

REPUBLIC OF SOUTH AFRICA

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**SELECT COMMITTEE AMENDMENTS  
TO  
NATIONAL ENVIRONMENTAL  
MANAGEMENT LAWS  
AMENDMENT BILL**

**[B 14D—2020]**

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*(As agreed to by the Select Committee on Land Reform, Environment, Mineral and  
Energy (National Assembly))*

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**[B 14E—2017]**

ISBN 978-1-4850-????-?

No. of copies printed ..... 250

**PROPOSED SELECT COMMITTEE AMENDMENTS  
TO**

NATIONAL ENVIRONMENTAL MANAGEMENT LAWS  
AMENDMENT BILL

[B 14D—2020]

CLAUSE 1

1. On page 5, in line 10, after “audit” to insert “when used in sections 24P and 24PA,”.
2. On page 5, from lines 12 to 15, to omit “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” and to substitute “financial provision, as prescribed”.
3. On page 5, from line 27, to omit the definition of ‘environmental management instrument’ and to substitute the following definition:
 

“ **‘environmental management instrument’** means—

<ul style="list-style-type: none"> <li>(i) environmental management framework;</li> <li>(ii) strategic environmental assessment;</li> <li>(iii) spatial tool;</li> <li>(iv) environmental management programme;</li> <li>(v) environmental risk assessment;</li> <li>(vi) environmental feasibility assessment;</li> <li>(vii) norm or standard;</li> <li>(viii) minimum information requirements; or</li> <li>(ix) any other relevant environmental management instrument, as may be developed in time;”.</li> </ul>
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4. On page 5, from line 45, to omit the definition of “financial provision” and to substitute the following definition:
 

“ **‘financial provision’** means 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, 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;”.
5. On page 5, after line 52, to insert the following paragraph:
 

“(g) by the insertion after the definition of “holder of an old order right” of the following definition:

“ **‘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);”.

6. On page 6, from line 3, to omit the definition of “latent environmental impacts” and to substitute with the following definition:
 

“ ‘latent environmental impacts’ when used in sections 24P and 24PA, means impacts which are existing and defined, but not yet developed and will manifest post-closure;”.
7. On page 6, after line 4, to insert the following paragraph:
 

“(i) by the 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, including hydraulic fracturing and reclamation;”.
8. On page 6, in line 18, after “mitigate” to insert “when used in sections 24P and 24PA,”.
9. On page 6, in line 20, after “rehabilitate” to insert “when used in sections 24P and 24PA,”.
10. On page 6, from line 21, to omit the definitions of “remediate” and “residual environmental impacts”.

#### CLAUSE 2

1. On page 6, from line 30, to omit paragraph (*qA*) and to substitute the following paragraph:
 

“(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.”.

#### CLAUSE 3

1. On page 6, from line 38, to omit paragraph (*a*) and to substitute the following paragraph:
 

“(a) by the substitution in subsection (2) for paragraphs (*b*) and (*c*) of the following paragraphs:  
 “(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;  
 (c) geographical areas based on environmental attributes, and specified in [**spatial tools or**] an environmental management [**instruments**] instrument, adopted in the prescribed manner by the Minister or an MEC, with the concurrence of the Minister, in which [**specified**] activities contemplated in paragraphs (*a*) and (*b*) may be excluded from the requirement to obtain an environmental authorisation from the competent authority, but which must comply with the requirements set in such environmental management instrument, if any;”.

2. On page 7, from line 1, to omit paragraph (c) and to substitute the following paragraph:

“(c) by the substitution in subsection (5) for paragraph (bA) of the following paragraph:

“(bA) laying down the procedure to be followed for the preparation, evaluation, adoption and review of **[prescribed]** environmental management instruments, including any conditions set out in such instrument, if any condition applies[, **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 4

1. On page 7, from line 16, to omit paragraph (a) and to substitute the following paragraph:

“(a) by the substitution for subsection (2A) of the following subsection:

“(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 **[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]** a mining activity.”;

2. On page 7, from line 30, to omit paragraph (c) and to substitute the following paragraph:

“(c) by the substitution for subsection (3) of the following subsection:

“(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.”.

