DRAFT AMENDMENTS TO THE EMA 2007 – MARCH 2016



**GOVERNMENT GAZETTE**

**OF THE**

**REPUBLIC OF NAMIBIA**

N$6.40 WINDHOEK - 27 December 2007 No. 3966

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**GOVERNMENT NOTICE**

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**Government Notice**

**OFFICE OF THE PRIME MINISTER**

No. 232 2007

**PROMULGATION OF ACT OF PARLIAMENT**

The following Act which has been passed by the Parliament and signed by the President in terms of the Namibian Constitution is hereby published in terms of Article 56 of that Constitution.

No. 7 of 2007: Environmental Management Act, 2007, Amended.

**ACT**

**To to promote the sustainable management of the environment and the use of natural resources by establishing principles for decision making on matters affecting the environment;; to provide for the creation of the Namibia Environmental Commission with all the required Board, Managing Director who is the Environmental Commissioner, other staff members, laboratory requirements and supportive funds; to establish the Sustainable Development Advisory Council, to provide for a process of Strategic Environmental Assessment (SEA) of policies, plans and programmes by Organ of State and site–specific Environmental Impact Assessment (EIA) for projects activities by proponent which may have significant effects on the environment; to provide for environmental assessment process; to provide for all environmental quality standards, licensing and certifications and to provide for incidental matters.**

**BE IT ENACTED** by the Parliament of the Republic of Namibia, as follows:

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# PART I- DEFINITIONS, OBJECT OF ACT AND PRINCIPLES

## Definitions

1. In this Act, unless the context indicates otherwise -

“activity” means policies, plans, programmes and projects;

“aftercare plan” means a plan containing identified actions that will be taken following the cessation of an operations and details the post closure management and monitoring programme that will be implemented.

“air quality” means the concentration prescribed under or pursuant to this Act of a pollutant in the atmosphere at the point of measurement;

“ambient air” means the atmosphere surrounding the earth but does not include the atmosphere within a structure or within any underground space;

“analysis” means the testing or examination of any matter, substance or process for the purpose of determining its composition or qualities or its effect (whether physical, chemical or biological) on any segment of the environment or examination of emissions or recording of noise or sub-sonic vibrations to determine the level or other characteristics of the noise or sub-sonic vibration or its effect on any segments of the environment;

“Advisory Council” means the Sustainable Development Advisory Council established in terms of this Act;

“assessment” means the process of identifying, predicting and evaluating –

(a) the significant effects of activities on the environment;

(b) the risks and consequences of activities and their alternatives and options for mitigation with a view to minimise the effects of activities on the environment and to maximise the benefits and to promote compliance with the principles set out in this Act;

“assessment report” means a report that presents the procedures and findings of an assessment at Strategic Environmental Assessment (SEA) undertaken for policies, plans or programmes or Environmental Impact Assessment (EIA) undertaken for project site-specific levels;

“authorisation” means an approval, licence, permit or other authorisation issued by a competent authority in respect of a listed activity;

“beneficial use” means a use of the environment or any element or segment of the environment that is conducive to public health, welfare or safety and which requires protection from the effects of wastes, discharges, emissions and deposits;

“benefited environment” means that environment which has benefited through the imposition of one or more obligations on the burdened land;

“biological diversity” means the variability among living organisms from all sources

including, terrestrial ecosystems, aquatic ecosystems and the ecological complexes of which they are part; this includes diversity within species, among species and of ecosystems;

“biological resources” include genetic resources organisms or parts thereof, populations, or any other biotic component or ecosystem with actual or potential

use or value for humanity

“burdened land” means any land upon which an environmental conservation order has been imposed in terms of this Act;

“climate change” means a change in the statistical distribution of weather patterns when that change lasts for an extended period of time (i.e., decades to millions of years).

“chemical” means a chemical substance in any form whether by itself or in a mixture or preparation, whether manufactured or derived from nature and for the purposes of this Act includes industrial chemicals, pesticides, fertilizers and drugs;

“Coastal zone” means is a region where interaction of the sea and land processes occurs;

“Continental Shelf” means the exclusive economic zone established under the Territorial Sea and Exclusive Economic Zone Act of Namibia;

“construction” means the building, erection or modification of a facility, structure or infrastructure that is necessary for the undertaking of an activity, including the modification, alteration, upgrading or decommissioning of such facility, structure or infrastructure;

“closure” means the final termination of all project activities.

“competent authority” means -

(a) an organ of state which is responsible, under any law, for granting or refusing an authorisation; or

(b) the competent authority identified in terms of the Act

“Criminal Procedure Act” means the Criminal Procedure Act, 1977 (Act No. 51 of 1977); “environment” means the complex of natural and anthropogenic factors and elements

that are mutually interrelated and affect the ecological equilibrium and the quality of life, including -

(a) the natural environment that is the land, water and air, all organic and inorganic material and all living organisms; and

(b) the human environment that is the landscape and natural, cultural, historical, aesthetic, economic and social heritage and values;

“Ecosystem” means a dynamic complex of plant, animal, micro-organism communities and their non-living environment interacting as a functional unit;

“ecosystem services” means provisioning, such as the production of food and water; regulating, such as the control of climate and disease; supporting, such as nutrient cycles and crop pollination; and cultural, such as spiritual and recreational benefits..

“ecosystem function” means the biological, geochemical and physical processes and components that take place or occur within an ecosystem.

“cultural services” means the non-material benefits people obtain from ecosystems through spiritual enrichment, cognitive development, reflection, recreation, and aesthetic experience, including, e.g., knowledge systems, social relations, and aesthetic values.

“environment” includes the physical factors of the surroundings of human beings including land, water, atmosphere, climate, sound, odour, taste, the biological factors of animals and plants and the social factor of aesthetics and includes both the natural and the built environment;

“Environmental Assessment Practitioner” (EAP) means a natural person qualified to perform an environmental assessment

“Environmental Clearance Certificate” ;

“environmental assessment” means

1. assessment undertaken for policy, plan or programme and includes scoping, strategic environmental assessment (SEA) and development of Strategic Environmental Management (SEMP)
2. assessment undertaken with respect to site-specific projects and includes scoping, Environmental Impact Assessment (EIA) and development of Environmental Management Plans (EMP)

“effluent” means gaseous waste, water or liquid or other fluid of domestic, agricultural, trade or industrial origin treated or untreated and discharged directly or indirectly into the aquatic environment;

“element” in relation to the environment means any of the principal constituent parts of the environment including water, atmosphere, soil, vegetation, climate, sound, odour, aesthetics, fish and wildlife;

“environmental audit” means the systematic, documented, periodic and objective evaluation of how well environmental organisation, management and equipment are

performing in conserving or preserving the environment;

“environmental compliance monitoring” means continuous process of obtaining information to determine if the parties required under law to control their polluting discharges and emissions are doing so.

"environmental damage" means the destruction of the physical factors of the surroundings of human beings including land, water, atmosphere, climate, sound, odour, taste, the biological factors of animals and plants and the social factor of aesthetics and includes both the natural and the built environment;.

“environmental education” includes the process of recognising values and clarifying concepts in order to develop skills and attitudes necessary to understand and

appreciate the inter-relatedness among man, his culture and his biophysical

surroundings;

“environmental impact assessment” means a systematic examination conducted to determine whether or not a programme, activity or project will have any adverse impacts on the environment;

“Environmental Inspector” means any environmental inspector appointed or designated under this Act;

“environmental management” includes the protection, conservation and sustainable use of the various elements or components of the environment;

“environmental monitoring” means the continuous or periodic determination of actual and potential effects of any activity or phenomenon on the environment whether short-term or long-term;

“environmental planning” means both long-term and short-term planning that takes into account environmental exigencies;

“environmental resources” includes the resources of the air, land, flora, fauna and water together with their aesthetical qualities;

“environmental restoration order” means an order issued in terms of the provisions of this Act;

“environmentally friendly” includes any phenomenon or activity that does not cause

harm or degradation to the environment;

“Environmental Commissioner” means the Environmental Commissioner appointed as the Managing Director of the Commission in terms of this Act;

“environmental officer” means an environmental officer appointed in terms of the provisions of this Act

“exception” means the action of freeing or state of being free from an obligation or liability imposed on others.

“financial guarantee” is a promise to take responsibility for another party's financial obligation if that party cannot meet its obligation. The entity assuming this responsibility is called the guarantor;

“Fund” means a fund established in terms of the provisions of this Act;

“listed activity” means an activity listed and cannot be undertaken without an environmental clearance certificate issued in terms of provisions of this Act;

“hazardous substance” means any chemical, waste, gas, medicine, drug, plant, animal or micro-organism which is likely to be injurious to human health or the environment;

“hazardous waste” means any waste which has been determined by the Environmental Commissioner to be hazardous waste or to belong to any other category of waste provided for in accordance with the provisions of this Act;

“Material Safety Data Sheet (MSDS)” means a document that contains

information on the potential hazards (health, fire, reactivity and environmental) and how to work safely with the chemical product.

“Minister” means the Minister responsible for environment;

“Ministry” means the Ministry responsible for the administration of matters relating to the environment;

“mixture containing oil” means a mixture of substances or liquids with such oil content as may be specified under this Act or, if such oil content is not specified, a mixture with an oil content of one hundred parts or more in one million parts of the mixture;

“noise” means any undesirable sound that is intrinsically objectionable or that may cause adverse effect on human health or the environment;

“occupational air quality” means the concentration prescribed under or pursuant to this Act of a substance or energy in the atmosphere within a structure or underground space in which human activities take place;

“occupier” means a person in occupation or control of premises, and in relation to premises different parts of which are occupied by different persons, means the respective persons in occupation or control of each part;

“oil” includes –

* 1. crude oil, refined oil, diesel oil, fuel oil and lubricating oil; and
  2. any other description of oil which may be prescribed;

“operator” means any natural or legal, private or public person who operates or controls the damaging occupational activity or, where this is provided for in national legislation, to whom decisive economic power over the technical functioning of such an activity has been delegated, including the holder of a permit or authorisation for such an activity or the person registering or notifying such an activity.

“owner” in relation to any premises means –

1. the registered proprietor of the premises;
2. the lessee, including a sub-lessee of the premises;
3. the agent or trustee of any other owners described in paragraphs (a) and (b) of this interpretation section or where such owner as described in paragraphs (a) and (b) cannot be traced or has died, his legal personal representative;
4. the person for the time being receiving the rent of the premises whether on his / her own account or as agent or trustee for any other person or as receiver or who would receive the rent if such premises were let to a tenant; and in relation to any ship means the person registered as the owner of the ship or in the absence of registration, the person owning the ship; except that in the case of a ship owned by any country and operated by a company which in that country is registered as the ship’s operator, “owner” shall include such country and the master of the ship;

“organs of state” means Line Ministries, Parastatals, Regional Councils and Local Authorities that exercise functions / mandate that may affect the environment or are entrusted with powers and duties aimed at the achievement, promotion, and protection of a sustainable environment, and for matters pertaining thereto.

“Permanent Secretary” means the Permanent Secretary of the Ministry; “person” includes an organ of state;

“premises” includes land and any building, structure, vehicle, ship, vessel, aircraft or container;

“prescribe” or “prescribed” means prescribe or prescribed by regulation; “proponent” means a person who proposes to undertake a listed project activity;

“provisioning services” means the products obtained from ecosystems, including, for example, genetic resources, food and fibre, and fresh water.

“ozone layer” means the layer of the atmospheric zone above the planetary boundary layer as defined in the Vienna Convention for the Protection of the Ozone Layer, 1985;

“plan” means a set of coordinated projects proposed by an organ of state;

“policy” means a statutory statement of intent providing aims and actors for plans and programmes valid over a period of two to three decades;

“PPP” means Policy, Plan or Programme;

“programme” mean a set of coordinated plans;

“pollutant” includes any substance whether liquid, solid or gaseous which –

1. may directly or indirectly alter the quality of any element of the receiving environment;
2. is hazardous or potentially hazardous to human health or the environment; and

includes objectionable odours, radio-activity, noise, temperature change or physical, chemical or biological change to any segment or element of the environment;

“polluter-pays principle” means that the cost of cleaning up any element of the environment damaged by pollution, compensating victims of pollution, cost of beneficial uses lost as a result of an act of pollution and other costs that are connected with or incidental to the foregoing, is to be paid or borne by the person convicted of pollution under this Act or any other applicable law or regulations;

“pollution” means any direct or indirect alteration of the physical, thermal, chemical, biological, or radio-active properties of any part of the environment by discharging, emitting, or depositing wastes so as to affect any beneficial use adversely, to cause

a condition which is hazardous or potentially hazardous to public health, safety or welfare, or to animals, birds, wildlife, fish or aquatic life, or to plants or to cause contravention of any condition, limitation, or restriction which is subject to a licence under this Act;

“practicable” means reasonably practicable having regard, among other things, to local conditions and knowledge and the term “practicable means” include the provision and the efficient maintenance of plants and the proper use thereof, and the supervision by or on behalf of the occupier of any process or operation;

“precautionary principle” is the principle that where there are threats of damage to the environment, whether serious or irreversible, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation;

“premises” include measures, buildings, lands, and hereditaments in every tenure and machinery, plant or vehicle used in connection with any trade carried on at any premises;

“proponent” means a person proposing or executing a project activity or an undertaking specified listed in terms of the provisions of this Act;

“proprietary information” means information relating to any manufacturing process, trade secret, trade mark, copyright, patent or formula protected by law in Namibia or by any international treaty to which Namibia is a party;

“public consultation, or simply consultation, is a regulatory process by which the public's input on matters affecting them is sought. Its main goals are in improving the efficiency, transparency and public involvement in policies plans, programme and projects activities

“rehabilitate” means to take measures in accordance with the standards prescribed by the regulations with respect to undertaking site –specific project activities so that the use or condition of the site

(i) is restored as close as is reasonably possible to its former use or condition,

(ii) is restored to a condition that is acceptable to the minister, or

(iii) is made suitable for a use that the minister considers appropriate;”;

““rehabilitation” means the process of returning the land in a given area to some degree of its former state, after some process (industry, natural disasters, etc.) has resulted in its damage.

“regulation” means a regulation made under this Act;

“review” when used in Part VIII, means the process of determining whether an assessment has been carried out correctly or whether the resulting information is adequate in order to make a decision;

“significant effect” 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;

“risk Assessment” means a scientifically based process consisting of four steps: hazard identification, hazard characterization, exposure assessment and risk characterization.

“staff member” means a staff member as defined in section (1) of the Public Service Act,

1995 (Act No. 13 of 1995);

“regulating” services means the benefits obtained from the regulation of ecosystem processes, including, for example, the regulation of climate, water, and some human diseases.

“scoping” means the process of determining the content and extent of the matters which should be covered in the. environmental assessment and is inclusive of preparation of Term of Reference for the SEA;

“screening” means the process of determination of whether or not an environmental assessment is required for policy, plan, programme or project activity.

