



DISCUSSION PAPER

**STATUTORY LAW REVISION
(LEGISLATION ADMINISTERED BY THE
DEPARTMENT OF ENVIRONMENTAL AFFAIRS)**

PROJECT 25

June 2015

South African Law Reform Commission

The South African Law Reform Commission (SALRC) was established by the South African Law Reform Commission Act 19 of 1973.

The members of the SALRC are –

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- Honourable Judge J Kollapen (Vice-Chairperson)
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On 31 July 2008, Ms BS Mabandla, then Minister of Justice and Constitutional Development, appointed the following advisory committee members, who assisted the SALRC to develop the consultation paper that preceded this discussion paper:

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Preface

This discussion paper has been prepared to elicit responses on the preliminary findings of the South African Law Reform Commission (SALRC) and on the proposals contained herein. The SALRC liaised with the Department of Environmental Affairs (DEA) during various phases of the investigation that led to the drafting of this discussion paper. We acknowledge the valuable assistance we have received, especially from officials in the Legal Services of the DEA.

This discussion paper will provide the basis for further deliberations by the SALRC, a process that will culminate in a final report on this statutory investigation. The views, conclusions and recommendations contained in this paper should not be regarded as the final opinion of the SALRC.

The discussion paper includes the Environmental Affairs General Laws Amendment and Repeal Bill (the draft Bill), which is published here in full. This provides background information so that people or organisations who wish to respond are able to make well-informed comments and representations to the SALRC.

The SALRC assumes that unless comments or representations are marked "confidential", respondents grant the SALRC permission to quote from their comments and to refer to respondents by name. Respondents should also be aware that the SALRC may, in terms of the Promotion of Access to Information Act 2 of 2000, be required to release information contained in representations or comments submitted to the SALRC. Respondents are requested to submit their written comments or representations to the SALRC using the address (email or post) on page (ii) of this paper. Enquiries should be addressed to Ms Aura Mngqibisa, the researcher to whom this investigation is assigned. Her contact details appear on page (ii).

This discussion paper is available on the internet at

<http://salawreform.justice.gov.za/dpapers.htm>

The draft Bill is contained in Annexure A of this discussion paper. The Bill includes Schedule 1 (Acts to be amended to the extent set out in the fourth column of that schedule) and Schedule 2 (Acts to be repealed to the extent set out in the fourth column of that schedule). Annexure B lists the 43 statutes administered by the DEA.

Preliminary proposals and questions for comment

The SALRC has been tasked with revising the South African statute book and identifying legislation or legislative provisions that are inconsistent with section 9 of the Constitution (commonly known as the “equality clause”), or which are redundant or obsolete. The SALRC then recommends such legislation or legislative provisions for amendment or repeal. Pursuant to this mandate, in 2004 the SALRC established that the South African statute book contained roughly 2 800 Acts at that time.

The SALRC has identified that 43 Acts on the statute book are administered by the DEA (see Annexure B). After careful analysis of the Acts administered by the DEA, the SALRC proposes that the provisions of Acts listed in Schedules 1 and 2 be amended or repealed, for reasons set out in Chapter 2 of this discussion paper.

It is possible that certain statutes or statutory provisions have not been identified for amendment or repeal in this discussion paper but may nonetheless require amendment or repeal. The SALRC requests all interested parties to identify such statutes or statutory provisions and bring them to the attention of the SALRC. We would appreciate receiving comments or representations on this discussion paper from interested parties no later than **31 January 2016**.

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CHAPTER 1

BACKGROUND AND SCOPE OF PROJECT 25

A Introduction

1 The objects of the South African Law Reform Commission

1.1 The objects of the SA Law Reform Commission (SALRC) are set out in the South African Law Reform Commission Act 19 of 1973, as follows: to do research with reference to all branches of the law of the Republic, and to study and to investigate all such branches of the law in order to make recommendations for the development, improvement, modernization or reform thereof, including -

- (a) the repeal of obsolete or unnecessary provisions;
- (b) the removal of anomalies;
- (c) the bringing about of uniformity in the law in force in the various parts of the Republic; and
- (d) the consolidation or codification of any branch of the law.

1.2 Thus the SALRC is an advisory statutory body, whose aim is the renewal and improvement of the law of South Africa on a continual basis.

2 History of the investigation

1.3 Shortly after its establishment in 1973, the SALRC (which was then the SALC) began revising all pre-Union legislation, as part of its Project 7. This investigation resulted in the repeal of approximately 1 200 laws, ordinances, and proclamations of the former colonies and republics. In 1981 the SALRC finalised a report on the repeal of post-Union statutes as

part of its Project 25 on statute law, which aims to establish a simplified, coherent, and generally accessible statute book. This report resulted in Parliament adopting the Repeal of Laws Act 94 of 1981, which repealed approximately 790 post-Union statutes.

1.4 Immediately after the advent of constitutional democracy in South Africa in 1994, the legislation enacted prior to that year remained in force. However, many pre-1994 provisions do not comply with the country's new Constitution. This discrepancy is exacerbated by the fact that some of the older provisions were enacted to promote and sustain the policy of apartheid.

1.5 In 2003, Cabinet approved that the Minister of Justice and Constitutional Development should coordinate and mandate the SALRC to review provisions in the legislative framework that would result in discrimination as defined by section 9 of the Constitution. Section 9 prohibits unfair discrimination on the basis of race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language, or birth.

1.6 In 2004, the SALRC included in its law reform programme an investigation on statutory law, with the aim of revising all statutes from 1910 to date. Whereas previous investigations had focused on identifying obsolete and redundant provisions for repeal, the new investigation would emphasise compliance with the Constitution. Redundant and obsolete provisions that are identified during this investigation are also recommended for repeal, but the constitutional inquiry has focused mainly on identifying statutory provisions that blatantly violate the provisions of section 9 (the Equality Clause) of the Constitution.

1.7 A 2004 provisional audit by the SALRC of national legislation that has remained on the statute book since 1910 established that roughly 2 800 individual statutes existed at that time. These comprised principal Acts, amendment Acts, private Acts, additional or supplementary Acts, and partially repealed Acts. A substantial number of Acts on the statute book no longer serve any useful purpose and many others have retained unconstitutional provisions. This situation has already resulted in expensive and sometimes protracted litigation.

B WHAT IS STATUTORY LAW REVISION?

1.8 Statutory law revision ordinarily focuses on the identification and repeal of statutes that are no longer useful in practice. As the Law Reform Commission for England and Wales explains, the purpose of statute revision is to modernise and simplify statutes that need updating, and to reduce the size of the statute book to the benefit of legal professionals and other people who use it.¹ Revision lessens the chance of people being misled by redundant laws that still appear in the statute book and seem to be relevant or “live” law. If statutory provisions appear in the statute book and are referred to in legal textbooks, readers may reasonably assume they still serve a purpose.

1.9 As in other jurisdictions, and as will become evident in this review, once legislation is deemed no longer to apply the question arises whether it should remain in the statute book or be repealed.² Usually such legislation no longer has any legal effect and is considered obsolete, redundant, or spent. A statutory provision may be identified for repeal because the grounds for which it was passed have lapsed or is presently remedied by another measure or provision.

1.10 In the context of this investigation, the statutory law revision primarily targets statutory provisions that are obviously at odds with the Constitution, particularly section 9.

1.11 The Law Commission for England and Wales lists the following guidelines for identifying statutory provisions that are candidates for repeal:³

- (a) references to bodies, organisations, etc. that have been dissolved or wound up or which have otherwise ceased to serve any purpose;

¹ See the *Background Notes on Statute Law Repeals* compiled by the Law Commission for England and Wales, par 1 accessed from http://lawcommission.justice.gov.uk/docs/background_notes.pdf on 28 May 2008 (hereinafter referred to as Law Commission for England and Wales *Background Notes on Statute Law Repeals*).

² See Law Commission for England and Wales *Background Notes on Statute Law Repeals*, par 6.

³ See Law Commission for England and Wales *Background Notes on Statute Law Repeals*, par 7.

- (b) references to issues that are no longer relevant as a result of changes in social or economic conditions (e.g. legislation about tithes or tin mines);
- (c) references to Acts that have been superseded by more modern (or EU) legislation or by international Convention;
- (d) references to statutory provisions (i.e. sections, schedules, orders, etc.) that have been repealed;
- (e) repealing provisions e.g. “Section 33 is repealed/shall cease to have effect”;
- (f) commencement provisions once the whole of an Act is in force;
- (g) transitional or savings provisions that are spent;
- (h) provisions that are self-evidently spent - e.g. a one-off statutory obligation to do something becomes spent once the required act has duly been done; and
- (i) powers that have never been exercised over a period of many years or where any previous exercise is now spent.

1.12 The Law Commission of India notes that in England the terms “expired”, “spent”, “repealed in general terms”, “virtually repealed”, “superseded”, and “obsolete” were defined in memoranda to Statute Law Revision Bills as follows:⁴

- (a) Expired – that is, enactments which having been originally limited to endure only for a specified period by a distinct provision, have not been either perpetuated or kept in force by continuance, or which have merely had as their object the continuance of previous temporary enactments for periods now gone by effluxion of time.
- (b) Spent – that is, enactments spent or exhausted in operation by the accomplishment of the purposes for which they were passed, either at the

⁴

Law Commission of India *Ninety-Sixth Report on Repeal of Certain Obsolete Central Acts* March 1984; p 3 of Chapter 2 (p 6 of 21) accessed from <http://lawcommissionofindia.nic.in/51-100/Report96.pdf> on 28 May 2008 (hereinafter referred to as Law Commission for England and Wales *Background Notes on Statute Law Repeals*).

moment of their first taking effect or on the happening of some event or on the doing of some act authorised or required.

- (c) Repealed in general terms – that is, repealed by the operation of an enactment expressed only in general terms, as distinguished from an enactment specifying the Acts which it is to operate.
- (d) Virtually repealed – where an earlier enactment is inconsistent with, or is rendered nugatory by, a later one.
- (e) Superseded – where a later enactment effects the same purposes as an earlier one by repetition of its terms or otherwise.
- (f) Obsolete – where the state of things contemplated by the enactment has ceased to exist, or the enactment is of such a nature as to be no longer capable of being put in force, regard being had to the alteration of political or social circumstances.

1.13 Statutory provisions usually become redundant as time passes.⁵ Generally, the redundancy of legislation is not signalled by a single occurrence; rather, legislation is simply overtaken by social and economic changes. Inevitably some provisions fade away more quickly than others. Relatively short-lived provisions include commencement and transitional provisions and those that confer powers to be exercised during the period between the passing of a law and its implementation (in some jurisdictions known as “pump-priming” provisions). Provisions that provide for delegated legislation-making powers might also become unnecessary over time, or a committee or board established by a statute might no longer be required.

