NATIONAL ENVIRONMENTAL MANAGEMENT ACT
NO. 107 OF 1998

[ASSENTED TO 19 NOVEMBER, 1998]
[DATE OF COMMENCEMENT TO BE PROCLAIMED]
(English text signed by the President)

ACT

To provide for cooperative environmental governance by establishing principles for decisionmaking on matters affecting the environment, institutions that will promote cooperative governance and procedures for coordinating environmental functions exercised by organs of state; and to provide for matters connected therewith.

Preamble.—WHEREAS many inhabitants of South Africa live in an environment that is harmful to their health and wellbeing;

everyone has the right to an environment that is not harmful to his or her health or wellbeing;

the State must respect, protect, promote and fulfill the social, economic and environmental rights of everyone and strive to meet the basic needs of previously disadvantaged communities;

inequality in the distribution of wealth and resources, and the resultant poverty, are among the important causes as well as the results of environmentally harmful practices;

sustainable development requires the integration of social, economic and environmental factors in the planning, implementation and evaluation of decisions to ensure that development serves present and future generations;

everyone has the right to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that—
prevent pollution and ecological degradation;

promote conservation; and

secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development;

the environment is a functional area of concurrent national and provincial legislative competence, and all spheres of government and all organs of state must cooperate with, consult and support one another;

AND WHEREAS it is desirable—

that the law develops a framework for integrating good environmental management into all development activities;

that the law should promote certainty with regard to decisionmaking by organs of state on matters affecting the environment;

that the law should establish principles guiding the exercise of functions affecting the environment;

that the law should ensure that organs of state maintain the principles guiding the exercise of functions affecting the environment;

that the law should establish procedures and institutions to facilitate and promote cooperative government and intergovernmental relations;

that the law should establish procedures and institutions to facilitate and promote public participation in environmental governance;

that the law should be enforced by the State and that the law should facilitate the enforcement of environmental laws by civil society:

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1. Definitions.—(1) In this Act, unless the context requires otherwise—
"activities" when used in Chapter 5 means policies, programmes, plans and projects;

"**Agenda 21**" means the document by that name adopted at the United Nations Conference of Environment and Development held in Rio de Janeiro, Brazil in June 1992;

"**best practicable environmental option**" means the option that provides the most benefit or causes the least damage to the environment as a whole, at a cost acceptable to society, in the long term as well as in the short term;

"**commercially confidential information**" means commercial information, the disclosure of which would prejudice to an unreasonable degree the commercial

interests of the holder: Provided that details of emission levels and waste products must not be considered to be commercially confidential notwithstanding any provision of this Act or any other law;

"**Committee**" means the Committee for Environmental Coordination referred to in section 7;

"**community**" means any group of persons or a part of such a group who share common interests, and who regard themselves as a community;

"**Constitution**" means the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996);

"**Department**" means the Department of Environmental Affairs and Tourism;

"**Director-General**" means the Director-General of Environmental Affairs and Tourism;

"**ecosystem**" means a dynamic system of plant, animal and microorganism communities and their nonliving environment interacting as a functional unit;

"**environment**" means the surroundings within which humans exist and that are made up of—

i. the land, water and atmosphere of the earth;
ii. microorganisms, plant and animal life;
iii. any part or combination of (i) and (ii) and the interrelationships among and between them; and
iv. the physical, chemical, aesthetic and cultural properties and conditions of the foregoing that influence human health and wellbeing;

"**environmental implementation plan**" means an implementation plan referred to in section 11;

"**environmental management cooperation agreement**" means an agreement referred to in section 35 (1);

"**environmental management plan**" means a management plan referred to in section 11;

"**financial year**" means a period commencing on 1 April of any year and ending on 31 March of the following year;

"**Forum**" means the National Environmental Advisory Forum referred to in section 3;

"**hazard**" means a source of or exposure to danger;

"**international environmental instrument**" means any international agreement, declaration, resolution, convention or protocol which relates to the management of the environment;

"**MEC**" means the Member of the Executive Council to whom the Premier has assigned the performance in the province of the functions entrusted to a MEC by or under such a provision;

"**Minister**" means the Minister of Environmental Affairs and Tourism;

"**national department**" means a department of State within the national sphere of government;

"**organ of state**" means organ of state as defined in the Constitution;

"**person**" includes a juristic person;

"**pollution**" means any change in the environment caused by—

i. substances;
ii. radioactive or other waves; or
iii. noise, odours, dust or heat,

emitted from any activity, including the storage or treatment of waste or substances, construction and the provision of services, whether engaged in by any person or an organ of state, where that change has an adverse effect on human health or wellbeing or on the composition, resilience and productivity of natural or managed ecosystems, or on materials useful to people, or will have such an effect in the future;

"**prescribe**" means prescribe by regulation in the Gazette;

"provincial head of department" means the head of the provincial department responsible for environmental affairs;

"**regulation**" means a regulation made under this Act;

"**state land**" means land which vests in the national or a provincial government, and includes land below the high water mark and the Admiralty Reserve, but excludes land belonging to a local authority;

"**sustainable development**" means the integration of social, economic and environmental factors into planning, implementation and decisionmaking so as to ensure that development serves present and future generations;

"**this Act**" includes the schedules, and regulations and any notice issued under the Act.

(2) Words derived from the word or terms defined have corresponding meanings, unless the context indicates otherwise.

(3) A reasonable interpretation of a provision which is consistent with the purpose of this Act must be preferred over an alternative interpretation which is not consistent with the purpose of this Act.

(4) Neither—

a. a reference to a duty to consult specific persons or authorities, nor
b. the absence of any reference in this Act to a duty to consult or give a hearing,

exempts the official or authority exercising a power or performing a function from the duty to act fairly.

CHAPTER 1
NATIONAL ENVIRONMENTAL MANAGEMENT PRINCIPLES

2. Principles.—(1) The principles set out in this section apply throughout the Republic to the actions of all organs of state that may significantly affect the environment and—

a. shall apply alongside all other appropriate and relevant considerations, including the State´s responsibility to respect, protect, promote and fulfil the social and economic rights in Chapter 2 of the Constitution and in particular the basic needs of categories of persons disadvantaged by unfair discrimination;
b. serve as the general framework within which environmental management and implementation plans must be formulated;
c. serve as guidelines by reference to which any organ of state must exercise any function when taking any decision in terms of this Act or any statutory provision concerning the protection of the environment;
d. serve as principles by reference to which a conciliator appointed under this Act must make recommendations; and
e. guide the interpretation, administration and implementation of this Act, and any other law concerned with the protection or management of the environment.

(2) Environmental management must place people and their needs at the forefront of its concern, and serve their physical, psychological, developmental, cultural and social interests equitably.

(3) Development must be socially, environmentally and economically sustainable.

(4) (a) Sustainable development requires the consideration of all relevant factors including the following:

i. That the disturbance of ecosystems and loss of biological diversity are avoided, or, where they cannot be altogether avoided, are minimised and remedied;
ii. that pollution and degradation of the environment are avoided, or, where they cannot be altogether avoided, are minimised and remedied;
iii. that the disturbance of landscapes and sites that constitute the nation´s cultural heritage is avoided, or where it cannot be altogether avoided, is minimised and remedied;
iv. that waste is avoided, or where it cannot be altogether avoided, minimised and reused or recycled where possible and otherwise disposed of in a responsible manner;

v. that the use and exploitation of nonrenewable natural resources is responsible and equitable, and takes into account the consequences of the depletion of the resource;
vi. that the development, use and exploitation of renewable resources and the ecosystems of which they are part do not exceed the level beyond which their integrity is jeopardised;
vii. that a riskaverse and cautious approach is applied, which takes into account the limits of current knowledge about the consequences of decisions and actions; and
viii. that negative impacts on the environment and on people´s environmental rights be anticipated and prevented, and where they cannot be altogether prevented, are minimised and remedied.

(b) Environmental management must be integrated, acknowledging that all elements of the environment are linked and interrelated, and it must take into account the effects of decisions on all aspects of the environment and all people in the environment by pursuing the selection of the best practicable environmental option.

(c) Environmental justice must be pursued so that adverse environmental impacts shall not be distributed in such a manner as to unfairly discriminate against any person, particularly vulnerable and disadvantaged persons.

(d) Equitable access to environmental resources, benefits and services to meet basic human needs and ensure human wellbeing must be pursued and special measures may be taken to ensure access thereto by categories of persons disadvantaged by unfair discrimination.

(e) Responsibility for the environmental health and safety consequences of a policy, programme, project, product, process, service or activity exists throughout its life cycle.

(f) The participation of all interested and affected parties in environmental governance must be promoted, and all people must have the opportunity to develop the understanding, skills and capacity necessary for achieving equitable and effective participation, and participation by vulnerable and disadvantaged persons must be ensured.

(g) Decisions must take into account the interests, needs and values of all interested and affected parties, and this includes recognising all forms of knowledge, including traditional and ordinary knowledge.

(h) Community wellbeing and empowerment must be promoted through environmental education, the raising of environmental awareness, the sharing of knowledge and experience and other appropriate means.

(i) The social, economic and environmental impacts of activities, including disadvantages and benefits, must be considered, assessed and evaluated, and decisions must be appropriate in the light of such consideration and assessment.

(j) The right of workers to refuse work that is harmful to human health or the environment and to be informed of dangers must be respected and protected.

(k) Decisions must be taken in an open and transparent manner, and access to information must be provided in accordance with the law.

(l) There must be intergovernmental coordination and harmonisation of policies, legislation and actions relating to the environment.

(m) Actual or potential conflicts of interest between organs of state should be resolved through conflict resolution procedures.

(n) Global and international responsibilities relating to the environment must be discharged in the national interest.

(o) The environment is held in public trust for the people, the beneficial use of environmental resources must serve the public interest and the environment must be protected as the people´s common heritage.

(p) The costs of remedying pollution, environmental degradation and consequent adverse health effects and of preventing, controlling or minimising further pollution, environmental damage or adverse health effects must be paid for by those responsible for harming the environment.

(q) The vital role of women and youth in environmental management and development must be recognised and their full participation therein must be promoted.

