

Government Gazette Staatskoerant

REPUBLIC OF SOUTH AFRICA
REPUBLIEK VAN SUID-AFRIKA

Vol. 554

Pretoria, 26 August
Augustus 2011

No. 34558

IMPORTANT NOTICE

The Government Printing Works will not be held responsible for faxed documents not received due to errors on the fax machine or faxes received which are unclear or incomplete. Please be advised that an "OK" slip, received from a fax machine, will not be accepted as proof that documents were received by the GPW for printing. If documents are faxed to the GPW it will be the sender's responsibility to phone and confirm that the documents were received in good order.

Furthermore the Government Printing Works will also not be held responsible for cancellations and amendments which have not been done on original documents received from clients.

CONTENTS • INHOUD*No.**Page
No. Gazette
 No.***GENERAL NOTICE****Environmental Affairs, Department of***General Notice*

586	National Environmental Management Laws Amendment Bill, 2011: For public comments	3	34558
-----	--	---	-------

GENERAL NOTICE

NOTICE 586 OF 2011

NATIONAL ENVIRONMENTAL MANAGEMENT LAWS AMENDMENT BILL, 2011

The Minister of Water and Environmental Affairs hereby publishes the National Environmental Management Laws Amendment Bill, 2011 in the Schedule hereto, for public comment.

Members of the public are invited to submit to the Minister, within 30 days of publication of the notice in the *Gazette*, written comments to the following addresses:

By post to: The Director-General: Environmental Affairs
 Attention: Mr Milton Ntwana
 Private Bag X447
 Pretoria, 0001

By fax to: (012) 320 7561, and by e-mail to mntwana@environment.gov.za

Hand delivered at: 315 Pretorius Street, Corner Pretorius and Van Der Walt Streets, Fedsure Forum Building, 2nd Floor, North Tower.

Any inquiries in connection with the National Environmental Management Laws Amendment Bill, 2011 can be directed to Mr. Sibusiso Shabalala at (012) 310 3449.

Comments received after the closing date may not be considered.

REPUBLIC OF SOUTH AFRICA

NATIONAL ENVIRONMENTAL MANAGEMENT LAWS AMENDMENT BILL

*(As introduced in the National Assembly (proposed section 76); explanatory summary of Bill published
in Government Gazette No. ... of ... 2011) (The English text is the official text of the Bill)*

(MINISTER OF WATER AND ENVIRONMENTAL AFFAIRS)

[B - 2011]

GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from existing enactments.

_____ Words underlined with a solid line indicate insertions in existing enactments.

BILL

To amend the National Environmental Management Act, 1998, so as to revise and insert certain definitions; To revise the timeframes on the preparation of environmental implementation plans and environmental management plans; To provide for the process and procedure for submitting state of environment report; To provide for the Minister or MEC to develop norms or standards for sensitive environmental areas; To provide for the Minister to restrict or prohibit development in certain sensitive environmental areas; To provide clarity on Environmental Impact Assessment applications that the Department must consider; To align the National Environmental Management: Waste Act, 2008 with the section 24F offences under National Environmental Management Act, 1998; To increase section 24G administrative fine and to exclude the payment of section 24G administrative fine for certain persons; To provide for no exemptions from the requirements to obtain an environmental authorisation; To adjust the provisions relating to the duty of care and remediation of environmental damage; To provide for textual amendments to the powers of the EMIs; To insert a provision to regulate products having detrimental effect on the environment; To rectify the term used in tabling matters before Parliament; To add provisions regarding the delivery of documents; To revise the provision on State criminal liability; To provide for authorized staff members the right to enter private property for certain purposes; To provide for a general amendment relating to name change of the Ministries of Minerals and Energy, Water Affairs and Forestry and Environmental Affairs and Tourism; To amend the National Environmental Management: Biodiversity Act, 2004, so as to insert and revise certain definitions; To provide for textual amendments on the provisions on protection of species; To revise the purpose and application of Chapter 6; To revise provisions on Bio-Prospecting Trust Fund; To repeal the appeal provisions; To add offences and penalties; To provide for Minister to declare amnesty in certain circumstances; To amend the National Environmental Management: Air Quality Act, 2004, so as to align the penalties with other specific environmental management Acts; To amend incorrect citation of the National Environment Management Laws Amendment Act, 2009; And to amend short title of National Environmental Management: Protected Areas Act, 2009.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

Amendment of section 1 of Act 107 of 1998, as amended by section 1 of Act 56 of 2002, section 1 of Act 46 of 2003, section 1 of Act 8 of 2004, section 60 of Act 39 of 2004, section 1 and 3 of Act 44 of 2008, section 1 of Act 62 of 2008 and section 4 of Act 14 of 2009

1. Section 1 of the National Environmental Management Act, 1998 is hereby amended—

(a) by the substitution for the definition of "Department" of the following definition:

"'Department' means the Department responsible for **[of]** Environmental Affairs **[and Tourism]**";

(b) by the substitution for the definition of "Director-General" of the following definition:

"'Director-General' means the Director-General responsible for the Department **[Environmental Affairs and Tourism]**";

(c) by the substitution for the definition of "Minister" of the following definition:

"'Minister' , in relation to all environmental matters except with regard to the implementation of environmental legislation, regulations, policies, strategies and guidelines relating to prospecting, mining, exploration, production and related activities on a prospecting, mining, exploration or production area, means the Minister **[of]** responsible for Environmental Affairs **[and Tourism]**";

(d) by the substitution for the definition of Minister of Minerals and Energy of the following definition:

