PARLIAMENT OF THE PROVINCE OF THE WESTERN CAPE

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ANNOUNCEMENTS, TABLINGS AND COMMITTEE REPORTS

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FRIDAY, 9 OCTOBER 2020

COMMITTEE REPORTS

1. ***(Negotiating mandate stage)*** Report of the Standing Committee on Local Government on the Local Government: Municipal Structures Amendment Bill [B 19B–2018] (NCOP), dated 15 September 2020, as follows:

The Standing Committee on Local Government, having considered the subject of the Local Government: Municipal Structures Amendment Bill [B 19B–2018] (NCOP) referred to the Committee in accordance with Standing Rule 217, confers on the Western Cape's delegation in the NCOP the authority to support the Bill. The Committee further proposes the following amendments:

1. General legal comment

The Municipal Structures Amendment Bill [B 19–2018] (the initial Bill) was considered by the Portfolio Committee on Cooperative Governance and Traditional Affairs during 2018. The Committee, after its consideration of the initial Bill, proposed and agreed on certain changes to that Bill in the form of Bill [B19A- 2018] (the "A" Bill). The changes introduced in the "A" Bill have been incorporated into Bill [B 19B–2018] (the "B" Bill).

In the initial Bill, the long title provided for the introduction of a minimum of 15 councillors for municipal councils. An amendment to the long title of the initial Bill was not proposed or agreed to in the "A" Bill. The "B" Bill however reflects a change in the long title that now refers to a minimum number of 10 councillors in its long title.

It is submitted that this is problematic because the change in the long title of the "B" Bill is not an accurate reflection of what the Committee agreed on after its consideration of the initial Bill.

It is proposed that the procedural and substantive implications of the long title of the "B" Bill are considered.

2. General legal comment

Not all the consequential amendments have been effected. For example, section 63(3) of the principal Act refers to Schedule 1 of the Local Government: Municipal Systems Act, 2000. Clause 32 read with clause 33 repeals the Code and incorporates it into the principal Act. The reference in section 63(3) must therefore be deleted.

It is proposed that the amendment Bill is checked for any consequential amendments that may be required.

3. Definitions

3.1 Clause 1(a)

The Memorandum on the Objects of the Bill states that the purpose of the proposed definition of "declared elected" is to provide clarity. However, to fully clarify, it is proposed that the words "by the Electoral Commission" are included at the end of the proposed definition.

It is proposed that the words "by the Electoral Commission" are included at the end of the proposed definition.

3.2 Clause 1(e)

The insertion of the draft definition of "whip" necessitates a consequential amendment to the definition of "political officer bearer" in the Local Government: Municipal Systems Act, 2000.

It is proposed that the definition of "political office bearer" in section 1 of the Local Government: Municipal Systems Act, 2000, is amended to include a whip.

3.3 New Definitions

It is proposed that the Bill is amended by the insertion of the following new definitions:

" **'ordinary meeting'** means a meeting of the municipal council convened by the speaker;

'special meeting' means a meeting of the municipal council convened by the speaker in accordance with section 29(1) for the consideration of a particular matter;".

'urgent meeting' means a meeting of the municipal council convened by the speaker in accordance with section 29(1B);".

4. Clause 3:

Clause 3 of the amendment Bill proposes the deletion of the plenary system of governance.

This proposed amendment will restrict the possible governance structure options that a MEC may consider appropriate. It also removes the ability of a municipal council to revert to a plenary system by default if it decides not to exercise its election in terms of section 42(2) or 54(2). This is particularly pertinent in the case of coalition governments that may not agree on a particular system.

Paragraph 3.3 of the Memorandum on the Objects of the Bill offers the following explanation for the deletion of the plenary executive system:

a) A plenary executive system limits the exercise of executive authority to the full municipal council;

b) The municipal council takes all executive decisions regarding the business of the municipality and is also responsible, as a council, for the political guidance and leadership;

c) A municipal council that has a plenary executive system cannot delegate its executive responsibilities to any individual councillor or to any of its committees; and

d) In instances where a municipal council is very large or has many decisions to contemplate, the taking of decisions in plenary would result in a slow decision-making process.

Despite paragraph 3.3 of the Memorandum on the Objects of the Bill, the memorandum does not provide reasons for the proposed amendment. The first 3 points merely lists the characteristics of a plenary system and do not offer motivation for the proposed deletion of the system. It must be born in mind that the system is chosen because of its characteristics. The fourth point is a general statement which seemingly is made without considering the power of an MEC when the MEC establishes a municipality in terms of section 12 of the principal Act and the factors that the MEC takes into consideration at that point, for example, the size of the council. Also, the power of the MEC in terms of section 20(3)(b) where the MEC may decrease the number of councillors if it is necessary to achieve good and timely executive decisions. It is submitted that the policy basis for the deletion of the plenary executive system is lacking. Clarity is required on the rationale for this amendment.

The proposed amendment is not supported. It is proposed that the plenary system of Governance is retained.

5. Clause 4:

See comment under clause 3.

6. Clause 5:

See comment under clause 3.

7. Clause 7(d):

The requirement of the concurrence of the Minister to effect a deviation may lead to unnecessary disputes in the event that agreement is not reached between the Minister and a MEC. It will furthermore result in a delay in the finalisation of the determination of the number of councillors and subsequent inefficiency.

It is proposed that clause 7(d) is reconsidered and deleted. If it is retained, then it is proposed that express provision is made in the amendment Bill on how the consequences of an agreement not being reached between the Minister and a MEC is to be managed.

8. Clauses 9(b) and 10(c):

Given section 26(2) of the principal Act and the new proposed definition of "declared elected", it is submitted that the amendments proposed in clauses 9(b) and 10(c) are unnecessary.

It is proposed that clauses 9(b) and 10(c) are deleted.

9. Clause 12(a):

The Code of Conduct for Councillors is proposed for incorporation into the principal Act by the amendment proposed in clause 30. Without the concomitant deletion of Schedule 1 in the Local Government: Municipal Systems Act, 2000, the proposed amendment in clause 13(a) may lead to confusion.

10. Comment on section 29(1) of the principal Act:

Clarity is required on whether the majority of councillors referred to in section 29(1) of the principal Act means a majority of the members allocated to a municipality in terms of its establishment notice (section 12) or does it mean the majority of councillors in office at the time of the meeting. Further, section 30(2) also refers to a majority of. Clarity is also required on whether the same meaning ascribed to the expression "majority of councillors" in section 29(1) should be ascribed to section 30(2) and elsewhere in the principal Act

It is proposed that section 29(1) (councilors in office at the time) and 30(2) (as per the establishment notice) of the Principal Act is amended to provide clarity.

