

REPUBLIC OF SOUTH AFRICA

**NATIONAL ENVIRONMENTAL
MANAGEMENT:
WASTE AMENDMENT BILL**

*(As presented by the Portfolio Committee on Water and Environmental Affairs
(National Assembly))
(The English text is the official text of the Bill)*

(MINISTER OF WATER AND ENVIRONMENTAL AFFAIRS)

[B 32B—2013]

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GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from existing enactments.

_____ Words underlined with a solid line indicate insertions in existing enactments.

BILL

To amend the National Environmental Management: Waste Act, 2008, so as to substitute and delete certain definitions; to exclude the department from the spheres of government that are required to compile integrated waste management plans; to require the MEC responsible for waste management to act in concurrence with the Minister when requesting certain persons to compile and submit industry waste management plans; to provide for the exclusion of the provincial department responsible for waste management from the requirement to compile an industry waste management plan; to establish a pricing strategy; to provide for the content and application of the pricing strategy; to establish the Waste Management Bureau; to provide for the determination of policy and the Minister’s oversight in relation to the Waste Management Bureau; to provide for the determination of policy and the Minister’s oversight in relation to the Waste Management Bureau; to provide for the objects, functions, funding, financial management, reporting and auditing, immovable property of the Waste Management Bureau; to provide for the employees of the Waste Management Bureau; to provide for the appointment and the functions of the Chief Executive Officer of the Waste Management Bureau; to prescribe certain matters in relation to the Waste Management Bureau; to provide for transitional provisions in respect of existing industry waste management plans and to provide for matters connected therewith.

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

Amendment of section 1 of Act 59 of 2008, as amended by Act 14 of 2013

1. Section 1 of the National Environmental Management: Waste Act, 2008, (Act No. 59 of 2008) (hereinafter referred to as the “principal Act”), as amended by the National Environmental Management Third Laws Amendment Act, 2013, is hereby amended—

- (a) by the deletion of the definition of “by-product”;
- (b) by the deletion of the definitions of “building and demolition waste”, “business waste”, “domestic waste”, “general waste”, “hazardous waste”, “inert waste”, “residue deposits” and “residue stockpiles” and the insertion of these definitions in Schedule 3;
- (c) by the substitution for the definition of “Department” of the following definition:

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- “**Department**” means the Department [of Environmental Affairs and Tourism] responsible for environmental affairs;”;
- (d) by the insertion after the definition of “domestic waste” of the following definition:
 “**employment practice**” has the meaning assigned to it in section 1 of the Public Service Act, 1994”;
- (e) by the substitution for the definition of “Minister” of the following definition:
 “**Minister**” means the Minister [of Environmental Affairs and Tourism] responsible for environmental affairs;”;
- (f) by the substitution for the definition of “recovery” of the following definition:
 “**recovery**” means the controlled extraction [of a material] or retrieval of [energy,] any substance, [or] material or object from waste [to produce a product];”;
- (g) by the substitution for the definition of “re-use” of the following definition:
 “**re-use**” means to utilise the whole, a portion of or a specific part of any [articles] substance, material or object from the waste stream [again] for a similar or different purpose without changing the form or properties of such [the articles] substance, material or object;”;
- (h) by the insertion after the definition of “sustainable development” of the following definition:
 “**the Bureau**” means the Waste Management Bureau established by section 34A;” and
- (i) by the substitution for the definition of “waste” of the following definition:
 “**waste**” means—
- (a) any substance, material or object, that is unwanted, rejected, abandoned, discarded or disposed of, or that is intended or required to be discarded or disposed of, by the holder of that substance, material or object, whether or not such substance, material or object can be re-used, recycled or recovered and includes all wastes as defined in Schedule 3 to this Act; or
- (b) any other substance, material or object that is not included in Schedule 3 that may be defined as a waste by the Minister by notice in the *Gazette*, but any waste or portion of waste, referred to in paragraphs (a) and (b), ceases to be a waste—
- (i) once an application for its re-use, recycling or recovery has been approved or, after such approval, once it is, or has been re-used, recycled or recovered;
- (ii) where approval is not required, once a waste is, or has been re-used, recycled or recovered;
- (iii) where the Minister has, in terms of section 74, exempted any waste or a portion of waste generated by a particular process from the definition of waste; or
- (iv) where the Minister has, in the prescribed manner, excluded any waste stream or a portion of a waste stream from the definition of waste.

Amendment of section 4 of Act 59 of 2008

2. Section 4 of the principal Act is hereby amended by the deletion in subsection (1) of paragraph (d).

Amendment of section 11 of Act 59 of 2008

3. Section 11 of the principal Act is hereby amended—
- (a) by the substitution for subsection (1) of the following subsection:
 “(1) The [Department and the] provincial departments responsible for waste management must prepare integrated waste management plans.”;
- (b) by the deletion of subsection (3);
- (c) by the substitution in subsection (4)(a) for subparagraphs (i) and (ii) of the following subparagraphs:
 “(i) submit its integrated waste management plan to the MEC for [approval] endorsement; and

- (ii) include the **[approved]** endorsed integrated waste management plan in its integrated development plan contemplated in Chapter 5 of the Municipal Systems Act.”;
- (d) by the substitution for subsection (5) of the following subsection:
 - “(5) The **[Department and the]** provincial departments contemplated in subsection (1) must submit their integrated waste management plans to the Minister for **[approval]** endorsement.”;
- (e) by the substitution in subsection (7) for paragraph (a) of the following paragraph:
 - “(a) Before finalising an integrated waste management plan, **[the Department and]** every provincial department contemplated in subsection (1) must follow a consultative process in accordance with sections 72 and 73.”; and
- (f) by the deletion in subsection (7) of paragraph (b).

Amendment of section 12 of Act 59 of 2008 15

4. Section 12 of the principal Act is hereby amended—
- (a) by the substitution in subsection (1)(b) for the words preceding subparagraph (i) of the following words:
 - “within the domain of the **[Department,]** provincial department or municipality, set out how that **[Department,]** provincial department or municipality intends—”;
 - (b) by the substitution in subsection (1) for paragraphs (c) and (d) of the following paragraphs:
 - “(c) within the domain of the **[Department or]** provincial department, set out how the **[Department or]** provincial department intends to identify the measures that are required and that are to be implemented to support municipalities to give effect to the objects of this Act;
 - (d) set out the priorities and objectives of the **[Department,]** provincial department or municipality in respect of waste management;”;
 - (c) by the substitution in subsection (1) for paragraph (f) of the following paragraph:
 - “(f) set out the approach of the **[Department,]** provincial department or municipality to the planning of any new facilities for disposal and decommissioning of existing waste disposal facilities;”;
 - (d) by the substitution in subsection (1) for paragraph (h) of the following paragraph:
 - “(h) describe how the **[Department,]** provincial department or municipality intends to give effect to its integrated waste management plan; and”;
 - (e) by the substitution for subsection (2) of the following subsection:
 - “(2) In the preparation of an integrated waste management plan the **[Department and]** provincial departments must give proper effect to the requirements contained in Chapter 5 of the Municipal Systems Act, insofar as such plan affects a municipality.”.