"'Minister of Mineral Resources **[Minerals and Energy]**' means the Minister responsible for the implementation of environmental matters relating to prospecting, mining, exploration, production and related activities with a mining, prospecting, exploration or production area";

(e) by the substitution for the definition of "norms or standards" of the following definition:

"'norms or standards', when used in Chapter 5, means any norm or standard contemplated in section 23 or in section 24(10);

(f) by the substitution for the definition of " specific environmental management Act" of the following definition:

"'specific environmental management Act' means-

(a) the Environmental Conservation Act, 1989 (Act No. 73 of 1989);

(b) the National Water Act, 1998 (Act No. 36 of 1998);

- (c) the National Environmental Management: Protected Areas Act, 2003 (Act No. 57 of 2003);
- (d) the National Environmental Management: Biodiversity Act, 2004 (Act No. 10 of 2004); [or]
- (e) the National Environmental Management: Air Quality Act, 2004 (Act No. 39 of 2004)[,] ;
- (f) the National Environmental Management: Integrated Coastal Management Act, 2008 (Act No. 24 of 2008); or
- (g) the National Environmental Management: Waste Act, 2008 (Act No. 59 of 2008).

and includes any regulation or other subordinate legislation made in terms of any of those Acts;”.

Amendment of section 11 of Act 107 of 1998, as amended by section 7 of Act 14 of 2009

2. Section 11 of the National Environmental Management Act, 1998 is hereby amended by the substitution for subsection (1) and (2) of the following subsections:

“(1) Every national department listed in Schedule 1 as exercising functions which may affect the environment and every province must prepare an environmental implementation plan within **[one] five** years of the promulgation of this Amendment Act and at least every **[four] five** years thereafter.”;

“(2) Every national department listed in Schedule 2 as exercising functions involving the management of the environment must prepare an environmental management plan within **[one] five** years of the promulgation of this Amendment Act and at least every **[four] five** years thereafter.”.

Insertion of section 16A in Act 107 of 1998

3. The following section is hereby inserted in the National Environmental Management Act, 1998 after section 16:

“National and provincial state of environment reports

16A (1) The Minister must in respect of the state of the environment report, by notice in the Gazette determine—

- (a) the procedure for compiling the report;**
- (b) the format; and**
- (c) the content of the report.**

(2) The Minister must within four years of the promulgation of this Amendment Act prepare and publish the state of the environmental report and at least every four years thereafter.

(3) The MEC responsible for environmental affairs must—

(a) prepare and publish the state of the environment report which must contain information prescribed by the Minister; and

(b) within four years of the promulgation of this Amendment Act, submit the report to the Minister and at least every four years thereafter.

(4) All metropolitan and district municipalities may—

(a) prepare and publish the state of the environment report which must contain information prescribed by the Minister; and

(b) within four years of the promulgation of this Amendment Act, submit the report to the Minister and MEC responsible for environmental affairs and at least every four years thereafter.

(5) The relevant organs of state must co-operate in furnishing to the Minister and MEC any information required for inclusion in the report.

(6) The Minister may, at the request of a province, assist with the preparation of the province's state of the environment report.

(7) The MEC may, at the request of a municipality, assist with the preparation of the municipality's state of the environment report."

Amendment of section 23 of Act 107 of 1998

4. Section 23 of the National Environmental Management Act, 1998 is hereby amended by the addition of the following subsection:

"(4) The Minister, or an MEC, with the concurrence of the Minister, may develop instruments, including norms or standards, for activities, sectors or geographical areas in order to give effect to the objectives of integrated environmental management."

Amendment of section 24 of Act 107 of 1998, as amended by section 2 of Act 8 of 2004 and section 2 of Act 62 of 2008

5. Section 24 of the National Environmental Management Act, 1998 is hereby amended by the insertion after subsection (2) of the following subsection:

"(2A)(a) Subject to paragraphs (d) and (e), the Minister may by notice in the Gazette, prohibit or restrict the granting of an environmental authorization by the competent authority for

a listed or a specified activity in identified or specified geographical area for such period and on such terms and conditions as the Minister may determine, if it is necessary to ensure protection of the environment, sustainability or human health and well-being.

(b) A prohibition or restriction contemplated in paragraph (a) does not affect the undertaking of activities authorized by means of an environmental authorization.

(c) Where the prohibition or restriction affects the exercise of a power that the MECs responsible for environmental affairs in each province may have in terms of this Act, the prohibition or restriction contemplated in paragraph (a) may be undertaken after consulting the MEC responsible for environmental affairs that will be affected by the prohibition or restriction.

(d) The Minister may from time to time by notice in the Gazette—

(i) lift a prohibition or restriction made in terms of paragraph (a) if the circumstances which caused the Minister to prohibit or restrict no longer exist; or

(ii) amend the period, term or condition applicable to any prohibition or restriction made in terms of paragraph (a) if the circumstances which caused the Minister to prohibit or restrict have changed.

(e) Before exercising the power contemplated in paragraph (a), the Minister must—

(i) consult all Cabinet members whose areas of responsibility will be affected by the exercise of the power;

(ii) in accordance with the principles of co-operative governance as set out in Chapter 3 of the Constitution, consult the MEC responsible for environmental affairs in each province that will be affected by the exercise of the power; and

(iii) publish the notice in the Gazette inviting members of the public to submit to the Minister, within 30 days of publication of the notice in the Gazette, written representations on the proposed exercise of power.”.