11. Clause 13

The new proposed amendment is supported in as far as it attempts to address the situation where a speaker or acting speaker refuses to call the meeting of the council as requested by a majority of the councillors in terms of section 29(1) of the principal Act. The proposed amendment is problematic for the following reasons:

11.1. The provision is confusing. It is understood that when the speaker refuses to call the meeting, the Municipal Manager can act. If the Municipal Manager is absent or refuses to do so, the MEC may then designate a person to act. The

action that either the Municipal Manager or the person designated by the MEC can take is to in turn, on a discretionary basis based on good cause, designate a further person to call and chair the meeting. This is one possible interpretation of the clause, but other interpretations are possible for example, that the Municipal Manager himself or herself calls and chairs the meeting and that it is only the person designated by the MEC who may designate a further person, on good cause, to call and chair the meeting. What the intention is, as set out in paragraph 3.10 of the Memorandum on the Objects of the Bill compared with the substantive content of the clause seems to be at odds with one another because paragraph 3.10 simply states that the person designated by the MEC may call and chair the meeting. The clause is therefore confusing and leads to issues of interpretation. This needs to be clarified.

11.2. The clause does not address ordinary meetings. Two types of meetings are contemplated in section 29(1). These are the "ordinary" council meetings of the council and the meetings requested by a majority of the councillors. It is submitted that the clause must also provide for the situation where a speaker or acting speaker refuses, fails or is unavailable to call the "ordinary" meetings contemplated in section 29(1).

11.3. The action in the clause is triggered when the speaker or acting speaker refuses to call the meeting. The MEC can act when the Municipal Manager is absent or refuses to call the meeting. Why the differentiation between the Municipal Manager and the speaker or acting speaker? Why is it also not when the speaker or acting speaker is absent? It is submitted that the action should also be triggered when the speaker or acting speaker is absent or fails to call the meeting.

11.4. It is understood that the clause now introduces a further level of designation. Clarity is required on what the reason for this is. The purpose of the clause is to ensure a quick response when the speaker or acting speaker does not act. This further level of designation may have the opposite effect.

11.5. In terms of the clause, the Municipal Manager or person designated by the MEC, may on good cause shown, designate a person to call and chair the meeting. The clause introduces the further requirement of "good cause". The power to take the action is discretionary. This is indicated using the word "may". This discretion is guided by the good cause that needs to be established. "Good cause" is a fluid concept and calls for assessment of the factual context. Concern is raised as to what the good cause must convince the Municipal Manager, or the person designated by the MEC of? In other words, at what objective must the good cause be aimed? It is that answer that will be determinative of whether the Municipal Manager or the person designated by the MEC will exercise the power. It is not clear from the clause in its current form what the objective is. It is submitted that if the clause is retained, it must clearly provide what the objective of the good cause must be.

It is proposed that the new proposed section 29(1A) must be clear and unambiguous and must provide for the Municipal Manager to be empowered to call and chair both types of meetings contemplated in section 29(1) of the Act in the event that the Speaker or Acting Speaker refuses, fails or is absent to call meetings contemplated in

section 29(1). In the event that the Municipal Manager is absent, refuses or fails to call such meetings, then the MEC for Local Government must designate a person to call and chair the meetings for the purpose of electing an Acting Speaker to preside over the remainder of the meetings.

It is further proposed that the Bill is amended by the insertion after line 57 on page 5 the following clause:

"(1B) The speaker may convene an urgent meeting if a special meeting was not requested in accordance with subsection (1) on a particular matter but the speaker, in his or her determination, is of the opinion that the particular matter requires a meeting of the municipal council.".

12. Clause 14

Section 29A provides for ordinary, special and urgent meetings. What is meant by these different types of meeting are not defined. The lack of clarity leads to problematic interpretation, particularly when applying sections 18(2) and 29(1) of the Principal Act. It is submitted that currently not all the committee meetings of council may be called by the Municipal Manager, for example, a disciplinary committee meeting. Is the intention of this clause to change the current arrangement that exists? If so, how is it intended to work practically?

It is proposed that the terms "ordinary", "special" and "urgent" meeting are clearly defined. It is also proposed that the nature of the meetings referred to in section 18(2) and 29(1) is clarified i.e. would the meetings contemplated in section 18(2) be considered ordinary meetings and those contemplated in section 29(1) when a request for a meeting is made, would those be considered special meetings? Clarity must be provided in this regard.

13. Clause 16:

See comments made under clause 3.

14. Clause 23:

It is not clear from the provisions of the new proposed section 79A when it is envisaged the reports and reviews referred to should be done because no time periods are provided for.

The provision in the new proposed section 79A(5)(b) is already provided for in section 166(1) of the Local Government: Municipal Financial Management Act, 2003. The new proposed provision is superfluous.

It is proposed that clause 23 must be reconsidered and redrafted to provide clarity.

15. Clause 26:

If the references to sections 9(e), (f) and 10(c) are deleted in the sections listed in this clause, then what is envisaged will govern the election of members of an executive committee should a MEC intend to change the type of municipality in terms of section 16(1)(a) of the principal Act from the type referred to in section 9(e), (f) and 10(c)?

The amendment Bill does not contain any savings or transitional provisions. Clarity is required in this regard.

See the comment under clause 3 in this regard.

16. Proposed Schedule 7

16.1 Item 5(2)

The words "must be removed from office as a councillor" must be changed to "may be removed from office as a councillor". This will align the provision to the rest of the provisions in item 5 thereby allowing for a uniform procedure to be followed that complies with the rules of natural justice before a councillor can be removed or fined.

16.2 Item 16

The provision provides that in each investigation, an investigator or initiator is appointed regarding the conduct of investigations. This may not always be possible and therefor it is proposed that an alternative is provided for. It is proposed that provision is made in the Code that additionally, a person who can act as an initiator in the investigation must be appointed. It must also be clear that a municipal council must appoint a special committee and express provision must be made as to what must constitute the special committee.

It is proposed that item 16(1) must be amended to read as follows:

"When a municipal council has considered a report as referred to in item 15(1)(c) and decided that disciplinary steps must be instituted against a councillor, the municipal council must –

(a) establish a special committee consisting of councillors, or councillors as well as a person with the appropriate legal knowledge –

(i) to investigate and make a finding on any alleged breach of the Code; and

(ii) to make recommendations to the Council regarding an appropriate sanction or sanctions;

(b) appoint a person to act as an initiator in the investigation or authorise the municipal manager to appoint an initiator.".

The current item 16(4)(b) must be amended by adding the following words at the end of the provision: "by the MEC." This will ensure that the MEC can be assured that the appeal was received by the municipality when making the finding on the appeal.

16.3 Item 17(7)

It is not clear whether the reference to the "rules of natural justice" means that the listed actions or aspects thereof are subject to the Promotion of Administrative Justice Act, 2000. It is submitted that clarity must be provided in this regard.

It is proposed that Schedule 7 of the Bill is amended by the substitution of item 17(7) with a new paragraph (7).