(r) Sensitive, vulnerable, highly dynamic or stressed ecosystems, such as coastal shores, estuaries, wetlands, and similar systems require specific attention in management and planning procedures, especially where they are subject to significant human resource usage and development pressure.

CHAPTER 2
INSTITUTIONS

Part 1: National Environmental Advisory Forum

3. Establishment, objects and functions of National Environmental Advisory Forum.—(1) The National Environmental Advisory Forum is hereby established.

(2) The object of the Forum is to—

(a) inform the Minister of the views of stakeholders regarding the application of the principles set out in section 2; and

(b) advise the Minister on—

(i) any matter concerning environmental management and governance and specifically the setting and achievement of objectives and priorities for environmental governance; and

(ii) appropriate methods of monitoring compliance with the principles set out in section 2.

(3) The Forum may, on its own initiative and after consultation with the DirectorGeneral, draw the Minister´s attention to any matter concerning environmental management requiring attention, and the Minister may refer matters for consideration by the Forum.

4. Composition.—(1) The Forum consists of at least 12 but not more than 15 members appointed by the Minister.

(2) The Minister appoints persons who represent stakeholders, and persons who have experience, expertise or skills necessary to enable the Forum to carry out its functions: Provided that the Minister must take into account the desirability of appointing women, youth and persons disadvantaged by unfair discrimination and ensuring representation of vulnerable and disadvantaged persons.

(3) Before persons contemplated in subsection (2) are appointed, the Minister must—

(a) invite nominations from organised labour, organised business, nongovernmental organisations and communitybased organisations in a manner that he or she may consider appropriate, and invite nominations from others by notice in the Gazette, at least two nationally distributed newspapers, appropriate local newspapers and on the radio specifying a period within which nominations must be submitted;

(b) stipulate in such notice, the procedure to be adopted regarding such nominations; and

(c) consult with—

(i) the MECs; and

(ii) the Committees of the National Assembly and the National Council of Provinces that scrutinise environmental affairs.

(4) The Minister appoints the chairperson of the Forum.

(5) (a) Each member of the Forum designates, with the concurrence of the Minister and the organisation or person who nominated him or her, an alternate to take his or her place if he or she is unable to attend a meeting of the Forum.

(b) The Minister may appoint a replacement for a member who vacates his or her office in terms of section 5 (3), and the Minister may invite nominations from the sector or organisation that nominated such member.

(6) The replacement must serve for the balance of the term of the person he or she replaces.

5. Conditions of appointment to Forum.—(1) A member of the Forum holds office for a period of two years.

(2) At the expiry of his or her term of office a member may be appointed for one further term.

(3) A member or replacement member of the Forum must vacate his or her office if—

(a) the Minister at any time terminates such term of office for good reason;

(b) he or she can no longer perform his or her duties on the Forum;

(c) he or she is convicted of a criminal offence, involving dishonesty, and is sentenced to imprisonment without the option of a fine;

(d) he or she is absent from more than two consecutive meetings of the Forum without the leave of the chairperson; or

(e) he or she resigns by way of written notice to the Minister.

(4) Members of the Forum and members of a committee of the Forum may be paid such remuneration and allowances for their services as the Minister may determine with the concurrence of the Minister of Finance.

(5) If any member of the Forum or his or her spouse has a direct or indirect financial interest in any matter before the Forum, he or she shall disclose such interest and may not take part in any discussion regarding such matter.

6. Functioning of Forum.—(1) The Minister must—

(a) lay down rules for the functioning of the Forum, including—

(i) by publication in the *Gazette*, a constitution for the Forum which may contain provisions relating to—

(aa) advice on matters related to Chapter 6;

(bb) participation in meetings relating to international environmental matters;

(cc) subcommittees and working groups of the Forum;

(ii) the manner and timing of reports by the Forum; and

(iii) consultation with the DirectorGeneral;

(b) with the concurrence of the Minister of Finance make available funds for the functioning of the Forum for purposes other than the payment of remuneration referred to in section 5 (4), from—

(i) money appropriated by Parliament for this purpose; and

(ii) funds obtained from donations or grants.

(2) The Director General may—

(a) designate as many officers and employees as he or she may deem necessary to assist the Forum in the performance of its work; and

(b) engage persons on contract to assist the Forum in the performance of its work.

(3) The Minister must present an annual report to Parliament on the work of the Forum, including the following:

(a) the work plan for the next year;

(b) information and recommendations submitted; and

(c) financial report and budget.

(4) The meetings of the Forum must be open to the public and all documents considered or produced by the Forum must be available for inspection by the public.

Part 2: Committee for Environmental Coordination

7. Establishment, objects and functions of Committee.—(1) The Committee for Environmental Coordination is hereby established.

(2) The object of the Committee is to promote the integration and coordination of environmental functions by the relevant organs of state, and in particular to promote the achievement of the purpose and objectives of environmental implementation plans and environmental management plans as set out in section 12.

(3) The functions of the Committee shall include the following:

(a) scrutinising, reporting and making recommendations on the environmental implementation plans submitted to it in accordance with section 15;

(b) investigating and making recommendations regarding the assignment and delegation of functions between organs of state under this Act or any other law affecting the environment and regarding the practical working arrangements, including memoranda of understanding, between the organs of state represented by members and other organs of state;

(c) investigating and recommending the establishment of mechanisms in each province, with the concurrence of the MEC, for providing a single point in the province for the receipt of applications for authorisations, licences and similar permissions required for activities under legal provisions concerned with the protection of the environment where such authorisations, licences or permissions are required from more than one organ of state, and procedures for the coordinated consideration of such applications by the organs of state concerned;

(d) making recommendations to coordinate the application of integrated environmental management as contemplated in Chapter 5, including cooperation in environmental assessment procedures and requirements and making determinations regarding the prevention of duplication of efforts as contemplated in section 24 (4);

(e) making recommendations aimed at securing compliance with the principles set out in section 2 and national norms and standards contemplated in section 146 (2) (b) (i) of the Constitution;

(f) making recommendations regarding the harmonisation of the environmental functions of all relevant national departments and spheres of government;

(g) advising the Minister on providing guidelines for the preparation of environmental management plans and environmental implementation plans; and

(h) endeavouring to ensure compliance with the principle set out in section 2 (2) by making appropriate recommendations, requiring reports from its members and advising government on law reform.

8. Composition of Committee.—(1) The Committee comprises:

a. the DirectorGeneral: Environmental Affairs and Tourism, who acts as chairperson;
b. the DirectorGeneral: Water Affairs and Forestry;
c. the DirectorGeneral: Minerals and Energy;
d. the DirectorGeneral: Land Affairs;
e. the DirectorGeneral: Constitutional Development;
f. the DirectorGeneral: Housing;
g. the DirectorGeneral: Agriculture;
h. the DirectorGeneral: Health;
i. the DirectorGeneral: Labour;
j. the DirectorGeneral: Arts, Culture, Science and Technology;
k. the provincial heads of department appointed by the Minister with the concurrence of the MEC;
l. a representative of the national organisation recognised in terms of section 2 of the Organised Local Government Act, 1997 (Act No. 52 of 1997), appointed by the Minister with the concurrence of that organisation; and
m. any other DirectorGeneral appointed by the Minister with the concurrence of the Minister under whose portfolio that Department falls.

(2) (a) The Committee may coopt persons to assist it in carrying out its functions.

(b) The Committee may invite persons to attend its meetings and to assist it in carrying out its functions.

(3) In making the appointments as contemplated in subsection (2) (a), the Committee must give due consideration to representation of the local sphere of government.

(4) Every member of the Committee referred to in subsection (1), must appoint an alternate member with the necessary authority from his or her department or provincial government.

(5) The alternate member appointed under subsection (4) must act in such member´s absence or inability to act as member of the Committee.

9. Meetings of Committee, subcommittees and working groups.—(1) The Committee meets at least four times a year.

(2) The DirectorGeneral determines—

a. the procedure for convening meetings of the Committee;
b. the quorum for meetings;
c. procedures at meetings; and
d. records the Committee must keep.

(3) The DirectorGeneral furnishes the Minister with copies of the minutes of all meetings, within three weeks of such meetings.

(4) The Committee may establish ad hoc and permanent subcommittees to assist the Committee in the performance of its functions, and such subcommittees may include persons who need not necessarily be members of the Committee.

(5) The Committee may establish ad hoc working groups to assist a subcommittee in the performance of its functions, and such working groups may include persons who need not necessarily be members of the subcommittee.

(6) Every subcommittee established in terms of subsection (4) must report at each meeting of the Committee on its own activities as well as those of any working groups established in terms of subsection (5) to assist the subcommittee.

10. Report of Committee.—(1) The Committee presents an annual report on its activities to the Minister on the following:

a. the work of the Committee and the work plan for the next year;
b. comments submitted to the DirectorGeneral on the environmental implementation and environmental management plans received;
c. recommendations made in respect of environmental implementation and environmental management plans received;
d. recommendations made in order to secure compliance with the principles set out in section 2 and national norms and standards;
e. law reform undertaken and proposed by organs of state represented on the Committee;
f. compliance with environmental implementation and management plans by municipalities; and
g. any other matter relevant to the coordination of policies, plans and programmes that may affect the environment.

(2) At the request of members of the public, the Committee must make copies available of the report contemplated in subsection (1).

(3) The Minister must present an annual report to Parliament on the work of the Committee, including the matters listed in subsection (1).

CHAPTER 3
PROCEDURES FOR COOPERATIVE GOVERNANCE

11. Environmental implementation plans and management plans.—(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 year of the promulgation of this Act and at least every four 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 year of the promulgation of this Act and at least every four years thereafter.

(3) Every national department that is listed in both Schedule 1 and Schedule 2 may prepare a consolidated environmental implementation and management plan.

(4) Every organ of state referred to in subsections (1) and (2) must, in its preparation of an environmental implementation plan or environmental management plan, and before submitting such plan take into consideration every other environmental implementation plan and environmental management plan already adopted with a view to achieving consistency among such plans.