3. On page 7, from line 41, to omit subsection (12) and to substitute the following subsection:

“(12) A person who wishes to apply for a mining activity which also involves an activity that requires a licence, permit or authorisation in terms of any of the specific environmental management Acts, must simultaneously apply for an environmental authorisation after the

acceptance, where such acceptance is applicable, of the application in terms of the Mineral and Petroleum Resources Development Act, 2002.”.

#### CLAUSE 5

1. On page 8, from line 5, to omit paragraphs (a) and (b) and to substitute the following paragraphs:

“(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;

**(G)** undertake public participation which is appropriate to bring the unlawful commencement, undertaking or conducting of a listed, specified or waste management activity to the attention of interested and affected parties, and to provide them with a reasonable opportunity to comment on the application in accordance with relevant elements of public participation as prescribed in terms of this Act; and

[(vii)] **(H)** 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;

- [(*ce*)] (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;
- [(*ee*)] **compile an environmental management programme; or** and
- [(*viii*)] (*bb*) may direct the applicant to compile an environmental management programme or 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*).”;
- (*c*) by the substitution in subsection (6) for paragraph (*a*) of the following paragraph:  
“(*a*) the environmental management inspector’s, environmental mineral and petroleum inspector’s or the South African Police Services’ authority to investigate any transgression in terms of this Act or any specific environmental management Act;”.

#### CLAUSE 7

1. On page 10, from line 1, to omit paragraph (*b*), and to substitute the following paragraph:  
“(*b*) by the substitution for subsection (2) of the following subsection:  
“(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.”.
2. On page 10, in line 7, to omit “and”.
3. On page 10, in line 8, to substitute full stop with “;and”.
4. On page 10, after line 8, to insert the following paragraph:  
“(*d*) by the substitution of subsection (3) of the following subsection:  
“(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

1. On page 10, from line 17, to omit “determined and provided for listed or specified activities” and to substitute “set aside”.
2. On page 10, from line 24, to omit subsection (4) and to substitute the following subsection:

“(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.”.

## CLAUSE 9

1. On page 11, from line 21, to omit subsection (1) and to substitute the following subsection:

“(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.”.

2. On page 12, from line 1, to omit subsection (5) and to substitute the following subsection:

“(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.”.

## CLAUSE 10

1. On page 12, from line 12, to omit subsection (1) and to substitute the following subsection:

“(1) Every holder, holder of an environmental authorisation for 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.”;

2. On page 12, from line 25, to omit subsection (3) and to substitute the following subsection:

“(3) Every holder, holder of an environmental authorisation for 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.”.

#### CLAUSE 17

1. On page 15, after line 6, to insert the following paragraph:

“(2A) The Minister responsible for mineral resources may designate a person as an environmental mineral **[resource]** and petroleum inspector for the compliance monitoring and enforcement of the provisions of this Act or a specific environmental management Act in respect of which powers are conferred on him or her.”.

#### CLAUSE 20

1. On page 16, after line 19, to insert the following paragraphs:

“(c) by the substitution in subsection (2) for the words preceding paragraph (a) of the following words:

“An environmental management inspector or an environmental mineral and petroleum inspector—”; and

(d) by the substitution in subsection (2)(a) for subparagraph (i) of the following subparagraph:

“(i) in accordance with any instructions issued by the Minister, Minister responsible for mineral resources, Minister responsible for water affairs or MEC, as the case may be ”.

#### CLAUSE 21

1. On page 16, after line 23, to insert the following paragraph:

“(a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

“An environmental management inspector or environmental mineral and petroleum inspector, within his or her mandate in terms of section 31D, may—”;

2. On page 17, after line 11, to insert the following paragraphs:

“(i) by substitution in subsection (4) for the words preceding paragraph (a) of the following words:

“An environmental management inspector or environmental mineral and petroleum inspector must—”; and

(j) by the substitution in subsection (5) for the words preceding paragraph (a) of the following words:

“In addition to the powers set out in this Part, an environmental management inspector or environmental mineral and petroleum inspector must be regarded as being a peace officer and may exercise all the powers assigned to

a peace officer, or to a police official who is not a commissioned officer, in terms of Chapters 2, 5, 7 and 8 of the Criminal Procedure Act, 1977 (Act 51 of 1977)".

