

DEPARTMENT OF ENVIRONMENTAL AFFAIRS AND TOURISM

DRAFT NATIONAL ENVIRONMENTAL MANAGEMENT BILL

1. In terms of section 154(2) of the Constitution of the Republic of South Africa, 1996 (Act No 108 of 1996), the draft Bill in the Schedule is hereby published for public comment.

2. Any comment in this regard should be addressed to:

The Acting Director-General
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or

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3. Comments may also be faxed to facsimile number (012) 3222682 or (021) 4182582 or e-mailed to deatlaw@sfri.wcape.gov.za

4. Comments must be received by 28 July 1998.

F HANEKOM
ACTING DIRECTOR-GENERAL

DRAFT NATIONAL ENVIRONMENTAL MANAGEMENT BILL

SCHEDULE

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

WHEREAS many inhabitants of South Africa live in an environment that is harmful to their health and well-being;

WHEREAS everyone has the right to an environment that is not harmful to his or her health or well-being;

WHEREAS 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;

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

AND WHEREAS it is desirable -

- that the law should promote certainty with regard to decision-making 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 establish procedures and institutions to facilitate and promote co-operative government and intergovernmental relations;
- that the law should facilitate the enforcement of environmental laws by civil society;

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

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Definitions

1. (1) In this Act, unless the context requires otherwise:

"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.

"Committee" means the Committee for Environmental Co-ordination referred to in section 8;

"Commission" means the Commission on Sustainable Development referred to in section 7;

"Commercially confidential information" means commercial information, the disclosure of which would prejudice to an unreasonable degree the commercial interests of the holder: Provided that emission levels and waste products shall not be considered to be commercially confidential notwithstanding any other law;

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

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

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

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

"Ecosystem" means a system made up of a group of living organisms, the relationship between them and their physical environment;

"Environment" means the aggregate or any component of the plants, living organisms other than humans, land, water and atmosphere of the earth and the interrelationship that exists among and between the foregoing, and includes their physical and aesthetic properties that influence the health and well-being of humans;

"Environmental implementation plan" means an implementation plan referred to in section 12;

"Environmental management plan" means a management plan referred to in section 12;

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

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

"MEC" means a Member of the Executive Council in a province responsible for performing functions in terms of this Act;

"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-

- a. any department of State or administration in the national, provincial or municipal sphere of government; or
- b. any other functionary or institution exercising a public power or performing a public function under any legislation, excluding a court or judicial officer;

"Owner" has its common law meaning and also includes-

- a. a lessee or other person who legally controls the land in question,
- b. in relation to State land, the Director-General of the government department or the member of the executive council of the provincial administration exercising control over that State land or a person authorised by him or her; and
- c. in relation to a community, the executive body of the community under its constitution or any law or custom, and
- d. in relation to a municipality, the chief executive officer of the municipality or a person authorised by him or her;

"Person" includes a juristic person;

"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", when used in relation to development, indicates development that:

- a. does not reduce the availability of renewable resources to future generations; and
- b. minimises the rate of depletion of a non-renewable resource;

"This Act" includes the regulations and any notice issued under the Act;

(2) Words derived from the word 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.

CHAPTER 1

NATIONAL ENVIRONMENTAL POLICY

Principles

2. (1) The principles set out in this section apply throughout the Republic and-

- a. shall apply alongside other appropriate and relevant considerations to the actions of all organs of state affecting the environment;
- b. serve as the general framework within which environmental management and implementation plans shall be formulated;
- c. serve as guidelines by reference to which any organ of state shall 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 shall reach decisions; and
- e. guide the administration and implementation of this Act, and any other law concerned with the protection or management of the environment.

(2) (a) Development must be sustainable so that the needs of the present generation are met without compromising the ability of future generations to meet their own needs. This requires that:

- i. the disturbance of ecosystems, including all flora and fauna, is avoided, or, where it cannot be altogether avoided, is minimised or remedied;
- ii. pollution and degradation of the environment is avoided, or, where it cannot be altogether avoided, is minimised and remedied;
- iii. cultural heritage sites are respected and their disturbance is minimised and remedied where it cannot be altogether avoided;
- iv. waste is avoided, or where it cannot be altogether avoided, minimised and re-used or recycled where possible and otherwise disposed of in a responsible manner;
- v. the use and exploitation of non-renewable natural resources is responsible and equitable, and takes into account the consequences of the depletion of the resource;
- vi. the development, use and exploitation of renewable resources and the ecosystems of which they are part does not exceed the level beyond which their integrity is jeopardized;
- vii. a risk-averse and cautious approach is applied, which takes into account the limits of current knowledge about the consequences of decisions and actions;
- viii. negative impacts on the environment and on people's environmental rights be anticipated and prevented.

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

- (c) Environmental justice shall be pursued so that diverse 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 well-being 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 encouraged, and all people must have the opportunity to develop the understanding, skills and capacity necessary for achieving equitable and effective participation, and ensuring participation by vulnerable and disadvantaged persons.
- (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) The right of workers to refuse work that is harmful to human health or the environment must be respected.
- (i) The full social 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; and organs of state must take measures to achieve the progressive realisation of this principle.
- (j) Decisions must be taken in an open and transparent manner, and access to information must be provided in accordance with the law.
- (k) There must be intergovernmental co-ordination and harmonisation of policies, legislation and actions relating to the environment.
- (l) Actual or potential conflicts of interest between organs of state should be resolved through conflict resolution procedures.
- (m) Global and international responsibilities relating to the environment must be discharged in the national interest.
- (n) The environment is held in public trust for the people, and the use of environmental resources must serve the public interest and the environment must be protected as the people's common heritage.

CHAPTER 2

INSTITUTIONS

Part 1: National Environmental Forum

Establishment, objects and functions of the National Environmental Forum

3. (1) The Minister may establish a National Environmental Forum by notice in the Gazette for a period stipulated in that notice.
- (2) The object of the Forum shall be to inform the Minister of the views of interested and affected parties regarding the application of the principles set out in section 2 and the setting and achievement of objectives and priorities for environmental governance.
- (3) The Forum may, on its own initiative, draw the Minister's attention to any matter concerning environmental management requiring attention.

(4) The Minister shall consider the information provided by the Forum alongside other relevant considerations and respond as he or she considers appropriate.

Composition

4. (1) The Forum shall consist of at least five but not more than twenty members appointed by the Minister.

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

(3) Before persons contemplated in subsection (2) are appointed, the Minister shall-

- a. invite nominations from organised labour, organised business, non-governmental organisations and community-based organisations in a manner that he or she may consider appropriate, and invite nominations from interested and affected parties by notice in the *Gazette* and at least two nationally distributed newspapers, 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 the MEC's.