(5) The Minister may by notice in the *Gazette*—

a. extend the date for the submission of any environmental implementation plans and environmental management plans for periods not exceeding 12 months;
b. on application by any organ of state, or on his or her own initiative with the agreement of the relevant Minister where it concerns a national department, and after consultation with the Committee, amend Schedules 1 and 2.

(6) The DirectorGeneral must, at the request of a national department or province assist with the preparation of an environmental implementation plan.

(7) The preparation of environmental implementation plans and environmental management plans may consist of the assembly of information or plans compiled for other purposes and may form part of any other process or procedure.

(8) The Minister may issue guidelines to assist provinces and national departments in the preparation of environmental implementation and environmental management plans.

12. Purpose and objects of environmental implementation plans and environmental management plans.—The purpose of environmental implementation and management plans is to—

a. coordinate and harmonise the environmental policies, plans, programmes and decisions of the various national departments that exercise functions that may affect the environment or are entrusted with powers and duties aimed at the achievement, promotion, and protection of a sustainable environment, and of provincial and local spheres of government, in order to—
    i. minimise the duplication of procedures and functions; and
    ii. promote consistency in the exercise of functions that may affect the environment;
b. give effect to the principle of cooperative government in Chapter 3 of the Constitution;
c. secure the protection of the environment across the country as a whole;
d. prevent unreasonable actions by provinces in respect of the environment that are prejudicial to the economic or health interests of other provinces or the country as a whole; and
e. enable the Minister to monitor the achievement, promotion, and protection of a sustainable environment.

13. Content of environmental implementation plans.—(1) Every environmental implementation plan must contain:

a. a description of policies, plans and programmes that may significantly affect the environment;
b. a description of the manner in which the relevant national department or province will ensure that the policies, plans and programmes referred to in paragraph (a) will comply with the principles set out in section 2 as well as any national norms and standards as envisaged under section 146 (2) (b) (i) of the Constitution and set out by the Minister, or by any other Minister, which have as their objective the achievement, promotion, and protection of the environment;
c. a description of the manner in which the relevant national department or province will ensure that its functions are exercised so as to ensure compliance with relevant legislative provisions, including the principles set out in section 2, and any national norms and standards envisaged under section 146 (2) (b) (i) of the Constitution and set out by the Minister, or by any other Minister, which have as their objective the achievement, promotion, and protection of the environment; and
d. recommendations for the promotion of the objectives and plans for the implementation of the procedures and regulations referred to in Chapter 5.

(2) The Minister may, after consultation with the Committee, make regulations for the purpose of giving effect to subsections (1) (b) and (c).

14. Content of environmental management plans.—Every environmental management plan must contain—

(a) a description of the functions exercised by the relevant department in respect of the environment;

(b) a description of environmental norms and standards, including norms and standards contemplated in section 146 (2) (b) (i) of the Constitution, set or applied by the relevant department;

(c) a description of the policies, plans and programmes of the relevant department that are designed to ensure compliance with its policies by other organs of state and persons;

(d) a description of priorities regarding compliance with the relevant department´s policies by other organs of state and persons;

(e) a description of the extent of compliance with the relevant department´s policies by other organs of state and persons;

(f) a description of arrangements for cooperation with other national departments and spheres of government, including any existing or proposed memoranda of understanding entered into, or delegation or assignment of powers to other organs of state, with a bearing on environmental management; and

(g) proposals for the promotion of the objectives and plans for the implementation of the procedures and regulations referred to in Chapter 5.

15. Submission, scrutiny and adoption of environmental implementation plans and environmental management plans.—(1) Every environmental implementation plan and every environmental management plan must be submitted to the Committee by a date to be set by the Minister.

(2) (a) The Committee scrutinises every environmental implementation plan and either recommends adoption of such plan or reports to the Minister as well as every other Minister responsible for a department which is represented on the Committee and every Provincial Premier concerned on the extent to which the environmental implementation plan concerned fails to comply with—

(i) the principles in section 2;

(ii) the purpose and objectives of environmental implementation plans; or

(iii) any relevant environmental management plan,
and specifies changes needed in the environmental implementation plan concerned.

(b) If the Committee recommends adoption of an environmental implementation plan, then the relevant organ of state must adopt and publish its plan in the relevant Gazette within 90 days of such approval and the plan becomes effective from the date of such publication.

(3) Any difference or disagreement between the Committee and a national department regarding either a failure to submit or the content of an environmental

implementation plan may, if it cannot be resolved by agreement between the parties concerned, be referred by the DirectorGeneral for determination by the Minister in consultation with the Ministers responsible for the Department of Land Affairs, Department of Water Affairs and Forestry, Department of Minerals and Energy and Department of Constitutional Development.

(4) Any difference or disagreement between the Committee and a province regarding either a failure to submit or the content of an environmental implementation plan may, if it cannot be resolved by agreement between the parties concerned, be referred by the DirectorGeneral to conciliation in accordance with Chapter 4 and if such conciliation fails, or where the DirectorGeneral does not refer the dispute to conciliation, to the Minister with a request for intervention in accordance with section 100 of the Constitution: Provided that such disputes shall be dealt with in accordance with the act contemplated in section 41 (2) of the Constitution, once promulgated.

(5) A national department which has submitted an environmental management plan must adopt and publish its plan in the Gazette within 90 days of such submission and the plan becomes effective from the date of such publication.

(6) The exercise of functions by organs of state may not be delayed or postponed on account of—

(a) the failure of any organ of state to submit an environmental implementation plan;

(b) the scrutiny of any environmental implementation plan by the Committee;

(c) the amendment of any environmental implementation plan following scrutiny of the plan by the Committee;

(d) any difference or disagreement regarding any environmental implementation plan and the resolution of that difference or disagreement; or

(e) the failure of any organ of state to adopt and publish its environmental implementation or management plan.

16. Compliance with environmental implementation plans and environmental management plans.—(1) (a) Every organ of state must exercise every function it may have, or that has been assigned or delegated to it, by or under any law, and that may significantly affect the protection of the environment, substantially in accordance with the environmental implementation plan or the environmental management plan prepared, submitted and adopted by that organ of state in accordance with this Chapter: Provided that any substantial deviation from an environmental management plan or environmental implementation plan must be reported forthwith to the DirectorGeneral and the Committee.

(b) Every organ of state must report annually within four months of the end of its financial year on the implementation of its adopted environmental management plan or environmental implementation plan to the DirectorGeneral and the Committee.

(c) The Minister may, after consultation with the Committee, recommend to any organ of state which has not submitted and adopted an environmental implementation plan or environmental management plan, that it comply with a specified provision of an adopted environmental implementation plan or submitted environmental management plan.

(2) The DirectorGeneral monitors compliance with environmental implementation plans and environmental management plans and may—

(a) take any steps or make any inquiries he or she deems fit in order to determine if environmental implementation plans and environmental management plans are being complied with by organs of state; and

(b) if, as a result of any steps taken or inquiry made under paragraph (a), he or she is of the opinion that an environmental implementation plan and an environmental management plan is not substantially being complied with, serve a written notice on the organ of state concerned, calling on it to take such specified steps as the DirectorGeneral considers necessary to remedy the failure of compliance.

(3) (a) Within 30 days of the receipt of a notice contemplated in subsection (2) (b), an organ of state must respond to the notice in writing setting out any—

(i) objections to the notice;

(ii) steps that will be taken to remedy failures of compliance; or

(iii) other information that the organ of state considers relevant to the notice.

(b) After considering the representations from the organ of state and any other relevant information, the DirectorGeneral must within 30 days of receiving a response referred to in paragraph (a) issue a final notice—

(i) confirming, amending or cancelling the notice referred to in subsection (2) (b);

(ii) specify steps and a time period within which steps must be taken to remedy the failure of compliance.

(c) If, after compliance with the provisions of paragraphs (a) and (b) there still remains a difference or disagreement between the organs of state and the DirectorGeneral, the organ of state may request the Minister to refer any difference or disagreement between itself and the DirectorGeneral regarding compliance with an environmental implementation plan, or the steps necessary to remedy a failure of compliance, to conciliation in accordance with Chapter 4.

(d) Where an organ of state does not submit any difference or disagreement to conciliation in accordance with paragraph (c), or if conciliation fails to resolve the matter, the DirectorGeneral may within 60 days of the final notice referred to in paragraph (b) if the matter has not been submitted to conciliation, or within 30 days of the date of conciliation, as the case may be—

(i) where the organ of state belongs to the provincial sphere of government, request the Minister to intervene in accordance with section 100 of the Constitution: Provided that such a difference or disagreement must be dealt with in accordance with the Act contemplated in section 41 (2) of the Constitution once promulgated;

(ii) where the organ of state belongs to the local sphere of government, request the MEC to intervene in accordance with section 139 of the Constitution: Provided that such a difference or disagreement must be dealt with in accordance with the Act contemplated in section 41 (2) of the Constitution once promulgated; or

(iii) where the organ of state belongs to the national sphere of government refer the matter for determination by the Minister in consultation with the Ministers responsible for the Department of Land Affairs, Department of Water Affairs and Forestry, Department of Minerals and Energy and Department of Constitutional Development.

(4) Each provincial government must ensure that—

(a) the relevant provincial environmental implementation plan is complied with by each municipality within its province and for this purpose the provisions of subsections (2) and (3) must apply with the necessary changes; and

(b) municipalities adhere to the relevant environmental implementation and management plans, and the principles contained in section 2 in the preparation of any policy, programme or plan, including the establishment of integrated development plans and land development objectives.

(5) The DirectorGeneral must keep a record of all environmental implementation plans and environmental management plans, relevant agreements between organs of state and any reports submitted under subsection (1) (b); and such plans, reports and agreements must be available for inspection by the public.