“ship” includes every description of vessel or craft or floating structure;

“soil” includes earth, sand, rock, shales, minerals, vegetation, and the flora and fauna in the soil and derivatives thereof such as dust;

“standard” means the limits of discharge or emissions established under this Act or under regulations made pursuant to this Act or any other written law;

“sustainable development” means development that meets the needs of the present generation without compromising the ability of future generations to meet their needs by maintaining the carrying capacity of the supporting ecosystems;

“sustainable use” means present use of the environment or natural resources which does not compromise the ability to use the same by future generations or degrade the carrying capacity of supporting ecosystems;

“supporting” services means ecosystem services that are necessary for the production of all other ecosystem services. Some examples include biomass production, production of atmospheric oxygen, soil formation and retention, nutrient cycling, water cycling, and provisioning of habitat.

“stakeholder”, means individuals or groups that are affected by a decision and have an interest in its outcome.

“strategic environmental assessment (SEA)” means a process for evaluating the environmental consequences of proposed plan, policy or programme initiatives in order to ensure that they are fully included and appropriately addressed at the earliest stage of decision making, on par with economic and social considerations

“trade” means any trade, business or undertaking whether originally carried on a fixed premises or at varying places which may result in discharge of substances and energy and includes any activity prescribed to be a trade, business or undertaking for the purpose of this Act;

“terms of reference” (ToR) means a document outlining the scope and limitations of an activity detailing all aspects of how a consultant or a team will conduct an evaluation. It defines the objectives and the scope of the evaluation, outlines the responsibilities of the consultant or team, and provides a clear description of the resources available to conduct the study.

“waste” includes any matter prescribed to be waste and any matter, whether liquid, solid, gaseous, or radioactive, which is discharged, emitted, or deposited in the environment in such volume composition or manner likely to cause an alteration of the environment;

“wetland” means areas permanently or seasonally flooded by water where plants and animals have become adapted;

“this Act”, includes any notice or regulation issued or made under this Act.

## Object of Act

1. The object of this Act is to prevent and mitigate, on the basis of the principles set out in section 3, the significant effects of activities on the environment by -
2. ensuring that the significant effects of activities on the environment are considered in time and carefully;
3. ensuring that there are opportunities for timeous participation of stakeholders or interested and affected parties throughout the assessment process; and
4. ensuring that the findings of an assessment are taken into account before any decision is made in respect of activities.

## Principles of environmental management

(1) The principles set out in subsection (2) -

* 1. guide the implementation of this Act and any other law relating to the protection of the environment;
  2. serve as the general framework within which environmental plans must be formulated; and
  3. serve as guidelines for any organ of state when making any decision in terms of this Act or any other law relating to the protection of the environment.

(2) The following are the principles of environmental management: -

1. renewable resources, ecosystem services and functions must be used on a sustainable basis for the benefit of present and future generations;
2. community involvement in natural resources management and the sharing of benefits arising from the use of the resources, must be promoted and facilitated;
3. the participation of all interested and affected parties must be promoted and decisions must take into account the interest, needs and values of interested and affected parties;
4. 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;
5. assessments must be undertaken for activities which may have a significant effects on the environment or the use of natural resources;
6. sustainable development must be promoted in all aspects relating to the environment;
7. Namibia’s cultural and natural heritage including, its biological diversity, must be protected and respected for the benefit of present and future generations;
8. the option that provides the most benefit or causes the least damage to the environment as a whole, at a cost acceptable to society, in the long term as well as in the short term must be adopted to reduce the generation of waste and polluting substances at source;
9. the reduction, re-use and recycling of waste must be promoted;
10. a person who causes damage to the environment must pay the costs associated with rehabilitation of damage to the environment and to human health caused by pollution, including costs for measures as are reasonably required to be implemented to prevent further environmental damage;
11. where there is sufficient evidence which establishes that there are threats of serious or irreversible damage to the environment, lack of full scientific certainty may not be used as a reason for postponing cost-effective measures to prevent environmental degradation; and
12. damage to the environment must be prevented and activities which cause such damage must be reduced, limited or controlled;
13. in planning for and assessment of future activities it is necessary to take into account the potential consequences of climate change and, where deemed appropriate, adapt the proposed activities in such a way that they become more resilient against the consequences of climate change,
14. in planning for and assessment of future activities minimise the production and emission of greenhouse gasses, in order to mitigate the risk of impacts resulting from global climate change.
15. promote climate resilient development, where adaptation and mitigation go hand in hand through the maintenance or restoration of resilient (healthy) ecosystems, and use of renewable energy .

## Access to environmental information

1. Organs of state are entitled to have access to prescribed environmental information held by any person where that information is necessary to enable such organs of state to perform their duties in terms of this Act or any other law concerned with the protection of the environment or the use of natural resources.

## International environmental agreements

1. The Minister may introduce legislation in Parliament or make such regulations as may be necessary for giving effect to an international environmental agreement to which Namibia is a party, and such legislation and regulations may deal with the following –
   1. the co-ordination of the implementation of the agreement;
   2. the allocation of responsibilities in terms of the agreement, including those of other organs of state;
   3. the gathering of information, including for the purposes of compiling and updating reports required in terms of the agreement and for submission to Parliament;
   4. the dissemination of information related to the agreement and reports from international meetings;
   5. initiatives and steps regarding research, education, training, awareness raising and capacity building;
   6. ensuring public participation;
   7. implementation of and compliance with the provisions of the agreement, including the creation of offences and the prescription of penalties where applicable; and
   8. any other matter necessary to give effect to the agreement.

# PART II – NAMIBIA ENVIRONMENTAL COMMISSION

## Establishment of the Namibia Environmental Commission

1. There is hereby established a body to be known as the Namibia Environmental Commission herein referred as the “Environmental Commission” or “Commission”;
2. The Commission shall be an independent body corporate with perpetual succession and a common seal and shall, in its corporate name, be capable of:
   1. suing and being sued;
   2. taking, purchasing, charging and disposing of movable and immovable property;
   3. borrowing money;
   4. entering into contracts; and
   5. doing or performing all such other things or acts for the proper administration of this Act, which may lawfully be performed by a body corporate.
3. The Commission shall governed by a Board of Directors appointed by the Minister with advise of the Sustainable Development Advisory Council and headed by the Environmental Commissioner who will be the Managing Director appointed by the Board.
4. The Headquarters of the Commission shall be in Windhoek with regional offices as the budget shall permit.

## The object and purpose for Establishing the Commission

1. The object and purpose for which the Commission is established is to exercise general supervision and co-ordination over all matters relating to the environment and to be the principal instrument of Government in the implementation of all policies, plans and projects relating to the national and international environmental matters and interests.
2. Without prejudice to the generality of the foregoing, the Commission shall –
   1. co-ordinate the various environmental management activities being undertaken by the organs of state and competent authorities at all levels of Government and promote the integration of environmental considerations into development policies, plans, programmes and projects with a view to ensuring conservation, protection and sustainable utilisation of natural resources for the improvement of the quality of human life in Namibia;
   2. take stock of the natural resources and state of the environment in Namibia and their utilisation and conservation;
   3. establish and review environmental regulations, guidelines and standards in consultation with the relevant organs of state and competent authorities;
   4. examine land use patterns to determine their impact on the quality and quantity of natural resources;
   5. carry out environmental surveys which will assist in the effective management and conservation of the environment;
   6. advise the Government on legislative and other measures for the management of the environment or the implementation of relevant international conventions, treaties and agreements in the field of environment, as the case may be;
   7. advise the Government on regional and international environmental conventions, treaties and agreements to which Namibia should be a party and follow up the implementation of such agreements where Namibia is a party;
   8. coordinate all matters related to Climate Change in Namibia;
   9. undertake and co-ordinate research, investigation and surveys in the field of environment and collect, collate and disseminate information about the findings of such research, investigation or survey;
   10. mobilise and monitor the use of financial and human resources for environmental management;
   11. identify plans, programmes and projects or types of projects and programme, plans and policies for which environmental audit or environmental monitoring must be conducted under this Act;
   12. initiate and evolve procedures and safeguard for the prevention of accidents which may cause environmental degradation and evolve remedial measures where accidents occur;
   13. monitor and assess activities, including activities being carried out by relevant organs of state, competent authorities and other government agencies, regional and local authorities in order to ensure that the environment is not degraded by such activities, environmental management objectives are adhered to and adequate early warning on impending environmental emergencies is given;
   14. undertake, in co-operation with relevant organs of state, competent authorities and other government agencies, regional and local authorities programmes intended to enhance environmental education and public awareness about the need for sound environmental management as well as for enlisting public support and encouraging the effort made by other entities in that regard;
   15. publish and disseminate manuals, codes or guidelines relating to environmental management and prevention or abatement of environmental degradation;
   16. render advice and technical support, where possible, to entities engaged in natural resources management and environmental protection so as to enable them to carry out their responsibilities satisfactorily;
   17. prepare and issue an annual report on the state of the environment in Namibia and in this regard may direct any organs of state, competent authorities and other government agencies, regional and local authorities to prepare and submit to it a report on the state of the sector of the environment under the administration of that entity;
   18. perform such other functions as the Government may assign to the Commission or as are incidental or conducive to the exercise by the Commission of any or all of the functions provided under this Act.
3. The Minister shall lay every annual report on the state of the environment prepared under 5 (ii) (q) before the National Assembly as soon as reasonably practicable after its publication.

## The Board of Directors

1. The Commission shall be managed by a Board of Directors which shall consist of –
   1. a chairperson appointed by the Minister; and
   2. the Permanent Secretary of the Ministry responsible for matters relating to the Commission or an officer of that Ministry designated in writing by the Permanent Secretary.
   3. three Directors who shall be officers of the Commission;
   4. seven members, not being public officers appointed by the Minister in consultation with the Sustainable Development Advisory Council; and
   5. the Secretary of the Board, who shall be appointed by the Commission. .
2. No person shall be appointed under subsections (1) (a), (c), (d) or (e) unless such person holds at least a post-graduate degree from a recognised university in the field of environmental law, environmental science or natural resource management or a relevant social science and in the case of the Managing Director, has at least ten years working experience in the relevant field.
3. The members referred to under section (1) (a) and (e) should be appointed at different times so that the respective expiry dates of their terms of office shall fall at different times.
4. The members appointed under paragraphs (a), (c) and (e) of subsection (1) shall hold office for a term of four years and shall be eligible for reappointment for one further term of four years.
5. The Board shall elect a vice-chairman from among the members appointed under paragraph (e).
6. The Board shall meet at least four time in every financial year.
7. The Chairman shall preside at every meeting of the Board at which he is present, but in his absence the vice-chairman shall preside, and in his absence, the members present shall elect one of their member who shall, with respect to that meeting and the business transacted thereat have all the powers of the Chairman.
8. Unless a unanimous decision is reached, a decision on any matter before the Board shall be by a majority of votes of the members present and in the case of an equality of votes, the Chairman or person presiding shall have a casting vote.
9. The quorum for the transaction of the business of the Board shall be seven members including the person presiding; and all acts, matters or things authorized or required to be done by the Board, shall be effected by a resolution passed by a majority of the members present and voting.
10. The Secretary to the Board shall not be entitled to vote on any matter before the Board.
11. Appointment of a member of the Board may be terminated by the appointing authority where the member -
    1. is adjudged bankrupt or enters into a composition or scheme of arrangement with his / her creditors;
    2. is convicted of an offence and sentenced to imprisonment for a term of six months or more without the option of a fine;
    3. is incapacitated by prolonged physical or mental illness from performing his / her duties as a member of the Board; or
    4. becomes for any reason, incapable or incompetent of properly perform in the functions of his / her office.
12. Where a member of the Board dies or resigns or otherwise vacates office before the expiry of his / her term of office, the appointing authority shall appoint another person in the place of such member.
13. the Board shall regulate its own Procedures in line with corporate Governance.

## Appointment and Duties of the Managing Director

1. Managing Director shall be appointed by the Board of Directors:
2. Duties of the Managing Director subject to this Act shall be-
3. responsible for the day to day management of the affairs of the Commission.
4. perform such functions as are conferred by this Act and such additional duties as may be assigned by the Minster.
5. Managing Director (Environmental Commissioner) and the Directors of the Commission shall be paid such salaries and allowances as may, from time to time, be determined by the Minister.
6. advise organs of state on screening, preparation of scoping, Strategic Environmental Assessments (SEAs) and Strategic Environmental Management Plans (SEMPs) for policy, plans or programmes including performance monitoring and evaluation requirements
7. advise proponents on screening, preparation of scoping, Environmental Impact Assessments (EIAs) and Environmental Management Plans (EMPs) for site-specific projects including performance monitoring, rehabilitation and closure plans requirements
8. receive and record notifications for policy, plans, programme or project registration and applications for environmental clearance certificates;
9. determine whether a listed Organ of State or activity requires an assessment;
10. advise on the scope, procedure and methods of an assessment;
11. review the assessment report in accordance with this Act;
12. issue environmental clearance certificates in terms of this Act;
13. maintain a register of environmental assessments undertaken in terms of this Act;
14. maintain a register of environmental clearance certificates issued in terms of this Act;
15. conduct inspections for monitoring compliance with this Act; and
16. perform any other duty or function which the Minister may assign or prescribe.
17. Where the Managing Director is unable to perform the functions of his / her office due to any temporary incapacity which is likely to be prolonged, the Minister may appoint a substitute therefore to act with the full powers of the Managing Director until such time as the Minster determines that the incapacity has ceased.

## Conduct of business and affairs of the Commission

1. The Commission shall have all powers necessary for the proper performance of its functions under this Act and in particular, but without prejudice to the generality of the foregoing, the Commission shall have power to – control, supervise and administer the assets of the Commission in such manner as best promotes the purpose for which the Commission is established-
2. determine the provisions to be made for capital and recurrent expenditure and for reserves of the Commission;
3. receive any grants, gifts, donations or endowments and make legitimate disbursements there from;
4. enter into association with other bodies or organisations within or outside Namibia as the Commission may consider desirable or appropriate and in furtherance of the purpose for which the Commission is established;
5. open a banking account or banking accounts for the funds of the Commission; and,
6. invest any funds of the Commission not immediately required for its purposes in the manner provided in this Act;

## Establishment of a General Fund

1. There shall be a general fund of the commission which shall vest in the Commission.
2. There shall be paid into the general fund –
   1. such monies or assets as may accrue to or vest in the Commission in the course of the exercise of its powers or the performance of its functions under this Act;
   2. such sums as may be granted to the Commission by the Minister; and
   3. all monies from other source provided for or donated or lent to the Commission.
3. There shall be made to the Commission out of monies provided by Parliament for that purpose, grants towards the expenditure incurred by the Commission in the exercise its powers or the performance of its functions under this Act.
4. There shall be paid out of the general fund all sums required to defray the expenditure incurred by the Commission in the exercise, discharge and performance of its objectives, functions and duties.

## Establishment the National Environment Trust Fund

1. There shall be a fund to be known as the National Environment Trust Fund, (hereinafter referred to as the “Trust Fund”).
2. The object of the Trust Fund shall be to facilitate research intended to further the requirements of the environmental management, capacity building, environmental awards, environmental publications, scholarships and grants;
3. The Trust Fund shall consist of –
   1. such sums of money as may be received by the Trust Fund in the form of donations, endowments, grants and gifts from whatever source and specifically designated for the Trust Fund;
   2. such sums of money or other assets as may be specifically designated to the Trust Fund by the Authority out of its General Fund.
4. The Trust Fund shall be vested in the Commission and subject to this Act, shall be administered by a Board of five Trustees to be appointed by the Minister by notice in the Gazette on such terms and conditions as he deems fit. The trustees shall be persons holding at least post-graduate degree from a recognised university in the field of environmental law, economics, environmental science or natural resource management at the time of their appointment.
5. The Board of Trustees may, on the recommendation of the Sustainable Development Council, determine that certain donations to the Trust Fund shall be applied specifically and reserved only for prizes and awards for exemplary services to the environment. Such prizes and awards shall be applied by the recipient exclusively to the management of the environment.

