GOVERNMENT GAZETTE

OF THE

REPUBLIC OF NAMIBIA

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No. 232 Promulgation of Environmental Management Act, 2007 (Act No. 7 of 2007), of the Parliament 1

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.

Act No. 7, 2007 ENVIRONMENTAL MANAGEMENT ACT, 2007

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 establish the Sustainable Development Advisory Council; to provide for the appointment of the Environmental Commissioner and environmental officers; to provide for a process of assessment and control of activities which may have significant effects on the environment; and to provide for incidental matters.

(Signed by the President on 21 December 2007)

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

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PART I
DEFINITIONS AND OBJECT OF ACT

Definitions

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

"activity" means a physical work that a proponent proposes to construct, operate, modify, decommission or abandon or an activity that a proponent proposes to undertake;

"Advisory Council" means the Sustainable Development Advisory Council established by section 6;

"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 section 3;

"assessment report" means a report that presents the procedures and findings of an assessment;

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

"biological diversity" means the variability among living organisms from all sources, including amongst others, terrestrial and aquatic ecosystems and the ecological complexes of which they are part, and this includes diversity within species, between species and of ecosystems;

"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 section 30;

"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;

"environmental clearance certificate" means an environmental clearance certificate issued in terms of section 34 or 37, authorising a listed activity to be undertaken;

"Environmental Commissioner" means the Environmental Commissioner appointed in terms of section 16;

"environmental officer" means an environmental officer appointed in terms of section 18;

"environmental plan" means an environmental plan referred to in section 24;

"Fund" means the Environmental Investment Fund of Namibia established by section 2 of the Environmental Investment Fund of Namibia Act, 2001 (Act No. 13 of 2001);

"listed activity" means an activity listed in terms of section 27(1) or 29;

"Minister" means the Minister responsible for environment;

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

"organ of state" means -

(a) any office, ministry or agency of State or administration in the local or regional sphere of government; or

(b) any other functionary or institution -

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

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

but does not include a court or a judicial officer;

"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 activity;

"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;

"staff member" means a staff member as defined in section (1) of the Public Service Act, 1995 (Act No. 13 of 1995);

"sustainable development" means human use of a natural resource, whether renewable or non-renewable, or the environment, in such a manner that it may equitably yield the greatest benefit to present generations while maintaining its potential to meet the needs and aspirations of future generations including the maintenance and improvement of the capacity of the environment to produce renewable resources and the natural capacity for regeneration of such resources; and

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

Object of Act

2. 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 -

(a) ensuring that the significant effects of activities on the environment are considered in time and carefully;

(b) ensuring that there are opportunities for timeous participation of interested and affected parties throughout the assessment process; and

(c) ensuring that the findings of an assessment are taken into account before any decision is made in respect of activities.

PART II
PRINCIPLES OF ENVIRONMENTAL MANAGEMENT

Principles of environmental management

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

(a) guide the implementation of this Act and any other law relating to the protection of the environment;

(b) serve as the general framework within which environmental plans must be formulated; and

(c) 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: -

(a) renewable resources must be used on a sustainable basis for the benefit of present and future generations;

(b) community involvement in natural resources management and the sharing of benefits arising from the use of the resources, must be promoted and facilitated;

(c) 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;

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

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

(f) sustainable development must be promoted in all aspects relating to the environment;

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

(h) 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;

(i) the reduction, re-use and recycling of waste must be promoted;

(j) 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;

(k) 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

(l) damage to the environment must be prevented and activities which cause such damage must be reduced, limited or controlled.

PART III
GENERAL FUNCTIONS AND POWERS OF MINISTER

Functions of Minister

4. The Minister's functions are to -

(a) determine policies for the management, protection and use of the environment;

(b) prepare and publish policies, strategies, objectives and standards for the management and protection of the environment;

(c) co-ordinate environmental management at national level; and

(d) monitor and ensure compliance with this Act.

Powers of Minister in respect of waste

5. (1) In this section -

(a) "disposal site" means a site used for the accumulation of waste with the purpose of disposing or treatment of such waste; and

(b) "waste" means any matter, whether gaseous, liquid or solid or any combination thereof, which is from time to time listed by the Minister by notice in the *Gazette* or by regulation as an undesirable or superfluous by-product, emission, residue or remainder of any process or activity.

(2) The Minister, after following the consultative process referred to in section 44 may, by notice in the *Gazette* or by regulation, declare a site to be a waste disposal site.