CHAPTER 4
FAIR DECISIONMAKING AND CONFLICT MANAGEMENT

17. Reference to conciliation.—(1) Any Minister, MEC or Municipal Council—

(a) where a difference or disagreement arises concerning the exercise of any of its functions which may significantly affect the environment, or

(b) before whom an appeal arising from a difference or disagreement regarding the protection of the environment is brought under any law,
may, before reaching a decision, consider the desirability of first referring the matter to conciliation and—

(i) must if he, she or it considers conciliation appropriate either—

(aa) refer the matter to the DirectorGeneral for conciliation under this Act; or

(bb) appoint a conciliator on the conditions, including timelimits, that he, she or it may determine; or

(cc) where a conciliation or mediation process is provided for under any other relevant law administered by such Minister, MEC or Municipal Council, refer the matter for mediation or conciliation under such other law; or

(ii) if he, she or it considers conciliation inappropriate or if conciliation has failed, make a decision: Provided that the provisions of section 4 of the Development Facilitation Act, 1995 (Act No. 67 of 1995), shall prevail in respect of decisions in terms of that Act and laws contemplated in subsection 1 (c) thereof.

(2) Anyone may request the Minister, a MEC or Municipal Council to appoint a facilitator to call and conduct meetings of interested and affected parties with the purpose of reaching agreement to refer a difference or disagreement to conciliation in terms of this Act, and the Minister, MEC or Municipal Council may, subject to section 22, appoint a facilitator and determine the manner in which the facilitator must carry out his or her tasks, including timelimits.

(3) A court or tribunal hearing a dispute regarding the protection of the environment may order the parties to submit the dispute to a conciliator appointed by the DirectorGeneral in terms of this Act and suspend the proceedings pending the outcome of the conciliation.

18. Conciliation.—(1) Where a matter has been referred to conciliation in terms of this Act, the DirectorGeneral may, on the conditions, including timelimits, that he or she may determine, appoint a conciliator acceptable to the parties to assist in resolving a difference or disagreement: Provided that if the parties to the difference or disagreement do not reach agreement on the person to be appointed, the DirectorGeneral may appoint a person who has adequate experience in or knowledge of conciliation of environmental disputes.

(2) A conciliator appointed in terms of this Act must attempt to resolve the matter—

(a) by obtaining such information whether documentary or oral as is relevant to the resolution of the difference or disagreement;

(b) by mediating the difference or disagreement;

(c) by making recommendations to the parties to the difference or disagreement; or

(d) in any other manner that he or she considers appropriate.

(3) In carrying out his or her functions, a conciliator appointed in terms of this Act must take into account the principles contained in section 2.

(4) A conciliator may keep or cause to be kept, whether in writing or by mechanical or electronic means, a permanent record of all or part of the proceedings relating to the conciliation of a matter.

(5) Where such record has been kept, any member of the public may obtain a readable copy of the record upon payment of a fee as approved by Treasury.

(6) Where conciliation does not resolve the matter, a conciliator may enquire of the parties whether they wish to refer the matter to arbitration and may with their concurrence endeavour to draft terms of reference for such arbitration.

(7) (a) The conciliator must submit a report to the DirectorGeneral, the parties and the person who referred the matter for conciliation, setting out the result of his or her conciliation, and indicating whether or not an agreement has been reached.

(b) In the event of no agreement having been reached, the report may contain his or her recommendations and reasons therefor.

(c) Where relevant, the report must contain the conciliator´s comments on the conduct of the parties.

(d) The report and any agreement reached as a result of the conciliation must be available for inspection by the public and any member of the public may obtain a copy thereof upon payment of a fee as approved by Treasury.

(8) The DirectorGeneral may from time to time with the concurrence of the Minister of Finance, appoint persons or organisations with relevant knowledge or expertise to provide conciliation and mediation services.

19. Arbitration.—(1) A difference or disagreement regarding the protection of the environment may be referred to arbitration in terms of the Arbitration Act, 1965 (Act No. 42 of 1965).

(2) Where a dispute or disagreement referred to in subsection (1) is referred to arbitration the parties thereto may appoint as arbitrator a person from the panel of arbitrators established in terms of section 21.

20. Investigation.—The Minister may at any time appoint one or more persons to assist either him or her or, after consultation with a Municipal Council or MEC or another national Minister, to assist such a Municipal Council or MEC or another national Minister in the evaluation of a matter relating to the protection of the environment by obtaining such information, whether documentary or oral, as is relevant to such evaluation and to that end—

(a) the Minister may by notice in the Gazette give such person or persons the powers of a Commission of Inquiry under the Commissions Act, 1947 (Act No. 8 of 1947);

(b) the Minister may make rules by notice in the Gazette for the conduct of the inquiry: Provided that the decision of the inquiry and the reasons therefor must be reduced to writing;

(c) the DirectorGeneral must designate, subject to the provisions of the Public Service Act, 1994 (Proclamation No. 103 of 1994), as many officers and employees

of the Department as may be necessary to assist such person and any work may be performed by a person other than such officer or employee at the remuneration and allowances which the Minister with the concurrence of the Minister of Finance may determine.

21. Appointment of panel and remuneration.—(1) The Minister may, with the concurrence of the Minister of Finance, determine remuneration and allowances, either in general or in any particular case, to be paid from money appropriated by Parliament for that purpose to any person or persons appointed in terms of this Act to render facilitation, conciliation, arbitration or investigation services, who are not in the fulltime employment of the State.

(2) The Minister may create a panel or panels of persons from which appointment of facilitators and arbitrators in terms of this Act may be made, or contracts entered into in terms of this Act.

(3) The Minister may, pending the establishment of a panel or panels in terms of subsection (2), adopt the panel established in terms of section 31 (1) of the Land Reform (Labour Tenants) Act, 1996 (Act No. 3 of 1996).

22. Relevant considerations, report and designated officer.—(1) Decisions under this Act concerning the reference of a difference or disagreement to conciliation, the appointment of a conciliator, the appointment of a facilitator, the appointment of persons to conduct investigations, and the conditions of such appointment, must be made taking into account—

a. the desirability of resolving differences and disagreements speedily and cheaply;
b. the desirability of giving indigent persons access to conflict resolution measures in the interest of the protection of the environment;
c. the desirability of improving the quality of decisionmaking by giving interested and affected persons the opportunity to bring relevant information to the decisionmaking process;
d. any representations made by persons interested in the matter; and
e. such other considerations relating to the public interest as may be relevant.

(2) (a) The DirectorGeneral shall keep a record and prepare an annual report on environmental conflict management for submission to the Committee and the Forum, for the purpose of evaluating compliance and conflict management measures in respect of environmental laws.

(b) The record and report referred to in paragraph (a) may include the following:

(i) Proceedings under this chapter, including reports of conciliators and agreements reached;

(ii) proceedings under Chapter 7, including complaints, charges and judgments;

(iii) proceedings under other laws listed in Schedule 3;

(iv) proceedings by the Human Rights Commission and the Public Protector.

(c) The DirectorGeneral shall designate an officer to provide information to the public on appropriate dispute resolution mechanisms for referral of disputes and complaints.

(d) The reports, records and agreements referred to in this subsection must be available for inspection by the public.

CHAPTER 5
INTEGRATED ENVIRONMENTAL MANAGEMENT

23. General objectives.—(1) The purpose of this Chapter is to promote the application of appropriate environmental management tools in order to ensure the integrated environmental management of activities.

(2) The general objective of integrated environmental management is to—

a. promote the integration of the principles of environmental management set out in section 2 into the making of all decisions which may have a significant effect on the environment;
b. identify, predict and evaluate the actual and potential impact on the environment, socioeconomic conditions and cultural heritage, the risks and consequences and alternatives and options for mitigation of activities, with a view to minimising negative impacts, maximising benefits, and promoting compliance with the principles of environmental management set out in section 2;
c. ensure that the effects of activities on the environment receive adequate consideration before actions are taken in connection with them;
d. ensure adequate and appropriate opportunity for public participation in decisions that may affect the environment;
e. ensure the consideration of environmental attributes in management and decisionmaking which may have a significant effect on the environment; and
f. identify and employ the modes of environmental management best suited to ensuring that a particular activity is pursued in accordance with the principles of environmental management set out in section 2.

(3) The DirectorGeneral must coordinate the activities of organs of state referred to in section 24 (1) and assist them in giving effect to the objectives of this section and such assistance may include training, the publication of manuals and guidelines and the coordination of procedures.

24. Implementation.—(1) In order to give effect to the general objectives of integrated environmental management laid down in this Chapter, the potential impact on—

a. the environment;
b. socioeconomic conditions; and
c. the cultural heritage,

of activities that require authorisation or permission by law and which may

significantly affect the environment, must be considered, investigated and assessed prior to their implementation and reported to the organ of state charged by law with authorising, permitting, or otherwise allowing the implementation of an activity.

(2) The Minister may with the concurrence of the MEC, and every MEC may with the concurrence of the Minister, in the prescribed manner—

(a) identify activities which may not be commenced without prior authorisation from the Minister or MEC;

(b) identify geographical areas in which specified activities may not be commenced without prior authorisation from the Minister or MEC and specify such activities;

(c) make regulations in accordance with subsections (3) and (4) in respect of such authorisations;

(d) identify existing authorised and permitted activities which must be considered, assessed, evaluated and reported on; and

(e) prepare compilations of information and maps that specify the attributes of the environment in particular geographical areas, including the sensitivity, extent, interrelationship and significance of such attributes which must be taken into account by every organ of state charged by law with authorising, permitting or otherwise allowing the implementation of a new activity, or with considering, assessing and evaluating an existing activity:

Provided that where authorisation for an activity falls under the jurisdiction of another Minister, a decision in respect of paragraph (a) or (b) must be taken in consultation with such other Minister.

(3) (a) The investigation, assessment and communication of the potential impact of activities contemplated in subsection (1) must take place in accordance with procedures complying with subsection (7).

(b) Every Minister and MEC responsible for an organ of state that is charged by law with authorising, permitting, or otherwise allowing an activity contemplated in subsection (1) may prescribe regulations laying down the procedures to be followed and the report to be prepared for the purpose of compliance with paragraph (a).

(c) Any regulations made in terms of this subsection or any other law that contemplates the assessment of the potential environmental impact of activities must, notwithstanding any other law, comply with subsection (7).