Amendment of section 24C of Act 107 of 1998, as amended by section 3 of Act 8 of 2004 and section 3 of Act 62 of 2008

6. Section 24C of the National Environmental Management Act, 1998 is hereby amended—

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

“(2) The Minister must be identified as the competent authority in terms of subsection (1) if the activity—

(a) has implications for international environmental commitments or relations;

(b) will take place within an area protected by means of an international environmental instrument; **[, other than-**

- (i) any area falling within the sea-shore or within 150 metres seawards from the high-water mark, whichever is the greater;**
- (ii) a conservancy;**
- (iii) a protected natural environment;**
- (iv) a proclaimed private nature reserve;**
- (v) a natural heritage site;**
- (vi) the buffer zone or transitional area of a biosphere reserve; or**
- (vii) the buffer zone or transitional area of a world heritage site;]**

(c) has a development footprint that falls within the boundaries of more than one province or traverses international boundaries;

(d) is undertaken, or is to be undertaken, by—

(i) a national department;

(ii) a provincial department responsible for environmental affairs;

or any other organ of state performing a regulatory function and reporting to the MEC; or

(iii) a statutory body, excluding any municipality, performing an exclusive competence of the national sphere of government; **[or]**

(e) will take place within a national proclaimed protected area or other conservation area under control of a national authority~~[,];~~ or

(f) will take place 150 metres or further, as measured seawards from the high-water mark.”.

(b) by the addition of the following subsections after subsection (3):

“(4) Whenever the MEC responsible for environmental affairs in a province fails to take a decision on an application for an environmental authorization within the time periods prescribed in this Act, the applicant may apply to the Minister to take the decision.”;

“(5) The application contemplated in subsection (4) must contain sufficient information and all the relevant documents as required in terms of this Act to enable the Minister to make a decision.”;

“(6) Before taking a decision as contemplated in subsection (4), the Minister must consult with the MEC responsible for environmental affairs in the province that will be affected by the decision.”.

Amendment of section 24F of Act 107 of 1998, as amended by section 3 of Act 8 of 2004 and section 5 of Act 62 of 2008

7. Section 24F of the National Environmental Management Act, 1998 is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) Notwithstanding any other Act, no person may—
(a) commence an activity listed or specified in terms of section 24(2)(a) or (b) unless the competent authority or the Minister responsible for **[of Minerals and Energy]** mineral resources, as the case may be, has granted an environmental authorisation for the activity; or”.

Amendment of section 24G of Act 107 of 1998, as amended by section 3 of Act 8 of 2004 and section 6 of Act 62 of 2008

8. Section 24G of the National Environmental Management Act, 1998 is hereby amended—
(a) by the substitution for the introductory portion of subsection (1) of the following:

“(1) On application by a person who—
(a) has committed an offence in terms of section 24F(2)(a);
(b) has commenced, undertaken or conducted a waste management activity without a waste management licence as contemplated in section 20(b) of the National Environmental Management: Waste Act, 2008;
(c) has commenced or continued with a listed or specified activity in an emergency response situation so as to protect human life, property or the environment,

the Minister, Minister responsible for mineral resources **[of Minerals and Energy]** or MEC concerned, as the case may be, may direct the applicant to—”;

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

“(b) provide such other information or undertake such further studies as the Minister, Minister responsible mineral resources or MEC, as the case may be, may deem necessary.”;

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

“(2) The Minister, Minister responsible for mineral resources or MEC concerned, as the case may be, must consider any reports or information submitted in terms of subsection (1) and thereafter may—

- (a) direct the person to cease the activity, either wholly or in part, and to rehabilitate the environment within such time and subject to such conditions as the Minister, Minister responsible for mineral resources or MEC may deem necessary; or
- (b) issue an environment authorisation to such person subject to such conditions as the Minister, Minister responsible for mineral resources or MEC may deem necessary.”;
- (d) by the substitution for subsection (2A) of the following subsection:

“(2A) A person contemplated in subsection (1) must pay an administrative fine, which may not exceed **[R1 million]** R5 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).”.
- (e) by the addition of the following subsection:

“(4) Subsection (2A) is not applicable to a person who has commenced or continued with a listed or specified activity in an emergency response situation so as to protect human life, property or the environment.”.

Amendment of section 24M of Act 107 of 1998, as amended by section 8 of Act 62 of 2008

9. Section 24M of the National Environmental Management Act, 1998 is hereby amended by the insertion after subsection (1) of the following subsection:
- “(1A) No exemption may be granted from the requirement to obtain an environmental authorisation, as contemplated in section 24(2)(a) and (b).”.

Amendment of section 28 of Act 107 of 1998, as amended by section 12 of Act 14 of 2009

10. Section 28 of the National Environmental Management Act, 1998 is hereby amended—
- (a) by the substitution for subsection (4) of the following subsection:

“(4) The Director-General **[or]**, a provincial head of department responsible for environmental affairs or an administrative head of any relevant organ of state, may, **[after consultation with any other organ of state concerned and]** after having given adequate opportunity to affected persons to inform him or her of their relevant interests, direct any person who **[fails to take the measures required under subsection (1) to -]** is causing, has caused or may cause significant pollution or degradation of the environment to, among others:

 - (a) **[investigate, evaluate and assess the impact of specific activities and report thereon]** cease with any activity, operation or undertaking;

(b) **[commence taking specific reasonable measures before a given date]** investigate, evaluate, and assess the impact of specific activities and report thereon;

(c) **[diligently continue with those measures; and]** commence taking specific measures before a given date;

(d) **[complete them before a specified reasonable date:]** diligently continue with those measures; and

(e) complete them before a specified reasonable date;