"(7) Any investigation in terms of this item and any action by the MEC in terms of sub item (6) must be in accordance with section 3 of the Promotion of Administrative Justice Act, 2000 (Act 3 of 2000).".

2. ***(Negotiating mandate stage)*** Report of the Standing Committee on Agriculture, Environmental Affairs and Development Planning on the National Environmental Management Laws Amendment Bill [B 14D–2017] (NCOP), dated 18 September 2020 as follows:

The Standing Committee on Agriculture, Environmental Affairs and Development Planning, having considered the subject of the National Environmental Management Laws Amendment Bill [B 14D–2017] (NCOP) referred to it in accordance with Standing Rule 217, confers on the Western Cape's delegation in the NCOP the authority to support the Bill. The Committee further proposes the following amendments:

1. General

The text of the amendment Bill contains numerous language and grammatical errors.

It is submitted that the legal editors of the Office of the Chief State Law Advisor review the amendment Bill and edit it accordingly.

It is further submitted that, due to the complex nature of the amendment Bill, the submissions made in this Report should be debated with the National Department of Environment, Forests and Fisheries (the National Department) to identify any potential unintended consequences and address possible consequential amendments that may be required to other provisions of the principal Acts and relevant subordinate legislation.

It is further submitted that, while it is noted that the legislative review of NEMA does go some way in providing clarity on cooperative governance at national, provincial and municipal spheres, what needs to be addressed is how the proposed amendments will empower provincial and local governments to develop protocols which will further integrate functions that would serve to eliminate red tape and facilitate the ease of doing business.

2. Long Title

2.1 It is submitted that the word "the" be inserted in line 32, on page 3, before the word "Director-General of the Department responsible for mineral resources" and also before the word "municipal manager" in the same line.

2.2 It is further submitted that the long title be reviewed to ensure that all the revisions to the provisions contained in the earlier "B" version of the amendment Bill are captured accurately.

Proposed amendments supported by the National Department in its response to the Committee on written input received from stakeholders.

3. Clause 1: Definition "financial provision"

3.1 Definition "financial provision"

It appears that the definition of "financial provision" and the enabling provisions proposed in sections 24P and 24PA of the amendment Bill, may be limiting insofar as it refers to "listed or specified activities".

It is submitted that if the definition of "financial provision" and the enabling provisions in sections 24P and 24PA of the amendment Bill is limited to listed and specified activities, then the definition of "financial provision" and sections 24P and 24PA should be amended to enable the requirement for financial provision to apply more broadly.

The National Department, in providing written comments to the Committee in reply to the written submissions received by the Committee from stakeholders, supported the comment and agreed that the above challenge must be addressed.

3.2 Definition "progressive rehabilitation"

The definition of "financial provision" refers to the "amount which is to be provided in terms of this Act, guaranteeing the availability of sufficient funds to undertake progressive rehabilitation, decommissioning…".

The term is used in the new proposed section 24P (3) of National Environmental Management Act, 1998 (Act 107 of 1998) (NEMA). NEMA, as well as the Mineral and Petroleum Resources Development Act, 2002 (Act 28 of 2002) does not contain a definition or description for the phrase "progressive rehabilitation".

It is submitted that the definition for "progressive rehabilitation" be added to the Draft Financial Provisioning Regulations, 2019 and, in order to accommodate section 24P, that the same definition be introduced into the amendment Bill.

Proposed amendment supported by the National Department in its response to the Committee on written input received from stakeholders.

3.3 Mechanism to ensure the safeguarding of financial provision

It is submitted that a mechanism must be provided for in NEMA that will ensure that the financial provision is safeguarded against being paid out, whether in the case of the insolvency of a mine or any other circumstance.

It is therefore further submitted that a financial provision may only be disbursed once the prior consent of the competent authority has been obtained.

4. Clause 1: Definition: "mitigate"

The proposed definition of "mitigate" is too narrow. It should be in line with the principle of "mitigation hierarchy" and include avoidance, as well as to remediate, rehabilitate and offset.

It is submitted that the definition should be amended to "means to avoid, or, where the impact cannot be altogether avoided, alleviate, reduce or make less severe, remediate, rehabilitate or offset".

5. Clause1: Definition: "rehabilitate"

The proposed definition of "rehabilitate" should be expanded to also cover the end of use of facilities and not only land. The definition should therefore be reconsidered and redrafted.

It is submitted that the draft definition should be redrafted to read as follows: "rehabilitate" means to restore to the approved end use of land or facilities;".

6. Clause 1: Definition: "remediate":

It is submitted that, should the proposed amendment to the definition of "mitigate" be accepted, i.e. to include a reference to offset, the definition of remediate is supported.

7. Clause 1: Definition "latent environmental impacts"

It is submitted that the text be reworded as follows: "'latent environmental impacts' means "impacts which are existing, but which have not developed yet or which have not manifested yet, or which are dormant."

Proposed amendment supported by the National Department in its response to the Committee on written input received from stakeholders.

8. Clause 2: Section 2 of NEMA

In principle the amendment directed at advancing and promoting the full participation of black professionals in the environmental sector is supported.

It is not clear, however, why other previously disadvantaged individuals are not also included.

It is submitted that the participation of previously disadvantaged persons in addition to black professionals should also be advanced and promoted.

It is further submitted that participation should be clearly obligatory.

In this regard it is submitted that the words "must be" be inserted on page 6, line 32, before the word "promoted".

Proposed amendment supported by the National Department in its response to the Committee on written input received from stakeholders.

9. Clause 4(c) and (d): Proposed new Section 24C(2B) and 24C(3)

Currently, when dealing with applications for environmental authorisations in terms of the NEMA, section 24C(3) of the NEMA does not allow the Minister and a MEC

to agree that applications for activities contemplated in section 24C(2B), i.e. activities related to matters declared as a national priority, may be dealt with by a MEC.

The current wording of section 24C(3) is problematic in the following respects:
(a) Whilst we support the principle that certain matters must be regarded as national priorities, the practical application of the criteria determining the listing of national priorities must be specific, transparent, and reasonable. Vague and indiscriminate application, for example, referring to types of development without any reference to location, scale, or effect, must be avoided.
(b) The notion that only national government is competent to make decisions on matters declared national priorities is flawed. In this regard it is submitted that criteria must be developed to objectively determine the instances in which provinces do not possess the required competency or capacity to make decisions on matters of national priority.

(c) The declaration of certain matters as national priorities, as envisaged, will be done unilaterally. This is not conducive to improving the effectiveness of environmental management particularly taking into account that the functional area of "environment" is, in terms of Schedule 4 of the Constitution, a concurrent national and provincial legislative competence.
(d) The application of the principle of "subsidiarity" must be adhered to - i.e. delivering services (including regulatory decision making) at the lowest level, closest to the community to be served.