Amendment of section 13 of Act 59 of 2008

5. Section 13 of the principal Act is hereby amended—
- (a) by the substitution for subsection (1) of the following subsection:
 - “(1) Annual performance reports on the implementation of the integrated waste management plans must, in the case of a provincial department, be submitted to the MEC for approval and to the Minister for endorsement.”;
 - (b) by the substitution in subsection (2) for the words preceding paragraph (a) of the following words:
 - “The annual performance report that the **[Department or]** provincial department must submit in terms of subsection (1) must contain information on the implementation of its integrated waste management plan, including information on—”.

Insertion of Chapter 3A in Act 59 of 2008

6. The following chapter is hereby inserted in the principal Act after Chapter 3:

“CHAPTER 3A

FINANCIAL PROVISIONS

Waste Management Charges

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Pricing strategy for waste management charges

13A. (1) The Minister must, with the concurrence of the Minister of Finance, by notice in the *Gazette*, publish a pricing strategy, contemplated in subsection 13A(5)(b), to achieve the objectives of this Act in relation to waste management or any waste stream, within three months of the commencement of this Act. 10

(2) The pricing strategy is to contain the basis and a guiding methodology or methodologies for setting waste management charges, including for the funding of—

- (a) the implementation of industry waste management plans for those activities that generate specific waste streams; 15
- (b) the re-use, recycling or recovery of waste in previously disadvantaged communities;
- (c) the identification, further development and promotion of best practices in the minimisation, re-use, recycling and recovery of waste; 20
- (d) implementation of approved guidelines, norms and standards for the minimisation, re-use, recycling and recovery of waste;
- (e) the monitoring of the implementation and impact of industry waste management plans;
- (f) the creation and the monitoring of the impacts of incentives and disincentives for the minimisation, re-use, recycling and recovery of waste; or 25
- (g) the management of the disbursements of incentives for the minimisation, re-use, recycling and recovery of waste.

(3) The pricing strategy may differentiate— 30

- (a) in respect of different geographic areas, including on the basis of—
 - (i) socio-economic aspects within the area in question;
 - (ii) the physical attributes of each area; or
 - (iii) the demographic attributes of each area; or
- (b) in respect of different types of uses, including on the basis of: 35
 - (i) the manner in which the waste is generated or disposed of;
 - (ii) whether it is re-used, recycled or recovered; or
 - (iii) whether any previously disadvantaged group is impacted upon or derives any benefit therefrom.

(4) The pricing strategy may provide for a differential rate for waste management charges, including on the basis of— 40

- (a) the characteristics of the waste disposed of;
- (b) the volume of the waste disposed of;
- (c) the toxicity of the waste disposed of;
- (d) the nature and extent of the impact on the environment caused by the waste disposed of; or 45
- (e) the extent of approved deviation from prescribed waste standards or management practices.

(5) (a) Before setting a pricing strategy for waste management charges under subsection (1) the Minister must publish a notice in the *Gazette*— 50

- (i) setting out the proposed pricing strategy; and
- (ii) inviting written comments to be submitted on the proposed strategy, specifying an address to which and a date before which the comments are to be submitted, which date may not be earlier than 60 days after publication of the notice; and 55

- (iii) consider what further steps, if any, are appropriate to bring the contents of the notice to the attention of interested persons, and take those steps which the Minister considers to be appropriate; and
 (b) the Minister must consider all comments received on or before the date specified in the notice before publishing the final notice in the *Gazette*, within 30 days of the date contemplated in paragraph (5)(a)(ii).

Application of pricing strategy

- 13B.** An Act of Parliament, to give effect to necessary elements of the pricing strategy contemplated in section 13A, is to be tabled in accordance with the provisions of section 77 of the Constitution, within 3 months of the publication of the pricing strategy contemplated in section 13A (5)(b) in the *Gazette*, including detail on—
- (a) the imposition of waste management charges;
 - (b) the determination of waste management charges and the review of these waste management charges from time to time;
 - (c) procedures for the collection through the national fiscal system; and
 - (d) procedures for the appropriation and allocation of such funds referred to in paragraph (c) for the work of the Bureau and the implementation of any approved industry waste management plan for a specific waste stream as outlined in this Act.

Amendment of section 28 of Act 59 of 2008

7. Section 28 of the principal Act is hereby amended—
- (a) by the insertion after subsection (1) of the following subsection:
 (1A) When exercising the power in terms of subsection (1), the Minister must consult every MEC of the province affected by the waste in question, or where the waste management activity is conducted, prior to taking a decision whether to approve the industry waste management plan or not.
 - (b) by the substitution for subsection (2) of the following subsection:
 “(2) The MEC, with the concurrence of the Minister, may, in respect of any activity [**within the**] not contemplated in subsection (1) and which only affects that province concerned that results in the generation of waste, by written notice require a person, or by notice in the *Gazette* require a category of persons or an industry, that generates that waste to prepare and submit an industry waste management plan to the MEC for approval.”.
 - (c) by the deletion of subsection (3).
 - (d) by the substitution for subsections (6) and (7) of the following subsections:
 “(6) The Minister or MEC, as the case may be, may give directions that an industry waste management plan must be prepared by an independent person [**for the**], consistent with sections 13A and 13B, at the cost of the person, category of persons or industry contemplated in subsection (1) or (2).”; and
 - (e) by the substitution in subsection (7) for paragraph (a) of the following paragraph:
 “(a) A person, category of persons or industry contemplated in subsection (1) or (2) may elect to prepare, consistent with sections 13A and 13B, an industry waste management plan for approval in terms of this Part without being required to do so by the Minister or MEC.”.

Amendment of section 29 of Act 59 of 2008

8. Section 29 of the principal Act is hereby amended—
- (a) by the deletion of subsection (2);
 - (b) by the substitution in subsection (3) for the words preceding paragraph (a) of the following words:
 “When exercising a power under subsection (1) [**or (2)**], the Minister or MEC must consider whether—”; and

- (c) the substitution for subsections (5) and (6) of the following subsections:

“(5) **[Any] An** organ of state **[or provincial department]** contemplated in subsection (1) **[and (2), respectively]**, may, by written notice, require any person to provide such information as may be necessary to prepare the industry waste management plan. 5

(6) An organ of state **[or provincial department]** contemplated in subsection (1) **[and (2), respectively]**, must follow a consultative process in accordance with section 72 and 73, unless that plan is being prepared as a result of a person who was required to prepare that plan failing to do so, in which case section 31(2) applies.”. 10

Amendment of section 30 of Act 59 of 2008

9. Section 30 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) The Minister, in a notice contemplated in section 28(1) or 29(1), or the MEC, with the concurrence of the Minister, in a notice contemplated in section 28(2) **[or 29(2)]**, must specify the information that must be included in the industry waste management plan.”. 15