(4) The Minister shall appoint the chairperson of the Forum .

(5) (a) Each member of the Forum shall designate an alternate to take his or her place if she is unable to attend a meeting of the Forum or vacates his or her office;

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

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

Conditions of appointment to the Forum

5. (1) A member of the Forum holds office for the duration of the period for which the Forum was established or a period of two years, whichever is the shorter.

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

(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, 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 shall not take part in any discussion regarding such matter.

Functioning of the Forum

6. (1) The Minister may:-

(a) by regulation published in the *Gazette* lay down rules for the functioning of the Forum, including:-

- i. a constitution for the Forum; and
- ii. the manner and timing of reports by the Forum;

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

Part 2: Commission for Sustainable Development

Establishment, composition and functions of the Commission

7. (1) The Minister may, in consultation with the President and any Minister who administers legislation that affects the environment so designated by the President, establish a Commission for Sustainable Development to promote the principle of sustainable development.

(2) The Minister may, after consultation with the Ministers referred to in subsection (1) above, prescribe the following:

(a) the composition, nomination procedure and appointment of members of the Commission;

(b) the functions of the Commission, which may include:-

- i. the development, within a specified time frame, of a national development strategy which is economically, socially and environmentally sustainable;
- ii. establishment of sustainable development indicators;
- iii. education and communication;
- iv. identification of best practice and best technology; and
- v. development of multi-stakeholder approaches.

(c) the manner in which the Commission will assist reporting by the Republic to the international community on the state of the environment,

(d) meetings and procedures of the Commission, and the establishment of technical committees;

(e) conditions of appointment of members;

(f) staffing requirements;

(g) reporting procedures and requirements, including reporting to Parliament;

(h) funding mechanisms; and

(i) any other matter which in the opinion of the Minister is necessary to give effect to the establishment and operation of the Commission.

(3) A member of the Commission who is not in the full-time employment of the State may be paid from money appropriated by Parliament for that purpose such remuneration and allowances as the Minister may, with the concurrence of the Minister of Finance, determine either in general or in any particular case.

Part 3: Committee for Environmental Co-ordination

Establishment, objects and functions of the Committee

8. (1) The Committee for Environmental Co-ordination is hereby established.
- (2) The object of the Committee is to promote the integration and co-ordination 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 as set out in section 13.
- (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 16;
 - b. commenting on any proposed environmental management co-operation agreements submitted to it in accordance with section 37(2)(c);
 - c. investigating and making recommendations regarding the assignment and delegation of functions 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;
 - d. 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 co-ordinated consideration of such applications by the organs of state concerned;
 - e. co-ordinating the application of integrated environmental management as envisaged in chapter 5, including co-operation in environmental assessment procedures and requirements;
 - f. making recommendations aimed at securing compliance with the principles set out in section 2 and national norms and standards;
 - g. making recommendations regarding the harmonisation of the environmental functions of all relevant national departments and spheres of government.

Composition of the Committee

9. (1) The Committee shall be comprised of:
- a. the Director-General: Environmental Affairs and Tourism who shall act as chairperson;
 - b. the Director-General: Water Affairs and Forestry;
 - c. the Director-General: Minerals and Energy;
 - d. the Director-General: Land Affairs;
 - e. the Director-General: Constitutional Development;
 - f. the Director-General: Housing;
 - g. the provincial heads of department appointed by the Minister with the concurrence of the MEC;
 - h. any other Director-General appointed by the Minister with the concurrence of the Minister under whose portfolio that Department falls.
- (2) The Minister may in his or her discretion, invite organisations, institutions and persons to the Committee to provide additional or specific information in order to assist the Committee in carrying out its functions.
- (3) In making the appointments as contemplated in subsection (2), the Minister shall give due consideration to representation by the local sphere of government.
- (4) Every member of the Committee referred to in subsection (1), shall appoint an alternate member from his or her department or provincial administration: Provided that such alternate member shall not hold a rank lower than Chief Director
- (5) The replacement member appointed under subsection (4) shall act in such member's absence or inability to act as member of the Committee.

(6) A person referred to in subsection (2) and a member of a subcommittee referred to in section 10(4) who is not in the full-time employment of the State may be paid from money appropriated by Parliament for that purpose such remuneration and allowances as the Minister may, with the concurrence of the Minister of Finance, determine either in general or in a particular case.

Meetings of the Committee and sub-committees

10. (1) The Committee shall meet at least four times a year.

(2) The Director-General shall determine:

1. the procedure for convening meetings of the Committee;
2. the quorum for meetings;
3. procedures at meetings; and
4. records the Committee must keep.

(3) The Director-General shall furnish 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 sub-committees to assist the Committee in the performance of its functions, and such sub-committees may include persons who need not necessarily be members of the Committee.

Report of the Committee

11. (1) The Committee shall present an annual report on its activities to the Minister on the following:

- a. the work of the Committee;
- b. comments submitted to the Director-General on the environmental implementation and management plans received ;
- c. comments made in respect of proposed environmental management co-operation agreements;
- d. recommendations made in respect of environmental implementation and management plans received;
- e. recommendations made in order to secure compliance with the principles set out in section 2 and national norms and standards; and
- f. any other matter relevant to the co-ordination of policies, plans and programmes that may affect the environment.

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

CHAPTER 3

PROCEDURES FOR CO-OPERATIVE GOVERNANCE

Environmental Implementation Plans and Management Plans

12. (1) Every national department that is listed in Schedule 1 as exercising functions which may affect the environment and every province shall 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 that is listed in Schedule 2 as exercising functions involving the management of the environment shall 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) 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 a period not exceeding twelve 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.

(5) The Director-General shall, at the request of a national department or province assist with the preparation of environmental implementation plans, and the Director-General may at the request of any provincial head of department assist a municipality to comply with the requirements referred to in section 14(2)(h).

(6) The preparation of environmental implementation plans and 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.

(7) Subject to sub-section (6), the Minister may issue guidelines to assist provinces and national departments in the preparation of environmental implementation and management plans.

Purpose and objectives of environmental implementation plans and management plans

13. (1) The purpose of environmental implementation plans and environmental management plans shall be to:-

(a) co-ordinate 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 co-operative 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 fulfilment of executive obligations aimed at the achievement, promotion, and protection of a sustainable environment so as to determine whether, and which, steps must be taken to ensure fulfilment of such obligations.

