



THE NATIONAL ENVIRONMENTAL MANAGEMENT LAWS AMENDMENT BILL [B 14F—2017] PORTFOLIO COMMITTEE

11 FEBRUARY 2022



forestry, fisheries
& the environment

Department:
Forestry, Fisheries and the Environment
REPUBLIC OF SOUTH AFRICA



PURPOSE

- To provide the Portfolio Committee on Environment, Forestry and Fisheries with an overview of the National Environmental Management Laws Amendment Bill [B14F-2017] (NEMLA BILL) as it progressed through the Parliamentary processes.



ACRONYMS

DFFE	Department of Forestry, Fisheries and the Environment
DMRE	Department of Mineral Resources and Energy
EMI	environmental management inspector
MEC	Member of Executive Council
MPRDA	Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002)
NEMLA	National Environmental Laws Amendment Bill [B14-2017]
NEMA	National Environmental Management Act, 1998 (Act No. 107 of 1998)
NEMAA	National Environmental Management Amendment Act, 2008 (Act No. 62 of 2008)
NEMAQA	National Environmental Management: Air Quality, 2004 (Act No. 39 of 2004)
NEMBA	National Environmental Management: Biodiversity Act, 2004 (Act No. 10 of 2004)
NEMICMA	National Environmental Management: Integrated Coastal Management Act, 2008 (Act No. 24 of 2008)
NEMPAA	National Environmental Management: Protected Areas Act, (Act No. 57 of 2003)
NEMWA	National Environmental Management: Waste Act 2008, (Act No. 59 of 2008)
SANBI	South African National Biodiversity Institute
SANParks	South African National Parks Board
SEMAS	specific environmental management Acts



Background

- The National Environmental Management Act, 1998 (Act No. 107 of 1998) (NEMA) is the overarching umbrella legislation for the environment in the country.
- Under this umbrella Act there are the specific environmental management Acts, which deal with specific aspects of the environment, namely air, biodiversity, coasts, protected areas and waste in more detail.
- NEMA is implemented by 11 competent authorities, namely the Department of Forestry, Fisheries and the Environment, the 9 provinces and the Department of Mineral Resources and Energy.



Purpose of National Environmental Laws Amendment Bill

- **The main purpose of NEMLA is to amend the following Acts:**
 - ✓ National Environmental Management Act, 1998 (Act No. 107 of 1998) (NEMA);
 - ✓ National Environmental Management: Protected Areas Act, 2003 (Act No. 57 of 2003) (NEMPAA);
 - ✓ National Environmental Management: Biodiversity Act, 2004 (Act No. 10 of 2004) (NEMBA);
 - ✓ National Environmental Management: Air Quality Act, 2004 (Act No. 39 of 2004) (NEMAQA);
 - ✓ National Environmental Management: Integrated Coastal Management Act, 2008 (Act No. 24 of 2008) (NEMICMA);
 - ✓ National Environmental Management: Waste Act, 2008 (Act No. 59 of 2008) (NEMWA);
 - ✓ National Environmental Management Amendment Act, 2008 (Act No. 62 of 2008) (NEMAA);
- and
- The main purpose of the Bill is to provide clarity on certain matters; to address the competencies and powers of the various competent authorities/ licensing authorities; address operational and implementation challenges; make textual and consequential amendments, and provide for matters not previously catered for in the legislation, e.g. the “well-being” of animals.

CONSULTATION PRIOR TO BILL INTRODUCTION IN PARLIAMENT

- After consultation with affected authorities, the NEMLA Bill was approved by Cabinet on 16 September 2015 and published for public comment on 13 October 2015
- Closing date for public comments was 30 November 2015
- The Department received a total of 29 sets of public comments from various stakeholders, including the business sector; non-governmental organisations; national; provincial and local spheres of government.
- Comments were received on integrated environmental management; clarity sought on implementation of the one environmental system; support for strengthening of compliance monitoring and enforcement mechanisms; clarity sought on proposed amendment to definition of waste, residue deposits and stockpiles management and certain transitional arrangements.
- The comments were considered and consulted on in detail during 2016 and most comments received were addressed.
- A revised Bill was provided at the end of 2016 with the classification and certification of the Bill by the Chief State Law Advisor in November 2016.



