

BILL

To amend the Environmental Management Act, 2007, so as to define certain words and phrases; to provide for prescribed response measures for the management of environmental emergencies; to provide for declaration of areas as environmental protected areas and protection of coastal areas; to provide for measures regarding climate change; to provide for the protection of ozone layer; to establish the Environmental Impact Assessment Appraisal Committee as standing committee; to provide for compliance audit, accreditation of laboratories, and admission of guilt and payment of fine without appearance in court; to provide for strategic environmental assessment; to provide for management and control measures for sand and gravel mining as listed activities; to provide for environmental impact assessment for clusters and industrial zones; to provide for different categories of listed activities; to provide for the increase of duration of environmental clearance certificate; to provide for the renewal of environmental clearance certificate and conditions thereof; to provide for the registration of environmental assessment practitioners; to provide for financial guarantee for environmental rehabilitation and restoration, and offset measures; to provide for formulation and enforcement of environmental standards; to provide for prevention and control of pollution in respect of emission of gases; to provide for management and disposal of wastes; and to provide for incidental matters.

(Introduced by the Minister of Environment, Forest and Tourism)

BE IT ENACTED as passed by the Parliament, and assented to by the President, of the Republic of Namibia as follows:

Amendment of section 1 of Act No. 7 of 2007

1. Section 1 of the Environmental Management Act, 2007 (in this Act referred to as “the principal Act”) is amended -

(a) by the insertion after the definition of “authorisation” of the following definition:

““Basel Convention” means the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal adopted on 22 March 1989 and set out in Schedule 2;”;

- (b) by the insertion after the definition of “biological diversity” of the following definitions:

““climate change” means a change of climate that is attributed directly or indirectly to human activity that alters the composition of the global atmosphere and that is in addition to natural climate variability observed over comparable time periods as defined by the United Nations Framework Convention on Climate Change of 22 May 2016;

“closure, restoration and rehabilitation plan” means a plan for the purpose of decommissioning, reclamation and rehabilitation of a project site after cessation of operations;”;

- (c) by the insertion after the definition of “competent authority” of the following definitions:

““compliance audit” means the systematic documented, periodic and objective evaluation of actions performed during or after operations to comply or conform with the requirements of all environmental laws, regulations, standards and conditions of the environmental clearance certificate, environmental management plan or specific conditions raised during inspection;

“compliance report” means documenting the compliance of actions performed during or after operations with the requirements of all environmental laws, regulations, standards and conditions of the environmental clearance certificate, environmental management plan or specific conditions raised during inspection and monitoring status of a listed activity;”;

- (d) by the insertion after the definition of “environment” of the following definition:

““environmental assessment” -

- (a) means the process of examining the environmental impacts, risks and benefits of activities;
- (b) at a project level, means an environmental impact assessment undertaken for an activity requiring an environmental clearance certificate; and
- (c) at the level of policies, plans and programmes, means a strategic environmental assessment”;

- (e) by the insertion after the definition of “environmental officer” of the following definition:

““environmental performance bond” means financial guarantee submitted to the Environmental Commissioner by the proponent for the purpose of ensuring proper closure, restoration and rehabilitation of the project site”;

- (f) by the substitution for the definition of “environmental plan” of the following definitions:

““environmental management plan” means a summary of project activities and key impacts, full details of avoidance and mitigation measures, time schedule, responsibilities and commitments proposed to avoid or minimise environmental impacts of activities, including -

- (a) monitoring and environmental audits during implementation and decommissioning phases of a project; and
- (b) indication of avoidance or mitigation costs should this be required for tendering purposes;

“Executive Director” means the Executive Director of the Ministry;”;

- (g) by the substitution for the definition of “organ of state” of the following definition:

““organ of State” means -

- (a) any office, ministry or agency of State or administration in the local, regional or national sphere of government, or any trans-boundary multi-state arrangements; or

- (b) any other functionary or institution -

- (i) exercising a power or performing a function in terms of the Namibian Constitution; or

- (ii) exercising public power or performing a public function in terms of any law,

but does not include a court or a judicial officer;”;

- (h) by the deletion of the definition of “Permanent Secretary”;

- (i) by the substitution for the phrase “Permanent Secretary” wherever it appears in the Act of the phrase “Executive Director”;

- (j) by the insertion after the definition of “person” of the following definition:

““plan” means a detailed plan that identifies options or intended actions to achieve policy objectives and sets out how, when and where specific actions and activities are to be conducted;

- (k) by the insertion after the definition of “regulation” of the following definition:

““residual impacts” means those negative environmental impacts that remain following the implementation of mitigation, restoration or rehabilitation measures,”;

- (l) by the substitution for the definition of “significant effect” of the following definition:

