NATIONAL ENVIRONMENT MANAGEMENT LAWS AMENDMENT BILL				
Province	**Reference**	**Amendment**	**National Department's Response**	**Legal Advisor's response (if necessary)**
Eastern Cape	Clause 12 Section 28 NEMA	Section 28 of the National Environmental Management Act, 1998 (Act No. 107 of 1998) which deals with the duty of care and the remediation of environmental damage has extended its powers to include Municipal Managers. The role of Municipal Managers therefore needs to be clarified with respect to Municipalities' capacity to manage the related compliance and enforcement functions.	**Noted No further amendments required.** The duty to undertake compliance and enforcement with the provisions of NEMA and SEMAs is divided amongst all 3 spheres of government – national, provincial and local. The Constitution allocates municipalities the power to undertake compliance and enforcement in respect of the functional areas set out in Parts B of Schedule 4 and 5 of the Constitution. As such, there has been an ongoing project to develop the Environmental Management Inspectorate capacity at municipal level, resulting in the designation of 410 local authority EMIs in 64 municipalities. The proposed amendment to provide the municipal manager with the power to issue s28 directives is to enable them to execute their original Constitutional competence; and to align with enforcement mechanisms available to national (Director-General) and provincial (Heads of Departments) functionaries, who are the administrative heads of their institutions.	

	Clause 38 Section 13 of Protected Areas Act	Mining in and around World Heritage sites needs to be revisited. The Bill does not address the development of these sites. There is a need for a law to address the development of World Heritage sites using an Environmental Impact Assessment on a case by case basis.	**Not supported** **No amendment recommended.** Section 48 of NEMPAA allows for mining in a buffer zone of a World Heritage Site, where it is declared as a protected environment, with the concurrence of both the Minister of Forestry, Fisheries and the Environment and the Minister of Mineral Resources and Energy.	
Free State	General	The Committee recommends that the Department of Environmental Affairs take note of the written and verbal comments as highlighted in clause 5 of this report and to consider the following emphasis from the Committee:	**Noted.**	
	Clause 1 Section 1 NEMA definitions	The definition of **"Environmental Management Instrument"** must be capable of considering all those other things that may be considered as Environmental Management Instrument as defined within different provinces. Kindly consider adding **"any relevant approved Provincial Biodiversity and/or Conservation Plans"** in the definition.	**Not supported, because Provincial Biodiversity and/or Conservation Plans are not developed for the purposes of Chapter 5 of NEMA.** The current wording the definition identifies that an environmental management instrument includes any instrument developed over time. This will allow for a provincial biodiversity and/or conservation plan to be regarded as an instrument when appropriate in the circumstances and when developed for the purposes of Chapter 5 of NEMA.	

			Due to the inclusion of the definition of environmental instrument, an editorial/ consequential amendment is required to s24(5)(bA) by the deletion of the word "including" as well as the list of instruments as these are now contained in the defined of environmental management instrument. **s24(5)(bA):** …"laying down the procedure to be followed for the preparation, evaluation, adoption and review of **[prescribed]** environmental management instruments, <u>including any conditions set out in such instrument, if any condition applies;</u> **[including—** **(i) environmental management frameworks;** **(ii) strategic environmental assessments;** **(iii) environmental impact assessments;** **(iv) environmental management programmes;** **(v) environmental risk assessments;** **(vi) environmental feasibility assessments;** **(vii) norms or standards;** **(viii) spatial development tools;**	

			(viiiA) minimum information requirements; or **(ix)any other relevant environmental management instrument that may be developed in time;"]**.	
	Clause 3(a) Section 24(2) NEMA	This clause refers to the word **"Conservation"** – there is no particular legislation defining what the meaning of conservation is. The word Conservation must be defined under NEMA Laws	**Not supported** **No amendment required.** The term does not appear in clause 3(a). However, clause 3(a) should only contain an amendment to the term "environmental management instrument" but should not refer to exclusion from environmental authorisation. This has not been indicated as an amendment in the published version and was probably a typing error copied into the text inaccurately. It should read as follows: "(b) geographical areas based on environmental attributes, and as specified in [spatial development tools] an environmental management instrument, adopted in the prescribed manner by the Minister or an MEC, with the concurrence of the Minister, in which specified activities may not commence without an environmental authorisation from the competent authority; ".	

	Clause 4(a) Section 24C(2A) NEMA Consequential amendment to clause 1, inserting new definition for mining activity	The purpose for the inclusion of the words **"or is"** is not clear. Kindly consider and amend accordingly.	**Supported** **Amendment required.** A further amendment is proposed to make it clear that the Minister responsible for mineral resources is the competent authority where the activity is a mining activity i.e. a NEMA environmental authorisation (EA) is required for a mining right, permit, permission or consent in terms of the MPRDA. Where an application requiring an EA is not for an activity associated with the MPRDA right, permit, permission or consent (i.e. such is not required or has already been obtained for the mining portions of the development / operation), the intention is that the Minister responsible for mineral resources should not be the competent authority (CA). In cases where an EA is required without the MPRDA mining right, permit, permission or consent, in an EA application, the relevant province or national Minister responsible for the environment will be the competent authority, depending on the normal criteria set out in section 24C(2) of NEMA. In addition, it is proposed that the principle of enabling an agreement	

			between the Minister responsible for environment, the MEC and the minister responsible for mineral resources, as proposed in clause 68 for section 43(3) of the NEMWA, also be incorporated into a proposed amendment of section 24C(3) of NEMA. These 2 proposed amendments should enable the determination of competency far better than is currently the case. This will also assist with numerous implementation challenges that have arisen since the implementation of the one environmental system (OES) in December 2014. Proposed text: **24C(2A):** "The Minister responsible for mineral resources must be identified as the competent authority in terms of subsection (1) where the listed or specified activity **[is, or is directly related to—** **(a) prospecting or exploration of a mineral or petroleum resource; or** **(b) extraction and primary processing of a mineral or petroleum resource]** <u>is a mining activity.".</u>	

			Clause 1 Consequential amendment: Insertion after the definition of **"**Mineral and Petroleum Resources Development Act, 2002**"** of the following definition: "**mining activity**" means an activity which requires a permission, right, permit or consent in terms of the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002), including hydraulic fracturing and reclamation, which also requires environmental authorisation;". **24C(3):** "(3) The Minister, the Minister responsible for mineral resources and an MEC may agree that applications for environmental authorisations with regard to any activity or class of activities- (a) contemplated in **[subsection]** subsections (2) and (2B) may be dealt with by the MEC or the Minister responsible for mineral resources; (b) in respect of which the MEC is identified as the competent authority may be dealt with by the Minister or the Minister responsible for mineral resources.".	

			Consequential amendment to **24C(12)** proposed: Proposed text: "A person who wishes to apply for an environmental authorisation for **[listed or specified activities for, or directly related to, prospecting or exploration of a mineral or petroleum resource or extraction and primary processing of a mineral or petroleum resource]**a mining activity which also involves an activity that requires a licence or permit in terms of any of the specific environmental management Acts, must simultaneously apply for an environmental authorisation after the acceptance of the application in terms of the Mineral and Petroleum Resources Development Act, 2002.". **Consequential amendment required also to Section 43(1A) of the National Environmental Management: Waste Act, 2008 (Act No. 58 of 2009):** Proposed text: "(1A) The Minister responsible for mineral resources is the licensing authority where the waste management activity is a mining	

			activity as defined in the National Environmental Management Act.”.	
	Clause 5(c) Section 24G NEMA	The meaning of “**in control of”** must be clarified. Define **“in control of”** under the definition clause.	**Not supported** **No amendment required.** This amendment to section 24G of NEMA seeks to extend the category of persons that can apply for a section 24G authorization. Not only will a person who commenced, conducted or undertook a listed or specified activity be entitled to apply, but also any person in control of that property; or a successor-in-title – this is to widen the ambit of persons that will be brought into the regulatory regime. The concept of a ‘person in control of’ is already used in section 28 of NEMA. It is submitted that this is not an open-ended concept and can be determined through a reasonable legal and factual enquiry.	
	Clause 8(3) Section 24P(3) NEMA	**Section 24P (3)** calls upon the applicant to determine the amount applicable for financial provision. This sounds like a provision for a self-regulation system. Is this the intention of the Bill? Kindly provide clarity.	**No amendment required.** The amount is determined through a regulated process which includes the preparation and costing of plans and the application of regulated calculations. The process is not a self-regulatory system.	
	Clause 8(6) Section 24P NEMA	The word **“and”** instead of **“or”** at the end of Section	**No amendment required.**	

		24P (6)(d) is capable of many interpretations. Kindly provide clarity.	The “and” is qualified as the provision indicates that the vehicles which must be used **include** (a)…and…. This means any of the options provided may be used and not all vehicles must be used for a single case.	
	Clause 9 Section 24PA NEMA	This clause amends Section 24P and it provides for the review of the financial provision for the mining activity every 3 years. In terms of section 27(8) of the MPRDA a mining permit is valid for a period specified in the permit which may not exceed a period of 2 years and may be renewed for 3 times for a period not exceeding 1 year. This amendment does not take into consideration the periods provided for in the MPRDA. Kindly consider.	**Supported** **Amendment required.** The current wording is prescriptive and does not consider short validity periods of certain MPRDA permits. The review and audit periods should be prescribed in regulation to allow for a variety of conditions. **24PA(1)** “(1) A holder of an environmental authorisation for a mining activity, holder or holder of an old order right must— (a) maintain and retain a financial provision until a closure certificate is issued by the Minister responsible for mineral resources in terms of the Mineral and Petroleum Resources Development Act, 2002; (b) review and adjust the environmental liability, as prescribed; (c) at the intervals as prescribed, subject the financial provision and the basis of the calculations to an independent audit;	

			(d) at the intervals as prescribed, submit to the Minister responsible for mineral resources, an audit report; (e) publish, at the intervals as prescribed, the review decision in a provincial newspaper as well as a newspaper distributed within the municipal area within which the mining operation is located, and indicate where the review can be obtained; and (f) annually undertake the mitigation and rehabilitation measures, as prescribed.". **Consequential amendment to 24PA(5):** (5) "If any person contemplated in subsection (1) fails to mitigate and rehabilitate environmental impacts as prescribed, the Minister responsible for mineral resources or the Minister responsible for water affairs may, upon written notice to such person, use all or part of the financial provision contemplated in this section to rehabilitate or manage the environmental impact in question.". **Consequential move of the definition of audit from section 1 to clause 8 (section 24P) to also apply to section 24PA (clause 9)**	

			and amendment to definition of "audit": ""**audit**" means a review of the scientific and engineering acceptability of the measures and the adequacy of related costs associated with financial provision, as prescribed;".	
	Clause 9 Section 24PA NEMA	Section 17(6) of the MPRDA – a prospecting right is valid for a period specified period in the right, which period may not exceed 5 years and in terms of section 18(4) of MPRDA prospecting right may be renewed once for not more 3 years. The financial provision or review thereof in terms of section 24P does not take this provision into consideration. Kindly consider.	**Supported** **Amendment required to 24PA(1) and (5) as above.**	
	Clause 9(5) Section 24P NEMA	Is there a recourse where the remediation costs exceed the determined financial provision? Kindly provide clarity.	**No amendment required.** The Financial Provisioning Regulations, 2015, as amended, provide that an annual review of the adequacy of the financial provision must be undertaken and adjustments made if necessary. The financial provision should therefore always be appropriate to the level of	

			environmental impact that must be remediated.	
	Clause 11 Section 24S NEMA	This clause repeals **section 24S** which deals with management of the residue stockpiles and deposits in terms of NEMA: Waste Act, 2008. However, motivation and provision under clause 59 (**section 4(b)A of NEM:WA**) amends Waste Act to the effect that stockpiles and residue deposits are no longer regulated under NEM:WA but under NEMA. Kindly provide clarity	**No amendment required.** The power to make regulations in terms of NEMA for residue deposits and stockpiles already exist in section 24(5)(b)(vi).	
	Clause 17 Sections 31B, 31C & 42 NEMA	This clause still provides for the Minister to instruct the EMI's to intervene where necessary. However, the EMI's are in general appointed by the MEC. Protocols might defeat the ends to justice. Recommend to give the MEC discretion to mandate the EMI's for purposes of proper oversight and monitoring of the implementation of the law.	**Not supported** **No amendment required.** Unlike "environment" which is a concurrent national and provincial competence according to Schedule 4 of the Constitution, mineral and petroleum resources are a residual national competence – this is the reason why there is a national Department of Mineral Resources and Energy, with regional offices. If the Minister of Forestry, Fisheries and the Environment, after consultation with the Minister responsible for mineral resources, directs EMIs to support the	

			Environmental Mineral and Petroleum Inspectors to execute their mandate, it is appropriate that these EMIs be from the national Department.	
	Clause 34 Section 43 NEMA	This introduces the Municipal Council as the appeal authority in decisions taken by the Municipal Managers. This was a challenge in relation to departments as there were no guidelines on the appointment and time frames for the appeal tribunal by the MEC's. Already Municipalities are facing a number of service delivery challenges, imposing the function of appeal to the Municipal Council is going to burden the Councils. The Committee suggests that the Council may be requested to provide reasons for any adverse decision and the appeal be lodged with the MEC responsible for Environmental Affairs. This is in line with the premise that the Departments are more empowered to handle the issues of environment as a core business. This will assist in handling of matters speedily.	**Not supported** **No amendment required.** The appeal provision has been amended to provide for an appeal against a section 28 directive issued by the municipal manager (or a delegated official) to be made to the municipal council. The municipal manager's mandate to issue this section 28 directive is limited (in the absence of a delegation or assignment) to pollution or degradation that is directly related to be the functional areas that are the exclusive, original competence of local authorities in terms of Parts B of Schedules 4 and 5 of the Constitution. In light of this, the MEC would not be a competent authority to hear these appeals, due to the fact that the functional areas provided for Parts B of Schedules 4 and 5 of the Constitution are the exclusive executive competence of the local authority.	

	Clause 39 Section 57 NEMPAA	This clause amends Section 57 by making a provision for an appointment of the CFO to the Board of SANParks to be mandatory on the basis of King III Report according to the Department. King III provides that for a sustainable reporting financial reporting must only be additional but it must be integrated in all the reports of the Board. Although there might be valid reasons, the recommendation by King III for integrated financial reports of the Board, this does not make a case for the appointment of the CFO into the board but could be one of the reasons for appointing the CFO into the Board. Note should be taken that strategically, integration of ethical standards should be driven from the top by the Board, with the CEO or designated executive board member being the visible link between the Board and the Executive Management.	**Not supported** **No amendment required.** King IV states that as minimum the CEO and one other executive should be appointed to the governing body to ensure that there is more than one point of interaction with management. The executive other than the CEO to be appointed to the Board may be the CFO or another designated executive deemed appropriate for the organization. For public entities there should be no perceived conflict between a CEO and CFO. The Minister may only make an appointment of the relevant legislation provides for this. In the absence of such a provision an appointment cannot be made. Leaving this to the discretion of the Minister is therefore not appropriate.	

		CFO is already a director of a company with the statutory duties and putting the CFO on the board has a potential of bringing conflict between the CEO and the CFO. Appointing the CFO on the Board may be useful to ensure that CFO is directly accountable as a director for the specific accounts that he/she was responsible for producing before the Board. Making an appointment of the CFO mandatory through a piece of legislation be detrimental and such a decision must not be taken lightly. A careful and weight up consideration of the benefits and disadvantages is hereby recommended, alternatively such a decision must be left at the discretion of the Minister as the Shareholder.		
	Clause 43 Section 3 NEMBA	The Committee takes note that of this amendment and agrees that in terms of the common law, all wild animals are regarded as res nullius, meaning it belongs to thereof.	The comment is **noted** with appreciation.	