(2) The objective of environmental implementation and management plans shall be to describe how the relevant national department or province will ensure that its policies, plans, programmes and decisions that involve the management of the environment or that may affect the environment, and the exercise of its powers, will comply with the principles set out in section 2 and any relevant national norms and standards set by the Minister, or by any other Minister, which have as their objective the achievement, promotion and protection of a sustainable environment, and in particular how the relevant national department or province will facilitate intergovernmental relations by way of procedures, negotiations and agreements such as memoranda of understanding

Content of environmental implementation plans

14. (1) Every environmental implementation plan shall contain:

- a. A description of policies, plans and programmes that may 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 set by the Minister, or by any other Minister, which have as their objective the achievement, promotion, and protection of a sustainable 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 the principles set out in section 2 and any national norms and standards set by the Minister, or by any other Minister, which have as their objective the achievement, promotion, and protection of a sustainable environment.

(2) The Minister may, after consultation with the Committee, make regulations for the purpose of giving effect to subsections (1)(b) and (c) and shall consider for inclusion, requirements regarding the following:

- a. the extent of current compliance in the area under the jurisdiction of the relevant national department or province;
- b. the reasons for any current non-compliance;
- c. priorities in respect of compliance with a view to securing human health and well-being and sustainable development;
- d. substantive and procedural steps to be taken to ensure compliance;
- e. arrangements for co-operation with other national departments and spheres of government, including any existing and proposed memoranda of understanding entered into, or delegations or assignments of powers, with a bearing on environmental management;
- f. any limitations on the capacity of the relevant national department or province to secure compliance, and the steps which have been, or will be, taken to lessen or eliminate those limitations;
- g. the nature and extent of public participation in the formulation of the environmental implementation plan;
- h. in the case of a plan prepared by a province, the manner in which municipalities are required to adhere to 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; and
- i. proposals for the promotion of the objectives and plans for the implementation of the procedures and regulations referred to in chapter 5.

Content of environmental management plans

15. Every environmental management plan shall contain:

- (1) A description of the functions exercised by the relevant department in respect of the environment;
- (2) A description of environmental norms and standards set or applied by the relevant department;
- (3) 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;
- (4) A description of priorities regarding compliance with the relevant department's policies by other organs of state and persons;
- (5) A description of the extent of compliance with the relevant department's policies by other organs of state and persons;
- (6) A description of arrangements for co-operation with other national departments and spheres of government, including any existing or proposed memoranda of understanding entered into, or delegations or assignments of powers to other organs of state, with a bearing on environmental management; and
- (7) Proposals for the promotion of the objectives and plans for the implementation of the procedures and regulations referred to in chapter 5.

Submission of environmental implementation and management plans and scrutiny of environmental implementation plans

16. (1) Every environmental implementation plan and every environmental management plan shall be submitted to the Committee by a date to be set by the Minister.

(2) The Committee shall:-

(a) scrutinise every environmental implementation plan and report to the Minister as well as every other Minister responsible for a department which is represented on the Committee and every Provincial Premier on the extent to which the environmental implementation plan concerned:-

- i. complies with the Principles in Chapter 1 of this Act;
- ii. complies with the purpose and objectives of environmental implementation plans;
- iii. complies with every relevant environmental management plan; and
- iv. make recommendations to the Minister regarding changes needed in the environmental implementation plan concerned.

(3) Upon receipt of such comment the Minister may, if an environmental implementation plan fails to comply with the purpose and objectives set out in section 13, refer it back to the relevant national department or province, indicating in which respects amendment is needed.

(4) Any dispute between the Minister and a national department or province regarding either a failure to submit or the content of an environmental implementation plan shall, if it cannot be resolved by agreement between the parties concerned, be referred by the Minister to conciliation in accordance with Chapter 4 and if such conciliation fails:-

- a. the Minister shall refer a dispute between himself or herself and another national department for determination by a majority of the Ministers responsible for the departments listed in Schedule 2; or
- b. the Minister shall draw up an environmental implementation plan for the province concerned.

Compliance with environmental implementation and management plans

17. (1) Environmental implementation plans and environmental management plans shall be binding in accordance with subsection (2) below: Provided that:-

- a. Non-compliance with such a plan shall not affect the validity of anything done in the exercise of such a function; and
- b. Such plans shall be enforced only as provided for in subsection (3).

(2) (a) Every organ of state shall exercise every function it may have, or that has been assigned or delegated to it, by or under any law, and which may affect the protection of the environment, in accordance with the environmental implementation plan or the environmental management plan prepared and submitted by that organ of state in accordance with this chapter;

(b) Every organ of state shall, 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 management plan already submitted with a view to achieving consistency among such plans;

(c) Every organ of state which has not submitted an environmental implementation plan or management plan shall consider every environmental implementation plan and management plan when exercising any function it may have or that has been assigned or delegated to it by or under any law.

(3) The Director-General shall ensure that environmental implementation plans and environmental management plans are complied with by every organ of state, 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 in pursuance 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 being complied with, serve a written notice on the organ of state concerned, calling on it to take such specified steps as the Director-General considers necessary to remedy the failure of compliance.

(4) (a) Within 14 days of the receipt of such notice, an organ of state may request the Minister to refer any dispute between itself and the Director-General regarding compliance with an environmental implementation plan, or the steps necessary to remedy a failure of compliance, to conciliation in accordance with Chapter 4;

(b) Where an organ of state does not submit any dispute to conciliation in accordance with paragraph (a), or conciliation fails to resolve the dispute, the Director-General may:

- 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;
- 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;
- iii. where the organ of state belongs to the national sphere of government refer the matter for determination by a majority of the Ministers responsible for the departments listed in Schedule 2.

(5) Each provincial government shall ensure that the relevant provincial environmental implementation plan is complied with by each municipality within its province and for this purpose the provisions of subsections (3) and (4) shall apply with the necessary changes.

(6) The Director-General shall keep a record of all environmental implementation plans, management plans and relevant agreements between organs of state, and such plans and agreements shall be available for inspection by the public.

CHAPTER 4

FAIR DECISION-MAKING AND CONFLICT MANAGEMENT

Consultation

18. (1) Every organ of state when exercising a function which may affect the environment, shall, before reaching a decision which affects a right or interest of any person, give adequate opportunity to interested and affected persons, including other organs of state, to inform it of their relevant interests, needs and values relating to the environment: Provided that an organ of state may, if urgent action is necessary for the protection of the environment, make its decision and give such opportunity to inform as soon thereafter as is reasonable.

(2) 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.

Reference to conciliation

19. (1) Any organ of state shall, where a dispute arises concerning the exercise of any of its functions which may affect the environment, before reaching a decision consider the desirability of first referring the dispute to conciliation and:-

- a. shall if it considers conciliation appropriate either refer the dispute to the Director-General for conciliation under this Act or appoint a conciliator on the conditions that it may determine, or
- b. If it considers conciliation inappropriate or if conciliation has failed, make its decision.