(3) Where a waste disposal site already exists in terms of any law, the Minister may approve that site as a waste disposal site for the purpose of this section.

(4) A person may not discard or cause to be discarded waste or dispose of it in any other manner, except -

(a) at a disposal site declared or approved by the Minister in terms of this section; or

(b) in a manner or by means of a facility or method and subject to such conditions as the Minister may prescribe.

(5) Any person who contravenes subsection (4) 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.

PART IV
SUSTAINABLE DEVELOPMENT ADVISORY COUNCIL

Establishment of Advisory Council

6. There is established an advisory council to be known as the Sustainable Development Advisory Council.

Functions of Advisory Council

7. The functions of the Advisory Council are to -

(a) 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;

(b) advise the Minister -

(i) on the development of a policy and strategy for the management, protection and use of the environment;

(ii) 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;

(iii) on appropriate methods of monitoring compliance with the principles set out in section 3;

(iv) on the need for, and initiation or amendment of legislation, on matters relating to the environment; and

(c) perform other functions assigned to it by the Minister.

Composition of Advisory Council

8. (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

9. 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

10. (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

11. (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

12. (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

13. 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

14. (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

15. (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 -

(a) a report on the activities of the Advisory Council; and

(b) 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 V
ENVIRONMENTAL COMMISSIONER AND ENVIRONMENTAL OFFICERS

Appointment of Environmental Commissioner

16. (1) The Minister must, subject to the laws governing the public service, appoint a person who is suitably qualified and experienced in environmental matters -

(a) to be the Environmental Commissioner; and

(b) to be the Deputy Environmental Commissioner, who must perform the duties and functions of the Environmental Commissioner when there is no Environmental Commissioner or when the Environmental Commissioner is absent or is for any other reason unable to perform his or her functions.

(2) The Environmental Commissioner may perform any duty or function or exercise any power of an environmental officer.

(3) The Permanent Secretary must make staff members of the Ministry available to assist the Environmental Commissioner in the performance of any duty or function or the exercise of any power in terms of this Act.

Functions of Environmental Commissioner

17. (1) The Environmental Commissioner must perform the functions set out in subsection (2), subject to the general or specific policy directives of the Minister.

(2) The functions of the Environmental Commissioner are to -

(a) advise organs of state on the preparation of environmental plans;

(b) receive and record applications for environmental clearance certificates;

(c) determine whether a listed activity requires an assessment;

(d) determine the scope, procedure and methods of an assessment;

(e) review the assessment report in accordance with this Act;

(f) issue environmental clearance certificates in terms of this Act;

(g) maintain a register of environmental assessments undertaken in terms of this Act;

(h) maintain a register of environmental clearance certificates issued and environmental plans approved in terms of this Act;

(i) conduct inspections for monitoring compliance with this Act; and

(j) perform any other duty or function which the Minister may assign or prescribe.

Appointment of environmental officers

18. (1) Subject to the laws governing the public service, the Minister may appoint environmental officers, as he or she may consider necessary for carrying out the provisions of this Act.

(2) If the Minister considers it necessary, and subject to such conditions as the Minister may from time to time and in consultation with the Minister responsible for finance determine, the Minister may appoint any person who is not in the full-time employment of the State as an environmental officer in any particular case or may so appoint such person to assist an environmental officer appointed in terms of subsection (1).

(3) Before appointing persons employed in any other organ of state, as environmental officers, the Minister must obtain the consent of the relevant employer.

(4) The Minister may withdraw the appointment of an environmental officer.

(5) Each environmental officer appointed in terms of subsection (1) or (2) must be furnished with a certificate of appointment in the form determined by the Permanent Secretary and stating that he or she has been appointed as an environmental officer, but if his or her appointment as environmental officer is limited to any particular function or functions his or her certificate must state such limitation.

(6) When performing any function or duty or exercising any power in terms of this Act, an environmental officer must on demand by any person in relation to whom the function, duty or power is performed or exercised, produce the certificate of appointment.

Entry and inspection

19. (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 (5) -

(a) 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;

(b) direct the person in control of or employed at the premises -

(i) 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;

(ii) to furnish such information as he or she has with regard to that matter; and

(iii) 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;

(c) inspect any book, record or other document and make copies of it or excerpts from it;

(d) 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

(e) 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 -

(a) request a member of the police to assist in the exercise of the powers referred to in this section; and

(b) request any person to assist as an interpreter or otherwise in the exercise of the powers referred to in this section.