		The committee further notes the provisions of the Game Theft Act as well as the High Court decision in the judgement of *Eastern Cape and Tourism Agency v Medbury (Pty) t/a Crown River Safari and Another (1466/2012) [2016] ZAECHGC.* The Committee confirms that there were no objections on this amendment and based on reasons advanced by the Department and the legal advice the committee supports this amendment.		
	Clause 56 Section 60 NEMAQA	Amendment of the Act for the express provision for the retrospective application of section 60 of the Act. The Committee notes the general principle that the law cannot apply retrospectively unless it is specifically provided for by Parliament after due process of public participation. The public participation was duly undertaken and there were no objections to this effect. The Committee was duly advised and therefore supports this amendment.	The support is **noted**.	

	Clause 59 Section 24S NEMA and NEMWA	This section refers to residue deposits and residue stockpile being regulated in terms of NEMA whereas Section 24S which deals with the residue deposits and stockpile under NEMA has been repealed. Kindly reconcile this cross referencing for clarity.	**Not supported** **No amendment required.** The regulation of residue deposits and stockpiles are already provided for in section 24(5)(b)(vi) of NEMA.	
	Clause 67 Section 41 NEMWA	Clause 67(1)(d) (iv) causes confusion. Kindly delete or rephrase.	**Not supported** **No amendment required.** Clause 67(1)(d)(iv) proposes the deletion of the following words currently contained in the NEMWA: **[(iv) is not contaminated;…]**	
	Clause 75 Sections 69 & 70 of NEMWA read with section 44 NEMA	The usage of the word "**may**" after Section 69 and 70 is capable of different interpretations. Kindly amend it to read "**must**".	**Not supported** **No amendment required.** The power to make regulations is never worded in a compulsory manner in legislation. It is an enabling provision, providing the entity described (on this case the Minister and MECs) with the ability to issue regulations should the circumstances require such.	
Gauteng	General	Due to the nature and complexity of environmental legislation, more training should be provided to stakeholders so at to ensure compliance with the legislation.	**Noted** **No amendment required.** The national and provincial environmental and conservation authorities that are charged with the responsibility to implement national legislation do have capacity that is	

			dedicated to raising awareness amongst stakeholders of their legislative obligations. These would fall within the responsibility of sections responsible for advocacy, environmental awareness / education or empowerment services. It is acknowledged that awareness-raising and training related to the provisions of these laws would support improved awareness, understanding and compliance.	
	Clause 58(j) Section 1 NEMWA	Definition of Waste should be simplified in order to avoid unnecessary challenges, different interpretation which could lead to unnecessary court cases.	**Supported** **Agree with amendment proposed** **Proposed text:** ““waste” means— (a) any substance, material or object— (i) that the generator of that substance, material or object has no further use for within its own processes, whether or not it has any commercial value for the generator, but which can be re-used, recycled, recovered or traded in by any person; or (ii) that is rejected, abandoned, discarded or disposed of, either temporary or permanently, or is intended to be discarded or disposed of by the holder of that substance, material or object,	

			regardless of whether or not that substance, material or object has any commercial value for the holder or can be re-used, recycled, recovered or traded in by any person; or (b) any other substance, material or object that may be defined as a waste by the Minister by notice in the Gazette; but any waste or portion of waste, referred to in paragraphs (a) and (b), ceases to be a waste- (i) once it is re-used, recycled or recovered or traded in by the holder of that waste or portion of waste in accordance with a condition stipulated in a valid waste management licence, where applicable, or in accordance with an applicable norm or standard made in terms of this Act; or (ii) where the Minister has, in the prescribed manner, excluded the holder of any waste stream or a portion of a waste stream from the definition of waste, enabling the holder thereof to trade in the excluded waste stream or portion of the excluded waste stream, provided that the holder has	

			satisfied the requirements of proving the environmentally safe use of the waste stream or portion of waste stream by it or any other person and committed to provide the Minister with annual reports of the use thereof.". **Consequential amendments:** 1. Definitions The following additional definitions will be required if the above definition is accepted. 2.1 On page 30, after line 15 to insert the following new definition: (c) by the insertion after the definition of "commence" of the following definition": "'commercial value' means the retail value a thing would have if it were offered for sale;"; and 2.2 On page 31, after line 10 to insert the following new definition: (m) by the insertion after the definition of "this Act" of the following definition: "'trade in' means buying, selling or bartering;".	

			2.3 The following transitional provision will be required due to the amendments of the waste definition: **NEW CLAUSE** **Transitional provision due to the amendment of the waste definition** "85 (1) Any substance, material or object, which is "waste" in terms of the amended definition "waste", but was not regarded as such prior to the commencement of the amended definition, will be regarded as waste from the date of the commencement of the amended provision, unless it is excluded in terms of section 4 from the scope of the principal Act. (2) A person in control of the substance, material or object must within 60 days from the date of the commencement of the amended definition of "waste", either— (a) apply for a waste management licence, if the person conducts an activity, which is listed in terms of section 19(1) of the principal Act; (b) comply with a norm or standard, if the person conducts an activity, which is listed in terms of section 19(3) of the Act, if applicable; or (c) apply for the exclusion of the substance, material or object from the definition of waste in the prescribed manner.".	

	Clause 5 Section 24G NEMA	The public participation as referred to in section 24G should be clearly defined.	**Supported** **Amendment required.** Proposed text: **“**(H) undertake public participation which is appropriate to bring the unlawful commencement, undertaking and/or conducting of an activity to the attention of and to provide interested and affected parties with a reasonable opportunity to comment on the application, which public participation may include appropriate elements of public participation as prescribed in the Environmental Impact Assessment Regulations and the Section 24G Fine Regulations promulgated in terms of this Act;”. **Also see revised numbering for section 24G. The full revised text is provided below:** Section 24G of the National Environmental Management Act, 1998, is hereby amended— *(a)* by the substitution in subsection (1) for paragraph *(b)* of the following paragraphs: “*(b)* has commenced, undertaken or conducted a waste management	

			activity without a waste management licence in terms of section 20*(b)* of the National Environmental Management: Waste Act, 2008 (Act No. 59 of 2008)**[,]**; *(c)* is in control of, or successor in title to, land on which a person— (i) has commenced with a listed or specified activity without an environmental authorisation in contravention of section 24F(1); or (ii) has commenced with, undertaken or conducted a waste management activity in contravention of, section 20*(b)* of the National Environmental Management: Waste Act, 2008 (Act No. 59 of 2008), the Minister, Minister responsible for mineral resources or MEC concerned, as the case may be**[,]**— *(aa)* **[may]** must direct the applicant to— **[(i)]**(A) immediately cease the activity pending a decision on the application submitted in terms of this subsection, except if there are reasonable grounds to believe the cessation will result in serious harm to the environment; **[(ii)]**(B) investigate, evaluate and assess the impact of the activity on the environment;	

			[(iii)](C) remedy any adverse effects of the activity on the environment; **[(iv)]**(D) cease, modify or control any act, activity, process or omission causing pollution or environmental degradation; **[(v)]**(E) contain or prevent the movement of pollution or degradation of the environment; **[(vi)]**(F) eliminate any source of pollution or degradation; **[(vii)]**(G) compile a report containing— **[*(aa)*]**(AA) a description of the need and desirability of the activity; **[*(bb)*]**(BB) an assessment of the nature, extent, duration and significance of the consequences for, or impacts on, the environment of the activity, including the cumulative effects and the manner in which the geographical, physical, biological, social, economic and cultural aspects of the environment may be affected by the proposed activity; **[*(cc)*]**(CC) a description of mitigation measures undertaken or to be undertaken in respect of the consequences for, or impacts on, the environment of the activity; and **[*(dd)*]**(DD) a description of the public participation process followed during the course of compiling the report, including all comments received from	

			interested and affected parties and an indication of how the issues raised have been addressed, if applicable; and (H) undertake public participation which is appropriate to bring the unlawful commencement, undertaking and/or conducting of and activity to the attention of, and to provide, interested and affected parties, with a reasonable opportunity to comment on the application and which required public participation may include appropriate elements of public participation as prescribed in the Environmental Impact Assessment Regulations promulgated in terms of this Act; and **[(viii)]***(bb)* may direct the applicant to compile an environmental management programme and to provide such other information or undertake such further studies as the Minister, Minister responsible for mineral resources or MEC, as the case may be, may deem necessary."; *(b)* by the substitution for subsection (4) of the following subsection: "'(4) A person contemplated in subsection (1) must pay an	

			administrative fine, which may not exceed **[R5]** R10 million and which must be determined by the competent authority, before the Minister, Minister responsible for mineral resources or MEC concerned may act in terms of subsection (2)*(a)* or *(b)*."; and (c) by the insertion, in subsection (6)(a), after the words "environmental management inspector's" of the words "<u>environmental mineral and petroleum inspector's</u>".	
		The Cooperative arrangement between SAPS and Environmental Management Inspectors should be regulated.	**Not supported** **No amendment required.** Chapter 3 of the Constitution provides the framework under which spheres of government and organs of state must give effect to co-operative governance, including, inter alia, that: "co-operate with one another in mutual trust and good faith by -(i) fostering friendly relations; (ii) assisting and supporting one another; (iii) informing one another of, and consulting one another on, matters of common interest; (iv) coordinating their actions and legislation with one another; (v) adhering to agreed procedures; and (vi) avoiding legal proceedings against one another.".	

			In furtherance of these Constitutional objectives, the EMI have entered into a Standard Operating Procedure since 2009 to give effect to this collaborative relationship. At this stage it is unnecessary to provide for further regulation of this relationship.	
	Clause 2 Section 2(qA) NEMA	Definition of black professionals should include indigenous knowledge practitioners.	**Supported** **Amendment required.** **Specific recognition for "black professionals" and "indigenous knowledge practitioners" has been incorporated. Based on another comment the term "previously disadvantaged professionals" is also included.** Despite legislative provisions in place for a number of years the recognition and promotion of participation by black professional has been identified as a specific challenge in the environmental sector. **Proposed amendment (new text) to section 2 NEMA:** **''(qA)** The full participation of previously disadvantaged professionals, with specific emphasis on black professionals and indigenous knowledge practitioners, in the environmental management	

			Sector, must be recognised and their participation in the sector promoted.''. **Consequential amendment to clause 1, section 1 definitions, required to define indigenous knowledge practitioners as follows:** **"'indigenous knowledge practitioner'** has the meaning assigned to it in section 1 of the Protection, Promotion, Development and Management of Indigenous Knowledge Act, 2019 (Act No. 6 of 2019);".	
		Amnesty concerning application fees for licences and permits should be provided for local practitioners or traditional healers that are struggling financially.	**Noted** **No amendment required.** This can be considered in various subordinate legislation where fees are prescribed. The Fees Regulations, 2014 already provide for a waiver of certain fees for environmental authorisation applications.	
Kwa-Zulu Natal		No input received	N/A	
Limpopo	Clause 1 Section 1 definitions NEMA	"mitigate" new definition means to avoid or prevent, minimise, rehabilitate, remediate and compensate. This definition makes provision for impacts remaining after all prior	**No amendment required to text but definitions for "mitigate", "rehabilitate", "latent environmental impacts" as well as "audit" should be moved to clause 8 to also apply to clause 9**	

		actions in this mitigation sequence or hierarchy have been taken into account.	**(sections 24P/PA) dealing with financial provision.** **If the proposed amendments are accepted, the definitions for "remediate" and "residual environmental impact" must be deleted as they are no longer proposed for insertion.** It is not possible to avoid or prevent impacts when authorisation has been given for mining. By its nature, mining impacts on the environment, therefore it is only possible after authorising mining to alleviate impacts. Compensation would also be done prior to mining not at closure when remediation would be implemented.	
	Clause 1 Section 1 definitions NEMA	"minimise" new definition means to alleviate, reduce, make less severe.	**Not supported** **No amendment required.** It is not deemed necessary to define this term as it is not used. Suggest that the following definition in the Bill be retained: **"'mitigate**' means to alleviate, reduce or make less severe;".	
	Clause 9 Section 24PA NEMA	The proposed periods of three years for the review of the environmental liability and five years for submission of audit report are to be amended to one year to ensure that there are sufficient funds to	**Amendment required to section 24PA(1) and (5) as per page 10 above.** It is proposed that the section be revised to provide a more framework approach in which the timeframes are to be prescribed in regulation.	

		undertake rehabilitation and depending on the findings to increase the funds for the rehabilitation.		
	Clause 38 Section 48 NEMPAA	(b)It is proposed that the Minister responsible for mineral resources should not be removed from decisions relating to the location of mining and related activities.	**Not supported as the Minister of Mineral Reources and Energy is already part of the decision-making process.** **No amendment required.** The removal stems from the fact that the Minister of Mineral Resources and Energy is already required to take a decision on whether an environmental authorisation should be issued or not. Requiring a decision in terms of NEMPAA as well would be a duplication. The proposed amendment intends to remove the Minister responsible for mineral resources from the legal obligation of granting/refusing permission in terms of NEMPAA.	
	Clause 41 Section 1 NEMBA	“wildlife welfare” new definition means to cater for diversity of the species, the psychological and psychosocial health and not suffering from any form of stress or pain.”	**Amendment required:** Court judgments have linked the welfare of wild animals with their conservation and protection to section 24 of the Constitution of the Republic of South Africa, 1996 (the Constitution). The term “well-being” is proposed in NEMBA, for the following reasons:	

			a) Consistency in the use of terminology: (i) Section 24 of the Constitution refers to well-being, even though it is used in the context of human well-being. The Constitution has not defined the term “well-being”; (ii) NEMBA does not use the term “wildlife”, but uses the term “biological resource”. To refer to faunal biological resources/ fauna would be consistent with the terminology of NEMBA; b) The ordinary meaning of welfare also refers to the well-being of animals; c) In the proposed definition for well-being, reference to “health” has been expanded to refer to physical, physiological and mental health. The preference is therefore to not be overly specific and restrictive in defining concepts; and d) The Department of Forestry, Fisheries and the Environment acknowledges that the Animals Protection Act, 1962 (Act No. 71 of 1962) remains the primary legislation for the regulation of welfare and cruelty-related matters. The purpose of the proposed amendment to NEMBA is to enable the Minister of Forestry, Fisheries and the Environment to address legislative	

			gaps relating to the well-being of wild animals, e.g. to develop regulatory measures for the manner in which wild animals may be kept in a captive environment, or transported. <u>The following changes are proposed:</u> **1. <u>Replacement of the definition in clause 41(c) with the following proposed definition:</u>** **"<u>well-being"</u>** means the holistic circumstances and conditions of an animal, which are conducive to its physical, physiological and mental health and quality of life, and ability to cope with its environment"; **2. Sequential changes:** Based on the amended definition, the following sequential amendments are required to replace "faunal biological resource" with "animal": • **Clause 44 - Insertion of section 9A in Act 10 of 2004** **44.** The following section is hereby inserted in the National Environmental Management: Biodiversity Act, 2004, after section 9:	

			Prohibition of certain activities **9A.** The Minister may, by notice in the *Gazette* and subject to such conditions as the Minister may specify in the notice, prohibit any activity that may negatively impact on the well-being of **[a faunal biological resource]** an animal.''; and • **Amendment of section 97 of Act 10 of 2004, as amended by section 45 of Act 14 of 2009 and section 30 of Act 14 of 2013** **48.** Section 97 of the National Environmental Management: Biodiversity Act, 2004, is hereby amended by the insertion in subsection (1) after paragraph *(a)* of the following paragraph: ''*(a*A*)* the well-being of **[a faunal biological resource]** an animal;''. **3. Clause 42 - revised amendment of section 2 of NEMBA:** a) Deletion of the proposed amendment to subparagraph (ii); and b) Insertion of a new subparagraph (iiA) after subparagraph (ii):	