(2) Any Minister, MEC or Municipal Council before whom an appeal is brought under any law shall before reaching a decision consider the desirability of first referring any dispute regarding the protection of the environment to conciliation and:-

- a. shall if it considers conciliation appropriate either refer the dispute to the Director-General for conciliation under this act or appoint a conciliator on the conditions that he or she may determine; or
- b. if it considers conciliation inappropriate or if conciliation has failed, make its decision.

(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 Director-General in terms of this Act and suspend the proceedings pending the outcome of the conciliation.

(4) Anyone may request the Minister to appoint a facilitator to call and conduct meetings of interested and affected parties with the purpose of reaching agreement to refer a dispute to conciliation in terms of this Act, and the Minister may in his or her sole discretion appoint a facilitator and determine the manner in which the facilitator shall carry out his or her tasks.

Conciliation

20. (1) Where a dispute has been referred to conciliation in terms of this Act, the Director-General may, on the conditions that he or she may determine, appoint a conciliator acceptable to the parties to assist in resolving the dispute: Provided that if the parties to the dispute do not reach agreement on the person to be appointed, the Director-General 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 shall attempt to resolve the dispute:-

- a. by obtaining such information whether documentary or oral as is relevant to the resolution of the dispute;
- b. by mediating and settling the dispute;
- c. by making recommendations to the parties to the dispute; 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 shall take into account the principles contained in section 2.

(4) A conciliator shall keep or cause to be kept, whether in writing or by mechanical or electronic means, a permanent record of the proceedings relating to the conciliation of a complaint: Provided that he or she may on his or her own accord or, at the request of any party, not keep such record.

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

(6) (a) The conciliator shall submit a report to the Director-General and the parties, 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 shall contain his or her recommendations and reasons therefor.

(c) where relevant the report shall contain the conciliator's comments on the conduct of the parties.

(7) The Director-General 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.

Arbitration

21. Parties to a dispute concerning the protection of the environment who refer the dispute to arbitration in terms of the Arbitration Act, 1965 (Act No. 42 of 1965) may appoint as arbitrator a person from the panel of arbitrators established in terms of this Act.

Investigation

22. The Minister may at any time appoint one or more persons to assist him or her or a local authority 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 resolving the complaint and to that end:-

- a. The Minister by notice in the Gazette may invest such person or persons with 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 shall be reduced to writing.
- c. The Director-General shall 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 administrative 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.

Remuneration and appointment of Panel

23. (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, mediation, arbitration or investigation services, who are not in the full-time employment of the State.

(2) The Minister may create a panel of persons from which appointment of facilitators, mediators 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 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).

Relevant considerations

24. Decisions under this Act concerning the reference of a dispute 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, shall be made taking into account:-

- a. The desirability of resolving disputes speedily and cheaply;
- b. The desirability of giving indigent parties access to dispute resolution measures in the interest of the protection of the environment; and
- c. Such other considerations relating to the public interest as may be relevant.

CHAPTER 5

INTEGRATED ENVIRONMENTAL MANAGEMENT

General objectives

25. (1) The purpose of this Chapter is to promote the application of appropriate environmental management tools in order to ensure integrated environmental management of policies, programmes, plans and projects.

(2) The general objective of integrated environmental management shall be to:-

- a. ensure 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 biophysical, social and other relevant environmental effects, the risks and consequences and alternatives and options for mitigation of policies, programmes, plans and projects, with a view to minimising negative impacts on the environment, maximising benefits, and promoting compliance with the principles of environmental management set out in section 2;
- c. ensure that the effects on the environment of policies, programmes, plans and projects receive adequate consideration before actions are taken in connection with them; and
- d. ensure adequate and appropriate opportunity for public participation in decisions that may affect the environment.

(3) The Director-General shall assist organs of state to co-operate in giving effect to the objectives of this section and such assistance may include training, the publication of manuals and guidelines and

the co-ordination of procedures.

Implementation of Integrated Environmental Management

26. (1) In order to give effect to the general objectives of integrated environmental management laid down in this Chapter, the potential environmental impact of policies, programmes, plans and projects that may significantly affect the environment, must be investigated and assessed prior to their implementation and communicated to the organ of state charged by law with authorising, permitting, or otherwise allowing the implementation of the policy, programme, plan or project referred to in this section as the "activity".

(2) Every Minister and MEC responsible for such organ of state may by notice in the *Gazette* or *Provincial Gazette* make regulations laying down the procedure to be followed in investigating, assessing and communicating potential environmental impacts for the purpose of complying with subsection (1).

(3) Where an activity falls under the jurisdiction of more than one organ of state, any regulations made under subsection (2) must provide measures for a single procedure to be followed by a person initiating a policy, programme, plan or project.

(4) The Minister may with the concurrence of the MEC, and every MEC may with the concurrence of the Minister, by notice in the *Gazette* or *Provincial Gazette*:-

- a. identify activities which may not be commenced in that Province without prior authorisation from the Minister or MEC ;
- b. identify geographical areas in that Province in which specified activities may not be commenced without prior authorisation from the Minister or MEC and specify such activities; and
- c. make regulations in accordance with subsections (2) and (3) in respect of such authorisations.

(5) Compliance with the procedure laid down by one Minister or MEC shall 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 stipulating the procedure to be followed where:-

- a. the activity will affect the interest of more than one province or traverse international boundaries; or
- b. the activity will affect compliance with obligations resting on the Republic under customary or conventional international law; or the activity will involve the development or upgrading of any nuclear power stations or other nuclear reactors, or installations for the production, enrichment, reprocessing and disposal of nuclear fuels and wastes, and such regulations shall, notwithstanding the above, prevail in the event of a conflict with regulations laid down by any other Minister or by any MEC.

(7) The regulations referred to in sub-section (2) must provide, as a minimum, procedures for:-

- a. investigation of the environment likely to be significantly affected by the proposed activity and alternatives thereto;
- b. investigation of the potential environmental impact, including cumulative impacts and effects on cultural heritage and socio-economic conditions, of the proposed activity and alternatives thereto as well as an estimation of the significance of the impact;
- c. investigation of mitigation measures to keep adverse environmental impacts to a minimum, as well as the option of not implementing the policy, programme, plan or project;
- d. conflict resolution, independent review and public participation in all phases of the environmental assessment process;
- 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 environmental impacts, and the assessment of the effectiveness of such arrangements after their implementation;
- g. co-ordination and co-operation between organs of state in the consideration of assessments

- where an activity falls under the jurisdiction of more than one organ of state; and
- h. ensuring 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 that sensitive environments identified in a provincial environmental management framework are protected against negative environmental impacts.