““significant impact” means having, or likely to have, a consequential qualitative or quantitative impact on the environment, including changes in ecological, aesthetic, cultural, historic, economic and social factors, whether directly or indirectly, individually or collectively;”;

- (m) by the insertion after the definition of “staff member” of the following definitions:

““Stockholm Convention” means the Stockholm Convention on Persistent Organic Pollutants of 22 May 2001 as amended in May 2019 and set out in Schedule 1;

“strategic environmental assessment” means a range of analytical and participatory processes that aim to integrate environmental considerations into policies, plans and programmes and evaluate the interlinkages with social and economic considerations;

“strategic environmental assessment report” means a report that describes the process, methodology, analysis, conclusions and recommendations of a strategic environmental assessment, and may include a strategic environmental management plan;

“strategic environmental management plan” means a plan for -

- (a) the management of direct and cumulative environmental impacts or consequences of a policy, plan or programme;
- (b) achieving environmental objectives; and
- (c) monitoring and reporting;”;

- (n) by the insertion after the definition of “this Act” of the following definition:

““transboundary” means across the national borders of Namibia;”.

Amendment of section 3 of Act No. 7 of 2007

2. Section 3 of the principal Act is amended -

(a) by the substitution for paragraphs (d), (e), (f), (g) and (l) of subsection (2) of the following paragraphs:

“(d) equitable access to environmental resources must be promoted [**and the functional integrity of ecological systems must be taken into account to ensure the sustainability of the systems and to prevent harmful effects**];

(dA) the functional integrity of ecological systems must be taken into account to ensure the sustainability of the systems and to prevent harmful impacts;

(e) assessments must be undertaken for activities which may have a significant [**effects**] impact on the environment or the use of natural resources;

(f) sustainable development and resilience to the effects of climate change must be promoted in all aspects of decision making relating to the [**environment**] development and environmental management;

(g) [**Namibia’s**] the cultural and natural heritage of Namibia, including its biological diversity, must be protected and respected for the benefit of present and future generations;

(l) all reasonable measures must be taken first to avoid and minimize the negative environmental impacts of an activity and then to rehabilitate on-site, before compensating through off-site measures or offsets.”.

Insertion of section 5A in Act No. 7 of 2007

3. The principal Act is amended by the insertion after section 5 of the following section:

“Environmental emergency

5A. The Minister, after following the consultative process referred to in section 44, must prescribe response measures for the management of environmental emergencies including, but not limited to -

- (a) major oil spills and gas leakages;
- (b) spills of other hazardous substances; and
- (c) industrial accidents and disasters and other measures as the Minister may prescribe.”.

Insertion of Part IIIA and Part IIIB in Act No. 7 of 2007

4. The principal Act is amended by the insertion after Part III of the following Parts:

“PART III A

ENVIRONMENTAL PROTECTED AREAS

Declaration of areas as environmental protected areas

5B. (1) The Minister, after following the consultative process referred to in section 44, by notice in the *Gazette*, may declare an area as environmental protected area.

(2) The Minister may prescribe general and specific restrictions as he or she considers necessary to protect the environmental protected area from environmental degradation and, in doing so, must take into consideration -

- (a) the geographical size of the area; and

(b) the interests of the communities resident around the area.

(3) The Minister may designate relevant organ of State, within specified time, to act as competent authority for an environmental protected area and prepare and implement environmental management plan.

(4) Environment management plan under subsection (3) may include -

(a) zoning;

(b) prohibitions;

(c) restricted use and activity;

(d) benefit sharing;

(e) entrance fees and permits; and

(f) any other measure considered appropriate for proper and sound management of the area.

Protection of coastal areas

5C. (1) The Minister, by notice in the *Gazette*, may declare a coastal area to be a protected coastal area.

(2) As soon as practicable upon the commencement of this Act, the Minister must, after consultation with the relevant organ of State and lead agencies, prepare a survey of the protected coastal areas and prepare an integrated national coastal area management plan based on the report of such survey.

(3) The Minister must, every two years, review the implementation of national coastal area management plan prepared under subsection (2).

(4) The report of the survey of the protected coastal area must contain -

- (a) an inventory of all structures, roads, excavations, harbours, outfalls, dumping sites and other works located in the protected coastal area;
- (b) an inventory of all areas within the coastal area of scenic value or of value for recreational and cultural purposes;
- (c) an inventory of areas within the protected coastal area of special value with respect to fisheries, erosion, littorals movement and such other similar subjects;
- (d) an estimate of the quantities of sand, coral sea shells and other substances being removed from the protected coastal area;
- (e) an estimate of the impacts of erosion on the protected coastal area;
- (g) an estimate of the extent, nature, cause and sources of coastal pollution and degradation;
- (h) an estimate of freshwater resources available in the protected coastal area; and
- (i) any other relevant data or information that may be considered appropriate.