(5) 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.

(6) Any environmental officer executing a warrant in terms of this section must immediately before commencing the execution -

(a) 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

(b) supply such person at the request of such person, with particulars regarding his or her authority to execute such a warrant.

(7) 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.

(8) 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.

(9) A warrant contemplated in this section may be issued on any day and is effective until -

(a) it is executed;

(b) it is cancelled by the person who issued it or, if such person is not available, by any person with similar authority;

(c) one month from the date of its issue; or

(d) the purpose for which the warrant was issued, no longer exists, whichever occurs first.

(10) An environmental officer may without a warrant enter on any premises and search for, seize and remove anything referred to in subsection (3), if -

(a) the person who is competent to do so consents to such entry, search, seizure and removal; or

(b) there are reasonable grounds to believe that -

(i) a warrant would be issued to the environmental officer if he applied for such warrant; and

(ii) the delay in obtaining such warrant would defeat the purpose of the search.

(11) A material or substance seized in terms of this section must be dealt with as contemplated in Chapter 2 of the Criminal Procedure Act.

Compliance orders

20. (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 -

(a) has contravened this Act; or

(b) has contravened a condition of an environmental clearance certificate.

(3) A compliance order must set out -

(a) the name of the person to whom the order applies;

(b) the provision or condition which has been contravened;

(c) details of the nature and extent of the contravention;

(d) any steps that are required to be taken and the period within which those steps must be taken; and

(e) any penalty that may be imposed in terms of this Act if those steps are not taken;

(f) the procedure to be followed in lodging an objection to the compliance order with the Minister; and

(g) 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.

Objections to compliance order

21. (1) Any person issued with an order in terms of section 20, may apply to the Minister in the prescribed form and manner for the review of the order within -

(a) 14 days after receiving that order; or

(b) such longer period as may be allowed by the Minister on good cause shown.

(2) After considering the application made in terms of subsection (1), and any other relevant information, the Minister may confirm, modify or cancel all or part of the order.

(3) 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.

(4) The Environmental Commissioner must in the prescribed form and manner notify the person referred to in subsection (1), of the decision made in terms of subsection (2) and the reasons for the decision.

Offences in relation to environmental officers

22. (1) A person commits an offence if the person -

(a) 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;

(b) without lawful excuse, refuses or fails to answer any question put by an environmental officer;

(c) intentionally furnishes false and misleading information to an environmental officer; or

(d) 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$20 000 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

PART VI
ENVIRONMENTAL PLANS

Objects of environmental plans

23. The objects of environmental plans are to -

(a) co-ordinate and harmonise the environmental policies, plans, programmes and 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.

Environmental plans

24. (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), must prepare an environmental plan in the prescribed form and manner.

(3) Every organ of state contemplated in subsection (1), must in the preparation of an environmental plan take into consideration every other environmental plan already adopted with a view to achieving consistency among such plans.

(4) The Environmental Commissioner may, at the request of an organ of state assist with the preparation of an environmental plan.

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

Approval of environmental plans

25. (1) Every organ of state required to submit an environmental plan must submit the plan to the Environmental Commissioner within the prescribed period.

(2) The Environmental Commissioner must scrutinise every environmental plan and -

(a) recommend the approval of the plan to the Minister;

(b) report to the Minister as well as to every other identified organ of state on the extent to which the environmental plan concerned fails to comply with-

(i) the principles set out in section 3;

(ii) the objects of environmental plans specified in section 23; or

(iii) any relevant environmental plan,

and set out the changes needed in the environmental plan concerned.

(3) Where the environmental plan is approved by the Minister, the relevant organ of state must adopt and publish its plan in the *Gazette* within 90 days of the approval and the plan becomes effective from the date of publication.

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

(a) the failure of any organ of state to submit an environmental plan;

(b) the scrutiny of any environmental plan by the Environmental Commissioner;

(c) the amendment of any environmental plan following scrutiny of the plan by the Environmental Commissioner; or

(d) the failure of any organ of state to adopt and publish its environmental plan.

Compliance with environmental plans

26. (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 plan prepared and approved in accordance with this Part, but any substantial deviation from an environmental plan must be reported to the Environmental Commissioner.

(2) Every organ of state identified and listed in terms of section 24(1) must report annually to the Minister on the implementation of its adopted environmental plan.

(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 plan must be made available for public inspection, without charge, at the office of the Enviromental Commissionr during office hours.