CHAPTER 6

INTERNATIONAL OBLIGATIONS AND AGREEMENTS

International Meetings

27. (1) Subject to the provisions of the Constitution, the Minister may after consultation with the Department of Foreign Affairs and other relevant government departments, participate in international meetings pertaining to international environmental instruments and matters related thereto.

(2) Without detracting from the powers of the Minister, the Minister may, after consultation with the Department of Foreign Affairs and other relevant government departments, authorise an officer from the Department, or such other person as the Minister may deem suitable, to participate in meetings concerning international environmental instruments as part of the government delegation.

Incorporation of International Environmental Instruments

28. (1) Where the Republic is not a party to an international environmental instrument, the Minister may make a recommendation to Cabinet and Parliament regarding accession to an international environmental instrument, which shall 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 government departments involved;
- i. reservations to be made, if any; and
- j. 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 shall, after compliance with the procedures set out in section 231(2) and (3) of the Constitution, publish the provisions of the international environmental instrument in the Gazette and any amendment or addition to such instrument.

(3) The Minister may make such regulations as may be necessary for giving effect to an international environmental instrument to which the Republic is a party regarding:-

- a. the co-ordination 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 where applicable; and
- h. any other matter necessary to give effect to the instrument.

Report

29. The Minister shall report to Parliament once a year regarding international environmental instruments which will 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 co-ordination mechanisms; and
- f. legislative measures that have been taken and the time frames within which it is envisaged that their objectives will be achieved.

Application

30. (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 the provisions set out in this section shall be evidence of the contents of the international environmental instrument in any proceedings or matter in which the provisions of the instrument came into question.

CHAPTER 7

COMPLIANCE AND ENFORCEMENT

Legal standing to enforce environmental laws

31. (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 sustainable 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 sustainable 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 the interest of the protection of the environment and that no other means had been reasonably available for obtaining the relief sought.

(3) A court may award costs in favour of a person who, or group of persons which, secures 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 sustainable use of natural resources, notwithstanding that the person or group of persons received free legal representation or other financial assistance for the conduct of the case, if the court is of the opinion that the person or group acted out of a concern for the public interest or the interest of the environment.

Access to environmental information

32. (1) Every person shall have access to information held by 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 land and the disposal and storage of hazardous waste;

(2) Organs of state shall 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 land and the disposal and storage of hazardous waste held by any person where that information is necessary to enable them 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 sustainable use of natural resources.

(3) A request for information contemplated in subsection (1) can be refused only:

- a. if the request is manifestly unreasonable or formulated in too general a manner;
- b. if the public order or national security would be affected by the supply of the information; or
- c. for the reasonable protection of commercially confidential information; and
- d. the granting of information endangers or further endangers any species.

(4) 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 and may to this end prescribe the manner in which such information shall be kept: Provided that such regulations are reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom.

(5) In the event of a request for information being refused, the person so refusing shall be obliged to furnish written reasons for the refusal.

Private prosecution

33. (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 by-law, 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 8 to 17 of the Criminal Procedure Act, 1977 (Act 51 of 1977) applicable to a prosecution instituted and conducted under section 8 of that Act shall apply to a prosecution instituted and conducted under subsection (1), provided that if-

1. the person prosecuting privately does so through a person entitled to practise as an advocate or an attorney in the Republic;
2. the person prosecuting privately has given written notice to the appropriate public prosecutor that he or she intends to do so; and
3. 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 Attorney-General 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, if the court is of the opinion that the person instituting and conducting the private prosecution acted out of a concern for the public interest or the protection of the environment.

(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 or vexatious.

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

Criminal proceedings

34. (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, 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 shall give judgement therefor in favour of the organ of state or other person concerned against the convicted person, and such judgement 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 of any person (in this subsection hereafter called the employer) does or omits to do any act which would be an offence under any provision listed in Schedule 3 for the employer to do or omit to do, and 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 paragraph (c) of this sub-section, liable on conviction to the penalty specified in the relevant law, including an order under subsection (3), 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 has task to do or 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 (3), if-

- a. the director connived in the commission of the offence; or
- b. the director failed to take all reasonable steps to prevent the commission of the offence:
Provided that the issuing of instructions by the director forbidding any act or omission constituting the offence in question shall not, by itself, be sufficient to this end, and proof of the said offence by the firm shall constitute *prima facie* evidence that the director is guilty under this sub-section.

(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 notice in the Gazette.

(b) An MEC may amend part (b) and part (c) of Schedule 3 in respect of the province of his or her jurisdiction by notice in the Provincial Gazette.

Duty of care and remediation of environmental damage

35. (1) Every person who knows or may reasonably suspect that his or her act or omission may harm the environment shall, in the absence of the specific authorisation of that act or omission by law, refrain from such act in so far as this can reasonably be demanded of him or her, and take every possible reasonable measure to prevent harm to the environment from occurring, continuing or recurring, or, in so far as harm to the environment is authorised by law or cannot reasonably be avoided or stopped, to minimise and rectify any harm to the environment.

(2) Without limiting the generality of the duty in subsection (1), the persons on whom subsection (1) imposes an obligation to take measures that may reasonably be demanded, includes 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 pollution or degradation of the environment.

(3) The measures required in terms of subsection (1) shall include measures to-

- a. cease, modify or control any act, activity or process causing the pollution or degradation;
- b. contain or prevent the movement of pollutants or causant of degradation;
- c. eliminate any source of the pollution or degradation; or
- d. remedy the effects of the pollution or degradation.

(4) The Director-General or a provincial head of department may, after consultation with any other organ of state concerned direct any person who fails to take the measures required under subsection (1) to-

- a. commence taking specific measures before a given date, which measures and date the Director-General or provincial head of department considers reasonable;
- b. diligently continue with those measures; and
- c. complete them before a given date which the Director-General or provincial head of department considers reasonable.

(5) 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.

(6) Should a person fail to comply, or inadequately comply, with a directive under subsection (4), the Director-General or provincial head of department may take the measures he or she considers necessary to remedy the situation.

(7) Subject to subsection (8), the Director-General or provincial head of department may recover all costs incurred as a result of it acting under subsection (6) 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 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 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. (d) any person who negligently failed to prevent-
 - a. the activity or the process being performed or undertaken; or
 - ii. the situation from coming about.

(8) The Director-General or provincial head of department may in respect of the recovery of costs under subsection (6), claim proportionally from any other person who, in the opinion of the Director-General concerned, benefited from the measures undertaken under subsection (5).

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

(10) If more than one person is liable under subsection (6), the liability may be apportioned among the persons concerned according to the degree to which each was at fault, where relevant.

