WETLAND REHABILITATION MANUAL: LEGAL COMPONENT

by

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FEBRUARY 2001

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EXECUTIVE SUMMARY

This report has been prepared for inclusion in a manual which will be used as a guideline document/management tool/protocol for the rehabilitation of degraded wetlands.

The report identifies three broad categories of legal controls which are applicable to wetland rehabilitation. The first of these relates to laws and policies which govern wetland rehabilitation generally. The second category identifies those human activities most likely to have a negative impact on wetlands. The third category of legal controls examined in this report are those governing activities undertaken during the course of wetland rehabilitation. The ambit of the protocol extends only to freshwater wetlands and excludes coastal and estuarine wetlands at this stage. With regard to the legal controls which apply to the three different categories mentioned above, we are instructed only to deal with national legislation at this stage, although we have, for the sake of completeness, made brief mention of the types of provincial and local laws which may have a bearing on wetland rehabilitation.

Our primary recommendation is that, in order to be really useful to people directly responsible for wetland rehabilitation, the protocol should be further reduced to take the form of an environmental management system. Presented that way, the protocol would identify likely activities associated with wetland rehabilitation and would specify, in one or two sentences, the precise legal controls which operate over that activity. In this way, the protocol would be more accessible to people engaged in wetland rehabilitation and, it is submitted, is likely to be more useful as a management tool.
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INTRODUCTION

The Department of Water Affairs and Forestry ("DWAF") in conjunction with Working for Water ("WfW") has identified a need to rehabilitate degraded wetlands in South Africa. To this end, it has been decided that a protocol for the rehabilitation of wetlands will be prepared. For practical purposes, the protocol will, at least initially, take the form of a manual which will be used by people and organisations responsible for wetland rehabilitation. These may include people employed by DWAF or WfW, but the protocol may also be used by people and/or in the private sector engaged in this activity.

It is our recommendation that the manual is eventually presented in the form of an environmental management system. It would contain identified aspects of wetland rehabilitation, together with their likely impacts on the environment. It is suggested that, in order to be useful to the people actually undertaking wetland rehabilitation, the legal component of such a document should be reduced to a brief description of the legal controls which apply to each aspect or impact of wetland rehabilitation. This report constitutes the first step in preparing the legal aspects of such a document. The process of identifying aspects and impacts and reducing the legal controls to simple statements falls outside of our terms of reference.

1. TERMS OF REFERENCE

Our terms of reference\(^1\) were embodied in a letter of appointment dated 10 January 2001\(^2\) and were varied at a workshop of role players in the project held at Sterkfontein Dam on 23 January 2001 ("the workshop").\(^3\) In summary, we were required to:

\(^1\) E-mailed by Wetland Consulting Services, the lead consultant in this project, on 19 October 2000.


\(^3\) A list of the attendees is contained in the minutes of that meeting ("the minutes"), circulated by Wetlands Consulting Services on 30 January 2001.
· Identify the international and national laws which have a bearing on wetland rehabilitation in South Africa;
· Mention the kinds of provincial and local laws which may exist and that might have a bearing on wetland rehabilitation;
· Identify the powers and duties of institutions or organs of State; the rights and duties of land owners, and the role of civil society in the context of wetland rehabilitation;
· Where appropriate, mention the role of civil society and mechanisms for cost recovery; and
· Produce a concise report in clear and simple language, analysing only those sections of applicable laws that have a bearing on wetland rehabilitation, so that the protocol can be understood easily by those with little or no knowledge of the law.

With regard to the ambit of this project, it is a requirement that only fresh water wetlands are considered. Although initially we were not required to consider the national legal controls which operate over mining, the obvious significance of that human activity on wetlands led to an agreement at the workshop that it should be included.

This report has been divided into three broad sections. The first of these considers those laws and policies which govern wetland rehabilitation in general terms. The second identifies human activities which degrade wetlands and identifies the laws which regulate those. The third section considers activities which may be undertaken in the course of rehabilitation and the laws which control those activities.

A first draft of this report was prepared for submission to the workshop. Following comments received at the workshop and questions submitted to the workshop facilitator and sent to us, this draft has been prepared. It will be forwarded to DWAF and WfW for comment and a final draft will be prepared by 23 February 2001.
2. LAWS AND POLICIES WHICH GOVERN WETLAND REHABILITATION GENERALLY

2.1 International laws and their implications for government

2.1.1 The Ramsar Convention

The Ramsar Convention on Wetlands of International Importance Especially as Waterfowl Habitat (“Ramsar”) was established to protect wetlands as ecosystems of international importance and, more specifically, to protect migratory waterfowl species that are dependent on certain trans-national wetlands. The main object of Ramsar is to reduce wetlands loss and to encourage the recognition of the ecological functions and social and scientific value of wetlands.4

Ramsar defines wetlands to include “areas of marsh fen, peatland or water, whether natural or artificial, permanent or temporary, containing water that is static or flowing, fresh, brackish or salt, including areas of marine water, the depth of which at low tides does not exceed six metres.”5 Importantly, Ramsar regulates many different kinds of wetlands, including fresh water rivers, coastal waters and estuaries.6

South Africa has designated 12 wetlands which have been or are to be included in the List of Wetlands of International Importance (“the list”) and has a number of international law obligations which arise from this listing. However, the majority of wetlands which will be rehabilitated in accordance with the manual do not fall within the list. The duties which the

4 South Africa acceded to Ramsar on 12 March 1975, and was one of the original seven Contracting Parties which brought it into force on 21 December 1975. It has accepted the Paris Protocol and the Regina amendments (which amend the original Ramsar text) on 25 May 1983 and 14 February 1992 respectively.

5 Article 1(1).

6 As was mentioned above, the latter two categories of wetland are excluded from the ambit of this protocol.
treaty imposes are specified in section 2.1.2 below.