Amendment of section 32 of Act 59 of 2008

10. Section 32 of the principal Act is hereby amended by—

- (a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words: 20

“The Minister, acting in terms of section 28(1) or 29(1), or the MEC acting in terms of section 28(2) **[or 29(2)]**, may on receipt of an industry waste management plan—”;

- (b) by the substitution in subsection (1) for paragraph (d) of the following paragraph: 25

“(d) reject the plan with reasons if it does not comply with the requirements of a notice in terms of section 28(1) or (2) or 29(1) **[or (2)]**, as the case may be, or if a consultation process in accordance with section 31 was not followed.”; 30

- (c) by the insertion after subsection (5) of the following subsection:

“(5A) The Minister or the MEC, as the case may be, must in accordance [to] with sections 72 and 73, follow such consultation process, as may be appropriate under the circumstances, before considering the industry waste management plan for approval in terms of section 28(1) or (2).” 35

- (d) the substitution for subsection (7) of the following subsection:

“(7) An industry waste management plan that has been prepared by an organ of state **[or provincial department responsible for environmental affairs]** in terms of section 29 and that has been approved by the Minister or MEC, as the case may be, must be published in the relevant *Gazette*, together with an indication of when and how the plan must be implemented, if applicable.”. 40

Amendment of section 33 of Act 59 of 2008

11. Section 33 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection: 45

“(1) If the Minister or MEC rejects an industry waste management plan in terms of section 32 **[more than once]**, or if any person who is required in terms of section 28(1) or (2) to prepare an industry waste management plan fails to do so, or if a person fails to revise or amend a plan as required by the Minister or the MEC in terms of section 32(1) or section 17 of the National Environmental Management: Waste Amendment Act, 2014, the Minister or MEC, as the case may be, may by notice in writing and without any criminal proceedings being affected, specify the waste management measures that must be taken by that person **[to ensure that that person is not unduly advantaged by the failure to submit a plan]**.”. 55

Amendment of section 34 of Act 59 of 2008

12. Section 34 (1) of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) An industry waste management plan that has been required by the Minister in terms of section 28(1) or 29(1), or by the MEC in terms of section 28(2) [or 29(2)], must be reviewed at intervals specified in the approval or at intervals specified by the Minister or MEC by notice in writing or in the relevant *Gazette*.” 5

Insertion of Part 7A in Act 59 of 2008

13. The following Part is hereby inserted in the principal Act after section 34:

“Part 7A 10

Waste Management Bureau

Establishment of Waste Management Bureau

34A. (1) An implementation Bureau dealing with waste management to be known as the “Waste Management Bureau” is hereby established, within the Department, as a juristic person. 15

(2) The Bureau must comply with the provisions of the Public Finance Management Act, 1999 (Act No. 1 of 1999).

(3) In the event of absence of a functional Bureau or a Chief Executive Officer, the powers and duties of the Bureau revert to the Director-General of the Department contemplated in section 34G(1), who, in such a case, must exercise those powers and perform those duties until the Bureau is functional or a Chief Executive Officer is appointed. 20

Determination of policy

34B. (1) The Minister must, after consultation with the Bureau, determine and publish a policy within which the Bureau must exercise its powers and perform its functions. 25

(2) The Minister may, after consultation with the Bureau, amend, substitute or withdraw the policy determined in terms of subsection (1), and must publish the amended policy.

(3) The Minister must, 30 days before the final publication of any policy contemplated in subsections (1) and (2), table the policy in Parliament. 30

Minister’s supervisory powers

34C. (1) The Bureau must exercise its powers and perform its functions subject to the policy determined in terms of section 34B (1) or (2), the service level standards and norms contemplated in subsection (2)(b) and any directives issued by the Minister in terms of subsection 2(c). 35

(2) The Minister—

(a) must monitor the exercising of powers and performance of functions of the Bureau in terms of the policy determined in terms of section 34B(1) or (2); 40

(b) may set service level standards and norms for the Bureau in the execution of its powers and functions; or

(c) must issue directives to the Bureau in the case of non compliance with the policy determined in terms of section 34B(1) or (2) or the service level standards and norms issued in terms of subsection 2(b), to ensure the effective and efficient functioning of the Bureau and for the achievement of the objectives of this Act.”. 45

Objects of Bureau

34D. The objects of the Bureau are to—

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| (a) | function as a specialist implementing agent within the Department in respect of matters delegated to the Bureau in terms of this Act; | 5 |
| (b) | promote and facilitate minimisation, re-use, recycling and recovery of waste; | |
| (c) | manage the disbursement of incentives and funds derived from waste management charges contemplated in sections 13B and 34D for the minimisation, reuse, recycling, recovery, transport, storage, treatment and disposal of waste and the implementation of industry waste management plans; | 10 |
| (d) | monitor implementation of industry waste management plans and the impact of incentives and disincentives; | |
| (e) | progressively build capacity within the Bureau to provide specialist support for the development and implementation of municipal waste management plans and capacity building programmes; and | 15 |
| (f) | support and advise on the development of waste management plans, tools, instruments, processes, systems, norms, standards and municipal waste management plans and capacity building programmes. | |

Functions of Bureau

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34E. (1) The Bureau must—

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| (a) | implement the disbursement of incentives and funds derived from waste management charges contemplated in sections 13B and 34D; | |
| (b) | identify and promote best practices in the minimisation, re-use, recycling or recovery of waste; | 25 |
| (c) | progressively build capacity of the Bureau to support municipalities in the development and implementation of integrated waste management plans and capacity building programmes; | |
| (d) | support and advise on the development of industry waste management plans, integrated waste management plans and other tools, instruments, processes and systems, including specialist support for the development of norms or standards for the minimisation, re-use, recycling or recovery of waste and the building of municipal waste management capacity; | 30 |
| (e) | monitor the implementation of industry waste management plans; | 35 |
| (f) | monitor and evaluate the impact of incentives and disincentives; and | |
| (g) | perform any other task or function that the Minister may assign or delegate to the Bureau in relation to the implementation of this Act. | |
| | (2) The Bureau may— | |
| (a) | invest any of its money, after having complied with section 34F(2); and | 40 |
| (b) | charge fees for services rendered, other than services rendered in terms of section 13A or to the Minister or the Department. | |

Funding of Bureau

34F. (1) The funds of the Bureau consist of—

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| (a) | money derived and allocated from charges referred to in section 13B; | |
| (b) | income derived by it for services rendered; | |
| (c) | money appropriated by Parliament; | |
| (d) | voluntary contributions, donations and bequests received consistent with the provisions of the regulations made in terms of section 76(1)(k) or (l) of the Public Finance Management Act, 1999; and | 50 |
| (e) | income derived from investments referred to in section 34E(2)(b). | |
| | (2) The Bureau must utilise its funds to defray expenses incurred in the performance of its functions. | |
| | (3) The Bureau must utilise the donations and contributions referred to in subsection (1)(d) in accordance with the conditions, if any, imposed by the donor or contributor concerned, but those conditions must be approved by the Minister, in concurrence with the Minister of Finance, and must not be | 55 |

inconsistent with the objects of the Bureau, provisions of this Act, regulations made in terms of section 76(1)(k) or (l) of the Public Finance Management Act, 1999, or any other law.