(11) The Minister may prescribe the criteria to be applied in determining the extent of liability of any person under subsections (6) and (7).

(12) Any person may, after giving the Director-General or provincial head of department 30 days' notice, apply to a competent court for an order directing any of the persons specified in subsection (6) to take any of the steps listed in subsection 3 if the Director-General or provincial head of department fails to inform such person in writing that he has directed the person to take one of those steps, and may recover the cost of such proceedings in accordance with section 33(3) of this Act.

Control of emergency incidents

36. (1) In this section "incident" means an unexpected sudden occurrence, including a major emission, fire or explosion leading to serious danger to the public or potentially serious detriment to the environment, whether immediate or delayed.

(2) In this section "responsible person" includes any person who-

- a. is responsible for the incident;
- b. owns any substance involved in the incident; or
- c. was in control of the substance involved in the incident at the time of the incident.

(3) The responsible person or, where the incident occurred in the course of that person's employment, or his or her employer or any other person involved in the incident must forthwith after knowledge of the incident, report-

- 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 by products 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 Department;
 - ii. the South African Police Services or the relevant fire prevention service;
 - iii. the relevant provincial head of department or municipality; and
 - iv. all persons who may be affected by the incident, through the most effective means reasonably available.

(4) The responsible person or any other person involved in the incident 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 clean-up procedures;
- c. remedy the effects of the incident;
- d. assess the immediate and long-term effects of the incident on the environment and public health;
- e. within 14 days of the incident report to the Director-General, provincial head of department and municipality such information as is available to enable an initial evaluation of the incident including-
 - i. the nature of the incident;
 - ii. 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;
 - iii. initial measures taken to minimise impacts;
 - iv. causes of the incident whether direct or indirect, and including equipment, technology, system, and/or management failure; and
 - v. measures taken and to be taken to avoid a recurrence of such incident.

(5) Any Director-General, provincial head of department or municipality may direct the responsible person to undertake specific measures within a specific time to fulfil his or her obligations under subsection (4).

(6) A verbal directive must be confirmed in writing within 7 days.

(7) Should-

- a. the responsible person fail to comply, or inadequately comply with a directive under subsection (5);
- 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, any Director-General, provincial head of department or municipality may take the measures it considers necessary to:
 - i. contain and minimize the effects of the incident;
 - ii. undertake clean-up procedures; and
 - iii. remedy the effects of the incident.

(8) Any Director-General, provincial head of department or municipality may claim reimbursement of all reasonable costs incurred by it in terms of subsection (7) from every responsible person jointly and severally.

(9) The relevant Director-General, provincial head of department or municipality shall, as soon as reasonably practicable, prepare comprehensive reports on the incident, which reports shall be made available to-

- a. the public-
- b. the Department;
- c. the South African Police Services or 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, through the most effective means reasonably available.

CHAPTER 8

ENVIRONMENTAL MANAGEMENT CO-OPERATION AGREEMENTS

Conclusion of Environmental Management Co-operation Agreements

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

(2) No environmental management co-operation agreement shall be valid without:-

- a. the agreement of every organ of state which has jurisdiction over any activity or geographical area to which such environmental management co-operation agreement relates;
- b. compliance with such procedures for public participation as the Minister may prescribe by regulation;
- c. prior submission to the Committee;
- d. an undertaking to exceed existing legal standards for the protection of the environment;
- e. a set of measurable targets for fulfilling the undertaking in (d), including dates for the achievement of such targets and
- f. provision for -
 - i. reporting;
 - ii. independent auditing 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;
 - v. the consequences of a breach of the agreement.

CHAPTER 9

ADMINISTRATION OF THE ACT

Expropriation of property

38. (1) 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 shall consult the Minister of Minerals and Energy before any mineral rights are expropriated.

(2) The Expropriation Act, 1975 (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 land in question must be given a hearing before any right in land is expropriated.

Reservation of State land for environmental purposes

39. The Minister may reserve State land with the consent of the Minister of Public Works, and after consultation with any other Minister concerned, for environmental or other purposes under this Act, if that purpose is a public purpose or is in the public interest.

Intervention in litigation

40. The Minister may intervene in litigation before a court in any matter under this Act.

Agreements with other organs of state

41. The Director-General may enter into agreements with organs of state in order to fulfil his or her responsibilities.

Appointment of employees on contract

42. The Director-General 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.

Assignment of powers

43. (1) In this section "assignment" means an assignment 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.

Delegation

44. (1) The Minister may delegate a power, function or duty vested in him or her other than a power referred to in Chapter 2 to-

- a. a named officer of the department;
- 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;
- c. municipality.

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

- a. must be in writing;
- b. may be made subject to conditions;
- c. must specify the period of time for which it endures;
- d. does not prevent the exercise of the power, function or duty by the Minister himself or herself; and
- e. may be withdrawn by the Minister.

(3) The Minister may give a directive to the Director-General in relation to the exercise of any of the Director-General's powers, or the performance of any of the Director-General's functions or duties, including any power, function or duty delegated to the Director-General.

(4) The Director-General must give effect to such a directive.

(5) The Director-General 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; or
- 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.

(6) The Director-General may permit a person to whom a power, function or duty has been delegated to delegate further that power, function or duty.

(7) A delegation referred to in subsection (1) and the permission referred to in subsection (6)-

- a. must be in writing;
- b. may be made subject to conditions;
- c. must specify the period of time for which it endures;
- d. does not prevent the exercise of the power, function or duty by the Director-General himself or herself; and
- e. may be withdrawn by the Director-General.

Appeal to the Minister and conciliation

45. (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 or section 238 of the Constitution.

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

(3) The Minister may-

- a. before proceeding to hear an appeal under this section; or

- b. at the request of any person aggrieved by any administrative action purportedly performed under this Act, refer the dispute to conciliation in accordance with Chapter 4 to attempt to resolve the dispute.

Regulations in general

46. (1) The Minister may make regulations-

1. 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.

Regulations for environmental management co-operation agreements

47. (1) The Minister may make regulations concerning-

- a. procedures for the conclusion of environmental management co-operation agreements, which must include 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;
- g. indicators of compliance with any norms and standards laid down in the Agreement as well as any obligations laid down by law; and
- h. compliance mechanisms, including, where appropriate, penalties for non-compliance and the provision of incentives.

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

Model environmental management by-laws

48. (1) The Minister may make model by-laws aimed at establishing environmental management systems applicable to any project within the jurisdiction of a municipality, which may be adopted by a municipality as municipal by-laws.

(2) Any municipality may request the Director-General to assist it with the preparation of by-laws on matters affecting the environment and the Director-General shall not unreasonably refuse such a request.