(5) A person who releases or causes to be released into the protected coastal area any polluting or hazardous substances in violation of this section commits an offence and is liable to a fine not exceeding N\$500 000 or to imprisonment for a period not exceeding 25 years, or to both such fine and such imprisonment.

(6) The Minister, after following the consultative process referred to in section 44, must -

- (a) prescribe appropriate measures to prevent, reduce and control pollution or other form of environmental degradation in the protected coastal area; and
- (b) impose general and specific restrictions as he or she considers necessary to protect the area from environmental degradation.

(7) Despite the generality of subsection (6), the measures prescribed there under must provide for the control and prevention of pollution of the marine environment from

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- (a) land based sources including rivers, estuaries, pipelines and outfall structures;
- (b) vessels, other engines or any other sources used in the protected coastal area;
- (c) installations and devices used in the exploration or exploitation of the natural resources of the seabed.

PART IIIB

ADAPTATION MEASURES

Measures regarding climate change

5D. (1) The Minister, after following the consultative process with relevant organ of State referred to in section 44, must -

- (a) take measures to address climate change, and its mitigation, impacts and adaptation;
- (b) periodically, guide the organs of State or any other institutions to mainstream climate change issues in their respective strategic and annual work plan as considered fit;

- (c) identify relevant organs of State to put in place strategies and action plans to deal with climate change; and
- (d) project national positions at global level on how to deal with the problem of climate change in the context of the United Nations Framework Convention on Climate Change of 22 May 2016 and its related Protocol(s).

Eliminating release of persistent organic pollutants and similar chemicals

5E (1) For the purpose of eliminating release of persistent organic pollutants, each organ of State may take the legal and/or administrative measures necessary to reduce or eliminate release of persistent organic pollutants in its production, use, import and export in accordance with this Act.

(2) Without prejudice to any applicable law, the Minister may prescribe matters pertaining to persistent organic pollutants relating to -

- (a) compliance with international obligations on persistent organic pollutants;
- (b) eliminating release of persistent organic pollutants and similar chemicals in compliance with the Stockholm Convention;
- (c) raising awareness of and training in sustainable alternative approaches in reduction and elimination of persistent organic pollutants;
- (d) maintaining inventory of persistent organic pollutants;
- (e) disposal of existing stocks of persistent organic pollutants and products containing persistent organic pollutants;
- (f) involvement of industry particularly with reference to sharing the costs of disposal and taking responsibility of disposal of persistent organic pollutants;
- (g) promotion of appropriate chemicals and suitable management practices;

- (h) proper packaging as a basic requirement to avoid leakage and contamination of the environment both during transportation and storage;
- (i) assessing and securing of contaminated sites; and
- (j) any other measures, consistent with the powers of the Minister, which the Minister considers necessary.

Control of transboundary movement of hazardous wastes and their disposal

5F Whenever there is a transboundary movement of hazardous wastes and their disposal, such movement is dealt with -

- (a) in accordance with the Basel Convention; and
- (b) is strictly coordinated and managed by the Ministry as Competent Authority appointed under the provisions of the Basel Convention.

Protection of ozone layer

5G. The Minister, after following the consultative process referred to in section 44, must prepare policies and strategies for phasing out ozone depleting substances in time bound manner.”.

Amendment of section 8 of Act No. 7 of 2007

5. Section 8 of the principal Act is amended -

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

“(1) The Advisory Council consists of the following members appointed by the Minister as follows -

- (a) a staff member selected by the Minister;
 - (b) a staff member nominated by the Minister responsible for mines;
 - (c) a staff member nominated by the Minister responsible for water;
 - (d) a staff member of the Roads Authority nominated by the Chief Executive Officer;
 - (e) a person nominated by the Council of Traditional Leaders; and
 - (f) four persons nominated by the public and organisations, associations or institutions representing tourism sector; agricultural sector; local authorities sector and mining sector, respectively.”; and
- (b) by the substitution for subsections (4) and (5) of the following subsections:

“(4) When any nomination in terms of subsection (1)(a) to (e) becomes necessary, the Minister must invite the [**State**] relevant Ministers, Chief Executive Officer, and the Council of Traditional Leaders in writing to nominate persons within a period of 30 days from the date of the invitation.

(5) When any nomination in terms of subsection (1)[**(b)**] (f) becomes necessary, the Minister must invite the public and organisations, associations [**or**] and institutions representing tourism, agricultural, local authorities and mining sectors by notice in the *Gazette* and in any other appropriate manner, to nominate persons within a period of 30 days from the date of publication of the notice.”.