2.1.2 The duties of national government

Acceding to and ratifying Ramsar creates a number of international law obligations for national government. These are apparently assumed by DWAF. Aside from the obligation to designate suitable wetlands within its territory for inclusion in the list, Ramsar requires that "the Contracting Parties shall formulate and implement their planning so as to promote . . . as far as possible the wise use of wetlands in their territory". 7 Ramsar does not define the wise use of wetlands. However, it is probable that the term is employed in the same sense the obligation to use migratory stocks of waterfowl. This appears to mean use on a sustainable basis. 8 Furthermore, Ramsar requires that each Contracting Party must promote the conservation of wetlands and waterfowl by establishing nature reserves on wetlands, whether they are included in the list or not, and provide adequately for their warden. 9

A Contracting Party has a liability for changing or restricting the boundaries of a wetland in the sense that:

"It should as far as possible compensate for any loss of wetland resources, and in particular it should create additional nature reserves for waterfowl and for the protection, either in the same area or elsewhere, of an adequate portion of the original habitat". 10

Contracting Parties are also obliged to consult with each other about implementing obligations arising from Ramsar especially in the case of transboundary wetlands or water systems. To this end, they must try to co-ordinate and support present and future policies and regulations concerning the conservation of wetlands and their flora and fauna. 11

It is therefore clear that national government has a number of obligations in relation to

7 Article 3.1.


9 Article 4 (1).

10 Article 4 (2).

11 Article 5(1).
wetlands. Implicit in the obligation to use them wisely is the requirement that they be rehabilitated where they have been degraded. It is therefore true to say that there is at least an implied international law mandate for the rehabilitation of wetlands, regardless of whether or not they are listed under Ramsar.

2.2 South African Law

2.2.1 Introduction

Aside from international law obligations, South African national law creates a framework of rights and obligations which bind and empower institutions, land owners and, in some instances, civil society. Each of these will be dealt with in turn.

2.2.2 The Constitution of the Republic of South Africa

The Constitution of the Republic of South Africa (“the Constitution”) contains broad provisions concerning environmental rights and state obligations to enforce them. The environmental right provides that:

“Everyone has the right-

(a) to an environment that is not harmful to their health or well-being; and
(b) to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that-

(i) prevent pollution and ecological degradation;
(ii) promote conservation; and
(iii) secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.”

Since wetlands are essential to ecological health which has, in turn, a direct bearing on human health, this provision imposes an implied mandate on all organs of State to take reasonable steps to ensure wetland health.

In order to enforce this right in the context of wetland rehabilitation, it may be necessary to rely on other Constitutional rights, such as the right of access to information. That section provides that:

12 Act 108 of 1996.

13 Section 24.
“(1) Everyone has the right of access to-
(a) any information held by the state; and
(b) any information that is held by another person and that is required for the exercise or protection of any rights.”14

An example of how this right may be used is a situation where it is not clear who may have been responsible for the degradation of the wetland. Rights of access to information may be used to obtain information concerning, for example, the identities of previous land owners or users, or the content of industrial effluent previously discharged into a wetland.

2.2.3 Institutional obligations

14 Section 32. These rights are further protected in the Promotion of Access to Information Act, 3 of 2000 and the National Environmental Management Act, 107 of 1998. The former is not yet in force, the latter is discussed in more detail below.
The environmental right imposes obligations on all three spheres of government (national, provincial and local) since it imposes an obligation on the state to adopt reasonable legislative and other measures to uphold the right. The Constitution also sets out the legislative and executive competence of each sphere of government. Given that our brief excludes the analysis of relevant provincial and local government laws, it is not appropriate to set out the different areas of competence of each different sphere of government insofar as wetland rehabilitation is concerned. For the sake of completeness, however, it must be noted that the environment is an area of concurrent national and provincial government competence\(^\text{15}\) and therefore, subject to certain restrictions, both spheres of government may make and administer laws affecting wetland rehabilitation. Water which flows in the wetlands is, in terms of the National Water Act,\(^\text{16}\) a national resource, belonging to all people, and the management of its use is the responsibility of the national government.\(^\text{17}\) These different competences may lead to tension from time to time.

### 2.2.4 Obligations of land owners/users

The Constitution operates both vertically, that is, as between the state and people within its jurisdiction, as well as horizontally, that is between individuals.\(^\text{18}\) Land users are therefore obliged to ensure that their activities do not unreasonably infringe the Constitutional rights of others. Similarly, those rehabilitating wetlands are required not to unreasonably infringe the Constitutional rights of other people.

### 2.2.5 Rights of civil society

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\(^{15}\) Section 104 read with Schedules 4 and 5 of the Constitution.

\(^{16}\) 36 of 1998.

\(^{17}\) Preamble.

\(^{18}\) Which includes juristic persons, such as companies.
Where environmental rights have been unreasonably infringed, individuals or organisations may compel either government or other people responsible for the infringement or limitation to enforce them. In this regard, the Constitution has considerably expanded the basis on which a court may be approached to enforce rights. It includes:

(a) anyone acting in their own interest;
(b) anyone acting on behalf of another person who cannot act in their own name;
(c) anyone acting as a member of, or in the interest of, a group or class of persons;
(d) anyone acting in the public interest; and
(e) an association acting in the interest of its members.\(^{19}\)

Accordingly, if a wetland is seriously damaged, or such harm is threatened, the abovementioned categories of people would be entitled to approach a court having jurisdiction over the wetland or the person who has harmed or threatens to harm the wetland. The litigant(s) would, if successful, be entitled to an order preventing the harm\(^{20}\) or, where appropriate, an order directing the rehabilitation of the wetland.

### 2.2.6 The National Water Act\(^ {21}\)

The primary purpose of the National Water Act is to manage and control South Africa’s water resources. In doing so, a number of factors must be taken into consideration. Relevant to the rehabilitation of wetlands are:

- meeting the basic human needs of present and future generations;
- promoting the efficient, sustainable and beneficial use of water in the public interest;
- facilitating social and economic development;

\(^{19}\) Section 38.

\(^{20}\) See section 3.5.

\(^{21}\) 36 of 1998.
providing for growing demands for water use;
· protecting aquatic and associated ecosystems and their biological diversity;
· reducing and preventing pollution and degradation of water resources; and
· meeting international obligations.  

The Act defines “riparian habitat” to include the physical structures and associated vegetation of the areas associated with a watercourse which are commonly characterised by alluvial soils, and which are inundated or flooded to an extent and with a frequency sufficient to support vegetation of species with a composition and physical structure distinct from those of adjacent land areas. Other relevant definitions are “watercourse” which means

· a river or spring;
· a natural channel in which water flows regularly or intermittently;
· a wetland, lake or dam into which, or from which, water flows; and
· any collection of water which the Minister may, by notice in the Gazette, declare to be a watercourse, and
· a reference to a watercourse includes, where relevant, its bed and banks.

“Wetland” is in turn defined to mean “land which is transitional between terrestrial and aquatic systems where the water table is usually at or near the surface, or the land is periodically covered with shallow water, and which land in normal circumstances supports or would support vegetation typically adapted to life in saturated soil.”

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22 Long title of the Act.