(d) This section does not affect the validity of any law contemplated in paragraph (c) that is in force at the commencement of this Act, including the provisions and regulations referred to in section 50 (2): Provided that paragraph (a) must nevertheless be complied with.

(4) Before any regulations are prescribed under this section or any other law that contemplates the assessment of the potential environmental impact of activities, and notwithstanding such other law—

(a) a Minister or MEC must submit a draft of such regulations to the Committee;

(b) the Committee must within 30 days of the receipt of such draft regulations—

(i) determine whether the draft regulations would bring about a duplication of effort by persons initiating activities contemplated in subsection (1) in the investigation and assessment of the potential impacts of activities that require authorisation or permission from more than one organ of state; and

(ii) approve the draft regulations unless they would bring about such a duplication of effort; or

(iii) specify amendments to be made to such draft regulations in order to avoid such a duplication of effort;

(c) a Minister or MEC must—

(i) where such draft regulations have been approved by the Committee, follow the procedure prescribed in section 47; or

(ii) give effect to the amendments specified by the Committee, and thereafter follow the procedure prescribed in section 47.

(5) Compliance with the procedure laid down by a Minister or MEC does not remove the need to obtain authorisation for that activity from any other organ of state charged by law with authorising, permitting or otherwise allowing the implementation of the activity.

(6) The Minister may make regulations in accordance with subsections (3) and (4) stipulating the procedure to be followed and the report to be prepared in investigating, assessing and communicating potential impacts for the purpose of complying with subsection (1) where—

(a) the activity will affect the interest of more than one province or traverse international boundaries;

(b) the activity will affect compliance with obligations resting on the Republic under customary or conventional international law; or

(c) an activity contemplated in subsection (1) is not dealt with in regulations made under subsection (3).

(7) Procedures for the investigation, assessment and communication of the potential impact of activities must, as a minimum, ensure the following:

(a) Investigation of the environment likely to be significantly affected by the proposed activity and alternatives thereto;

(b) investigation of the potential impact, including cumulative effects, of the activity and its alternatives on the environment, socioeconomic conditions and cultural heritage, and assessment of the significance of that potential impact;

(c) investigation of mitigation measures to keep adverse impacts to a minimum, as well as the option of not implementing the activity;

(d) public information and participation, independent review and conflict resolution in all phases of the investigation and assessment of impacts;

(e) reporting on gaps in knowledge, the adequacy of predictive methods and underlying assumptions, and uncertainties encountered in compiling the required information;

(f) investigation and formulation of arrangements for the monitoring and management of impacts, and the assessment of the effectiveness of such arrangements after their implementation;

(g) coordination and cooperation between organs of state in the consideration of assessments where an activity falls under the jurisdiction of more than one organ of state;

(h) that the findings and recommendations flowing from such investigation, and the general objectives of integrated environmental management laid down in this Act and the principles of environmental management set out in section 2 are taken into account in any decision made by an organ of state in relation to the proposed policy, programme, plan or project; and

(i) that environmental attributes identified in the compilation of information and maps as contemplated in subsection (2) (e) are considered.

CHAPTER 6
INTERNATIONAL OBLIGATIONS AND AGREEMENTS

25. Incorporation of international environmental instruments.—(1) Where the Republic is not yet bound by an international environmental instrument, the Minister may make a recommendation to Cabinet and Parliament regarding accession to and ratification of an international environmental instrument, which may deal with the following:

a. Available resources to ensure implementation;
b. views of interested and affected parties;
c. benefits to the Republic;
d. disadvantages to the Republic;
e. the estimated date when the instrument is to come into effect;
f. the estimated date when the instrument will become binding on the Republic;
g. the minimum number of states required to sign the instrument in order for it to come into effect;
h. the respective responsibilities of all national departments involved;
i. the potential impact of accession on national parties;

j. reservations to be made, if any; and
k. any other matter which in the opinion of the Minister is relevant.

(2) Where the Republic is a party to an international environmental instrument the Minister, after compliance with the provisions of section 231 (2) and (3) of the Constitution, may publish the provisions of the international environmental instrument in the Gazette and any amendment or addition to such instrument.

(3) The Minister may introduce legislation in Parliament or make such regulations as may be necessary for giving effect to an international environmental instrument to which the Republic is a party, and such legislation and regulations may deal with inter alia the following—

a. the coordination of the implementation of the instrument;
b. the allocation of responsibilities in terms of the instrument, including those of other organs of state;
c. the gathering of information, including for the purposes of compiling and updating reports required in terms of the instrument and for submission to Parliament;
d. the dissemination of information related to the instrument and reports from international meetings;
e. initiatives and steps regarding research, education, training, awareness raising and capacity building;
f. ensuring public participation;
g. implementation of and compliance with the provisions of the instrument, including the creation of offences and the prescription of penalties where applicable; and
h. any other matter necessary to give effect to the instrument.

(4) The Minister may prior to a recommendation referred to in subsection (1), publish a notice in the Gazette, stating his or her intention to make such recommendation and inviting written comments.

26. Reports.—(1) The Minister must report to Parliament once a year regarding international environmental instruments for which he or she is responsible and such report may include details on—

a. participation in international meetings concerning international environmental instruments;
b. progress in implementing international environmental instruments to which the Republic is a party;
c. preparations undertaken in respect of international instruments to which the Republic is likely to become a party;
d. initiatives and negotiations within the region of Southern Africa;
e. the efficacy of coordination mechanisms; and
f. legislative measures that have been taken and the time frames within which it is envisaged that their objectives will be achieved.

(2) (a) The Minister must initiate an Annual Performance Report on Sustainable Development to meet the government´s commitment to Agenda 21.

(b) (i) The Annual Performance Report must cover all relevant activities of all national departments and spheres of government.

(ii) All relevant organs of state must provide information to the Minister by a date to be determined by the Minister for the purposes of the report referred to in paragraph (a) and this may consist of an assembly of information compiled for other purposes.

(c) The Minister may appoint persons as he or she considers necessary to act as a Secretariat to ensure preparation of the report.

(d) The purpose of the report shall be to—

(i) provide an audit and a report of the government´s performance in respect of Agenda 21;

(ii) review procedures for coordinating policies and budgets to meet the objectives of Agenda 21; and

(iii) review progress on a public educational programme to support the objectives of Agenda 21.

27. Application.—(1) This Chapter applies to any international environmental instrument whether the Republic became a party to it before or after the coming into force of this Act.

(2) The provisions of any international environmental instrument published in accordance with this section are evidence of the contents of the international environmental instrument in any proceedings or matter in which the provisions of the instrument come into question.

CHAPTER 7
COMPLIANCE, ENFORCEMENT AND PROTECTION

Part 1: Environmental hazards

28. Duty of care and remediation of environmental damage.—(1) Every person who causes, has caused or may cause significant pollution or degradation of the environment must take reasonable measures to prevent such pollution or degradation from occurring, continuing or recurring, or, in so far as such harm to the environment is authorised by law or cannot reasonably be avoided or stopped, to minimise and rectify such pollution or degradation of the environment.

(2) Without limiting the generality of the duty in subsection (1), the persons on whom subsection (1) imposes an obligation to take reasonable measures, include an owner of land or premises, a person in control of land or premises or a person who has a right to use the land or premises on which or in which—

(a) any activity or process is or was performed or undertaken; or

(b) any other situation exists,
which causes, has caused or is likely to cause significant pollution or degradation of the environment.

(3) The measures required in terms of subsection (1) may include measures to—

a. investigate, assess and evaluate the impact on the environment;
b. inform and educate employees about the environmental risks of their work and the manner in which their tasks must be performed in order to avoid causing significant pollution or degradation of the environment;
c. cease, modify or control any act, activity or process causing the pollution or degradation;
d. contain or prevent the movement of pollutants or the causant of degradation;
e. eliminate any source of the pollution or degradation; or
f. remedy the effects of the pollution or degradation.

(4) The DirectorGeneral or a provincial head of department 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—

(a) investigate, evaluate and assess the impact of specific activities and report thereon;

(b) commence taking specific reasonable measures before a given date;

(c) diligently continue with those measures; and

(d) complete them before a specified reasonable date:

Provided that the DirectorGeneral or a provincial head of department 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.

(5) The DirectorGeneral or a provincial head of department, when considering any measure or time period envisaged in subsection (4), must have regard to the following:

(a) the principles set out in section 2;

(b) the provisions of any adopted environmental management plan or environmental implementation plan;

(c) the severity of any impact on the environment and the costs of the measures being considered;

(d) any measures proposed by the person on whom measures are to be imposed;

(e) the desirability of the State fulfilling its role as custodian holding the environment in public trust for the people;

(f) any other relevant factors.

(6) If a person required under this Act to undertake rehabilitation or other remedial work on the land of another, reasonably requires access to, use of or a limitation on use of that land in order to effect rehabilitation or remedial work, but is unable to acquire it on reasonable terms, the Minister may—

(a) expropriate the necessary rights in respect of that land for the benefit of the person undertaking the rehabilitation or remedial work, who will then be vested with the expropriated rights; and

(b) recover from the person for whose benefit the expropriation was effected all costs incurred.

(7) Should a person fail to comply, or inadequately comply, with a directive under subsection (4), the DirectorGeneral or provincial head of department may take reasonable measures to remedy the situation.

(8) Subject to subsection (9), the DirectorGeneral or provincial head of department may recover all costs incurred as a result of it acting under subsection (7) from any or all of the following persons—

(a) any person who is or was responsible for, or who directly or indirectly contributed to, the pollution or degradation or the potential pollution or degradation;

(b) the owner of the land at the time when the pollution or degradation or the potential for pollution or degradation occurred, or that owner´s successor in title;

(c) the person in control of the land or any person who has or had a right to use the land at the time when—

(i) the activity or the process is or was performed or undertaken; or

(ii) the situation came about; or

(d) any person who negligently failed to prevent—

(i) the activity or the process being performed or undertaken; or

(ii) the situation from coming about:

Provided that such person failed to take the measures required of him or her under subsection (1).

(9) The DirectorGeneral or provincial head of department 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).

(10) The costs claimed under subsections (6), (8) and (9) must be reasonable and may include, without being limited to, labour, administrative and overhead costs.