National Assembly process for NEMLA Bill

- The National Environmental Laws Amendment Bill [B14-2017] - introduced to Parliament in May 2017.
- Content of this Bill was attempting to address the following matters:
- **In NEMA, to:**
 - Correct and clarify the meanings of terms and definitions in NEMA:
 - Constitution
 - Environmental mineral resource inspector
 - Financial provision for the rehabilitation of environmental damage caused by mining and related activities;
 - Add a new environmental management principle promoting transformation and diversity in sector, namely “ The full participation of black professionals in the environmental management sector must be recognised and their participation in the sector promoted”.
 - Refine empowering provision in respect of regulations for environmental management instruments and remove the list of these instruments from the text;
 - Require that the Minister to keep a register of all environmental management instruments adopted in terms of the Act.



Tabled NEMLA Bill content

- In NEMA to:
 - Strengthen the integrated environmental management system and clarify sections dealing with applications for environmental authorisations and the roles of different authorities in this process and provide for integrated decision-making where possible;
 - Provide clarity on section 24G applications - which deals with authorising activities that had commenced illegally without environmental authorisation or a waste management licence – namely that a successor in title or person who controls the land may also lodge a section 24G application;
 - Provide the Minister with the power to set minimum information requirements for environmental management programmes;
 - Allow environmental assessment practitioners to consult with organs of state in the course of applications for environmental authorisation;
 - Amend NEMA section 24P, which deals with financial provision for the rehabilitation of environmental damage caused by mining;



Tabled NEMLA Bill content

- **In NEMA to:**
 - Empower Director-General of the Department responsible for mineral resources and a municipal manager of a municipality to issue section 28(4) directives;
 - Provide clarity that section 28 is applicable to anticipatory costs as well as remedial measures;
 - Provide for joint and several liability in respect of the responsible persons listed under section 28(8);



Tabled NEMLA Bill content

- **In NEMA to:**
 - Empower the Minister responsible for mineral resources to designate environmental mineral and petroleum inspectors from staff within that Department or an organ of state, by agreement with the organ of state;
 - Empower the Member of Executive Council to designate environmental management inspectors to undertake compliance and enforce provincial environmental legislation;
 - Empower the Minister to prescribe a Code of Conduct for environmental management inspectors and environmental mineral and petroleum inspectors;
 - Provide clarity that an environmental mineral and petroleum inspector must also undergo approved training before designation;
 - Provide clarity on functions and general powers of environmental management inspectors when conducting investigations;
 - Provide clarity that the conducting of a “search” is not the primary purpose of an environmental management inspector undertaking a routine inspection;



Tabled NEMLA Bill content

- **In NEMA to:**
 - Provide clarity that an environmental management inspector may detain an item, for further analysis or verification for purposes of determining compliance or not, with applicable legal requirements;
 - Provide clarity that the Minister's power to develop regulations on admission of guilt fines contextualises the related provisions of the Criminal Procedure Act, 1977;
 - Empower the Minister responsible for mineral resources, the Minister responsible for water affairs and a municipal manager to delegate functions and duties in terms of this Act;
 - Provide clarity that a person may appeal a section 28(4) directive issued by a person acting on delegated authority, but that an appeal against a directive does not automatically suspend it;
 - Provide clarity that an appeal against a directive must be lodged at the appropriate appeal authority;
 - Correct references and cross references to offences and penalties and to update the list of offences.



Tabled NEMLA Bill content

- National Environmental Management: Protected Areas Act, 2003 (NEMPAA):
 - Clarify that the Chief Financial Officer of the South African National Parks (SANParks) is part of the SANParks Board.
 - A new offence has been inserted for non-compliance with section 48A, which prohibit certain activities in marine protected areas.
- National Environmental Management: Biodiversity Act, 2004 (Act No. 10 of 2004) (NEMBA)
 - Specify that the Chief Financial Officer of the South African National Biodiversity Institute (SANBI) is part of the SANBI Board.



Tabled NEMLA Bill content

In NEMBA:

- Some definitions and provisions relating to alien and invasive species have been amended, namely “control” and “eradicate”.
- One of the objectives for NEMBA has been amended to provide for the use of indigenous biological resources in a manner that is ecologically sustainable, **including taking into account the well-being of any faunal biological resource involved**
- The Minister has been authorized to specify the circumstances under which landowners must report the presence of invasive species on their land and take steps to control or eradicate those species.
- The Bill clarifies that the MECs must also follow consultation and public participation processes when taking decisions in terms of NEMBA.