(4) The Chief Executive Officer must, with the concurrence of the Minister and the Minister of Finance—

(a) open an account in the name of the Bureau with an institution registered as a bank in terms of the Banks Act, 1990 (Act No. 94 of 1990); and

(b) deposit therein all money received in terms of subsection (1).

(5) The Chief Executive Officer is responsible and accountable to the Director-General of the Department as the accounting authority for all money received by the Bureau and the utilisation of that money.

Financial management

34G. (1) The Director-General of the Department is, for the purposes of the Public Finance Management Act, 1999 (Act No. 1 of 1999), the accounting authority and must cause full and proper books of account and all the necessary records in relation thereto to be kept.

(2) The Chief Executive Officer must ensure compliance with the Public Finance Management Act, 1999 (Act No. 1 of 1999), including ensuring that the Bureau's annual budgets, corporate plans, annual reports and audited financial statements are prepared and submitted.

Reporting and audit

34H. (1) The Bureau must in each financial year, on or before a date determined by the Public Finance Management Act, 1999 (Act No. 1 of 1999), submit an annual report on its activities and a statement of its income and estimated expenditure for the next financial year to the Minister through the Director-General for approval.

(2) Notwithstanding subsection (1), the Bureau must submit such additional reports as the Minister or the Director-General may require.

(3) The books, records of account and financial statements of the Bureau must be audited annually by the Auditor-General.

Immovable property

34I. (1) The Bureau may, with the approval of the Minister, acquire, hold or dispose of immovable property in the course of its business.

(2) The policy and procedure of the Bureau with regard to the acquisition and disposal of immovable property must be in accordance with the policies, regulations and practices of the public service.

Chief Executive Officer of Bureau

34J. (1) The Director-General of the Department must recruit and the Minister must approve the appointment of a suitably qualified and skilled person as the Chief Executive Officer of the Bureau in accordance with the Public Service Act, 1994, including its employment practices, but at a level of remuneration and employment service conditions as determined by the Minister, in concurrence with the Minister of Finance.

(2) The appointment of the Chief Executive Officer must follow a transparent and competitive recruitment and selection process, in accordance with the Public Service Act, 1994.

(3) The Chief Executive Officer must be appointed for a term not exceeding five years subject to subsection (1).

(4) The Chief Executive Officer must enter into a written performance agreement with the Minister within three months of taking up the post as Chief Executive Officer.

(5) The Director-General of the Department, with the approval of the Minister, may terminate the Chief Executive Officer's employment in accordance with the Public Service Act, 1994.

(6) The Chief Executive Officer may not serve for more than two consecutive terms, unless otherwise stipulated by the Minister, after consultation with the Minister of Finance.

Functions of Chief Executive Officer

- 34K.** (1) The Chief Executive Officer is responsible for— 5
- (a) the management of the operations of the Bureau, subject to the direction of the Director-General of the Department;
 - (b) the compilation of a business and financial plan and reports in terms of the Public Finance Management Act, 1999 (Act No. 1 of 1999), for approval by the Director-General of the Department and the Minister; 10
 - (c) the appointment of members of staff;
 - (d) control of, and maintenance of discipline over, members of staff of the Bureau; and
 - (e) any other function provided for in this Act.
- (2) The Chief Executive Officer is accountable to the Director-General of the Department and must report to him or her on the activities of the Bureau. 15
- (3) The Chief Executive Officer must ensure that the Bureau complies with all relevant provisions of applicable public service policy, regulations and legislation. 20
- (4) If the Chief Executive Officer is for any reason unable to perform any of his or her functions, the Director-General of the Department must, in writing, appoint another person as Acting Chief Executive Officer until the Chief Executive Officer is able to resume those functions, but not for a period longer than six months, except under circumstances where the absence of the Chief Executive Officer is due to a disciplinary matter. 25
- (5) The Chief Executive Officer may, in writing and on such conditions as he or she may determine, delegate any power or duty of the Chief Executive Officer to a senior member of the Bureau, unless the Director-General of the Department or Minister prohibits a specific delegation. 30
- (6) A delegation made under subsection (4) does not—
- (a) divest the Chief Executive Officer of the accountability concerning the performance of the function in question; or
 - (b) prohibit the performance of the function in question by the Chief Executive Officer. 35
- (7) A delegation made under subsection (4) may be repealed, withdrawn or amended, but the repeal, withdrawal or amendment does not affect any right which may have accrued to a person as a result of the function performed before the delegation was repealed, withdrawn or amended.

Employees of Bureau 40

- 34L.** (1) Subject to subsection (2), the Chief Executive Officer—
- (a) must appoint such number of employees, within allocated resources available for that purpose, or receive on secondment such number of persons provided to enable the Bureau to perform its functions;
 - (b) is responsible for the administrative control of the Bureau and for the discipline of the employees and persons contemplated in paragraph (a); and 45
 - (c) must ensure compliance with applicable public service and labour legislation.
- (2) The employees referred to in subsection (1) must at least have the following specialist expertise: 50
- (a) resource economics;
 - (b) financial accounting;
 - (c) financial management;
 - (d) process chemistry or engineering; and 55
 - (e) technical expert knowledge in the waste and environmental resource management fields.
- (3) The provisions relating to employment practice contained in the Public Service Act, 1994, the regulations, determinations, deemed determi-

nations contemplated in section 5 (6) of that Act and directives made in terms of that Act apply, except with regard to consideration of scales of remuneration and employment conditions service of the staff referred to in subsection (3).

(4) The Minister must determine, in concurrence with the Minister of Finance, the organisational structure and the scale of remuneration for employees referred to in paragraphs (a) to (e) of subsection (3), which may be different from those of the public service.

(5) A person employed by the Bureau may become a member of the Government Employees' Pension Fund mentioned in section 2 of the Government Employees Pension Law, 1996 (Proclamation No. 21 of 1996), and is entitled to pension and retirement benefits as if that person were in service in a post classified in a division of the public service.

(6) The Bureau may utilise persons seconded from or transferred from the public service in accordance with the provisions of the Public Service Act, 1994 (Proclamation No. 103 of 1994).”.

Insertion of section 69A in Act 59 of 2008

14. The following section is hereby inserted in the principal Act after section 69:

“Regulations for Bureau

69A. The Minister must make regulations regarding—

- (a) any matter required or to be prescribed in terms of Part 7A;
- (b) the setting or determination of service fees by the Bureau, other than those referred to in section 13B;
- (c) the circumstances under which service fees can be charged;
- (d) the manner in which the Bureau will receive and disburse funds referred to in section 34F(1); or
- (e) any other matter in relation to the Bureau that is necessary to be prescribed for the proper implementation of this Act.”.