Amendment of section 10 of Act No. 7 of 2007

6. Section 10 of the principal Act is amended by the substitution for paragraph (c) of subsection (1) of the following paragraph:

“(c) ceases -

- (i) to be a staff member of the ministry for which the nominating Minister is responsible or of the Roads Authority;
- (ii) to be a member of such organisation, association or institution by which the member has been nominated;
- (iii) to represent the interests of the Council of Traditional Leaders, public or such organisation, association or institution; or”.

Substitution of section 13 of Act No. 7 of 2007

7. The principal Act is amended by the substitution for section 13 of the following section:

“Allowances of members of Advisory Council and committees

13. A member of the Advisory Council or committee who -

- (a) is not in the full-time service of the State; or
- (b) is in full-time service of the State, but is not a member of the Advisory Council or committee as a result of the position held by him or her in the service of the State as contemplated in section 18(2) of the Public Enterprises Governance Act,

is entitled to such allowances determined by the Minister -

- (i) with the concurrence of the Minister responsible for finance; and
- (ii) with due regard to any directives laid down by the Minister responsible for public enterprises under section 4(1)(e) of the Public Enterprises Governance Act.”.

Insertion of section 15A of Act No. 7 of 2007

13. The principal Act is amended by the insertion after section 15 of the following section:

“Establishment of Environmental Impact Assessment Appraisal Committee

“**15A.** (1) The Environmental Commissioner may, as and when necessary, establish a committee to be known as the Environmental Impact Assessment Appraisal Committee to deal with the environmental impact assessment appraisal in respect of listed activities under category “A” and “B”, and to advise the Environmental Commissioner.

(2) The constitution, requirements for appointment, functions and term of office of the Environmental Impact Assessment Appraisal Committee and other connected matters are as prescribed.

(3) The Environmental Commissioner -

(a) appoints the members of the Environmental Impact Assessment Appraisal Committee; and

(b) announces the appointment, names, dates and period of appointment of such members by notice in the Gazette.”.

Amendment of section 16 of Act No. 7 of 2007

14. Section 16 of the principal Act is amended by the substitution for subsection (3) of the following subsection:

“(3) The Executive Director must -

(a) make staff members of the Ministry available; and

- (b) subject to the laws governing the Public Service, cause to be appointed a legal compliance officer with knowledge in environmental law,

to assist the Environmental Commissioner in the exercise of any power or performance of any function in terms of this Act.”.

Amendment of section 17 of Act No. 7 of 2007

15. Section 17 of the principal Act is amended by the insertion after paragraph (e) of the following paragraph:

“(eA) to undertake site visit, if he or she considers necessary for issuance of environment clearance certificate;”.

Insertion of sections 19A and 19B in Act No. 7 of 2007

16. The principal Act is amended by the insertion after section 19 of the following sections:

“Compliance audit

19A. (1) The proponent must -

- (a) annually, carry out self-compliance audit;
- (b) prepare a compliance report and submit it to the Environmental Commissioner two weeks after the end of financial year;
- (c) ensure that the environmental management plan is being complied with;
- (d) ensure that conditions of environmental clearance certificate are being complied with; and
- (e) take reasonable measures to mitigate any undesirable effects not previously

anticipated in the environmental impact assessment.

- (2) The Environmental Commissioner must -
 - (a) determine the manner of reporting annual compliance; and
 - (b) annually conduct compliance, inspection, review and report on compliance audit in respect of environmental management.
- (3) An aggrieved member of the public, on good cause shown, may lodge a complaint in writing to the Environmental Commissioner to carry out an inspection on the project by which the member is aggrieved.

Accreditation of laboratories

19B. (1) The Minister, after following the consultative process referred to in section 44, may prescribe requirements for the accreditation of laboratories.

(2) For the purpose of preparing documents in support of an application for issuance of environmental clearance certificate, a proponent must use the results provided by an accredited laboratory.

(3) The results provided by an accredited laboratory are considered as supporting proof for the purpose of accreditation of a laboratory.

(4) Samples and materials or substance seized by an environmental officer in terms of section 19(3)(d) for the purpose of being used as evidence in any prosecution under this Act must first be verified by an accredited laboratory.”.

Insertion of section 22A in Act No. 7 of 2007

17. The principal Act is amended by the insertion after section 22 of the following section:

“Admission of guilt and payment of fine without appearance in court

22A. A person who commits an offence under this Act may, without appearing in court on a written notice or summons to appear in court issued to him or her by an environmental officer or police officer, admit guilt of the offence and pay the admission of guilt fine as -

- (a) determined by the Chief Magistrate by notice in the *Gazette* in respect of any category of offence under this Act and in accordance with section 57 of the Criminal Procedure Act, 1977 (Act 51 of 1977) the amount of which does not exceed -
 - (i) the maximum of the fine prescribed in respect of the offence in question; or
 - (ii) the amount of N\$20 000, whichever is the lesser; and

(b) proceeded in accordance with sections 57 and 57A of that Act.”.