## Establishment the National Environment Restoration Fund

1. There shall be a fund to be known as the National Environment Restoration Fund, (hereinafter referred to as “The Restoration Fund”).
2. The object of the Restoration Fund shall be as supplementary insurance for the mitigation of environmental degradation where the perpetrator is not identifiable or where exceptional circumstances require the Commission to intervene towards the control or mitigation of environmental degradation.
3. The Restoration Fund shall consist of:-
   1. such proportion of fees or deposit bonds as may be determined by the Commission from time to time;
   2. such sums as may be donated or levied from industries and other projects proponents as a contribution towards the Restoration Fund.
4. The Restoration Fund shall be vested in the Commission and, subject to this Act, shall be administered by the Managing Director.
5. The Minster may, by notice in the Gazette, issue orders for the levying of funds from project proponents towards the Restoration Fund.

## Investment of funds and disposal of assets

1. Subject to this Act, the Commission may, invest any of its funds in securities in which trustees may, for the time being, invest trust funds or in any other securities which the Treasury may, from time to time, approve for that purpose.
2. Subject to this Act, the Commission may place on deposit with such bank or banks as it may determine, any moneys not immediately required for its purposes.
3. The assets of the Commission may be disposed of:-
   1. if they are current assets, in the normal course of business carried on by the Commission;
   2. where the disposal and utilisation of the proceeds have been taken into account in an annual estimate prepared and approved by the Board in accordance with the provisions of this Act;
   3. by way of sale or otherwise with the approval of the Minister and the Treasury where such disposal has not been taken into account in the Annual Budget.

## Annual estimates

1. At least three months before the commencement of each financial year, the Commission; shall cause to be prepared estimates of the revenue and expenditure of the Commission; for that year.
2. The annual estimates shall make provisions for the estimated expenditure of the Commission; for the financial year and in particular, the estimates shall provide for –
   1. the payment of the salaries, allowances and other charges in respect of the staff of the Commission;
   2. the payment of pensions, gratuities and other charges in respect of the staff of the Commission;
   3. the effective maintenance of the buildings and grounds of the Commission;;
   4. the maintenance, repair and replacement of the equipment and other property of the Commission; and
   5. the creation of such reserve funds to meet future contingent liabilities in respect of retirement benefits, insurance or replacement of buildings or equipment, or in respect of such other matter as the Commission may deem appropriate.
3. The annual estimates shall be approved by the Commission before the commencement of the financial year to which they relate and shall be submitted to the Minister for approval and after the Minister’s approval, the Commission shall not increase the annual estimates without the consent of the Minister.
4. The Commission shall cause to be kept all proper books and records of accounts of the income, expenditure and assets of the Commission.
5. Within a period of four months from the end of each financial year, the Commission shall submit to the Auditor-General or to an auditor appointed under this section, the accounts of the Commission together with –
   1. a statement of the income and expenditure of the Commission during that year; and
   2. a statement of the assets and liabilities of the Commission on the last day of that year.
6. The accounts of the Commission shall be audited and reported upon in accordance with the national financial and audit Acts as may be applicable.

## Delegation by the Commission

1. The Commission may, after giving reasonable notice of its intention so to do, direct any competent authority to perform, within such time and in such manner as it shall specify, any of the duties imposed upon the competent authority by or under this Act or any other written law, in the field of environment and if the competent authority fails to comply with such directions, the Commission may itself perform or cause to be performed the duties in question, and the expense incurred by it in so doing shall be a civil debt recoverable by the Commission from the competent authority.
2. Subject to this Act, the Commission shall regulate its own procedure.
3. Subject to this Act, the Commission may, by resolution either generally or in any particular case, delegate to any committee of the Commission or to any member, officer, employee or agent of the Commission, the exercise of any of the powers or the performance of any of the functions or duties of the Commission under this Act.

## Staff of the Commission

1. The Commission may appoint such officers or other staff of the Commission as are necessary for the effective discharge of its functions under this Act or any other written law, upon such terms and conditions of service as the Commission may determine;

## The common seal of the Commission

1. The common seal of the Commission shall be kept in such custody as the Commission may direct and shall not be used except on the order of the Commission.

## Protection from personal liability

1. No matter or thing done by a member of the Commission or any officer, employee or agent of the Commission shall, if the matter or thing is done bona fide for executing the functions, powers or duties of the Commission, render the member, officer, employee or agent or any person acting on his directions personally liable to any action, claim or demand whatsoever.
2. The Provisions of Section (12) (i) shall not relieve the Commission of the liability to pay compensation or damages to any person for any injury to him, his property or any of his / her interests caused by the exercise of the powers conferred on the Commission by this Act or by any other written law or by the failure, whether wholly or partially, or any works.

## Entry and inspection

1. In this section “member of the police” means a member of the Namibian Police Force as defined in section 1 of the Police Act, 1990 (Act No. 19 of 1990).
2. To the extend that this section authorises the interference with the privacy of persons homes, correspondence or communications as contemplated in Article 13(1) of the Namibian Constitution, this section is enacted on the authority of Sub-Article (2) of that Article.
3. An environmental officer may, on the authority of a warrant issued in terms of subsection (1) -
   1. in order to obtain evidence, enter premises where he or she has reason to believe that any provision of this Act has been or is being contravened;
   2. direct the person in control of or employed at the premises -
      1. to deliver any book, record or other document that relates to the investigation and which is in the possession or under the control of that person;
      2. to furnish such information as he or she has with regard to that matter; and;
      3. to render such assistance as the environmental officer requires in order to enable him or her to perform his or her duties or functions under this Act;
   3. inspect any book, record or other document and make copies of it or excerpts from it;
   4. seize any, material, substance, book, record or other document which is or may be relevant to a prosecution under this Act and keep it in his or her custody, but the person from whose possession or control any book, record or document has been taken, may, at his or her own expense and under supervision of the environmental officer concerned, make copies of it or excerpts from it; and
   5. take samples of any material or substance seized in terms of paragraph (d), for analysis.
4. An environmental officer conducting a search under subsection (3) and (10) may -
5. request a member of the police to assist in the exercise of the powers referred to in this section; and,
6. request any person to assist as an interpreter or otherwise in the exercise of the powers referred to in this section.
7. A warrant referred to in subsection (3) must be issued by a judge of the High Court or by a magistrate who has jurisdiction in the area where the premises in question are situated, and may only be issued if it appears from information on oath that there are reasonable grounds for believing that any material, substance or other things contemplated in subsection (3) is on or in such premises, and must specify which of the acts mentioned in that subsection may be performed in terms of the warrant by the person to whom it is issued.
8. Any environmental officer executing a warrant in terms of this section must immediately before commencing the execution –
9. identify himself or herself to the person in control of the premises, if such person is present, and hand to such person a copy of the warrant or, if such person is not present, affix such copy in a prominent place on the premises; and
10. supply such person at the request of such person, with particulars regarding his or her authority to execute such a warrant.
11. A person may not enter or search any premises unless he has audibly demanded admission to the premises and has notified the purpose of his or her entry, unless such person is, on reasonable grounds, of the opinion that any material, substance or other things contemplated in subsection (3) may be destroyed if such admission is first demanded and such purpose is first notified.
12. Any entry and search in terms of this section must be executed by day, unless the execution of it by night is justifiable and necessary.
13. A warrant contemplated in this section may be issued on any day and is effective until –
14. it is executed;
15. it is cancelled by the person who issued it or, if such person is not available, by any person with similar authority;
16. one month from the date of its issue; or
17. the purpose for which the warrant was issued, no longer exists, whichever occurs first.
18. An environmental officer may without a warrant enter on any premises and search for, seize and remove anything referred to in subsection (3), if –
19. the person who is competent to do so consents to such entry, search, seizure and removal; or
20. there are reasonable grounds to believe that -
    * 1. a warrant would be issued to the environmental officer if he applied for such warrant; and’
      2. the delay in obtaining such warrant would defeat the purpose of the search.
21. A material or substance seized in terms of this section must be dealt with as contemplated in Chapter 2 of the Criminal Procedure Act.

## Offences in relation to environmental officers

1. A person commits an offence if the person -
   1. hinders or obstructs an environmental officer in the performance of the environmental officer’s duties and functions or the exercise of the environmental officer’s powers;
   2. without lawful excuse, refuses or fails to answer any question put by an environmental officer;
   3. intentionally furnishes false and misleading information to an environmental officer; or
   4. falsely claims to be an environmental officer.
2. A person convicted of an offence contemplated in subsection (1) is liable to a fine not exceeding N$100 000 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

**PART III- SUSTAINABLE DEVELOPMENT ADVISORY COUNCIL**

## Establishment of Advisory Council

1. There is established an advisory council to be known as the Sustainable

Development Advisory Council.

## Functions of Advisory Council

1. The functions of the Advisory Council are to -
   1. promote co-operation and co-ordination between organs of state, non- governmental organisations, community based organisations, the private sector and funding agencies, on environmental issues relating to sustainable development;
   2. advise the Minister -
      1. on the development of a policy and strategy for the management, protection and use of the environment;
      2. on the conservation of biological diversity, access to genetic resources in Namibia and the use of components of the environment in a way and at a rate that does not lead to the long-term decline of the environment, thereby maintaining its potential to meet the needs and aspirations of present and future generations;
      3. on appropriate methods of monitoring compliance with the principles set out in section 3;
      4. on the need for, and initiation or amendment of legislation, on matters relating to the environment; and
   3. perform other functions assigned to it by the Minister.

## Composition of Advisory Council

(1) The Advisory Council consists of the following members appointed by the

Minister -

(a) four persons who represent the interests of the State; and

(b) four persons whom the Minister reasonably believes represent the interests of organisations, associations or institutions concerned with environmental matters.

(2) The Environmental Commissioner is an *ex efficio* member of the Advisory

Council, but may not vote at its meetings.

(3) Persons appointed as members of the Advisory Council must have the

necessary knowledge of, or experience in, matters relating to the functions of the Advisory Council.

(4) When any nomination in terms of subsection (1)(a) becomes necessary, the

Minister must invite the State 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) becomes necessary, the

Minister must invite the public, organisations, associations or institutions by notice in the *Gazette* and in any other appropriate manner, to nominate persons within a period of 30 days from the date of the notice.

(6) If, after the Minister has invited nominations in terms of subsections (4) or (5), the Minister receives no or insufficient nominations within the period specified in the notice, the Minister may appoint the required number of persons who qualify for appointment in terms of this section.

(7) The Minister must designate one of the members of the Advisory Council as chairperson.

(8) The Minister must, as soon as possible after appointing the members of the

Advisory Council, make known in the *Gazette* -

(a) the name of every person appointed as a member;

(b) the period for which the appointment is made; and

(c) the date from which the appointment takes effect.

(9) The Advisory Council may with the approval of the Minister co-opt any person to assist it in its functions, but the person co-opted may not vote at meetings of the Advisory Council.

(10) The Advisory Council may establish one or more committees consisting of members only or consisting of members and non-members to perform, subject to the Advisory Council’s directions, functions the Advisory Council may assign to such committee.

## Term of office of members of Advisory Council

1. Subject to section 10, a member of the Advisory Council holds office for a term of three years and may be reappointed at the end of that term.

## Vacation of office and filling of vacancies

(1) The office of a member of the Advisory Council becomes vacant if the

member -

(a) is absent from three consecutive meetings of the Advisory Council without the permission of the Advisory Council;

(b) through a written notice addressed to the Minister, resigns from

office;

(c) ceases to represent the State, organisation, association or institution for which the member has been appointed; or

(d) is for any other reasonable cause removed from office by the Minister.

(2) Before removing a member from office in terms of subsection (1)(d), the

Minister must -

(a) in writing notify the member concerned of the grounds on which the member is to be removed from office;

(b) give the member an opportunity to make oral or written representations on the matter to the Minister or to any person designated by the Minister; and

(c) consider any representations made in terms of paragraph (b).

(3) If a member of the Advisory Council dies or vacates office before the expiry

of his or her term of office the Minister must, in accordance with section 8, appoint a person to fill the vacancy for the unexpired portion of the term for which that member was appointed.

## Meetings of Advisory Council

(1) The Advisory Council must meet at least two times a year.

(2) The first meeting of the Advisory Council must be held at a place, date and time determined by the Minister and thereafter any meeting of the Advisory Council must be held at a place, date and time determined by the chairperson of the Advisory Council.

(3) The chairperson may at any time call a special meeting of the Advisory

Council, at the request of the Minister or of a majority of the members.

(4) At the first meeting of the Advisory Council the members must elect from among their number a deputy chairperson.

(5) The chairperson of the Advisory Council, or in the absence of the chairperson, the deputy chairperson, presides at meetings of the Advisory Council, or if both the chairperson and deputy chairperson are absent from the meeting, or are unable to preside at the meeting, the members must elect a member to preside at the meeting.

(6) At any meeting of the Advisory Council -

(a) a majority of the members of the Advisory Council forms a quorum;

(b) a decision of a majority of members of Advisory Council present at a meeting is the decision of the Advisory Council; and

(c) if, there is an equality of votes, the person presiding at the meeting has a casting vote in addition to that person’s ordinary vote.

(7) The Advisory Council determines the procedures to be followed at its

meetings.

(8) As soon as possible after a meeting of the Advisory Council has taken place, the chairperson must cause a copy of the minutes to be submitted to the Minister.

## Administration of Advisory Council

(1) The Permanent Secretary must -

(a) make staff members in the Ministry available to perform the clerical work for the Advisory Council in the performance of its functions; and

(b) designate a staff member of the Ministry as secretary of the Advisory Council.

(2) The expenditure resulting from the performance of the duties and functions of the Advisory Council in terms of subsection (1) must be paid from the State Revenue Fund from moneys appropriated for that purpose by Parliament.

## Allowances of members of Advisory Council and committees

1. Members of the Advisory Council and of a committee of the Advisory Council who are not in the full time employment of the State are entitled to such allowances as the Minister, with the concurrence of the Minister responsible for finance, may determine.

## Disclosure of interest

1. If a member of the Advisory Council or of a committee of the Advisory Council has a direct or indirect financial or other interest in a matter being dealt with or about to be dealt with by the Advisory Council or a committee of the Advisory Council, the member must as soon as is possible after the relevant facts come to the member’s knowledge, disclose the nature of the interest to the chairperson of the Advisory Council.
2. Any disclosure made under this section must be noted in the minutes of the relevant meeting of the Advisory Council.
3. A member of the Advisory Council or of a committee of the Advisory Council who contravenes subsection (1) commits an offence and is on conviction liable to a fine not exceeding N$10 000 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

## Annual report

1. As soon as possible after the end of each financial year as defined in the State Finance Act, 1991 (Act No. 31 of 1991), the Advisory Council must prepare an annual report in accordance with subsection (2)
2. The annual report must include -
   1. a report on the activities of the Advisory Council; and
   2. any other matter the Minister may consider necessary to be included in the report.
3. As soon as possible after the annual report has been prepared, the chairperson of the Advisory Council must cause a copy of the report to be submitted to the Minister.
4. The Minister must lay a copy of the Advisory Council’s annual report before the National Assembly within 30 days of receipt thereof, if the National Assembly is then in ordinary session, or if the National Assembly is not then in ordinary session, within 30 days after the commencement of the next ordinary session.