Provided that the Director-General **[or]**, a provincial head of department responsible for environmental affairs or an administrative head of any relevant organ of state may, if urgent action is necessary for the protection of the environment, issue such directive, and consult and give such opportunity to inform as soon thereafter as is reasonable.”;

(b) by the substitution for subsection (5) of the following subsection:

“(5) The Director-General **[or]**, a provincial head of department responsible for environmental affairs or an administrative head of any relevant organ of state, when considering any measure or time period envisaged in subsection (4), must have regard to the following”;

(c) by the substitution for subsection (7) of the following subsection:

“(7) Should a person fail to comply, or inadequately comply, with a directive under subsection (4), the Director-General **[or]**, a provincial head of department responsible for environmental affairs or an administrative head of any relevant organ of state may take reasonable measures to remedy the situation or apply to a competent court for appropriate relief.”;

(d) by the substitution for subsection (8) of the following subsection:

“(8) Subject to subsection (9), the Director-General **[or]**, a provincial head of department responsible for environmental affairs or an administrative head of any relevant organ of state may recover costs for reasonable remedial measures to be undertaken under subsection (7), before such measures are taken and all costs incurred as a result of acting under subsection (7), from any or all of the following persons—”;

(e) by the substitution for subsection (9) of the following subsection:

“(9) The Director-General **[or]**, a provincial head of department responsible for environmental affairs or an administrative head of any relevant organ of state may in respect of the recovery of costs under subsection (8), claim proportionally from any other person who benefited from the measures undertaken under subsection (7).”;

(f) by the deletion of subsection (12).

Insertion of section 28A in Act 107 of 1998

11. The following section is hereby inserted after section 28 of the National Environmental Management Act, 1998:

“Criminal liability**28A. (1) No person may—**

(a) unlawfully and intentionally or negligently commit any act or omission which causes pollution or degradation of the environment or is likely to cause pollution or degradation of the environment; or

(b) unlawfully and intentionally or negligently commit any act or omission which detrimentally affects or is likely to affect the environment in a significant manner; or

(2) Any person who contravenes or fails to comply with subsection (1) is guilty of an offence and liable on conviction to a fine not exceeding R5 million or to imprisonment for a period not exceeding 5 years and in the case of a second or subsequent conviction, to a fine not exceeding R10 million and or imprisonment for period not exceeding 10 years or in both instances to both a fine and such imprisonment.”.

Amendment of section 30 of Act 107 of 1998, as amended by section 13 of Act 14 of 2009

12. Section 30 of the National Environmental Management Act, 1998 is hereby amended by the substitution for subsection (11) of the following subsection:

“(11) A person who contravenes or fails to comply with subsection (3), (4), (5) or to comply or inadequately comply with a directive issued in terms of subsection (6) is guilty of an offence and liable on conviction to a fine not exceeding R1 million or to imprisonment for a period not exceeding 1 year, or to both such a fine and such imprisonment.

Amendment of section 31J of Act 107 of 1998

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

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

“(2) An environmental management inspector may, without a warrant, seize a vehicle, vessel, aircraft, pack-animal or any mechanism of transport or anything contained in or on any vehicle, vessel, aircraft, mechanism of transport or pack-animal – [that may be used as evidence in the prosecution of any person for an offence in terms of this Act or a specific environmental management Act.]

(a) which is concerned in or is on reasonable grounds believed to be concerned in the commission or suspected commission of an offence in terms this Act or a specific environmental management Act;

(b) which may afford evidence of the commission or suspected commission of an offence in terms of this Act or a specific environmental management Act;

(c) which is intended to be used or is on reasonable grounds believed to be intended to be used in the commission of an offence in terms of this Act or a specific environmental management Act.”;

(b) by the substitution for paragraph (b) of subsection (4) of the following paragraph:

“(b) if necessary and possible, force the driver or pilot to stop or land. **[, as the case may be.]”**

Amendment of section 44 of Act 107 of 1998, as amended by Act 56 of 2002

14. Section 44 of the National Environmental Management Act, is hereby amended by the insertion in subsection (1) after paragraph (aA) of the following paragraph:

“(aB) dealing with the prohibition, control, sale, distribution, import or export of products that may have a substantial detrimental effect on the environment or on human health.”.

Amendment of section 47 of Act 107 of 1998, as amended by section 5 of Act 8 of 2004 and section 11 of Act 62 of 2008

15. Section 47 of the National Environmental Management Act, 1998 is hereby amended by the substitution for subsection (3) of the following subsection:

“(3) Notwithstanding subsection (2), any regulation made in terms of section 24(5)(bA) must be **[submitted to]** tabled at Parliament for information 30 days prior to final publication.”.

Amendment of section 47D of Act 107 of 1998, as added by section 11 of Act 46 of 2003

16. Section 47D of the National Environmental Management Act, 1998 is hereby amended—

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

“(c) where an address is unknown despite reasonable enquiry, by publishing it once in the *Gazette* and once in a local newspaper circulating in the area of that person's last known residential or business address[.]”;

(b) by the addition to subsection (1) of the following paragraphs:

“(d) by faxing it; or

(e) by e-mailing it.”.

Amendment section 48 of Act 107 of 1998

17. The following section is hereby substituted for section 48 of the National Environmental Management Act, 1998:

"48. This Act is binding on the State, **[except in so far as any criminal liability is concerned.]**".