Substitution of Part VI of Act No. 7 of 2007

18. The principal Act is amended by the substitution for Part VI of the following Part:

“PART VI

STRATEGIC ENVIRONMENTAL ASSESSMENT

Objectives of strategic environmental assessment

23. The objectives of strategic environmental assessment are to ensure that -

- (a) policies, plans and programmes promote sustainable use of natural resources; and

- (b) the principles of environmental management as listed in section 3 are addressed.

Strategic environmental assessment

24. (1) An organ of State must, in the prescribed manner, undertake a strategic environmental assessment for an activity listed as a policy, plan or programme in section 25(1) that it is proposing to undertake and for which it is responsible, including those of a transboundary nature that may have a significant impact on the environment.

(2) Where an organ of State undertakes a strategic environmental assessment, it must -

- (a) prepare, in the prescribed format, a strategic environmental assessment report and, where the Environmental Commissioner so directs, an accompanying strategic environmental management plan; and
- (b) obtain approval for such report and plan contemplated in paragraph (a) from the Environmental Commissioner as regards its quality and content.

(3) An organ of State must consider the recommendations made in a strategic environmental assessment report and accompanying strategic environmental management plan in the design and implementation of the policy, plan or programme.

(4) Whenever an organ of State commences the process of undertaking a strategic environmental assessment, the organ must -

- (a) notify the Environmental Commissioner in the prescribed manner;
- (b) cause the strategic environmental assessment to be registered in a register maintained by the Environmental Commissioner; and
- (c) at the same time notify the public and all other organs of State having jurisdiction in respect of any aspect of the Public Private Partnership that

such notification to the Environmental Commissioner has been made.

(5) The Minister may prescribe procedures and other requirements for strategic environmental assessment.

Policies, plans and programmes

25. (1) Policies, plans and programmes for which a strategic environmental assessment must be undertaken are as listed under section 27, and may include -

- (a) policies, plans and programmes for -
 - (i) national and regional developments;
 - (ii) urban spatial frameworks for towns with a population in excess of 10,000 inhabitants; and
 - (iv) sectors such as -
 - (aa) agriculture;
 - (bb) forestry;
 - (cc) fisheries and marine management;
 - (dd) health;
 - (ee) mining;
 - (ff) energy;
 - (gg) trade and industry;
 - (hh) transportation

- (ii) water;
- (jj) telecommunications;
- (kk) tourism ;
- (ll) nature conservation; and
- (mm) land and resettlement;
- (v) coastal development and management, including ports, waste management, river basin management and development; and
- (vi) areas considered as hubs or development corridors where there is a concentration of activities which may have significant cumulative impacts on the environment; and
- (b) any other policy, plan or programme that is likely to have a significant impact on the environment or on another policy, plan, programme.

(2) The Minister, after following the consultative process referred to in section 44, may amend the list in subsection (1) by notice in the *Gazette*.

(3) The Minister, by notice in the *Gazette*, may grant exemption in respect of listing or delisting of sectors for which a strategic environmental assessment for a particular policy, plan or programme is applicable.

(4) A person may make representations to the Minister on the desirability to have a policy, plan or programme listed in subsection (1) be amended or delisted, or a new policy, plan or programme be listed.

(5) The Minister is not bound by a representation made under subsection (4).

Implementation of strategic environmental assessment reports and strategic environmental management plans

26. (1) Where an organ of State decides to ignore, dismiss, or substantially deviate from recommendations made in a strategic environmental assessment report or accompanying strategic environmental management plan, the organ must -

- (a) justify the decision in the prescribed manner and form; and
- (b) cause the decision to be registered in a register maintained by the Environmental Commissioner.

(2) An organ of State must -

- (a) undertake environmental monitoring during the implementation of the policy, plan or programme;
- (b) prepare monitoring reports as recommended in the strategic environmental assessment report or strategic environmental management plan; and
- (c) take any steps necessary to ensure that the objectives of this Act are being met, including modifying the policy, plan or programme, implementing improved impact avoidance, and mitigation measures.

(3) If the Environmental Commissioner is of the opinion that the objectives and principles in this Act are not being met by an organ of State, the Commissioner may serve a written notice on the organ calling on it to take such specified steps as the Commissioner considers necessary to remedy the non-compliance.

(4) Where a non-compliance persists, the Environmental Commissioner may hold the organ of State concerned to be in breach of this Act and take any further steps he or she considers to be necessary.”.