23 Section 1(xxi).

24 Section 1 (xxiv).

25 Section 1(xxix).
The use of water is also controlled by the National Water Act. Relevant to wetland rehabilitation are the controls, subject to various provisos, concerning the right:

· to take or use water;
· to obstruct or divert a flow of water;
· to affect the quality of any water;
· to receive any particular flow of water;
· to receive a flow of water of any particular quality; or
· to construct, operate or maintain any waterwork.\(^{26}\)

These controls may regulate activities which degrade wetlands. For example, impacting on the water quality of a wetland by discharging of effluent generated in an industrial process would be an activity regulated by the National Water Act. Similarly, the diversion of the flow of water for the purposes of rehabilitating a wetland may also be the subject of control by this Act.

### 2.2.7 Obligations of land owners/users

For our purposes, one of the most important provisions in the National Water Act as far as land owners and users are concerned is that concerning an obligation not to pollute water. It stipulates that:

\begin{quote}
“(1) An owner of land, a person in control of land or a person who occupies or uses the land on which-

(a) any activity or process is or was performed or undertaken; or

(b) any other situation exists,
\end{quote}

---

\(^{26}\) Section 4(4).
which causes, has caused or is likely to cause pollution of a water resource, must take all reasonable measures to prevent any such pollution from occurring, continuing or recurring.”

The measures referred to may include measures to-

“(a) cease, modify or control any act or process causing the pollution;
(b) comply with any prescribed waste standard or management practice;
(c) contain or prevent the movement of pollutants;
(d) eliminate any source of the pollution;
(e) remedy the effects of the pollution; and
(f) remedy the effects of any disturbance to the bed and banks of a watercourse.”

Importantly, pollution is defined as having two discrete components: Firstly, the direct or indirect alteration of the physical, chemical or biological properties of a water resource so as to make it less fit for any beneficial purpose for which it may reasonably be expected to be used; and secondly, the alteration of the abovementioned properties so as to make it harmful or potentially harmful to humans, aquatic or non-aquatic organisms, to the resource quality or to property. This wide definition of pollution is likely to cover most aspects of wetland degradation.

2.2.8 Institutional powers and obligations

The institutional roles regulated in the National Water Act are primarily those of DWAF and the catchment management agencies (“CMAs”) which are the bodies charged with enforcing some aspects of this law.

With regard to remediation, a CMA has considerable powers. It may direct anyone who fails to take the measures referred to in paragraph 2.2.7 above, to:

(a) commence taking specific measures before a given date;
(b) diligently continue with those measures; and

27 Section 19(1).

28 Section 19(2)
(c) complete them before a given date. 29

If someone fails to comply, or complies inadequately with a directive given, the CMA may take the measures it considers necessary to remedy the situation and may recover all costs incurred. These may be recovered jointly and severally from:

“(a) Any person who is or was responsible for, or who directly or indirectly contributed to, the pollution or the potential pollution;
(b) the owner of the land at the time when the pollution or the potential for pollution occurred, or that owner’s successor-in-title;
(c) the person in control of the land or any person who has a right to use the land at the time when-
   (i) the activity or the process is or was performed or undertaken; or
   (ii) the situation came about; or
(d) any person who negligently failed to prevent-
   (i) the activity or the process being performed or undertaken; or
   (ii) the situation from coming about.”. 30

29 Section 19(3).

30 Section 19(5).
It is therefore clear that the Act has retrospective effect in that costs may be recovered in respect of harm which occurred before the Act came into force. The CMA may, in respect of the recovery of costs, claim those from any other person who, in its opinion, benefited from the measures undertaken, to the extent of such benefit. The costs claimed must be reasonable and may include, without being limited to, labour, administrative and overhead costs. If more than one person is liable for the costs, the CMA must, at the request of any of those persons, and after giving the others an opportunity to be heard, apportion the liability, but such apportionment does not relieve any of the polluters of their joint and several liability for the full amount of the costs.  

These provisions are extremely powerful in wetland rehabilitation, particularly where the degradation of a wetland can clearly be attributed to wrongful human conduct and the person or people concerned can still be traced. These powers represent an important source of income or cost recovery (and, therefore, sustainability) in any wetland rehabilitation programme. Significantly, the Act does not allow CMAs to delegate their powers to other authorities or people. Accordingly, the co-operation of CMAs must be enlisted by those undertaking the wetland rehabilitation in order to ensure that the CMAs will exercise these powers to assist the rehabilitating party, failing which it will be very difficult to recover costs. Other powers and duties contained in the National Water Act which may be relevant to wetland rehabilitation allow the Cabinet to establish a body to implement any international agreement entered into by the South African government and a foreign government relating to investigating, managing, monitoring and protecting water resources; and regional co-operation on water resources.

The Minister is also required to establish national monitoring systems on water resources as soon as reasonably practicable. These systems must provide for the collection of appropriate data and information necessary to assess, among other matters -

31 Section 19(4) to (8).

32 Section 102.

33 Section 137(1).
(a) the quantity of water in the various water resources;
(b) the quality of water resources;
(c) the use of water resources;
(d) the rehabilitation of water resources;
(e) compliance with resource quality objectives;
(f) the health of aquatic ecosystems; and
(g) atmospheric conditions which may influence water resources.

This national monitoring system may be significant in determining which wetlands are most degraded and are therefore high priorities for rehabilitation.

2.2.9 National Environment Management Act

The National Environment Management Act (“NEMA”) is an overarching statute regulating various aspects of natural resource use, integrated environmental management and pollution control. Its definition of the environment includes the land and water of the earth; microorganisms, plant and animal life or a combination of those things; and the interrelationships among them.

Pollution means “any change in the environment caused by substances, radio-active or other waves, or noise, odours, dust or heat emitted from any activity, including the storage or treatment of waste or substances, construction and the provision of services, whether or not the change has an adverse effect on human health or well-being”. Given the wide definition of both of the concepts of “environment” and “pollution”, it is likely that most aspects of wetland degradation will be covered by these terms.

Underpinning NEMA are a number of national environmental management principles which apply to the actions of all organs of State that may significantly affect the environment. They are therefore the test against which administrative action which may affect the environment must be measured. For the purposes of wetland degradation and rehabilitation the following are important:

34 107 of 1998.