Although the current proposed amendment at least allows for a potential agreement in terms of section 24C(3) in instances where the Minister is the competent authority for activities related to a national priority is supported, it is not the preferred option because it does not provide clear guidance as to how and in what circumstances a MEC may be identified as a competent authority in matters regarded as a national priority.

It is submitted that the preferred option is that section 24C(2B) of the NEMA is deleted and the existing section 24C together with an agreed set of criteria (considered essential in managing matters of national priority) must be used to reach an agreement between the Minister and a MEC in order for the Minister to become the competent authority in certain instances.

It is further submitted that the application of such criteria, combined with the current wording of section 24C(3) is a more appropriate co-operative governance and transparent mechanism to allocate national priority matters to the national Minister in specific cases.

10. Clause 4(d): Proposed new Section 24C(13):

Although the proposed new section 24C(13) is supported, it is submitted that it may not be practical and appropriate in all instances. For example, the information required in terms of an application for an environmental authorisation in terms of the NEMA may not cover all the technical information required for an application for a water use licence in terms of the National Water Act, 1998 (Act 36 of 1998). The latter application's information requirements may delay the processing of the former.

Although the issuing of an integrated authorisation should be encouraged, it is submitted that it should not be mandatory as it may not be practical and appropriate in all circumstances. The reference to "must" should therefore be changed to "may" to allow the competent authority discretion in this regard. It is further not clear what the repercussions, if any, would be if an integrated authorisation is not issued. If an integrated authorisation cannot be issued, the alignment of processes, as far as may practically be possible, should be ensured. Furthermore, the proposed new subsection (13) provides that an "integrated decision" must be issued in accordance with section 24L of the NEMA. Section 24L(1) provides for the issuing of an "integrated environmental authorisation".

It is therefore submitted that the words "integrated decision" in the proposed new subsection (13) is substituted with the words "integrated environmental authorisation" as defined in section 1 of NEMA. "Integrated decision" is not a defined term. It is submitted that the defined term "integrated environmental authorisation" should be used consistently in subsection (13).

The issue of rationalisation and alignment of processes should also be considered and included as part of the national NEMA/SEMA Rationalisation Project.

It is submitted that the proposed new section 24C(13) should be included as follows:

"If the competent authority or licensing authority contemplated in subsections (11) or (12) is the same authority that considers and decides the application for an environmental authorisation under this Act and the application under a specific environmental management Act, an integrated environmental authorisation may be issued in accordance with section 24L of this Act.".

11. Clause 5: Section 24G of NEMA - New proposed Sections 24G(1)(c)(ii) (aa)(G)(DD) and 24G(1)(c)(ii) (aa)(G)(EE):

It is submitted that the environmental management programme requirement should be a separate requirement and not included as part of the section 24G(1)(c)(ii) (aa) report directive. The requirements to compile an environmental management programme should be a separate requirement captured in a new and separate provision under section 24G.

Therefore, it is submitted that clause 5(c), read as follows:

"…the Minister, Minister responsible for mineral resources or MEC concerned, as the case may be**[,]**—

(aa) **[may]** must direct the applicant to—

…

[(vii)](G) compile a report containing—

…

[(cc)](CC) a description of mitigation measures undertaken or to be undertaken in respect of the consequences for, or impacts on, the environment of the activity; and

[(dd)](DD) a description of the public participation process followed during the course of compiling the report, including all comments received from interested and affected parties and

an indication of how the issues raised have been addressed, if applicable; and

[(ee) an environmental management programme; or]

(H) undertake public participation as prescribed; and

[(viii)](bb) may direct the applicant to provide such other information or undertake such further studies as the Minister, Minister responsible for mineral resources or MEC, as the case may be, may deem necessary**[.]**; and

(cc) may direct the applicant to compile an environmental management programme."

Proposed amendment supported by the National Department in its response to the Committee on written input received from stakeholders.

12. Clause 5: Section 24G

12.1 Consideration should be given on how to deal with a situation where an air emissions activity listed in terms of the National Environment Management: Air

Quality Act, 2004 (Act 39 of 2004) (NEMAQA) as well as the associated listed activity in terms of NEMA, unlawfully commenced.

It is submitted that only an application in terms of section 22A of NEMAQA is required, if such unlawful commencement relates to an air emissions facility. This is proposed to prevent a duplication of the approvals that are required and the subsequent issuing of duplicate fines for an air emissions facility.

12.2 It is submitted that a provision should be included to provide for the closure and lapsing of a section 24G application as a result of the applicant's failure to submit outstanding information required to process the application. Currently there is no provision or mechanism for a competent authority to close an application or for the application to lapse after the expiry of a certain period because of the applicant failing to submit the requisite information. This results in pending applications with no final outcome which is problematic because an application, when no further action in processing the application can be taken by the competent authority, is not capable of finalisation. The situation is further exacerbated by the applicant not withdrawing the application, thus an end point to the application is not reached and the application remains in limbo.

Added to this concern is the potential for the incorrect reporting of the section 24G fines as a contingent asset (amount of outstanding fines) in respect of fines that have not been paid and in all likelihood will not be paid by an applicant.

From an administrative perspective, a closure mechanism is therefore crucial both from a contingent asset and application finalisation perspective.

It is therefore submitted that section 24G be amended by the insertion of the following subsection:

"(1B)(1) Failure to submit a report or other information as directed or requested in terms of subsection (1)(c)(aa)(G) or (1)(c)(bb) within six months will result in the lapsing of the application. Subsection (1) does not apply where a request for extension has been communicated to the competent authority in writing and accepted by the competent authority.".

12.3 It is not clear from the current wording of section 24G(3) whether rehabilitation under section 24G(3)(a) and 24G(3)(b) includes the power to direct the demolition or removal of any structure or infrastructure erected, constructed or developed during the commencement of the listed activity or waste management activity.

It is submitted that section 24G(3) of NEMA must be expanded to include a paragraph (c) to read as follows: "demolish and remove, at the cost of the applicant, any infrastructure or structure constructed or erected or developed in respect of the listed or specified activity or waste management activity."

13. Clause 5: Section 24G(1)

Currently section 24G(1) provides that the relevant authorities "…may direct the applicant to−"

Currently there is no option to request an applicant to do something to ensure administrative completeness. For example, in a situation where an applicant failed to sign an application form or attach a public participation report.

It is therefore submitted that the words "request or" are inserted before the word "direct" in section 24G(1). This will allow a competent authority the flexibility to request an applicant to address an administrative requirement, other than by issuing a directive.

It is further submitted that provision should be made for circumstances in which a landowner did not commence unlawfully with a listed activity but who subsequently becomes the owner of the property. In these circumstances, the landowner should be able to pay an administrative fee instead of an administrative fine, as the new landowner did not contravene NEMA.