Amendment of section 27 of Act No. 7 of 2007

19. Section 27 of the principal Act is amended by the substitution for subsection (1) of the following subsection:

“(1) The Minister, by notice in the *Gazette*, after following the consultative process referred to in section 44, may -

- (a) list activities which may not be undertaken without an environmental clearance certificate; or
- (b) arrange listed activities in categories.”.

Insertion of section 29A in Act No. 7 of 2007

20. The principal Act is amended by the insertion after section 29 of the following section:

“Management and control measures for sand and gravel mining as listed activities

29A. (1) The Minister may prescribe the management and control measures for mining of sand and gravel as listed activities on land other than watercourse, including -

- (a) the application, issue, suspension, cancelation and review of permits and related environmental clearance certificates and the powers of traditional authorities in respect of sand mining permits;
- (b) the transportation of sand from site to destinations and security and safety of vehicles;
- (c) the prohibition of heaping of sand or gravel for future sale;
- (d) the management of air pollution and dust;
- (e) the management of health and safety of workers;

- (f) the fencing of sand mining sites;
- (g) the compensation for damages; and
- (h) the determination of maximum fees to be charged for sale of sand, levies to be paid to owners, occupiers and lessees of land.

(2) A current authorisation to mine sand or gravel issued before the commencement of this Amendment Act remains valid for a period of 12 months from the date of commencement of this Amendment Act.”.

Insertion of section 31A in Act No. 7 of 2007

21. The principal Act is amended by the insertion after section 31 of the following section:

“Environmental impact assessment for clusters and industrial zones

31A. A common environmental impact assessment report and a common environmental management plan for the notified industrial zone , export processing zone or special economic zone and mining clusters, if the zone or mining clusters comprise of a collection of homogeneous industries or mines or a pre-defined set of industries or projects must be treated as a listed category project.”.

Substitution of section 32 of Act No. 7 of 2007

22. The principal Act is amended by the substitution for section 32 of the following section:

“Application for environmental clearance certificate

32. (1) A person who is required to obtain an environmental clearance certificate must, in the prescribed form and manner and on payment of the prescribed fee,

apply to the Environmental Commissioner for an environmental clearance certificate in respect of the listed activity to be undertaken.

(2) The Environmental Commissioner must inform the relevant competent authority of the application referred to in subsection (1) and request the competent authority to provide comments relevant to their legal mandate on the proposed activity.”.

Substitution of section 40 of Act No. 7 of 2007

23. The principal Act is amended by the substitution for section 40 of the following section:

“Duration of environmental clearance certificate

40. An environmental clearance certificate -

- (a) becomes effective and operates from the date endorsed on the certificate; and
- (b) remains effective for a period not exceeding five years, subject to cancellation or suspension under section 42.”.

Insertion of section 40A in Act No. 7 of 2007

23. The principal Act is amended by the insertion after section 40 of the following section:

“Renewal of environmental clearance certificate

40A. (1) An environmental clearance certificate is renewable at the end of its expiry -

- (a) upon submitting the application for renewal to the Environmental Commissioner 90 days before the expiry; and

- (b) in the prescribed form and manner and on payment of the prescribed renewal fee.

(2) The application for renewal of the environmental clearance certificate is accompanied by -

- (a) the statement of compliance with all the conditions of the certificate, including the extent to which restoration and rehabilitation plan has been implemented;
- (b) the updated environmental management plan, if applicable; and
- (c) environmental performance and compliance reports.

(3) If the conditions set out in the environmental clearance certificate submitted for renewal have not been met, the Environmental Commissioner may request the applicant -

- (a) for an explanation for not complying with the conditions of the certificate or environmental management plan; and
- (b) to submit the additional information thereof.

(4) After considering the application for renewal for the environmental clearance, the Environmental Commissioner may -

- (a) grant the application; or
- (b) reject the application and must give the reason for his or her decision.”.

Insertion of section 43A in Act No. 7 of 2007

24. The principal Act is amended by the insertion after section 43 of the following section:

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“Registration of environmental assessment practitioners

43A. (1) The Minister may prescribe requirements and procedures required for the registration of environmental assessment practitioners.

(2) An environmental assessment practitioner must have -

- (a) requisite resources for carrying out environmental impact assessment study such as staff, laboratory and field investigation facilities; and
- (b) expertise in different functional areas like air, water, land biodiversity, hydrology, risk and hazards and socio-economic studies or have the capacity to pool the individual environmental experts for different functional areas.

(3) The Environmental Commissioner must -

- (a) register and maintain a register of environmental assessment practitioners certified to conduct environmental impact assessment; and
- (b) deregister a registered environmental assessment practitioner if the Commissioner finds proof of -
 - (i) concealment of information;
 - (ii) plagiarism;
 - (iii) technically unsound assessment; or
 - (iv) conflict of interests,
 in the proposed or undertaken activity.