35 Section 1.

36 Section 2.
· Development must be socially, environmentally and economically sustainable.
· Sustainable development requires the consideration of all relevant factors including the following:
  · The disturbance of ecosystems and loss of biological diversity are avoided, or, where they cannot be altogether avoided, are minimised and remedied;
  · Pollution and degradation of the environment are avoided, or, where they cannot be altogether avoided, are minimised and remedied;
  · Development, use and exploitation of renewable resources and the ecosystems of which they are part do not exceed the level beyond which their integrity is jeopardised.
  · A risk-averse and cautious approach is applied, which takes into account the limits of current knowledge about the consequences of decisions or actions;
  · Negative impacts on the environment and on people's environmental rights be anticipated and prevented, and where they cannot be altogether prevented, are minimised and remedied.
  · The costs of remedying pollution, environmental degradation and consequent adverse health effects and of preventing, controlling or minimising further pollution, environmental damage or adverse health effects must be paid for by those responsible for harming the environment.
· Sensitive, vulnerable, highly dynamic or stressed ecosystems, such as coastal shores, estuaries, wetlands, and similar systems require specific attention in management and planning procedures, especially where they are subject to significant human resource usage and development pressure.

Apart from these principles which must underpin all administrative acts, NEMA creates specific institutional powers which are relevant to wetland rehabilitation. One of the most significant is relates to the duty of land owners to rehabilitate degraded environments, referred to in section 2.2.10. For the sake of convenience, the duties of land owners/users are dealt with first, after which institutional powers and obligations are discussed.

### 2.2.10 Obligations of land owners/users

NEMA imposes a general duty on every person who causes, has caused or may cause significant pollution or degradation of the environment to take “reasonable measures” to prevent that pollution or degradation from occurring, continuing or recurring, or, in so far as such harm to the environment is authorised by law or cannot reasonably be avoided or
stopped, to minimise and rectify such pollution or degradation of the environment.\textsuperscript{37} Importantly, this provision is similar to the corresponding section in the National Water Act, and is also retrospective in effect; it applies to people who have, in the past, polluted or degraded wetlands.

This section of NEMA refers to “significant” pollution or degradation. The test of what is significant may be difficult to assess and must be considered in the light of the circumstances of each wetland. Factors as its sensitivity and ecological importance would certainly be relevant to a determination of what constitutes significant pollution or degradation.

The measures which must be taken include, but are not limited to, measures to:

\[
\text{(a)} \quad \text{investigate, assess and evaluate the impact on the environment;}
\]
\[
\text{(b)} \quad \text{inform and educate employees about the environmental risks of their work and the manner in which their tasks must be performed in order to avoid causing significant pollution or degradation of the environment;}
\]
\[
\text{(c)} \quad \text{cease, modify or control any act, activity or process causing the pollution or degradation;}
\]
\[
\text{(d)} \quad \text{contain or prevent the movement of pollutants or the causant of degradation;}
\]
\[
\text{(e)} \quad \text{eliminate any source of the pollution or degradation; or}
\]
\[
\text{(f)} \quad \text{remedy the effects of the pollution or degradation.}
\]

\textsuperscript{37} Section 28.
These provisions impose a primary obligation on land owners to rehabilitate degraded wetlands on their property.\textsuperscript{38}

2.2.11 Institutional rights and obligations

Like the corresponding sections of the National Water Act,\textsuperscript{39} NEMA gives considerable power to specified officials to direct that remediation take place and, in defined circumstances, to recover the cost of rehabilitation. As with the National Water Act, that power is restricted to cases where the degradation of the wetland is a result of wrongful human conduct. The category of persons from whom costs may be recovered is similar to that contained in the corresponding provisions in the National Water Act.\textsuperscript{40} Prior to giving such a directive, the Director-General or provincial head of department is required to give affected people notice of his or her intention, and to allow them to make representations concerning the proposed directive. However, if the situation is an urgent one, it is competent to give the directive first, and, as soon as possible afterwards, to consult affected parties.\textsuperscript{41}

\textsuperscript{38} Section 28(3).

\textsuperscript{39} Discussed in section 2.2.8.

\textsuperscript{40} See section 2.2.8 of this report.

\textsuperscript{41} Section 28(4).
Importantly, from a wetland rehabilitation perspective, NEMA states that if a person is required under the Act to undertake rehabilitation on someone else’s land, and reasonably requires access to, use of or a limitation on use of that land in order to carry out the rehabilitation but cannot acquire it on reasonable terms, then the Minister may expropriate the necessary rights and vest them in the rehabilitator. He or she may then recover from the person for whose benefit the expropriation was effected all costs incurred.\textsuperscript{42}

As far as the delegation of this power is concerned, it may only be (in the case of the Director-General) delegated to a named official in the department or an officer in the provincial administration or municipality.\textsuperscript{43} Delegation to any other person is unlawful. It follows that if any other party is carrying out the remediation activities and wishes to recover the costs from the party causing (or having caused) the harm, it must enlist the co-operation of an official vested with those powers.

\subsection*{2.2.12 The role of civil society}

NEMA allows civil society to conduct criminal prosecutions, provided that such a prosecution is instituted in the public interest or in the protection of the environment. In terms of NEMA, a person may institute and conduct a prosecution in respect of a breach or threatened breach of any duty (other than a public duty resting on an organ of state) where the duty is concerned with the protection of the environment and a breach of it is an offence.\textsuperscript{44} Furthermore, NEMA allows a broad category of people to approach a court for relief in respect of any breach or threatened breach of any provision of NEMA, including a principle contained in Chapter 1. This category of people includes:

(a) a person acting in his or her own interest or a group of persons’ interests;
(b) a person acting on behalf of someone else who is unable to institute proceedings;

\textsuperscript{42} Section 28(6).

\textsuperscript{43} Section 42(3).

\textsuperscript{44} Section 33.
(c) a person acting in the interests of a group or class of persons;
(d) a person or persons acting in the public interest;
(e) a person or persons acting in the interest of protecting the environment.

Significantly, a court may decide not to award costs against a person or group who fails to obtain the relief sought, provided that the litigant or litigants who or which instituted the action can show that they acted reasonably out of a concern for the public interest or that of the environment and made due efforts to use other means to obtain the relief sought. This provision is important insofar as a public interest group, or NGO, wishing to require a party to remediate a wetland is concerned. Whereas previously such a body may have been discouraged from litigating because of the risks of an adverse costs order, that danger has now receded significantly.

2.2.13 The Environment Conservation Act

The Environment Conservation Act (“ECA”) was intended to be an overarching piece of legislation aimed at environmental management in the broadest sense. It has, to a large extent been repealed and replaced by NEMA. Perhaps the most important remaining provisions of the ECA are those concerning the power of certain officials to require remediation, and the Environmental Impact Assessment Regulations. These are discussed in section 3.2.1.