It is therefore submitted that section 24G(1) of NEMA is further amended as follows:

"…the Minister, Minister responsible for mineral resources or MEC concerned, as the case may be, may request or direct the applicant to-…"

It is further submitted that a clause be inserted stating that the financial liability for any rehabilitation measures must remain the responsibility of the person who unlawfully undertook the listed activity.

14. Clause 7: Section 24O(2)

"Environment" is a functional area of municipal competence and municipalities administer activities relating to the environment. The Minister or MEC should therefore consult municipalities before making a decision. In its current form the clause may be interpreted to exclude municipalities.

It is submitted that the new proposed section 24O(2) is redrafted to read as follows:

"The Minister responsible for mineral resources **[or]**, an MEC or an environmental assessment practitioner must consult with every **[State department]** organ of state that administers a law relating to a matter affecting the environment when such Minister, the Minister responsible for mineral resources or an MEC considers an application for an environmental authorisation.".

Consequential amendments to sections 24O(2A) and 24O(3) may further be required.

15. Clause 8: Section 24P of NEMA

15.1 It is submitted that the word "is" on page 10, in line 25, be substituted with the word "must". This will ensure and clarify that the provision is mandatory.

It is submitted that the clause must be redrafted to read as follows:

"Where prescribed, the applicant, holder of an environmental authorisation, holder, or holder of an old order right must provide financial provision….".

Proposed amendment supported by the National Department in its response to the Committee on written input received from stakeholders.

15.2 It is submitted that the new proposed section 24P must be further amended to provide for more broadly "financial provision" rather than financial provision only in relation to remediation of environmental damage. It is further submitted that the section heading be amended to read "Financial provision" and that the reference to the words "for remediation of environmental damage", be deleted.

15.3 The expression "post closure" in clause 8 is not defined in NEMA or the draft Financial Provision for the Rehabilitation, Closure and Post Closure of Prospecting, Exploration, Mining or Production Operations, 2015.

15.4 Clause 8 in the new proposed section 24P(4) further refers to "…a holder of an environmental authorisation, holder, holder of an old order right …".

It is not clear why this distinction is being made. This may lead to issues of interpretation and should be reconsidered.

To assist with clarification, it is submitted that it should be clarified that "old order right" refers to a mining related approval.

In addition, there appears to be a comma instead of the word "or" between "holder" and "holder" on page 10, line 25.

It is submitted that the comma should be deleted and substituted with the word "or". See the submission in terms of 15.1 above.

16. Clause 8: Section 24P(8):

It is not clear to what extent this assessment or review process would be open to interested and affected parties, if at all. It is submitted that interested and affected parties must be informed of and be allowed to participate in the process.

The new proposed section 24P(8) provides that if the Minister responsible for mineral resources or the MEC is not satisfied with the determination or "review" of the Financial provision, he or she may appoint an independent person to conduct an assessment of the determination or review.

The new proposed section 24P(3) requires "Where prescribed, an applicant, must, before the competent authority issues an environmental authorisation, determine the financial provision…". Section 24P (3) however does not provide for the review of the financial liability.

It is submitted that section 24P(3) is further amended to align with section 24P(8), in terms of the review of financial provision.

It is submitted that a new sub clause must be drafted that enables a review to take place. The amendment Bill should therefore include the following reworded section 24P(2):

"The Minister, or MEC in concurrence with the Minister, may prescribe –

(a) instances for which financial provision must be determined and provided for listed or specified activities; and

(b) reviews of the financial provision as determined in paragraph (a)"

The National Department agreed that further amendment to the Bill is required to make provision for a review of the financial provision in section 24P.

17. Clause 8: Section 24P(10)

In the new proposed section 24P (10) the word "shall" is used. The principal text of NEMA does not use this word.

It is submitted that the word "shall" be substituted with the word "must".

18. Clauses 8 and 9: Section 24P and 24PA of NEMA

The concern raised in terms of the definition of financial provision in point 3.1 above has reference, in that it appears that the definition of "financial provision" and the enabling provisions proposed in sections 24P and 24PA of NEMA may be limiting insofar as it refers to "listed or specified activities".

It is therefore submitted that if the enabling provisions are limited to listed and specified activities, section 24P and 24PA of NEMA, as proposed in the amendment Bill, should be amended to enable the requirement for financial provision to apply more broadly.

Proposed amendment supported by the National Department in its response to the Committee on written input received from stakeholders.

19. Proposed Amendment: Sections 28, 30 and 30A of NEMA:

It is submitted that section 28(2) should be amended to expressly provide that "Without limiting the generality of the duty in subsection (1), the persons on whom subsection (1) imposes an obligation to take reasonable measures, include an owner or successor in title, 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 -" should be subject to direction. Such an amendment will make it clear that the new owner or person in control of the land may be directed in terms of section 28. Clause 12(b) limits the persons referred to in section 28(2).

Although section 28(2) can credibly be interpreted to include a person in control of or a successor in title to land because of its open-ended wording, such an interpretation involves a convoluted need to interpret the section. It would however be advisable to also include the owner or person in control of the land envisaged in section 28.

Similarly, section 30 and 30A should be amended to also allow for the new owner or person in control of the land to be "responsible persons" who may be directed.

It is submitted that sections 28, 30 and 30A are reconsidered and redrafted.

20. Clause 12(b): Section 28 of NEMA

The proposed amendment is supported. The current provision obstructs the issuing of a directive, thus rendering this enforcement instrument less effective.

It is also difficult to determine who "affected persons" are. Section 28(2), in its current form, introduces an unnecessary step which renders law enforcement ineffective. There is no similar provision in respect of a compliance notice in section 31L of NEMA which is a similar enforcement instrument.

The proposed deletion of the words "…after having given adequate opportunity to affected persons to inform him or her of their relevant interests…" is therefore supported.

21. Clause 15: Section 31 BB of NEMA

It is crucial that the designation must be in writing and must be consistent with the Constitution. If not, such a designation may be considered to constitute an unfunded mandate.

It is submitted that the words "in writing" be inserted on page 14, line 33, after the words "organ of state."

22. Clause 20: Section 31G of NEMA

Section 31G(2) should also include references to "or a municipal manager of a municipality" and "mineral and petroleum resource inspector".

Proposed amendment partially supported by the National Department in its response to the Committee on written input received from stakeholders in that section 31G(2) should include reference to "mineral and petroleum resource inspector" but not "municipal manager of a municipality."

23. Clauses 21, 22, 23, 24, 25 and 27

It is submitted that sections 31H (4) and (5); s31I (2) and (3); s31J (1), (2), (4), (5), (6) and (7); s31K (2), (4) and (7); s31L (3) and s31O (1) of NEMA be amended to refer to "environmental mineral and petroleum inspectors".

Proposed amendment supported by the National Department in its response to the Committee on written input received from stakeholders.