(4) Despite any other law to the contrary, a staff member or officer in the office of -

(a) the Environmental Commissioner; or

(b) any other competent authority appointed to issue authorisation in respect of listed activities under this Act,

may not conduct environmental impact assessment or strategic environmental impact assessment in respect of any application for consideration by the Environmental Commissioner or such other competent authority.”.

Insertion of sections 48A and 48B in Act No. 7 of 2007

25. The principal Act is amended by the insertion after section 48 of the following sections:

“Financial guarantee for environmental rehabilitation and restoration and cancellation of environmental clearance certificate

48A. (1) A proponent applying for an environmental clearance certificate in respect of a listed activity must submit to the Environmental Commissioner, as a condition of the environmental clearance certificate, a closure, restoration and rehabilitation plan within 12 months of issuance of environmental clearance certificate.

(2) For the purpose of ensuring proper closure, restoration and rehabilitation of project site, the proponent must, as financial guarantee, submit an environmental performance bond to the Environmental Commissioner within 12 months of the issuance of an environmental clearance certificate.

(3) If a holder of the clearance certificate fails to comply with the requirements of subsection (2) -

(a) the holder is liable to a fine not exceeding N\$500 000 as the Environmental

Commissioner may determine; or

- (b) the environmental clearance certificate is automatically cancelled after 60 days of such failure or failure to pay a fine under paragraph (a).

(3) The Environmental Commissioner, on satisfaction that the closure, restoration and rehabilitation plan has been properly implemented, and after consultation with the competent authority concerned, must -

- (a) return the environmental performance bond to the proponent as submitted to the Commissioner in terms of subsection (2); and
- (b) issue a closure certificate to the environmental clearance certificate holder.

Mitigation and offset measures

48B. (1) Where an activity is likely to cause environmental impacts or has caused environmental impacts, a process of addressing environmental impacts must be undertaken using mitigation measures to minimise the impacts.

(2) Negative environmental impacts should be avoided, for instance by re-siting the project to a more suitable location, and if -

- (a) relocation is not feasible, science-strong measures should be deployed to minimize harms;
- (b) impacts cannot be minimised by science-strong measures, then the environment should be restored or rehabilitated to as close to its former state as possible; or
- (c) restoration or rehabilitation is impossible or impractical and residual environmental impacts are inevitable, there should be appropriate compensation, including through offsets.

(3) The offset measures contemplated in subsection (2)(c) are -

(a) taken to compensate for any unavoidable residual negative environmental impacts resulting from an activity such as the loss of valuable species, loss or disturbance of habitats or impairment of ecosystem functioning on a site or area after full implementation of measures -

(i) to avoid and minimise impacts during the life of the activity; or

(ii) to restore ecological functioning or rehabilitate land.

(b) often provided by securing land at another site and managing such land over a period of time to replace those significant environmental matters which were lost.

(4) Offsetting serves to meet the environmental principle of “no net loss” of environmental assets, particularly biodiversity, as a consequence of development.”.

Insertion of Part IXA in Act No. 7 of 2007

26. The principal Act is amended by the insertion after Part IX of the following Parts:

“PART IXA

ENVIRONMENTAL STANDARDS

Formulation of environmental standards

48C. (1) The Minister, after following the consultative process referred to in section 44, may prescribe environmental standards in relation to -

(a) water quality;

(b) industry specific discharge;

- (c) air quality;
- (d) control of noise and vibration pollution;
- (e) soil quality;
- (f) control of noxious smells; and
- (g) any other environmental quality standards.

(2) A proponent undertaking any activity must at all times comply with environmental standards.

Enforcement of environmental standards

48D. (1) In enforcing environmental standards the Environmental Commissioner may -

- (a) carry out investigations of actual or suspected environmental degradation including the collection of samples, records and data;
- (b) after a reasonable notice period given to the proponent, enter, inspect and examine any place, area, premises or any vehicle, vessel or any carriage of any description on which the Commissioner has reasonable grounds to believe that the activity is or is likely to lead to violation of environmental standards;
- (c) take necessary measures to ensure that industry and other facilities adopt cleaner technology to meet the required standards;
- (d) monitor emission concentration and nature of pollutants emitted;

(e) make guidelines to minimise greenhouse gases and other emissions and identify suitable technologies for minimization of air pollution; or

(f) perform any act that is necessary for the monitoring and control of environmental pollution.

(2) Subject to any other law, a person who emits pollutant or emission in excess of environmental standards prescribed under this Act is liable to make good as may be prescribed.

PART IXB

PRACTICES FOR SUSTAINABLE DEVELOPMENT

Corporate social responsibilities

48E. The Minister, after following the consultative process referred to in section 44, may prescribe measures for corporate social responsibility in order to improve socio-economic conditions of the people through environmental development and beneficiation.