			(ii) the use of indigenous biological resources in a sustainable manner; **[and]** (iiA) the consideration of the well-being of animals in the management, conservation and sustainable use thereof; and…	
	New proposed amendment Section 41(3) NEMAQA	The provisional atmospheric licence is valid for a period of one year from the date of the commissioning of the listed activity and may be extended to an additional one year or a period determined by the licensing authority on good cause shown.	**Not supported** **No amendment required.** This proposal will empower the licensing authority to issue a provisional licence that can be renewed endlessly. There are already provisional licence from some provinces that were valid for five years thus allowing facilities to operate without the need to comply with Minimum Emission Standards (MES). The atmospheric emission licence (AEL) cannot be issued to a facility that failed to demonstrate compliance with the Minimum Emission Standards. By issuing the license the authorities will be undermining the law. A facility is designed with MES being the battery limit or the boundary condition for the plant. While it is understood that it might take some time for the plant to operate as it was intended to during the design, the	

			two-year period is enough to illustrate compliance with the law. The regulated community needs to understand that an AEL is an essential authorization that allows them to operate within acceptable limits.	
Mpumalanga	General	In order to avoid unnecessary amendments of the National Environmental Laws Bill inputs made by stakeholders at this stage should be considered and be reasonably incorporated in the proposed National Environmental Management Laws Amendment Bill [B 14D–2017].	**Noted. Responses provided below.**	
	Clause 4 Section 24C(11) NEMA	EWT: The addition of section 24C(11), allowing for simultaneous submissions of applications where the environmental authorisation also includes activities requiring licences or permits under specific environmental management acts, is supported provided that these permits and licences are only approved once the environmental authorisation is granted to prevent any undue or premature development or activities being undertaken.	**No amendment required.** The intention with the introduction of section 24C(11) is to ensure that multiple processes that can be combined (because of similarities in both procedural and content aspects) should be combined to save time and avoid duplication – where possible. To force a staggered process by forcing the environmental authorisation (EA) to be granted first may defeat this objective. It must also be kept in mind that the procedural and technical requirements for an EA may differ from that of specific environmental management Act (SEMA)	

		Further, the process for simultaneous applications will require enhanced cooperative governance as foreshadowed in, inter alia, section 41of the Constitution, 1996, ensuring that decision making in this regard is effective, transparent and accountable.	requirements such as the National Water Act, 1998 water use licence application processes and a refusal of one application may not automatically result in a refusal of the other. Different legal mandates and requirements / considerations are applicable.	
	Clause 4 Section 24C(12) NEMA	The provisions of the proposed 24C (12) cannot be supported. In terms of this addition, where a person wishes to apply for an environmental authorisation, this application can only be done once the application for a right or permit has been accepted in terms of the Mineral and Petroleum Resources Development Act 28 of 2002 (MPRDA). This proposed amendment is counter-intuitive and undermining of the one environmental system. The environmental authorisation must be the point of departure in any process to undertake mining or related activities requiring a right or licence in terms of the MPRDA. In addition to this, we have noted what appears to be a lacuna between the	**No amendment required in relation to the concern identified. However, due to a different comment the section will be amended to remove the reference to "directly related to prospecting,…."**. Proposed new wording 24C(12): "A person who wishes to apply for an environmental authorisation for **[listed or specified activities for, or directly related to, prospecting or exploration of a mineral or petroleum resource or extraction and primary processing of a mineral or petroleum resource]** a mining activity which also involves an activity that requires a licence or permit in terms of any of the specific environmental management Acts, must simultaneously apply for an environmental authorisation after the acceptance of the application in terms of the Mineral and Petroleum Resources Development Act, 2002.".	

		provisions of NEMA (specifically section 24C(2A)) and the provisions in the MPRDA as they relate to mining. Attention must be given to resolve this, ensuring consistency in terminology.	The acceptance of an application in terms of the MPRDA does not equate to an approval but only means the application will be processed. It is deemed essential that the MPRDA application must first be accepted before the NEMA process is allowed to continue. If the MPRDA application is rejected there is no value in considering the NEMA application as the development will not be capable of being undertaken legally in the absence of the MPRDA approval. It would also mean that the NEMA authority will process an application that is already rejected under the MPRDA. Government resources should be put to better use, thus the requirement that an application under the MPRDA must first be accepted before the NEMA application is processed.	
	Clause 5 Section 24G NEMA	EWT: Serious concerns about broadening the provisions of section. This provision is already severely abused and is resulting in loss of biodiversity and negative conservation impacts. The provisions of section 24G have allowed people (natural and juristic) to undertake activities that require an environmental authorisation,	**No amendment required.** Section 24G has been amended specifically to curb the abuse of this provision by, inter alia: • Compelling competent authorities to direct the applicant to immediately cease the activity pending a decision on the application, except if there are reasonable grounds to believe the cessation will result in serious harm to the environment; and	

		destroying critical biodiversity, often irreversibly, to pay a relatively small administrative fine and then continue with the activities that may not have been approved had the person followed proper and due process. Section 24G undermines the section 2 NEMA principles which inter alia call for: i. That the disturbance of ecosystems and loss of biological diversity are avoided, or, where they cannot be altogether avoided, are minimised and remedied. ii. That a risk-averse and cautious approach is applied, which takes into account the limits of current knowledge about the consequences of decisions and actions. iii. That negative impacts on the environment and on people's environmental rights be anticipated and prevented, and where they cannot be altogether prevented, are minimised and remedied. iv. The social, economic and environmental impacts of activities, including disadvantages and benefits,	• Increasing the maximum monetary penalty from R5 million to R10 million. In addition, Section 24G fine Regulations have been promulgated which provide the criteria to be considered and the process to be followed in the determination of the quantum of the fine. These Regulations also provide that the fine committee to recommend the maximum penalty in instances where the person is found to be a repeat contravener.	

		must be considered, assessed and evaluated, and decisions must be appropriate in the light of such consideration and assessment.		
		Accordingly, it is time change our approach to section 24G to prevent its continued abuse (including considering repealing or substantially amending this provision). With this said we have set our comments specific to the proposed amendments to section 24G. We do support the replacement of the term "may" with "must" and we support the new requirement for public participation processes to be undertaken, although this should not be "as prescribed" but a set requirement in all section 24G applications.	**Supported** **Response as above. Support noted. Amendment suggested for public participation:** "(H) undertake public participation which is appropriate to bring the unlawful commencement, undertaking and/or conducting of and activity to the attention of and to provide interested and affected parties with a reasonable opportunity to comment on the application, which public participation may include appropriate elements of public participation as prescribed in the Environmental Impact Assessment Regulations and the Section 24G Fine Regulations promulgated in terms of this Act;". See proposed full text on pages 24-26 above.	
	Clause 6 Section 24N NEMA	EWT: Serious concerns about the weakening of the provisions of section 24N by removing all of the provisions guiding what an environmental management	**Not supported** **No amendment required.** NEMA is intended to be framework legislation. The proposed amendment intends to achieve this.	

		programme must contain (such as information on management, mitigation, protection or remedial measures, information of who will be responsible for the implementation of the measure etc.) and replacing this detailed content with "information that is prescribed". The consequence of this is that the applicant will challenge the imposition of conditions that are not set out in NEMA and this is easy prevented by maintaining the provisions detailing what an environmental management programme must contain. Perhaps consideration can be given to amending the provisions of section 24N (2) to provide detail what the environmental management programme must contain (as is currently provided for) but then to make it clear that this is it not a closed list, allowing the decision maker to specify additional parameters if circumstances should so dictate. Further, "information that is prescribed" is vague and will result in	The current content contained in section 24N(2) is not appropriate for all instances where EMPrs are required. The EMPr requirements in the environmental authorisation (EA) process is already prescribed by means of the Environmental Impact Assessment Regulations, 2014, as amended. Other contexts within which EMPrs are required are also governed by existing prescripts. For instance, if an EMPr is proposed to be used to exclude from the requirement to obtain EA in terms of section 24(2)(c) and (e) of NEMA, the 2019 Regulations laying down the procedure to be followed for the adoption of spatial tools or environmental management instruments contemplated in section 24(2)(c) and (e) of NEMA already require that certain information must be made available and must be consulted on. This includes an upfront indication of the proposed purpose of the instrument (e.g. EMPr). The consultation process for this is also prescribed in these Regulations. Lastly, for EMPrs used in the section 24G NEMA context, there is a need to be flexible depending on the circumstances of the specific case (e.g. a description of mitigation measures, etc. must already be provided in the report to	

		inconsistencies in the content of environmental management programmes and must be seen as a weakening of the provisions in this regard. We note the justification provided in the presentation by the Department of Environment, Forestry and Fisheries that the amendment allows environmental management programme content to be prescribed through Regulations, but as no regulations are in draft and given the time taken to approve and promulgate regulations, it could be several years before they are effective and this justification therefore is not supported.	be required, creating the need to be flexible regarding content of an EMPr so that it can be adjusted to the specific circumstances as per the proposed amendments to this section as contained in the Bill). Each section 24G application is managed on a case by case basis and nothing prevents the relevant Minister or MEC to require case specific content for such EMPrs.	
	Clause 7 Section 24O NEMA	EWT: We strongly oppose to the inclusion of "or an environmental assessment practitioner" in the proposed amendments to section 24O. This suggests that instead of the Minister, the Minister responsible for mineral resources or the MEC consulting with every State department that administers a law relating to a matter, the environmental assessment	**Not supported** **No amendment required based on this comment. However, based on another comment the term "State department" is to be replaced with the term "organ of state". Based on the amendment to 24C(2) a consequential amendment is made to 24O(2A).** **24O(2) with consequential amendment to (2A) and (3):**	

		practitioner is also empowered to undertake this engagement in the place of the Minister, the Minister responsible. For mineral resources or the MEC, thus undermining cooperative governance. This is contrary to the provisions and spirit of section 41 of the Constitution and section 2(4)(l) of NEMA.	‘‘(2) The Minister, the Minister responsible for mineral resources **[or],** an MEC or an environmental assessment practitioner must consult with every **[State department]** organ of state that administers a law relating to a matter affecting the environment, when such Minister, the Minister responsible for mineral resources or an MEC considers an application for an environmental authorisation. (2A) Where the matter relates to **[prospecting, exploration,]** a mining activity**[or production]**, the request for comment contemplated in subsection (2), must be submitted by registered mail to the Director-General or provincial head of department of the **[State department]**organ of state contemplated in subsection (2). (3) **[A State department]** An organ of state consulted in terms of subsection (2) must submit comment within 30 days from the date on which the Minister, Minister responsible for mineral resources, or MEC, or environmental assessment practitioner requests such **[State department]** organ of state in writing to submit comment.”.	

			During the process, comments must be sourced and provided at the earliest and most appropriate stage. Introducing the EAP into this provision is aimed at ensuring this. It is also intended to avoid any delays during consultation processes. The responsibility of the Ministers and MECs remain unchanged. Adding the responsibility of the EAP it is intended that the EAP will take greater care in ensuring the correct initial identification of stakeholders to be involved in any given process.	
	Clause 8 Section 24P NEMA	EWT: Serious concerns relating to the new provisions of section 24P effectively allowing the applicant to determine the financial provisioning required to undertake progressive rehabilitation and other activities. This determination should be made by an external, objective expert based on clear guidance to quantity financial provisioning for remediation and form part of the public participation process.	**No amendment required.** Regulation 9 of the Financial Provisioning Regulations, 2015 require the determination, review and assessment of financial provision to be prepared by independent specialists. The provisions of section 24P as proposed require the details to be prescribed by regulation. This requirement will be retained in regulations.	
	Clause 9 Section 24PA NEMA	EWT: The time periods prescribed in section 24PA are unnecessarily long, the three and five year time periods should be amended	**Amendment required to section 24PA(1) and a consequential amendment required to 24PA(5).**	

		to one year to prevent abuse of the financial provisioning, ensuring that there are sufficient funds to undertake the rehabilitation of the land and, depending on the findings, increase the funds for the rehabilitation.	Due to comments received, it is proposed that the relevant sections be amended to provide a more framework approach and allow the timeframes to be prescribed in regulations. **Amendments proposed to 24PA(1) and consequential amendment to (5) as indicated on pages 10-12 above**.	
	Clause 10 Section 24R(2) NEMA	EWT: We oppose the proposed deletion of section 24R (2) which currently allows the Minister to retain a portion of such financial provision for any latent, residual or any other environmental impact, including the pumping of polluted or extraneous water, for a prescribed period after issuing a closure certificate. This is vitally important, as the costs of environmental remediation should be borne by the polluter. This is reflected in section 2(4)(p) of NEMA which provides that "the costs of remedying pollution, environmental degradation and consequent adverse health effects and of preventing, controlling or minimising further pollution, environmental damage or	**Not supported** **No amendment required based on this comment but consequential amendments proposed to section 24P and 24PA.** Section 24R(2) is a repetition of section 24PA(3) which already provides that the portion of the financial provision set aside for the management of latent impacts must be transferred to the Minister on the issuing of a closure certificate. It is therefore required that section 24R(2) be deleted. **Consequential amendments also proposed to 24R:** "(1) Every holder, holder of an environmental authorisation for **[listed or specified activities for, or directly related to, prospecting or exploration of a mineral or petroleum resource or extraction**	

		adverse health effects must be paid for by those responsible for harming the environment." In addition to our objection to the deletion of this provision we call for the consideration of the financial provision for any latent, residual or any other environmental impact to be part of the public participation process in respect of the closure of the mine. This is to prevent mines from closing operations and leaving displaced communities to suffer the negative impacts of environmental harm caused by the mine. This is integrally linked to environmental justice for previously disadvantaged individuals/ communities.	**and primary processing of a mineral or petroleum resource]**a mining activity, holder of an old order right and owner of works remain responsible for any environmental liability, pollution or ecological degradation, the pumping and treatment of polluted or extraneous water, the management and sustainable closure thereof notwithstanding the issuing of a closure certificate by the Minister responsible for mineral resources in terms of the Mineral and Petroleum Resources Development Act, 2002, to the holder or owner concerned.". ''(3) Every holder, holder of an environmental authorisation for **[listed or specified activities for, or directly related to, prospecting or exploration of a mineral or petroleum resource or extraction and primary processing of a mineral or petroleum resource]**a mining activity, holder of an old order right or owner of works must plan, manage and implement such procedures and requirements in respect of the closure of a mine as may be prescribed.".	

			The financial provision is not intended to be used to fund the management of social issues on closure, this is the task of the social and labour plans and funds that are set aside by the mining company. The financial provision is related only to the remediation of environmental impacts.	
	Clause 11 Section 24S NEMA	EWT: The proposed deletion of section 24S which provides for the management of residue stockpiles and residue deposits leaves this important consideration unregulated should the amendments be approved. Without guidance to the contrary this is not supported.	**Not supported** **No amendment required.** The regulation of residue deposits and stockpiles are already provided for in section 24(5)(b)(vi) of NEMA.	
	Clause Section 31K NEMA	EWT: We oppose the proposed removal of the powers of search for EMIs as provided for currently by section 31K.	**Not supported** **No amendment required in response to this comment but amendment required to add references to <u>environmental mineral and petroleum inspector</u>.** The purpose of section 31K is to empower EMIs to undertake regulatory inspections for the purposes of ascertaining compliance with legislation that they are mandated to enforce, or any term or condition of a permit, authorisation or instrument issued in terms of such legislation.	

			As such, this type of inspection is a "routine inspection" and is not triggered by a reasonable suspicion of a contravention. The use of the word "search" is inappropriate in this section, as it implies that the EMI is "looking for" something specific, which implies that they may be looking for evidence of wrongdoing i.e. conducting a criminal investigation – this is not the purpose of S31K – the EMIs are there to inspect and not "search".	
	Clause Section 34E NEMA	EWT: We wholly reject the softening of section 34E by replacing "must" with "may" in relation to the requirement for seized specimens to be deposited with suitable institutions and we call for policy to be developed to further guide this.	**Not supported** **No amendment required.** The reason that this clause was amended is primarily to provide for a level of discretion for the EMI to manage the seized live specimen in the **best interests of the animal** that has been seized. For example, the seized live specimen may **not be able to survive** in captivity, for example, Pangolins, or they may have very specific habitat requirements. In these circumstances, it may be in the interests of the animal to be returned to a natural environment, after the EMI has consulted the appropriate conservation/scientific authorities; and taken the appropriate identification samples/photos etc.	