PART VII
ENVIRONMENTAL ASSESSMENT

Listing of activities and prohibition in respect of listed activities

27. (1) The Minister, after following the consultative process referred to in section 44, may list, by notice in the *Gazette*, activities which may not be undertaken without an environmental clearance certificate.

(2) Activities listed, under subsection (1), may include activities in respect of any of the following areas -

(a) land use and transformation;

(b) water use and disposal;

(c) resource removal, including natural living resources;

(d) resource renewal;

(e) agricultural processes;

(f) industrial processes;

(g) transportation;

(h) energy generation and distribution;

(i) waste and sewage disposal; chemical treatment;

(j) recreation; and

(k) any other area which the Minister considers necessary for the purpose of listing.

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

(4) 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

28. The Minister may in a notice under section 27 make provision for the granting of an exemption in respect of an activity.

Provisions relating to listing of activities

29. (1) The Minister may amend the list referred to in section 27(1), by -

(a) adding an activity to the list;

(b) removing an activity from the list; or

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

(2) The Minister must comply with section 27(1) before amending the list referred to in that section.

(3) Any person may make representations to the Minister on the desirability of having an activity listed in terms of section 27(1) 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

30. (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 under section 27(1) identify a person or authority who is responsible for grating authorisation in respect of that 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 applications for environmental clearance certificates in respect of which the Minister is identified as the competent authority be dealt with by that organ of state.

Effect of authorisations under other laws

31. (1) Despite any other law to the contrary, a competent authority may not issue an authorisation unless the proponent has obtained an environmental clearance certificate in terms of this Act.

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

PART VIII
ENVIRONMENTAL ASSESSMENT PROCESS

Application for environmental clearance certificate

32. (1) A person who is required to obtain an environmental clearance certificate must, in the prescribed form and manner and on payment of the prescribed fee, apply to the relevant competent authority for an environmental clearance certificate in respect of the listed activity to be undertaken.

(2) The competent authority must in the prescribed manner forward the application referred to in subsection (1) to the Environmental Commissioner, if the proponent complies, in respect of the proposed activity, with any requirements prescribed by law in respect of that activity.

Registration of application and determining whether assessment is required

33. (1) When an application is made for an environmental clearance certificate, the Environmental Commissioner must -

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

(b) within the prescribed time, decide whether the proposed activity requires an assessment.

(2) In making a decision in terms of subsection (1)(b), the Environmental Commissioner must -

(a) follow the consultative process referred to in section 44; and

(b) take into account -

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

(ii) the significant effect of the proposed activity on the environment;

(iii) the nature and extend of the proposed activity;

(iv) the principles set out in section 3; and

(v) any other matter that may be prescribed.

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

Procedure where assessment is not required

34. (1) Where the Environmental Commissioner has under section 33, decided that the proposed activity does not require an assessment the Environmental Commissioner may -

(a) grant the application and, on payment of the prescribed fee, issue an environmental clearance certificate to the proponent; or

(b) refuse the application and provide the proponent with reasons for the refusal.

(2) The Environmental Commissioner must within the prescribed time and in the prescribed form and manner -

(a) notify the proponent of the decision made in terms of subsection (1); and

(b) provide the proponent with the environmental clearance certificate, if issued.

(3) Any person who fails to comply with any condition attached to the environmental clearance certificate in terms of subsection (1) 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.

Procedure where assessment is required

35. (1) Where the Environmental Commissioner has under section 33 decided that the proposed activity requires an assessment the Environmental Commissioner must -

(a) determine -

(i) the scope of the assessment; and

(ii) the procedures and methods for conducting the assessment;

(b) in the prescribed manner -

(i) notify the proponent that an assessment of the proposed activity is required to be carried out and prepared by the proponent, at the proponent's own expense, in accordance with the scope, procedures and methods determined under paragraph (a); and

(ii) state a reasonable period within which the assessment report must be submitted to the Environmental Commissioner.

(2) An assessment report must consist of the matters as prescribed.

(3) When determining the scope, procedures and methods of an assessment the Environmental Commissioner must follow the consultative process referred to in section 44.

(4) The Environmental Commissioner may vary the scope, procedures and methods determined under subsection (1)(a) -

(a) in accordance with modifications proposed by the proponent; or

(b) if the Environment Commissioner considers it necessary to complete an effective and timely assessment of the proposed activity.

(5) The Environmental Commissioner may, on application of the proponent and on good cause shown extend the period stipulated under subsection (1)(b)(ii) for the submission of the assessment report.