Prevention and control of pollution in respect of motor vehicles

48F. (1) The Minister, after following the consultative process referred to in section 44, may prescribe -

(a) mandatory emission standards; or

(b) measures prohibiting the emissions of gases that fails to comply with emission standards.

Promotion of cleaner production technology and sustainable consumption of goods and services

48G. (1) The Minister, after following the consultative process referred to in section 44, by notice in the *Gazette*, may prescribe the best practices guidelines relating to -

- (a) cleaner production technologies and techniques and sustainable consumption to guide industrial, tourism, trade, mining, agriculture and service oriented activities;
- (b) the monitoring of the impact of cleaner production; and
- (c) mainstreaming of cleaner production and sustainable consumption approaches in relevant policies in public and private bodies.

(2) A person carrying out a listed activity impacting the environment must adapt to and comply with such prescribed best practice guidelines in technology and techniques to prevent or reduce pollution of the environment.

PART IXC

WASTE MANAGEMENT

Integrated waste management

48H. For the purposes of ensuring proper waste disposal, the Minister, after following the consultative process referred to in section 44, may make regulations to manage waste including hazardous wastes relating to -

- (a) various types of wastes streams;
- (b) responsibility and liability of persons involved in any generation, transportation and disposal of hazardous wastes and other wastes;
- (c) procedures in segregation, transportation and disposal of hazardous wastes and other wastes;

- (d) licenced disposal facilities for hazardous wastes and other wastes;
- (e) responsibility and liability of person or group of persons that have caused contamination of the environmental ecosystem or owners of such sites; and
- (f) criteria for classification of sites contaminated with hazardous wastes.

Disposal of health care wastes

48I. (1) The Minister, in concurrence with the Minister responsible for health, may prescribe measures -

- (a) to ensure that health care wastes are sorted, segregated and stored in prescribed coded containers and transported in refuse trucks designed and registered for that purpose; and
- (b) relating to the best possible method for final disposal of various types of health care wastes.

(2) In this section, “health care wastes” include infectious wastes, pathological wastes, pharmaceutical waste, radioactive wastes, coagulated blood wastes and drugs.

National guidelines on waste management planning

48J. For the purposes of ensuring proper waste disposal, the Minister, after following the consultative process referred to in section 44, by notice in the *Gazette*, may prescribe national guidelines on waste management planning relating to any matter contemplated in this Part.

Substitution of section 50 of Act No. 7 of 2007

27. The principal Act is amended by the substitution for section 50 of the following section:

Environmental Management Amendment Draft Bill as @ 23 February 2021

“Appeals to Minister

50. (1) A person aggrieved by a decision of the Environmental Commissioner in the exercise of any power in terms of this Act may appeal to the Minister against that decision.

(2) An appeal is submitted to and noted by the Minister and is dealt with in the prescribed form and manner.

(3) Upon receipt of the notice of appeal the Minister must appoint an appeal panel consist of three members, with knowledge and expertise in environmental, land and legal matters and in any other matters relevant to this Act, to hear the appeal and recommend to the Minister.

(4) An appeal panel must consider the appeal and may recommend to the Minister -

- (a) to confirm the decision or order;
- (b) to set aside the decision or order;
- (c) to vary the decision or order; or
- (d) to make any other appropriate order including an order that the prescribed fee paid by the appellant, or any part thereof, be refunded.

(5) An appeal does not suspend the operation or execution of the decision pending the decision of the Minister, unless the Minister, on the application of a party, and on the recommendation of the appeal panel, directs otherwise.

(6) Any expenditure resulting from the performance of functions by the appeal panel in terms of this section is paid from the State Revenue Fund from moneys appropriated by Parliament for that purpose.

(7) The legal compliance officer appointed under section 16(3) administers the appeals and performs secretarial functions for an appeal panel.”.

Amendment of section 54 of Act No. 7 of 2007

28. Section 54 of the principal Act is amended by the substitution for subsection (3) of the following subsection:

“(3) Money received as payment of a penalty following a conviction or an admission of guilt fine in terms of this Act, or the proceeds from the sale of anything declared forfeited in terms of section 35 of the Criminal Procedure Act following a conviction in terms of this Act, or any fee or charge payable in terms of this Act, must be paid into the Fund.”.

Insertion of Schedules 1 and 2 in Act No. 7 of 2007

29. The principal Act is amended by the insertion after section 58 of the following Schedules:

““Schedule 1: Stockholm Convention on Persistent Organic Pollutants; and

Schedule 2: Basel Convention on Control of Transboundary Movements of Hazardous Wastes and Their Disposal.”.

Short title and commencement

30. This Act is called the Environmental Management Amendment Act, 2021 and commences on the date determined by the Minister by notice in the *Gazette*.