1.14 Substantial revision of statutory law is possible in South Africa because of the general savings provisions of section 12(2) of the South African Interpretation Act. The South African Interpretation Act 33 of 1957⁶ mirrors section 16(1) of the Interpretation Act of 1978 of England and Wales.⁷ Section 12(2) of the South African Interpretation Act provides that where a law repeals any other law, then unless the contrary intention appears, the repeal shall not:

⁵ See Law Commission for England and Wales *Background Notes on Statute Law Repeals*, par 9 and 10.

⁶ With the exception of few minor changes, the South African Interpretation Act 5 of 1910 repeated the provisions of the United Kingdom Interpretation Act of 1889 (Interpretation Act 1889 (UK) 52 & 53 Vict c 63).

⁷ See Law Commission for England and Wales *Background Notes on Statute Law Repeals the Background*, par 8.

- (a) revive anything not in force or existing at the time at which the repeal takes effect; or
- (b) affect the previous operation of any law so repealed or anything duly done or suffered under the law so repealed; or
- (c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any law so repealed; or
- (d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any law so repealed; or
- (e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, forfeiture or punishment as is in this subsection mentioned,
and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed, as if the repealing law had not been passed.

1.15 The methodology adopted in this investigation is to review the statute book by department. The SALRC identifies a department, reviews the national legislation administered by that department for constitutionality and redundancy, sets out the preliminary findings and proposals in a consultation paper, and consults with that department to verify the SALRC's preliminary findings and proposals. The next step that the SALRC undertakes is the development of a discussion paper in respect of the legislation of each department. Once the paper has been approved by the Commission, it is published for general information and comment. Finally, the SALRC develops a report in respect of each department, which reflects the comments on the discussion paper and contains a draft Bill proposing amending legislation.

C THE INITIAL INVESTIGATION

1.16 In the early 2000s, the SALRC and the German Agency for Technical Cooperation commissioned the Centre for Applied Legal Studies at the University of the Witwatersrand to conduct a preliminary study on law reform. The study examined the feasibility, scope, and operational structure of a revision of the South African statute book for constitutionality, redundancy, and obsolescence. The Centre for Applied Legal Studies pursued four main

avenues of research in this study, which was conducted in 2001 and the findings of which were submitted to the SALRC in April 2001.⁸ These four steps are outlined here.

1. A series of interviews was conducted with key role-players drawn from the three governmental tiers, Chapter 9 institutions, the legal profession, academia, and civil society. These interviews revealed a high level of support for a law reform project.
2. All Constitutional Court judgments up to 2001 were analysed. The results were compiled as schedules summarising the nature and outcome of these cases, and the statutes impugned. The three most problematic categories of legislative provisions were identified, and the Constitutional Court's jurisprudence in each category was analysed. The three most problematic categories were reverse onus provisions, discriminatory provisions, and provisions that infringe on the separation of powers. Guidelines summarising the Constitutional Court's jurisprudence were compiled for each category.
3. Sixteen national statutes were tested against the guidelines. The results were compared with the results of a control audit that tested the same statutes against the entire Bill of Rights, excluding socio-economic rights. Comparison of the outcomes showed that a targeted revision of the statute book in accordance with the guidelines had produced highly effective results.
4. A survey of law reform in five other countries (United Kingdom, Germany, Norway, Switzerland, and France) was conducted. Apart from France, all these countries had conducted or were conducting statutory revision exercises. The motivation for the revision and the outcomes of the exercises differed by country.

1.17 The SALRC finalised the following reports, proposing reform of discriminatory areas of the law or the repeal of specific discriminatory provisions:

- (a) the Recognition of Customary Marriages (August 1998);

⁸ "Feasibility and Implementation Study on the Revision of the Statute Book" prepared by the Law and Transformation Programme of the Centre for Applied Legal Studies of the University of the Witwatersrand April 2001. Available on request from pvanwyk@justice.gov.za and the [SALRC library](#).

- (b) the Review of the Marriage Act 25 of 1961 (May 2001);
- (c) the Application of the Bill of Rights to Criminal Procedure, Criminal Law, the Law of Evidence and Sentencing (May 2001);
- (d) Traditional Courts (January 2003);
- (e) the Recognition of Muslim marriages (July 2003);
- (f) the Repeal of the Black Administration Act 38 of 1927 (March 2004);
- (g) Customary Law of Succession (March 2004); and
- (h) Domestic Partnerships (March 2006).

D SCOPE OF THE PROJECT

1.18 The constitutional validity aspect of this project focuses on statutes or provisions in statutes that are clearly inconsistent with the right to equality entrenched in section 9 of the Constitution. In practical terms, this leg of the investigation is limited to statutes or provisions in statutes that –

- (a) differentiate between people or categories of people in a manner that is not rationally connected to a legitimate government purpose; or
- (b) unfairly discriminate against people or categories of people on one or more grounds listed in section 9(3) of the Constitution; or
- (c) unfairly discriminate on grounds which impair, or have the potential to impair, a person's fundamental dignity as a human being.

1.19 Consequently, a law or a provision in a law which appears on the face of it to be neutral and non-discriminatory, but which has or could have discriminatory effect or consequences, has been left to the judicial process. This investigation focuses on the constitutionality of provisions in statutes of South African law, with special attention paid to consonance with section 9 of the Constitution. The investigation also attends to obsolescence or redundancy of provisions. In 2003, Cabinet directed that the highest priority be given to reviewing provisions that would result in discrimination as defined in section 9 of the Constitution, which prohibits unfair discrimination on the basis of race, gender, sex, pregnancy, marital status, ethnic and social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language, or birth. The SALRC agreed that the project

should proceed by scrutinising and revising national legislation that discriminates unfairly.⁹ However, as explained in the preceding sections of this chapter, even the section 9 inquiry was limited, because it dealt primarily with statutory provisions that were blatantly in conflict with section 9 of the Constitution. This delimitation arose mainly from considerations of time and capacity. Nonetheless, during the investigation certain other anomalies and obvious inconsistencies with the Constitution were identified. The SALRC has made recommendations on how to address these issues.

E CONSULTATION WITH STAKEHOLDERS

1.20 In 2004, Cabinet endorsed the proposal that government departments should be asked to participate in and contribute to this investigation. In certain instances, legal researchers cannot decide whether to recommend a provision for repeal unless they have access to factual information that might be considered “inside” knowledge – of the type usually accessible only within a specific department or organisation. Examples include savings or transitional provisions that are instituted to preserve the status quo until an office-holder ceases to hold office or until a loan has been repaid. In such cases, the consultation paper drafted by the SALRC invited the department or organisation being consulted to supply the necessary information. The aim of the publication of discussion papers in this investigation is likewise to determine whether departments and stakeholders agree with and support the proposed findings and the proposals for legislative amendment or repeal. The SALRC relies on the assistance of departments and stakeholders. This process should ensure that all relevant provisions are identified during this review, and are dealt with responsively and without creating unintended negative consequences.

1.21 On 30 September 2011, the SALRC submitted a consultation paper to the DEA with preliminary proposals for legislative amendment and repeal. On 5 January 2012, the DEA submitted its comments on the consultation paper to the SALRC. The SALRC then commenced with the drafting this discussion paper, which includes the comments received from the DEA.

⁹ Cathi Albertyn prepared a ‘Summary of Equality jurisprudence and Guidelines for assessing the SA Statute Book for Constitutionality against section 9 of the 1996 Constitution’, specifically for the SALRC in February 2006 available on request from pvanwyk@justice.gov.za and the SALRC library.

1.22 The Commission considered this discussion paper at its meeting on 13 June 2015 and approved it for publication for public comments.

CHAPTER 2

EVALUATION OF LEGISLATION ADMINISTERED BY THE DEPARTMENT OF ENVIRONMENTAL AFFAIRS

A Introduction

2.1 The DEA is mandated, amongst other things, to promote the conservation and sustainable utilisation of natural resources, to enhance economic growth and alleviate poverty, to protect and improve the quality and safety of the environment, and to promote a global sustainable development agenda.¹⁰ In its quest for better usage and management of the natural environment, the DEA is guided by its constitutional mandate as contained in the Constitution. Accordingly, the DEA develops legislation, policies and strategies to implement its mandate.¹¹

2.2 In terms of Schedule 4 Part A of the Constitution, “Environment” refers to a functional area of concurrent national and provincial legislative competence. In terms of section 41(1)(h) of the Constitution, all spheres of government and organs of state must co-operate with, consult and support one another.

B General observation

2.3 Having regard to the scope of Project 25, and within the context of this discussion paper, it is important to note the following:

- (a) The SALRC has a limited review mandate to conduct the current investigation. This discussion paper is part of a narrowly focused and text-based statutory review process, as indicated in Chapter 1 above.

¹⁰ See Department of Environmental Affairs and Tourism: Fifteen years review of the Department of Environmental Affairs and Tourism 2009 at p12.

¹¹ See Department of Environmental Affairs and Tourism: Fifteen years review of the Department of Environmental Affairs and Tourism 2009 at page 4.

- (b) The DEA participated in the SALRC audits of legislation that were conducted in 2003 and 2005; the DEA gave the SALRC a list of legislation which the DEA administers. That list forms the focus of review in this discussion paper.
- (c) Even if a statute administered by the DEA appears to be free from provisions that violate section 9 of the Constitution, this does not imply that the execution of the statute is automatically in line with section 9 of the Constitution.

C Evaluation of legislation

2.4 The SALRC has prepared the Environmental Affairs General Laws Amendment and Repeal Bill, which if enacted will amend or repeal certain legislation or legislative provisions administered by the DEA which have been identified as redundant or obsolete. This Chapter contains the reasons for the amendment or repeal of the provisions that are reflected in Schedules 1 and 2 of Annexure A, respectively.

2.5 The review of the statutes administered by the DEA in this discussion paper is not arranged or dealt with in a chronological order as *per* the number and year of each Act, but according to identified themes. The SALRC considers that this approach enhances the clarity of the provisional proposals made. For the purpose of clarity, these statutes have been broadly grouped under four main themes: framework legislation, planning legislation, natural resource legislation and pollution control legislation. For each statute or statutory provision which needs to be reformed, an explanation of the issue requiring reform and a recommendation for such reform is provided.

Theme 1: Framework Legislation

(a) National Environmental Management Act 107 of 1998 (NEMA)

2.6 The NEMA aims to provide for co-operative environmental governance, by establishing –¹²

- (a) principles for decision-making on matters affecting the environment;
- (b) institutions that will promote co-operative governance; and
- (c) procedures for coordinating environmental functions exercised by organs of state.