			The specimen could also be **diseased or infectious**, in which case, the EMI would need to have the animal examined by a vet and/or quarantined. It could also be **so badly injured**, that the most "humane" manner of management would be to euthanize the specimen. In the case of alien or invasive species, there could also be specimens which are **completely prohibited** to possess. The EMI requires a level of discretion to deal with these specimens as the circumstances may require and the cross-referencing to the relevant provisions of the Criminal Procedure Act ensures that this is done in terms of an existing regulatory framework. The circumstances are exacerbated by the fact that the **EMIs do not own safe keeping facilities**, which means that they may not be able to comply with this provision as a result of circumstances beyond their control.	
	Clause 38 Section 48 NEMPAA	EWT: The proposed amendments to section 48 of NEMPAA will remove the requirement for the Minister responsible for mineral resources to provide written permission for undertaking	**Not supported as the Minister responsible for mineral resources is already involved in the decision-making process.** **No amendment required.**	

		any activities detailed in section 48(1) in a protected environment. We do not support the softening of this provision. The Minister responsible for mineral resources should not be removed from decisions relating to the location of mining and related activities and should be held to those decisions where the land in question is legally protected. Again, this proposed amendment undermines the principles of cooperative governance enshrined in section 41 of the Constitution. Further the proposed deletion of the specific reference to taking into account the interests of local communities is disappointing and not supported while the boarder considerations detailed in the proposed section 48(4) are.	The removal stems from the fact that the Minister of Mineral Resources is already required to take a decision on whether an environmental authorisation should be issued or not. Requiring a decision in terms of NEMPAA as well would be a duplication. The proposed amendment intends to remove the Minister responsible for mineral resources from the legal obligation of granting/refusing permission in terms of NEMPAA. However, such a decision will be made by the Minister responsible for environmental affairs after consultation with the Minister responsible for mineral resources [Section 41(h) of the Constitution]. The interests of affected parties may be considered through the public consultation process as required in terms of PAJA.	
	Clause 41 Section 1 NEMBA	EWT: We question why the proposed definitions of control and eradicate are limited to invasive species and not alien species as well, and without clear justification this is not supported.	**No amendment required.** Alien species do not pose a risk to the country. It is only if an alien species becomes invasive that it needs to be controlled. All alien species are not invasive. The intention is not to regulate alien species unless they become invasive in which case they will be listed and	

			will then have to be controlled and eradicated.	
	Clause 41 Section 1 NEMBA	EWT: For many years in South Africa, wildlife regulation that would govern the use of wildlife and wildlife welfare, has been seen as two mutually exclusive considerations, and perhaps even at odds with one another. The result is that wildlife use has often come at the cost of the welfare of many individuals of species. As such we welcome the initiative to include welfare considerations in NEMBA, however, we are concerned about the proposed definition of well-being for the following reasons: i. It is very narrow and limits well-being to health. ii. The scope of health is uncertain, would it include psychological or psychosocial health as well? iii. The terms “health” and “well-being” themselves are two mutually exclusive terms, as is illustrated in our Constitution and shouldn’t be combined or used interchangeably as is proposed in the definition of	**Amendment required.** Court judgments have linked the welfare of wild animals with their conservation and protection to section 24 of the Constitution of the Republic of South Africa (the Constitution). The term “well-being” is proposed in NEMBA, for the following reasons: a) Consistency in the use of terminology: (i) Section 24 of the Constitution refers to well-being, even though it is used in the context of human well-being. The Constitution has not defined the term “well-being”; (ii) NEMBA does not use the term “wildlife”, but uses the term “biological resource”. To refer to faunal biological resources/ fauna would be consistent with the terminology of NEMBA; b) The ordinary meaning of welfare also refers to the well-being of animals; and c) In the proposed definition for well-being, reference to “health” has been expanded to refer to physical, physiological and mental health. The preference is therefore to not be	

		"well-being". We would strongly urge the term "well-being" be replaced with "welfare" and this amendment carried throughout all the proposed amendments to NEMBA that relate to well-being. Animal welfare considerations vary from species to species but would be reflective in how an individual of a species coping with the conditions in which it lives.1 Overall "an animal is in a good state of welfare if (as indicated by scientific evidence) it is healthy, comfortable, well-nourished, safe, able to express innate behaviour, and if it is not suffering from unpleasant states such as pain, fear, and distress."2 In the alternative the definition of well-being must be amended to address the challenges detailed above and be reflective of the definition of welfare above.	overly specific and restrictive in defining concepts; and d) The Department of Forestry, Fisheries and the Environment acknowledges that the Animals Protection Act, 1962 (Act No. 71 of 1962) remains the primary legislation for the regulation of welfare and cruelty-related matters. The purpose of the proposed amendment to NEMBA is to enable the Minister of Forestry, Fisheries and the Environment to address legislative gaps relating to the well-being of wild animals, e.g. to develop regulatory measures for the manner in which wild animals may be kept in a captive environment, or transported. The following amended definition is proposed to make provision for measures to also apply in circumstances other than just living conditions: <u>The following changes are proposed:</u> **1. <u>Replacement of the definition in clause 41(c) with the following proposed definition:</u>** **"<u>well-being"</u>** means the holistic circumstances and conditions of an animal, which are conducive to its physical, physiological and mental	

			health and quality of life, and ability to cope with its environment"; **2. Sequential changes:** Based on the amended definition, the following sequential amendments are required to replace "faunal biological resource" with "animal": • **Clause 44 - Insertion of section 9A in Act 10 of 2004** **44.** The following section is hereby inserted in the National Environmental Management: Biodiversity Act, 2004, after section 9: **Prohibition of certain activities** **9A.** The Minister may, by notice in the *Gazette* and subject to such conditions as the Minister may specify in the notice, prohibit any activity that may negatively impact on the well-being of **[a faunal biological resource]** an animal."; and • **Amendment of section 97 of Act 10 of 2004, as amended by section 45 of Act 14 of 2009 and section 30 of Act 14 of 2013**	

			48. Section 97 of the National Environmental Management: Biodiversity Act, 2004, is hereby amended by the insertion in subsection (1) after paragraph *(a)* of the following paragraph: "*(a*A) the well-being of **[a faunal biological resource]** an animal;". **3. Clause 42 - revised amendment of section 2 of NEMBA:** a) Deletion of the proposed amendment to subparagraph (ii); and b) Insertion of a new subparagraph (iiA) after subparagraph (ii): *(ii)* the use of indigenous biological resources in a sustainable manner; **[and]** (iiA) the consideration of the well-being of animals in the management, conservation and sustainable use thereof; and	
Northern Cape		**The legislature vote in favour of the Bill** The Committee recommends to the House to mandate the Permanent Delegates to participate in the deliberations at the negotiating stage and to support the Bill taking note	**Noted**	

		of the comment or recommendation raised by the stakeholders		
	Stakeholder written input: (Ms A Fotheringham - Independent Environmental Consultant)	The applicability' of the changes, to the existing strategic infrastructure plans, and the impacts of expanded infrastructure (power) servitudes/alignments, to incorporate alternative power sources into the existing electrical supply grids. In other words, if these amendments are enforceable on the projects which have already been approved, but are implemented over a long term?	**No amendment required.** Transitional arrangements have been incorporated where necessary and generally new provisions introduced in the Bill will not have retrospective applicability.	
	Stakeholder written input: (Provincial department of environment & conservation)	The move to grant power to issue directive in terms of section 28, is a good one and with the current cooperative agreements in place with municipalities, it will stand us in a good stead as directive will be issued at local level. Additional funding for training and mentoring will be required to ensure that municipalities undertaking the inspections and recommending the issuing of directives are up to standard to fully implement the legislation (Interpretation and Enforcement). It is	**Noted and supported.**	

		important for the provincial treasury to be made aware of the financial implications the amendment will have on compliance and enforcement.		
North West	Clause 1 Definitions NEMA	There is a strong opposition of the proposed definition of the term “mitigate”, “rehabilitate”, “remediate” and “residual environmental impacts” and proposed that this terms require rewording. This words are seen to counter to contemporary definitions and understanding and by redefining these terms it is likely to cause confusion and inconsistent and misapplication of the mitigation hierarchy. The proposed redefinition are also seen to have an undesirable consequence for the correct location of and character of biodiversity offsets and compensation. This could weaken the state’s fiducial duties to ensure that natural environment, and the biodiversity therein is protected and used sustainably.	**No amendment required to “rehabilitate” except the proposed move to clause 8 (section 24P) to also apply to section 24PA.** **No amendment required to definition for “mitigate” but proposed to be moved to clause 8 (section 24P) to also apply to clause 9 (section 24PA) dealing with financial provision**. **Terms** “**remediate” and “residual environmental impact” definitions should be deleted and are no longer proposed for insertion in the Bill.**	
	Clause 1 Definitions NEMA	Proposed amendment: “Mitigate” means to anticipate, avoid and prevent negative	**No amendment required. Move definition to section 24P to also**	

		impacts and risks, then to minimise them, rehabilitate or repair impacts to the extent feasible, and compensate or offset remaining significant negative impacts to rectify or remedy harm.	**apply to section 24PA as these relate to financial provisioning.** At the point of rehabilitation it is not possible to avoid negative impacts or risks.	
	Proposed new definition NEMA	Proposed amendment: "Offset" means the measurable action to counterbalance impacts remaining after actions to avoid or prevent, and then minimise negative impacts, rehabilitate or repair damage have been exhausted.	**No amendment required.** The term "offset" is not used within NEMA and therefore does not need to be defined.	
	Clause 1(i) Section 1 NEMA definitions	The definition of "residual negative impacts" is non-sensical when read with the definition of "financial provision". The latter refers to the mitigation, remediation and rehabilitation of residual environmental impacts. How can residual impacts be mitigated, remediated or rehabilitated when they are by definition, those impacts remain after such measures has been undertaken? It is proposed that "Residual negative impacts" be defined as those remaining after efforts to avoid/prevent,	**Amendment required to delete residual environmental impact from the proposed definitions.** In mining it is not always possible to remediate and rehabilitate all impacts. There will be some impacts which are ongoing for example the treatment of polluted mine water. Therefore, these impacts are not possible to be remediated at the time of decommissioning and closure. The current definition of residual environmental impact does refer to impacts that remain after actions to mitigate, rehabilitate and remediate have been undertaken.	

		minimise and rehabilitate have been exhausted.		
	Clause 1 Section 1 NEMA definitions	Proposed amendment: “Rehabilitate” means to restore to the approved sustainable end use of land, water and air. The proposed definition of “remediate” does not encompass compensation since these measures neither repair nor reverse the environmental damage caused by the project being authorised.	**Amendment required namely to delete the definition of “remediate”.** **No amendment to definition of “rehabilitate” except the proposed move to section 24P as it relates to financial provisioning.** Compensation will be considered prior to the authorisation of the project. It is therefore not required in the definition of rehabilitation. **A definition for remediate is proposed to be deleted** as this is no longer required to be defined for purposes of financial provisioning, which was the reason for the insertion.	
	Clause 3 Section 24C(11) NEMA	Allows for simultaneous submission of applications where the environmental authorisation also include activities requiring permits or licence under specific environmental management acts. It is supported provided that these permits and licences are only approved once the environmental authorisation is granted to prevent any undue or premature development being undertaken.	**No amendment required.** The intention with the introduction of section 24C(11) is to ensure that multiple processes that can be combined (because of similarities in both procedural and content aspects) should be combined to save time and avoid duplication – where possible. To force a staggered process by forcing the environmental authorization (EA) to be granted first may defeat this objective. Where applications are run together the legal provisions already to a certain extent provide for a sequence in the	

			issuing of such decisions. It must also be kept in mind that the procedural and technical requirements for an EA may differ from that of specific environmental management Act (SEMAs) requirements such as the National Water Act water use license application processes and a refusal of one application may not automatically result in a refusal of the other. Different legal mandates and requirements / considerations are applicable.	
	Clause 82 3(7)	Clause 3. 7: it appears that any mining right issued in terms of the Mining and Petroleum Resources Development Act, that on or before 08 December 2014 will be deemed as having authorisation in terms of NEMA. The proposed amendment as it stands currently has the potential to vindicate those mining companies that are mining without a valid environmental authorisation and cause a substantial number of mining companies environmental management obligations to be substantially below what is required by various provision in NEMA and is so doing risk	**No amendment required.** No 3(7) could be found. However, the wording of clause 82 is intended to indicate that if all legal requirements that were applicable before 8/12/2014 were met and activities so authorised commence after 8/12/2014, these activities are deemed to be lawfully commenced with. There are exceptions provided in the provision namely where the EA or WML was applied for but refused or where it was not obtained (i.e. it was required but not applied for). If an institution was operating illegally this provision does not legalise such conduct. This deals with historical cases mostly while new mining applicants (after 8/12/2014) had to comply with the same provisions as are applicable to all other applicants.	

		causing uncertainty and confusion with respect to enforcement of this and other relevant environmental legislation. It is therefore proposed that there be a provision for transitional arrangement that requires that all mining companies, by a specified date, to amend their EMPRS to meet these new requirements, and to have these amended documents re-approved by the Department.	Clause 82 subclauses (2) and (3) already provide for the upgrading of old EMPrs under certain circumstances. There is no intention to convert environmental management programmes or plans to environmental authorisations.	
	Clause 13 section 31 A-Q NEMA	The appointment of environmental management inspectors across all three spheres of government is appreciated. Recourse constraints may however limit the actual number of inspectors in the field. Proposal is that government can consider the appointment of honorary environmental management inspectors from members of the public including members of civil society to support the capacity of government, but focusing on minor environmental transgressions. Honorary officers would also have to complete specified	**No amendment required.** Currently, sections 31B, BA, BB and C provide that only staff members of government departments and organs of state are eligible for designation as Environmental Management Inspectors (EMIs). There is no provision for the designation of a non-government official as an honorary EMIs. Mintech Working Group IV (Compliance and Enforcement) is currently in the process of considering the potential inclusion of such a provision in NEMA, however, it is premature at this stage, to include such as provision, as a thorough assessment/feasibility will be required to ensure that a proper	

		training and be certified to ensure consistence and appropriate action.	system is in place, prior to inclusion in legislation.	
	Clause 30 Section 34E NEMA	Delegation of powers should be considered if there is demonstrated capacity to deal with the relevant matters.	**No amendment required.** This is already enabled in law and will be done as part of implementation of the legal framework.	
	Clause 38 Section 48 NEMPAA	The proposed amendments to section 48 of NEMPAA will remove the requirement for the Minister responsible for Mineral Resources to provide written permission for undertaking any activities. The Minister responsible for mineral resources should not be removed from decision relating to the location of mining and related activities and should be held to those decisions where the land in question is legally protected.	**No amendment required.** The removal stems from the fact that the Minister of Mineral Resources is already required to take a decision on whether an environmental authorisation should be issued or not. Requiring a decision in terms of NEMPAA as well would be a duplication. The proposed amendment intends to remove the Minister responsible for mineral resources from the legal obligation of granting/refusing permission in terms of NEMPAA.	
	Clause 42 Section 2 NEMBA	The scope of the bill extends its scope to include the wellbeing of any faunal biological resource. Proposal is that it should be clear that the Bill is underpinned by the principle laid down by NEMA and that sustainability requires social responsibility, environmental sustainability and economic efficiency. The fact that the scope include	**a) No amendment required** The proposed principle is already contained in section 24 of the Constitution, whereas the principles set out in section 2 of NEMA also apply to its specific environmental management acts. b) Comment noted. **Amendment required.** The Department of Forestry, Fisheries and the Environment,	

		faunal biological resource not conflict the overlapping mandates between Department of Agriculture, Land Reform and Rural Development (DALRRD) and the Department of Forestry and Fisheries (DEFF) and the difference in wild populations and that in captive operations. The five freedoms as applied in welfare assessment of captive animals do not apply to wild animals that are part of well-functioning ecosystem, where natural environmental drivers such as drought, should continue to persist to maintain ecological processes and natural selection. Specific attention should be given to the alignment of the principle of sustainable and responsible use of faunal biological resources and the construct of animal well-being.	acknowledges that the Animals Protection Act, 1962 (Act No. 71 of 1962) remains the primary legislation for the regulation of welfare and cruelty-related matters. The purpose of the proposed amendment to NEMBA is to enable the Minister of Forestry, Fisheries and the Environment to address legislative gaps relating to the well-being of wild animals, e.g. to develop regulatory measures for the manner in which wild animals may be kept in a captive environment, or transported. The following changes are proposed: **1. Replacement of the definition in clause 41(c) with the following proposed definition:** **"well-being"** means the holistic circumstances and conditions of an animal, which are conducive to its physical, physiological and mental health and quality of life, and ability to cope with its environment"; **2. Sequential changes:** Based on the amended definition, the following sequential amendments are required to replace "faunal biological resource" with "animal":	