# PART IV – ENVIRONMENTAL SCOPING, STRATEGIC ENVIRONMENTAL ASSESSMENT (SEA) AND STRATEGIC ENVIRONMENTAL MANAGEMENT PLAN (SEMP)

## Objects of Environmental Scoping, Strategic Environmental Assessment (SEA), Strategic Environmental Management Plan (SEMP)

(1) The objects of Environmental Scoping, Strategic Environmental Assessment

(SEA) and Environmental Management Plan (SEMP) are to -

(a) co-ordinate and harmonise the environmental issues related to the development and implementation of policies, plans and programmes decisions of the various organs of state that exercise functions that may affect the environment or are entrusted with powers and duties aimed at the achievement, promotion, and protection of a sustainable environment, in order to -

(i) minimise the duplication of procedures and functions; and

(ii) promote consistency in the exercise of functions that may affect the environment; and

(b) enable the Minister to monitor the achievement, promotion and protection of a sustainable environment, ecosystem services and climate change.

## Environmental Scoping, Strategic Environmental Assessment (SEA) and Strategic Environmental Management Plan (SEMP)

(1) For the purpose of this Part, the Minister may identify and list by notice in

the *Gazette* or by regulation organs of state which are exercising functions that may affect the environment.

(2) Every organ of state identified and listed in terms of subsection (1) and the regulations, must prepare an Environmental Scoping followed by Strategic Environmental Assessment (SEA) and / or Strategic Environmental Management Plan (SEMP) as the case may be in terms of the provisions of the regulations with respect to any policy, plan or programme proposal;

(3) Every organ of state contemplated in subsection (1), must in the preparation of the Environmental Scoping, Strategic Environmental Assessment (SEA) and / or Strategic Environmental Management Plan (SEMP) assess alternatives and take into consideration every other policy, plan or programme already adopted the organ of state and other organs of state with a view to achieving consistency among such policies, plans or programmes.

(4) The Environmental Scoping, Strategic Environmental Assessment (SEA) and / or Strategic Environmental Management Plan (SEMP) must contain all information on the proposed policy, plan or programme that is necessary for the Environmental Commissioner to consider and to make a decision on the application for environmental clearance certificate

(5) The Environmental Commissioner may, at the request of an organ of state provide procedural guidance and advice with respect to the preparation of the Environmental Scoping, Strategic Environmental Assessment (SEA) and / or Strategic Environmental Management Plan (SEMP).

(6) The Minister may issue guidelines to assist organs of state in the preparation of environmental plans.

## Approval of Environmental Scoping, Strategic Environmental Assessment (SEA) and Strategic Environmental Management Plan (SEMP)

1. Every listed organ of state required to submit Environmental Scoping, Strategic Environmental Assessment (SEA) and / or Strategic Environmental Management Plan (SEMP) must make the submission to the Environmental Commissioner.
2. The Environmental Commissioner must scrutinise every Environmental Scoping, Strategic Environmental Assessment (SEA) and / or Strategic Environmental Management Plan (SEMP) and -
3. recommend the approval of the Environmental Scoping, Strategic

Environmental Assessment (SEA) and / or Strategic Environmental Management Plan (SEMP) to the Minister with respect to a specific policy, plan or programme proposal;

(b) report to the Minister as well as to every other identified organ of state on the extent to which the Environmental Scoping, Strategic Environmental Assessment (SEA) and / or Strategic Environmental Management Plan (SEMP) concerned fails to comply with-

(i) the principles set out in section 3;

(ii) the objects of Environmental Scoping, Strategic Environmental

Assessment (SEA) and / or Strategic Environmental Management Plan (SEMP) specified in section 24; or

(iii) any relevant policy, plan or programme and set out the changes needed in the Environmental Scoping, Strategic Environmental Assessment (SEA) and / or Strategic Environmental Management Plan (SEMP) concerned.

(3) Where the Environmental Scoping, Strategic Environmental Assessment (SEA) and / or Strategic Environmental Management Plan (SEMP) is approved by the Minister, the relevant organ of state must adopt and publish its policy, plan or programme in the *Gazette* within three (3) years of the approval of the Environmental Scoping, Strategic Environmental Assessment (SEA) and / or Strategic Environmental Management Plan (SEMP).

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

1. the failure of any organ of state to submit Environmental Scoping, Strategic Environmental Assessment (SEA) and / or Strategic Environmental Management Plan (SEMP);
2. the scrutiny of the Environmental Scoping, Strategic Environmental Assessment (SEA) and / or Strategic Environmental Management Plan (SEMP) by the Environmental Commissioner;
3. the amendment of the Environmental Scoping, Strategic Environmental Assessment (SEA) and / or Strategic Environmental Management Plan (SEMP) following scrutiny of the plan by the Environmental Commissioner; or
4. the failure of any organ of state to adopt and publish its policy, plan or programme within three (3) years after being issued with Environmental Clearance Certificate by the Environmental Commissioner

## Monitoring Compliance with Environmental Scoping, Strategic Environmental Assessment (SEA) and Strategic Environmental Management Plan (SEMP)

(1) Every organ of state must exercise every function it may have, or that has

been assigned or delegated to it, by or under any law, and that may significantly affect the protection of the environment, substantially in accordance with the Environmental Scoping, Strategic Environmental Assessment (SEA) and / or Strategic Environmental Management Plan (SEMP) prepared and approved in accordance with this Part, but any substantial deviation from Environmental Scoping, Strategic Environmental Assessment (SEA) and / or Strategic Environmental Management Plan (SEMP) must be reported to the Environmental Commissioner.

(2) Every organ of state identified and listed in the regulations must report annually to the Minister on the implementation of its adopted policy, plan or programme proposals

(3) The Environmental Commissioner monitors compliance with environmental plans and may -

(a) take any steps or make any inquiries the Commissioner considers necessary in order to determine if environmental implementation plans are being complied with by organs of state; and

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

(4) A copy of every Environmental Scoping, Strategic Environmental Assessment (SEA) and / or Strategic Environmental Management Plan (SEMP) must be made available for public inspection, without charge, at the office of the Environmental Commissioner during office hours

# PART V - ENVIRONMENTAL SCOPING, ENVIRONMENTAL IMPACT ASSESSMENT (EIA) AND ENVIRONMENTAL MANAGEMENT PLAN (EMP)

## Objects of Environmental Scoping, Environmental Impact Assessment (EIA), Environmental Management Plan (EMP)

1. The objects of Environmental Scoping, Environmental Impact Assessment (EIA) and Environmental Management Plan (EMP) are to -

(a) co-ordinate and harmonise the environmental issues related to the development and implementation of site-specific project activities by proponents that may affect the environment

(b) enable the Minister to monitor the achievement, promotion and protection of a sustainable environment.

## Environmental Scoping, Environmental Impact Assessment (EIA) and Environmental Management Plan (EMP)

(1) For the purpose of this Part, the Minister may identify and list by notice in

the *Gazette* or by regulation project activities which may affect the environment.

(2) Every project activity identified and listed in terms of subsection (1) and the regulations, may not be undertaken without environmental clearance certificate to be issued after approval of Environmental Scoping, Environmental Impact Assessment (EIA) and / or Environmental Management Plan (EMP) reports;

(3) Every project contemplated in subsection (1), must in the preparation of the Environmental Scoping followed by Environmental Impact Assessment (EIA) and / or Environmental Management Plan (EMP) assess alternatives and take into consideration every other project already proposed by other proponents with a view to evaluating possible cumulative effects

(4) The Environmental Scoping followed by Environmental Impact Assessment (EIA) and / or Environmental Management Plan (EMP) must contain all information on the proposed project that is necessary for the Environmental Commissioner to consider and to make a decision on the application for environmental clearance certificate

(5) The Environmental Commissioner may, at the request of a proponent or competent authority provide procedural guidance and advice with respect to the preparation of the Environmental Scoping, Environmental Assessment (EIA) and / or Environmental Management Plan (EMP)

## Rehabilitation, closure and aftercare plan for listed projects

(1) Where environmental impact assessment has been identified as the environmental

instrument to be used in informing an application for an authorisation or an environmental clearance certificate or where such application relates to a listed activity that requires rehabilitation and closure plan, the environmental commissioner or a competent authority must require the submission of a rehabilitation, closure and aftercare plans before granting such an application.

(2) The rehabilitation or closure and aftercare plan must contain -

1. information on any proposed, management mitigation, protection or remedial measures that will be undertaken to address the environment­ impacts that have been identified including environmental impacts or objectives in respect of -
   * 1. the rehabilitation of the environment; and
     2. closure and aftercare , if applicable shall contain details of the person who prepared the plan and the expertise of that person to prepare the plan;

(b) a detailed description of the aspects of the listed activity that are covered by the plan;

(c) information identifying the persons who will be responsible for the implementation of the measures contemplated in paragraph (a);

(d) information in respect of the mechanisms proposed for monitoring compliance with the and for reporting on the compliance;

(f) as far as is reasonably practicable, measures to rehabilitate the environment affected by the undertaking of any listed activity or specified activity to its natural or predetermined state or to a land use which conforms to the generally accepted principle of sustainable development; and

(g) a description of the manner in which it intends to -

* + 1. modify, remedy, control or stop any action, activity or process which causes pollution or environmental degradation;
    2. remedy the cause of pollution or degradation and migration of pollutants; and
    3. such other matters as may be prescribed.

(3) The minister may accept a rehabilitation and closure plan with or without the changes the minister may require.

(3) A proponent must comply with a rehabilitation, closure and aftercare plan accepted by the minister under subsection (2).

(4) Where closure begins on a site, subject to the rehabilitation and closure plan, the proponent must -

* + 1. notify the minister immediately that closure has begun; and
    2. comply with the requirements of the rehabilitation, closure and aftercare plan.

(7) Where a proponent intends to change the method of closure of a project, the proponent must file with the minister or the competent authority an amended rehabilitation, closure and aftercare plan which the minister may accept with or without changes.

## Environmental Rehabilitation and Aftercare Financial guarantee

(1) Where an application for authorisation or an environmental clearance certificate

relates to listed activities subject to environmental impact assessment and management plan specified by regulation or by notice, the environmental commissioner or a competent authority must require the proponent to provide financial guarantee as part of a rehabilitation, closure and aftercare plan.

(2) The Minister or the competent authority shall request proof of financial guarantee to be ceded to the state and may be in form of a bond or insurance policy or any other instrument on condition that such instrument is independently managed and not controlled by the proponent and is fully capitalised / liquid appropriate to the level of environmental labilities that the proponent is likely to be exposed to at any given time of the operations.

(3) As part of a rehabilitation, closure and aftercare plan, the proponent must provide a copy of a statement of a person qualified to ascertain that the estimate of the cost of completing the work set out in the rehabilitation, closure and aftercare plan is a reasonable one.

(4) The financial guarantee required as part of a rehabilitation, closure and aftercare plan must be in a form acceptable to the Minister, including

1. a bond;
2. an insurance policy;
3. an annual contribution to a financial guarantee fund established for the project; or
4. any another form of security acceptable to the minister or the competent authority, and the amount specified in the rehabilitation, closure and aftercare plan, or an amendment to it, must be acceptable to the minister or the competent authority.

(5) Such independently managed financial instrument /guarantee shall be ceded to the State in order to guarantee rehabilitation, closure and aftercare in an event of a sudden closure, bankruptcy or any event that might make it impossible for the proponent to honor their obligations under the rehabilitation, closure and aftercare plan of the EMP.

(6) Where the minister or the competent authority has reasonable grounds to believe that a rehabilitative measure required by an accepted rehabilitation, closure and aftercare plan in respect of which financial guarantee was given has not been or is not being carried out in accordance with that rehabilitation, closure and aftercare plan, the minister may order the proponent to perform the rehabilitation measures contained in the accepted rehabilitation, closure and aftercare plan.

(7) The minister or the competent authority must send written notice to the proponent of his or her intention to issue the order referred to in subsection (5) at least twenty-one (21) working days before the date the order is to be issued.

(8) Where the minister or the competent authority makes an order and the minister has reasonable grounds to believe that the order has not been or is not being complied with, the minister may release upon the security provided for financial guarantee under subsection (3) and may carry out the rehabilitative and aftercare measures.

(9) The minister or the competent authority may consider an application by a proponent for a reduction of the financial guarantee to an amount consistent with the financial requirements of the rehabilitation, closure and aftercare work commitments remaining to be completed where the balance of the work has already been completed according to the requirements of the rehabilitation, closure and aftercare plan.

(10) Where the Minister or the competent authority realizes upon the financial assurance provided by the proponent, and the amount of the financial assurance is in excess of the amount required to complete the required rehabilitation, closure and aftercare work commitments in relation to the listed activity, the minister must refund the amount of the excess to the provider of such guarantee.

## Listing of activities and prohibition in respect of listed activities and Organ of State

(1) The Minister, after following the consultative process referred to in section

59, may list, by notice in the *Gazette,* activities which may not be undertaken without an environmental clearance certificate.

(2) Despite any other law to the contrary, a proponent may not undertake a listed activity, unless the proponent is a holder of an environmental clearance certificate in relation to that activity.

(3) A plan, policy or programme implemented by a listed organ of state for which an Environmental Scoping, Strategic Environmental Assessment (SEA) and / or Strategic Environmental Management Plan (SEMP) is required by any provision of the Act may not be adopted or submitted to the legislative procedure for the purpose of its adoption before the requirements of the Act in relation to that plan, policy or programme have been complied with.

(4) A proponent may not undertake or implement an activity designated as listed activity unless Environmental Scoping, Environmental Assessment (EIA) and / or Environmental Management Plan (EMP) has been undertaken and the environmental clearance certificate has been issue by the Environmental Commissioner in accordance with the Act.

(5) Any person who contravenes subsection (3) commits an offence and is on conviction 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.

## Exemption

(1) The Minister may grant an exemption from a provision of this Act

(2) The Minister must prescribe the process to be followed for the lodging and processing of an application for exemption in terms of this section.

## Provisions relating to listing of Organs of State and project activities

(1) The Minister may amend the list Organs of State and project activities as

may be provided in the regulations by –

(a) adding an Organ of State or project activity to the list;

(b) removing an Organ of State or project activity from the list; or

(c) making other changes to the particulars on the list;

(2) The Minister must comply with the provisions of this Act before amending the list referred to in that section.

(3) Any person may make representations to the Minister on the desirability of having an Organ of State or project activity listed or delisted in terms of this section.

(4) The Minister is not bound by a representation made under subsection (3).

## Procedure for identifying competent authorities

(1) Where no person or authority is, in terms of any other law, charged with the

responsibility of granting authorisation in respect of a listed activity the Minister must in the notice in terms of this Act identify a person or authority who is responsible for grating authorisation in respect of that listed activity.

(2) The Minister or any other organ of state may under subsection (1) be identified as the competent authority.

(3) The Minister may agree with an organ of state that the review of the environmental assessment reports of which the Minister has identified as the competent authority be dealt with by that organ of state.