2.7 The NEMA also aims to provide for certain aspects of the administration and enforcement of other environmental management laws like the so-called “specific environmental management Acts” and other sectoral laws. It also provides for other related matters.

2.8 The NEMA has been amended a number of times. The most recent amendments include those effected by the National Environmental Management Laws Second Amendment Act 30 of 2013 and the National Environmental Management Laws Amendment Act 25 of 2014.

2.9 Section 33(2)(c)(i) and section 33(5) of NEMA refer to the “Attorney General”. This designation has, in terms of section 179(1)(a) of the Constitution, been replaced by that of “National Director of Public Prosecutions”. Consequently, the designation of “Attorney General” is obsolete. The SALRC recommended that sections 33(2)(c)(i) and (5) be amended to refer to “national Director of Public Prosecutions”. In its comment on the SALRC’s consultation paper, the DEA stated that referring to this specific Act by name is unwise because the Act could be repealed in the future and replaced by another Act with a different name. If that happens, the DEA would be compelled to amend its legislation. However, the SALRC remains of the view that since the designation of “Attorney General” has been replaced by that of “national Director of Public Prosecutions” in the Constitution, continued reference to “Attorney General” can be misleading and confusing to users of this

¹² The numbered points from (a) to (c) do not appear in the Act; they have been added here for ease of reading.

legislation. Therefore, the SALRC is still of the view that sections 33(2)(c)(i) and (5) should be amended to refer to “national Director of Public Prosecutions”.

(b) National Environmental Management Amendment Act 56 of 2002

2.10 The purpose of the Act is to amend the National Environmental Management Act of 1998, so as to substitute a definition; and to provide for the prohibition, restriction or control of activities which are likely to have a detrimental effect on the environment; and to provide for matters connected therewith. The SALRC reviewed this amendment Act and no provision of the Act was found to be unconstitutional, redundant or obsolete. Since the principal Act is still in force, the SALRC proposed to the DEA that the amendment Act be retained for legal certainty. In its comment on the SALRC’s consultation paper, the DEA accepted this recommendation.

(c) National Environmental Management Amendment Act 46 of 2003

2.11 The purpose of this Act is to amend the National Environmental Management Act of 1998, so as to define certain expressions, to provide for the administration and enforcement of certain national environmental management laws, and to provide for matters connected therewith. The SALRC reviewed this amendment Act and no provision of the Act was found to be unconstitutional, redundant or obsolete. Since the principal Act is still in force, the SALRC proposed to the DEA that the amendment Act be retained for legal certainty. In its comment on the SALRC’s consultation paper, the DEA accepted this recommendation.

(d) National Environmental Management Amendment Act 8 of 2004

2.12 The purpose of this Act is to amend the National Environmental Management Act of 1998, so as to inserting certain definitions and substituting others. The amendment Act also provides for environmental authorizations, textual alterations registration of environmental impact assessments. The SALRC reviewed this amendment Act and no provision of the Act was found to be unconstitutional, redundant or obsolete. Since the principal Act is still in force, the SALRC proposed to the DEA that the amendment Act be retained for legal

certainty. In its comment on the SALRC's consultation paper, the DEA accepted this recommendation.

(e) National Environmental Management Amendment Act 62 of 2008

2.13 The purpose of this amendment Act is to amend the National Environmental Management Act of 1998. The amendment Act inserts certain definitions and substitutes others, and further regulates environmental authorizations. It empowers the Minister of Minerals and Energy to implement environmental matters in terms of the National Environmental Management Act of 1998 with regard to prospecting, mining, exploration, production or related activities on a prospecting, mining, exploration or production area. It also aligns environmental requirements in the Mineral and Petroleum Resources Development Act 28 of 2002 with the National Environmental Management Act of 1998, by providing for the use of one environmental system, and by providing for¹³

- (a) environmental management programmes,
- (b) consultation with State departments,
- (c) exemptions from certain provisions of the National Environmental Management Act of 1998,
- (d) financial provision for remediating environmental damage,
- (e) the management of residue stockpiles and residue deposits,
- (f) recovering costs in the event of urgent remedial measures, and
- (g) the issuing of closing certificates related to the conditions of the environmental authorization.

2.14 The amendment Act refers to the "Minister of Minerals and Energy". The SALRC has recommended to the DEA that "Minister of Minerals and Energy" be substituted with the expression "Minister of Mineral Resources" wherever it occurs in this amendment Act. In its comment on the SALRC's consultation paper, the DEA accepted this recommendation. The afore-mentioned recommendation has now been effected in terms of the National Environmental Management Laws Act 25 of 2014 which defines Minister as the "Minister responsible for mineral resources".

¹³ The numbered points from (a) to (g) do not appear in the Act; they have been added here for ease of reading.

(f) National Environment Laws Amendment Act 14 of 2009

2.15 The purpose of this Act is to amend the National Environmental Management Act of 1998, so as to delete certain definitions, to provide for the establishment of *fora* or advisory committees and to increase powers of the courts. The Act also provides for the-¹⁴

- (a) removal of the requirement that environmental management inspectors must carry notices of designation with them;
- (b) extension of the scope of routine inspections to the search of vehicles; and
- (c) jurisdiction of magistrate's court in instances where the maximum fines have been increased.

2.16 Section 51, which is the short title and commencement provision of this Act, reflects the year of publication of the Act as 2008 instead of 2009. The SALRC proposed to the DEA that section 51 be amended to reflect 2009. In its comment to the SALRC' consultation paper, the DEA accepted this recommendation. The proposed amendment has now been effected in terms of section 39 of the National Environmental Management Laws Amendment Act 14 of 2013.

(g) National Environmental Management Laws Second Amendment Act 30 of 2013

2.17 The purpose of this Act was to amend the National Environmental Management Act of 1998 so as to -¹⁵

- (a) amend certain definitions;
- (b) to adjust the timeframes for the preparation of environmental implementation plans and environmental management plans;
- (c) provide for the process and procedure for submitting environment outlook reports;
- (d) promote or facilitate the mainstreaming of integrated, environmentally sustainable and sound management considerations into business processes, practices, technology and decision-making across the economy;

¹⁴ The numbered points from (a) to (c) do not appear in the Act; they have been added here for ease of reading.

¹⁵ The numbered points from (a) to (w) do not appear in the Act; they have been added here for ease of reading.

- (e) enable, as appropriate, the use of spatial tools, norms and standards and environmental management instruments in decision-making as an alternative to environmental authorization procedures;
- (f) empower the Minister to restrict or prohibit development in specified geographical areas;
- (g) empower the Minister or MEC to develop norms and standards for activities, sectors and geographical areas;
- (h) clarify when the Minister is the competent authority;
- (i) identify the Minister as the competent authority where the MEC is usually the competent authority and a Cabinet decision stipulates that the Minister must be the competent authority for activities related to a matter declared as a national priority or matters related to such national priority;
- (j) empower the Minister to take a decision in the place of the MEC under certain circumstances;
- (k) allow for the transfer of rights and obligations relating to an environmental authorization;
- (l) provide legal clarity on the applicability of section 24G to the unlawful commencement, undertaking or conducting of a waste management activity under the National Environmental Management: Waste Act of 2008;
- (m) provide legal clarity on the options available to the competent authority in processing a section 24G application;
- (n) increase the administrative fine and to provide for criminal investigation and prosecution in certain circumstances;
- (o) further provide for exemptions under certain circumstances and to clarify that no exemptions will be provided from obtaining an environmental authorization;
- (p) provide for the consideration of adopted environmental management instruments when considering an environmental authorization application;
- (q) provide for emergency situations and to distinguish between an “incident” and an “emergency situation”;
- (r) provide for the power and the circumstances under which an environmental management inspector may, without a warrant, seize any mechanism of transport;
- (s) insert provisions to regulate products which have a detrimental effect on the environment;
- (t) provide for all regulations to be tabled in Parliament before promulgation;
- (u) add provisions regarding the delivery of documents;
- (v) consolidate all offences and penalties under the Act; and

- (w) correct and delete certain provisions and to provide for matters connected therewith.

2.18 The SALRC has reviewed this amendment Act and no provision of the Act has been found to be unconstitutional, redundant or obsolete.

(h) National Environmental Management Amendment Act 25 of 2014

2.19 The purpose of this Act is to -¹⁶

- (a) amend certain definitions and to define certain words and expressions;
- (b) provide for the review of environmental management instruments;
- (c) provide for minimum information requirements to be included under environmental management instruments;
- (d) provide for the Minister responsible for mineral resources to be the competent authority for environmental matters in so far as they relate to prospecting, exploration, mining or production of mineral and petroleum resources;
- (e) empower the Minister to take an environmental decision in so far as it relates to prospecting, exploration, mining or production (instead of the Minister responsible for mineral resources) under certain circumstances;
- (f) clarify the provisions relating to integrated environmental authorizations;
- (g) strengthen the financial provisions in the Act;
- (h) provide for consultation with State Departments;
- (i) provide for the management of residue stockpiles and residue deposits;
- (j) empower the Director-General of the Department responsible for mineral resources to issue section 28 directives in so far as they relate to prospecting, exploration, mining or production;
- (k) empower the Minister responsible for mineral resources to designate environmental mineral resource inspectors within the Department responsible for mineral resources for compliance monitoring and enforcement of provisions in so far as they relate to prospecting, exploration, mining or production;

¹⁶ The numbered points from (a) to (y) do not appear in the Act; they have been added here for ease of reading.

- (l) provide the Minister with the power to direct environmental management inspectors to perform compliance monitoring and enforcement duties (instead of mineral resource inspectors) under certain circumstances;
- (m) empower the provincial head of department to delegate a function entrusted to him or her under this Act;
- (n) provide for the suspension of a decision on receipt of an appeal; to provide for appeals against directives;
- (o) further provide for the power of the Minister to make regulations;
- (p) provide for consultation in the event that an Act of Parliament or regulations are amended that impact on the Agreement;
- (q) provide for the criteria for condonation applications in the case of appeals that relate to prospecting, exploration, mining or production;
- (r) amend the National Environmental Management: Waste Act of 2008, so as to insert certain definitions;
- (s) empower the Minister to prohibit or restrict waste management activities in specified geographical areas;
- (t) empower the Minister responsible for mineral resources to be the licensing authority to issue waste management licenses in so far as it relates to prospecting, exploration, mining or production activities of mineral and petroleum resources;
- (u) empower the Minister responsible for mineral resources to delegate a function entrusted to him or her under this Act;
- (v) amend the National Environmental Management Amendment Act of 2008, so as to provide for transitional arrangements;
- (w) amend the commencement provisions;
- (x) delete certain obsolete provisions; and
- (y) provide for matters connected therewith.