Insertion of section 49A of Act 107 of 1998, as amended by section 12 of Act 46 of 2003 and section 6 of Act 8 of 2004

18. The following section is hereby inserted in the National Environmental Management Act, 1998 after section 49:

"Access to and rights over land by staff members"

49A.(1) An authorised staff member of the Department, a provincial department responsible for environmental affairs or any relevant organ of state may enter upon private land or cross a property with the necessary persons, vehicles, equipment and material for the purpose of performing functions under this Act, any Specific Environmental Management Act, any regulations or notices made under these Acts.

(2) An authorised staff member must be provided with a certificate of appointment signed by or on behalf of the Minister, MEC or administrative head of any relevant organ of state in which the nature of his or her functions is described prior to entering upon private property and which certificate must be presented at the request of any person on that property.

(3) A person who refuses authorised staff member of the Department, a provincial department responsible for environmental affairs or any relevant organ of state entry upon private property, after having been presented with the certificate issued in terms of subsection (2), is guilty of an offence and liable on conviction to a fine not exceeding R1 million or to imprisonment for a period not exceeding 1 year or to both such a fine and such imprisonment."

General Amendment

19. The National Environmental Management Act, 1998 is hereby amended wherever it appears in the Act by the substitution of the "Minister of Water Affairs and Forestry" with the "Minister responsible for water affairs" and the "Minister of Minerals and Energy" with "Minister responsible for mineral resources".

Amendment of section 1 of Act 10 of 2004

20. Section 1 of the National Environmental Management: Biodiversity Act, 2004 is hereby amended—

(a) by the insertion before the definition of “alien species” of the following definition:

“‘amnesty’ means an indemnity against prosecution for the carrying out of a restricted activity involving specimens of listed threatened or protected species in terms of section 57(1), alien species in terms of section 65(1) or listed invasive species in terms of section 71(1), the engagement in the commercialisation phase of bioprospecting, without a permit issued in terms of Chapter 7;”

(b) by the substitution for the definition of “bioprospecting” of the following definition:

“‘bioprospecting’, in relation to indigenous biological resources, means any research on, or development or application of, indigenous biological resources for commercial or industrial exploitation, and includes—

(a) the systematic search, collection or gathering of such resources or making extractions from such resources for purposes of such research, development or application;

(b) the utilisation for purposes of such research or development of any information regarding any traditional uses of indigenous biological resources by indigenous communities; **[or]**

(c) research on, or the application, development or modification of, any such traditional uses, for commercial or industrial exploitation; or

(d) the business of trade in and export of indigenous biological resources to develop and produce products, including drugs, industrial enzymes, food flavours, fragrances, cosmetics, emulsifiers, oleoresins, colours, extracts and essential oils;”

(c) by the substitution for the definition of “commercialisation” of the following definition:

“‘commercialisation, commercial exploitation or industrial exploitation’, in relation to indigenous biological resources, includes the following activities:

(a) the filing of any complete intellectual property application, whether in South Africa or elsewhere;

(b) obtaining or transferring any intellectual property rights or other rights;

(c) commencing clinical trials and product development, including the conducting of market research and seeking pre-market approval for the sale of resulting products; **[or]**

(d) the multiplication of indigenous biological resources through cultivation, propagation, cloning or other means to develop and produce products, including drugs, industrial enzymes, food flavours, fragrances, cosmetics, emulsifiers, oleoresins, colours and extracts; or

(e) the business of trade in and export of indigenous biological resources to develop and produce products, including drugs, industry enzymes, food flavours, fragrances, cosmetics, emulsifiers, oleoresins, colours, extracts and essential oils;";

(d) by the substitution for the definition of "Department" of the following definition:

"'Department' means the national Department responsible for [of] Environmental Affairs [and Tourism];";

(e) by the substitution for the definition of "genetic resource" of the following definition:

"'genetic resource' includes—

(a) any genetic material; or

(b) the genetic potential [or], characteristics or information of any species;".

Amendment of section 51 of Act 10 of 2004

21. Section 51 of the National Environmental Management: Biodiversity Act, 2004 is hereby amended by the addition of the following paragraph:

"(e) provide for the regulation of threatened or protected indigenous species to ensure the utilisation of these species is managed in an ecologically sustainable manner."

Amendment of section 56 of Act 10 of 2004

22. Section 56 of the National Environmental Management: Biodiversity Act, 2004 is hereby amended—

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

"(d) protected species, being any species, which are of **[such]** high conservation value or national importance **[that they require national protection]** or require regulation to ensure the species is managed in an ecologically sustainable manner. [although they are not listed in terms of paragraph (a), (b) or (c).]";

(b) by the insertion after subsection (1) of the following subsection:

"(1A) The Minister may further categorise within the different categories of species listed in paragraphs (a) – (d) in subsection (1) when compiling the list referred to in subsection (1)."

Amendment of section 57 of Act 10 of 2004, amended by section 35 of Act 14 of 2009

23. Section 57 of the National Environmental Management: Biodiversity Act, 2004 is hereby amended—

(a) by the substitution for the heading of the following heading:

"Restricted activities involving listed threatened or protected species and species to which an international agreement regulating international trade applies";

(b) substitution for subsection (1) of the following subsection:

"(1) A person may not carry out a restricted activity involving a specimen of a listed threatened or protected species or a species to which an international agreement regulating international trade applies without a permit issued in terms of Chapter 7.";

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

"(3) Subsection (1) does not apply in respect of a specimen of a listed threatened or protected species or a species to which an international agreement regulating international trade applies conveyed from outside the Republic in transit through the Republic to a destination outside the Republic, provided that such transit through the Republic takes place [under the control of an environmental management inspector] with the required original documentation from the country of origin accompanying the shipment.";

(d) by the substitution for paragraph (a) of subsection (4) of the following paragraph:

"(a) The Minister may, by notice in the Gazette, subject to certain conditions, exempt a person or category of persons from a restriction contemplated in sub-section (1)."