(11) If more than one person is liable under subsection (8), the liability must be apportioned among the persons concerned according to the degree to which each was responsible for the harm to the environment resulting from their respective failures to take the measures required under subsections (1) and (4).

(12) Any person may, after giving the DirectorGeneral or provincial head of department 30 days´ notice, apply to a competent court for an order directing the DirectorGeneral or any provincial head of department to take any of the steps listed in subsection (4) if the DirectorGeneral or provincial head of department fails to inform such person in writing that he or she has directed a person contemplated in subsection (8) to take one of those steps, and the provisions of section 32 (2) and (3) shall apply to such proceedings with the necessary changes.

(13) When considering any application in terms of subsection (12), the court must take into account the factors set out in subsection (5).

29. Protection of workers refusing to do environmentally hazardous work.—
(1) Notwithstanding the provisions of any other law, no person is civilly or criminally liable or may be dismissed, disciplined, prejudiced or harassed on account of having refused to perform any work if the person in good faith and reasonably believed at the time of the refusal that the performance of the work would result in an imminent and serious threat to the environment.

(2) An employee who has refused to perform work in terms of subsection (1) must as soon thereafter as is reasonably practicable notify the employer either personally or through a representative that he or she has refused to perform work and give the reason for the refusal.

(3) Subsection (1) applies whether or not the person refusing to work has used or exhausted any other applicable external or internal procedure or otherwise remedied the matter concerned.

(4) No person may advantage or promise to advantage any person for not exercising his or her right in terms of subsection (1).

(5) No person may threaten to take any action contemplated by subsection (1) against a person because that person has exercised or intends to exercise his or her right in terms of subsection (1).

30. Control of emergency incidents.—(1) In this section—

(a) "incident" means an unexpected sudden occurrence, including a major emission, fire or explosion leading to serious danger to the public or potentially serious pollution of or detriment to the environment, whether immediate or delayed;

(b) "responsible person" includes any person who—

(i) is responsible for the incident;

(ii) owns any hazardous substance involved in the incident; or

(iii) was in control of any hazardous substance involved in the incident at the time of the incident;

(c) "relevant authority" means—

(i) a municipality with jurisdiction over the area in which an incident occurs;

(ii) a provincial head of department or any other provincial official designated for that purpose by the MEC in a province in which an incident occurs;

(iii) the DirectorGeneral;

(iv) any other DirectorGeneral of a national department.

(2) Where this section authorises a relevant authority to take any steps, such steps may only be taken by—

(a) the person referred to in subsection (1) (c) (iv) if no steps have been taken by any of the other persons listed in subsection (1) (c);

(b) the person referred to in subsection (1) (c) (iii) if no steps have been taken by any of the persons listed in subsection (1) (c) (i) and (c) (ii);

(c) the person referred to in subsection (1) (c) (ii) if no steps have been taken by the person listed in subsection (1) (c) (i):

Provided that any relevant authority may nevertheless take such steps if it is necessary to do so in the circumstances and no other person referred to in subsection (1) (c) has yet taken such steps.

(3) The responsible person or, where the incident occurred in the course of that person´s employment, his or her employer must forthwith after knowledge of the incident, report through the most effective means reasonably available—

(a) the nature of the incident;

(b) any risks posed by the incident to public health, safety and property;

(c) the toxicity of substances or byproducts released by the incident; and

(d) any steps that should be taken in order to avoid or minimise the effects of the incident on public health and the environment to—

(i) the DirectorGeneral;

(ii) the South African Police Services and the relevant fire prevention service;

(iii) the relevant provincial head of department or municipality; and

(iv) all persons whose health may be affected by the incident.

(4) The responsible person or, where the incident occurred in the course of that person´s employment, his or her employer, must, as soon as reasonably practicable after knowledge of the incident—

(a) take all reasonable measures to contain and minimise the effects of the incident, including its effects on the environment and any risks posed by the incident to the health, safety and property of persons;

(b) undertake cleanup procedures;

(c) remedy the effects of the incident;

(d) assess the immediate and longterm effects of the incident on the environment and public health.

(5) The responsible person or, where the incident occurred in the course of that person´s employment, his or her employer, must, within 14 days of the incident, report to the DirectorGeneral, provincial head of department and municipality such information as is available to enable an initial evaluation of the incident, including—

(a) the nature of the incident;

(b) the substances involved and an estimation of the quantity released and their possible acute effect on persons and the environment and data needed to assess these effects;

(c) initial measures taken to minimise impacts;

(d) causes of the incident, whether direct or indirect, including equipment, technology, system, or management failure; and

(e) measures taken and to be taken to avoid a recurrence of such incident.

(6) A relevant authority may direct the responsible person to undertake specific measures within a specific time to fulfil his or her obligations under subsections (4) and (5): Provided that the relevant authority must, when considering any such measure or time period, have regard to the following:

(a) the principles set out in section 2;

(b) the severity of any impact on the environment as a result of the incident and the costs of the measures being considered;

(c) any measures already taken or proposed by the person on whom measures are to be imposed, if applicable;

(d) the desirability of the State fulfilling its role as custodian holding the environment in public trust for the people;

(e) any other relevant factors.

(7) A verbal directive must be confirmed in writing at the earliest opportunity, which must be within seven days.

(8) Should—

(a) the responsible person fail to comply, or inadequately comply with a directive under subsection (6);

(b) there be uncertainty as to who the responsible person is; or

(c) there be an immediate risk of serious danger to the public or potentially serious detriment to the environment,
a relevant authority may take the measures it considers necessary to—

(i) contain and minimise the effects of the incident;

(ii) undertake cleanup procedures; and

(iii) remedy the effects of the incident.

(9) A relevant authority may claim reimbursement of all reasonable costs incurred by it in terms of subsection (8) from every responsible person jointly and severally.

(10) A relevant authority which has taken steps under subsections (6) or (8) must, as soon as reasonably practicable, prepare comprehensive reports on the incident, which reports must be made available through the most effective means reasonably available to—

(a) the public;

(b) the DirectorGeneral;

(c) the South African Police Services and the relevant fire prevention service;

(d) the relevant provincial head of department or municipality; and

(e) all persons who may be affected by the incident.

Part 2: Information, enforcement and compliance

31. Access to environmental information and protection of whistleblowers.—
(1) Access to information held by the State is governed by the statute contemplated under section 32 (2) of the Constitution: Provided that pending the promulgation of such statute, the following provisions shall apply:

a. every person is entitled to have access to information held by the State and organs of state which relates to the implementation of this Act and any other law affecting the environment, and to the state of the environment and actual and future threats to the environment, including any emissions to water, air or

soil and the production, handling, transportation, treatment, storage and disposal of hazardous waste and substances;

b. organs of state are entitled to have access to information relating to the state of the environment and actual and future threats to the environment, including any emissions to water, air or soil and the production, handling, transportation, treatment, storage and disposal of hazardous waste held by any person where that information is necessary to enable such organs of state to carry out their duties in terms of the provisions of this Act or any other law concerned with the protection of the environment or the use of natural resources;

c. a request for information contemplated in paragraph (a) can be refused only:
    i. if the request is manifestly unreasonable or formulated in too general a manner;
    ii. if the public order or national security would be negatively affected by the supply of the information; or
    iii. for the reasonable protection of commercially confidential information;
    iv. if the granting of information endangers or further endangers the protection of the environment; and
    v. for the reasonable protection of personal privacy.

(2) Subject to subsection (3), the Minister may make regulations regarding access by members of the public to privately held information relating to the implementation of this Act and any other law concerned with the protection of the environment and may to this end prescribe the manner in which such information must be kept: Provided that such regulations are reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom.

(3) The Minister must take into account—

a. the principles set out in section 2;
b. the provisions of subsection (1) (c);
c. the provisions of international law and foreign law; and
d. any other relevant considerations.

(4) Notwithstanding the provisions of any other law, no person is civilly or criminally liable or may be dismissed, disciplined, prejudiced or harassed on account of having disclosed any information, if the person in good faith reasonably believed at the time of the disclosure that he or she was disclosing evidence of an environmental risk and the disclosure was made in accordance with subsection (5).

(5) Subsection (4) applies only if the person concerned—

a. disclosed the information concerned to—
    i. a committee of Parliament or of a provincial legislature;
    ii. an organ of state responsible for protecting any aspect of the environment or emergency services;
    iii. the Public Protector;
    iv. the Human Rights Commission;
    v. any attorneygeneral or his or her successor;
    vi. more than one of the bodies or persons referred to in subparagraphs (i) to (v);

b. disclosed the information concerned to one or more news media and on clear and convincing grounds believed at the time of the disclosure—
    i. that the disclosure was necessary to avert an imminent and serious threat to the environment, to ensure that the threat to the environment was properly and timeously investigated or to protect himself or herself against serious or irreparable harm from reprisals; or
    ii. giving due weight to the importance of open, accountable and participatory administration, that the public interest in disclosure of the information clearly outweighed any need for nondisclosure;
c. disclosed the information concerned substantially in accordance with any applicable external or internal procedure, other than the procedure contemplated in paragraph (a) or (b), for reporting or otherwise remedying the matter concerned; or
d. disclosed information which, before the time of the disclosure of the information, had become available to the public, whether in the Republic or elsewhere.

(6) Subsection (4) applies whether or not the person disclosing the information concerned has used or exhausted any other applicable external or internal procedure to report or otherwise remedy the matter concerned.

(7) No person may advantage or promise to advantage any person for not exercising his or her right in terms of subsection (4).

(8) No person may threaten to take any action contemplated by subsection (4) against a person because that person has exercised or intends to exercise his or her right in terms of subsection (4).

32. Legal standing to enforce environmental laws.—(1) Any person or group of persons may seek appropriate relief in respect of any breach or threatened breach of any provision of this Act, including a principle contained in Chapter 1, or any other statutory provision concerned with the protection of the environment or the use of natural resources—

a. in that person´s or group of person´s own interest;
b. in the interest of, or on behalf of, a person who is, for practical reasons, unable to institute such proceedings;
c. in the interest of or on behalf of a group or class of persons whose interests are affected;
d. in the public interest; and
e. in the interest of protecting the environment.