2.20 The SALRC has reviewed this amendment Act and no provision of the Act has been found to be unconstitutional, redundant or obsolete.

(i) Environment Conservation Act 73 of 1989 (ECA)

2.21 The purpose of the ECA is to provide for the effective protection and controlled utilisation of the environment. The administration of certain sections of the ECA has been assigned to provinces in terms of Proclamation R29 in GG 16346 of 7 April 1995 and Proclamation R43 in GG 17354 of 8 August 1996, to the extent set out in the schedules of both Proclamations.

2.22 Section 36 of the ECA has been assigned to Provinces in so far as it applies or relates to a section assigned to provinces. Section 36 refers to the “division of the Supreme Court”. In terms of section 16(4)(a) of Schedule 6 of the Constitution, a provincial or local division of the Supreme Court of South Africa became a High Court under the Constitution. The SALRC therefore recommends that section 36 of the ECA be amended to replace the phrase “division of the Supreme Court” with “High Court”.

2.23 The SALRC reviewed those sections of the ECA which are not assigned to provinces and which are administered by the DEA. The SALRC is of the view that none of those sections of this Act are unconstitutional, redundant or obsolete. The SALRC therefore proposed to the DEA that the Act, to the extent administered by the DEA, be retained. In its comment on the SALRC’s consultation paper, the DEA accepted this recommendation.

(j) Environment Conservation Amendment Act 98 of 1991

2.24 The purpose of this Act is to amend the Environment Conservation Act of 1989 so as to -¹⁷

- (a) extend the definition of “local authority”;
- (b) provide that regulations which may affect the activities of any local authority or government institution shall only be made applicable within the area of jurisdiction of such local authority or government institution with its concurrence; and
- (c) provide for matters connected therewith.

¹⁷ The numbered points from (a) to (c) do not appear in the Act; they have been added here for ease of reading.

2.25 The SALRC has reviewed this amendment Act and no provision of the Act has been found to be unconstitutional, redundant or obsolete. Since the principal Act is still in force, the SALRC proposed to the DEA that the amendment Act be retained for legal certainty. In its comment on the SALRC's consultation paper, the DEA accepted this recommendation.

(k) Environment Conservation Amendment Act 79 of 1992

2.26 The purpose of the Act is to amend the Environmental Conservation Act of 1989 in order to ⁻¹⁸

- (a) define or further define certain expressions;
- (b) make further provision concerning the determination of and compliance with the policy for environmental conservation;
- (c) further regulate the constitution of the Council for the Environment;
- (d) amend certain references to provide that the Minister may in certain circumstances declare private land or water to be a special nature reserve;
- (e) extend the exemptions in respect of the prohibition on admittance to special nature reserves;
- (f) compel any person or authority in control of any place to which the public has access to remove any litter discarded, dumped or left at such place;
- (g) further define the power of the Minister of Water Affairs to issue permits in connection with disposal sites;
- (h) make further provision in connection with the identification of actions likely to have a detrimental effect on the environment;
- (i) empower Administrators to authorize the performance of identified activities;
- (j) empower Administrators to authorize development in limited development areas;
- (k) empower the Minister to make regulations regarding the submission of statistics on the types of waste produced;
- (l) empower the Minister to make regulations regarding the dumping of litter;
- (m) empower the Minister to make regulations regarding environmental impact reports in respect of activities prohibited in limited development areas;

¹⁸ The numbered points from (a) to (s) do not appear in the Act; they have been added here for ease of reading.

- (n) delete the requirement in terms of which certain regulations may only be made applicable within the area of jurisdiction of a local authority with the concurrence of such local authority;
- (o) empower the Minister to grant exemption from the application of regulations, notices or directions promulgated or issued in terms of the Act;
- (p) extend the provision regarding offences and penalties;
- (q) confer upon the Minister, an Administrator and a local authority or government institution certain powers where the environment is damaged, endangered or detrimentally affected;
- (r) extend the powers of the Minister to delegate, and to empower persons authorized thereto by the Minister to enter upon land; and
- (s) provide for matters connected therewith.

2.27 The SALRC has reviewed this amendment Act and no provision of the Act has been found to be unconstitutional, redundant or obsolete. Since the principal Act is still in force, the SALRC proposed to the DEA that the amendment Act be retained for legal certainty. In its comment on the SALRC's consultation paper, the DEA accepted this recommendation.

(I) Environment Conservation Second Amendment Act 115 of 1992

2.28 The purpose of this Act is to amend the Environment Conservation Act of 1989 so as to -¹⁹

- (a) extend the powers of Administrators with regard to protected natural environments;
- (b) do away with a restriction in respect of land reserved in terms of the Physical Planning Act 88 of 1967 as a nature area, but which is in terms of the Environment Conservation Act 1989 deemed to be declared a protected natural environment;
- (c) validate certain functions performed in terms of the Physical Planning Act of 1967; and
- (d) provide for matters incidental thereto.

¹⁹ The numbered points from (a) to (d) do not appear in the Act; they have been added here for ease of reading.

2.29 The SALRC has reviewed this amendment Act and no provision of the Act has been found to be unconstitutional, redundant or obsolete. Since the principal Act is still in force, the SALRC proposed to the DEA that the amendment Act be retained for legal certainty. In its comment on the SALRC's consultation paper, the DEA accepted this recommendation.

(m) Environment Conservation Amendment Act 94 of 1993

2.30 The purpose of this Act is to amend the Environment Conservation Act of 1989 so as to ⁻²⁰

- (a) substitute a new committee for the Committee for Environmental Management;
- (b) assign to or impose upon the new committee certain powers, functions and duties;
- (c) provide for the election of an executive committee and the appointment of subcommittees by such new committee;
- (d) provide for the payment of allowances to certain members of such subcommittees and to persons co-opted onto such new committee;
- (e) regulate the meetings and decisions of the new committee;
- (f) substitute a certain obsolete expression; and
- (g) provide for matters connected therewith.

2.31 The SALRC has reviewed this amendment Act and no provision of the Act has been found to be unconstitutional, redundant or obsolete. Since the principal Act is still in force, the SALRC proposed to the DEA that the amendment Act be retained for legal certainty. In its comment on the SALRC's consultation paper, the DEA accepted this recommendation.

(n) Environment Conservation Second Amendment Act 189 of 1993

2.32 The purpose of this Act is to amend the Environment Conservation Act of 1989 so as to ⁻²¹

²⁰ The numbered points from (a) to (g) do not appear in the Act; they have been added here for ease of reading.

²¹ The numbered points from (a) to (d) do not appear in the Act; they have been added here for ease of reading.

- (a) make provision for the Minister to determine policy with regard to the implementation and application of a convention, treaty or agreement;
- (b) grant the Minister the power to lay down norms and standards at the determination of policy;
- (c) grant the Director-General the power to ensure that the policy is complied with, and to further regulate the delegation of powers and assignment of duties; and
- (d) make provision for matters connected there with.

2.33 The SALRC has reviewed this amendment Act and no provision of the Act has been found to be unconstitutional, redundant or obsolete. Since the principal Act is still in force, the SALRC proposed to the DEA that the amendment Act be retained for legal certainty. In its comment on the SALRC's consultation paper, the DEA accepted this recommendation.

(o) Environment Conservation Amendment Act 52 of 1994

2.34 The purpose of this Act is to amend the Environment Conservation Act of 1989 so as to ⁻²²

- (a) adjust certain definitions;
- (b) extend the Minister's powers with regard to the determination of policy;
- (c) make provision for the appointment of additional members to the Committee for Environmental Co-ordination;
- (d) substitute references to obsolete provisions and names;
- (e) empower the Minister to make regulations relating to the application and enforcement of international conventions, treaties and agreements; and
- (f) provide for matters connected therewith.

2.35 The SALRC has reviewed this amendment Act and no provision of the Act has been found to be unconstitutional, redundant or obsolete. Since the principal Act is still in force, the SALRC proposed to the DEA that the amendment Act be retained for legal certainty. In its comment on the SALRC's consultation paper, the DEA accepted this recommendation.

²² The numbered points from (a) to (f) do not appear in the Act; they have been added here for ease of reading.

(p) Environment Conservation Amendment Act 50 of 2003

2.36 The purpose of this amendment Act is to amend the Environment Conservation Act of 1989 so as to enable the Minister of Environmental Affairs to make regulations regarding financial matters relating to identified waste types and product control for waste management. The amendment Act further provides for the transfer of the administration of waste disposal sites from the Minister of Water Affairs and Sanitation to the Minister of Environmental Affairs.

2.37 The Environment Conservation Amendment Act of 2003 makes references to “Minister of Water Affairs and Forestry” and “Minister of Environmental Affairs and Tourism”. The Department of Water Affairs and Forestry was subsequently split into two departments: the Department of Water Affairs and the Department of Agriculture, Forestry and Fisheries. The Department of Water Affairs is responsible for waste management. The SALRC therefore recommended that the Environment Conservation Amendment Act of 2003 be amended to replace “Minister for Environmental Affairs and Tourism” with “Minister responsible for Environmental Affairs” and similarly to replace “Minister for Water Affairs and Forestry” with “Minister for Water Affairs”. In its comment to the SALRC consultation paper, the DEA accepted these proposals. However, after this recommendation was made and accepted, the name of the Department of Water Affairs was changed to the Department of Water and Sanitation. The SALRC therefore now recommends that the designation of “Minister of Water Affairs” be replaced with that of “Minister responsible for Water and Sanitation”.

(q) Environment Conservation Extension Act 100 of 1996

2.38 The Environment Conservation Extension Act of 1996 was promulgated to extend the application of the ECA to the former self-governing entities in the Republic of South Africa. The extension of application of this Act is in line with section 2(2)(a) of Schedule 6 of the Constitution. This section of Schedule 6 provides that old-order legislation that continues in force after the Constitution took effect shall not have a wider application, territorially or otherwise, than it had before the interim Constitution took effect, unless it has been subsequently amended to have a wider application, territorially or otherwise. The SALRC reviewed this Act and found none of its provisions to be unconstitutional, redundant and obsolete. The SALRC recommended to the DEA that the Act be retained to ensure that its

objectives are achieved. In its comment on the SALRC's consultation paper, the DEA accepted this recommendation.