(6) If, upon submission of the assessment report by the proponent, it appears to the Environmental Commissioner that the prescribed requirements in respect of the contents of the assessment report have been complied with the Environmental Commissioner must -

(a) at the cost of the proponent, notify the application in the prescribed manner; or

(b) direct the proponent to notify the application in the prescribed manner.

(7) A notification of an application under subsection (6) must -

(a) contain the prescribed particulars in relation to the application;

(b) state that the application and assessment report are available for inspection at the office of the Environmental Commissioner;

(c) invite written submissions in relation to the application and assessment to be lodged with the Environmental Commissioner; and

(d) specify the closing date for submissions.

(8) Where the proponent is directed under subsection (6)(b) to notify the application the proponent must furnish proof of the notification to the Environmental Commissioner as soon as is possible after the date of the publication of the notification.

Review

36. (1) Within a reasonable time after the closing date referred to in section 35(7)(c), the Environmental Commissioner must review the application and may take any action the Environmental Commissioner considers appropriate for the review of the application, including -

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

(c) holding a public hearing.

(2) At least 14 days before the date fixed for the holding of a public hearing in accordance with subsection (1)(c), the Environmental Commissioner must give notice of the public hearing -

(a) in the prescribed manner to the proponent;

(b) in writing to every person from whom a submission in relation to the application has been received; and

(c) by publication of the notice in the prescribed manner.

(3) The notice in terms of subsection (2) must -

(a) specify the date, time and place of the public hearing; and

(b) contain a brief description of the nature of the application.

Environmental Commissioner's decision

37. (1) After reviewing the assessment report in terms of section 36, the Environmental Commissioner may -

(a) grant the application, and on payment of the prescribed fee, issue an environmental clearance certificate to the proponent; or

(b) refuse the application and provide the proponent with reasons for the refusal.

(2) The Environmental Commissioner must within the prescribed time and in the prescribed form and manner -

(c) notify the proponent of the decision made in terms of subsection (1); and

(d) provide the proponent with the environmental clearance certificate, if issued.

(3) Any person who fails to comply with any condition attached to an environmental clearance certificate in terms of subsection (1) commits an offence and is on conviction liable to a fine not exceeding N$500 000 or to imprisonment for a period not exceeding 20 years or to both such fine and such imprisonment.

Record of decisions

38. (1) The Environmental Commissioner must, in accordance with subsection (2), keep a record of decisions made under sections 33, 34 and 37.

(2) The record of decisions must be kept in the prescribed form and must consist of information that may be prescribed.

(3) A copy of the record must be made available for public inspection at the office of the Environmental Commissioner during office hours.

Amending conditions of environmental clearance certificate

39. (1) The Environmental Commissioner may amend a condition of an environmental clearance certificate -

(a) if the certificate holder consents to or requests for the amendment; or

(b) at the initiave of the Environmental Commissioner, by giving written notice to the holder of the certificate.

(2) 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.

(3) 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.

(4) The Environmental Commissioner may only amend a condition of the environmental clearance certificate under this section if he or she is satisfied that the -

(a) amendment will not have a significant effect on the environment; and

(b) interests of any other person are not adversely affected.

(5) In amending an environmental clearance certificate the Environmental Commissioner must follow the consultative process referred to in section 44.

Duration of environmental clearance certificate

40. (1) An environmental clearance certificate becomes effective and operates from the date endorsed on the certificate.

(2) An environmental clearance certificate remains effective for a period not exceeding three years, subject to cancellation or suspension under section 42.

Prohibition on transfer of environmental clearance certificate

41. (1) A person may not transfer an environmental clearance certificate except with the permission of the Environmental Commissioner.

(2) An application for the transfer of an environmental clearance certificate must be made in the prescribed form and manner.

Suspension or cancellation of environmental clearance certificate

42. (1) Subject to subsection (3), 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 -

(a) has contravened any condition of the certificate;

(b) has contravened this Act; or

(c) is convicted of an offence in terms of this Act.

(2) An environmental clearance certificate may be suspended under subsection (1) -

(a) for the period specified in the notice of suspension; or

(b) until the Environmental Commissioner is satisfied that the person concerned has rectified the failure which led to the suspension.

(3) 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.

(4) The Environmental Commissioner may, for good reason shown, reinstate an environmental clearance certificate cancelled or suspended under subsection (1).

(5) In suspending, canceling or reinstating an environmental clearance certificate in terms of this section, the Environmental Commissioner must follow the consultative process referred to in section 44.