			• **Clause 44 - Insertion of section 9A in Act 10 of 2004** **44.** The following section is hereby inserted in the National Environmental Management: Biodiversity Act, 2004, after section 9: **Prohibition of certain activities** **9A.** The Minister may, by notice in the *Gazette* and subject to such conditions as the Minister may specify in the notice, prohibit any activity that may negatively impact on the well-being of **[a faunal biological resource]** an animal.”; and • **Amendment of section 97 of Act 10 of 2004, as amended by section 45 of Act 14 of 2009 and section 30 of Act 14 of 2013** **48.** Section 97 of the National Environmental Management: Biodiversity Act, 2004, is hereby amended by the insertion in subsection (1) after paragraph *(a)* of the following paragraph:	

			''*(a*A*)* the well-being of **[a faunal biological resource]** an animal;''. **3. Clause 42 - revised amendment of section 2 of NEMBA:** a) Deletion of the proposed amendment to subparagraph (ii); and b) Insertion of a new subparagraph (iiA) after subparagraph (ii): *(ii)* the use of indigenous biological resources in a sustainable manner; **[and]** (iiA) the consideration of the well-being of animals in the management, conservation and sustainable use thereof; and **Comment noted** The proposed alignment is achieved by the proposed amendment of the objective contained in section 2(a)(ii) of NEMBA.	
	Clause 46 & 47 Sections 73 & 75 NEMBA	Amendments relating to alien invasive species is supported. It is therefore proposed that where it is required that written notification of invasive species on land must be given to the competent authority. The competent authority must develop the necessary information material and mechanism to inform, educate and empower	This is **noted and supported**. Awareness and education programmes will be rolled out.	

		the general public to identify and eradicate such alien species.		
Western Cape	General	The text of the amendment Bill contains numerous language and grammatical errors. It is submitted that the legal editors of the Office of the Chief State Law Advisor review the amendment Bill and edit it accordingly. It is further submitted that, due to the complex nature of the amendment Bill, the submissions made in this Report should be debated with the National Department of Environment, Forests and Fisheries (the National Department) to identify any potential unintended consequences and address possible consequential amendments that may be required to other provisions of the principal Acts and relevant subordinate legislation. It is further submitted that, while it is noted that the legislative review of NEMA does go some way in providing clarity on cooperative governance at national, provincial and municipal spheres, what needs to be addressed is how	**Support that grammatical errors should be rectified.** Many provisions proposed in this Bill are geared at reducing red tape such as the provisions enabling the simultaneous submission of applications.	

		the proposed amendments will empower provincial and local governments to develop protocols which will further integrate functions that would serve to eliminate red tape and facilitate the ease of doing business.		
	Long Title	It is submitted that the word "the" be inserted in line 32, on page 3, before the word "Director-General of the Department responsible for mineral resources" and also before the word "municipal manager" in the same line. 2.2 It is further submitted that the long title be reviewed to ensure that all the revisions to the provisions contained in the earlier "B" version of the amendment Bill are captured accurately. Proposed amendments supported by the National Department in its response to the Committee on written input received from stakeholders.	**Supported** **Amendment required:** **Line 32 and 33 page 3 Long Title:** "…to empower <u>the</u> Director-General of the Department responsible for mineral resources and <u>the</u> municipal manager…".	
	Clause 1 Definition "financial provision"	It appears that the definition of "financial provision" and the enabling provisions proposed in sections 24P and 24PA of the amendment Bill, may be limiting insofar as it refers to "listed or specified activities".	**Supported** **Amendment required.** Proposed new definition: "**<u>'financial provision'</u>** <u>means the amount which is to be provided in terms of this Act by a holder, holder</u>	

		It is submitted that if the definition of “financial provision” and the enabling provisions in sections 24P and 24PA of the amendment Bill is limited to listed and specified activities, then the definition of “financial provision” and sections 24P and 24PA should be amended to enable the requirement for financial provision to apply more broadly. The National Department, in providing written comments to the Committee in reply to the written submissions received by the Committee from stakeholders, supported the comment and agreed that the above challenge must be addressed.	of an old order right or applicant, guaranteeing the availability of funds to fulfil the obligation to undertake progressive rehabilitation, mitigation, decommissioning, closure and post-closure activities including the pumping and treatment of polluted or extraneous water to ensure that the State does not become liable for those costs which should be covered by a holder, holder of an old order right or applicant. **Consequential amendments proposed to sections 24P(2), (4), (9) and (10) as well as sections 24PA (1) and (5).** **24P**(2) The Minister, or an MEC in concurrence with the Minister, may prescribe the instances for which financial provision must be set aside.”. “(4) Where prescribed, the applicant, holder of an environmental authorisation, holder or holder of an old order right must provide financial provision for progressive rehabilitation, mitigation, decommissioning, closure and post-closure activities, including the pumping and treatment of extraneous and polluted water where relevant, to ensure the mitigation and	

			rehabilitation of adverse environmental impacts, including latent environmental impacts.". (9) If any holder of an environmental authorisation, holder or holder of an old order right fails to undertake such mitigation and rehabilitation of such impact, as prescribed, the Minister, the Minister responsible for mineral resources, the Minister responsible for water affairs or MEC may, upon written notice to such holder, use all or part of the financial provision contemplated in this section to undertake mitigation and rehabilitation as the Minister, the Minister responsible for mineral resources, the Minister responsible for water affairs or MEC deems appropriate.". "(10) The financial provision may only be used for the purposes of decommissioning, closure and post-closure, as prescribed, to ensure mitigation and rehabilitation of adverse environmental impacts for which it was provided and may not be used for any other purposes.".	
	Clause 1 Section 1 NEMA definition	The definition of "financial provision" refers to the "amount which is to be provided in terms of this Act,	**No amendment required.** NEMA is intended to be framework legislation with the detail being provided in regulation. The proposed	

	"progressive rehabilitation"	guaranteeing the availability of sufficient funds to undertake progressive rehabilitation, decommissioning…". The term is used in the new proposed section 24P (3) of National Environmental Management Act, 1998 (Act 107 of 1998) (NEMA). NEMA, as well as the Mineral and Petroleum Resources Development Act, 2002 (Act 28 of 2002) does not contain a definition or description for the phrase "progressive rehabilitation". It is submitted that the definition for "progressive rehabilitation" be added to the Draft Financial Provisioning Regulations, 2019 and, in order to accommodate section 24P, that the same definition be introduced into the amendment Bill. Proposed amendment supported by the National Department in its response to the Committee on written input received from stakeholders.	amendment to the Financial Provisioning Regulations, 2015 do propose a definition for progressive rehabilitation.	
	Mechanism to ensure the safeguar-ding of financial provision	It is submitted that a mechanism must be provided for in NEMA that will ensure that the financial provision is	**No amendment required.** The winding-up and liquidation of companies are regulated by the companies and insolvency laws.	

		safeguarded against being paid out, whether in the case of the insolvency of a mine or any other circumstance. It is therefore further submitted that a financial provision may only be disbursed once the prior consent of the competent authority has been obtained.	Clause 8 (s24P(11)) contains a provision that the Insolvency Act, 1936 (Act No. 24 of 1936), does not apply to any form of financial provision contemplated in subsection (1) and all amounts arising from that provision. However, the environmental law cannot regulate the situations pertaining to the winding-up and liquidation of companies adequately. The current Financial Provisioning Regulations are proposed to be amended to identify the beneficiary of the trust fund which is set up for the sole purpose of rehabilitation of environmental damage at decommissioning and closure. It is anticipated that this measure will safeguard funds set aside in trusts. Insurance brokers are required to inform the Minister responsible for mineral resources should they wish to terminate any insurance policy and the Minister is required, through the financial provisioning regulations to request alternative arrangements or to draw down the funds as a proactive measure.	
	Clause 1 Section 1 NEMA definition “mitigate”	The proposed definition of “mitigate” is too narrow. It should be in line with the principle of “mitigation hierarchy” and include	**Not supported** **No amendment required except the proposed move of the**	

		avoidance, as well as to remediate, rehabilitate and offset. It is submitted that the definition should be amended to "means to avoid, or, where the impact cannot be altogether avoided, alleviate, reduce or make less severe, remediate, rehabilitate or offset".	**definition to clause 8 and /section 24P and 24PA.** It is not possible to avoid or prevent impacts when authorisation has been given for mining. By its nature, mining impacts on the environment, therefore it is only possible after authorizing mining to alleviate impacts. Any offset is to be considered prior to authorisation in order to be effective.	
	Clause 1 Section 1 NEMA definition "rehabilitate"	The proposed definition of "rehabilitate" should be expanded to also cover the end of use of facilities and not only land. The definition should therefore be reconsidered and redrafted. It is submitted that the draft definition should be redrafted to read as follows: "rehabilitate" means to restore to the approved end use of land or facilities;".	**No amendment required.** Facility will be included in the reference to land**.** **Move the definition to clause 8 / section 24P.**	
	Clause 1 Section 1 NEMA definition "remediate"	It is submitted that, should the proposed amendment to the definition of "mitigate" be accepted, i.e. to include a reference to offset, the definition of remediate is supported.	**Not supported** **Amendment required namely the deletion of the proposed definition of "remediate".** An offset must be considered prior to the authorisation of an activity.	
	Clause 1 Section 1 NEMA definition "latent	It is submitted that the text be reworded as follows: "'latent environmental impacts' means "impacts which are	**Amendment required.** M**ove the definition to section 24P to also apply to section 24PA.**	

	environmental impacts”	existing, but which have not developed yet or which have not manifested yet, or which are dormant.” Proposed amendment supported by the National Department in its response to the Committee on written input received from stakeholders.	The inclusion of both developed and manifested is a duplication, and if the impacts have not yet developed they are dormant. The proposed wording is verbose. Proposed wording: **“latent environmental impacts”** means impacts which are existing and defined, but not yet developed and will manifest post-closure”.	
	Clause 2 Section 2(qA) NEMA	In principle the amendment directed at advancing and promoting the full participation of black professionals in the environmental sector is supported. It is not clear, however, why other previously disadvantaged individuals are not also included. It is submitted that the participation of previously disadvantaged persons in addition to black professionals should also be advanced and promoted. It is further submitted that participation should be clearly obligatory. In this regard it is submitted that the words “must be” be inserted on page 6, line 32, before the word “promoted”.	**Supported** **Amendment required.** Specific recognition for “black professionals” and indigenous knowledge practitioners has been incorporated. Based on another comment the term “previously disadvantaged professionals” is also included. Despite legislative provisions in place for a number of years the recognition and promotion of participation by black professional has been identified as a specific challenge in the environmental sector. **Proposed amendment (new text) to section 2 NEMA:** ‘‘(qA) The full participation of previously disadvantaged professionals, with specific emphasis on black professionals and indigenous knowledge practitioners,	

		Proposed amendment supported by the National Department in its response to the Committee on written input received from stakeholders.	in the environmental management sector must be recognised and their participation in the sector promoted.''. **Consequential amendment to clause 1, section 1 definitions, required to define indigenous knowledge practitioners as follows:** "**'indigenous knowledge practitioner'** has the meaning assigned to it in section 1 of the Protection, Promotion, Development and Management of Indigenous Knowledge Act, 2019 (Act No. 6 of 2019);".	
	Clause 4(c) and (d) Section 24C(2B) and 24C(3) NEMA	Currently, when dealing with applications for environmental authorisations in terms of the NEMA, section 24C(3) of the NEMA does not allow the Minister and a MEC to agree that applications for activities contemplated in section 24C(2B), i.e. activities related to matters declared as a national priority, may be dealt with by a MEC. The current wording of section 24C(3) is problematic in the following respects: (a) Whilst we support the principle that certain matters	**No amendment required as suggested. However, section 24C(3) is also proposed to be amended by the specific inclusion of the reference to section 24C(2B) to address specifically the concern raised.** It is intended to allow the Minister to agree that the MEC is identified as the competent authority for national priority matters. The current wording of section 24C(3) is being amended in the Bill to address the concerns raised. The proposed deletion of 24C(2B) is not supported as this section also deals with Cabinet related matters	

		must be regarded as national priorities, the practical application of the criteria determining the listing of national priorities must be specific, transparent, and reasonable. Vague and indiscriminate application, for example, referring to types of development without any reference to location, scale, or effect, must be avoided. (b) The notion that only national government is competent to make decisions on matters declared national priorities is flawed. In this regard it is submitted that criteria must be developed to objectively determine the instances in which provinces do not possess the required competency or capacity to make decisions on matters of national priority. (c) The declaration of certain matters as national priorities, as envisaged, will be done unilaterally. This is not conducive to improving the effectiveness of environmental management particularly taking into account that the functional	and procedures and cannot be deleted without unintended consequences being caused. The implementation of section 24C(3) already relies on cooperative governance in practice. Proposed wording for section **24C(3):** "(3) The Minister<u>, the Minister responsible for mineral resources</u> and an MEC may agree that applications for environmental authorisations with regard to any activity or class of activities- (a) contemplated in [**subsection]** <u>subsections</u> (2) <u>and (2B)</u> may be dealt with by the MEC <u>or the Minister responsible for mineral resources</u>; (b) in respect of which the MEC is identified as the competent authority may be dealt with by the Minister <u>or the Minister responsible for mineral resources</u>.".	

		area of “environment” is, in terms of Schedule 4 of the Constitution, a concurrent national and provincial legislative competence. (d) The application of the principle of “subsidiarity” must be adhered to - i.e. delivering services (including regulatory decision making) at the lowest level, closest to the community to be served. Although the current proposed amendment at least allows for a potential agreement in terms of section 24C(3) in instances where the Minister is the competent authority for activities related to a national priority is supported, it is not the preferred option because it does not provide clear guidance as to how and in what circumstances a MEC may be identified as a competent authority in matters regarded as a national priority. It is submitted that the preferred option is that section 24C(2B) of the NEMA is deleted and the existing section 24C together with an agreed set of criteria (considered essential		

		in managing matters of national priority) must be used to reach an agreement between the Minister and a MEC in order for the Minister to become the competent authority in certain instances. It is further submitted that the application of such criteria, combined with the current wording of section 24C(3) is a more appropriate co-operative governance and transparent mechanism to allocate national priority matters to the national Minister in specific cases.		
	Clause 4(d) Section 24C(13) NEMA	Although the proposed new section 24C(13) is supported, it is submitted that it may not be practical and appropriate in all instances. For example, the information required in terms of an application for an environmental authorisation in terms of the NEMA may not cover all the technical information required for an application for a water use licence in terms of the National Water Act, 1998 (Act 36 of 1998). The latter application's information requirements may delay the processing of the former.	**No amendment required.** Integrated decision implies the two processes are concluded at the same time. It therefore allows for differences in procedural and technical requirements. The term "decision" is regarded as appropriate. For the example cited it is unlikely that the Minister responsible for water affairs will ever also be the authority to issue a NEMA EA. If not made mandatory in the law it is unlikely to ever be done in practice. Therefore, the suggested change from "must" to "may" is not supported. If no integrated decision is issued the decisions issued will	

		Although the issuing of an integrated authorisation should be encouraged, it is submitted that it should not be mandatory as it may not be practical and appropriate in all circumstances. The reference to “must” should therefore be changed to “may” to allow the competent authority discretion in this regard. It is further not clear what the repercussions, if any, would be if an integrated authorisation is not issued. If an integrated authorisation cannot be issued, the alignment of processes, as far as may practically be possible, should be ensured. Furthermore, the proposed new subsection (13) provides that an “integrated decision” must be issued in accordance with section 24L of the NEMA. Section 24L(1) provides for the issuing of an “integrated environmental authorisation”. It is therefore submitted that the words “integrated decision” in the proposed new subsection (13) is substituted with the words “integrated environmental authorisation” as defined in	remain valid until set aside by a competent court.	

		section 1 of NEMA. “Integrated decision” is not a defined term. It is submitted that the defined term “integrated environmental authorisation” should be used consistently in subsection (13). The issue of rationalisation and alignment of processes should also be considered and included as part of the national NEMA/SEMA Rationalisation Project. It is submitted that the proposed new section 24C(13) should be included as follows: “<u>If the competent authority or licensing authority contemplated in subsections (11) or (12) is the same authority that considers and decides the application for an environmental authorisation under this Act and the application under a specific environmental management Act, an integrated environmental authorisation may be issued in accordance with section 24L of this Act.”.</u>		

	Clause 5: Section 24G of NEMA - New proposed Sections 24G(1)(c)(ii) (aa)(G)(DD) and 24G(1)(c)(ii)(aa)(G)(EE)	It is submitted that the environmental management programme requirement should be a separate requirement and not included as part of the section 24G(1)(c)(ii) (aa) report directive. The requirements to compile an environmental management programme should be a separate requirement captured in a new and separate provision under section 24G. Therefore, it is submitted that clause 5(c), read as follows: "…the Minister, Minister responsible for mineral resources or MEC concerned, as the case may be**[,]**— (aa) **[may]** must direct the applicant to— … **[(vii)]**(G) compile a report containing— … **[(cc)]**(CC) a description of mitigation measures undertaken or to be undertaken in respect of the consequences for, or impacts on, the environment of the activity; and	**Supported. Amendment required moving the EMPr to the "may" part of the section as suggested. Numbering errors to fixed and consequential numbering changes made. See full text on pages 24-26 above.**	

		[(dd)](DD) a description of the public participation process followed during the course of compiling the report, including all comments received from interested and affected parties and an indication of how the issues raised have been addressed, if applicable; and **[(ee) an environmental management programme; or]** (H) undertake public participation as prescribed; and **[(viii)](**bb) may direct the applicant to provide such other information or undertake such further studies as the Minister, Minister responsible for mineral resources or MEC, as the case may be, may deem necessary**[.]**; and (cc) may direct the applicant to compile an environmental management programme." Proposed amendment supported by the National Department in its response to the Committee on written input received from stakeholders.		