(r) Environmental Laws Rationalisation Act 51 of 1997

2.39 The Environmental Laws Rationalisation Act of 1997 seeks to rationalise several laws administered by the DEA through extending the application thereof to the entire territory of the Republic. The SALRC has reviewed this Act and no provision of the Act was found to be unconstitutional, redundant or obsolete. Since the principal Act is still in force, the SALRC proposed to the DEA that the amendment Act be retained for legal certainty. In its comment on the SALRC's consultation paper, the DEA accepted this recommendation.

Theme 2: Planning legislation

2.40 Planning legislation predominantly refers to those laws which regulate the planning and management of land use. It includes those laws that regulate environmental impact assessment, national, regional and local urban planning, town-planning schemes subdivision, and title deed restrictions. For purposes of this discussion paper, the term planning legislation includes laws that provide for planning in other contexts, such as climatology.

(a) Environment Planning Amendment Act 104 of 1977

2.41 The Environment Planning Amendment Act of 1977 amends various provisions of the Environment Planning Act 88 of 1967, which seeks to promote coordinated environment planning and the utilization of the Republic's resources. It does so through providing for the control of the zoning and subdivision of land for industrial purposes; the reservation of land for use for specific purposes; the establishment of controlled areas; placing restrictions upon the subdivision and use of land in controlled areas; the compilation and approval of guide plans; and imposing restrictions on the use of land for certain purposes.

2.42 The Environmental Planning Act of 1967 has been repealed in whole by section 36(1)(d) of the Physical Planning Act 125 of 1991. However, the provision is not yet in

operation. In its comment on the SALRC's consultation paper, the DEA noted the recommendation.²³

(b) South African Weather Service Act 8 of 2001

2.43 The purpose of the South African Weather Services Act of 2001 is to establish a juristic person, namely the South African Weather Service; and to determine its objects, functions and method of work. The Act also prescribes the manner in which the South African Weather Service is to be managed and governed; regulates its staff matters and financial affairs; and provides for matters connected therewith.

2.44 This Act is not entirely relevant to environmental matters, when considered in terms of the traditional components or classification of environmental laws. This is because the Act's primary aim is to establish a juristic person known as the "South African Weather Service". It therefore does not deal explicitly with environmental matters, but rather with climatological and meteorological issues and activities of the South African Weather Service, which may indirectly be relevant to environmental matters. The SALRC nevertheless surveyed the Act for the sake of completeness, as the Act is administered by the DEA. The SALRC proposed to the DEA that the Act be retained. In its comment on the SALRC's consultation paper, the DEA noted this recommendation and informed the SALRC that the DEA is currently amending certain provisions of the South African Weather Services Act of 2001.

(c) South African Weather Service Amendment Act 48 of 2013

2.45 The purpose of this Act is to amend the South African Weather Service Act of 2001 so as to -²⁴

- (a) substitute and insert certain definitions;
- (b) provide the Minister with policy determinations and supervisory powers;

²³ Subsequent to the approval of this discussion paper by the SALRC, the Environmental Planning Amendment Act of 1977 was repealed by the Spatial Planning and Land Use Management Act, 2013 (Act No. 16 of 2013). This Act came into operation on 1 July 2015.

²⁴ The numbered points from (a) to (k) do not appear in the Act; they have been added here for ease of reading.

- (c) extend the powers, functions and objectives of the weather service with a legal mandate;
- (d) provide ambient air quality services and to act as custodian of the South African Air Quality Information Service;
- (e) provide for the appointment and removal of the Chief Executive Officer;
- (f) align the Public Finance Management Act of 1999 by providing for the Board to be the Accounting Authority for the Weather Service;
- (g) delete certain obsolete provisions;
- (h) provide for the limitation of certain liability of the Weather Services;
- (i) provide for offences and penalties;
- (j) amend the Schedules and the Act; and
- (k) provide for matters connected therewith.

2.46 The SALRC has reviewed this amendment Act and no provision of the Act has been found to be unconstitutional, redundant or obsolete.

Theme 3: Natural Resource Legislation

2.47 South Africa has a comprehensive and fairly modern body of laws dealing with natural resource conservation. Some of the issues which these laws regulate are biodiversity, protected areas, marine resources, forests, and natural and cultural heritage resources. The most notable of these laws are the National Environmental Management: Biodiversity Act 10 of 2004 (NEM: BA); the National Environmental Management: Protected Areas Act 57 of 2003 (NEM: PAA); the National Heritage Resources Act 25 of 1999 (NHRA); and the Marine Living Resources Act 10 of 1998 (MLRA). Also noteworthy is the legislation that specifically regulates South Africa's national parks and forests.

(a) National Environmental Management: Biodiversity Act 10 of 2004 (NEM: BA)

2.48 The NEM: BA generally provides for the management and conservation of South Africa's biodiversity. It does so through prescribing a range of biodiversity planning mechanisms; listing and protecting species and ecosystems that warrant national protection; regulating alien and invasive species; and prescribing a range of measures to regulate bio-

prospecting that involves indigenous biological resources, and ensuring the fair and equitable sharing of benefits derived from such activities. The Act also provides for the establishment, powers and functions of the South African National Biodiversity Institute. This Act aims to provide for the management and conservation of South Africa's biodiversity within the framework of the National Environmental Management Act of 1998.

2.49 Section 1 of this Act defines "Department" as the "National Department of Environmental Affairs and Tourism". However, Proclamation 48 of 2009 defines "Department" as the "National Department of Environmental Affairs".²⁵ The SALRC recommended that section 1 of the Act be amended to define "Department" as the "National Department responsible for Environmental Affairs". The DEA accepted this recommendation, and it has been given effect by the National Environmental Management Laws Amendment Act 14 of 2013.

2.50 Section 55 provides that the Minister or the MEC for Environmental Affairs in any relevant province may, by notice in the *Gazette*, amend or repeal any notice published by him or her in terms of section 52(1) or 53(1). Reference to the MEC for Environmental Affairs in any relevant province creates confusion, because section 53(1) does not authorize the MEC to identify any process or activity in a listed ecosystem as being a threat. The SALRC therefore recommends that this reference to the MEC be deleted. In its comment on the SALRC's consultation paper, the DEA accepted this recommendation. The DEA at the same time informed the SALRC that in 2012 it would undertake a substantial revision of the National Environmental Management: Biodiversity Act of 2004, and that the SALRC's recommendation would be addressed in the proposed amendments.

2.51 Section 88(1) provides that a person may apply for a permit by lodging an application on the prescribed form to the "authority". Subsection (2) outlines the powers of the issuing authority after the person in subsection (1) has applied for a permit. Subsection (1) refers to "authority" and subsection (2) refers to "issuing authority". The SALRC recommends that subsection (1) be amended to refer to "issuing authority". In its comment on the SALRC's consultation paper, the DEA accepted this recommendation. The DEA at the same time informed the SALRC that in 2012 it would undertake a substantial revision of the National Environmental Management: Biodiversity Act of 2004, and the SALRC recommendation would be addressed in the proposed amendments.

²⁵ Proclamation 48 of 2009 published in *Government Gazette* 32387 of 7 July 2009.

2.52 Section 104(2)(a) provides that a person who was a member of the Board of the National Botanical Institute becomes a member of the Board of the South African National Biodiversity Institute, and remains such a member until the Minister appoints members of the Board in terms of section 15 of the Act. Subsection (2)(b) provides similar transitional measures for the Chief Executive Officer. The Board and Chief Executive Officer have no doubt been appointed by now, because this Act commenced more than five years ago. These transitional provisions would accordingly appear to have expired. The SALRC therefore recommended that the sub-section be repealed. In its comment on the SALRC's consultation paper, the DEA accepted this recommendation. The DEA at the same time informed the SALRC that in 2012 it would undertake a substantial revision of the National Environmental Management: Biodiversity Act of 2004, and the SALRC recommendation would be addressed in the proposed amendments.

2.53 Section 105(1) provides that at the commencement of Chapter 6, any party which is involved in a bio-prospecting project that concerns any interests to be protected in terms of section 82 may, despite section 82, continue with the project. Such continued involvement is allowed if negotiations are pending through which an appropriate benefit-sharing agreement, in terms of Chapter 6, is to be drawn up. Subsection (2) of section 105 provides that subsection (1) lapses one year after the commencement of Chapter 6. Chapter 6 commenced on 1 January 2006 and therefore the time-frame for which this Act applied has passed. The SALRC therefore recommended that the section be repealed. In its comment on the SALRC's consultation paper, the DEA accepted the recommendation. The DEA at the same time informed the SALRC that in 2012 it would undertake a substantial revision of the National Environmental Management: Biodiversity Act of 2004 and the SALRC recommendation would be addressed in the proposed amendments.

(b) National Environment Laws Amendment Act 14 of 2013

2.54 This Act amends the National Environmental Management: Biodiversity Act of 2004 so as to ⁻²⁶

- (a) amend certain definitions and to define certain words and expressions;
- (b) revise the objectives of the Act to emphasize the need to protect the ecosystem as a whole, including species which are not targeted for exploitation;

²⁶ The numbered points from (a) to (q) do not appear in the Act; they have been added here for ease of reading.

- (c) revise the purpose of Chapter 4 to provide for the regulation of threatened and indigenous species, to ensure that these species are used in an ecologically sustainable manner;
- (d) effect certain textual amendments to the provisions on protection of species;
- (e) address some of the regulatory gaps within the permit system;
- (f) facilitate the implementation of self-administration;
- (g) extend the functions of the scientific authority to include assisting with species that are subject to an international agreement regulating international trade;
- (h) revise the purpose and application of Chapter 6;
- (i) insert a provision to allow for the domestic or subsistence use of indigenous biological resources;
- (j) repeal the appeal provisions;
- (k) provide for circumstances under which a permit application or permit may be deferred, refused, cancelled or suspended;
- (l) extend the powers of the Minister to make regulations or to add offences and penalties, and to provide for the Minister to declare amnesty in certain circumstances;
- (m) amend the National Environmental Management: Air Quality Act of 2004 so as to align the penalties with other specific environmental management Acts;
- (n) amend the National Environmental Management: Waste Act of 2008 so as to provide for textual amendment to the definition of waste;
- (o) amend the National Environment Management Laws Amendment Act of 2008 so as to correct an incorrect citation;
- (p) amend the National Environmental Management: Protected Areas Amendment Act of 2009 so as to correct an incorrect citation; and
- (q) provide for matters connected therewith.

2.55 The SALRC has reviewed this Act and has not identified any provision that is non-compliant with section 9 of the Constitution, redundant or obsolete.

(c) National Environmental Management: Protected Areas Act 57 of 2003 (NEM: PAA)

2.56 The NEM: PAA generally provides for the protection and conservation of ecologically viable areas that represent South Africa's biological diversity, natural landscapes and sea-

scapes. The Act regulates the establishment and management of all national, provincial and local protected areas; the listing of these areas on a register of protected areas; and the management of these areas in accordance with national norms and standards. The Act also provides for the continued existence, governance and functions of the South African National Parks, which administers the majority of the country's national parks.