## Effect of authorisations under other laws

(1) Despite any other law to the contrary, a competent authority may only issue a

letter of intent to grant authorisation for a listed activity until such time when the proponent has obtained an environmental clearance certificate in terms of this Act.

(2) An authorisation issued contrary to subsection (1) is invalid.

# PART VI - ENVIRONMENTAL ASSESSMENT PROCESS AND APPROVALS

## Determining whether assessment is required (screening)

1. Before submitting a notification for Policy, Plan, Programme or project registration to the Environmental Commissioner, the Organ of State or proponent must, with reference to the Screening List of listed Organs of State or project activities in the regulations, determine that the proposed Policy, Plan, Programme or project for which the notification for registration is required is listed and require environmental clearance certificate.
2. For the purposes of subsection (1), the Organ of State or proponent may consult the Environmental Commissioner, the regulations and guidelines, if any.
3. If the Organ of State has determined that it is listed, the Organ of State must submit the notification to the Environmental Commissioner for Policy, Plan or Programme registration in accordance;
4. If the proponent determines that the proposed project activity is listed in the regulations, the proponent must submit the notification to the Environmental Commissioner for the project registration;

## Procedure where assessment is required

(1) Where the Organ of State or proponent has screened the policy, plan

programme or project and decided that the proposed policy, plan programme or project requires an assessment the organ of state or proponent must -

(a) determine -

(i) the scope of the assessment and prepare the environmental scoping

report in accordance with the regulations and

(ii) the procedures and methods for conducting the

assessment;

(b) in the prescribed manner -

(i) notify the Environmental Commissioner that an assessment of the proposed policy, plan programme or project is required to be carried out in accordance with the scope, procedures and methods determined under paragraph (a); and

(2) An assessment and management plan reports for the proposed policy, plan programme or project must consist of the matters as prescribed in this Act and the regulations

(3) When determining the scope, procedures and methods of an assessment the

Organ of State responsible for the proposed policy, plan or programme the proponent responsible for the proposed project must follow the consultative process referred to in section 45 and the regulations

(4) On receipt of the notification for project registration, the Environmental Commissioner may vary the scope, procedures and methods determined under subsection (1)(a) -

(a) in accordance with the Terms of Reference or modifications proposed by

the Organ of State or the proponent.

(5) If, upon submission of the application for environmental assessment certificate with the assessment and management reports by the Organ of State or proponent, it appears to the Environmental Commissioner that the prescribed requirements in respect of the contents of the assessment and management reports have been complied with, the Environmental Commissioner must-

(a) notify the organ of state or proponent in the prescribed manner.

## Procedure where assessment is not required

(1) Where the Organ of State or proponent has determined that the proposed

policy, plan, programme or project is not listed and does not require an assessment following the screening process, the Organ of State or proponent may proceed with the implementation of the proposed policy, plan, programme or project activity without any further requirements for environmental clearance certificate under this Act provided that all the other requirements of the relevant competent authority under which the proposed policy, plan, programme or project falls and any applicable laws are met.

## Notification for policy, plan, programme of project registration

(1) A listed organ of state who is proposing a policy, plan or programme must,

in the prescribed notification form and manner and on payment of the prescribed fee, notify the Environmental Commissioner as part of the proposed policy, plan or programme registration process

(2) A proponent who is proposing to undertake a listed project activity must, in

the prescribed notification form and manner and on payment of the prescribed fee, notify the Environmental Commissioner as part of the proposed project activity registration process.

## Considerations for public consultation process

1. All policies, plans or programmes activities by listed organ of state are subject to public consultations in terms of the SEA regulations;
2. All listed project activities are subject to public consultations;
3. The person conducting a public consultation process must invite and give a public notice subject to the type of activity being undertaken (policy, plan or programme) as the case may be and shall notify;-
   1. the local authority council, regional council and traditional authority, as the case may be, in which the site or alternative site is situated;
   2. any other competent authority having jurisdiction in respect of any aspect of the policy, plan, programme or project activities;
   3. the public.
4. The person conducting a public consultation must advertise in a manner that is most appropriate to the prevailing conditions, including placement of an advertisement once a week for two consecutive weeks in a daily or weekly newspaper publication circulated widely in Namibia, making announcements on the national or regional radio station in the local language and placement, affixing at places where potential stakeholders gather and are likely to the receive notification of the intended policy, plan, programme or project and hold a public meeting as the case may be in terms of this Act and the regulations.
5. A notice, notice board or advertisement referred to in subsection 2 must -
   1. give details of the application which is subjected to public consultation; and
   2. state that the notification or application is to be submitted to the Environmental Commissioner in terms of this Act;
   3. state the nature and location of the policy, plan, programme or project activities to which the notification or application relates;
   4. state where further information on the notification or application can he obtained.
6. Public consultation process for policies, plans and programme activities for all listed Organs of State and project activities shall;-
   1. include a public meeting after registering the proposed policy, plan, programme or project activities with the Environmental Commissioner in order to inform the public about the proposed activities.
   2. include a public meeting after preparation of the final environmental scoping, draft assessment and management plan reports of the proposed policy, plan, programme or project activities in order to present the outcomes and findings of the environmental assailment to the public and stakeholders.
   3. The public meetings in subsection (5) shall be organised at location/s and venue/s which are most appropriate and accessible to the local community.
7. The person conducting a public consultation process must open a register for registration of stakeholders.
8. A registered stakeholder is entitled to comment in writing, on all written submissions made to the Environmental Commissioner by the organ of state or proponent for a notification or application, and to bring to the attention of the Environmental Commissioner any issues which that stakeholder, believes may be of significance to the consideration of the notification or application, as long as -
   1. comments are submitted within twenty-one (21) working days of the notification or application of the public consultation process organised by the organ of state or proponent or person undertaking the public consultation.
   2. the stakeholders discloses any direct business, financial, personal or other interest which that stakeholders may have in the approval or refusal of the notification or application.
9. The Environmental Commissioner may consult an organ of state, other organs of state or competent authorities or any person whose area of responsibility or interests may be affected by the performance of the function or duty or the exercise of the power or adoption of a proposed policy, plan or programme or implementation of a project.
10. When in terms of this Act the Minister or the Environmental Commissioner or the organ of state or the proponent is required to consult an organ of state, others organs of state, component authorities or public or any person, such consultation is regarded as having been satisfied if a written notification of intention to act has been made publicly or directly to that person or organ of state and no response has been received within twenty-one (21) working days from the date of issue consultation notification.
11. The Environmental Commissioner may request additional justification information from a registered stakeholders submitting objections for a policy, plan , programme or project activities and such additional justification information if not provided may include detailed explanation with factual data on the objections, names of the individuals behind such an objection, affiliations, sources of funding for environmental advocacy in order to protect national interests and any other information that the Environmental Commissioner may consider relevant to the notification or application;
12. Failure to submit such additional information that the Environmental Commissioner may request in terms of subsection (9) will deem the objection submission invalid and will not be considered in the decision making process for the notification or application.

## Application for environmental clearance certificate

* + - * 1. A listed organ of state who is required to obtain an environmental clearance certificate for a proposed policy, plan or programme 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 proposed policy, plan or programme to be undertaken by the listed organ of state.
        2. A proponent who is required to obtain an environmental clearance certificate for a proposed listed project activity 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 project activities to be undertaken.

## Consultation between Competent Authority and Commission

1. If the Environmental Commissioner or identified competent authority considers an application for an authorisation of activity subject to environmental assessment, the Environmental Commissioner, or the competent authority must take into account all relevant factors including any comments received from other relevant competent authorities that administers laws relating to the notification or application.
2. The Environmental Commissioner must consult with the relevant competent authority that administers a law relating to the proposed policy, plan, programme or project activity notifications or application..
3. A competent authority consulted in terms of section (2) must submit its comments within twenty-one (21) working days from the date on which the Environmental Commissioner requests such component authority, in writing to, submit comments with respect to a specific notification or application.

## Review

1. Within twenty one (21) working days after submission of a notification for project registration or application for environmental clearance certificate, the Environmental Commissioner must review the notification or application and may take any action the Environmental Commissioner considers appropriate for the review of the notification or application, including -

(a) consulting any person, institution, or authority on any matter concerning the notification or application, the assessment or any submission received in relation to the notification or application;

(b) carrying out, or appointing a person or a committee of persons to carry out, an investigation, including a process of public consultation, in relation to any matter concerning the notification or application, the assessment or any submission; or

(c) holding a public hearing.

## Appointment of external specialist reviewer

1. The Environmental Commissioner may appoint an external specialist reviewer and may recover costs from the organ of state or proponent in instances where -
   1. the technical knowledge required to review any aspect of an assessment is not readily available within the Commission or;
   2. a high level of objectivity is required which is not apparent in the documents submitted, in order to ascertain whether the information contained in such documents is adequate for decision-making.
2. The Environmental Commissioner may order the organ of state or proponent to pay prescribed fees or charges for all or part of the costs that are incurred as the case may be, in carrying out an assessment under this Act.

## Public hearing

1. The Commission may, at its own cost organise and hold a public hearing as part of the further public consultation process for applications for environmental clearance certificate due to-
   1. national security or public interest or ;
   2. as may be direct by Cabinet for decisions on applications with national security or public interests submitted by the Environmental Commissioner to Cabinet through the Minster.
2. At least 14 days before the date fixed for the holding of a public hearing the Environmental Commissioner must give notice of the public hearing -
   1. in the prescribed manner to the organ of state or proponent;
   2. in writing to every person from whom a submission in relation to the notification or application has been received; and
   3. by publication of the notice in the prescribed
   4. manner.
3. The notice in terms of subsection (2) must -
   1. specify the date, time and place of the public hearing; and
   2. contain a brief description of the nature of the notification or application subject to a public hearing.

## Environmental Commissioner’s decision

(1) After reviewing the notification for policy, plan, programme or project

registration Environmental Commissioner may -

1. grant the notification and on payment of the prescribed fee-
2. notify the organ of state or proponent to proceed with the assessment with respect to a notification for the proposed policy, plan, programme or project registration
3. Issue additional requirements for the terms of reference to be considered in the assessment;
4. refuse the notification and provide the organ of state or proponent with reasons for the refusal or request for amendments.

(2) The Environmental Commissioner must within twenty-one (21) working days and in the prescribed form and manner -

(a) notify the organ of state or proponent of the decision made in terms of subsection (1).

(3) When a new, amendment or renewal application is made for an environmental clearance certificate, the Environmental Commissioner must -

(a) register the application in the prescribed assessment register, and

(b) within twenty-one (21) working days, decide whether the proposed policy, plan, programme or project requires an assessment.

(4) In making a decision in terms of subsection (3)(b), the Environmental

Commissioner must -

(a) review the consultative process undertaken the requirements of this Act

(b) take into account -

(i) any comment received in terms of the consultative process;

(ii) the significant effect of the proposed policy, plan, programme or project activity on the environment;

(iii) the nature and extend of the proposed policy, plan,

programme or project activity;

(iv) the principles set out in this Act; and

(v) any other matter that may be prescribed.

(5) A decision under subsection (1) does not exempt the organ of state or proponent from complying with other requirements prescribed in respect of the proposed activity under any other law

(6) In event that the notification or application is of very high national security, national interest or public interest, the Environmental Commissioner may defer the final decision on the notification or application to the Minister for final Cabinet decision.

## Record of decisions

* + - * 1. The Environmental Commissioner must keep a record of decisions made under this Act;
        2. The record of decisions must be kept in the prescribed form and must consist of information that may be prescribed.

## Environmental Audit, Inspection and Monitoring

1. An organ of state or proponent shall notify the commission on the intention to cease operation or close the activity in order for the Environmental Commissioner to undertake an environmental audit, inspection and monitoring and issue a rehabilitation, restoration or aftercare order to be followed by a closure certificate if all the terms and conditions of the rehabilitation, restoration or aftercare order have been complied with in term of the provisions of this Act.
2. The Environmental Commissioner shall be responsible for carrying out environmental monitoring and auditing of all activities that are likely to have significant effect on the environment. All environmental inspectors or officers appointed under this Act may enter any land or premises for the purposes of determining how far the activities carried out on that land or premises conform with the statements made in the environmental assessment study report or conditions of the rehabilitation, restoration or aftercare order issued in respect of that land or those premises.
3. The owner of the premises or the operator of an activity for which an environmental assessment study report has been made or a rehabilitation, restoration or aftercare order has been issued shall keep accurate records and make annual reports to the commission describing how far the activities conforms in operation with the statements made in the environmental assessment study report or conditions of the rehabilitation, restoration or aftercare order.
4. The owner of premises or the operator of an activity shall take all reasonable measures to mitigate any undesirable effects not contemplated in the environmental assessment study report or conditions of the rehabilitation, restoration or aftercare order and shall prepare and submit an environmental audit report on those measures to the Environmental Commissioner annually or as the Environmental Commissioner may, in writing, require.
5. The Environmental Commissioner shall, in consultation with the relevant competent authority, inspect, audit and monitor:-
   1. all environmental phenomena with a view to making an assessment of any possible changes in the environment and their possible impacts; or
   2. the implementation of any policy, plan , programme or project operation of any industry or activity with a view of determining its immediate and long-term effects on the environment.
   3. the implementation of the activities related to meeting the conditions of the rehabilitation, restoration or aftercare order.

# PART XII - ENVIRONMENTAL CERTIFICATES AND ORDERS

## Environmental Clearance Certificate Issue, Duration, Renewal, Amendments, transfer and suspension

1. On receipt of an application for Environmental Clearance Certificate the Environmental Commissioner must, together with all the comments/input/ objections received during the assessment and consultation process, consider and notify the proponent in writing of the –
   1. decision to approve or reject the application for an environmental clearance certificate;
   2. in the event of an approval, demand lodgment by the proponent of an independently managed financial environmental guarantee (security) such as a bond, insurance policy, etc acceptable to the Environmental Commissioner for project activities requiring rehabilitation, closure, restoration and aftercare in term of the Act and the regulations
   3. in the event of an approval of the application, and on payment of the fee prescribed in the regulations, and subject to such conditions, if any, as the Environmental Commissioner deems necessary, issue the environmental clearance certificate to the proponent;
2. The Environmental Commissioner may amend a condition of an environmental clearance certificate -
   1. if the certificate holder consents to or requests for the amendment; or
   2. at the initiative of the Environmental Commissioner, by giving written notice to the holder of the certificate.
3. The Environmental Commissioner may require the holder of the environmental clearance certificate to make an application in the prescribed form and manner to the Environment Commissioner for the proposed amendment.
4. In considering an application to amend an environmental clearance certificate the Environmental Commissioner must have regard to the same matters which he or she was required to consider when deciding the initial application for that environmental clearance certificate.
5. The Environmental Commissioner may only amend a condition of the environmental clearance certificate under this section if he or she is satisfied that the –
   1. amendment will not have a significant effect on the environment; and
   2. interests of any other person are not adversely affected;
   3. Interest of the organ of state or proponent are not adversely affected.
6. An environmental clearance certificate becomes effective and operates from the date endorsed on the certificate.
7. An environmental clearance certificate remains effective for a period not exceeding five (5) years, subject to cancellation or suspension under this Act.
8. An environmental clearance certificate may be renewed by submitting to the Environmental Commissioner a renewal application in the prescribed renewal form and manner and on payment of the prescribed fee and may be renewed –
9. if the organ of state or proponent has complied with all the conditions of the environmental clearance certificate before it expired;
10. if the organ of state or proponent has submitted all the environmental performance monitoring reports for the period under review as may be prescribed as one of the condition on the environmental clearance certificate or in the regulations.
11. If the conditions set out in the environmental clearance certificate submitted for renewal have not been met, the Environmental Commissioner may-
12. request the organ of state or proponent for an explanation for not complying with the conditions of the environmental clearance certificate
13. request the organ of state or proponent to submit additional information thereof as may be required;
14. reject the renewal application and request the organ of state or proponent to register the policy, plan, programme or project and implement environmental assessment process in accordance with this Act and the regulations.
15. The environmental clearance certificate renewal application must be submitted to the Environmental Commissioner ninety (90) calendar days before the expiry date.
16. A person may not transfer an environmental clearance certificate except with the permission of the Environmental Commissioner.
17. An application for the transfer of an environmental clearance certificate must be made in the prescribed form and manner.
18. The Environmental Commissioner may, by notice to the holder of the environmental clearance certificate suspend or cancel an environmental clearance certificate if the holder of the certificate -
19. has contravened any condition of the environmental clearance certificate;
20. has contravened this Act; or
21. is convicted of an offence in terms of this Act.
22. An environmental clearance certificate may be suspended –
23. for the period specified in the notice of suspension; or
24. until the Environmental Commissioner is satisfied that the person concerned has rectified the failure which led to the suspension.
25. Except in a situation that the Minister considers to be an emergency that warrants action without notice to the holder of the environmental clearance certificate, the Minister may not suspend or cancel an environmental clearance certificate without first giving the holder an opportunity to be heard.
26. The Environmental Commissioner may, for good reason shown, reinstate an environmental clearance certificate cancelled or suspended under subsection (1).
27. In suspending, cancelling or reinstating an environmental clearance certificate, the Environmental Commissioner may follow the consultative process in accordance with Act and the regulations.