	Clause 5 Section 24G	Consideration should be given on how to deal with a situation where an air emissions activity listed in terms of the National Environment Management: Air Quality Act, 2004 (Act 39 of 2004) (NEMAQA) as well as the associated listed activity in terms of NEMA, unlawfully commenced. It is submitted that only an application in terms of section 22A of NEMAQA is required, if such unlawful commencement relates to an air emissions facility. This is proposed to prevent a duplication of the approvals that are required and the subsequent issuing of duplicate fines for an air emissions facility. It is submitted that a provision should be included to provide for the closure and lapsing of a section 24G application as a result of the applicant's failure to submit outstanding information required to process the application. Currently there is no provision or mechanism for a competent authority to close an application or for the	**No amendment required.** In some cases, only a section 22A NEMAQA process will be triggered but there could be instances where a section 24G NEMA process may also be triggered. An example of the latter is the development and related operation of a coal-fired power station where the NEMA activities triggered will also require assessment and this will not be covered by the section 22A NEMAQA process only. **No amendment required.**	

		application to lapse after the expiry of a certain period because of the applicant failing to submit the requisite information. This results in pending applications with no final outcome which is problematic because an application, when no further action in processing the application can be taken by the competent authority, is not capable of finalisation. The situation is further exacerbated by the applicant not withdrawing the application, thus an end point to the application is not reached and the application remains in limbo. Added to this concern is the potential for the incorrect reporting of the section 24G fines as a contingent asset (amount of outstanding fines) in respect of fines that have not been paid and in all likelihood will not be paid by an applicant. From an administrative perspective, a closure mechanism is therefore crucial both from a contingent asset and application finalisation perspective.	If an applicant fails to finalise the process the development will remain illegal. To provide a fixed period as the suggested 6 months in an Act will also not be practical as scenarios differ. The ability for authorities to close applications on an internal system should not require amendments to legislation and in this instance such applicants will remain illegal and the necessary enforcement action may be taken.	

		It is therefore submitted that section 24G be amended by the insertion of the following subsection: "(1B)(1) Failure to submit a report or other information as directed or requested in terms of subsection (1)(c)(aa)(G) or (1)(c)(bb) within six months will result in the lapsing of the application. Subsection (1) does not apply where a request for extension has been communicated to the competent authority in writing and accepted by the competent authority.".		
	Clause 5 Section 24G(3)	It is not clear from the current wording of section 24G(3) whether rehabilitation under section 24G(3)(a) and 24G(3)(b) includes the power to direct the demolition or removal of any structure or infrastructure erected, constructed or developed during the commencement of the listed activity or waste management activity. It is submitted that section 24G(3) of NEMA must be expanded to include a paragraph (c) to read as follows: "demolish and remove, at the cost of	**Not supported** **No amendment required.** It is not deemed necessary to expand section 24G(3)(b) as the current wording of this section is regarded as being wide enough to allow for demolition, etc. to be required as part of "any other steps necessary…".	

		the applicant, any infrastructure or structure constructed or erected or developed in respect of the listed or specified activity or waste management activity."		
	Clause 5 Section 24G(1)	Currently section 24G(1) provides that the relevant authorities "…may direct the applicant to−" Currently there is no option to request an applicant to do something to ensure administrative completeness. For example, in a situation where an applicant failed to sign an application form or attach a public participation report. It is therefore submitted that the words "request or" are inserted before the word "direct" in section 24G(1). This will allow a competent authority the flexibility to request an applicant to address an administrative requirement, other than by issuing a directive. It is further submitted that provision should be made for circumstances in which a landowner did not commence unlawfully with a listed activity	**No amendment required.** Section 24G(2) provides that the Minister or MEC must consider any report or information submitted in terms of (1) and may thereafter: (a)refuse… (b)issue… (c) direct the applicant to provide further information or take further steps prior to making a decision provided for in (a) or (b). It is submitted that the provision in section 24G(2)(c) provides for the flexibility to direct/request an applicant to address an administrative requirement; for example, the failure to sign an application form or attach a public participation report. It would be more appropriate to utilize this section to manage administrative matters, due to the fact that the directive referred to in section 24G(1) is aimed at the prevention, minimization of pollution / degradation of the environment; as it may instruct the applicant to	

		but who subsequently becomes the owner of the property. In these circumstances, the landowner should be able to pay an administrative fee instead of an administrative fine, as the new landowner did not contravene NEMA. It is therefore submitted that section 24G(1) of NEMA is further amended as follows: "…the Minister, Minister responsible for mineral resources or MEC concerned, as the case may be, may request or direct the applicant to-…" It is further submitted that a clause be inserted stating that the financial liability for any rehabilitation measures must remain the responsibility of the person who unlawfully undertook the listed activity.	undertake a number of actions, including to cease, investigate, evaluate and assess, remedy, modify, control, contain, prevent or eliminate.	
	Clause 7: Section 24O(2)	"Environment" is a functional area of municipal competence and municipalities administer activities relating to the environment. The Minister or MEC should therefore consult municipalities before making a decision. In its current form the clause may be interpreted to exclude municipalities. It is	**Supported. Amendment agreed to by replacing "State department" with "organ of state".** This does not create any changes to current implementation of consultation undertaken in application processes. The EIA Regulations already require broad consultation per application with, amongst others, relevant municipalities.	

		submitted that the new proposed section 24O(2) is redrafted to read as follows: "The Minister responsible for mineral resources [or], an MEC or an environmental assessment practitioner must consult with every **[State department]** organ of state that administers a law relating to a matter affecting the environment when such Minister, the Minister responsible for mineral resources or an MEC considers an application for an environmental authorisation". Consequential amendments to sections 24O(2A) and 24O(3) may further be required.	**Consequential amendments to (2A) and (3) also proposed.** ''(2) The Minister, the Minister responsible for mineral resources **[or],** an MEC or an environmental assessment practitioner must consult with every **[State department]** organ of state that administers a law relating to a matter affecting the environment when such Minister, the Minister responsible for mineral resources or an MEC considers an application for an environmental authorisation. (2A) Where the matter relates to **[prospecting, exploration,]**a mining **[or production]**activity, the request for comment contemplated in subsection (2), must be submitted by registered mail to the Director-General or provincial head of department of the **[State department]**organ of state contemplated in subsection (2). (3) **[A State department]** An organ of state consulted in terms of subsection (2) must submit comment within 30 days from the date on which the Minister, Minister responsible for mineral resources, or MEC, or environmental assessment practitioner requests such **[State**	

			department] organ of state in writing to submit comment.”.	
	Clause 8 Section 24P(4) NEMA	It is submitted that the word “is” on page 10, in line 25, be substituted with the word “must”. This will ensure and clarify that the provision is mandatory. It is submitted that the clause must be redrafted to read as follows: “Where prescribed, the applicant, holder of an environmental authorisation, holder, or holder of an old order right must provide financial provision….”. Proposed amendment supported by the National Department in its response to the Committee on written input received from stakeholders.	**Supported** **Amendment required to replace “is required to” with “must” and to add “or”.** “(4) Where prescribed, the applicant, holder of an environmental authorisation, holder or holder of an old order right must provide financial provision for progressive rehabilitation, mitigation, decommissioning, closure and post-closure activities, including the pumping and treatment of extraneous and polluted water where relevant, to ensure the mitigation**[, remediation]** and rehabilitation of adverse environmental impacts, including latent environmental impacts.”. **Consequential amendment to 24P(2)** “(2) The Minister, or an MEC in concurrence with the Minister, may prescribe the instances for which financial provision must be set aside. “.	
	Clause 8 Section 24P NEMA	It is submitted that the new proposed section 24P must be further amended to provide for more broadly “financial	**Not supported. No amendment required.** Financial provision is defined in relation to rehabilitation of environmental damage.	

		provision" rather than financial provision only in relation to remediation of environmental damage. It is further submitted that the section heading be amended to read "Financial provision" and that the reference to the words "for remediation of environmental damage", be deleted. 15.3 The expression "post closure" in clause 8 is not defined in NEMA or the draft Financial Provision for the Rehabilitation, Closure and Post Closure of Prospecting, Exploration, Mining or Production Operations, 2015. 15.4 Clause 8 in the new proposed section 24P(4) further refers to "…a holder of an environmental authorisation, holder, holder of an old order right …". It is not clear why this distinction is being made. This may lead to issues of interpretation and should be reconsidered. To assist with clarification, it is submitted that it should be clarified that "old order right" refers to a mining related approval.	An amendment to the heading would not achieve the objective. It is understood that there may be a need to finance a decommissioning and closure plan which are not rehabilitation related. However, this would require a more significant amendment which has not been envisaged through this amendment process. **Not supported.** The distinction is made to ensure that mines in operation prior to the enactment of the MPRDA and who have applied but not been given a mining right in terms of the MRPDA and included in the requirement to set aside a financial provision. **Amendment required to replace "is required to" with "must" and to add "or".** "(4) Where prescribed, the applicant, holder of an environmental authorisation, holder or holder of an old order right must provide financial	

		In addition, there appears to be a comma instead of the word “or” between “holder” and “holder” on page 10, line 25. It is submitted that the comma should be deleted and substituted with the word “or”. See the submission in terms of 15.1 above.	provision for progressive rehabilitation, mitigation, decommissioning, closure and post-closure activities, including the pumping and treatment of extraneous and polluted water where relevant, to ensure the mitigation**[, remediation]** and rehabilitation of adverse environmental impacts, including latent environmental impacts. “.	
	Clause 8 Section 24P(8) NEMA	It is not clear to what extent this assessment or review process would be open to interested and affected parties, if at all. It is submitted that interested and affected parties must be informed of and be allowed to participate in the process. The new proposed section 24P(8) provides that if the Minister responsible for mineral resources or the MEC is not satisfied with the determination or “review” of the Financial provision, he or she may appoint an independent person to conduct an assessment of the determination or review. The new proposed section 24P(3) requires “Where prescribed, an applicant, must, before the competent	**Not supported. No amendment required.** It is not the intention that section 24P(8) would be subjected to public participation. Review of the financial provision is provided for in the section 24P (general provisions) and 24PA (mining specific provisions). This ensures sufficient alignment with sections 24P(3).	

		authority issues an environmental authorisation, determine the financial provision…". Section 24P (3) however does not provide for the review of the financial liability. It is submitted that section 24P(3) is further amended to align with section 24P(8), in terms of the review of financial provision. It is submitted that a new sub clause must be drafted that enables a review to take place. The amendment Bill should therefore include the following reworded section 24P(2): "The Minister, or MEC in concurrence with the Minister, may prescribe – (a) instances for which financial provision must be determined and provided for listed or specified activities; and (b) reviews of the financial provision as determined in paragraph (a)" The National Department agreed that further amendment to the Bill is		

		required to make provision for a review of the financial provision in section 24P.		
	Clause 8 Section 24P(10) NEMA	In the new proposed section 24P (10) the word “shall” is used. The principal text of NEMA does not use this word. It is submitted that the word “shall” be substituted with the word “must”.	**Principle supported. Amendment required.** “(10) The financial provision **may** only be used for the purposes of decommissioning, closure and post-closure, as prescribed, to ensure mitigation and rehabilitation of adverse environmental impacts for which it was provided and may not be used for any other purposes.”.	
	Clauses 8 and 9 Section 24P and 24PA NEMA	The concern raised in terms of the definition of financial provision in point 3.1 above has reference, in that it appears that the definition of “financial provision” and the enabling provisions proposed in sections 24P and 24PA of NEMA may be limiting insofar as it refers to “listed or specified activities”. It is therefore submitted that if the enabling provisions are limited to listed and specified activities, section 24P and 24PA of NEMA, as proposed in the amendment Bill, should be amended to enable the requirement for financial provision to apply more	**Supported. The intention is not to limit it to listed or specified activities. Amendment required** **Definition of “financial provision” proposed to be amended as follows:** “‘**financial provision’** means **[the insurance, bank guarantee, trust fund or cash that applicants for an environmental authorisation must provide in terms of this Act guaranteeing the availability of sufficient funds to undertake the-** **(a) rehabilitation of the adverse environmental impacts of the listed or specified activities;** **(b) rehabilitation of the impacts of the prospecting, exploration, mining or production activities, including the pumping and**	

		broadly. Proposed amendment supported by the National Department in its response to the Committee on written input received from stakeholders.	**treatment of polluted or extraneous water;** **(c) decommissioning and closure of the operations;** **(d) remediation of latent or residual environmental impacts which become known in the future;** **(e) removal of building structures and other objects; or** **(f) remediation of any other negative environmental impacts;]** the amount which is to be provided in terms of this Act by a holder, holder of an old order right or applicant, guaranteeing the availability of funds to fulfil the obligation to undertake progressive rehabilitation, mitigation, decommissioning, closure and post-closure activities including the pumping and treatment of polluted or extraneous water to ensure that the State does not become liable for those costs which should be covered by a holder, holder of an old order right or applicant;".	
	Proposed amendment: Sections 28, 30 and 30A NEMA	It is submitted that section 28(2) should be amended to expressly provide that "Without limiting the generality of the duty in subsection (1), the persons on whom subsection (1) imposes an obligation to take	**Supported in principle. No amendment required**. **The amendment already provides that the section 28(4) directive can now be served** on: - an owner of land or premises, - a person in control of land or premises;	

		reasonable measures, include an owner or successor in title, of land or premises, a person in control of land or premises or a person who has a right to use the land or premises on which or in which -" should be subject to direction. Such an amendment will make it clear that the new owner or person in control of the land may be directed in terms of section 28. Clause 12(b) limits the persons referred to in section 28(2). Although section 28(2) can credibly be interpreted to include a person in control of or a successor in title to land because of its open-ended wording, such an interpretation involves a convoluted need to interpret the section. It would however be advisable to also include the owner or person in control of the land envisaged in section 28. Similarly, section 30 and 30A should be amended to also allow for the new owner or person in control of the land to be "responsible persons" who may be directed.	- or a person who has a right to use the land or premises on which or in which: (a) any activity or process is or was performed or undertaken; or (b)any other situation exists, which causes, has caused or is likely to cause significant pollution or degradation of the environment. It is submitted that the cross reference to (2) is not open ended or convoluted, but reinforces the principle that the category of persons that are liable to the general duty of care; may also be liable to receive a directive.	