#### CLAUSE 22

1. On page 17, in line 18, after "inspector" to insert "or environmental mineral and petroleum inspector".
2. On page 17, in line 21, to omit the word "and".
3. On page 17, after line 21, to insert the following paragraph:

“(b) by the substitution for subsection (3) of the following subsection:  
 “(3) In order to safeguard a vehicle, vessel or aircraft that has been seized, the environmental management inspector or environmental mineral and petroleum inspector may immobilise it by removing a part.”; and”.

#### CLAUSE 23

1. Clause rejected.

#### NEW CLAUSE

1. That the following be a new clause:

**“Amendment of section 31J of Act 107 of 1998, as amended by section 15 of Act 30 of 2013**

**23.** Section 31J of the National Environmental Management Act, 1998, is hereby amended—

- (a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:  
 “An environmental management inspector or environmental mineral and petroleum inspector, within his or her mandate in terms of section 31D, may, without a warrant, enter and search any vehicle, vessel or aircraft, or search any pack-animal or any other mechanism of transport, on reasonable suspicion that that vehicle, vessel, aircraft, pack animal or other mechanism of transport—”;
- (b) by the substitution in subsection (2) for the words preceding paragraph (a) of the following words:  
 “An environmental management inspector or environmental mineral and petroleum inspector may, without a warrant, seize a vehicle, vessel, aircraft, pack-animal or any other mechanism of transport or anything contained in or on any vehicle, vessel, aircraft, pack-animal or other mechanism of transport—”;
- (c) by the substitution in subsection (2) for the words following paragraph (d) of the following words:  
 “in terms of this Act [**or**], a specific environmental management Act or a provincial Act that substantively deals with environmental management.”;
- (d) by the substitution in subsection (4) for the words preceding paragraph (a) of the following words:  
 “An environmental management inspector or environmental mineral and petroleum inspector may for the purpose of implementing subsection (1), at any time,

- and without a warrant—”;
- (e) by the substitution for subsection (5) of the following subsection:  
 “(5) An environmental management inspector or environmental mineral and petroleum inspector may exercise on or in respect of such vehicle, vessel or aircraft any of the power mentioned in section 31H.”; and
- (f) by the substitution for subsection (6) of the following subsection:  
 “(6) An environmental management inspector or environmental mineral and petroleum inspector may apply to the National or Provincial Commissioner of Police for written authorisation in terms of section 13 (8) of the South African Police Service Act, 1995 (Act 68 of 1995), to establish a roadblock or a checkpoint.”.

#### CLAUSE 24

1. On page 17, after line 54, to insert the following paragraph:  
 “(b) by the substitution in subsection (2) for the words preceding paragraph (a) of the following words:  
 “An environmental management inspector or environmental mineral and petroleum inspector, within his or her mandate in terms of section 31D, may, with a warrant obtained in terms of subsection (3), but subject to subsection (4), enter and inspect any residential premises for the purposes of ascertaining compliance with—”;
2. On page 18, in line 5, to omit the word “and”.
3. On page 18, after line 5, to insert the following paragraph:  
 “(d) by the substitution in subsection (4) for the words preceding paragraph (a) of the following words:  
 “An environmental management inspector or environmental mineral and petroleum inspector may in terms of subsection (2) enter and inspect any residential premises without a warrant, but only if—”;
4. On page 18, after line 28, to substitute the full stop with “;and”.
5. On page 18, after line 28, to insert the following paragraph:  
 “(f) by the substitution for subsection (7) of the following subsection:  
 “(7) An environmental management inspector or environmental mineral and petroleum inspector may exercise on such building, land, premises, vessel, aircraft, pack animals, container, bag, box, item and the like any of the powers mentioned in section 31H.”.