2.57 Section 12 provides that a protected area which, immediately before the section took effect, was reserved or protected in terms of provincial legislation (for any purpose for which an area could, in terms of this Act, be declared a nature reserve or protected environment) must be regarded as a nature reserve or protected environment for purposes of this Act. The definitions of "nature reserve" and "protected environment" in section 1 of the NEM: PAA expressly state what is contained in this section. This section therefore appears to be superfluous, and the SALRC recommends that the section be repealed. In its comment on the SALRC's consultation paper, the DEA noted this proposed amendment, and has undertaken to study the relevant section carefully before deciding whether or not to repeal it.

(d) National Environmental Management: Protected Areas Amendment Act 31 of 2004

2.58 The purpose of this Act is to amend the National Environmental Management: Protected Areas Act of 2003, to provide for the application of that Act in relation to national parks and marine protected areas; and to provide for matters connected therewith. The SALRC proposed to the DEA that this amendment Act be retained for legal certainty. The DEA accepted this proposed recommendation.

(e) National Environmental Management: Protected Areas Amendment Act 15 of 2009

2.59 The purpose of this Act is to amend the National Environmental Management: Protected Areas Act of 2003 so as to ²⁷

²⁷ The numbered points from (a) to (e) do not appear in the Act; they have been added here for ease of reading.

- (a) provide for a comprehensive list in the Schedule of all national parks;
- (b) provide for the assignment of national parks, special nature reserves and heritage sites to the South African National Parks;
- (c) make provision for flight corridors and permission from the management authority to fly over a special nature reserve, national park or heritage site;
- (d) provide for specific areas to be available for training and testing of aircraft; and
- (e) provide for matters connected therewith.

2.60 Section 9 of this Act is wrongly numbered as section 7. The SALRC recommended that this discrepancy be amended so that section 9 is correctly numbered. In its comment on the SALRC's consultation paper, the DEA accepted this recommendation. The amendment has now been effected in terms of section 40 of the National Environmental Management Laws Amendment 14 of 2013.

(f) National Environmental Management: Protected Areas Amendment Act 21 of 2014

2.61 The purpose of this Act is to amend the National Environmental Management: Protected Areas Act of 2003, so as to amend or insert certain definitions; to authorize the declaration of marine protected areas; to provide for the management of marine protected areas; to provide for transitional measures; to effect certain textual alterations; and to provide for matters connected therewith. The SALRC has reviewed this amendment Act and no provision of the Act was found to be unconstitutional, redundant and obsolete.

(g) World Heritage Convention Act 49 of 1999

2.62 The main purpose of the World Heritage Convention Act is to incorporate, implement and enforce the Convention Concerning the Protection of the World Cultural and Natural Heritage (1972) 11 ILM 1358 into South African law. The Act provides for the recognition and establishment of world heritage sites; the establishment of regulatory authorities and the granting of additional powers to existing organs of state; and the powers and duties of such authorities. It also provides for the establishment of boards and executive staff components of these authorities; integrated management plans over world heritage sites; land matters in

relation to world heritage sites; financial, auditing and reporting controls over the authorities; and matters related to the foregoing.

2.63 Section 13(2)(c) provides that one of the duties of an authority is to identify cultural and natural heritage that must be “transmitted” (sic) to future generations. The use of the word “transmitted” in this provision is unclear, and gives rise to an impossible obligation because heritage cannot be “transmitted” to future generations. The SALRC therefore recommended that the word “transmitted” be replaced with the word “transferred”. The recommendation was accepted by the DEA. The DEA also advised the SALRC that in 2012 the DEA would undertake substantial amendments to this Act, and the SALRC’s recommendation would be addressed during that process.

2.64 Section 17(3) lists the skills that members of the Board must possess. However, the section does not mention skills in environmental management and protection. This is a glaring omission given the environmental objectives and underlying rationale of environmental protection that are meant to be embodied in the Act. The SALRC recommends that the provision should include, for example, “environmental management” “governance protection” and the phrase “any other skills relevant to heritage sites”. In its comment on the SALRC’s consultation paper, the DEA accepted this recommendation. The DEA at the same time informed the SALRC that the DEA would undertake a substantial revision of the World Heritage Convention Act, and that the SALRC recommendations would be addressed during that process.

(h) Marine Living Resources Act 18 of 1998 (MLRA)

2.65 The MLRA provides for the conservation of the marine ecosystem; the long-term sustainable use of marine living resources; and the orderly access to exploit, use and protect certain marine living resources. The Act also seeks to provide for the fair and equitable access to marine living resources, and the equitable sharing of benefits derived from such use. Finally, it regulates the establishment and management of protected areas in the marine environment.

2.66 The MLRA was passed after the Constitution was proclaimed, and the SALRC has found that none of its provision fall foul of the Constitution. However, the Act does contain certain inherent anomalies and spent provisions, which require amendment and deletion respectively.

2.67 Section 85 of the Act contains transitional provisions. Section 85 provides that the Minister shall, for a period of six months after the commencement of the Act, exercise the powers of all institutions established by or under any Act repealed by section 85. This includes the Sea Fishery Advisory Committee and Quota Board established by the Sea Fishery Act of 1988. The transitional provisions in section 85 are now spent, as more than six months have passed since the commencement of the Act on 1 September 1998. The SALRC recommended that section 85 be repealed, and the DEA accepted this recommendation.

(i) Marine Living Resources Amendment Act 68 of 2000

2.68 The purpose of this Act is to amend the Marine Living Resources Act of 1998 so as to permit the extension of certain rights to undertake commercial or subsistence fishing or to engage in mariculture or operate a fish-processing establishment; and to provide for matters connected therewith. The SALRC has reviewed this Act and no provision of the Act has been found to be unconstitutional, redundant or obsolete. The SALRC therefore proposed to the DEA that this Act be retained. In its comment on the SALRC's consultation paper, the DEA noted the proposed recommendation.

(j) Marine Living Resources Amendment Act 5 of 2014

2.69 The purpose of this Act is to amend the Marine Living Resources Act of 1998 so as to –²⁸

- (a) insert, amend or delete certain definitions;
- (b) amplify the objectives and principles provided for in that Act;
- (c) make provision for measures relating to small-scale fishing; and
- (d) make provision for the powers and duties of the Minister to effect technical amendments.

2.70 The SALRC has reviewed this amendment Act and no provision of the Act has been found to be unconstitutional, redundant or obsolete.

²⁸ The numbered points from (a) to (d) do not appear in the Act; they have been added here for ease of reading.

(k) Antarctic Treaties Act 60 of 1996

2.71 The principal aim of the Antarctic Treaties Act is to provide for the application of certain treaties relating to Antarctica. Section 3 provides for the transformation of the relevant international agreements into South African law, in terms of section 231(4) of the Constitution. Subsection (1) includes the agreements as a schedule to an Act of Parliament and mandates the executive to publish the provisions of the agreements in the *Gazette*. The texts of the treaties were duly published in accordance with subsection (1), and Schedule 1 of Act 60 of 1996 was then amended to reflect the number and date of the *Gazette* in which the treaties had been published. Refer to GN 678 in GG 17993 of 16 May 1997.

2.72 In terms of section 6(1)(a) of the Antarctic Treaties Act of 1996, the Minister may make regulations with regard to the qualifications and functions of persons who apply this Act or a treaty. The SALRC recommended that the term “applying” be replaced with the term “enforcing”. In its comment on the SALRC’s consultation paper, the DEA accepted this recommendation.

2.73 Section 12 refers to the Sea Fishery Act of 1988, which has been repealed by the Marine Living Resources Act of 1998. The SALRC recommended to the DEA that the reference to the Sea Fishery Act of 1988 be repealed and replaced with a reference to the Marine Living Resources Act of 1998. In its comment on the SALRC’s consultation paper, the DEA accepted this recommendation.

(l) Sea Fishery Act 12 of 1988

2.74 The Sea Fishery Act of 1988 provides for the conservation of the marine ecosystem and the orderly exploitation, utilization and protection of certain marine resources. This Act has been repealed by section 84(1) of the Marine Living Resources Act of 1998, in whole; apart from section 1 of the Sea Fishery Act in its application to sections 29, 38, 47, and 50(1), (2) and (3) of the Marine Living Resources Act of 1998. In its comment on the SALRC’s consultation paper, the DEA noted this comment.

(m) Sea Birds and Seals Protection Act 46 of 1973

2.75 The purpose of this Act is to -²⁹

- (a) provide for the control over certain islands and rocks;
- (b) provide for the protection of sea birds and seals, and for the control of the capture and killing of sea birds and seals;
- (c) provide for the disposal of the products of sea birds and seals;
- (d) provide for matters incidental thereto; and
- (e) repeal the Fish Protection Act 15 of 1893 (Cape of Good Hope) and the provisions of the Sealing and Fisheries Ordinance 12 of 1949 (South West Africa) relating to the killing, pursuit or capture of seals.

2.76 In terms of section 2(1)(a) of the Sea Birds and Seals Act of 1973, the Minister shall exercise control over sea birds and seals; as well as over the acquisition, gathering and disposal of all products of sea birds and seals; within the Republic and territorial waters and fishing zone of the Republic, as defined in sections 2 and 3 respectively of the Territorial Waters Act 87 of 1963. The provisions refer to the “territorial waters” and the “fishing zone” as defined in the Territorial Waters Act of 1963. The Territorial Waters Act of 1963 has been repealed by the Maritime Zones Act 12 of 1994. The SALRC therefore recommended that the Sea Birds and Seals Protection Act of 1973 be amended so that reference in section 2(1)(a) to “territorial waters” be replaced with “exclusive economic zone” as defined in the Maritime Zones Act of 1994. In its comment on the SALRC’s consultation paper, the DEA accepted this recommendation.

2.77 Section 7(2)(a) provides that neither the State, nor any person in the service of the State, nor the Minister, shall be liable (except in the case of any wilful act or omission on the part of any such person) to any person who, except in the performance of a duty or an activity under this Act or any other law, makes use of any vehicle, boat or vessel which is the property or under the control of the State in its Department of Industries. The department referred to here is the Department of Trade and Industry. The SALRC recommended that the section be amended to refer to the Department of Trade and Industry. In its comment on the SALRC’s consultation paper, the DEA accepted this recommendation.

²⁹ The numbered points from (a) to (e) do not appear in the Act; they have been added here for ease of reading.