(2) A court may decide not to award costs against a person who, or group of persons which, fails to secure the relief sought in respect of any breach or threatened breach of any provision including a principle of this Act or any other statutory provision concerned with the protection of the environment or the use of natural resources if the court is of the opinion that the person or group of persons acted reasonably out of a concern for the public interest or in the interest of protecting the environment and had made due efforts to use other means reasonably available for obtaining the relief sought.

(3) Where a person or group of persons secures the relief sought in respect of any breach or threatened breach of any provision of this Act or any other statutory provision concerned with the protection of the environment, a court may on application—

a. award costs on an appropriate scale to any person or persons entitled to practice as advocate or attorney in the Republic who provided free legal assistance or representation to such person or group in the preparation for or conduct of the proceedings; and
b. order that the party against whom the relief is granted pay to the person or group concerned any reasonable costs incurred by such person or group in the investigation of the matter and its preparation for the proceedings.

33. Private prosecution.—(1) Any person may—

a. in the public interest; or
b. in the interest of the protection of the environment,
institute and conduct a prosecution in respect of any breach or threatened breach of any duty, other than a public duty resting on an organ of state, in any national or provincial legislation or municipal bylaw, or any regulation, licence, permission or authorisation issued in terms of such legislation, where that duty is concerned with the protection of the environment and the breach of that duty is an offence.

(2) The provisions of sections 9 to 17 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977) applicable to a prosecution instituted and conducted under section 8 of that Act must apply to a prosecution instituted and conducted under subsection (1): Provided that if—

a. the person prosecuting privately does so through a person entitled to practice as an advocate or an attorney in the Republic;
b. the person prosecuting privately has given written notice to the appropriate public prosecutor that he or she intends to do so; and
c. the public prosecutor has not, within 28 days of receipt of such notice, stated in writing that he or she intends to prosecute the alleged offence,
    i. the person prosecuting privately shall not be required to produce a certificate issued by the AttorneyGeneral stating that he or she has refused to prosecute the accused; and
    ii. the person prosecuting privately shall not be required to provide security for such action.

(3) The court may order a person convicted upon a private prosecution brought under subsection (1) to pay the costs and expenses of the prosecution, including the costs of any appeal against such conviction or any sentence.

(4) The accused may be granted an order for costs against the person prosecuting privately, if the charge against the accused is dismissed or the accused is acquitted or a decision in favour of the accused is given on appeal and the court finds either:

a. that the person instituting and conducting the private prosecution did not act out of a concern for the public interest or the protection of the environment; or
b. that such prosecution was unfounded, trivial or vexatious.

(5) When a private prosecution is instituted in accordance with the provisions of this Act, the AttorneyGeneral is barred from prosecuting except with the leave of the court concerned.

34. Criminal proceedings.—(1) Whenever any person is convicted of an offence under any provision listed in Schedule 3 and it appears that such person has by that offence caused loss or damage to any organ of state or other person, including the cost incurred or likely to be incurred by an organ of state in rehabilitating the environment or preventing damage to the environment, the court may in the same proceedings at the written request of the Minister or other organ of state or other person concerned, and in the presence of the convicted person, inquire summarily and without pleadings into the amount of the loss or damage so caused.

(2) Upon proof of such amount, the court may give judgment therefor in favour of the organ of state or other person concerned against the convicted person, and such judgment shall be of the same force and effect and be executable in the same manner as if it had been given in a civil action duly instituted before a competent court.

(3) Whenever any person is convicted of an offence under any provision listed in Schedule 3 the court convicting such person may summarily enquire into and assess the monetary value of any advantage gained or likely to be gained by such person in consequence of that offence, and, in addition to any other punishment imposed in respect of that offence, the court may order the award of damages or compensation or a fine equal to the amount so assessed.

(4) Whenever any person is convicted of an offence under any provision listed in Schedule 3 the court convicting such person may, upon application by the public prosecutor or another organ of state, order such person to pay the reasonable costs incurred by the public prosecutor and the organ of state concerned in the investigation and prosecution of the offence.

(5) Whenever any manager, agent or employee does or omits to do an act which it had been his or her task to do or to refrain from doing on behalf of the employer and which would be an offence under any provision listed in Schedule 3 for the employer to do or omit to do, and the act or omission of the manager, agent or employee occurred because the employer failed to take all reasonable steps to prevent the act or omission in question, then the employer shall be guilty of the said offence and, save that no penalty other than a fine may be imposed if a conviction is based on this subsection, liable on conviction to the penalty specified in the relevant law, including an order under subsections (2), (3) and (4), and proof of such act or omission by a manager, agent or employee shall constitute prima facie evidence that the employer is guilty under this subsection.

(6) Whenever any manager, agent or employee does or omits to do an act which it had been his or her task to do or to refrain from doing on behalf of the employer and which would be an offence under any provision listed in Schedule 3 for the employer

to do or omit to do, he or she shall be liable to be convicted and sentenced in respect thereof as if he or she were the employer.

(7) Any person who is or was a director of a firm at the time of the commission by that firm of an offence under any provision listed in Schedule 3 shall himself or herself be guilty of the said offence and liable on conviction to the penalty specified in the relevant law, including an order under subsection (2), (3) and (4), if the offence in question resulted from the failure of the director to take all reasonable steps that were necessary under the circumstances to prevent the commission of the offence: Provided that proof of the said offence by the firm shall constitute prima facie evidence that the director is guilty under this subsection.

(8) Any such manager, agent, employee or director may be so convicted and sentenced in addition to the employer or firm.

(9) In subsection (7) and (8)—

(a) "firm" shall mean a body incorporated by or in terms of any law as well as a partnership; and

(b) "director" shall mean a member of the board, executive committee, or other managing body of a corporate body and, in the case of a close corporation, a member of that close corporation or in the case of a partnership, a member of that partnership.

(10) (a) The Minister may amend Part (a) of Schedule 3 by regulation.

(b) An MEC may amend Part (b) of Schedule 3 in respect of the province of his or her jurisdiction by regulation.

CHAPTER 8
ENVIRONMENTAL MANAGEMENT COOPERATION AGREEMENTS

35. Conclusion of agreements.—(1) The Minister and every MEC and municipality, may enter into environmental management cooperation agreements with any person or community for the purpose of promoting compliance with the principles laid down in this Act.

(2) Environmental management cooperation agreements must—

a. only be entered into with the agreement of—
    i. every organ of state which has jurisdiction over any activity to which such environmental management cooperation agreement relates;
    ii. the Minister and the MEC concerned;
b. only be entered into after compliance with such procedures for public participation as may be prescribed by the Minister; and
c. comply with such regulations as may be prescribed under section 45.

(3) Environmental management cooperation agreements may contain—

a. an undertaking by the person or community concerned to improve on the standards laid down by law for the protection of the environment which are applicable to the subject matter of the agreement;
b. a set of measurable targets for fulfilling the undertaking in (a), including dates for the achievement of such targets; and
c. provision for—
    i. periodic monitoring and reporting of performance against targets;
    ii. independent verification of reports;
    iii. regular independent monitoring and inspections;
    iv. verifiable indicators of compliance with any targets, norms and standards laid down in the agreement as well as any obligations laid down by law;
d. the measures to be taken in the event of noncompliance with commitments in the agreement, including where appropriate penalties for noncompliance and the provision of incentives to the person or community.

CHAPTER 9
ADMINISTRATION OF ACT

36. Expropriation.—(1) The Minister may purchase or, subject to compensation, expropriate any property for environmental or any other purpose under this Act, if that purpose is a public purpose or is in the public interest: Provided that the Minister must consult the Minister of Minerals and Energy before any mineral rights are expropriated.

(2) The Expropriation Act, 1975 (Act No. 63 of 1975) applies to all expropriations under this Act and any reference to the Minister of Public Works in that Act must be read as a reference to the Minister for purposes of such expropriation.

(3) Notwithstanding the provisions of subsection (2), the amount of compensation and the time and manner of payment must be determined in accordance with section 25 (3) of the Constitution, and the owner of the property in question must be given a hearing before any property is expropriated.

37. Reservation.—The Minister may reserve State land with the consent of the Minister authorised to dispose of the land, and after consultation with any other Minister concerned, for environmental or other purposes in terms of this Act, if that purpose is a public purpose or is in the public interest.

38. Intervention in litigation.—The Minister may intervene in litigation before a court in any matter under this Act.

39. Agreements.—The DirectorGeneral may enter into agreements with organs of state in order to fulfil his or her responsibilities.

40. Appointment of employees on contract.—(1) The DirectorGeneral may appoint employees on contract outside the provisions of the Public Service Act, 1994 (Proclamation No. 103 of 1994), when this is necessary to carry out the functions of the Department.

(2) The DirectorGeneral must, from time to time, and after consultation with the Department of Public Service and Administration, determine the conditions of employment of such employees.

(3) Such employees must be remunerated from money appropriated for that purpose by Parliament.

41. Assignment of powers.—(1) In this section "assignment" means an assignment as contemplated in section 99 of the Constitution.

(2) The Minister must record all assignments referred to in subsection (1) in a Schedule to this Act and may amend that Schedule.

42. Delegation.—(1) The Minister may delegate a power, function or duty vested in him or her to—

a. a named officer of the Department; or
b. the holder of an office in the Department or, after consultation with the relevant Minister or MEC, the holder of an office of any other national department, provincial administration or municipality.

(2) A delegation referred to in subsection (1)—

a. must be in writing;
b. may be made subject to conditions;
c. does not prevent the exercise of the power, function or duty by the Minister himself or herself; and
d. may be withdrawn by the Minister.

(3) The DirectorGeneral may delegate a power, function or duty vested in him or her by or under this Act to—

a. a named officer of the Department;
b. the holder of an office in the Department; or
c. after consultation with a provincial head of department, an officer in a provincial administration or municipality.

(4) The DirectorGeneral may permit a person to whom a power, function or duty has been delegated by the DirectorGeneral to delegate further that power, function or duty.