(3) The Director-General may institute programmes to assist municipalities with the preparation of by-laws for the purposes of implementing this Act.

(4) The purpose of the model by-laws referred to in subsection (1) shall 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 co-operation with other organs of state.

(5) The model by-laws referred to in subsection (1) shall include measures for environmental

management, which may include-

- a. auditing, monitoring and ensuring compliance;
- b. reporting requirements and the furnishing of information; and
- c. pollution and waste management, and energy and resource conservation.

Procedure for making regulations

49. (1) Before making any regulations under this Act, the Minister must-

- a. publish a notice in the *Gazette*-
 - i. setting out the draft regulations; and
 - ii. inviting written comments to be submitted on the proposed regulations within the specified period mentioned in the notice; and
- b. consider all comments received.

(2) The Minister must, within 30 days after publishing any regulations under this Act, table the regulations in Parliament, or, if Parliament is then not in session, within 30 days after the beginning of the next ensuing session of Parliament.

(3) Parliament must determine whether the regulations are

- a. consistent with the purposes of this Act;
- b. within the powers conferred by this Act; and
- c. consistent with the Constitution.

(4) Parliament may accept or disapprove the regulations within 30 days after they have been tabled under subsection (2).

(5) If Parliament by resolution disapproves of any regulation, the regulation lapses, but without affecting -

- a. the validity of anything done in terms of the regulation before it lapsed;
- b. a right or privilege acquired or an obligation or liability incurred before it lapsed.

(6) If Parliament disapproves of any regulation, it must state its reasons.

(7) The Minister must repeal or amend any regulation within 30 days after being informed in writing that Parliament has rejected it.

CHAPTER 10

GENERAL AND TRANSITIONAL PROVISIONS

State bound

50. This Act is binding on the State.

Limitation of liability

51. 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.

Repeal of laws

52. (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 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 *Government Gazette*, which date may not be earlier than the date on which regulations made by or with the concurrence of the Minister under section 26(2) and 26(4) of this Act are promulgated.

Savings

53. 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.

Short title

54. This Act is called the National Environmental Management Act, 1998.

Commencement

55. This Act comes into operation on a date fixed by the President in the Government Gazette.

SCHEDULE 1

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 Defense

SCHEDULE 2

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

(a) National

National Environmental Management Act, 1998 (Act No. of 1998)
Environment Conservation Act 73 of 1989 (section 29(4))
National Parks Act 57 of 1976 (section 21(1)(c))
Conservation of Agricultural Resources Act 43 of 1983 (section 7(6))
Atmospheric Pollution Prevention Act 45 of 1965 (section 9(2))
Hazardous Substances Act 15 of 1973 (section 19(1) and section 20(5))
Dumping at Sea Control Act 73 of 1980 (sections 2(1)(a) and 2(1)(b))
Marine Pollution (Control and Civil Liability) Act 6 of 1981 (section 2(1))
Marine Pollution (Prevention of Pollution from Ships) Act 2 of 1986 (section 3A)
Health Act 63 of 1977 (section 57)
Marine Living Resources Act 18 of 1988 (section 39(5) and section 58)
Animal Protection Act 71 of 1962 (section 2 (10) and section 2A)

Fertilisers, Farm Feeds, Agricultural Remedies and Stock Remedies Act 36 of 1947 (section 18 (1))
Advertising on Roads and Ribbon Development Act 21 of 1940 (section 8 and section 15)
Mountain Catchment Areas Act of 63 of 1976 (section 14(6))

(b) Provincial

Cape Nature and Environmental Conservation Ordinance 19 of 1974 (section 85 and section 86)
Cape Land Use Planning Ordinance 15 of 1985 (section 43(1))
Kwazulu Natal Planning and Development Act, 1998 (Act No 5 of 1998)
Natal Nature Conservation Ordinance 15 of 1974 (sections 15(1)(c) and (d); section 55; section 76(1a); section 90; section 130 (1)(a); section 152; section 182; section 183 and section 208)
Natal Prevention of Environmental Pollution Ordinance 21 of 1981 (section 6)
Regulations under Natal Ordinance 21/1981 - Provincial Notice Number 115/1982 dd.11 March 1982
Natal Town Planning Ordinance 27 of 1949 (section 77(b) and (c))
Transvaal Nature Conservation Ordinance 12 of 1983 (section 77 and section 84)
Transvaal Town Planning and Townships Ordinance 15 of 1986 (section 134)
Orange Free State Conservation Ordinance 8 of 1969 (section 40(1)(c) and (d))
Orange Free State Prohibition of the Dumping of Rubbish Ordinance 8 of 1876 (section 4(1)(a) and (b))
Orange Free State Townships Ordinance 9 of 1969 (section 41(1)(a)(ii))
Transkei Nature Conservation Act 1971 (section 33(1)(a); (b) and (l))
Ciskei Nature Conservation Act 10 of 1987

(c) Municipal By-Laws

MEMORANDUM ON THE OBJECTS OF THE NATIONAL ENVIRONMENTAL MANAGEMENT BILL

General background and overview

1. The Bill seeks to give effect to the management policy laid down in the White Paper on Environmental Management Policy approved by Cabinet.
2. The most important feature of the White Paper on Environmental Management Policy is its emphasis on the principle of co-operative governance to ensure that the environmental rights in the Constitution are protected and fulfilled. The Bill employs a number of instruments to promote and give effect to co-operative governance as envisaged in section 41(2) of the Constitution.
3. The role of the Department of Environmental Affairs and Tourism as lead agent in exercising government's custodianship of the environment must be effective and compatible with the constitutional allocation of powers. The Bill therefore acknowledges both primary policy and decision making roles for specialised sectoral national Departments, and the limits on national environmental management flowing from the constitutional allocation of powers.

Chapter by chapter analysis

4. Following the customary definitions clause, the Bill starts off in Chapter I by declaring the principles to be adhered to by all spheres of government in managing the environment. For example, it is stated that natural and cultural resources shall be managed and utilised on a sustainable basis for the benefit of current and future generations. Another principle declares that public participation in decision-making affecting the environment shall be promoted and facilitated. These principles are derived from the White Paper and were developed in the Consultative National Environmental Policy Process (CONNEPP).
5. Chapter 2 introduces the institutions the Bill seeks to establish, and sets out the usual provisions relating to institutions, such as their composition, conditions for appointment, meetings, funding, staff etc. Foremost among the bodies to be established are the National Environmental Forum, the Commission on Sustainable Development and the Committee for Environmental Co-ordination. The rationale for the creation of the Forum is to place at the disposal of the Minister of Environmental Affairs and Tourism a forum comprising of a well-balanced mixture of representatives which shall inform the Minister of the views of interested and affected parties. The principal role of the Committee is to manage the fragmented performance of environmental functions by various government departments at both the horizontal and vertical levels of government, in order to promote and ensure integration and co-ordination regarding the implementation of environmental policies by government. The

mechanism for such co-ordination is to be found in the environmental implementation plans referred to below. Provision is also made for investigating and establishing a single point in each province for handing in applications for authorizations and licences, and the co-ordinated consideration of applications by all organs of state. It is further proposed that a Commission for Sustainable Development may be established to promote the principle of sustainable development and to assist in reporting to the international community on the state of the environment.