Tabled NEMLA Bill content

- National Environmental Management: Air Quality, 2004 (Act No. 39 of 2004) (NEMAQA)
 - Change the current mandatory requirement that the Minister must establish the National Air Quality Advisory Committee to a discretionary power that may be exercised.
 - Provide clarity on section 22A of NEMAQA regarding consequences of the unlawful conducting of listed activities by inserting a provision that authorises a person who has commenced an activity that requires an atmospheric emission licence, without such licence, to apply for an authorisation to continue the activity subject to the payment of an administrative fine.
 - Also provide for 2 scenarios, namely for those activities that were operated without a registration certificate under the Atmospheric Pollution Prevention Act, 1965, and those activities that have an environmental authorisation but no atmospheric emission licence under NEMAQA.
 - Provide clarity that a provincial department responsible for environmental affairs is the licensing authority where a listed activity falls within the boundaries of more than one metropolitan municipality or more than one district municipality.



Tabled NEMLA Bill content

- **National Environmental Management: Integrated Coastal Management Act, 2008 (Act No. 24 of 2008) (NEMICMA)**
 - Clarify the retrospective effect of section 60 of the NEMICMA, which allows for the issuing of notices for the removal of illegal structures built in the coastal zone before the coming into effect of NEMICMA. Currently retrospectivity is implied, but in the implementation of this provision there is uncertainty.
 - Correct the current situation where the Minister is the appeal authority for certain decisions taken by a Member of the Executive Council (MEC), and the MEC is the appeal authority for decisions taken by a municipality. The repeal of the provisions will have the effect that appeals will be dealt with under section 43 of NEMA .
- **National Environmental Management: Waste Act, 2008 (Act No. 59 of 2008) (NEMWA)**
 - All the definitions from Schedule 3 were moved to section 1. Schedule 3 was also be replaced.
 - Provide for a textual amendment to the definitions of “residue deposits” and “residue stockpiles” and “waste”;
 - Exclude residue stockpiles and residue deposits from the provisions of the Act, which means that residue stockpiles and residue deposits will be dealt with in terms of NEMA.



Tabled NEMLA Bill content

- NEMWA

- Clarify that the Minister responsible for mineral resources is responsible for the regulation of waste management activities in so far as they are conducted as part of mining operations.
- Provision has been made for the constitution of a Board for the Waste Management Bureau, with explicit powers and functions.
- Amend the provisions to ensure that a site assessment report and remediation plan regarding contaminated land are submitted together to the Minister for approval.
- Clarify that no exemption from the requirement to obtain a waste management licence may be issued.
- Enable the payment of processing fees when applications are made for the variation of waste management licences.
- Updating certain offences and penalties provisions.



TABLED NEMLA BILL CONTENT

- National Environmental Management Amendment Act, 2008 (Act No. 62 of 2008) (NEMAA):
 - The NEMAA is still relevant as it contains the transitional provisions relating to the switch to the “One Environmental System” on 8 December 2014. There are still some matters that require clarity namely to specify when the requirements of NEMA and the Mineral and Petroleum Resources Development Act, 2002 (MPRDA) are regarded as having been fulfilled in so far as they relate to activities that commenced before or after 8 December 2014;
 - Clarify that appeals that were lodged against decisions taken before 8 December 2014, in respect of environmental aspects in terms of the MPRDA, must be finalised in terms of the MPRDA, and not NEMA; and
 - Provide for transitional arrangements in respect of residue deposits and residue stockpiles and the continued operation of the Waste Management Bureau before it can be properly set up in terms of the proposed provisions.