Offences relating to this Part

43. (1) A person commits an offence, if the person -

(a) alters or forges an environmental clearance certificate or any notice, order or document issued under this Part;

(b) knowingly gives false information in any application for an environmental clearance certificate made under this Part;

(c) without lawful excuse, fails or refuses to give data or information, or gives false or misleading data or information when required to give information in terms of this Part; or

(d) makes any false entry or declaration in any register, record or document required to be kept in terms of this Part.

(2) A person convicted of an offence -

(a) contemplated in subsection (1) is liable to a fine not exceeding N$100 000 or imprisonment for a period not exceeding ten years or to both such fine and such imprisonment; and

(b) who after such conviction continues in the course of conduct which constituted such offence, commits a continuing offence and is liable to a fine not exceeding N$10 000 or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment in respect of every day on which he continues with the conduct.

PART IX
SPECIAL PROVISIONS RELATING TO ENVIRONMENTAL ASSESSMENTS

Consultation

44. (1) When in terms of this Act the Minister or the Environmental Commissioner is required to consult, the Minister or the Environmental Commissioner, as the case may be -

(a) must consult the organ of state whose area of responsibility may be affected by the performance of the function or duty or the exercise of the power; and

(b) may, where appropriate, consult any other interested or affected person.

(2) When in terms of this Act the Minister or the Environmental Commissioner is required to consult any person or organ of state, such consultation is regarded as having been satisfied if a written notification of intention to act has been made to that person or organ of state and no response has been received within a reasonable time.

Appointment of external specialist

45. The Environmental Commissioner may with the approval of the Minister appoint an external specialist reviewer and may recover costs from the proponent in instances where -

(a) the technical knowledge required to review any aspect of an assessment is not readily available within the Ministry; or

(b) 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.

Assessment costs may be recovered

46. The Environmental Commissioner may order the proponent to pay prescribed fees or charges for all or part of the costs that are incurred by or on behalf of the Ministry, as the case may be, in carrying out an assessment under this Act.

Access to environmental information

47. 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

48. 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 -

(a) the co-ordination of the implementation of the agreement;

(b) the allocation of responsibilities in terms of the agreement, including those of other organs of state;

(c) the gathering of information, including for the purposes of compiling and updating reports required in terms of the agreement and for submission to Parliament;

(d) the dissemination of information related to the agreement and reports from international meetings;

(e) initiatives and steps regarding research, education, training, awareness raising and capacity building;

(f) ensuring public participation;

(g) implementation of and compliance with the provisions of the agreement, including the creation of offences and the prescription of penalties where applicable; and

(h) any other matter necessary to give effect to the agreement.

PART X
GENERAL PROVISIONS

Delegation

49. (1) The Environmental Commissioner may delegate the exercise of any of his or 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 16(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

50. (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

51. (1) Any person aggrieved by a decision of the Minister made in terms of section 50(4) or a decision under section 21 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

52. 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

53. (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

54. (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

55. This Act binds the State.

Regulations

56. (1) The Minister may make regulations relating to -

(a) the disposal of certain types of waste;

(b) the granting of exemption from any provision of this Act and the conditions subject to which such exemption may be granted;

(c) the requirements for listing or delisting of activities in terms of section 27 or 29;

(d) what constitutes an activity for purposes of listing or delisting in terms of section 27 or 29, and for that purpose the Minister may -

(i) 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

(ii) provide differently for the different categories of activities;

(e) the form and content of an application, for an environmental clearance certificate, the transfer, amendment or renewal of the certificate;

(f) the form and content of a register, record or any other document required to be kept under this Act;

(g) fees payable for any application made in terms of this Act and the manner of payment of fees;

(h) fees payable for request for records and other information kept in terms of this Act;

(i) the assessment process;

(j) the content of an assessment report;

(k) the procedure and time limits within which organs of state must do anything required to be done in terms of this Act;

(l) 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;

(m) the manner and form for delivering or a document or for giving notice under this Act;

(n) any matter which in terms of this Act is required or permitted to be prescribed; and

(o) 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 10 years or to both such fine and such imprisonment.

Existing authorisation

57. (1) A person who, on the date of commencement of this Act, undertakes a listed activity under an authorisation may continue to undertake such activity for a period not exceeding one year, or such longer period as the Minister may on application approve.

(2) A person who wishes to continue with a listed 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 before its expiry.

(3) If a person 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

58. (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.

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