## Compliance orders

1. For the purpose of this section “exceptional circumstances” includes circumstances in which the delay necessary to issue a written order that meets the requirements of subsection (2) would result in danger to human life or the environment.
2. An environmental officer may issue a compliance order to a person whom the environmental officer has reason to believe -
   1. has contravened this Act; or
   2. has contravened a condition of an environmental clearance certificate.
3. A compliance order must set out -
   1. the name of the person to whom the order applies;
   2. the provision or condition which has been contravened;
   3. details of the nature and extent of the contravention;
   4. any steps that are required to be taken and the period within which those steps must be taken; and
   5. any penalty that may be imposed in terms of this Act if those steps are not taken;
   6. the procedure to be followed in lodging an objection to the compliance order with the Minister; and
   7. any other prescribed matter.
4. In exceptional circumstances a compliance order may be given orally, but within a period of seven days after such order is given, a written order must be issued in accordance with subsection (3).
5. A person who receives a compliance order must comply with that order within the time period stated in the order unless the Minister has agreed to suspend the operation of the compliance order under section 21.
6. Where a person fails to take any measures specified in the compliance order without raising an objection an environmental officer may take the measures or cause them to be taken.
7. Any costs incurred by the environmental officer in connection with any action taken under subsection (6) may be recovered from the person referred to in that subsection as a debt owing to the State.
8. Any person who, without good reason, fails or refuses to comply with a compliance order commits an offence and is liable on conviction 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.
9. Any person issued with an order, may apply to the Minister in the prescribed form and manner for the review of the order within-
10. twenty-one (21) working days after receiving that order; or
11. longer period as may be allowed by the Minister on good cause shown.
12. After considering the application made in terms of this Act, and any other relevant information, the Minister may confirm, modify or cancel all or part of the order.
13. If the Minister confirms or modifies all or part of a compliance order, the applicant must comply with that order as confirmed or modified, within the time period specified in it.
14. The Environmental Commissioner must in the prescribed form and manner notify the person referred to in subsection (9), of the decision made in terms of subsection (10) and the reasons for the decision.

## Environmental Conservation Orders

1. A court may, on an application by the Environmental Commissioner made under this Part, grant an environmental conservation order subject to the provisions of this Act.
2. The object of an environmental conservation order is to further the principles of environmental management set out in this Act by facilitating the conservation and enhancement if the environment, in this Act referred to as the benefited environment, through the imposition of one or more obligations in respect of the use of land, in this Act referred to as the burdened land, being the land in the vicinity of the benefited environment.
3. An environmental conservation order may be imposed on and shall thereafter attach to the burdened land in perpetuity or for a term of years or for an equivalent interest as the court may determine.
4. Without prejudice to the general effect of subsection (2), an environmental conservation order may be imposed on burdened land so as to –
   1. preserve flora and fauna;
   2. preserve the quality and flow of water in a dam, lake, perennial or ephemeral river or aquifer;
   3. preserve any outstanding geological, physiological, ecological, archaeological, or historical features of the burdened land;
   4. preserve scenic view;
   5. preserve open space;
   6. permit persons to walk in a defined path across the burdened land;
   7. preserve the natural contours and features of the burdened land;
   8. prevent or restrict the scope of any activity on the burdened land which has as its object the mining and working of minerals, sand or aggregates;
   9. prevents or restrict the scope of any agricultural activity on the burdened land;
   10. create and maintain works on burdened land so as to limit or prevent harm to the environment; or
   11. create or maintain migration corridors for wildlife.
5. Where an environmental conservation order is imposed on burdened land on which any person has at the time of the imposition of the easement, any existing right or interest to the land and that environmental conservation order will restrict that right or interest, there shall be paid to that person, by the applicant for the environmental conservation order such compensation as may be determined in accordance by the court
6. the validity and enforceability of an environmental conservation order shall not be dependent on the existence of a plot of land in the vicinity of the burdened land which can be benefited or, of a person with an interest in that plot of land who can be benefited by the environmental easement.
7. A person or a group of persons may make may make representation to the Environmental Commissioner for the Environmental Commissioner to make an application to the court for the grant of one or more environmental conservation order.
8. The court may impose such conditions on the grant of an environmental conservation order as it considers to be best calculated to advance the object of an environmental conservation order.
9. Proceedings to enforce an environmental conservation order may be commenced only by the person in whose name the environmental conservation order has been issued. Proceedings to enforce an environmental easement may request the court to:-
   1. grant an environmental rehabilitation, restoration or aftercare order;
   2. grant any remedy available under the law relating to environmental conservation in respect of land.
10. The court shall have a discretion to adapt and adjust, so far as seems necessary to it, the law and procedures relating to the enforcement of the requirements of an environmental conservation order.
11. Where an environmental conservation order is imposed on land, the title of which is registered under a particular system of land registration, the environmental conservation order shall be registered in accordance with the provisions of the Act applicable to that particular system of registration for environmental conservation order in a Title Deed.
12. In addition to any matter which may be required by any law relating to the registration of environmental conservation order in respect of land, the registration of an environmental conservation order shall include the name of the applicant for the environmental conservation order as the person in whose name the environmental conservation order is registered.
13. Any person who has a legal interest in the land which is the subject of an environmental conservation order, shall, in accordance with the provisions of this Act, be entitled to compensation commensurate with the lost value of the use of the land.
14. A person described in subsection (14) may apply to the court that granted the environmental conservation order for compensation stating the nature of his / her legal interest in the burdened land and the compensation sought.
15. The court may require the applicant for the environmental conservation order to bear the cost of compensating the person described in subsection (14).
16. The court may, if satisfied that the environmental conservation order sought is of national importance, order that the Government compensates the person described in subsection (14).
17. The court in determining the compensation due under this section shall take into account the relevant provisions of the Constitution and any other laws relating to compulsory acquisition of land.

## Environmental Rehabilitation, Restoration or Aftercare Order

1. Subject to any other provisions of this Act, the Environmental Commissioner may issue and serve on any person in respect of any matter relating to the management of the environment an order for environmental rehabilitation, restoration or aftercare order.
2. An environmental rehabilitation, restoration or aftercare order issued under this Act shall be issued to –
   1. compel the person on whom it is served to rehabilitate, restore or take care rehabilitated or restored environment (aftercare);
   2. prevent the person on whom the order is served from taking any action which would or is reasonably likely to cause harm to the environment;
   3. award compensation to be paid by the person on whom it is served to other persons whose environment or livelihood has been harmed by the action which is the subject of the order;
   4. levy a charge on the person on whom the order is served which in the opinion of the Environmental Commissioner represents a reasonable estimate of the costs of any action taken by an authorised person or organisation to restore the environment to the state in which it was before the taking of the action which is the subject of the order.
3. An environmental rehabilitation, restoration or aftercare order may contain such terms and conditions and impose such obligations on the persons on whom it is served as will, in the opinion of the Commission, enable the order to achieve all or any of the purposes set out in subsection (2).
4. Without prejudice to the general effect of the purpose set out in subsection (2) an environmental rehabilitation, restoration or aftercare order may require a person on whom it is served to –
   1. take such action as will prevent the commencement or continuation or cause of pollution;
5. rehabilitate, restore and / or look after the land, including the replacement of soil, the replanting of trees and other flora and the restoration as far as may be, of outstanding geological, archaeological or historical features of the land or perineal or ephemeral river, the area contiguous to the land or sea as may be specified in the particular order;
6. take such action to prevent the commencement or continuation or cause of environmental hazard;
7. cease to take any action which is causing or may contribute to causing pollution or an environmental hazard;
8. remove or alleviate any injury to land or the environment or to the amenities of the area;
9. prevent damage to the land or the environment, perineal or ephemeral river, aquifers beneath the land and flora and fauna in, on or under or about the land or sea specified in the order or land or the environment contiguous to the land or sea specified in the order;
10. remove any waste or refuse deposited on the land, perineal or ephemeral river or sea specified in the order and dispose of the same in accordance with the provisions of the order;
11. pay any compensation specified in the order;
12. In exercising the powers under this section, the Environmental Commissioner shall –
    1. be guided by the principles of good environmental management in accordance with the provisions of this Act; and
    2. take into consideration the amount of funds available with respect to the financial guarantee posted by the proponent;
    3. explain the right of appeal of the persons against whom the order is issued to the Minister or if dissatisfied with the decision of the Minster, to superior courts.
13. An environmental rehabilitation, restoration or aftercare order shall specify clearly and in a manner which may be easily understood:-
    1. the activity to which it relates with respect to rehabilitation, restoration or aftercare;
    2. the person or persons to whom it is addressed;
    3. the time at which it comes into effect;
    4. the action which must be taken to remedy the harm to the environment and the time, being not more than twenty-one (21) working days or such further period as may be prescribed in the order within which the action must be taken;
    5. the powers of the Environmental Commissioner to enter any land and undertake the action specified in paragraph (d);
    6. the penalties which may be imposed if the action specified is not undertaken;
    7. the right of the person served with an environmental restoration order to appeal to the Minister against that order, except where the order is issued by a court of competent jurisdiction, in which case the right of appeal shall lie with superior courts.
14. An Environmental Inspector / officer of the Commission may inspect or cause to be inspected any activity to determine whether that activity is harmful to the environment and may take into account the evidence obtained from that inspection in any decision on whether or not to serve an environmental rehabilitation, restoration or aftercare order.
15. The Environmental Commissioner may seek and take into account any technical, financial, professional and scientific advice which it considers to be desirable for a satisfactory decision to be made on an environmental rehabilitation, restoration or aftercare order.
16. An environmental rehabilitation, restoration or aftercare order shall continue to apply to the activity in respect of which it was served notwithstanding that it has been complied with until an Environmental Closure Certificate has been issues by the Commission.
17. A person served with an environmental rehabilitation, restoration or aftercare order shall, subject to the provisions of this Act, comply with all the terms and conditions of the order that has been served on him / her.

## Environmental Closure Certificate

1. Subject to any other provisions of this Act and other laws related to the competent authorities, the Environmental Commissioner must issue an Environmental Closure Certificate with respect to completion of an environmental rehabilitation, restoration or aftercare order.
2. An Environmental Closure Certificate shall specify clearly and in a manner which may be easily understood:-
   1. the activity to which it relates;
   2. the person or persons to whom it is addressed;
   3. the time at which it comes into effect.
3. An Environmental Inspector / officer of the Commission may inspect or cause to be inspected any activity to determine whether all the terms and conditions of the an environmental rehabilitation, restoration or aftercare order have been met and may take into account the evidence obtained from that inspection in any decision on whether or not to issue an Environmental Closure Certificate
4. The Environmental Commissioner may seek and take into account any technical, financial, professional and scientific advice which it considers to be desirable for a satisfactory decision to be made on an issue of an Environmental Closure Certificate;-
5. The issue of an Environmental Closure Certificate by the Environmental Commissioner shall in all its entirety demonstrate that all the conditions of environmental clearance certificate, environmental rehabilitation, restoration or aftercare order have been complied with and that any future environmental liability associated with the activity of which the environmental clearance certificate or order was issued now falls on to the State.
6. On issue of an Environmental Closure Certificate by the Environmental Commissioner all the residual monies remaining in the financial guarantee instrument posted shall be released back to the owner.

# PART XIII - ENVIRONMENTAL QUALITY MANAGEMENT STANDARDS

## Air Quality Management Standards

1. The Commissions, in consultation with the relevant competent authorities shall develop regulations, criteria and procedures for the measurement of air quality and establish;-
   1. ambient air quality standards;
   2. occupational air quality standards;
   3. emission standards for various sources;
   4. criteria and guidelines for air pollution control for both mobile and stationary sources;
   5. any other air quality standards as may be applicable;
2. The Minister through regulations shall establish measures necessary to;-
   1. reduce existing sources of air pollution by requiring the redesign of plants or the installation of new technology or both, to meet the requirements of standards established under this Act;
   2. prepare guidelines to minimize emissions of greenhouse gases and identify suitable technologies to minimize air pollution;
   3. do all such things as appear necessary for the monitoring and controlling of air pollution including introduction of air emission tax for heavy air polluting industrial operators.
3. The Environmental Commissioner shall if needed, establish of such number of laboratories for air quality analytical services and monitoring in order to ;-
   1. effectively monitor concentration and nature of pollutants emitted by various industries including vehicles;
   2. determine and recommend the best practicable technology available in controlling pollutants during the emission process;
   3. determine for consideration by the Commission the analytical methods for monitoring air contaminants;
   4. support investigations of actual or suspected air pollution including pollution produced by aircrafts and other self-propelled vehicles and by factories and power generating stations;
4. The Environmental Commissioner may order any industry or other source of air pollution to provide such information as it may require;
5. An owner or operator of a trade, industrial undertaking or an establishment which after the commencement of this Act, is emitting a substance or energy which is above the established air quality standard shall apply to the Environmental Commissioner for an emission licence.
6. In the case of any trade, industrial undertaking or establishment existing before the commencement of this Act, such application shall be made within twenty-four (24) months after the established air quality standards has come into operation in terms of this Ac.
7. Every application for an emission licence shall be in the prescribed form and be accompanied by the prescribed fee.
8. Before issuing a licence in respect of emissions, the Environmental Commissioner shall:-
9. consider the possible effects of the emissions on the quality of ambient air;
10. consider existing licences affecting the same air resource;
11. give due regard to the requirements for the residents, human settlements and other industrial and commercial activities;
12. solicit the comments of relevant Local Authorities and other stakeholders;
13. where the information accompanying the application appears inadequate, require the applicant to furnish further information relating to the undertaking in question, its location, materials, technology design or other appropriate matters;
14. where it appears necessary to conduct an environmental impact study, require the applicant to conduct an environmental impact assessment study in respect of the undertaking in question in accordance with the provisions this Act.
15. An emission licence issued under this Act shall be in a prescribed form, be subject to such conditions as may be prescribed or as may be specified in the licence and shall remain valid for such period and may be renewed for such further periods as may be prescribed or specified in the licence.
16. Where the Environmental Commissioner rejects an application for the grant of an emission licence, it shall within twenty-one (21) working days of its decision, notify the applicant in writing of its reasons for such refusal.
17. No owner or operator of a motor-vehicle, train, ship, aircraft or other similar conveyance shall –
    1. operate it in such a manner as to cause air pollution in contravention of the established emission standards; or
    2. import any machinery, equipment, device or similar thing that will cause emissions into the ambient air in contravention of prescribed emission standards.
18. The Environmental Commissioner may establish additional procedures by regulations for the application and grant of any licence under this Act and impose such conditions as it may deem appropriate.
19. The Environmental Commissioner may, in writing, cancel any emission licence:-
20. if the holder of the licence contravenes any provisions of this Act or of any regulations made under it;
21. if the holder fails to comply with any conditions specified in the licence; or
22. if the Environmental Commissioner considers it in the interest of the environment or in the national security or public interest so to do.
23. The Environmental Commissioner shall maintain a register of all emission licences issued under this Act. The register shall be a public document and may be inspected at reasonable hours by any person on the payment of a prescribed fee.