2.2.14 Institutional rights and obligations

As was mentioned above, the most important provision in relation to wetland rehabilitation in this Act is section 31A. It provides that:

“If, in the opinion of the Minister or the competent authority, local authority or government institution concerned, any person performs any activity or fails to perform any activity as a result of which the

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45 Section 32.

46 73 of 1989.

47 Under section 50(1) of NEMA.

48 Defined in section 1 of the ECA to mean the authority to whom the administration of the Act has been assigned in that province under section 235(8) of the Interim Constitution of the Republic of South Africa Act, 200 of 1993. In most instances in South Africa, that authority is a provincial department or directorate within the provincial ministry responsible for environment.

SECOND DRAFT, NOT FOR CIRCULATION, FOR DISCUSSION WITH DWAF ONLY
environment is or may be seriously damaged, endangered or detrimentally affected, the Minister, competent authority, local authority or government institution, as the case may be, may in writing direct such person to cease the activity or to take steps which are deemed by the directing authority in order to eliminate, reduce or prevent the damage, danger or detrimental effect. If that person fails to perform the activity, the directing authority may him/her or itself perform it and recover the costs from the person who failed to comply with the direction.”

Section 31A is similar to the directive powers contained in NEMA (discussed in section 2.2.11 of this report), but is materially different in several respects. Firstly, the powers to direct rehabilitation are granted to the Minister (of Environment Affairs and Tourism), a competent authority, local authority or government institution. As can be seen, this is considerably wider than the same powers contained in NEMA. Furthermore, these powers may be delegated\(^{49}\) to officers or employees of DEAT, DWAF, the Provincial Administration, local authority or government institution concerned.\(^{50}\) Accordingly, in the rehabilitation of wetlands, far more scope is given in terms of the ECA for different officials to direct that an activity which is being conducted must cease or that remediation must occur. These provisions of the ECA are also different from the corresponding sections of NEMA in that it does not have a retrospective effect. To that extent, section 31A is more limited than the compounding provisions of NEMA. Finally, although the ECA does not make specific reference to the obligation on officials giving such directives to allow affected parties to make representation, such a step would be necessary.\(^{51}\)

\(^{49}\) In terms of section 33.

\(^{50}\) Section 34(1).

\(^{51}\) This is a requirement of our common law, and section 33 of the Constitution which guarantees just administrative action. This position was confirmed in the recent decision of ***Evans and Others v The Transitional Metropolitan Substructure of Llandudno/Hout Bay or its successor in title and Another***, heard in the CPD, an unreported judgment given on an unspecified day in December 1997 by Cleaver J under case no. 10016/96.
3. LAWS WHICH REGULATE ACTIVITIES THAT DEGRADE WETLANDS

3.1 Introduction

We have identified a number of activities which may have an adverse impact on wetlands. More were identified by delegates at the workshop. They are poor practices in the agriculture, forestry and mining sectors. One aspect of poor agricultural or forestry practices is allowing the spread of alien invasive species, the spread of alien invasives, other negative impacts include mining, urbanisation and the construction of roads. In most cases, these activities or practices are dealt with by means of sector-specific legislation. However, there are several provisions of South African environmental law and policy which have an over-arching (and cross-cutting) control over these activities. They are the Environmental Impact Assessment (“EIA”) regulations passed under the ECA, aspects of NEMA, and the General Policy passed under the ECA. These general controls over activities which may have a negative impact on wetlands will be considered before activity-specific laws are analysed.

3.2 General controls over activities which may have a negative impact on wetlands

3.2.1 The EIA regulations

In terms of the ECA, the Minister of Environmental Affairs and Tourism is entitled to identify activities which he or she believes may have a substantial detrimental effect on the environment. No-one may carry out such an identified activity without the prior written permission of a competent authority. Permission may not be granted without compliance with (or exemption from) the EIA regulations.

52 It is dealt with briefly, as a separate section of this part of the report.
54 In particular, section 28.
55 Section 2, in GNR 15428 promulgated on 21 January 1994.
56 Section 21.
57 Section 22.
58 These were promulgated in GNR 1183 in Government Gazette 18261 on 5 September 1997.
The Minister has identified a list of activities. The important activities for the purposes of wetland degradation and rehabilitation are as follows:

- The construction or upgrading of:
  - Roads... and associated structures outside the borders of town planning schemes;\textsuperscript{59}
  - canals and channels, including diversions of the normal flow of water in a riverbed... and impoundments;\textsuperscript{61}
  - dams, levies or weirs affecting the flow of the river;\textsuperscript{62} and

\footnotesize
\textsuperscript{59} In GNR 1182 in \textit{Government Gazette} 18261 on 5 September 1997.
\textsuperscript{60} 1(d).
\textsuperscript{61} 1(i).
\textsuperscript{62} 1(j).
schemes for the abstraction or utilisation of ground or surface water for bulk supply purposes.\textsuperscript{63}  

- The intensive husbandry of, or importation of, any plant or animal that has been declared a weed or alien invasive species.  
- The reclamation of land below the highwater mark of the sea and in inland water including wetlands.  
- Defined change(s) of land use

Clearly, these identified activities encompass a number of human undertakings which have been identified in this report as likely to have an adverse impact on wetlands. They also, potentially, include activities which may be undertaken in the rehabilitation of wetlands. This aspect of the EIA regulations is discussed in section.

The EIA regulations contain a number of procedural and substantive requirements, including an obligation to complete a scoping report which must include a brief project description, a description of how the environment may be affected, a description of environmental issues identified and a description of all alternatives identified. An applicant is also required to ensure adequate public participation in the process. Where the impact is likely to be a particularly significant one, the applicant will be required to conduct a full environmental impact assessment.

3.2.2 NEMA

\textsuperscript{63} 1(l).
Importantly, NEMA contains provisions regarding an obligation to conduct environmental impact assessments for proposed activities, even where they are not those identified by the Minister in terms of section 21 of the ECA. NEMA provides that where someone proposes to carry out an activity which, firstly, requires permission or authorisation by law and secondly, may significantly affect the environment, that proposed activity must be considered, investigated and assessed prior to implementation and reported to the organ of state charged by law with giving the permission. The section makes it clear that the existing EIA regulations remain in force, but that, notwithstanding those, the minimum requirements for investigation and assessment, contained in section 24(7) of NEMA, must be complied with even where an activity is not scheduled under the EIA regulations. These minimum requirements go beyond the procedures required under the EIA regulations. They include an obligation to investigate the potential impacts, including cumulative effects of the activity and its alternatives, an investigation into the alternative of not implementing the activity, and reporting on gaps in knowledge and underlying assumptions. These requirements are, in some respects, considerably broader than those required by the EIA regulations.