Amendment of section 58 of Act 10 of 2004, as amended by section 36 of Act 14 of 2009

24. The following section is hereby substituted for section 58 of the National Environmental Management: Biodiversity Act, 2004:

"Amendment of notices

58.(1) The Minister may by notice in the Gazette amend or repeal any notice published in terms of section 56(1), 57(2) or 57(4).

(2) The notices in terms of section 56(1), 57(2) or 57(4) may—

(a) apply—

(i) generally throughout the Republic or a province, as the case may be, or only in a specified area or category of areas;

(ii) generally to all persons or only to a specified category of persons;

(iii) generally with respect to all species or only to a specified species or category of species; or

(b) differentiate between—

(i) areas or categories of areas;

(ii) persons or categories of persons; or

(iii) species or categories of species.”

Amendment of section 60 of Act 10 of 2004

25. Section 60 of the National Environmental Management: Biodiversity Act, 2004 is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) The Minister must establish a scientific authority for the purpose of assisting in regulating and restricting the trade in specimens of listed threatened or protected species [.] and species to which an international agreement regulating international trade applies.”

Amendment to section 61 of Act 10 of 2004

26. Section 61 of the National Environmental Management: Biodiversity Act, 2004 is hereby amended by the substitution for paragraph (d) of subsection (1) of the following paragraph:

“(d) make non-detriment findings on the impact of actions relating to the international trade in specimens of listed threatened or protected species and species to which an international agreement regulating international trade applies, and submit such findings to the Minister;”.

Amendment of section 62 of Act 10 of 2004

27. Section 62 of the National Environmental Management: Biodiversity Act, 2004 is hereby amended—

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

“(1) The Minister **[scientific authority]** must, by notice in the Gazette, publish **[in the Gazette]** any **[annual]** non-detriment findings made by the scientific authority on trade in specimens of listed threatened or protected species and species to which an international agreement regulating international trade applies, in accordance with the requirements of the **[an]** international agreement regulating international trade **[in specimens of listed threatened or protected species]** and which is binding on the Republic.”;

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

"(2) Any interim findings **[of the scientific authority]** by the Minister must be published in the *Gazette* for public information within 30 days after the decision has been made."

Insertion of section 62A in Act 10 of 2004

28. The following section is hereby inserted in the National Environmental Management: Biodiversity Act, 2004 after section 62:

"Amendment of notices

62A. The Minister may by notice in the *Gazette* amend or repeal a notice published in terms of section 62(1)."

Amendment of section 63 of Act 10 of 2004

29. Section 63 of the National Environmental Management: Biodiversity Act, 2004 is hereby amended by the substitution for subsection (1) of the following subsection:

"63. (1) Before publishing a notice in terms of section 52(1), 53(1), 56(1), **[or]** 57(2), 57(4) or 62(1), or amending or repealing such a notice in terms of section 55, **[or]** 58 or 62A, the Minister must follow a consultative process in accordance with sections 99 and 100."

Amendment of section 66 of Act 10 of 2004

30. Section 66 of the National Environmental Management: Biodiversity Act, 2004 is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) The Minister may, by notice in the *Gazette*, subject to certain conditions, exempt **[from the provisions of section 65]—**

- (a) any alien species specified in the notice; **[or]**
- (b) any alien species of a category specified in the notice~~];~~ or
- (c) any person or category of persons from the provisions contemplated in section 65(1) or (2).

Amendment of section 71 of Act 10 of 2004

31. Section 71 of the National Environmental Management: Biodiversity Act, 2004 is hereby amended by the addition of the following subsections after subsection (2):

"(3) The Minister may, by notice in the *Gazette*, subject to certain conditions, exempt—

- (a) a person or categories of persons;

- (b) a species or categories of species; or
 - (c) an area or categories of areas,
- from a restriction contemplated in subsection (1) or (2).
- (4) The notice contemplated in subsection (3) may differentiate between areas or categories of areas."

Insertion of section 71A in Act 10 of 2004

32. The following section is hereby inserted in the National Environmental Management: Biodiversity Act, 2004 after section 71:

"Prohibitions

71A (1) The Minister may, by notice in the *Gazette*, publish a list of invasive species in respect of which a permit contemplated in section 71(1) to carry out certain restricted activities specified in the notice, may not be issued.

(2) The notice may—

- (a) restrict or prohibit any restricted activity either absolutely or conditionally;
- (b) differentiate between—
 - (i) areas or categories of areas;
 - (ii) persons or categories of persons; or
 - (iii) species or categories of species."

Amendment of section 72 of Act 10 of 2004

33. The following section is hereby substituted for section 72 of the National Environmental Management: Biodiversity Act, 2004:

"Amendment of notices

72.(1) The Minister or the MEC for environmental affairs in any relevant province may, by notice in the *Gazette* or *Provincial Gazette*, amend or repeal any notice published in terms of section 70(1), 71(3) or 71A(1).

(2) The notices in terms of section 70(1), 71(3) or 71A(1) may—

- (a) apply—
 - (i) generally throughout the Republic or a province, as the case may be, or only in a specified area or category of areas;
 - (ii) generally to all persons or only to a specified category of persons;
 - (iii) generally with respect to all species or only to a specified species or category of species; or

(b) differentiate between—

- (i) areas or categories of areas;
- (ii) persons or categories of persons; or
- (iii) species or categories of species."