CONSULTATION ON TABLED NEMLA BILL

- The Department briefed the then Portfolio Committee (PC) during the latter half of 2017 on the content and intended purpose of the Bill. The PC considered the Bill between mid 2017 and mid 2018, and invited comments on the Bill- held public hearings where comments and representations were made by a wide range of stakeholders including industry, business and non-government organisations.
- The PC considered all these inputs and prepared a **B version** on the Bill, containing the following main amendments to the original tabled Bill:
 - Addition of the definition for “audit” to mean a review of the scientific and engineering acceptability of the measures and the adequacy of related costs associated with undertaking progressive rehabilitation, decommissioning, closure and post closure activities for listed and specified activities, including the pumping and treatment of extraneous and polluted water, where relevant.
 - Addition of definition for the word “black” in respect to the newly added NEMA principle;
 - Addition for definition of “environmental management instrument”;
 - Additional changes to financial provision requirements e.g. through the addition of and changes to relevant definitions and the expansion of the financial provision section in the Bill, also leading to specific provisions for financial provision for mining in the Bill;
 - Amend section 24G provisions to make certain requirements compulsory when applying for an environmental authorization or waste management licence in order to rectify/ legalise activities that commenced illegally and adding public participation requirements to this provision;
 - Increase the administrative fine amount from R5 million to R10 million;



B BILL AMENDMENTS

- B Bill amendments made (continued)
 - Change the term “environmental mineral resource inspector” to “environmental mineral and petroleum inspector” throughout the Bill.
 - Make additions to certain powers of these inspectors and consequential amendments to the enforcement provisions.
 - Adding consequential amendments to section 42B regarding delegation powers and to sections 49A and 49B regarding offences and penalties.

NEMPAA:

- Amend section 48, which relates to the prohibition of prospecting and mining in protected environments, unless permission is applied for and the criteria under which such permission application may be rejected or permission issued.

NEMICMA:

- Repeal the whole of chapter 9 as it duplicates appeal provisions already catered for in NEMA.

NEMBA:

- Include a definition for “well-being” and empower the Minister to prohibit activities that may negatively impact on the well-being of a faunal biological resource.
- Add a provision that the Minister must provide education and awareness to local communities affected by listed invasive species.
- Add regulation making powers in respect of the well-being of animals.



B BILL AMENDMENTS

- **NEMAQA:**

- Amendments similar to that of NEMA section 24G were added to section 22A of NEMAQA, which deals with consequences of unlawful conduct; and
- Enable the revocation and suspension of atmospheric emission licences;

- **NEMWA:**

- Insert a definition for “general waste”; and
- Schedule 3 of the Act was repealed. The Schedule set out the different categories of waste. However, it is regarded as being largely unnecessary. Some consequential amendments were made due to the repeal of the Schedule.

NEMAA:

- Consolidation and improvement of various transitional provisions which are similar in content.

D BILL AMENDMENTS

On 08 November 2018, the Portfolio Committee on Environmental Affairs (National Assembly) considered and adopted the National Environmental Management Laws Amendment Bill with amendments. The amendments resulted in the Bill becoming a D Bill.

Main changes contained in the D Bill are:

- More specific provisions and changes were incorporated into section 24G of NEMA dealing with requirements for illegally commenced activities.
- Section 31D(4) had been amended to enable the Minister, after consultation with the Minister of Mineral and Petroleum Resources, if it is necessary to address significant harm to the environment caused by mining activities direct an EML, to provide support.
- Inclusion of a section into NEMA to enable appeals to a municipal council on decisions taken by a NEMAQA licensing authority (municipality).
- NEMPAA: changes to section 48 provisions relating to mining in protected environments.
- NEMAQA changes to revocation and suspension provisions of section 47A; and
- Amending the long title of the NEMLA Bill to reflect all preceding amendments made.



NCOP PROCESS

- National Assembly passed the NEMLA Bill, 2017 and referred the Bill to the National Council of Provinces (NCOP) to deal with the NEMLA Bill, 2017 in terms of section 76 of the Constitution. However, the NCOP did not deal with the NEMLA Bill, 2017, as contemplated in section 76 of the Constitution because of the expiry of the 5th administration term at the time.
- In October 2019 the NCOP, on advice from Parliamentary Legal Advisors, decided to revive certain Bills which were not finalised when the term of the 5th NCOP ended. This included the NEMLA Bill.
- Timing of consideration by NCOP also coincided with the COVID19 pandemic and national lockdown at various Alert Levels in 2020 and 2021.
- The NCOP through the Select Committee on Land Reform, Environment, Mineral Resources and Energy however engaged on the Bill, held public hearings in certain provinces, engaged with the DFFE on many occasions and carefully considered all content and inputs received from provincial legislatures.
- The process was halted during 2021 as a result of the announcement of municipal elections and the rising of Parliament on 10 September 2021. The process reconvened in November 2021
- During the NCOP process, provincial legislatures provided negotiating mandates, an E List of amendments was produced by State and Parliamentary Law Advisors in collaboration with DFFE and final mandates resulted in the F Bill being adopted by the Select Committee and adopted Bill was referred back to National Assembly (Portfolio Committee) in December 2021.