An application under the EIA regulations will fall within the ambit of section 24, since it is an undertaking which requires permission and, by its very nature, may have a significant effect on the environment. It therefore follows that anyone wishing to conduct an identified activity which is potentially harmful to a wetland, must comply with the requirements of both the EIA regulations and with section 24(7) of NEMA.

This section of NEMA also has important implications for activities which are likely to affect wetlands negatively and which are currently not subject to the EIA regulations. One such example is mining. Importantly, insofar as wetland rehabilitation is concerned, any activities which meet the two-pronged test referred to above must also be subject to the minimum requirements contained in section 24(7) of NEMA.

3.2.3 General Policy under the ECA

This policy was passed in terms of section 2 of the ECA, but does not appear to have been enforced in any significant way until fairly recently. In relation to land use it requires that “before embarking on any large-scale or high-impact development project, a planned analysis must be taken in which all interested and affected parties must be involved.” The Cape Provincial Division enforced this requirement in the matter of The Save Klein Hangklip Association v The Minister of Planning, Administration and Culture (Western Cape) and

\[64\] Section 24(3)(d).
Others\textsuperscript{65} The failure by the second respondent to carry out a planned analysis (that is, an EIA) at the time when an application was made for the change of land use rights, resulted in the court setting aside those land use rights. This policy may be significant where wetlands have been degraded prior to the entry into force of the EIA regulations in 1997. However, the provisions of NEMA, which are retrospective in effect,\textsuperscript{66} have, for the most part, superseded the provisions of the policy.

3.3 Activity specific controls

3.3.1 Poor Agricultural Practices

\textsuperscript{65} Unreported judgment delivered on 3 November 2000 under case no. 10543/98.

\textsuperscript{66} Discussed in section 2.2.10.
3.3.1.1 The Conservation of Agricultural Resources Act\textsuperscript{67}

The main focus of the Conservation of Agricultural Resources Act ("CARA"), is upon agricultural resources but it has indirect implications for wetlands, especially insofar as they play a positive role in agricultural activities. It is also one of the primary statutes through which agricultural activities which negatively affect wetlands may be regulated. Of particular importance are the recently drafted regulations. The stated object of CARA is to provide for the conservation of the natural agricultural resources of the Republic by the maintenance of the production potential of land, by the combating and prevention of erosion and weakening or destruction of the water sources, and by the protection of the vegetation and the combating of weeds and invader plants.\textsuperscript{68} The resources which CARA is accordingly concerned with are land, water and the related aspects of the veld and the vegetation. Importantly, the CARA does not apply to land (and by implication, wetlands) situated in urban areas.\textsuperscript{69}

CARA regulates rehabilitation of wetlands insofar as that activity falls under the definition of "conservation" which, in relation to the natural agricultural resources, includes the protection, recovery and reclamation of those resources.\textsuperscript{70}

The Minister of Agriculture may prescribe control measures with which all land users must

\textsuperscript{67} 43 of 1983.

\textsuperscript{68} Section 3.

\textsuperscript{69} Section 2(1)(a). The term urban area is defined in section 1 of CARA and includes areas under the control of local authorities as well as public open spaces within local authority areas.

\textsuperscript{70} Section 1.
comply. Section 6 includes the control measures which are relevant to wetland rehabilitation. They are:

- the irrigation of land;
- the prevention or control of waterlogging or salination of land;
- the utilization and protection of vleis, marshes, water sponges, water courses and water sources;
- the regulation of the flow pattern of run-off water;
- the utilization and protection of vegetation;
- the control of weeds and invader plants;
- the protection of water sources against pollution on account of farming practices; and

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71 Section 6.
any other matter which the Minister may deem necessary or expedient in order that
the objects of CARA be achieved.  

The Minister has published a number of control measures. These include those in accordance
with section 6(2) concerning the utilisation and protection of vleis, marshes, water sponges
and water courses, regulation of the flow pattern of water, restoration and reclamation of
eroded land, and restoration and reclamation of disturbed or denuded land. With the
Minister’s co-operation, these may be employed to compel wetland rehabilitation, where this
is appropriate.

3.3.2 Poor Forestry Practices

Forestry activities are governed by several pieces of national legislation. These include the
National Water Act, the National Forests Act and NEMA. Insofar as these laws regulate
wetland rehabilitation, their important provisions are as follows:


73 Regulation 7.

74 Regulation 8.

75 Regulation 13.

76 Regulation 14.

77 84 of 1998.
3.3.2.1 National Water Act

The Act identifies the use of land for commercial afforestation as a stream flow reduction activity. Stream flow reduction activities are included in the definition of water uses. Such a licence would not be granted until a consideration of the use of water had been undertaken. Although the Act does not make this explicit, it would be reasonable to include an examination of the extent to which proposed forestry activities negatively impact on wetlands.

3.3.2.2 National Forests Act

Like much of the legislation which has been passed in South Africa recently, the National Forests Act rests on a principled-based approach to decision-making. Some of the principles which underpin this Act and which are relevant to wetlands are the requirement that forests be developed and managed so as to:

· conserve biological diversity, ecosystems and habitats; and
· sustain the potential yield of their economic, social and environmental benefits.

The Act also allows the Minister to determine criteria for measuring the sustainability of forest management.

The Act also makes provision for licences to be granted for activities conducted in State

78 Section 36.

79 Section 21(d).

80 Section 3.

81 Section 4(2).
forests, which activities include the construction of roads, buildings or structures, grazing or herding of animals and cultivation of lands, all of which impact on wetlands situated in State forests.  

82

82 Section 23.
State forests may also be managed by communities in terms of community forestry agreements. Such an agreement would include permitted activities within an area designated to be the subject of a community forestry agreement. If wetland rehabilitation were to take place in such an area, the co-operation of the community concerned would need to be secured.

3.3.2.3 The EIA regulations

The identified activities referred to in section 3.2.1 above includes the intensive husbandry of, or importation of any plant or animal that has been declared a weed or an invasive alien species. It will therefore be necessary for anyone intending to conduct the commercial forestry of any plant which has been declared an invasive alien species to comply with the EIA regulations, in addition to any other statutory obligations (like those under the draft CARA regulations) he or she may have.