#### CLAUSE 25

1. Clause rejected.

## NEW CLAUSE

1. That the following be a new clause:

**“Amendment of section 31L of Act 107 of 1998, as inserted by section 4 of Act 46 of 2003**

**25.** Section 31L of the National Environmental Management Act, 1998, is hereby amended—

- (a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

“An environmental management inspector or environmental mineral and petroleum inspector, within his or her mandate in terms of section 31D, may issue a compliance notice [in] which must correspond substantially with the prescribed form and following a prescribed procedure if there are reasonable grounds for believing that a person has not complied—”;

- (b) by the substitution in subsection (2) of paragraph (d) of the following paragraph:

“(d) the procedure to be followed in lodging an objection to the compliance notice with the Minister, Minister responsible for mineral resources, Minister responsible for water affairs, [or] MEC, or municipal council, as the case may be.”;

- (c) by the substitution for subsection (3) of the following subsection:

“(3) An environmental management inspector or environmental mineral and petroleum inspector may, on good cause shown, vary a compliance notice and extend the period within which the person must comply with the notice.”; and

- (d) by the substitution for subsections (4) and (5) of the following subsections, respectively:

“(4) A person who receives a compliance notice must comply with that notice within the time period stated in the notice unless the Minister, Minister responsible for mineral resources, Minister responsible for water affairs [or], MEC or a municipal council has agreed to suspend the operation of the compliance notice in terms of subsection (5).

(5) A person who receives a compliance notice and who wishes to lodge an objection in terms of section 31M may make representations to the Minister, Minister responsible for mineral resources, Minister responsible for water affairs [or], MEC or a municipal council, as the case may be, to suspend the operation of the compliance notice pending finalisation of the objection.’.”

## NEW CLAUSE

1. That the following be a new clause:

**“Amendment of section 31N of Act 107 of 1998, as amended by section 7 of Act 44 of 2008 and section 20 of Act 46 of 2003**

**27.** Section 31N of the National Environmental Management Act, 1998, is hereby amended by the substitution in subsection (2) for the words preceding paragraph (a) of the following words:

“If a person fails to comply with a compliance notice, the environmental management inspector or an environmental mineral and petroleum inspector must report the non-compliance to the Minister, Minster responsible for mineral resources, Minister responsible for water affairs, [or] MEC or municipal council, as the case may be, and they [**Minister or MEC**] may—”.

#### CLAUSE 27

1. Clause rejected.

#### NEW CLAUSE

1. That the following be a new clause

**“Amendment of section 31O of Act 107 of 1998, as inserted by section 4 of Act 46 of 2003**

**28.** Section 31O of the National Environmental Management Act, 1998, is hereby amended—

- (a) by the substitution for subsection (1) of the following subsection:

“(1) A member of the South African Police Service has, in respect of an offence in terms of this Act [**or**], a specific environmental management Act or a provincial Act that substantively deals with environmental management, all the powers of an environmental management inspector or environmental mineral and petroleum inspector in terms of this Part, excluding the power to conduct routine inspections in terms of section 31K and the power to issue and enforce compliance notices in terms of sections 31L to 31O.”; and

- (b) by the substitution for subsection (2) of the following subsection:

“(2) Notwithstanding subsection (1), the Minister, Minister responsible for mineral resources, Minister responsible for water affairs or MEC as the case may be, may, with the concurrence of the Minister responsible for safety and security, by written notice to a member of the South African Police Service, assign to that member all the powers contemplated in sections 31K to 31O.”.