Repeal of section 78 of Act 59 of 2008

15. Section 78 of the principal Act is hereby repealed.

Amendment of Table of Contents of Act 59 of 2008

16. The Table of Contents of the principal Act is hereby amended—

- (a) by the insertion after item 13 of the following items:

*“Chapter 3A
Financial Provisions
Waste Management Charges*

13A. Pricing Strategy for Waste Management Charges

13B. Application of Pricing strategy

- (b) by the insertion after item 34 of the following items:

*“Part 7A
Waste Management Bureau*

34A. Establishment of Waste Management Bureau

34B. Determination of policy

34C. Minister's supervisory powers

34D. Objects of Bureau

34E. Functions of Bureau

34F. Funding of Bureau

34G. Financial Management

34H. Reporting and Auditing

34I. Immovable property

34J. Chief Executive Officer of Bureau

34K. Functions of the Chief Executive Officer

34L. Employees of Bureau”;

(c) by the insertion after item 69 of the following item:

“69A. Regulations for Bureau”; and

(d) by the addition of the following item under Schedules:

“3. Defined Wastes“.

5

Transitional provisions in respect of any existing industry waste management plan

17. (1) Existing industry waste management plans approved prior to commencement of this Act are subject to the provisions of this Act, the pricing strategy for waste management charges referred to in section 13A and subsequent waste charge provisions and procedures of the Act referred to in section 13B.

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(2) A person, a category of persons or industry that operates in terms of an approved industry waste management plan at the time of the coming into operation of this Act, must align the plan with the provisions of this Act and the strategy referred to in 13A, and this alignment must take place after the publication of the strategy and before the commencement of the Act contemplated in section 13B.

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(3) A person, a category of persons or industry referred to in subsection (2) must, within 60 calendar days after the publication of the strategy, submit an initial draft aligned plan for review to the Minister or MEC, as the case may be, which must include specification of how the plan will transition to the system of waste charges outlined in the strategy contemplated in section 13A and which will subsequently be enacted in terms of section 13B.

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(4) On receipt of the draft aligned plan referred to in subsection (3) by the Minister or MEC, he or she may review the proposed alignments and either accept or refer the proposed alignments back for further revision before acceptance.

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(5) The process outlined in subsections (3) and (4) must be completed prior to the commencement of the Act contemplated in section 13B but the finalisation of these processes shall not delay the commencement of the Act contemplated in section 13B.

(6) A transitional period of 180 calendar days from the commencement of the Act referred to in section 13B is hereby provided for to enable transitional steps detailed in subsections (7) to (12).

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(7) Within 60 calendar days from the commencement date of the Act referred to in section 13B, a person, a category of persons or industry referred to in subsection (2), must amend the existing approved industry waste management plan in accordance with the provisions of this Act and the Act contemplated in section 13B, including measures to comply with the system of waste charges outlined in section 13B paragraphs (a) to (c) within the stipulated time frames, and submit the amended plan for consideration to the Minister or MEC, as the case may be.

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(8) If a person, category of persons or industry fails to submit the amended industry waste management plan for consideration within the time period stipulated in subsection (7), the plan shall lapse after 30 calendar days and members of such plan must, as of this date, comply with the waste charge provisions and procedures outlined in the Act contemplated in section 13B.

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(9) On receipt of the amendments referred to in subsection (7) by the Minister or MEC, he or she must, within 60 calendar days, consider the amendments in terms of the provisions of this Act and the Act contemplated in section 13B and either accept, refer the amendments back for further revision or reject the amendments.

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(10) If the amendments are referred back or rejected, the person referred to in subsection (2) may amend the plan and re-submit the plan within 30 calendar days, for further consideration by the Minister or MEC in terms of sections 28 and 29.

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(11) On receipt of the re-submitted amendments, referred to in subsection (10), by the Minister or MEC, he or she must, within 30 calendar days, consider the amendments in terms of the provisions of this Act and the Act referred to in section 13B and either approve or not approve the amendments.

(12) If the Minister or MEC does not approve the amendments to the plan referred to in subsection (11) the plan shall lapse after 30 calendar days, and members of such plan must, as of this date, comply with the waste management charge provisions and procedures outlined in the Act referred to in section 13B and the plan must wind up its affairs in accordance with applicable laws.

Insertion of Schedule 3 in Act 59 of 2008

18. Schedule 3 is hereby inserted after Schedule 2:

“SCHEDULE 3: DEFINED WASTES

CATEGORY A: Hazardous Waste

“**hazardous waste**” means any waste that contains organic or inorganic elements or compounds that may, owing to the inherent physical, chemical or toxicological characteristics of that waste, have a detrimental impact on health and the environment and includes hazardous substances, materials or objects within business waste, residue deposits and residue stockpiles as outlined below:

“**business waste**” means waste that emanates from premises that are used wholly or mainly for commercial, retail, wholesale, entertainment or government administration purposes, which include:

| | | |
|--|--|----------|
| 1. Wastes from agriculture, horticulture, aquaculture, forestry, hunting and fishing, food preparation and processing | (a) hazardous portion of wastes from agriculture, horticulture, aquaculture, forestry, hunting and fishing | 25 30 |
| 2. Wastes from wood processing and the production of panels and furniture, pulp, paper and cardboard | (a) hazardous portion of wastes from wood processing and the production of panels and furniture | 35 |
| | (b) hazardous portion of wastes from wood preservation | |
| | (c) hazardous portion of wastes from pulp, paper and cardboard production and processing | 40 |
| 3. Wastes from the leather, fur and textile industries | (a) hazardous portion of wastes from the leather and fur industry | |
| | (b) hazardous portion of wastes from the textile industry | |
| 4. Wastes from petroleum refining, natural gas purification and pyrolytic treatment of coal | (c) wastes from petroleum refining | 45 |
| | (d) wastes from the pyrolytic treatment of coal | |
| | (e) wastes from natural gas purification and transportation | |
| 5. Wastes from inorganic chemical processes | (a) wastes from the manufacture, formulation, supply and use (MFSU) of acids | 50 |
| | (b) wastes from the MFSU of bases | |
| | (c) wastes from the MFSU of salts and their solutions and metallic oxides | |
| | (d) metal-containing wastes | |