3.3.3 POOR Mining Practices

Mining is one of the human activities which has potentially the most significant adverse impacts on wetlands. This was highlighted in the case of The Director: Mineral Development (Gauteng Region) and Another vs Save the Vaal Environment and Others. Mining is regulated by the Minerals Act and regulations passed under it or its predecessor, the Mines and Works Act.

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83 Section 29(1).

84 Item 4 on GNR 1182.

85 1999 (2SA 709(SCA)).

86 27 of 1956.
3.3.3.1 The Minerals Act\(^\text{87}\)

\(^{87}\) 50 of 1991.
The Act requires that anyone intending to prospect or to mine must first be in possession of the appropriate permit and an approved Environmental Management Plan (“EMP”). It is a requirement that the EMP be implemented as a part of the prospecting or mining process and simultaneously with such operations. It is further required that no sand may be extracted from the bank of any stream, river, dam or watercourse except with written permission. Furthermore, where damage has been caused to the bank of a stream, river, dam, pan or lake, that bank must be restored to the satisfaction of the inspector of mines at the expense of the owner or manager. Sand or slimes dumps may not be established on the bank of a river or stream, dam, pan or lake without the written permission of the inspector of mines.

3.3.3.2 NEMA

It is important to recognise that, in addition to obtaining a prospecting or mining licence and an approved EMP, a person wishing to undertake mining activities will be obliged to comply with section 24 of NEMA. This is because a prospecting or mining licence or the approval of an EMP falls within the ambit of an activity which requires authorisation or permission by law and mining may significantly affect the environment. Given that those tests are met, someone wishing to undertake mining activities must comply with the procedures laid down in section 24(7) of NEMA. This is explained more fully in section 3.2.2.

3.3.4 The spread of alien invasives

3.3.4.1 Introduction

This activity is governed by two primary legal controls. The first of these is the EIA regulations, discussed in section 3.2. The second of these is in the proposed regulations promulgated under CARA, which are not yet in force.

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88 Sections 38 and 39.

89 Regulation 5.14 of the Regulations promulgated under the (now partially repealed) Mines and Works Act, in GNR 992 on 26 June 1970 and saved under section 68(2) of the Minerals Act.

90 Regulation 5.14.2.

91 Regulation 5.14.3.

92 These are laid down in section 24(1) of NEMA.
3.3.4.2  The EIA regulations

As was mentioned in section 3.2.1, the intensive husbandry of, or importation of any plant or animal that has been declared a weed or invasive alien species is an activity identified in terms of section 21 of the ECA and it will therefore be necessary for anybody carrying out intensive husbandry to comply with the EIA regulations. If the growing of such plants does not fall within the ambit of intensive husbandry, perhaps because the plants are simply grown ornamentally or as a hobby, then the regulations will not apply.

3.3.4.3  The draft CARA regulations

Published for comment on 16 August 2000, the draft CARA regulations contain some wide-ranging provisions concerning the importation and exportation of plants identified to be invader plants. A very significant control contained in these proposed regulations, is that prohibiting subdivision, transfer or a change of land use or rezoning unless the land concerned has been cleared of weeds and invader plants, or they have been controlled. If that provision comes into force, it will have the effect of compelling land owners who wish to sell their land or change its use to clear invader plants, including those found in degraded wetlands.

3.3.5  Urbanisation

3.3.5.1 The Physical Planning Acts\textsuperscript{93}

Aside from mining, urbanisation is one of the most significant threats to wetlands. Land use control laws in South Africa operate primarily through town planning or zoning schemes, promulgated under provincial ordinances and laws, and this will increasingly become the case since South Africa has established wall-to-wall local government. However, there are several pieces of national legislation which regulate land use planning. They are the two Physical Planning Acts, the Black Communities Development Act\textsuperscript{94} and the Less Formal Townships Establishment Act.\textsuperscript{95}

\textsuperscript{93} 88 of 1967 and 125 of 1991.

\textsuperscript{94} 4 of 1984. (Large portions of this Act have now been repealed.)

\textsuperscript{95} 113 of 1991.
The only national Act which is of direct relevance to wetland rehabilitation is the Development Facilitation Act.

3.3.5.2 The Development Facilitation Act\textsuperscript{96}

The Development Facilitation Act ("DFA") sets the overall framework and administrative structures for planning throughout the country. It is intended to be a framework law which allows provinces to pass provincial planning laws and regulations which are appropriate for specific circumstances.

The overall objective of the DFA is evident from its long title, namely to introduce extraordinary measures to facilitate and speed up the implementation of reconstruction and development programmes and projects in relation to land; and in so doing to lay down general principles governing land development throughout the Republic.

'Environment' is defined to mean the environment as defined in section 1 of the ECA and 'environmental evaluation' means an evaluation of the environmental impact of a proposed land development, conducted in accordance with the integrated environmental management guidelines which are from time to time issued or amended by the Department of Environment Affairs and Tourism;

\textsuperscript{96} 67 of 1995.
The DFA contains general principles for land development and conflict resolution.97 Principles relevant to the rehabilitation of wetlands are the following:

- Policy, administrative practice and laws should promote efficient and integrated land development in that they-
  - promote the integration of the social, economic, institutional and physical aspects of land development;
  - promote integrated land development in rural and urban areas in support of each other; and
  - encourage environmentally sustainable land development practices and processes.

- Furthermore, the DFA requires that policy, administrative practice and laws should promote sustainable land development at the required scale in that they should-
  - promote land development which is within the fiscal, institutional and administrative means of the Republic;
  - promote the establishment of viable communities;
  - promote sustained protection of the environment; and
  - meet the basic needs of all citizens in an affordable way.

Each proposed land development area should be judged on its own merits and no particular use of land, such as residential, commercial, conservational, industrial, community facility, mining, agricultural or public use, should in advance or in general be regarded as being less important or desirable than any other use of land.

3.3.6 The construction of roads

3.3.6.1 Introduction

We understand from the technical experts present at the workshop that roads are often constructed through wetlands, thereby bisecting them and changing their nature. In addition, the runoff from roads may create unexpected water movement or erosion some distance from the roads, thereby leading to unanticipated impacts for wetlands which may be nearby. These problems are regulated, at least partially, by two pieces of legislation.

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97 Sections 2 to 4.
3.3.6.2 The South African National Roads Agency Limited and National Roads Act

The South African National Roads Agency Limited and National Roads Act does not specifically provide for the carrying out of environmental impact assessments by the National Roads Agency during the construction of maintenance of roads. The only power which it has which may positively affect wetlands is the power to plant trees, shrubs or other plants or grass or to take any other steps for the convenience of road users, the appearance of the road or to prevent soil erosion arising as a result of the construction of a national road.