24. Clause 25: Section 31L(4) and (5) of NEMA

It is submitted that sections 31L (4) and (5) be amended to include the "Minister responsible for mineral resources", "Minister responsible for water resources" and "Municipal Council".

Proposed amendment supported by the National Department in its response to the Committee on written input received from stakeholders.

25. Section 31N of NEMA

It is submitted that section 31N be amended to include references to "environmental mineral and petroleum inspector" and "Minister responsible for mineral resources", "Minister responsible for water resources" and "Municipal Council".

Proposed amendment supported by the National Department in its response to the Committee on written input received from stakeholders.

26. Clause 27: Section 31O (2) of NEMA

It is submitted that section 31O(2) be amended to include reference to "Minister responsible for mineral resources".

Proposed amendment supported by the National Department in its response to the Committee on written input received from stakeholders.

27. Clause 30: Section 34E of NEMA

27.1 It is submitted that sections 34C, 31D, s31E and s31F (1) be amended to include "provincial Act that substantively deals with environmental management".

Proposed amendment supported by the National Department in its response to the Committee on written input received from stakeholders.

27.2 It is not clear why the "must" was changed to "may" when it comes to the placement of live specimen in a suitable institution.

It is also not clear why live specimens are being disposed of in terms of section 30 of the Criminal Procedure Act, which refers only to "articles".

It is further not clear whether international best practice was consulted when drafting these provisions.

It is submitted that these provisions in the case of specimen especially live specimen, should be reconsidered.

28. Clause 34: Amendment of Section 43(7) of NEMA

The proposed deletion of the word "directive" is supported, for the following reasons:

1. An automatic suspension of a directive on the lodgement of an appeal significantly reduces the effectiveness of a directive and may allow pollution and/or degradation of the environment to continue unabated whilst the procedure in section 43(9) is underway. It is submitted that section 43(10) adequately ensures just administrative action in respect of persons lodging an appeal in respect of directives received.
2. The operation of this provision is open to abuse by persons appealing merely to delay the process of enforcement or to complete their illegal activity.

29. Clause 35: Section 49A(1)(p) of NEMA

It must be clear that the instruction should be issued in respect of the powers of environmental management inspectors or clearly linked to the exercising of those powers.

It is submitted that the word "request" in section 31I(2), (5)(a), (5)(b) and section 31P be substituted with the word "instruction".

Proposed amendment supported by the National Department in its response to the Committee on written input received from stakeholders.

30. Clauses 34(b): Amendment of Section 43(8) and additional new proposed amendments of section 43 of NEMA

Insofar as appeals of directives issued by the municipal manager or his delegate are concerned, the proposed amendment to section 43(8) only contemplates appeals to the municipal council and not to the other municipal appeal authorities identified in (1C).

It is submitted that reference to the executive mayor or executive committee should be included in the case of such appeals.

The National Department has noted the afore-mentioned submission and has commented as follows, "Noted – need to explore the proper appeal authorities for actions of the municipal manager re: the provisions of the Municipal Systems Act; as well as the merit of other appeal authorities."

The view that the appeal process to be followed by an appeal to the municipal council must be in terms of the NEMA Appeal Regulations is supported and the following is therefore submitted in terms of section 43 of NEMA:

(4) An appeal under subsection (1), (1A), (1C) or (2) must be dealt with in the manner prescribed upon payment of a prescribed fee.
(5) The Minister, **[or an]** MEC, or an executive committee, executive mayor, or municipal council, as the case may be, may consider and decide an appeal or appoint an appeal panel to consider and advise the Minister, **[or]** MEC, or an executive committee, executive mayor, or municipal council on the appeal.
(6) The Minister, **[or an]** MEC or an executive committee, executive mayor, or municipal council, as the case may be, may, after considering such an appeal, confirm, set aside or vary the decision, provision, condition or directive or make any other appropriate decision, including a decision that the prescribed fee be paid by the appellant, or any part thereof, be refunded.

31. Proposed new clause to deal with appeals against directives issues in terms of NEMA

Municipalities are empowered to issue directives. This constitutes administrative action. Provision should therefore be made for an appeal against such a decision to the appropriate organ of state.

It is submitted that provision should be made that a Municipal Council may decide an Appeal In terms of section 43(1) to (6) of the NEMA, where appropriate.

The National Department responded to this written submission that "…this is already provided for in clause 34 of the amendment Bill, which adds the municipal council as an appeal authority for s28 directives issued by the municipal manager".

This does however not clarify whether an appeal to the Municipal Council should be made in terms of section 62 of the Municipal Systems Act, 2000 (Act 32 of 2000), or in terms of the National Appeal Regulations promulgated in terms of NEMA.

The view that the appeal process to be followed for an appeal to the municipal council, for a decision made in terms of NEMA or a SEMA, must be in terms of the NEMA National Appeal Regulations is supported.

In addition to the amendments to section 43 of NEMA as proposed in paragraph 27 above, the following further amendments to section 43 of NEMA are therefore submitted:

(4) An appeal under subsection (1), (1A), (1C), **[or]** (2) or (8) must be dealt with in the manner prescribed upon payment of a prescribed fee.
(5) The Minister, **[or an]** MEC, or municipal council, as the case may be, may consider and decide an appeal or appoint an appeal panel to consider and advise the Minister, **[or]** MEC, or municipal council on the appeal.
(6) The Minister, **[or an]** MEC **[may,]** or municipal council, as the case may be, may, after considering such an appeal, confirm, set aside or vary the decision, provision, condition or directive or make any other appropriate decision, including a decision that the prescribed fee be paid by the appellant, or any part thereof, be refunded.

…

(12) No appeal in respect of a decision taken in terms of or pursuant to this Act or any of the specific environmental management Acts, may be lodged in terms of section 62 of the Municipal Systems Act 2000 (Act No. 32 of 2000).".

A consequential amendment will be required to the National Appeal Regulations (GN.R. 993 of 08 December 2014) to enable the appeal provisions of NEMA for use by Municipalities.

32. Clause 35: Amendment of Section 49A(1)(p) of NEMA

The rationale for the amendment as per the Memorandum on the Objects of the Bill is noted.

It is submitted that on the same basis, the word "request" in section 31I(2), (5)(a), (5)(b) and section 31P must likewise be substituted with the word "instruction".

It needs to be clarified that the instruction should be issued in respect of the powers of environmental management inspectors or clearly linked to the exercising of those powers.

Proposed amendment supported by the National Department in its response to the Committee on written input received from stakeholders.