## Noise and Vibrations Management Standards

1. The Environmental Commissioner shall, in consultation with the relevant competent authorities,
   1. develop minimum standards for emissions of noise and vibration pollution into the environment as are necessary to preserve and maintain public health and the environment;
   2. establish criteria and procedures for the measurement of noise and vibration pollution into the environment;
   3. establish criteria and procedures for the measurement of sub-sonic vibrations;
   4. establish standards of the emission of sub- sonic vibrations which are likely to have a significant impact on the environment;
   5. recommend guidelines for the minimisation of sub-sonic vibrations, referred to in paragraph (d) from existing and future sources;
   6. establish noise level and noise emission standards applicable to construction sites, plants, machinery, motor vehicles, aircraft including sonic bonus, industrial and commercial activities;
   7. recommend measures necessary to ensure the abatement and control of noise from sources referred to in paragraph (f);
   8. measure the levels of noise emanating from the sources referred to in paragraph (f) details of which measurements shall be given to the owner or occupier of the premises from which the measurement was taken; and recommend guidelines for the abatement of unreasonable noise and vibration pollution emitted into the environment from any source.
2. Subject to the provisions other Acts and regulations, any person who emits noise in excess of the noise emission standards established under this Act commits an offence.
3. Notwithstanding the provisions of section 2, the Environmental Commissioner may on request grant a temporary permit not exceeding three (3) months, allowing emission of noise in excess of established standards for such activities as fireworks, demolitions, firing ranges, and specific heavy industry on such terms and conditions as the Environmental Commissioner may determine.
4. Where an exemption has been granted under subsection (3), workers exposed to excessive levels of noise shall be adequately protected in accordance with the directives issued by the Commission.

## Ionisation Management Standards

1. Subject to the provisions of the Atomic Energy and Radiation Protection Act, the Commission, in consultation with the National Radiation Protection Authority and other relevant competent authorities, shall –
   1. establish the standards for the setting of acceptable levels of ionising and other radiation in the environment;
   2. establish criteria and procedures for the measurement of ionising and other radiation;
   3. inspect and examine any area, place or premises or any vehicle, vessel boat or any carrier of any description in or upon which the Environmental Commissioner has reasonable cause to believe that radioactive material or any source of ionising radiation is stored, used, transported or disposed of;
   4. examine any person with respect to matters under this Act, where there is reasonable cause to believe that that person is contaminated with radioactive material or is unlawfully in possession of an ionising radiation source;
   5. provide information, warn and protect the public in case of actual or potential public exposure to radioactive material or ionising radiation;
   6. in collaboration with the National Radiation Protection Authority, conduct an ionising radiation monitoring programme and advise on ionising radiation control and protection measures;
   7. maintain records of release of radioactive contaminants into the environment;
   8. keep records of baseline data of radiation in the environment;
   9. maintain a register of all radioactive substances imported into Namibia; and
   10. do all such things as may be necessary for the monitoring and control of pollution from radiation.
2. In accordance with the provisions of the Atomic Energy and Radiation Protection Act no person shall use, stored, used, transported or disposed controlled radioactive sources materials without a relevant license or permit issued by the relevant competent authority.

## Noxious Smells Management Standards

1. The Environmental Commissioner shall, in consultation with the relevant competent authorities, establish –
2. procedures for the measurement and determination of noxious smells;
3. minimum standards for the control of pollution of the environment by noxious smell; or
4. guidelines for measures leading to the abatement of noxious smells, whether from human activities or from naturally occurring phenomena.

## Liquid Waste Management Standards

1. The Environmental Commissioner shall, in consultation with the Department of Water Affairs and other relevant competent authorities shall:-
   1. establish criteria and procedures for the measurement of waste water quality’
   2. develop minimum waste water quality standards;
   3. prepare guidelines or regulations for the preservation of marine and freshwater fishing areas, aquatic areas, water sources and reservoirs and other areas where water may need special protection from waste water discharges.
   4. identify areas of research on the effects of waste water pollution on the environment, human beings flora and fauna;
   5. carry out investigations of actual or suspected waste water pollution including the collection of data;
   6. document the analytical methods by which waste water quality and pollution control standards can be determined and appoint laboratories for the analytical services required or establish such laboratories;
   7. collect, maintain and interpret data from industries and local authorities on the pre-treatment nature, quality and levels of effluents;
   8. develop measures necessary for the treatment of effluents before being discharged into the sewerage system;
   9. develop measures necessary for the treatment of effluents before being discharged into the marine or fresh water bodies;
2. All owners or operators of irrigation project schemes, sewage systems, industrial production workshops or any other undertaking which may discharge effluents or other waste water pollutants or have been discharging effluents or other pollutants shall within twelve (12) month upon the coming into force of this Act or as may be demanded from time to time by the Environmental Commissioner to submit on demand, the accurate information about the quantity and quality of such effluent or other waste water pollutant.
3. No Local Authority operating a sewerage system or owner or operator of any trade or industrial undertaking shall discharge any waste water effluents or other pollutants into the environment without a waste water discharge permit issued by the relevant competent authority.

## Solid Waste Management Standards

1. The Environmental Commissioner in consultation with the relevant competent authorities, shall develop and implement solid waste management measures necessary to:-
   1. identify materials and processes that are dangerous to human health and the environment;
   2. issue guidelines and prescribe measures for the management of the material and processes identified under subsection (ii);
   3. prescribe standards for solid waste management classification and analysis, and formulate standards of management for such wastes;
   4. issue regulations for the handling, storage, transportation, segregation, recycling, reuse, incineration, disposal or destruction of any solid waste.
2. No person shall discharge or dispose of any solid wastes, whether generated within or outside Namibia, in such manner as to cause pollution to the environment or ill health to any person.
3. No person shall transport any solid waste other than –
   1. in accordance with a valid licence to transport solid wastes issued by the Commission; and
   2. to a solid wastes disposal site established in accordance with a licence issue by the Commission.
4. Transportation of solid waste must always be undertaken in such way that no unnecessary emission are emitted in the immediate environment.
5. No person shall operate a solid wastes disposal site or processing or incineration plant without a licence issued by the Commission.
6. Every person whose activities generate solid wastes shall employ measures essential to minimize wastes through reuse, treatment, reclamation and recycling.
7. Any person intending to transport solid wastes within Namibia, operate a solid wastes disposal site or processing or incineration plant or to generate hazardous solid waste, shall prior to transporting the solid wastes, commencing with the development of a solid wastes disposal site or processing or incineration or generating hazardous solid wastes, as the case may be, apply to the Environmental Commissioner in writing for the grant of an appropriate licence.
8. A licence to operate a solid waste disposal site or processing or incineration plant may only be granted subject to undertaking all relevant studies and payment of the appropriate fee and any other licence that may be required by the relevant Local Authority.
9. Where the Environmental Commissioner rejects an application made under this section, it shall within twenty-one (21) working days of its decision, notify the applicant of the decision specifying the reasons thereof.
10. Any person who, at the commencement of this Act, owns or operates a solid waste disposal site or processing or incineration plant or generated solid hazardous waste, shall apply to the Environmental Commissioner for a licence under this Part, within six months after the commencement of this Act.
11. The Environmental Commissioner may apply to a competent court for orders compelling any person to immediately stop the generation, handling, transportation, storage or disposal of any solid wastes where such generation, handling, transportation, storage or disposal presents an imminent and substantial danger to public health, the environment or natural resources.
12. The Environmental Commissioner shall, in consultation with the relevant competent authorities, develop and implement standard criteria or regulations for the classification of hazardous solid wastes with regard to determining –
13. hazardous waste;
14. corrosive waste
15. carcinogenic waste;
16. flammable waste;
17. persistent waste;
18. toxic waste;
19. explosive waste;
20. radioactive waste;
    1. any other category of solid waste the Environmental Commissioner may consider necessary.
21. The Environmental Commissioner shall, issue guidelines and regulations for the management of each category of solid wastes determined under subsection (12).
22. No person shall import into Namibia any type solid waste
23. No solid waste shall be exported to any country from Namibia without a valid permit granted by the Environmental Commissioner and written consent given by a competent authority of the receiving country.
24. No solid waste shall be transported within or through Namibia without a valid permit granted by the Commission.
25. Any person who contravenes any provision of this section or who withholds, falsifies or otherwise tampers with information relating to trafficking in solid or other waste shall be guilty of an offence in terms of this Act.
26. A person found guilty under subsection (17) shall be responsible for the removal of the waste from Namibia and for its safe disposal.

## Toxic and Hazardous Chemicals and Materials Management Standards

1. The Minister may, on the advice of the Environmental Commissioner make regulations prescribing the procedure and criteria for –
   1. classification of toxic and hazardous chemicals and materials in accordance with their toxicity and the hazard they present to the human health and to the environment;
   2. registration of chemicals and materials;
   3. labelling of chemicals and materials;
   4. packaging for chemicals and materials;
   5. advertising of chemicals and materials;
   6. control of imports and exports of toxic and hazardous chemicals and materials permitted to be so imported or exported;
   7. distribution, storage, transportation and handling of chemicals and materials;
   8. monitoring of the effect of chemicals and their residue on human health and the environment;
   9. disposal of expired and surplus chemicals and materials; and
   10. restriction and banning of toxic and hazardous substances and energy.
2. No person shall discharge negligibly, knowingly or accidentally any hazardous substance, chemical, oil or mixture containing oil into any marine or fresh waters or any other segments of the environment contrary to the provisions of this Act or any regulations thereunder;
3. A person who negligibly, knowingly or accidentally discharges a hazardous substance, chemical, oil or a mixture containing oil into any marine or fresh waters or other segments of the environment contrary to subsection (1) commits an offence
4. A person convicted of an offence under subsection (2) shall, in addition to any other sentence imposed by the court:-
   1. pay the cost of the removal of the hazardous substance, chemical, oil or a mixture containing oil including any costs which may be incurred by any Government agency or organ in the restoration of the environment damaged or destroyed as a result of the discharge; and
   2. the costs of third parties in the form of reparation, restoration, restitution or compensation as may be determined by a competent court on application by such third parties.
5. The owner or operator of a production or storage facility, motor vehicle or vessel from which a discharge occurs contrary to this section shall mitigate the impact of the discharge by –
   1. giving immediate notice of the discharge to the Environmental Commissioner and other relevant Government officers;
   2. immediately beginning clean-up operations using the best available clean- up methods;
   3. complying with such directions as the Environmental Commissioner may, from time to time, prescribe.
6. Where the owner or operator of a production or storage facility, motor vehicle or vessel has refused, neglected and/or failed to take the mitigation measures prescribed in subsection (5), the Environmental Commissioner may through court order seize the production or storage facility, motor vehicle or vessel.
7. Where the owner or operator fails to take the necessary measures under subsection (5) after the passage of a reasonable time not exceeding six (6) months in all the circumstances, the Environmental Commissioner may, upon an order of court, dispose of the production or storage facility, motor vehicle or vessel to meet the costs of taking necessary measures under subsection (5) and other remedial and restoration measures.
8. The Court in convicting a person of an offence under this section shall take into account the measures taken by that person to comply with subsection (5).

## Pesticides and Toxic Substances Management Standards

1. The Environmental Commissioner shall, in consultation with the Department of Agriculture and all other relevant competent authorities shall–
   1. prepare standards for the concentration of pesticides residues in raw agricultural commodities, processed foods and animal feed and for the purposes of this paragraph raw agricultural commodities:-
      1. include fresh or frozen fruit and vegetables in their raw state, grains, nuts, eggs, raw milk, meat and other agricultural produce;
      2. do not include any agricultural produce or good which is processed, fabricated or manufactured by cooking, dehydrating, milling, or by any other similar means;
   2. establish, revisit, modify standards to regulate the importation, exportation, manufacture, storage, distribution, sale, use, packaging, transportation, disposal and advertisement of pesticides and toxic substances with the relevant organisations;
   3. establish procedures for the registration of pesticides and toxic substances;
   4. establish measures to ensure proper labelling and packaging of pesticides and toxic substances;
   5. constantly review the use and efficacy of pesticides and toxic substances and publish the findings of such reviews.
   6. recommend measures for monitoring the effects of pesticides and toxic substances on the environment;
   7. recommend measures for the establishment and maintenance of laboratories to operate as standards laboratories for
      1. pesticides and toxic substances;
      2. recommend measures for the establishment of enforcement procedures and regulations for the storage, packaging and
      3. transportation of pesticides and toxic substances;
   8. constantly collect data from industries on the production, use and health effects of pesticides and toxic substances and publish such data;
   9. keep up-to-date records and reports necessary for the proper regulations of the administration of pesticides and toxic substances;
   10. do all other things as appear necessary for the monitoring and control of pesticides and toxic substances;
2. Subject to the provisions of this Act or any other written law applicable in Namibia, any person who intends to manufacture, import or process a new pesticide or toxic substance or who intends to reprocess an existing pesticide or toxic substance for a significantly new use, must apply to the Environmental Commissioner for the registration of the pesticide or toxic substance, before importing, manufacturing, processing or reprocessing such pesticides or toxic substance.
3. The application referred to in subsection (2) shall include the name, trade mark, and the molecular structure, proposed categories of use, an estimate of the quantity of the pesticides or toxic substances and any data contained in the Material Safety Data Sheet (MSDS) related to health and other environmental effects thereof that the Environmental Commissioner may require.
4. Any person who, being in Namibia, has been manufacturing, importing or processing a pesticide or toxic substance before the coming into force of this Act, shall apply to the Environmental Commissioner for registration of such pesticides or toxic substance within twenty-four (24) months after the commencement of this Act.
5. The Environmental Commissioner may, upon application, register a pesticide or toxic substance subject to such existing conditions and any other conditions that the Environmental Commissioner may determine.
6. Every pesticide or toxic substance shall be registered for ten (10) years unless some other period is specified by the Commission, and may be renewed for a like period.
7. Where the Environmental Commissioner refuses to register any pesticide or toxic substance, the notice of refusal shall state the reasons for such refusal.
8. No person shall –
   1. detach, alter or destroy any labelling on a pesticide or toxic substance contrary to the provisions of this Act;
   2. change the composition of a pesticide or toxic substance, contrary to the provisions of this Act; or
   3. use or dispose into the environment a pesticide or toxic substance in contravention of the provisions of this Act.
9. No person shall distribute, sell, offer for sale, hold for sale, import, deliver for importation to, or receive from, deliver or offer to deliver to any other person any unregistered pesticide or toxic substance.
10. Any person who contravenes any of the provisions of this section shall be guilty of an offence and shall be in accordance with the provisions of this Act.
11. Any pesticide or toxic substance which the Environmental Commissioner reasonably suspects to be the subject matter of an offence under this Act shall be liable to seizure by the Environmental Commissioner.
12. Whenever any pesticide or toxic substance is seized under subsection (11), the Environmental Commissioner shall serve a notice of seizure on the owner of the pesticide or toxic substance as soon as practicable.
13. Where any pesticide or toxic substance is seized under this section, the pesticide or toxic substance shall be placed under the custody of the Commission.
14. Any pesticide or toxic substance placed under the custody of the Environmental Commissioner under subsection (13) shall be released, if after six months –
    1. no prosecution under this Act has been instituted with regard to the pesticide or toxic substance;
15. no person is convicted of an offence under this Act.
16. The Minister shall, in consultation with the relevant competent authority, make regulations prescribing the contents of any application and the conditions for the registration of pesticides and toxic substances under this Act.