Amendment of section 79 of Act 10 of 2004

34. Section 79 of the National Environmental Management: Biodiversity Act, 2004 is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) Before publishing a notice in terms of section 66(1), 67(1), **[or]** 70(1), 71(3), 71A(1), or amending or repealing such a notice in terms of section 68 or 72, the Minister must follow a consultative process in accordance with sections 99 and 100.

Amendment of section 80 of Act 10 of 2004

35. Section 80 of the National Environmental Management: Biodiversity Act, 2004 is hereby amended—

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

"(1) The purpose of this Chapter is—

(a) to regulate bio-prospecting involving indigenous genetic and/or biological resources;

(b) to regulate the export from the Republic of indigenous genetic and/or biological resources for the purpose of bioprospecting or any other kind of research;

[and]

(c) to provide for a fair and equitable sharing by stakeholders in benefits arising from bioprospecting involving indigenous genetic and/or biological resources~~].~~; and

(d) to ensure that the nations indigenous genetic and biological resources are developed and utilized in an ecologically sustainable manner while promoting social and economic development, in particular in the areas where the indigenous genetic or biological resources and/or associated traditional knowledge is accessed."

(b) by the addition to subsection (2) of the following definition:

"'derivative', in relation to an animal, plant or other organism, means any part, tissue or extract, of an animal, plant or other organism, whether fresh, preserved or processed, and includes any genetic material and information or chemical compound derived from such part, tissue or extract."

Substitution of section 85 of Act 10 of 2004, as amended by section 41 of Act 14 of 2009

36. The following section is hereby substituted for section 85 of the National Environmental Management: Biodiversity Act, 2004:

“Establishment of Bio-prospecting Fund

85. (1) The Department hereby establish a bio-prospecting fund, separate from its account, into which all moneys arising from benefit-sharing agreements and material transfer agreements, and due to stakeholders, must be paid, and from which all payments to, or for the benefit of, stakeholders must be made.

(2) All money paid into the bio-prospecting fund must be managed in terms of the relevant provisions of the Public Finance Management Act, 1999.

(3) The Director-General is accountable for the money in the bio-prospecting fund in terms of the Public Finance Management Act, 1999.

(4) Notwithstanding subsection (1), where a stakeholder has an established traditional authority in terms of the applicable legislation, all moneys arising from the benefit-sharing agreement and material transfer agreements must be paid into the traditional authority bank account.”

Amendment of section 86 of Act 10 of 2004

37. Section 86 of the National Environmental Management: Biodiversity Act, 2004 is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) The Minister may by notice in the Gazette-

(a) declare that this Chapter does not apply to indigenous resources specified in the notice or to an activity relating to such indigenous biological resources; **[or]**

(b) declare that this Chapter does not apply to certain categories of research involving indigenous biological resources or commercial exploitation of indigenous biological resources; **[and]**

(c) declare that this Chapter does not apply to the activity of collection, use, propagation cultivation or trade of indigenous biological resources for domestic use or subsistence purposes; or

[(c)](d) declare that the Benefit Sharing Agreement and Material Transfer Agreements contemplated in sections 82 and 83 do not apply to certain categories of commercial or industrial exploitation of indigenous biological resources; and

(e) amend or withdraw a notice referred to in paragraph (a), **[and]** (b), (c) or (d).”

Amendment of section 87 of the Act 10 of 2004

38. Section 87 of the National Environmental Management: Biodiversity Act, 2004 is hereby amended by the substitution for subparagraph (i) of paragraph (a) of the following subparagraph:

“(i) listed threatened or protected species or species to which an international agreement regulating international trade applies in terms of section 57(1);”.

Amendment of section 91 of the Act 10 of 2004

39. Section 91 of the National Environmental Management: Biodiversity Act, 2004 is hereby amended by the substitution for paragraph (a) of the following paragraph:

“(a) adequate procedures have been followed by the applicant to assess the risks and potential impacts associated with the restricted activity, unless a person has been exempted from the provisions of sections 65(2) and 71(2) as contemplated in sections 66(1) and 71(3);”.

Repeal of section 94 of Act 10 of 2004

40. Section 94 of the National Environmental Management: Biodiversity Act, 2004 is hereby repealed.

Repeal of section 95 of Act 10 of 2004

41. Section 95 of the National Environmental Management: Biodiversity Act, 2004 is hereby repealed.

Repeal of section 96 of Act 10 of 2004

42. Section 96 of the National Environmental Management: Biodiversity Act, 2004 is hereby repealed.

Amendment of section 97 of Act 10 of 2004, as amended by section 45 of Act 14 of 2009

43. Section 97 of the National Environmental Management: Biodiversity Act, 2004 is hereby amended—

(a) by the substitution for subparagraph (i) of paragraph (c) of subsection (1) of the following subparagraph:

“(i) the designation of organs of state which may be issuing authorities for permits referred to in section ~~[67]~~65(1) or 71(1);”

(b) by the substitution for paragraph (v) of paragraph (c) of subsection (1) of the following subparagraph:

“(v) the assessment of risks and potential impacts on biodiversity of restricted activities involving specimens of alien species or of listed invasive species; **[and]**

(c) by the substitution for subparagraph (vi) of paragraph (c) of subsection (1) of the following subparagraph:

“(vi) the control and eradication of **[listed]** invasive species;”

(d) by the substitution for subparagraph (iv) of paragraph (e) of subsection (1) of the following subparagraph:

“(iv) the administration of the Bio-prospecting **[Trust]** Fund;”

(e) by the deletion of subparagraph (xvi) of paragraph (f) of subsection (1);

(f) by the insertion in subsection (1) after paragraph (f) of the following paragraphs:

“(fA) self-administration within the wildlife industry.”.