33. Clause 41: Section 1 of the National Environmental Management: Biodiversity Act, 2004 (Act 10 of 2004) (NEMBA)

The explanation provided by the National Department to written input received from stakeholders clarified the wording of the definition of "control".
Based on the explanations given, it is proposed that the definition be further amended by adding the words "planned" and "over time" to the definition. The reference to "or the whole of the Republic" is adequately explained and should be retained.
It is therefore proposed that the definition in the amendment Bill should read as follows:

" **'control'**, in relation to **[an alien or]** invasive species, means—

(a) **[to combat or eradicate an alien or invasive species]** the systematic, planned destruction over time, of all specimens of invasive species from within a specified area of, or the whole of, the Republic; or
(b) where such **[eradication]** systematic destruction is not possible, to prevent, as far as may be practicable, the recurrence, re-establishment, re-growth, multiplication, propagation, regeneration or spreading of **[an alien or]** invasive species;"

34. Clause 49(b): Section 99(2) of NEMBA

This clause amends the introductory paragraph of section 99(2) of NEMBA. In its current form, the clause requires that a MEC for environmental affairs must, inter alia, consult all Cabinet members whose areas of responsibility may be affected by

the exercise of a power in terms of the principal Act. It is submitted that the MEC would be exercising his or her power at a provincial level. It is therefore not clear why the MEC must rather consult Cabinet members whose areas of responsibility may be affected by the exercise of the power. It is submitted that a MEC should consult the members of the Provincial Executive

Council whose areas of responsibility may be affected by the exercise of the power."

The National Department supported the comment and proposed the following:

"(a) Retain the original text of subsection (2), as reflected below, that will apply to the Minister; and
(b) Insert new text as subsection (2A), as reflected below, that will apply to the MEC."

The National Department indicated that the comment is valid, and to create different circumstances that will apply differently to the Minister and the MEC within the same subsection may become confusing and difficult to interpret.

The specific wording proposed by the National Department to address this is also supported. It is therefore submitted that section 99 be amended by the insertion, after subsection (2), of the following subsection:

"(2A) The MEC must, in terms of subsection (1)—
(a) consult all Members of the Provincial Executive Council and organs of state, whose areas of responsibility may be affected by the exercise of the power in the province;
(b) in accordance with the principles of cooperative governance set out in Chapter 3 of the Constitution, consult the Minister; and
(c) allow public participation in the process in accordance with section 100."

35. Proposed amendment: Section 12A and Section 22 of the National Environmental Management: Air Quality Act, 2004 (Act 39 of 2004) (NEMAQA)

The use of norms and standards provide much needed flexibility in the application of environmental assessment processes (i.e. adherence to a standard replaces the need to apply for an environmental authorisation). To ensure that norms and standards developed in terms of section 24(10) of NEMA can also apply in instances where such a norm or standard is related to a listed activity or sector involving an air quality activity, it is proposed that NEMAQA is amended to allow for the development of such norms and standards, consistent with section 24(10) of NEMA.

It is proposed that in order to enable the application of norms and standards for activities requiring atmospheric emission licences without having to formally apply for an atmospheric emission licence, a further section should be inserted (section 12A) and that section 22 of NEMAQA is amended.

It is submitted that a section 12A is inserted to read as follows:

"Part 4: Norms and standards for air quality activities"

"Section 12A. Norms or Standards for air quality activities
(1) The Minister may, by notice in the Gazette, set national norms and standards for activities listed in terms of section 21.
(2) Before publishing a notice in terms of subsection (1), or any amendment to the notice, the Minster must follow a consultative process in accordance with sections 56 and 57.".

It is further submitted that section 22 of NEMAQA be amended as follows:

"Section 22. Consequences of listing
No person may without a provisional atmospheric emission licence or an atmospheric emission licence conduct an activity -
(a) listed on the national list anywhere in the Republic; or
(b) listed on the list applicable in a province anywhere in that province, unless it is done in terms of an applicable norm or standard contemplated in section 12A.".

36. Clause 51: Section 13 of NEMAQA

The proposed amendment substantially takes away from the requirement under NEMAQA that the Minister must establish the advisory committee. The intention of NEMAQA was clearly that it would be imperative for the Minister to receive vital technical inputs into complicated and complex issues. The fact that the Minister is now in this clause given the discretion to establish the committee, instead of being obliged to do so, may create the situation where no committee is established and vital capacity would consequently not be established.

It is submitted that the word 'must' must be retained on page 27, line 20.

37. Clause 52: Section 22A(4)(b) of NEMAQA

In the proposed new section 22A(4)(b) the words "or found not guilty after prosecution" is tautologous.

It is submitted that the words "or found not guilty after prosecution" on page 28, lines 23 and 24 of the amendment Bill are deleted.

Proposed amendment supported by the National Department in its response to the Committee on written input received from stakeholders.

38. Clause 53(a): Section 36(2A) of NEMAQA

The clause provides that "A provincial organ of state must be regarded as the licensing authority if a listed activity falls within the boundaries of more than one metropolitan municipality, or within the boundaries of more than one district municipality, and the relevant municipalities agreed thereto in writing".

It is not clear from the clause in its current form who the licensing authority will be if agreement cannot be reached between the relevant municipalities.

It is submitted that a provincial organ of state should be the default licensing authority in the circumstances described in this clause and that the requirement of agreement on page 28, lines 49 and 50 be deleted.

Such an amendment will align the clause with section 36(5)(b) of NEMAQA (i.e. where the Minister is regarded as the competent authority without the need for agreement from provinces).

The National Department, in its response to the Committee on written input received from stakeholders, indicated that "The proposal…under these stated circumstances is acceptable. Where a listed activity falls within the boundaries of more than one district municipality/metropolitan municipality (and where the Minister is not the Licencing Authority), the provincial organ of state should automatically assume the responsibility of the Licencing Authority without the requirement for the affected municipalities to give consent in writing,"

39. Clause 53(c): Sections 36(5) and 36(8) of NEMAQA

It is submitted that section 36(5)(c) of NEMAQA be deleted. This will allow district and metropolitan municipalities to be the licensing authorities, even for matters of national priority, but still allow the Minister and licensing authority to reach an agreement based on the facts of a specific application for the Minister to become the licensing authority (as opposed to a blanket assumption that district and metropolitan municipalities cannot adequately deal with such applications).

Section 36(5)(c) of the Act constitutes an unconstitutional limitation of the powers and functions of municipalities.

Even though national and provincial legislation may regulate the exercise by municipalities of their executive authority in respect of the functional competence of air pollution, the national and provincial spheres of government cannot, by legislation, *themselves* exercise municipal executive authority.

Reference is made to section 156(1)(a) of the Constitution of the Republic of South Africa, 1996 ('the Constitution') read together with section 155(7), as well as the Constitutional Court judgment in City of Johannesburg Metropolitan Municipality v Gauteng Development Tribunal and Others [2010] ZACC 11 ('the judgment').