2.78 Section 10(2) provides that if any person seizes anything under the provisions of subsection (1)(b)(iii), that person shall as soon as possible take such thing before a magistrate; thereupon the provisions of the Criminal Procedure Act 56 of 1955 shall apply in respect of such thing as if it had been seized under the provisions of that Act. Subsequently, Act 56 of 1955 was repealed by the Criminal Procedure Act 51 of 1977. The SALRC therefore recommended that section 10(2) should refer to the Criminal Procedure Act 51 of 1977. In its comment on the SALRC's consultation paper, the DEA accepted this recommendation.

2.79 In terms of section 11(1)(cB), the Minister may make regulations to prohibit or regulate the taking on board on any fishing boat (without lawful reason) of any firearm, instrument or substance with which seals may be killed, disturbed or frightened away. This section refers to a "fishing boat" as defined in the Sea Fisheries Act of 1973. Most of the provisions contained in this Act have now been repealed by the Marine Living Resources Act of 1998. In terms of section 1 of the Marine Living Resources Act of 1998, a "fishing vessel" means any vessel, boat, ship or other craft which is used for, is equipped to be used for, or is of a type that is normally used for fishing or related activities, and includes all gear, equipment, stores, cargo and fuel on board the vessel. The SALRC recommended that section 11(1)(cB) be amended to refer to the definition contained in the Marine Living Resources Act of 1998. In its comment on the SALRC's consultation paper, the DEA accepted this recommendation.

2.80 Section 16(2) provides that the Minister may by notice in the *Gazette* declare that this Act shall not apply in any area defined in that notice and declared to be a national park under section 2 of the National Parks Act 42 of 1962 and which abuts on or includes any portion of the sea. This law was repealed by the National Parks Act 57 of 1976 which has similarly almost wholly been repealed by the National Environmental: Protected Areas Act 57 of 2003. The SALRC recommended that the section be amended to refer to the NEM: PAA (reviewed above). In its comment to the SALRC on the SALRC's consultation paper, the DEA accepted this recommendation.

(n) Prince Edwards Islands Act 43 of 1948

2.81 The purpose of the Act is to confirm the annexation by the Union of South Africa of the Prince Edward Islands; and to provide for the administration, government and control of these islands.

2.82 In terms of section 1 of Act 43 of 1948, the territory of Prince Edwards Islands forms part of the Union of South Africa. In terms of section 1 of the Interpretation Act 33 of 1957, “Union” means the Republic. The SALRC recommends that the word “Union” be replaced with “Republic”.

2.83 Section 2 of Act 43 of 1948 provides that Roman-Dutch law, as existing and applied in the Province of Good Hope, shall be in force as the common law of the Territory. The territorial jurisdiction vests in the Republic of South Africa. This provision is obsolete. The SALRC recommends that the provision should state that territorial jurisdiction vests in the “Republic of South Africa”.

2.84 Section 3(1) lists laws (also listed in the Schedule) that apply in the Territory. These laws are as follows:³⁰

- (a) Administration of Estates Act 24 of 1913;
- (b) Justices of Peace and Oaths Act 16 of 1914;
- (c) Criminal Procedure Act 31 of 1917;
- (d) Special Justices of Peace Act of 1918;
- (e) Inquest Act 12 of 1919;
- (f) Magistrates’ Courts Act 32 of 1944, and
- (g) Electoral Consolidation Act 46 of 1946.

2.85 The SALRC noted that it is not clear why only these Acts should apply to the Territory (now the Republic of South Africa). In its comment on the SALRC’s consultation paper, the DEA noted the proposed recommendations with regard to this Act, and undertook to investigate why the Acts listed in section 3(1) are specifically referred to in the Act.

Theme 4: Pollution Legislation

2.86 South Africa has a comprehensive set of pollution regulation laws. The NEMA, which has been reviewed above, is the framework law which governs all generic aspects of pollution regulation. The NEMA is especially concerned with issues related to compliance, enforcement and liability for pollution or environmental degradation. In addition to NEMA,

³⁰ The numbered points from (a) to (g) do not appear in the Act; they have been added here for ease of reading.

various other laws exist which are environmental media-specific, and which aim to regulate issues related to waste, water, air quality and marine pollution.

2.87 The Department of Environmental Affairs is the competent authority for air quality management, marine pollution regulation, and waste management. The Department of Water Affairs is responsible for the implementation of the National Water Act 36 of 1998 (NWA) and related water legislation. With the recent promulgation of the National Environmental Management: Waste Management Act 59 of 2008 (NEM: WMA), South Africa is firmly set for a wholesale reform of its waste management regime. Importantly, the NEM: WMA is also intended to repeal all the provisions of the ECA (reviewed above) which have, to date, in conjunction with the NWA governed most aspects of waste management in the country.

(a) National Environmental Management: Air Quality Act 39 of 2004

2.88 The main purpose of this Act is to reform the law regulating air quality in order to protect the environment. The Act provides reasonable measures for the prevention of pollution and ecological degradation, and for securing ecologically sustainable development while promoting justifiable economic and social development. It also aims to provide for national norms and standards regulating air quality monitoring, management and control by all spheres of government; for specific air quality measures; and for matters incidental thereto. The Act also repeals the Atmospheric Pollution Prevention Act 45 of 1965. The SALRC found that no provision of the Act is unconstitutional, redundant or obsolete, and proposed that this Act be retained. In its comment on the SALRC's consultation paper, the DEA accepted this recommendation.

(b) National Environmental Laws Amendment Act 44 of 2008

2.89 The main purpose of this Act was to regard the Atmospheric Pollution Prevention Act of 1965 as a specific environmental management Act, until section 60 of the National Environmental Management: Air Quality Act of 2004 came into operation.³¹ The Atmospheric

³¹ See sections 1 and 2 of the National Environmental Laws Amendment Act 44 of 2008.

Pollution Prevention Act of 1965 has since been repealed by the National Environmental Management: Air Quality Act of 2004.

2.90 Section 60 of the National Environmental Management: Air Quality Act of 2004 commenced on 1 April 2010.

2.91 The SALRC therefore recommended that sections 1 and 2 of the National Environmental Laws Amendment Act 44 of 2008 be repealed, because section 60 of the National Environmental Management Air Quality Act of 2004 is now in operation. In its comment on the SALRC's consultation paper, the DEA accepted this recommendation.

(c) National Environmental Management: Air Quality Amendment Act 20 of 2014

2.92 The purpose of this Act so as to -³²

- (a) amend the National Environmental Management: Air Quality Act of 2004 so as to substitute certain sections;
- (b) provide for the establishment of the National Air Quality Advisory Committee;
- (c) provide for the consequences of unlawful commencement of a listed activity;
- (d) provide for monitoring, evaluation and reporting on the implementation of an approved pollution prevention plan;
- (e) empower the MEC or Minister to take a decision in the place of the licensing authority under certain circumstances;
- (f) provide for the Minister as licensing authority in situations where –
 - (i) the province, as a delegated licensing authority by the municipality, is the applicant for an atmospheric emission license
 - (ii) the applications are trans-boundary
 - (iii) the air activity forms part of national priority project
 - (iv) the activity is also related to the environmental impact and waste management activities authorized by the Minister

³² The numbered points from (a) to (m) do not appear in the Act; they have been added here for ease of reading.

- (v) the air activity relates to a prospecting, mining, exploration or production activity;
- (g) delete cross-references to the Environmental Conservation Act of 1989;
- (h) clarify that applications must be brought to the attention of interested and affected parties soon after the submission to the licensing authority;
- (i) provide for a validity period of a provisional atmospheric emission licence;
- (j) create an offence for non-compliance with controlled fuel standards;
- (k) provide for the development of regulations on climate change matters and the procedure and criteria for administrative fines;
- (l) delete certain obsolete provisions; and
- (m) provide for matters connected therewith.

2.93 This Act has been reviewed, and the SALRC identified no provision that is non-compliant with section 9 of the Constitution or is redundant or obsolete.

(d) Marine Pollution (Control and Civil Liability) Act 6 of 1981

2.94 The short title of this Act was previously “Prevention and Combating of Pollution of the Sea by Oil Act of 1981”. It was substituted by section 45 of the Shipping General Amendment Act 23 of 1997. The Marine Pollution (Control and Civil Liability) Act of 1981 provides for the protection of the marine environment from pollution by oil and other harmful substances. For this purpose, the Act provides for the prevention and combating of pollution of the sea by oil and other harmful substances; it establishes measures to determine liability in certain respects for loss or damage caused by the discharge of oil from ships, tankers and offshore installations; and it further provides for matters connected to the foregoing. The SALRC has reviewed this Act and no provision of this Act was found to be unconstitutional, redundant or obsolete. The SALRC proposed to the DEA that this Act be retained to ensure its objectives are achieved. In its comment on the SALRC’s consultation paper, the DEA noted the recommendation.

(e) Prevention and Combating of Pollution of the Sea by Oil Amendment Act 59 of 1985

2.95 The purpose of the Act is to amend the Prevention and Combating of Pollution of the Sea by Oil Act of 1981, so as to make further provision in respect of certain amounts to be paid into the Oil Pollution Prevention Fund; and to provide for matters connected therewith. The SALRC has reviewed this Act and no provision of this Act was found to be unconstitutional, redundant or obsolete. Since the principal Act is still in force, the SALRC proposed to the DEA that for legal certainty the amendment Act be retained. In its comment on the SALRC's consultation paper, the DEA accepted this recommendation.

(f) Prevention and Combating of Pollution of the Sea by Oil Amendment Act 63 of 1987

2.96 The purpose of the Act is to amend the Prevention and Combating of Pollution of the Sea by Oil Act of 1981 so as to make provision for the jurisdiction of courts, and for the imposition of penalties and to provide for matters connected therewith. The SALRC has reviewed this Act and no provision of this Act was found to be unconstitutional, redundant or obsolete. Since the principal Act is still in force, the SALRC proposed to the DEA that for legal certainty the amendment Act be retained. In its comment on the SALRC's consultation paper, the DEA accepted this recommendation.

(g) Prevention and Combating of Pollution of the Sea by Oil Amendment Act 9 of 1990

2.97 The purpose of the Act is to amend the Prevention and Combating of Pollution of the Sea by Oil Act of 1981, so as to provide for the abolition of the Oil Pollution Prevention Fund and its substitution by the State Revenue Fund; and to increase the fines which may be imposed under the Act; and to provide for incidental matters. The SALRC has reviewed this Act and no provision of this Act was found to be unconstitutional, redundant or obsolete. Since the principal Act is still in force, the SALRC proposed to the DEA that for legal certainty the amendment Act be retained. In its comment on the SALRC's consultation paper, the DEA accepted this recommendation.