NCOP PROCESS

- Main amendments proposed during this process, which are reflected in the F Bill can be summarised as follows:
 - Clarify that certain definitions, such as “audit”, “mitigate” and “rehabilitate” only apply to section 24P and section 24PA.
 - Omit definitions for “residual environmental impact” and “remediate”.
 - The definition for “financial provision” was further amended.
 - Provide further clarity on financial provisioning related matters and providing that the detail should be prescribed by regulation and adjusting certain definitions to align.
 - Alignment of terminology throughout the Bill specifically on compliance and enforcement matters and clarification is provided in respect of the environmental mineral and petroleum inspector’s mandate and role.
 - A definition for “mining activity” was inserted and consequential amendments were made.
 - Expanding and strengthening the NEMA principle to recognise and promote the full participation of previously disadvantaged professionals and indigenous knowledge practitioners in the environmental management sector. A definition for “indigenous knowledge practitioner” was inserted.
 - Replacing the term “State department” with the wider term “organ of state” in relation to consultation on environmental authorisation applications.
 - Correcting grammar, textual and numbering errors throughout the Bill.



F BILL AMENDMENTS

NEMBA:

- Further amend the “well-being” with consequential amendments required as a result of the proposed amended definition.
- Clarify consultation requirements for MECs by providing clear wording.

NEMAQA:

- Further clarify the licensing authority mandate for air quality related matters where multiple local authorities could be the licensing authority.

NEMWA:

- Amend the definition of “waste” to allow the necessary clarity and addressing challenges experienced with the current definition, as well as consequential amendments and a transitional provision in this respect.

SUMMARY

The National Environmental Laws Amendment Bill [B14F-2017] will improve NEMA and the SEMAs that it amends, amongst others, in the following respect:

- A new NEMA principle promoting diversity in the sector has been added.
- The competencies of the various competent authorities and licensing authorities in terms of NEMA and NEMAQA have further been clarified.
- The provisions relating to the integration of licensing processes and the issuing of integrated environmental authorisations for the purposes of the One environmental system have further been strengthened.
- Clarity is provided in respect of what an environmental management instrument is.
- The Bill provides clarity that successors in title of land on which an unlawful activity had been committed, will now be able lodge a s24G application for an environmental authorisation or waste management licence. The provisions of section 24G of NEMA and section 22A of NEMAQA, respectively, have further been strengthened. Penalties have been increased.



SUMMARY

- The legislative provisions relating to the financial provision for the purposes of progressive rehabilitation, decommissioning, closure and post-closure for mining activities have been strengthened,
- General interpretation and implementation challenges in respect of enforcement are addressed;
- The Minister has been empowered to prescribe a Code of conduct for Environmental Management Inspectors and Environmental Mineral and Petroleum Inspectors
- Municipal Managers will now be able to issue section 28 directives;
- All decisions made under delegated authority in terms of NEMAQA and the ICMA can now be appealed against in terms of section 43 of the National Environmental Management Act.



SUMMARY

- The scope of NEMBA will now include the consideration of the “well-being” of animals in the management, conservation and sustainable use thereof”. The concept of “well-being” has been defined and the Minister has been empowered to make regulations or to prohibit certain activities that may negatively impact on animals.
- Clarity provided on the definitions of “control” and “eradicate”, as well as on the measures to be undertaken to eradicate listed invasive species.
- Provision has been made for the constitution of a Board for the Waste Management Bureau, with explicit powers and functions.
- The “waste” definition has been substantively amended to address interpretation and implementation challenges.
- Residue Deposit and stockpiles will in future be addressed under NEMA and not the NEMWA.
- The NEMICMA has been amended to allow for the removal of illegal structures erected prior to the commencement of that Act.
- Section 48 of NEMPAA has been amended to provide for a process and criteria to be considered when an application is lodged to conduct commercial prospecting, mining, exploration, production or activities related thereto in a protected environment.
- Enable the revocation and suspension of atmospheric emission licences.



THANK YOU!

Thank You



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