(5) A delegation referred to in subsection (3) and the permission referred to in subsection (4)—

a. must be in writing;
b. may be made subject to conditions;
c. does not prevent the exercise of the power, function or duty by the DirectorGeneral himself or herself; and
d. may be withdrawn by the DirectorGeneral.

43. Appeal to Minister.—(1) Any affected person may appeal to the Minister against a decision taken by any person acting under a power delegated by the Minister under this Act.

(2) An appeal under subsection (1) must be noted and must be dealt with in the manner prescribed.

44. Regulations in general.—(1) The Minister may make regulations—

(a) dealing with any matter which under this Act must be dealt with by regulation; and

(b) generally, to carry out the purposes and the provisions of this Act.

(2) The Minister may make different regulations under this Act in respect of different activities, provinces, geographical areas and owners or classes of owners of land.

(3) The Minister may by regulation provide that infringements of certain regulations constitute criminal offences and prescribe penalties for such offences.

45. Regulations for management cooperation agreements.—(1) The Minister may make regulations concerning—

a. procedures for the conclusion of environmental management cooperation agreements, which must include procedures for public participation;
b. the duration of agreements;
c. requirements relating to the furnishing of information;
d. general conditions and prohibitions;
e. reporting procedures;
f. monitoring and inspection.

(2) An MEC or municipal council may substitute his or her or its own regulations or bylaws, as the case may be, for the regulations issued by the Minister under subsection (1) above: Provided that such provincial regulations or municipal bylaws must cover the matters enumerated in subsection (1), and comply with the principles laid down in this Act.

46. Model environmental management bylaws.—(1) The Minister may make model bylaws aimed at establishing measures for the management of environmental impacts of any development within the jurisdiction of a municipality, which may be adopted by a municipality as municipal bylaws.

(2) Any municipality may request the DirectorGeneral to assist it with the preparation of bylaws on matters affecting the environment and the DirectorGeneral may not unreasonably refuse such a request.

(3) The DirectorGeneral may institute programmes to assist municipalities with the preparation of bylaws for the purposes of implementing this Act.

(4) The purpose of the model bylaws referred to in subsection (1) must be to—

(a) mitigate adverse environmental impacts;

(b) facilitate the implementation of decisions taken, and conditions imposed as a result of the authorisation of new activities and developments, or through the setting of norms and standards in respect of existing activities and developments; and

(c) ensure effective environmental management and conservation of resources and impacts within the jurisdiction of a municipality in cooperation with other organs of state.

(5) The model bylaws referred to in subsection (1) must include measures for environmental management, which may include—

(a) auditing, monitoring and ensuring compliance; and

(b) reporting requirements and the furnishing of information.

47. Procedure for making regulations.—(1) Before making any regulations under this Act, a Minister or MEC must—

(a) publish a notice in the relevant Gazette—

(i) setting out the draft regulations; and

(ii) inviting written comments to be submitted on the proposed regulations within a specified period mentioned in the notice; and

(b) consider all comments received in accordance with paragraph (a) (ii).

(2) The Minister must, within 30 days after promulgating and publishing any regulations under this Act, table the regulations in the National Assembly and the National Council of Provinces, and an MEC must so table the regulations in the relevant provincial legislature or, if Parliament or the provincial legislature is then not in session, within 30 days after the beginning of the next ensuing session of Parliament or the provincial legislature.

(3) In considering regulations—

(a) tabled in the National Assembly, a committee of the National Assembly must consider and report to the National Assembly;

(b) tabled in the National Council of Provinces, a committee of the National Council of Provinces must consider and report to the National Council of Provinces; and

(c) tabled in a provincial legislature, a committee of that provincial legislature must consider and report to the provincial legislature,
whether the regulations—

(i) are consistent with the purposes of this Act;

(ii) are within the powers conferred by this Act;

(iii) are consistent with the Constitution; and

(iv) create offences and prescribe penalties for such offences that are appropriate and acceptable.

(4) The National Council of Provinces may by resolution reject the regulations within 30 days after they have been tabled in the National Council of Provinces, and such rejection must be referred to the National Assembly for consideration.

(5) (a) The National Assembly, after considering any rejection of a regulation by the National Council of Provinces; and

(b) the relevant provincial legislature,
may by resolution within 60 days after they have been tabled disapprove of the regulations, and may suspend its disapproval for any period and on any conditions to allow the Minister or MEC to correct a defect.

(6) If the National Assembly or provincial legislature disapproves of any regulation, the regulation lapses, but without affecting—

(a) the validity of anything done in terms of the regulation before it lapsed; or

(b) a right or privilege acquired or an obligation or liability incurred before it lapsed.

CHAPTER 10
GENERAL AND TRANSITIONAL PROVISIONS

48. State bound.—This Act is binding on the State except in so far as any criminal liability is concerned.

49. Limitation of liability.—Neither the State nor any other person is liable for any damage or loss caused by—

(a) the exercise of any power or the performance of any duty under this Act; or

(b) the failure to exercise any power, or perform any function or duty under this Act,
unless the exercise of or failure to exercise the power, or performance or failure to perform the duty was unlawful, negligent or in bad faith.

50. Repeal of laws.—(1) Sections 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 14A, 14B, 14C, 15, 27A and 38 of the Environment Conservation Act, 1989 (Act No. 73 of 1989), are hereby repealed.

(2) Sections 21, 22 and 26 of the Environment Conservation Act, 1989 (Act No. 73 of 1989) and the notices and regulations issued pursuant to sections 21 and 22 and in force on the commencement date of this Act are repealed with effect from a date to be

published by the Minister in the Gazette, which date may not be earlier than the date on which regulations or notices made or issued under section 24 of this Act are promulgated and the Minister is satisfied that the regulations and notices under sections 21 and 22 have become redundant.

51. Savings.—Anything done or deemed to have been done under a provision repealed by this Act—

(a) remains valid to the extent that it is consistent with this Act until anything done under this Act overrides it; and

(b) subject to paragraph (a) is considered to be an action under the corresponding provision of this Act.

52. Short title.—This Act is called the National Environmental Management Act, 1998.

53. Commencement.—This Act comes into operation on a date fixed by the President in the *Gazette*.

Schedule 1
Section 11 (1)

National departments exercising functions which may affect the environment

- Department of Environmental Affairs and Tourism
- Department of Land Affairs
- Department of Agriculture
- Department of Housing
- Department of Trade and Industry
- Department of Water Affairs and Forestry
- Department of Transport
- Department of Defence

Schedule 2
Section 11 (2)

National departments exercising functions that involve the management of the environment

- Department of Environmental Affairs and Tourism
- Department of Water Affairs and Forestry
- Department of Minerals and Energy
- Department of Land Affairs
- Department of Health
- Department of Labour

Schedule 3
(Section 34)

Part (a): National Legislation

No. and year of law	*Short title*	*Relevant provisions*
Act No. 36 of 1947	Fertilizers, Farm Feeds, Agricultural Remedies and Stock Remedies	Section 18 (1) (l) in so far as it relates to contraventions of sections 7 and 7bis
Act No. 71 of 1962	Animal Protection	Sections 2 (1) and 2A
Act No. 45 of 1965	Atmospheric Pollution Prevention	Section 9
Act No. 15 of 1973	Hazardous Substances	Section 19 (1) (a) and (b) in so far as it relates to contraventions of sections 3 and 3A
Act No. 57 of 1976	National Parks	Section 24 (1) (b)
Act No. 63 of 1976	Mountain Catchment Areas	Section 14 in so far as it relates to contraventions of section 3
Act No. 63 of 1977	Health	Section 27
Act No. 73 of 1980	Dumping at Sea Control	Sections 2 (1) (a) and 2 (1) (b)
Act No. 6 of 1981	Marine Pollution (Control and Civil Liability)	Section 2 (1)
Act No. 43 of 1983	Conservation of Agricultural Resources	Sections 6 and 7
Act No. 2 of 1986	Marine Pollution (Prevention of Pollution from Ships)	Section 3A
Act No. 73 of 1989	Environment Conservation	Section 29 (2) (a) and (4)
Act No. 18 of 1998	Marine Living Resources	Section 58 (1) in so far as it relates to contraventions of sections 43 (2), 45, and 47, and section 58 (2) in so far as it relates to contraventions of international conservation and management measures
Act No. 36 of 1998	National Water	Section 151 (i) and (j)

Part (b): Provincial Legislation

No. and year of law	*Short title*	*Relevant provisions*
Ordinance No. 8 of 1969	Orange Free State Conservation	Section 40 (1) (a) in so far as it relates to contraventions of sections 2 (3), 14 (2), 15 (a), 16 (a) and 33

Ordinance No. 9 of 1969	Orange Free State Townships	Section 40 (1) (a) (ii)
Ordinance No. 15 of 1974	Natal Nature Conservation	Section 55 in so far as it relates to section 37 (1), to section 49 in respect of specially protected game and to section 51 in respect of specially protected game, section 109 in so far as it relates to section 101, to section 102 and to section 104, section 154 in so far as it relates to section 152; section 185 in so far as it relates to section 183, and section 208 in so far as it relates to section 194 and to section 200
Ordinance No. 19 of 1974	Cape Nature and Environmental Conservation	Section 86 (1) in so far as it relates to contraventions of sections 26, 41 (1) (b) (ii) and (c)(e), 52 (a), 57 (a), 58 (h) and 62 (1)
Ordinance No. 12 of 1983	Transvaal Nature Conservation	Sections 16A, 42, 84, 96 and 98
Ordinance No. 15 of 1985	Cape Land Use Planning	Section 46 (1) in so far as it relates to sections 23 (1) and 39 (2)
Ordinance No. 15 of 1986	Transvaal Town Planning and Townships	Sections 42, 93 and 115
Act No. 5 of 1998	KwaZulu Natal Planning and Development	Section 48
Act No. 29 of 1992	KwaZulu Nature Conservation	Section 67 in so far as it relates to sections 59 (1), 59 (2), 60 (1) and 62 (1); section 86 in so far as it relates to sections 76, 77 and 82; and section 110 in so far as it relates to section 109