| | | |
|--|---|----|
| | (e) wastes from the MFSU of sulphur chemicals, sulphur chemical processes and desulphurisation processes | |
| | (f) wastes from the MFSU of halogens and halogen chemical processes | |
| | (g) wastes from the MFSU of silicon and silicon derivatives | |
| | (h) wastes from the MFSU of phosphorous chemicals and phosphorous chemical processes | 5 |
| | (i) wastes from the MFSU of nitrogen chemicals, nitrogen chemical processes and fertiliser manufacture | |
| | (j) wastes from the manufacture of inorganic pigments | |
| | (k) other wastes from inorganic chemical processes | 10 |
| 6. Wastes from organic chemical processes | (a) wastes from the manufacture, formulation, supply and use (MFSU) of basic organic chemicals | |
| | (b) wastes from the MFSU of plastics, synthetic rubber and man-made fibres | 15 |
| | (c) wastes from the MFSU of organic dyes and pigments | |
| | (d) wastes from the MFSU of organic plant protection products, wood preserving agents and other biocides | 20 |
| | (e) wastes from the MFSU of pharmaceuticals | |
| | (f) wastes from the MFSU of fats, grease, soaps, detergents, disinfectants and cosmetics | |
| | (g) other wastes from the MFSU of fine chemicals and chemical products | 25 |
| 7. Wastes from thermal processes | (a) hazardous portion of wastes from power stations and other combustion plants | |
| | (b) hazardous portion of wastes from the iron and steel industry | 30 |
| | (c) wastes from aluminium thermal metallurgy | |
| | (d) wastes from lead thermal metallurgy | |
| | (e) wastes from zinc thermal metallurgy | |
| | (f) wastes from copper thermal metallurgy | 35 |
| | (g) wastes from silver, gold and platinum thermal metallurgy | |
| | (h) wastes from other non-ferrous thermal metallurgy | |
| | (i) hazardous portion of wastes from casting of ferrous pieces | 40 |
| | (j) hazardous portion of wastes from casting of non-ferrous pieces | |
| | (k) hazardous portion of wastes from manufacture of glass and glass products | 45 |
| | (l) hazardous portion of wastes from manufacture of ceramic goods, bricks, tiles and construction products | |
| | (m) hazardous portion of wastes from manufacture of cement, lime and plaster and articles and products made from them | 50 |

| | | |
|---|---|----|
| 8. Waste from the photographic industry | (a) hazardous portion of waste from the photographic industry | |
| 9. Wastes from the manufacture, formulation, supply and use (MFSU) of coatings (paints, varnishes and vitreous enamels), adhesives, sealants and printing inks | (a) wastes from MFSU and removal of paint and varnish | 10 |
| | (b) wastes from MFSU of other coatings (including ceramic materials) | |
| | (c) wastes from MFSU of printing inks | |
| | (d) wastes from MFSU of adhesives and sealants (including waterproofing products) | 15 |
| 10. Wastes from chemical surface treatment and coating of metals and other materials; non-ferrous hydrometallurgy | (a) wastes from chemical surface treatment and coating of metals and other materials (for example galvanic processes, zinc coating processes, pickling processes, etching, phosphating, alkaline degreasing, anodising) | 20 |
| | (b) wastes from non-ferrous hydrometallurgical processes | 25 |
| | (c) wastes from sludges and solids from tempering processes | |
| | (d) wastes from hot galvanising processes | |
| 11. Wastes from shaping and physical and mechanical surface treatment of metals and plastics | (a) hazardous portion of wastes from shaping and physical and mechanical surface treatment of metals and plastics | 30 |
| | (b) wastes from water and steam degreasing processes | 35 |
| 12. Oil wastes and wastes of liquid fuels (except edible oils) | (a) waste hydraulic oils | |
| | (b) waste engine, gear and lubricating oils | |
| | (c) waste insulating and heat transmission oils | 40 |
| | (d) oil/water separator contents | |
| | (e) wastes of liquid fuels | |
| | (f) hazardous portion of other oil wastes | |
| 13. Waste organic solvents, refrigerants and propellants | (a) waste organic solvents, refrigerants and foam/aerosol propellants | 45 |
| 14. Other wastes not specified in the list | (a) hazardous portion of wastes from end-of-life vehicles from different means of transport (including off-road machinery) and wastes from dismantling of end-of-life vehicles and vehicle maintenance | 50 |
| | (b) hazardous portion of wastes from electrical and electronic equipment | |
| | (c) hazardous portion of wastes from off-specification batches and unused products | 55 |
| | (d) wastes from discarded gases in pressure containers and discarded chemicals | |
| | (e) wastes from discarded batteries and accumulators | 60 |
| | (f) wastes from transport tank, storage tank and barrel cleaning | |
| | (g) spent catalysts wastes | |
| | (h) oxidising substances wastes | |
| | (i) aqueous liquid wastes destined for off-site treatment | 65 |
| | (j) waste linings and refractories | |

| | | |
|--|--|----|
| 15. Construction wastes | (a) wastes from bituminous mixtures, coal tar and tarred products | 5 |
| | (b) discarded metals (including their alloys) | |
| | (c) waste soil (including excavated soil from contaminated sites), stones and dredging spoil | |
| | (d) wastes from insulation materials and asbestos-containing construction materials | |
| | (e) wastes from gypsum-based construction material | |
| | (f) wastes from other construction and demolition [wastes] | |
| 16. Wastes from human or animal health care and/or related research (except kitchen and restaurant wastes not arising from immediate health care) | (a) wastes from natal care, diagnosis, treatment or prevention of disease in humans | 15 |
| | (b) wastes from research, diagnosis, treatment or prevention of disease involving animals | 20 |
| 17. Wastes from waste management facilities | (a) hazardous portion of wastes from incineration or pyrolysis of waste | 25 |
| | (b) hazardous portion of wastes from physico/chemical treatments of waste | |
| | (c) hazardous portion of stabilised/solidified wastes | |
| | (d) hazardous portion of wastes from aerobic treatment of solid wastes | 30 |
| | (e) hazardous portion of wastes from anaerobic treatment of waste | 35 |
| | (f) landfill leachate wastes | |
| | (g) wastes from shredding of metal-containing wastes | |
| | (h) wastes from oil regeneration | |
| | (i) wastes from soil remediation | |

“**residue deposits**” means any residue stockpile remaining at the termination, cancellation or expiry of a prospecting right, mining right, mining permit, exploration right or production right; 40

“**residue stockpile**” means any debris, discard, tailings, slimes, screening, slurry, waste rock, foundry sand, mineral processing plant waste, ash or any other product derived from or incidental to a mining operation and which is stockpiled, stored or accumulated within the mining area for potential re-use, or which is disposed of, by the holder of a mining right, mining permit or, production right or an old order right, including historic mines and dumps created before the implementation of this Act. [**and**] 45

Residue deposits and residue stockpiles include:

| | | |
|---|--|----|
| 1) Wastes resulting from exploration, mining, quarrying, and physical and chemical treatment of minerals | (a) wastes from mineral excavation | 50 |
| | (b) wastes from physical and chemical processing of metalliferous minerals | |
| | (c) wastes from physical and chemical processing of non-metalliferous minerals | 55 |
| | (d) wastes from drilling muds and other drilling operations [wastes] | |

CATEGORY B: General Waste

“**general waste**” means waste that does not pose an immediate hazard or threat to health or to the environment, and includes—

- (a) domestic waste;
- (b) building and demolition waste;
- (c) business waste;
- (d) inert waste; or
- (e) any waste classified as non-hazardous waste in terms of the regulations made under section 69,

and includes non-hazardous substances, materials or objects within business, domestic, inert, building and demolition wastes as outlined below:

“**business waste**” means waste that emanates from premises that are used wholly or mainly for commercial, retail, wholesale, entertainment or government administration purposes, which include:

| | | |
|--|--|----|
| 1. Wastes from agriculture, horticulture, aquaculture, forestry, hunting and fishing, food preparation and processing | (a) wastes from agriculture, horticulture, aquaculture, forestry, hunting and fishing not otherwise specified in Category A | 5 |
| | (b) wastes from the preparation and processing of meat, fish and other foods of animal origin | 10 |
| | (c) wastes from fruit, vegetables, cereals, edible oils, cocoa, coffee, tea and tobacco preparation and processing; conserve production; yeast and yeast extract production, molasses preparation and fermentation | 15 |
| | (d) wastes from sugar processing | 20 |
| | (e) wastes from the dairy products industry | 25 |
| | (f) wastes from the baking and confectionery industry | 30 |
| | (g) wastes from the production of alcoholic and non-alcoholic beverages (except coffee, tea and cocoa) | 35 |
| 2. Wastes from wood processing and the production of panels and furniture, pulp, paper and cardboard | (a) wastes from wood processing and the production of panels and furniture not otherwise specified in Category A | 40 |
| | (b) wastes from wood preservation not otherwise specified in Category A | 45 |
| | (c) wastes from pulp, paper and cardboard production and processing not otherwise specified in Category A | 50 |
| 3. Wastes from the leather, fur and textile industries | (a) wastes from the leather and fur industry not otherwise specified in Category A | 55 |
| | (b) wastes from the textile industry not otherwise specified in Category A | 60 |
| 4. Wastes from thermal processes | (a) wastes from power stations and other combustion plants not otherwise specified in Category A | 65 |
| | (b) wastes from the iron and steel industry not otherwise specified in Category A | 70 |
| | (c) wastes from casting of ferrous pieces not otherwise specified in Category A | 75 |
| | (d) wastes from casting of non-ferrous pieces not otherwise specified in Category A | 80 |
| | (e) wastes from manufacture of glass and glass products not otherwise specified in Category A | 85 |

| | | |
|--|---|----------|
| | (f) wastes from manufacture of ceramic goods, bricks, tiles and construction products not otherwise specified in Category A | |
| | (g) wastes from manufacture of cement, lime and plaster and articles and products made from them not otherwise specified in Category A | 5 |
| 5. Waste from the photographic industry | (a) waste from the photographic industry not otherwise specified in Category A | |
| 6. Wastes from shaping and physical and mechanical surface treatment of metals and plastics | (a) wastes from shaping and physical and mechanical surface treatment of metals and plastics not otherwise specified in Category A | 10 15 |
| 7. Oil wastes and wastes of liquid fuels | (a) oil wastes not otherwise specified in Category A | |
| 8. Other wastes not specified in the list | (a) wastes from end-of-life vehicles from different means of transport (including off-road machinery) and wastes from dismantling of end-of-life vehicles and vehicle maintenance not otherwise specified in Category A | 20 |
| | (b) wastes from electrical and electronic equipment not otherwise specified in Category A | 25 |
| | (c) wastes from off-specification batches and unused products not otherwise specified in Category A | |
| 9. Food wastes | (a) waste from kitchen and restaurant facilities | 30 |
| 10. Wastes from waste management facilities | (a) wastes from incineration or pyrolysis of waste not otherwise specified in Category A | |
| | (b) wastes from aerobic treatment of solid wastes not otherwise specified in Category A | 35 |
| | (c) wastes from anaerobic treatment of waste not otherwise specified in Category A | |
| | (d) wastes from shredding of metal-containing wastes not otherwise specified in Category A | |
| | (e) wastes from the mechanical treatment of waste not otherwise specified in Category A (for example sorting, crushing, compacting, pelletising) not otherwise specified | 40 |

“**building and demolition waste**” means waste, excluding hazardous waste, produced during the construction, alteration, repair or demolition of any structure, and includes rubble, earth, rock and wood displaced during that construction, alteration, repair or demolition, which include:

| | | |
|---|--|----|
| 11. Building and demolition wastes | (a) discarded concrete, bricks, tiles and ceramics | |
| | (b) discarded wood, glass and plastic | 50 |
| | (c) discarded metals | |
| | (d) discarded soil, stones and dredging spoil | |
| | (e) Other discarded building and demolition wastes | 55 |

“**domestic waste**” means waste, excluding hazardous waste, that emanates from premises that are used wholly or mainly for residential, educational, health care, sport or recreation purposes, which include:

| | | |
|----------------------------|----------------------------|----|
| 12. Domestic wastes | (a) garden and park wastes | 60 |
| | (b) municipal waste | |
| | (c) food waste | |

“inert waste” means waste that—

- (a) does not undergo any significant physical, chemical or biological transformation after disposal;
- (b) does not burn, react physically or chemically biodegrade or otherwise adversely affect any other matter or environment with which it may come into contact; and
- (c) does not impact negatively on the environment, because of its pollutant content and because the toxicity of its leachate is insignificant; and which include:

| | | |
|------------------------|--|----|
| 13. Inert waste | (a) discarded concrete, bricks, tiles and ceramics | 10 |
| | (b) discarded glass | |
| | (c) discarded soil, stones and dredging spoil | |

Short title and commencement

19. (1) This Act is called the National Environmental Management: Waste Amendment Act, 2014, and comes into operation on the date of publication of this Act by the President in the *Gazette* in terms of section 81 of the Constitution of the Republic of South Africa, 1996. 15

**MEMORANDUM ON THE OBJECTS OF THE NATIONAL
ENVIRONMENTAL MANAGEMENT: WASTE AMENDMENT BILL,
2013**

1. INTRODUCTION

- 1.1 The purpose of the National Environmental Management: Waste Act, 2008 (Act no. 59 of 2008) (the “NEMWA”), is to reform the law regulating waste management in order to protect health and the environment by providing reasonable measures for the prevention of pollution and ecological degradation and for securing ecologically sustainable development. In this regard, the NEMWA provides for institutional arrangements and planning matters; the establishment of a national waste information system; national norms and standards for the management of waste by all spheres of government; licensing and control of waste management activities, as well as waste management measures and the remediation of contaminated land.
- 1.2 Since 2009, the National Department and the provincial departments responsible for waste management have identified certain implementation challenges with respect to some provisions of the NEMWA.

2. PURPOSE OF BILL

The purpose of this Bill is to amend the NEMWA, in order to—

- substitute and delete certain definitions;
- to exclude the department from the spheres of government that are required to compile integrated waste management plans;
- to require the MEC responsible for waste management to act in concurrence with the Minister when requesting certain persons to compile and submit industry waste management plans;
- to provide for the exclusion of the provincial department responsible for waste management from the requirement to compile an industry waste management plan;
- to establish the Waste Management Bureau;
- to provide for the objects, functions, funding, financial management, reporting and auditing, immovable property of the Waste Management Bureau;
- to provide for the employees of the Waste Management Bureau; to provide for the appointment and the functions of the Chief Executive Officer of the Waste Management Bureau;
- to provide for the determination of policy and the Minister’s oversight in relation to the Waste Management Bureau;
- to prescribe certain matters in relation to the Waste Management Bureau; and
- to provide for matters connected therewith.