(h) Dumping at Sea Control Act 73 of 1980

2.98 The Dumping at Sea Control Act of 1980 aims to provide for the control of dumping of substances at sea. The whole of this Act has been repealed by section 98 of the National Environmental Management: Integrated Coastal Management Act 24 of 2008, which will come into operation on a date to be fixed by the President by proclamation in the *Gazette*. The SALRC recommended that the National Environmental Management: Integrated Coastal Management Act of 2008 should be put into operation. In its comment on the SALRC's consultation paper, the DEA noted the proposed comment.

Annexure A

ENVIRONMENTAL AFFAIRS GENERAL LAWS AMENDMENT AND REPEAL BILL

GENERAL EXPLANATORY NOTE:

[] Unless otherwise indicated words in bold type in square brackets indicate omissions from existing enactments.

_____ Unless otherwise indicated words underlined with a solid line indicate insertions in existing enactments.

BILL

To amend and repeal certain laws of the Republic pertaining to environmental affairs and containing redundant or obsolete provisions; and to provide for matters connected therewith

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

1. Amendment and Repeal of laws

(1) The laws specified in Schedule 1 are hereby amended to the extent set out in the fourth column of that Schedule.

(2) The laws specified in Schedule 2 are hereby repealed to the extent set out in the fourth column of that Schedule.

2. Short title and commencement

This Act is called the Environmental Affairs General Laws Amendment and Repeal Act, 2015 and comes into operation on a date determined by the President by proclamation in the *Gazette*.

SCHEDULE 1

Item	No. and year of law	Title and subject	Extent of Amendment
1.	43 of 1948	Prince Edwards Islands Act	<p>1. Section 1 of the Prince Edwards Islands Act is hereby amended by the substitution for subsection (1) of the following subsection: “(1) The territory known as the Prince Edwards Island, consisting of Marion Island, situate latitude 46 53’S., longitude 37 45’E., and Prince Edwards Island situate latitude 46 36’S., longitude 37 57’E (hereinafter called the territory) is hereby amended to have been annexed to and to form part of the [Union] Republic of South Africa.”</p> <p>2. Section 1 of the Prince Edwards Islands Act is hereby amended by the substitution for subsection 2 of the following subsection: “(2) For purposes of the administration of justice, and in general for application of laws of the [Union] Republic of South Africa, the Territory shall be deemed to be situate within the magisterial district which includes the city of Cape Town and to form part of the electoral division which includes the harbour of the city of Cape Town.”</p>
2.	46 of 1973	Sea Birds and Seals Protection Act	<p>1. Section 2 of the Sea Birds and Seals Protection Act is hereby amended by the substitution in subsection (1) for paragraph (a) of the following paragraph: “(a) sea birds and seals as well as over the acquisition, gathering and disposal of all products of sea birds and seals, within the Republic and territorial waters and fishing zone of the Republic as defined in section [2 and 3 of the Territorial Waters Act, 1963] <u>4 of the Maritime Zones Act 15 of 1994.</u>”</p> <p>2. Section 7 of the Sea Birds and Seals</p>

			<p>Protection Act is hereby amended by the substitution in subsection (2) for paragraph (a) of the following paragraph: “(a) makes the use of any vehicle, boat or vessel which is the property or under control of the State in its [Department of Industries] <u>Department of Trade and Industry</u> or of Transport, for the purpose of his journey to or return from any island, including any island not defined in this Act, or Antarctica.”</p> <p>3. Section 10 of the Sea Birds and Seals Protection Act is hereby amended by the substitution for subsection (2) of the following subsection: “(2) If any person seizes anything under the provisions of subsection (1)(b)(ii), he or she shall, as soon as possible, take such thing before a magistrate, and thereupon the provisions of the [Criminal procedure Act 56 of 1955] <u>Criminal Procedure Act 51 of 1977</u>, shall apply in respect of such thing as if it had been seized under the provisions of that Act.”</p> <p>4. Section 11 of the Sea Birds and Seals Protection Act is hereby amended by the substitution in subsection (1) for paragraph (cB) of the following paragraph: “(cB) makes regulations prohibiting or regulating the taking on board, without lawful reason, on any fishing boat as defined in the [Sea Fishery Act 58 of 1973] <u>the Marine Living Resources Act 18 of 1998</u>, of any firearm or any instrument or substance with which seals may be killed, disturbed or frightened away.”</p> <p>5. Section 16 of the Sea Birds and Seals Protection Act is hereby amended by the substitution in subsection (2) of the following subsection: “(2) The Minister may by</p>
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			<p>notice in the <i>Gazette</i> declare that this Act shall not apply in any area defined in that notice and declared to be a national park under section [2 of the National Parks Act, 1962 (Act No. 42 of 1962),] <u>1 of the National Environmental Management Protected Areas Amendment Act, 2003 (Act No. 57 of 2003)</u> and which abuts on or includes any portion of the sea.”</p>
3.	60 of 1996	Antarctic Treaties Act	<p>1. Section 6 of the Antarctic Treaties Act is hereby amended by the substitution in subsection (1) for paragraph (a) of the following paragraph:</p> <p>“(a) the qualifications and functions of persons [applying] <u>enforcing</u> this Act or a treaty, including a person authorized in terms of section 4(3) and the incumbent of a post or rank or any other person designated in terms of section 5(1).”</p> <p>2. Section 12 of the Antarctic Treaties Act is hereby amended by the substitution for section 12 of the following section:</p> <p>“(12). In the event of any conflict between the provisions of this Act and those of the Prince Edwards Islands Act 43 of 1948, the South African Citizens in Antarctica Act, 55 of 1962, the Sea Birds and Seals Protection Act 46 of 1973 and the [the Sea Fishery Act, 1998,] <u>Marine Resources Act 18 of 1998</u>, the provisions of this Act shall prevail.”</p>
4.	107 of 1998	National Environmental Management Act	<p>1. Section 33 of the National Environmental Management Act is hereby amended by the substitution in subsection (2)(i) for subparagraph (i) of the following subparagraph:</p> <p>“(i) the person prosecuting privately shall not be required to produce a certificate issued by the [Attorney-General] <u>national Director of Public Prosecutions</u></p>

			<p>stating that he or she has refused to prosecute the accused.”</p> <p>2. Section 33 of the National Environmental Management Act is hereby amended by the substitution for subsection (5) of the following subsection:</p> <p>“5. When a private prosecution is instituted in accordance with the provisions of this Act the [Attorney-General] <u>national Director of Public Prosecutions</u> is barred from prosecuting except with leave of the court concerned.”</p>
5.	50 of 2003	Environment Conservation Amendment Act	<p>The Environment Conservation Amendment Act is hereby amended –</p> <p>(a) by the substitution for the expression “Minister of Environmental Affairs and Tourism”, wherever it occurs, of the expression “Minister responsible for environmental affairs”; and</p> <p>(b) by the substitution for the expression “Minister of Water Affairs and Forestry”, wherever it occurs, of the expression “Minister responsible for water Affairs and Sanitation”.</p>
6.	10 of 2004	National Environmental Management: Biodiversity Act	<p>Section 55 of the National Environmental Management: Biodiversity Act is hereby amended by the substitution for section 55 of the following section:</p> <p>“55. The Minister [or the MEC] for Environmental Affairs in any relevant province may by notice in the Gazette, amend or repeal any notice published by him or her in terms of section 52(1) or 53(1).”</p>

SCHEDULE 2

Item	No. and year of law	Title and subject	Extent of Repeal
1.	18 of 1998	Marine Living Resources Act	Section 85
2.	57 of 2003	National Environmental Management: Protected Areas	Section 12
3.	10 of 2004	National Environmental Management: Biodiversity Act	Sections 104(2)(a) and 105(1)
4.	44 of 2008	National Environmental Management Act	Section 1 and 2

Annexure B

STATUTES ADMINISTERED BY THE DEPARTMENT OF ENVIRONMENTAL AND WATER AFFAIRS

No	Name of Act, number and year
1.	Prince Edwards Islands Act 43 of 1948
2.	Sea Birds and Seals Protection Act 46 of 1973
3.	Environmental Planning Amendment Act 104 of 1977
4.	Dumping at Sea Control Act 73 of 1980
5.	Marine Pollution Act 6 of 1981
6.	Prevention and Combating of Pollution of the Sea by Oil Amendment Act 59 of 1985
7.	Prevention and Combating of Pollution of the Sea by Oil Amendment Act 63 of 1987
8.	Sea Fishery Act 12 of 1988
9.	Environmental Conservation Act 73 of 1989
10.	Prevention and Combating of Pollution of the Sea by Oil Amendment Act 9 of 1990
11.	Environment Conservation Amendment Act 98 of 1991
12.	Environment Conservation Amendment Act 79 of 1992
13.	Environment Conservation Second Amendment Act 115 of 1992
14.	Environment Conservation Amendment Act 94 of 1993
15.	Environment Second Amendment Act 189 of 1993
16.	Environment Conservation Amendment Act 52 of 1994
17.	Antarctic Treaties Act 60 of 1996
18.	Environment Conservation Extension Act 100 of 1996
19.	Environmental Laws rationalisation Act 51 of 1997
20.	Marine Living Resources Act 18 of 1998
21.	National Environmental Management Act 107 of 1998
22.	World Heritage Convention Act 49 of 1999
23.	Marine Living Resources Amendment Act 68 of 2000
24.	South African Weather Service Act 8 of 2001
25.	National Environmental Management Amendment Act. 56 of 2002
26.	National Environmental Management Amendment Act 46 of 2003
27.	Environment Conservation Amendment Act 50 of 2003

28.	National Environmental Management Protected Areas Amendment Act 57 of 2003
29.	National Environmental Management Amendment Act 8 of 2004
30.	National Environmental Management: Biodiversity Act 10 of 2004
31.	National Environmental Management: Protected Areas Amendment Act 31 of 2004
32.	National Environmental Management: Air Quality Act 39 of 2004
33.	National Environmental Management Amendment 44 of 2008
34.	National Environmental Management Amendment Act 62 of 2008
35.	National Environmental Laws Amendment Act 14 of 2009
36.	National Environmental Management: Protected Areas Amendment Act 15 of 2009
37.	National Environment Laws Amendment Act 14 of 2013
38.	National Environmental Management Laws Amendment Act 30 of 2013
39.	South African Weather Service Amendment Act 48 of 2013
40.	Marine Living Resources Amendment 5 of 2014
41.	National Environmental Management: Air Quality Amendment Act 20 of 2014
42.	National Environmental Management: Protected Areas Amendment Act 21 of 2014
43.	National Environmental Management Amendment Act 25 of 2014