		It is submitted that sections 28, 30 and 30A are reconsidered and redrafted.		
	Clause 12(b) Section 28 of NEMA	The proposed amendment is supported. The current provision obstructs the issuing of a directive, thus rendering this enforcement instrument less effective. It is also difficult to determine who “affected persons” are. Section 28(2), in its current form, introduces an unnecessary step which renders law enforcement ineffective. There is no similar provision in respect of a compliance notice in section 31L of NEMA which is a similar enforcement instrument. The proposed deletion of the words “…after having given adequate opportunity to affected persons to inform him or her of their relevant interests…” is therefore supported.	**Noted.**	
	Clause 15 Section 31BB NEMA	It is crucial that the designation must be in writing and must be consistent with the Constitution. If not, such a designation may be considered to constitute an unfunded mandate.	**Not supported. No amendment required.** The amendment provides for the Minister to designate officials from other organs of State as environmental management inspectors (EMIs), for example, the	

		It is submitted that the words "in writing" be inserted on page 14, line 33, after the words "organ of state."	South African Petroleum Association (SAPA) with the agreement of that organ of State – there will be no transfer / assignment/delegation of functions, but merely providing SAPA with the compliance and enforcement capacity to execute their existing mandate**, it is not considered necessary to add the words in writing; as this agreement, will, in practice, take the form of an agreement** such as an Implementation Protocol in terms of the Intergovernmental Framework Relations Act (IGFRA).	
	Clause 20: Section 31G of NEMA	Section 31G(2) should also include references to "or a municipal manager of a municipality" and "mineral and petroleum resource inspector". Proposed amendment partially supported by the National Department in its response to the Committee on written input received from stakeholders in that section 31G(2) should include reference to "mineral and petroleum resource inspector" but not "municipal manager of a municipality."	**Partially supported. Amendment partially agreed.** **Section 31G(2) should include reference to "mineral and petroleum resource inspector".** However, **it is not supported to include the municipal manager under this section**, as they are, together with the DG & HOD, empowered to issue S28 directives; and, as such, may not be subject to the same limitations and restrictions as EMIs, as is the intention of this provision.	
	Clauses 21, 22, 23, 24, 25 and 27	It is submitted that sections 31H (4) and (5); s31I (2) and (3); s31J (1), (2), (4), (5), (6)	**Supported. Amendments required as proposed.**	

	Sections 31H (4) and (5); 31I (2) and (3); 31J (1), (2), (4), (5), (6) and (7); 31K (2), (4) and (7); 31L (3) and 31O (1) of NEMA	and (7); s31K (2), (4) and (7); s31L (3) and s31O (1) of NEMA be amended to refer to "environmental mineral and petroleum inspectors". Proposed amendment supported by the National Department in its response to the Committee on written input received from stakeholders.		
	Clause 25 Section 31L(4) and (5) NEMA	It is submitted that sections 31L (4) and (5) be amended to include the "Minister responsible for mineral resources", "Minister responsible for water resources" and "Municipal Council". Proposed amendment supported by the National Department in its response to the Committee on written input received from stakeholders.	**Supported. Amendments required as proposed.**	
	Proposed new clause 26A Section 31N NEMA	It is submitted that section 31N be amended to include references to "environmental mineral and petroleum inspector" and "Minister responsible for mineral resources", "Minister responsible for water resources" and "Municipal Council". Proposed amendment supported by	**Supported. Amendment required. Section 31N should be amended to include references to "environmental mineral and petroleum inspector" and "Minister responsible for mineral resources", "Minister responsible for water affairs" and "Municipal Council".**	

		the National Department in its response to the Committee on written input received from stakeholders.		
	Clause 27 Section 31O(2) NEMA	It is submitted that section 31O(2) be amended to include reference to "Minister responsible for mineral resources". Proposed amendment supported by the National Department in its response to the Committee on written input received from stakeholders.	**Supported. Amendment required. Section 31O(2) should be amended to include reference to "Minister responsible for mineral resources". In addition, also to include "Minister responsible for water affairs".**	
	Clause 30 Section 34C, 31D, 31E and 31F NEMA	It is submitted that sections 34C, 31D, s31E and s31F (1) be amended to include "provincial Act that substantively deals with environmental management". Proposed amendment supported by the National Department in its response to the Committee on written input received from stakeholders.	**Not supported. No amendment required.** Section 31 D already includes, where relevant, the necessary references to "provincial Act that substantively deals with environmental management". Section 31E deals with prescribed training standards and not legal mandate issues; Section 31F(1) relates to the mandatory issuance of an ID card to EMIs and not legal mandate. Sections 34C deals with court powers upon conviction of a person to withdrawal, and disqualification of permits – these types of court powers should be confined to offences i.t.o. national legislation; as	

			the provincial Acts will have their own clauses relating to these issues; and a duplication/misalignment should be avoided.	
		It is not clear why the “must” was changed to “may” when it comes to the placement of live specimens in a suitable institution. It is also not clear why live specimens are being disposed of in terms of section 30 of the Criminal Procedure Act, which refers only to “articles”. It is further not clear whether international best practice was consulted when drafting these provisions. It is submitted that these provisions in the case of specimen especially live specimen, should be reconsidered.	**Not supported. No amendment required.** The reason that this clause was amended is primarily to provide for a level of discretion for the EMI to manage the seized live specimen in the best interests of the animal that has been seized. For example, the seized live specimen may not be able to survive in captivity, for example, Pangolins, or they may have very specific habitat requirements. In these circumstances, it may be in the interests of the animal to be returned to a natural environment, after the EMI has consulted the appropriate conservation/scientific authorities; and taken the appropriate identification samples/photos etc. The specimen could also be diseased or infectious, in which case, the EMI would need to have the	

			animal examined by a vet and/or quarantined. It could also be so badly injured, that the most "humane" manner of management would be to euthanize the specimen. In the case of alien or invasive species, there could also be specimens which are completely prohibited to possess. The EMI requires a level of discretion to deal with these specimens as the circumstances may require and the cross-referencing to the relevant provisions of the Criminal Procedure Act ensures that this is done in terms of an existing regulatory framework. The circumstances are exacerbated by the fact that the EMIs do not own their own safe keeping facilities, which means that they may not be able to comply with this provision due to circumstances beyond their control.	
	Clause 34 Section 43(7) NEMA	The proposed deletion of the word "directive" is supported, for the following reasons: 1. An automatic suspension of a directive on the lodgement of an appeal significantly reduces the effectiveness of a directive and may allow pollution and/or degradation of the environment to	**Noted.**	

		continue unabated whilst the procedure in section 43(9) is underway. It is submitted that section 43(10) adequately ensures just administrative action in respect of persons lodging an appeal in respect of directives received. 2. The operation of this provision is open to abuse by persons appealing merely to delay the process of enforcement or to complete their illegal activity.		
	Clause 35 Section 49A(1)(p) NEMA	It must be clear that the instruction should be issued in respect of the powers of environmental management inspectors or clearly linked to the exercising of those powers. It is submitted that the word “request” in section 31I(2), (5)(a), (5)(b) and section 31P be substituted with the word “instruction”. Proposed amendment supported by the National Department in its response to the Committee on written input received from stakeholders. The rationale for the amendment as per the Memorandum on the Objects of the Bill is noted.	**Partially supported. No amendment required.** Section 31I(2), 5(a), 5(b) and section 31P has been amended to substitute “request” with the word “instruction”.	

		It is submitted that on the same basis, the word "request" in section 31I(2), (5)(a), (5)(b) and section 31P must likewise be substituted with the word "instruction". It needs to be clarified that the instruction should be issued in respect of the powers of environmental management inspectors or clearly linked to the exercising of those powers. Proposed amendment supported by the National Department in its response to the Committee on written input received from stakeholders.		
	Clauses 34(b): Section 43(8) and additional new proposed amend-ments of section 43 of NEMA	Insofar as appeals of directives issued by the municipal manager or his delegate are concerned, the proposed amendment to section 43(8) only contemplates appeals to the municipal council and not to the other municipal appeal authorities identified in (1C). It is submitted that reference to the executive mayor or executive committee should be included in the case of such appeals. The National Department has noted	**Partially supported, to amend section 43(5) as proposed:** "(5) The Minister, **[or an]** MEC, or an executive committee, executive mayor, or municipal council, as the case may be, may consider and decide an appeal or appoint an appeal panel to consider and advise the Minister, **[or]** MEC, or an executive committee, executive mayor, or municipal council on the appeal.".	

		the afore-mentioned submission and has commented as follows, “Noted – need to explore the proper appeal authorities for actions of the municipal manager re: the provisions of the Municipal Systems Act; as well as the merit of other appeal authorities.” The view that the appeal process to be followed by an appeal to the municipal council must be in terms of the NEMA Appeal Regulations is supported and the following is therefore submitted in terms of section 43 of NEMA: (4) An appeal under subsection (1), (1A), (1C) or (2) must be dealt with in the manner prescribed upon payment of a prescribed fee. (5) The Minister, [or an] MEC, or an executive committee, executive mayor, or municipal council, as the case may be, may consider and decide an appeal or appoint an appeal panel to consider and advise the Minister, [or] MEC, or an executive committee, executive mayor, or municipal council on the appeal.		

		(6) The Minister, [or an] MEC or an executive committee, executive mayor, or municipal council, as the case may be, may, after considering such an appeal, confirm, set aside or vary the decision, provision, condition or directive or make any other appropriate decision, including a decision that the prescribed fee be paid by the appellant, or any part thereof, be refunded.		
	Proposed new clause to deal with appeals against directives issued in terms of NEMA	Municipalities are empowered to issue directives. This constitutes administrative action. Provision should therefore be made for an appeal against such a decision to the appropriate organ of state. It is submitted that provision should be made that a Municipal Council may decide an Appeal In terms of section 43(1) to (6) of the NEMA, where appropriate. The National Department responded to this written submission that "…this is already provided for in clause 34 of the amendment Bill, which adds the municipal council as an appeal	**Partially supported. Not supported, except for proposal to add proposed subsection (12):** "(12) No appeal in respect of a decision taken in terms of or pursuant to this Act or any of the specific environmental management Acts, may be lodged in terms of section 62 of the Municipal Systems Act, 2000 (Act No. 32 of 2000)."."	

		authority for s28 directives issued by the municipal manager". This does however not clarify whether an appeal to the Municipal Council should be made in terms of section 62 of the Municipal Systems Act, 2000 (Act 32 of 2000), or in terms of the National Appeal Regulations promulgated in terms of NEMA. The view that the appeal process to be followed for an appeal to the municipal council, for a decision made in terms of NEMA or a SEMA, must be in terms of the NEMA National Appeal Regulations is supported. In addition to the amendments to section 43 of NEMA as proposed in paragraph 27 above, the following further amendments to section 43 of NEMA are therefore submitted: (4) An appeal under subsection (1), (1A), <u>(1C)</u>, **[or]** (2) <u>or (8)</u> must be dealt with in the manner prescribed upon payment of a prescribed fee. (5) The Minister, **[or an]** MEC, <u>or municipal council</u>, as the case may be, may		

		consider and decide an appeal or appoint an appeal panel to consider and advise the Minister, **[or]** MEC, or municipal council on the appeal. (6) The Minister, **[or an]** MEC **[may,]** or municipal council, as the case may be, may, after considering such an appeal, confirm, set aside or vary the decision, provision, condition or directive or make any other appropriate decision, including a decision that the prescribed fee be paid by the appellant, or any part thereof, be refunded. … (12) No appeal in respect of a decision taken in terms of or pursuant to this Act or any of the specific environmental management Acts, may be lodged in terms of section 62 of the Municipal Systems Act 2000 (Act No. 32 of 2000).”. A consequential amendment will be required to the National Appeal Regulations (GN.R. 993 of 08 December 2014) to enable the appeal provisions of NEMA for use by Municipalities.	The National Appeal Regulations is currently in the process of being amended.	

	Clause 41 Section 1 definition 'control" NEMBA	The explanation provided by the National Department to written input received from stakeholders clarified the wording of the definition of "control". Based on the explanations given, it is proposed that the definition be further amended by adding the words "planned" and "over time" to the definition. The reference to "or the whole of the Republic" is adequately explained and should be retained. It is therefore proposed that the definition in the amendment Bill should read as follows: " **'control'**, in relation to **[an alien or]** invasive species, means— (a) **[to combat or eradicate an alien or invasive species]** the systematic, planned destruction over time, of all specimens of invasive species from within a specified area of, or the whole of, the Republic; or (b) where such **[eradication]** systematic destruction is not possible, to prevent, as far as may be practicable, the recurrence, re-establishment,	**Supported. Amendment required as proposed:** "**'control'**, in relation to **[an alien or]** invasive species, means— (a) **[to combat or eradicate an alien or invasive species]** the systematic, planned destruction over time, of all specimens of invasive species from within a specified area of, or the whole of, the Republic; or (b) where such **[eradication]** systematic destruction is not possible, to prevent, as far as may be practicable, the recurrence, re-establishment, re-growth, multiplication, propagation, regeneration or spreading of **[an alien or]** invasive species;".	

		re-growth, multiplication, propagation, regeneration or spreading of **[an alien or]** invasive species;"		
	Clause 49(b) Section 99(2) NEMBA	This clause amends the introductory paragraph of section 99(2) of NEMBA. In its current form, the clause requires that a MEC for environmental affairs must, inter alia, consult all Cabinet members whose areas of responsibility may be affected by the exercise of a power in terms of the principal Act. It is submitted that the MEC would be exercising his or her power at a provincial level. It is therefore not clear why the MEC must rather consult Cabinet members whose areas of responsibility may be affected by the exercise of the power. It is submitted that a MEC should consult the members of the Provincial Executive Council whose areas of responsibility may be affected by the exercise of the power." The National Department supported the comment and proposed the following: "(a) Retain the original text of sub-section (2), as reflected	**Supported. Amendment required as proposed.** This is in line with the proposal made by the Department to accommodate the initial concern raised. **Section 99 to be amended by the insertion, after subsection (2), of the following subsection:** **"(**2A) The MEC must, in terms of subsection (1)— (a) consult all Members of the Provincial Executive Council and organs of state, whose areas of responsibility may be affected by the exercise of the power in the province; (b) in accordance with the principles of cooperative governance set out in Chapter 3 of the Constitution, consult the Minister; and (c) allow public participation in the process in accordance with section 100.".	

		below, that will apply to the Minister; and (b) Insert new text as subsection (2A), as reflected below, that will apply to the MEC." The National Department indicated that the comment is valid, and to create different circumstances that will apply differently to the Minister and the MEC within the same subsection may become confusing and difficult to interpret. The specific wording proposed by the National Department to address this is also supported. It is therefore submitted that section 99 be amended by the insertion, after subsection (2), of the following subsection: "(2A) The MEC must, in terms of subsection (1)— (a) consult all Members of the Provincial Executive Council and organs of state, whose areas of responsibility may be affected by the exercise of the power in the province; (b) in accordance with the principles of cooperative governance set out in Chapter 3 of the Constitution, consult the Minister; and		