6. Chapter 3 deals with distribution and sharing of functions between national government departments and provincial departments. Instruments for co-ordination and alignment of functions proposed will be by means of environmental implementation plans and management plans. The purpose of these will be to spell out how various departments will ensure that their policies, plans and programmes and the exercise of their powers that may affect the environment, will comply with the principles and national norms and standards that have as their object the protection of the environment. Environmental implementation plans and management plans are binding, and provision is made for compliance by all spheres of government, namely national, provincial and local, and other organs of state.

These instruments will make it possible to give effect to the White Paper's vision of the Department of Environmental Affairs and Tourism as an environmental lead agent which respects the functional responsibilities of the national Departments and the constitutional powers of provinces. They will be mechanisms through which the overlapping responsibilities of different national Departments and the various spheres of government can be dealt with in a co-operative manner that reflects the need for both flexibility and predictability. The handling of any disagreements with Provinces and local authorities, and between national departments are dealt with in compliance with the Constitution. The chapter further makes it possible to phase in compliance with the provision for environmental implementation plans and management plans in order to accommodate capacity constraints in government. There shall be guidelines for, and assistance with, the preparation of plans and they may form part of other planning processes.

7. Chapter 4 provides for a system of conflict management and fair decision making by providing for a clear procedure which, while facilitating the use of conciliation, arbitration, mediation, investigation, and public access to such procedures, leaves the final decision in the hands of the province or department to whom a function was entrusted by law, subject, of course, to the normal recourse to the Courts. It is proposed that the Director-General may appoint a conciliator acceptable to the parties to a dispute to resolve a dispute, for example by mediating, by fact-finding, or by making a recommendation to the parties.

8. Chapter 5 deals with the topic of environmental assessment and integrated environmental management. The main object is to integrate principles of environmental management into the planning and development process and to identify, predict and evaluate the effects which policies, programmes, proposals or projects may have on the environment. The Bill here seeks to create a system that complies with the constitutional allocation of powers and current line Ministry responsibility by making it possible for provinces and other Departments to conduct assessment system within their areas of jurisdiction and to co-operate where appropriate. The proliferation of environmental assessment procedures where activities fall under the jurisdiction of more than one organ of state is prevented and the protection of sensitive environments is secured. Recognition is given to the development and phased introduction into law of integrated environmental management procedures. Assistance to other organs of state to achieve the objectives of integrated environmental management, includes training, the development of manuals and guidelines, and the coordination of procedure. In the interest of certainty and effectiveness this chapter lays down minimum requirements with which all integrated environmental systems must comply.

9. Chapter 6 (International Obligations and Agreements) sets out a procedure for giving effect to international agreements to which the Republic is a party and where necessary the enactment of an agreement into law by national legislation.

10. In Chapter 7 "Compliance and Enforcement" is addressed. The Bill seeks to broaden the legal standing requirement (*locus standi*) along the lines of section 38 of the Constitution so that any person may approach a competent court for relief in respect of any breach or threatened breach of any provision of law concerned with the protection of the environment or the utilisation of natural resources. The Bill further provides for private criminal prosecutions by any person acting in the public interest or in the interest of the environment. The Courts are authorised to make appropriate cost orders. In addition provision is made for the rehabilitation and remediation of environmental damage and control of emergency incidents.

11. Chapter 8 provides that the Minister and every provincial government and local authority may enter into environmental management co-operation agreements with any person or community for the purpose of promoting compliance with the principles laid down in the Bill. To be valid, such an agreement requires the concurrence of the level of government or other organ of state which is responsible for the activity or geographical area affected by the agreement. The Chapter also lays down what the contents of an agreement must be.

12. Chapter 9, under the heading "Administration of Act", contains various powers or duties of the Minister or Director-General, for example expropriation of property, reservation of State land for environmental purposes, agreements with other organs of state, delegations, the making of regulations, etc.

13. The last Chapter (Chapter 10) sets out "General and transitional provisions", including repeal of laws; savings, short title and commencement. As far as repeals are concerned, the Bill seeks to replace the greater part of the Environment Conservation Act, 1989 (Act 73 of 1989). After its partial repeal, this Act will chiefly only provide for various kinds of protected area and aspects of waste management.

Effect on the provinces and local government

14. The Bill will have the following implications for the provinces and local government:

14.1 The authorities within provinces and local government that are charged with environment-related functions are required to observe and adhere to the principles set out in Chapter 1 (par. 4 above).

14.2 The Provincial Heads of Department dealing with environmental matters may be invited to be members of the Committee for Environmental Co-ordination (see par. 5 above, dealing with Chapter 2).

14.3 Provinces will be required to draw up environmental implementation plans (Chapter 3, see par. 6 above).

14.4 Provincial authorities will be required to adhere to minimum standards in developing integrated environmental management procedures (Chapter 5, par. 9 above).

14.5 Provincial governments and local authorities may take action in emergency incidents by directing the responsible person to undertake specific measures. If the person fails to comply, the authority concerned may itself take action and claim reimbursement of all reasonable costs from the responsible person. (Chapter 7, par. 11 above).

14.6 Provincial governments and local authorities may enter into environmental management co-operation agreements with any person or community for the purpose of promoting compliance with the principles laid down in the Bill (Chapter 8, par. 12 above).

14.7 The Director-General may enter into agreements with provincial departments and local authorities in order to fulfil his or her obligations (Clause 41).

14.8 Clause 44 provides that the Minister and the Director General may delegate functions to a provincial government or local authority.

14.9 Clause 48 requires the Minister to support local authorities by promulgating model by-laws which they may adopt.

Other departments/bodies consulted

15. All national departments and provincial governments were consulted. The following organisations were consulted:

- Congress of South African Trade Unions
- Chemical and Allied Industries Association
- South African National Civics Organisation

16. The Department of Environmental Affairs and Tourism and the State Law Advisors are of the

opinion that the Bill should be dealt with in accordance with section 76 of the Constitution, as it falls within a functional area listed in Schedule 4 to the Constitution, namely "Environment".