The functional competence of 'air pollution' is situated in Schedule 4B of the Constitution. In paragraph 59 of the judgment the Constitutional Court said the following in respect of the matters listed in Schedule 4B of the Constitution:

"… But the national and provincial sphere cannot, by legislation, give themselves the power to exercise executive municipal powers or the right to administer municipal affairs. The mandate of these two spheres is ordinarily limited to regulating the exercise of executive municipal powers and the administration of municipal affairs by municipalities."

An alternative submission, which is a less preferred option is that section 36(8) of NEMAQA is expanded to also include subsection 5 and therefore allow for

agreements between the Minister and MEC or municipalities for matters of national priority, as is proposed in clause 53(c) of the current version of the Bill.

Although this is supported as a second option, it must be pointed out that this is not the preferred option. This is because this second option would be premised on an "intrusion" into the municipal competence on the functional area of "air pollution" by agreement depending on the ambit of such an agreement.

Clause 53(c) which aims to expand the option of a section 36(8) agreement to subsection 5 as well, however also needs to be amended. Given that the Minister would be the licensing authority contemplated in subsection 5, it is submitted that clause 53(c) should be amended as follows:

''(8) The Minister and licensing authority contemplated in subsections (1) to [(4)] (5) may agree that an application for an atmospheric emission licence with regard to any activity contemplated in section 22 may be dealt with by the Minister, MEC or the relevant licensing authority contemplated in subsections (1) to [(4)](5).".

40. Proposed new clause: Section 46 of NEMAQA

An application for a variation of an atmospheric emission licence triggers the need for a basic assessment process in terms of the Environmental Impact Assessment Regulations, 2014, with specialist studies required in certain circumstances. The processing of a variation application requires a great deal of engagement and the process often takes considerable time and effort.

It is therefore submitted that the NEMAQA is amended to require that an application for variation of an atmospheric emission licence must be accompanied by the payment of a processing fee.

The National Department supported the recommendation but requested that only section 46 of NEMAQA should be amended.

Based on the above, the following is submitted:

That section 46(1)(d) of NEMAQA is amended by the substitution of subsection (d) for the following subsection:

"(d)**[at the written request of]** on application by the holder of the licence;

That section 46(3) of NEMAQA is amended by the substitution of subsection (3) for the following subsection:

(3) If a licensing authority receives **[a request]** an application from the holder of a licence in terms of subsection (1)(d), the licensing authority must require the holder of the licence to take appropriate steps to bring the **[request]** application to the attention of relevant organs of state, interested persons and the public if—

That section 46 of NEMAQA is amended by-

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

"(2A) An application for the variation of provisional atmospheric emission licences from the holder of a licence contemplated in subsection (1)(d), must be lodged with the licensing authority of the area in which the listed activity is or is to be carried out, in the form required by the licensing authority.

(2B) An application contemplated in subsection (1)(d) must be accompanied by—

(a) the payment of the prescribed application fee; and

(b) such documentation and information as may be required by the licensing authority."

This insertion may also require an amendment to the Regulations prescribing the atmospheric emission licence processing fee, 2016.

41. Proposed new clause: Section 41 of NEMAQA

Section 41(3) of NEMAQA provides that a provisional atmospheric emission licence is valid for a period of one year from the date of the commissioning of the listed activity and may be extended for an additional one year period, on good cause shown, to the licensing authority.

However, section 42(1) of the NEMAQA provides that the holder of a provisional atmospheric emission licence is entitled to an atmospheric emission licence when the facility has been in full compliance with the conditions and requirements of the provisional atmospheric emission licence for a continuous period of at least six months.

The NEMAQA does not make provision for a further extension of the provisional atmospheric emission licence. It is unclear how the licensing authority should deal with this practical scenario.

It is submitted that the licensing authority should be empowered to determine the period of extension of the provisional atmospheric emission licence. This will resolve the practical difficulties faced by licensing authorities.

It is submitted that section 41(3) of NEMAQA be amended by the substitution of subsection (3) for the following subsection:

"(3) A provisional atmospheric emission licence is valid for a period of one year from the date of the commissioning of the listed activity, and may be extended once, for **[an additional one year]**, a period as determined by the licensing authority, on good cause shown to the licensing authority."

42. Clause 62: Proposed new Section 34J(3) of the National Environmental Management: Waste Act, 2008 (Act 59 of 2008) (NEMWA)

This section states that "The Minister may appoint a member of the Board as acting chairperson if…" As this provides a discretion to the Minister, it is submitted that on page 33, line 35, the following is inserted as a new provision under section 34J:

"(4) If the Minister does not appoint a Chairperson or and acting chairperson, then the Board can elect an acting chairperson until the minister appoints a Chairperson or acting chairperson".

43. Clause 64: Section 36(5) of NEMWA

It is submitted that clause 64 be amended as follows:
"An owner of the land that is **[significantly]** likely to be contaminated, or a person who undertakes an activity on land that has likely caused the land to be **[significantly]** contaminated, must notify the Minister and MEC of that contamination or potential contamination as soon as that person becomes aware, of that contamination or potential contamination".

The National Department, in its response to written comments, agreed that the emphasis on who needs to report on likely contamination must be the same for either user of land or owner of land and agrees with the text as proposed.

44. Clause 65: Sections 37(1) and (2) of NEMWA

It is submitted that the substitution of the word "cause" with the word "require" on page 37, line 37, is supported as this provides for further clarity in terms of the powers of the Minister or MEC.

The inclusion of "and submit a site assessment report and a remediation plan" on page 37, line 38, is misleading as it implies that the obligation to submit the report and plan lies with the Minister or MEC, which cannot be correct.

It is submitted that section 37(1)(a) of NEMWA be amended further, to specify the time period within which the site assessment report and remediation plan must be submitted as follows:

"**[cause]** require a site assessment to be conducted in respect of the relevant investigation area, and that a site assessment report and remediation plan, if applicable, be submitted to the Minister or MEC, as the case may be, within a period specified in the notice, which cannot be more than 90 days; or"

45. Clause 81: Repeal Schedule 3 of NEMWA

The proposed deletion of Schedule 3 of the NEMWA is supported. However, there is still reference made to schedule 3, for example, in section 58J.

It is submitted that all consequential amendments are checked for and effected.

46. Clause 82: Section 12 of the National Environmental Management Amendment Act, 2008 (Act 62 of 2008) (NEMAA)

It is submitted that there is still a concern regarding the lack of clarity provided by the proposed clause 82. The National Department's response to this concern indicates that consideration should be given to removing the ambiguity. One of the primary concerns relates to the perceived conversion of an environmental management plan or programme to an environmental authorisation issued in terms of NEMA. In their response, the National Department confirmed that this is not the intention of the clause. However, due to the complex nature of this provision and the potential unintended consequences, the redrafting of this clause should not be undertaken without detailed discussions with the National Department.

It is submitted that the clause be remitted back to the National Department for redrafting in consultation with relevant decision-making authorities.