## Other Environmental Management Standards

1. The Minister may, on the advice of the Environmental Commissioner make regulations prescribing the procedure and criteria for –
   1. Other environmental management standards.

## Laboratory Designated as an Analytical or Reference Laboratory

1. A laboratory designated as an analytical or reference laboratory under this Act must be an accredited facility and shall comply with national or international standards for analysis limits and reporting process;
2. A laboratory designated as an analytical or reference laboratory must issue a certificate of analysis of any substance submitted to it under this Act.
3. The certificate of analysis shall state the methods of analysis followed and shall be signed by the analyst or the reference analyst, as the case may be.
4. A certificate issued under subsection (2) and complying with subsection (3) shall be sufficient evidence of the facts stated in the certificate for all purposes under this Act.
5. The results of any analysis made by the laboratory shall be open to inspection by all interested parties.

# PART IX GENERAL PROVISIONS

## Delegation

(1) The Environmental Commissioner may delegate the exercise of any of his

her powers, and the performance of any of his or her duties or functions, to -

(a) the holder of an office in the Ministry, who has the qualifications set out in section 18(1); or

(b) an organ of state.

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

(a) must be in writing;

(b) may be subject to conditions; and

(c) does not prevent the exercise of the power or the performance of the duty by the Environmental Commissioner.

(3) The Environmental Commissioner may withdraw any delegation made in terms of subsection (1).

## Appeals to Minister

(1) Any 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 made under subsection (1), must be noted and must be dealt with in

the prescribed form and manner.

(3) The Minister may consider and determine the appeal or may appoint an appeal panel consisting of persons who have knowledge of, and are experienced, in environmental matters to advise the Minister on the appeal.

(4) The Minister must consider the appeal made under subsection (1), and may confirm, set aside or vary the order or the decision or make any other appropriate order including an order that the prescribed fee paid by the appellant, or any part thereof, be refunded.

(5) Any expenditure resulting from the performance of duties by the appeal panel in terms of subsection (3) must be paid from the State Revenue Fund from moneys appropriated by Parliament for that purpose.

(6) An appeal made under subsection (1) does not suspend the operation or execution of the decision pending the decision of the Minister, unless the Minster, on the application of a party, directs otherwise.

## Appeal to High Court against Minister’s decision

(1) Any person aggrieved by a decision of the Minister made in terms of this Act

may appeal, on points of law only, against that decision to the High Court within the prescribed time and in the prescribed manner.

(2) The appeal must be proceeded with as if it were an appeal from a Magistrate’s

Court to a High Court.

## Limitation of liability

(1) The State or any other person is not liable for any damage or loss caused by –

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

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

## Offence by a body corporate and jurisdiction

(1) If an offence under this Act which has been committed by a body corporate

is proven to have been committed with the consent or connivance or, or to be attributable to any neglect on the part of -

(a) any director, member, trustee, manager or other similar officer of the body corporate; or

(b) any person who was purporting to act in the capacity of a director, member, trustee, manager or similar officer, that person as well as the body corporate is deemed to have committed the offence and is liable to be proceeded against and punished accordingly.

(2) Despite any other law to the contrary, a magistrate’s court has jurisdiction to impose any penalty provided for in terms of this Act.

## Forfeiture and payment into Fund

(1) A court convicting a person of an offence under this Act may, in addition to

any penalty imposed in respect of that offence -

(a) order that the any equipment, record, register, document or any other material object that was used for the purpose of or in connection with the commission of the offence be forfeited to the State; and

(b) summarily enquire into and assess the monetary value of any advantage gained or likely to be gained by that person in consequence of that offence and impose on that person a fine to a maximum equal to the monetary value so assessed or, in default of payment of the fine, to imprisonment for a period not exceeding one year.

(2) Section 35 of the Criminal Procedure Act applies with necessary changes to a forfeiture under subsection (1).

(3) Money received as payment of a penalty following a conviction 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.

## Act to bind State

1. This Act binds the State.
2. Any written law, in force immediately before the coming into force of this Act, relating to the management of the environment shall have effect subject to modifications as may be necessary to give effect to this Act, and where the
3. provisions of any such law conflict with any provisions of this Act, the provisions of this Act shall prevail.

## Environmental Offences

1. Any person or organ of state –
   1. Undertaking a listed activity without an environmental clearance certificate,

commits an offence and shall, on conviction be liable to imprisonment for a term not exceeding two (2) years, or to a fine of not more than five hundred thousand Namibia Dollars (N$500, 000.00), or both.

1. Any person who –
   1. hinders or obstructs an environmental inspector in the exercise of his / her duties under this Act or regulations made thereunder;
   2. fails to comply with a lawful order or requirement made by an environmental inspector in accordance with this Act or regulations made thereunder;
   3. refuses an environmental inspector / officer entry upon any land or into any premises, vessel or motor vehicle which he is empowered to enter under this Act or regulations made thereunder;
   4. impersonates an environmental inspector / officer;
   5. refuses an environmental inspector / officer access to records or documents kept pursuant to the provisions of this Act or regulations made thereunder;
   6. fails to state or wrongly states his name or address to an environmental inspector / officer in the cause of his / her duties under this Act or regulations made thereunder;
   7. misleads or gives wrongful information to an environmental inspector / officer under this Act or regulations made thereunder;
   8. fails, neglects or refuses to carry out an improvement order issued under this Act by an environmental inspector / officer;

commits an offence and shall, on conviction be liable to imprisonment for a term not exceeding two (2) years, or to a fine of not more than one hundred thousand Namibia Dollars (N$100, 000.00), or both.

1. Any person who –
   1. fails to submit a project report contrary to the requirements of this Act;
   2. fails to prepare an environmental impact assessment report in accordance with the requirements of this Act or regulations made thereunder;
   3. fraudulently makes false statements in an environmental impact assessment report submitted under this Act or regulations made thereunder;

commits an offence and shall, on conviction be liable to imprisonment for a term not exceeding two (2) years, or to a fine of not more than two hundred thousand Namibia Dollars (N$200, 000.00), or both.

1. Any person who –
   1. fails to keep records required to be kept under this Act;
   2. fraudulently alters any records required to be kept under this Act;
   3. fraudulently makes false statements in any records required to be kept under this Act;

commits an offence and shall, on conviction be liable to imprisonment for a term not exceeding two (2) years, or to a fine of not more than one hundred thousand Namibia Dollars (N$100, 000.00), or both.

1. Any person who –
   1. contravenes any environmental standard prescribed under this Act; (b) contravenes any measure prescribed under this Act;
   2. uses the environment or natural resources in a wasteful and destructive manner contrary to measures prescribed under this Act;

commits an offence and shall, on conviction be liable to imprisonment for a term not exceeding two (2) years, or to a fine of not more than one hundred thousand Namibia Dollars (N$100, 000.00), or both.

1. Any person who –
   1. fails to manage any hazardous waste and materials in accordance with this Act;
   2. imports any hazardous waste contrary to this Act;
   3. knowingly mislabels any waste, pesticide, chemical, toxic substance or radioactive matter;
   4. fails to manage any chemical or radioactive substance in accordance with this Act;
   5. aids or abets illegal trafficking in hazardous waste, chemicals, toxic substances and pesticides or hazardous substances;
2. disposes of any chemical contrary to this Act or hazardous waste within Namibia;
3. withholds information or provides false information about the management of hazardous wastes, chemicals or radioactive substances

commits an offence and shall, on conviction be liable to imprisonment for a term not exceeding two (2) years, or to a fine of not more than one hundred thousand Namibia Dollars (N$500, 000.00), or both.

1. Any person who –
   1. discharges any dangerous materials, substances, oil, oil mixtures into land, marine or fresh water, perineal or ephemeral river, air, or aquatic environment contrary to the provisions of this Act;
   2. pollutes the environment contrary to the provisions of this Act;
   3. discharges any pollutant into the environment contrary to the provisions of this Act;

commits an offence and shall, on conviction be liable to imprisonment for a term not exceeding two (2) years, or to a fine of not more than one hundred thousand Namibia Dollars (N$100, 000.00), or both. In addition to any sentence that the Court may impose upon the polluter by directing that person to –

* 1. pay the full cost of cleaning up the polluted environment and of removing the pollution;
  2. clean up the polluted environment and remove the effects of pollution to the satisfaction of the Commission.
  3. meet the cost of the pollution to any third parties through adequate compensation, restoration or restitution.

1. Any person who –
   1. fails, neglects or refuses to comply with any order made under this Act;

commits an offence and shall, on conviction be liable to imprisonment for a term not exceeding two (2) years, or to a fine of not more than one hundred thousand Namibia Dollars (N$100, 000.00), or both.

1. Any person who commits an offence against any provision of this Act or of regulations made thereunder for which no other penalty is specifically provided is liable, upon conviction, to imprisonment for a term not exceeding two (2) years, or to a fine of not more than one hundred thousand Namibia Dollars (N$100, 000.00), or both.

## Environmental Offences by Companies

1. When an offence against this Act, is committed by a company/ body corporate registered locally or internationally, the company / body corporate and every director or member or office of the company / body corporate who had knowledge of the commission of the offence and who did not exercise due diligence, efficiency and economy to ensure compliance with this Act, shall be guilty of an offence.
2. Where an offence is committed under this Act by a partnership, every partner or officer of the partnership who had knowledge or who should have had knowledge of the commission of the offence and who did not exercise due diligence, efficiency and economy to ensure compliance with this Act, commits an offence.
3. A person shall be personally liable for an offence against this Act, whether committed by him on his own account or as an agent or servant of another person;
4. An employer or principal shall be liable for an offence committed by an employee or agent against this Act, unless the employer or principal prove that the offence was committed against his express or standing directions.
5. The Court before which a person is charged for an offence under this Act or any regulations made thereunder may, in addition to any other order, order that the substance, motor vehicle, equipment and appliance or other thing by means whereof the offence concerned was committed or which was used in the commission of the offence be forfeited to the State and be disposed of as the court may direct.:-
   1. upon the conviction of the accused; or
   2. if it is satisfied that an offence was committed notwithstanding that no person has been convicted of the offence.
6. In making the order to forfeit under subsection (1) the Court may also order that the cost of disposing of the substance, motor vehicle, equipment, appliance or any other thing provided for in that subsection be borne by the person convicted thereunder.
7. The Court may further order that any licence, permit or any authorisation given under this Act, and to which the offence relates, be cancelled.
8. The Court may further issue an order requiring that a convicted person restores at his own cost, the environment to as near as it may be to its original state prior to the offence;
9. The Court may in addition issue an environmental restoration order against the person convicted in accordance with the provisions of this Act.

## Regulations

(1) The Minister may make regulations relating to –

* 1. All matters related to air pollution;
  2. All matters related to noise pollution;
  3. All maters related to noxious smell pollution;
  4. all matters of liquid and solid waste management;
  5. the granting of exemption from any provision of this Act and the conditions subject to which such exemption may be granted;
  6. the requirements for listing or delisting of organs of state and project activities;
  7. what constitutes an organ of state or project or activity for purposes of listing or delisting and for that purpose the Minister may -
  8. categorise activities according to size, production or storage capacity, timing, geographical location, potential for significant effects, type of industry to which the activities are related, type of proponent or on any other basis that the Minister considers appropriate, and
  9. provide differently for the different categories of activities;

1. the form and content of an application, for an environmental clearance certificate, the transfer, amendment or renewal of the certificate;
2. the form and content of a register, record or any other document required to be kept under this Act;
3. fees payable for any application made in terms of this Act and the manner of payment of fees;
4. fees payable for request for records and other information kept in terms of this Act;
5. laying down the procedure to be followed for the preparation, evaluation and adoption of prescribed environmental management instruments, including -
   * 1. strategic environmental assessments;
     2. environmental impact assessments;
     3. rehabilitation, closure and aftercare plans
6. the assessment process;
7. the content of an assessment report;
8. the procedure and time limits within which organs of state must do anything required to be done in terms of this Act;
9. time limits not otherwise provided for under this Act for things required or permitted to be done under this Act, which time limits may differ for different categories of projects, events or circumstances;
10. the manner and form for delivering or a document or for giving notice under this Act;
11. any matter which in terms of this Act is required or permitted to be prescribed; and
12. generally any other matter in respect of which it is necessary or expedient to make regulations in order to achieve the object of this Act.

(2) A regulation made under subsection (1) may prescribe a penalty for any contravention of, or failure to comply with any provision thereof, not exceeding a fine of N$ 100 000 or imprisonment for a period not exceeding two (2) years or to both such fine and such imprisonment.

## Existing Certificates, Licenses or Orders

(1) An organ of state or proponent who, on the date of commencement of this

Act, is a listed organ of state undertaking a policy plan or programme or a proponent undertaking a listed project activity under an authorisation may continue to implement such a policy, plan , programme or project for a period not exceeding one year, or such longer period as the Minister may on application approve.

(2) A listed organ of state or proponent wishing to continue with policy, plan

or programme or a listed project activity in terms of an authorisation contemplated in subsection (1) after its expiry in terms of that subsection must apply for an environmental clearance certificate, in terms of this Act and ninety (90) calendar days before its expiry.

(3) If an organ of state or proponent has lodged an application in terms of subsection (2) the relevant authorisation in respect of which the application has been lodged remains valid until such time as the application has been dealt with in terms of this Act.

## Short title and commencement

(1) This Act is called the Environmental Management Act, 2007, and

commences on a date determined by the Minister by notice in the *Gazette.*

(2) Different dates may be determined under subsection (1) in respect of different

provisions of this Act.