3. OBJECTS OF BILL

Clause 1: Amendment of section 1

This amendment seeks to provide certainty, remove ambiguity and provide congruency and alignment with regard to the interpretation and understanding of definitions and key concepts. In order to achieve the afore-mentioned objective the following definitions have been deleted: by-product”, “building and demolition waste”, “business waste”, “domestic waste”, “general waste”, “hazardous

waste” and “inert waste”. The definitions for “waste”, “recovery” and re-use have been amended. The new definition of waste intends to—

- provide more clarity and certainty;
- less ambiguity with respect to its interpretation;
- provide for the Minister to define new wastes or exclude wastes through a prescribed manner;
- provide for a comprehensive list of wastes as a new Schedule 3;
- provide for a regulatory mechanism for the reuse, recycling and recovery of waste streams;
- provide for opportunities to promote the recycling economy within a legal framework;
- provide for the end of waste.

The definition for “Bureau” has been added, which was necessitated by the establishment of the Waste Management Bureau.

Clause 2: Amendment of section 4

The current provisions of the NEMWA are not applicable to the disposal of animal carcasses. This clause will ensure that the disposal of animal carcasses will be regulated under the NEMWA.

Clause 3: Amendment of section 11

This amendment provides that the National Department will not be required to prepare an integrated waste management plan, but will rather prepare the National Waste Management Strategy setting out how the objectives of the NEMWA will be achieved. The intention of the amendment is to avoid the duplication of plans. The amendment will also provide for municipal integrated waste management plans to be submitted to the MEC for endorsement and not for approval.

Clause 4: Amendment of section 12

This is a consequential amendment that provides that the National Department will no longer be required to develop an integrated waste management plan.

Clause 5: Amendment of section 13

This amendment is consequential and provides that the reports on the implementation of the provincial integrated management plans must be submitted to the MEC for approval and to the Minister for endorsement.

Clause 6: Insertion of Chapter 3A, sections 13A and 13B

This amendment makes provision for the establishment of a pricing strategy within three months of the commencement of this Act in order to achieve the objectives of this Act in relation to waste management or any waste stream. It also sets out the content of the pricing strategy.

Clause 7: Amendment of section 28

A new subsection (1A) has been inserted, which stipulates that when the Minister calls for industry waste management plans to be compiled, she must consult every MEC of the province affected by the waste in question, or where the waste management activity is conducted, prior to taking a decision whether to approve the industry waste management plan or not.

Subsection (2) has been amended to clarify the MEC's powers in relation to requesting and approving industry waste management plans.

Industry waste management plans will have to comply with the pricing strategy after the commencement of this Act.

Clause 8: Amendment of section 29

This amendment provides that the provincial departments responsible for waste management will not be required to prepare industry waste management plans, but will have to prepare and implement integrated waste management plans. This amendment is intended to avoid the duplication of plans.

Clause 9: Amendment of section 30

This amendment that relates to the issuing of a notice by the Minister or the MEC, specifying information to be included in the industry waste management plans, is consequential and provides that the MEC responsible for waste management must act in concurrence with the Minister when requesting an organ of state to compile and submit industry waste management plans.

Clause 10: Amendment of section 32

This amendment, which relates to the actions of the Minister or the MEC upon receipt of the industry waste management plans, is consequential.

A new subsection (5A) has been included to require the Minister and MEC to follow the consultation process in sections 72 and 73 before considering industry waste management plans for approval.

Clause 11: Amendment of section 33

This section is a consequential amendment mainly to address the situation provided for in the transitional provision. The text has also been amended to provide clarity that even if a person is not "unduly advantaged" the Minister or MEC may still specify the waste management measures to be taken by that person. The phrase "more than once" also creates interpretation difficulties and has therefore been removed.

Clause 12: Amendment of section 34

This amendment, which relates to the review of industry waste management plans, is consequential.

Clause 13: Insertion of sections 34A, 34B, 34C, 34D, 34E, 34F, 34G, 34H, 34I, 34J, 34K and 34L

The intention of the inclusion of these sections is to create an institutional mechanism for the implementation of the objectives of the Act including the facilitation and implementation of waste management plans through the establishment of a Waste Management Bureau (Bureau) without a Board. Employees will be employed under the same conditions as public servants, except for certain specialists referred to in the Bill, where the Minister in concurrence with the Minister of Finance can determine special remuneration. The Bill provides for the objects, form, functions, funding, financial management, reporting, auditing; governance and administration of the Bureau.

Clause 14: Insertion of section 69A

This amendment authorises the Minister to make regulations pertaining matters relating to the Bureau.

Clause 15: Repeal of section 78

This amendment repeals section 78 of the NEMWA, since all appeals will be lodged in terms of section 43 of the National Environmental Management Act, 1998 (Act No. 107 of 1998), and will be considered and processed in accordance with the national appeals regulations developed in terms of section 43 of the National Environmental Management Act, 1998.

Clause 16: Amendment of Table of Contents

This section amends the table of contents of the principal Act, which is necessitated by the insertion of sections 13A and 13B and sections 34A-34L.

Clause 17: Transitional provisions in respect of any industry waste management plan

Currently there are funding arrangements contained in terms of existing industry waste management plans. The Pricing Strategy and an Act of Parliament will make provision for waste management charges, which will replace the existing funding arrangement of existing industry waste management plans approved prior to commencement of this Act. The Bill provides for an alignment with the pricing strategy before the Act referred to in clause 6 (Section 13B) commences (essentially a negotiating period of three months up until the tabling of the Act referred to in clause 6 (Section 13B) plus the length of time it will take to promulgate the Act). A transitional period of 6 months (180 calendar days) is made provision for, starting from the date that the Act referred to in clause 6 (Section 13B) commences.

Clause 18 Insertion of Schedule

A new Schedule 3 Defined Wastes has been inserted. The schedule must be read with the definition of “waste.”

Clause 19

Clause 19 provides for the short title and commencement.

4. BODIES CONSULTED

The Department together with the Provincial departments responsible for waste management identified the areas of amendments. The draft Bill was further discussed with representatives of Provincial departments responsible for waste management and other national departments through MinTech Working Groups 9 and 11.

5. FINANCIAL IMPLICATIONS FOR THE STATE

The Bureau will require a new structure and will have initial additional financial implications. However, eventually it will be funded through the levying of waste management charges in terms of Act of Parliament. The Bureau will accelerate job creation through the management of waste streams and other waste services.

6. ORGANISATIONAL AND PERSONNEL IMPLICATIONS

The amendments do not require new structures or capacity within the Department.

7. COMMUNICATION IMPLICATIONS

Appropriate communication measures will be implemented by the Government Communication and Information System.

8. PROVINCIAL IMPLICATIONS

None

9. CONSTITUTIONAL IMPLICATIONS

None

10. PARLIAMENTARY PROCEDURE

10.1 The State Law Advisers and the Department of Environmental Affairs are of the opinion that this Bill must be dealt with in accordance with the procedure prescribed by section 76(1) or (2) of the Constitution since it falls within functional areas listed in Part A of schedule 4 of the Constitution, dealing with “environment” and “pollution control”, respectively.

10.2 The State Law Advisers are of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or custom of traditional communities.