#### NEW CLAUSE

1. That the following be a new clause:

**“Amendment of section 50A of Act 107 of 1998 as inserted by section 17 of Act 25 of 2014**

**38.** Section 50A of the National Environmental Management Act, 1998, is hereby amended—

- (a) by the substitution in subsection (2) for the words preceding paragraph (a) of the following words:

“An agreement for the purpose of subsection (1) means the Agreement reached between the Minister, the Minister responsible for water affairs and the Minister responsible for mineral resources titled the *One Envi-*

*ronmental System* for the country with respect to prospecting, exploration, mining or production, which entails—”; and

- (b) by the substitution in subsection (2) for paragraphs (b) and (c) of the following paragraphs:

“(b) that the Minister sets the regulatory framework and norms and standards, and that the Minister responsible for mineral resources will implement the provisions of the principal Act and the subordinate legislation as far as it relates to prospecting, exploration, mining or production operations;

(c) that the Minister responsible for mineral resources will issue environmental authorisations in terms of the principal Act for prospecting, exploration, mining or production operations, and that the Minister will be the appeal authority for these authorisations; and”.

#### CLAUSE 41

1. On page 25, from line 7, to omit the definition of “well-being” and to substitute the following 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, including the ability to cope with its environment.”.

#### CLAUSE 42

1. Clause rejected.

#### NEW CLAUSE

1. That the following be a new clause:

##### “Amendment of section 2 of Act 10 of 2004

**44.** Section 2 of the National Environmental Management: Biodiversity Act, 2004, is hereby amended—

(a) by the deletion in paragraph (a) of the word “and” at the end of subparagraph (ii); and

(b) by the insertion in paragraph (a) after subparagraph (ii) of the following paragraph:

“(iiA) the consideration of the well-being of animals in the management, conservation and sustainable use thereof; and”.

#### CLAUSE 44

1. On page 25, from line 29, to omit the words “a faunal biological resource” and to substitute “an animal”.

#### CLAUSE 48

1. On page 26, in line 25, to omit the words “a faunal biological resource” and to substitute “an animal”.

## CLAUSE 49

1. On page 26, from lines 34 to 44, to omit paragraphs (b) and (c) and to substitute with the following paragraph:

“(b) by the insertion after subsection (2) of the following subsection:  
“(2A) The MEC must, before exercising a power in terms of subsection (1)—  
 (a) consult all Cabinet members, 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) consult the Minister, in accordance with the principles of cooperative governance set out in Chapter 3 of the Constitution and  
 (c) allow public participation in the process in accordance with section 100.”.

## NEW CLAUSE

1. That the following be a new clause:

**“Amendment of section 101 of Act 10 of 2004**

**53.** Section 101 of the National Environmental Management: Biodiversity Act, 2004, is hereby amended by the insertion, in paragraph (b) of subsection (1), of the words “9A or” after the words “in terms of section”.

## CLAUSE 53

1. On page 28, from lines 46 to 50, to omit subsection (2A) and to substitute the following:

“(2A) A provincial organ of state must be regarded as the licensing authority if a listed activity falls within the boundaries of—  
 (a) more than one metropolitan municipality;  
 (b) more than one district municipality; or  
 (c) both a metropolitan and district municipality.”.

## CLAUSE 58

1. On page 30, after line 15, to insert the following paragraph:

“(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;”.

2. On page 30, from line 54 to 64, to omit paragraph (i).
3. On page 31, from line 1, to omit paragraphs (j), (k) and (l) and to substitute the following paragraphs:

“(i) by the insertion after the definition of ‘this Act’ of the following definition:  
“‘trade in’ means buying, selling or bartering;”; and  
 “(j) by the substitution for the definition of “waste” of the following definition:

‘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;”.

#### CLAUSE 64

1. On page 37, in line 29, to omit “significantly” and to substitute [significantly]”.

#### CLAUSE 68

1. On page 38, from line 43, to omit paragraph (a) and to substitute the following paragraph:
 

“(a) by the substitution for subsection (1A) of the following subsection:  
     ‘(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.’ ”.
2. On page 38, from line 48, to delete paragraph (b).

## NEW CLAUSE

1. That the following be a new clause:

**“Transitional provision due to amendment of definition of  
“waste”**

**88.** (1) Any substance, material or object, which is “waste” in terms of the amended definition of “waste”, but was not regarded as such prior to the commencement of the amended definition must 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 National Environmental Management: Waste Act, 2008.

(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.”.