		(c) allow public participation in the process in accordance with section 100."		
	Proposed new amendment: Section 12A and Section 22 of the National Environmental Management: Air Quality Act, 2004 (Act 39 of 2004) (NEMAQA)	The use of norms and standards provide much needed flexibility in the application of environmental assessment processes (i.e. adherence to a standard replaces the need to apply for an environmental authorisation). To ensure that norms and standards developed in terms of section 24(10) of NEMA can also apply in instances where such a norm or standard is related to a listed activity or sector involving an air quality activity, it is proposed that NEMAQA is amended to allow for the development of such norms and standards, consistent with section 24(10) of NEMA. It is proposed that in order to enable the application of norms and standards for activities requiring atmospheric emission licences without having to formally apply for an atmospheric emission licence, a further section should be inserted (section 12A) and	**Not supported. No amendment required.** The proposed amendment replaces the requirement for an AEL which is used as the command and control in air quality management. The AEL empowers the licensing authorities to manage the listed activity in its entirety thus minimising the environmental impacts on the entire facility. **Furthermore, section 23 of NEMAQA empowers the Minister to declare certain activities as controlled emitters. A licence is not required for these activities** except for compliance with controlled emitter's emission standards. This section already provides for flexibility to manage certain activities without an authorisation.	

		that section 22 of NEMAQA is amended. It is submitted that a section 12A is inserted to read as follows: “Part 4: Norms and standards for air quality activities” “Section 12A. Norms or Standards for air quality activities (1) The Minister may, by notice in the Gazette, set national norms and standards for activities listed in terms of section 21. (2) Before publishing a notice in terms of subsection (1), or any amendment to the notice, the Minster must follow a consultative process in accordance with sections 56 and 57”. It is further submitted that section 22 of NEMAQA be amended as follows: “Section 22. Consequences of listing No person may without a provisional atmospheric emission licence or an atmospheric emission licence conduct an activity - listed on the national list anywhere in the Republic; or (b) listed on the list applicable in a province anywhere in that		

		province, unless it is done in terms of an applicable norm or standard contemplated in section 12A.".		
	Clause 51 Section 13 NEMAQA	The proposed amendment substantially takes away from the requirement under NEMAQA that the Minister must establish the advisory committee. The intention of NEMAQA was clearly that it would be imperative for the Minister to receive vital technical inputs into complicated and complex issues. The fact that the Minister is now in this clause given the discretion to establish the committee, instead of being obliged to do so, may create the situation where no committee is established and vital capacity would consequently not be established. It is submitted that the word 'must' must be retained on page 27, line 20.	**Not supported. No amendment required.** The amendment provides for flexibility. It is intended that the Minister will appoint a committee to advise on specific challenges that need to be resolved, when there is a need to do so. Air quality management includes a number of specialist areas which include emission sources, emission dispersion, environmental and health impacts. All these aspects require different skill sets. Therefore, when a committee is appointed it should have specific objectives so that relevant expertise can be sourced. A standing committee will be too generic and might not be able to advise the Minister on all aspects. The proposed amendments however still empower the Minister to appoint the committee when there is a need.	
	Clause 52: Section 22A(4)(b) NEMAQA	In the proposed new section 22A(4)(b) the words "or found not guilty after prosecution" is tautologous. It is submitted that the words "or found not guilty after prosecution" on page 28,	**Supported. Amendment required.** **22A(4)(b) proposed wording:** "(b) the applicant concerned is acquitted in respect of the contravention of, or failure to comply with, section 22; or…"	

		lines 23 and 24 of the amendment Bill are deleted. Proposed amendment supported by the National Department in its response to the Committee on written input received from stakeholders.		
	Clause 53(a) Section 36(2A) NEMAQA	The clause provides that "A provincial organ of state must be regarded as the licensing authority if a listed activity falls within the boundaries of more than one metropolitan municipality, or within the boundaries of more than one district municipality, and the relevant municipalities agreed thereto in writing". It is not clear from the clause in its current form who the licensing authority will be if agreement cannot be reached between the relevant municipalities. It is submitted that a provincial organ of state should be the default licensing authority in the circumstances described in this clause and **that the requirement of agreement on page 28, lines 49 and 50 be deleted.**	**Supported. Amendment required as proposed.** This amendment will indicate that, where a listed activity falls within the boundaries of more than one district municipality/metropolitan municipality (and where the Minister is not the Licensing Authority), the provincial organ of state should automatically assume the responsibility of the Licensing Authority without the requirement for the affected municipalities to give consent in writing. **Proposed text:** **Section 36(2A):** ''(2A) A provincial organ of state is the licensing authority if a listed activity falls within the boundaries of more than one metropolitan municipality, or within the boundaries of more than one district municipality.''.	

		Such an amendment will align the clause with section 36(5)(b) of NEMAQA (i.e. where the Minister is regarded as the competent authority without the need for agreement from provinces). The National Department, in its response to the Committee on written input received from stakeholders, indicated that "The proposal…under these stated circumstances is acceptable. Where a listed activity falls within the boundaries of more than one district municipality/metropolitan municipality (and where the Minister is not the Licencing Authority), the provincial organ of state should automatically assume the responsibility of the Licencing Authority without the requirement for the affected municipalities to give consent in writing,"		
	Clause 53(c) Sections 36(5) and 36(8) NEMAQA	It is submitted that section 36(5)(c) of NEMAQA be deleted. This will allow district and metropolitan municipalities to be the licensing authorities, even for matters of national priority,	**Not supported. No amendment required.** National priority projects are a responsibility of national government, for which the Minister assumes the licensing function. Therefore, section 36(5)(c) should remain unchanged.	

		but still allow the Minister and licensing authority to reach an agreement based on the facts of a specific application for the Minister to become the licensing authority (as opposed to a blanket assumption that district and metropolitan municipalities cannot adequately deal with such applications). Section 36(5)(c) of the Act constitutes an unconstitutional limitation of the powers and functions of municipalities. Even though national and provincial legislation may regulate the exercise by municipalities of their executive authority in respect of the functional competence of air pollution, the national and provincial spheres of government cannot, by legislation, themselves exercise municipal executive authority. Reference is made to section 156(1)(a) of the Constitution of the Republic of South Africa, 1996 ('the Constitution') read together with section 155(7), as well as the Constitutional Court judgment in City of	In Part A of Schedule 4 of the Constitution of the Republic of South Africa, 1996, which are the (functional areas of concurrent national and provincial legislative competence), one of the functional areas listed is "pollution control" while "air pollution" is listed in Part B of Schedule 4. This means that national and provincial spheres of government must cooperate in regulating and/or administering pollution control matters, while local government has executive and administrative authority in dealing with air pollution matters.	

		Johannesburg Metropolitan Municipality v Gauteng Development Tribunal and Others [2010] ZACC 11 ('the judgment'). The functional competence of 'air pollution' is situated in Schedule 4B of the Constitution. In paragraph 59 of the judgment the Constitutional Court said the following in respect of the matters listed in Schedule 4B of the Constitution: "… But the national and provincial sphere cannot, by legislation, give themselves the power to exercise executive municipal powers or the right to administer municipal affairs. The mandate of these two spheres is ordinarily limited to regulating the exercise of executive municipal powers and the administration of municipal affairs by municipalities." An alternative submission, which is a less preferred option is that section 36(8) of NEMAQA is expanded to also include subsection 5 and therefore allow for agreements between the		

		Minister and MEC or municipalities for matters of national priority, as is proposed in clause 53(c) of the current version of the Bill. Although this is supported as a second option, it must be pointed out that this is not the preferred option. This is because this second option would be premised on an "intrusion" into the municipal competence on the functional area of "air pollution" by agreement depending on the ambit of such an agreement. Clause 53(c) which aims to expand the option of a section 36(8) agreement to subsection 5 as well, however also needs to be amended. Given that the Minister would be the licensing authority contemplated in subsection 5, it is submitted that clause 53(c) should be amended as follows: ''(8) The Minister and licensing authority contemplated in subsections (1) to [(4)] <u>(5)</u> may agree that an application for an atmospheric emission licence with regard to any activity contemplated in section 22		

		may be dealt with by the Minister, MEC or the relevant licensing authority contemplated in subsections (1) to [(4)](5).".		
	Proposed new Clause 53A: Section 46 of NEMAQA	An application for a variation of an atmospheric emission licence triggers the need for a basic assessment process in terms of the Environmental Impact Assessment Regulations, 2014, with specialist studies required in certain circumstances. The processing of a variation application requires a great deal of engagement and the process often takes considerable time and effort. It is therefore submitted that the NEMAQA is amended to require that an application for variation of an atmospheric emission licence must be accompanied by the payment of a processing fee. The National Department supported the recommendation but requested that only section 46 of NEMAQA should be amended. Based on the above, the following is submitted:	**Supported. Amendments required to section 46 as proposed:** **Section 46(1)(d)** "(d)**[at the written request of]** on application by the holder of the licence;"; **New section 46(2A) and (2B) insertion after subsection (2):** "(2A) An application for the variation of a provisional atmospheric emission licence or an atmospheric emission licence from the holder of a licence contemplated in subsection (1)(d), must be lodged with the licensing authority of the area in which the listed activity is or is to be carried out, in the form required by the licensing authority. (2B) An application contemplated in subsection (1)(d) must be accompanied by— (a) the payment of the prescribed application fee; and (b) such documentation and information as may be required by the licensing authority."; 	

		That section 46(1)(d) of NEMAQA is amended by the substitution of sub-section (d) for the following subsection: "(d)**[at the written request of]** on application by the holder of the licence; That section 46(3) of NEMAQA is amended by the substitution of sub-section (3) for the following subsection: (3) If a licensing authority receives **[a request]** an application from the holder of a licence in terms of subsection (1)(d), the licensing authority must require the holder of the licence to take appropriate steps to bring the **[request]** application to the attention of relevant organs of state, interested persons and the public if— That section 46 of NEMAQA is amended by- the insertion after subsection (2) of the following subsection: "(2A) An application for the variation of provisional atmospheric emission licences from the holder of a licence contemplated in subsection (1)(d), must be	**Substitution of section 46(3) for the following subsection:** "(3) If a licensing authority receives **[a request]** an application from the holder of a licence in terms of subsection (1)(d), the licensing authority must require the holder of the licence to take appropriate steps to bring the **[request]** application to the attention of relevant organs of state, interested persons and the public if—…".	

		lodged with the licensing authority of the area in which the listed activity is or is to be carried out, in the form required by the licensing authority. (2B) An application contemplated in subsection (1)(d) must be accompanied by— (a) the payment of the prescribed application fee; and (b) such documentation and information as may be required by the licensing authority." This insertion may also require an amendment to the Regulations prescribing the atmospheric emission licence processing fee, 2016.		
	Proposed new clause: Section 41 of NEMAQA	Section 41(3) of NEMAQA provides that a provisional atmospheric emission licence is valid for a period of one year from the date of the commissioning of the listed activity and may be extended for an additional one-year period, on good cause shown, to the licensing authority. However, section 42(1) of the NEMAQA provides that the holder of a provisional	**Not supported. No amendment required.** This proposal will empower the licensing authority to issue a provisional license that can be renewed endlessly. There are already provisional licenses from some provinces that were valid for five years thus allowing facilities to operate without the need to comply with Minimum Emission Standards (MES).	

		atmospheric emission licence is entitled to an atmospheric emission licence when the facility has been in full compliance with the conditions and requirements of the provisional atmospheric emission licence for a continuous period of at least six months. The NEMAQA does not make provision for a further extension of the provisional atmospheric emission licence. It is unclear how the licensing authority should deal with this practical scenario. It is submitted that the licensing authority should be empowered to determine the period of extension of the provisional atmospheric emission licence. This will resolve the practical difficulties faced by licensing authorities. It is submitted that section 41(3) of NEMAQA be amended by the substitution of subsection (3) for the following subsection: “(3) A provisional atmospheric emission licence is valid for a period of one year from the date of the commissioning of	The atmospheric emission license (AEL) cannot be issued to a facility that failed to demonstrate compliance with the Minimum Emission Standards. By issuing the license the authorities will be undermining the law. A facility is designed with MES being the battery limit or the boundary condition for the plant. While it is understood that it might take a sometime for the plant to operate as it was intended to during the design, the two year period is enough to illustrate compliance with the law. The regulated community needs to understand that an AEL is an essential authorisation that allows them to operate within acceptable limits.	

		the listed activity, and may be extended once, for **[an additional one year]**, a period as determined by the licensing authority, on good cause shown to the licensing authority."		
	Clause 62: Proposed new Section 34J(3) NEMWA	This section states that "The Minister may appoint a member of the Board as acting chairperson if…" As this provides a discretion to the Minister, it is submitted that on page 33, line 35, the following is inserted as a new provision under section 34J: "(4) If the Minister does not appoint a Chairperson or and acting chairperson, then the Board can elect an acting chairperson until the minister appoints a Chairperson or acting chairperson".	**Supported. Amendment agreed. Proposed text:** "(4) If the Minister does not appoint a Chairperson or an acting Chairperson, the Board may elect an acting chairperson until the Minister appoints a Chairperson or acting Chairperson.".	
	Clause 64 Section 36(5) NEMWA	It is submitted that clause 64 be amended as follows: "An owner of the land that is **[significantly]** likely to be contaminated, or a person who undertakes an activity on land that has likely caused the land to be **[significantly]** contaminated, must notify the Minister and MEC of that contamination or potential contamination as soon as that	**Partially supported. Amendment partially agreed to** "An owner of the land that is **[significantly]** likely to be contaminated, or a person who undertakes an activity that caused the land to be **[significantly]** contaminated, must notify the Minister and MEC of that contamination as soon as that person becomes aware of that contamination.".	

		person becomes aware, of that contamination or potential contamination". The National Department, in its response to written comments, agreed that the emphasis on who needs to report on likely contamination must be the same for either user of land or owner of land and agrees with the text as proposed.	This is mere notification and notification itself does not mean that the land is contaminated. If you suspect that land is contaminated (maybe because of a particular activity/ies that took place there) then notify the Department. This is not punitive in any way. Contamination is only proven when the studies are done and the site assessment report is submitted. There is also no reputational harm for notification and if the land is not contaminated, we write back to the person notifying the Department stating that the land is not contaminated and thus there is nothing that that person needs to do. These notifications also do not end up on the contaminated land register.	
	Clause 65 Sections 37(1) and (2) NEMWA	It is submitted that the substitution of the word "cause" with the word "require" on page 37, line 37, is supported as this provides for further clarity in terms of the powers of the Minister or MEC. The inclusion of "and submit a site assessment report and a remediation plan" on page 37, line 38, is misleading as it implies that the obligation to submit the report and plan	**Not supported. No amendment required.** The 90 day period is not reasonable and is not supported by the Department as each piece of land where contamination has occurred is different and depending on the nature of the contaminant and the length of time that the contamination has been taking place, a site assessment may not be able to indicate the full extent of contamination within 90 days. One would have to in some instances do as assessment over two seasons to	

		lies with the Minister or MEC, which cannot be correct. It is submitted that section 37(1)(a) of NEMWA be amended further, to specify the time period within which the site assessment report and remediation plan must be submitted as follows: **"[cause]** require a site assessment to be conducted in respect of the relevant investigation area, and that a site assessment report and remediation plan, if applicable, be submitted to the Minister or MEC, as the case may be, within a period specified in the notice, which cannot be more than 90 days; or"	verify the contamination. A shorter period may give inaccurate results and actually cause more environmental damage.	
	Clause 81 Repeal Schedule 3 NEMWA	The proposed deletion of Schedule 3 of the NEMWA is supported. However, there is still reference made to schedule 3, for example, in section 58J. It is submitted that all consequential amendments are checked for and effected.	**Not supported. No amendment required.** Reference to Schedule 3 shouldn't be interpreted as if it's about including Schedule 3, as Schedule 3 is to be removed from the NEMWA.	
	Clause 82 Section 12 of the National	It is submitted that there is still a concern regarding the lack of clarity provided by the proposed clause 82.	The intention is not to provide that environmental management plans or programmes are converted to environmental authorisations.	

	Environmental Management Amendment Act, 2008 (Act 62 of 2008) (NEMAA)	The **National Department's response to this concern indicates that consideration should be given to removing the ambiguity**. One of the primary concerns relates to the perceived conversion of an environmental management plan or programme to an environmental authorisation issued in terms of NEMA. In their response, the National Department confirmed that this is not the intention of the clause. However, due to the complex nature of this provision and the potential unintended consequences, the redrafting of this clause should not be undertaken without detailed discussions with the National Department. It is submitted that the clause be remitted back to the National Department for redrafting in consultation with relevant decision-making authorities.		