(g) by the insertion after subparagraph (vi) of paragraph (c) of subsection (1) of the following subparagraphs:

“(vii) the coordination and implementation of programmes for the prevention, control or eradication of invasive species; and”;

“(viii) a system for the registration of institutions, ranching operations, nurseries, captive breeding operations and other facilities.”.

Amendment of section 98 of Act 10 of 2004

44. Section 98 of the National Environmental Management: Biodiversity Act, 2004 is hereby amended—

(a) by the substitution for subparagraph (iv) of paragraph (b) of subsection (1) of the following subparagraph:

“(iv) generally with respect to all permits **[or appeals]** or only to a specified category of permits **[or appeals]**; or”;

(b) by the substitution for subparagraph (iv) of paragraph (c) of subsection (1) of the following subparagraph:

“(iv) categories of permits, **[or appeals.]**”.

(c) by the insertion of subsection (3) after subsection (2):

“(3) Regulations made in terms of section 97 may differentiate between the penalties for the contravention of the different provisions thereof, but the maximum penalty may not exceed the penalty provided for in subsection (2).”

Amendment of section 101 of Act 10 of 2004

45. Section 101 of the National Environmental Management: Biodiversity Act, 2004 is hereby amended—

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

“(a) section 57(1), 65(1), 67(2), 71(1), **[or]** 81(1) or 81A(1);”;

(b) by the substitution for subsection (3) of the following subsection:

“(3) A person is guilty of an offence if that person-

(a) fraudulently alters any permit;

(b) fabricates or forges any document for the purpose of passing it as a permit;

(c) passes, uses, alters or has in his or her possession any altered or false document purporting to be a permit; **[or]**

(d) knowingly makes any false statement or report for the purpose of obtaining a permit; or

(e) permits or allows any other person to do, or to omit to do, anything which is an offence in terms of subsection (1) or (2)(a) and (b).”

Amendment of section 102 of Act 10 of 2004, as amended by section 47 of Act 14 of 2009

46. Section 102 of the National Environmental Management: Biodiversity Act, 2004 is hereby amended—

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

“(2) If a person is convicted of an offence involving a specimen of a listed threatened or protected species or in the commercialisation phase of bio-prospecting without a permit issued in terms of chapter 7, a fine may be determined, either in terms of subsection (1) or equal to three times the commercial value of the specimen in respect of which the offence was committed, whichever is the greater.”.

(b) by the insertion after subsection (2) of the following subsection:

“(2A) If a person is convicted of an offence involving a specimen of a listed invasive species, a fine may be determined, either in terms of subsection (1) or equal to the estimated cost associated with the eradication of the specimen in respect of which the offence was committed or both.”

Insertion of section 105A in Act 10 of 2004

47. The following section is hereby inserted in the National Environmental Management: Biodiversity Act, 2004 after section 105:

"Emergency incidents"

105A. (1) The Minister may, by notice in the Gazette, declare an emergency intervention for the purpose of the control or eradication of an alien species or a listed invasive species where the Minister is of the view that the alien species or listed invasive species constitutes a significant threat to the environment.

(2) A notice contemplated in subsection (1) must—

(a) list the species to which the emergency intervention relates;

(b) indicate the reasons for the intervention; and

(c) provide the details relating to the intervention."

Insertion of section 105B in Act 10 of 2004

48. The following section is hereby inserted in the National Environmental Management: Biodiversity Act, 2004 after section 105:

"Amnesty"

105B. (1) The Minister may, by notice in the Gazette, subject to certain conditions, declare a period of amnesty to facilitate compliance with the provisions of the Act.

(2) A notice contemplated in subsection (1) must—

(a) specify the period during which persons may apply for amnesty; and

(b) specify the period the amnesty applies."

General Amendment

49. The National Environmental Management: Biodiversity Act, 2004 is hereby amended wherever it appears in the Act by the substitution of the "bio-prospecting trust fund" with the "bio-prospecting fund".

Amendment of section 55 of Act 39 of 2004

50. Section 55 of the National Environmental Management: Air Quality Act, 2004 is hereby amended by the substitution for subsection (2) of the following subsection:

"(2) Regulations made in terms of this Act may provide that any person who contravenes or fails to comply with a provision thereof is guilty of an offence and liable in the case of a first conviction to a fine not exceeding R5 million or to imprisonment for a period not exceeding five years and in the case of a second or subsequent conviction to a fine not exceeding R10 million or imprisonment for a period not exceeding 10 years or in both instances to both a fine and such imprisonment. [on conviction to –

- (a) imprisonment for a period not exceeding five years;
- (b) an appropriate fine; or
- (c) both a fine and imprisonment.]”

Amendment of Short title of Act 14 of 2009

51. The National Environment Management Laws Amendment Act, 2009 is hereby amended by the substitution for paragraph 51 of the following paragraph:

“This Act is called the National Environmental Management Laws Amendment Act, 200[8]9 and comes into effect on a date fixed by the President by proclamation in the *Gazette*.”.

Amendment to Short title of Act 15 of 2009

52. The National Environmental Management: Protected Areas Amendment Act, 2009 is hereby amended by the substitution for the second paragraph number “7” with “9”.

Short title and Commencement

53. This Act shall be called the National Environmental Management Laws Amendment Act, 2011 and comes into effect on the date fixed by the Minister by Notice in the *Gazette*.
-