3.3.6.3 The EIA regulations

As was mentioned previously, the construction or upgrading of, among other things, roads and associated structures outside the borders of town planning schemes is an activity requiring compliance with the EIA regulations. Road-building must also be done in compliance with section 24(7) of NEMA. If it meets the two-pronged test in section 24(7).

3.4 South African Provincial Law

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98 7 of 1998.

99 Activity 1(d) listed in GNR 1182 of 5 September 1997.
An analysis of provincial laws in South Africa which may have a bearing on wetland rehabilitation is excluded from the ambit of this report. However, it was agreed that the kinds of provincial laws which may be relevant should be mentioned briefly. These might include the Town Planning or Land Use Planning Ordinances enacted by the four former provinces in South Africa before 1994. Some provinces have passed laws replacing those, which do or will regulate planning and development. Some provinces are in the process of enacting broader environment conservation laws, and all provinces are subject at least to the provisions of the Nature Conservation Ordinances of the former four provinces. KwaZulu-Natal also has a Prevention of Environmental Pollution Ordinance. Each of these might have a bearing on wetland degradation and rehabilitation.

3.5 Local legislation

As with provincial laws, local laws are excluded from the ambit of this brief. However, for the sake of completeness, it is worth bearing in mind that many municipalities (or their predecessors-in-law) will have passed local authority by-laws which may regulate activities which degrade wetlands. These are likely to be contained in water supply or effluent discharge by-laws, both categories of which will, generally speaking, make it an offence to pollute water resources, which definition would ordinarily include a wetland. In addition, nuisance by-laws may also have a bearing on wetland degradation in that they will prohibit their pollution. Finally, solid waste disposal by-laws may have similar provisions.

4. LAWS WHICH REGULATE REHABILITATION ACTIVITIES

4.1 Introduction

As was mentioned previously, certain of the activities which must be undertaken in order to rehabilitate wetlands may also have legal controls or consequences. This may happen both if the rehabilitation activities are not correctly performed or have unintended consequences or

100 Such as the KwaZulu-Natal Planning and Development Act, 5 of 1998 and the Western Cape Planning and Development Act 7 of 1999. Neither these has yet come into force.

101 Such as the Free State.

102 These will, in some instances, not apply to the erstwhile homelands.

103 21 of 1981.
they may require prior permission before they can commence. These laws are as follows:

4.2 Common law

There are several areas of common law which are likely to have a bearing on wetland remediation activities. They are the law of delict, the law of nuisance and the law of trespass. In order for one to found a claim in delict, he or she would have to prove:

· a wrongful act;
· negligently or intentionally committed;
· which caused foreseeable harm;
· to a foreseeable person; and
· with the taking of reasonably steps, that harm could have been prevented.

Such a claim may occur where someone takes intentional steps to rehabilitate a wetland and unintentionally (but foreseeable) causes someone harm. This may be a downstream user of a wetland or may arise where someone is (lawfully) crossing another person’s land and causes damage to a person or property on that land. The situation may also arise where someone takes steps to rehabilitate and these fail. One example suggested was where a gabion or weir fails and this causes damage to downstream users. If the rehabilitation measure failed through the negligence of the persons carrying out the rehabilitation they may well be liable to someone who suffered harm as a result. Similarly, if they are employees acting within the terms of their employment contract, the employer will be held liable for the employees’ negligence. Generally speaking this so-called vicarious liability does not apply to third party contractors engaged to carry out rehabilitation work.

4.2.1 Nuisance

The principles of the law of nuisance will apply where a land owner or land user carries out activities in the course of rehabilitation which unreasonably interfere with a neighbour’s right to use or enjoy his or her property. Such an example may arise where perhaps bulldozing causes unreasonable noise or dust to a neighbour. In that case, a landowner will be entitled to ask someone carrying out those rehabilitation activities to stop them and, in extreme cases, to approach a court for an order directing that the activity stop.

4.2.2 The law of trespass
It is a requirement of common law that no-one may enter onto another person’s property without prior permission unless he or she is authorised under a statute. If the person entering onto the land, for the purpose of rehabilitation, is not a duly authorised person armed with, for example, powers of inspection under any law, he or she must first obtain the permission to enter onto the land. If this cannot be obtained, it may be necessary, in extreme cases, to secure this right, for example in terms of the National Water Act.

4.3 The EIA regulations

As was mentioned above, there are several activities, identified in terms of section 21 of the ECA which may take place during the course of wetland rehabilitation. One of the activities identified by the Minister is the construction or upgrading of dams, levies or weirs affecting the flow of a river. Since the construction of either any of these structures may occur, either permanently or temporarily in the course of remediating a wetland, it will be necessary for the remediator either to obtain exemption from compliance with the EIA regulations, or to comply with them and to obtain written permission from the competent authority to commence the activity.

Where the proposed structure which will affect the flow of a river is a temporary one constructed in order to carry out the activities which will remediate the wetland, it may be appropriate to apply for exemption from the requirements of the ECA (and the EIA regulations). Such an exemption may only be given on the furnishing of adequate reasons for exemption being appropriate (by the applicant wishing to undertake the activity. The most obvious one is that the environmental impacts will be minimal. It must, however, be borne in mind that it is the practice of some competent authorities not to allow the applicant to make a decision as to whether or not it is entitled to an exemption. The practice is to require it to make an application, to identify its likely impacts and for the competent authority to determine whether or not an exemption is appropriate. It may be appropriate to approach the competent authority in the provinces in which rehabilitation is likely to be carried out regularly for a directive in this regard.

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104 Activity 1(j).

105 This is done in terms of section 28(A) of the ECA.

106 In most instances, the nature conservation authority or the environmental conservation ministry in any province.
5. CONCLUSION

As is clear, there are numerous laws which regulate wetland rehabilitation, activities which degrade wetlands and activities which may be undertaken in the course of their rehabilitation. Each of these laws give rise to a number of rights and duties to government institutions, land holders or users and, in some instances, civil society. This report has summarised those in a framework. It is likely, however, not to be helpful to people directly involved in wetland rehabilitation since it is a somewhat lengthy document to read through if a person simply wishes to know what the legal controls are which operate over a given activity.

It is therefore recommended that someone who has a good understanding of the activities which take place during the course of wetland rehabilitation, be requested to identify each of these. Thereafter, it is suggested that the legal controls which operate in respect of each of these activities be simplified into one or two sentences, together with their legal reference, so that they can be easily understood and accessed by those carrying out wetland rehabilitation.