Dear Sirs

NATIONAL ENVIRONMENTAL MANAGEMENT FIRST AMENDMENT BILL (VERSION 2)

Our previous correspondence dated 15 April 2013 refers.

1. The SAVC considered the proposed amendments to the National Environmental Management: Biodiversity Act (NEM: BA) and submit that the following may have an impact on the veterinary professions.

   a. The amendment of section 56 to include not only species that face the threat of extinction in the wild or which are of national importance or high conservation value but any specie that requires management in an ecologically sustainable manner to prevent the inclusion of such specie in one of the threatened categories in future.
Comment: If the ambit is widened it becomes even more important to ensure that the capturing and/or catching of and exercising physical control over a listed specie with the sole purpose to render a veterinary service is not regarded as a restricted activity for which a permit is required. Alternatively, the Minister must grant the veterinary professions exemption from the requirement to obtain permits if a listed specie is captured and/or caught and physical control exercised over it with the sole purpose to render a veterinary service.

b. The amendment of:

(i) section 59 by the inclusion of paragraph (f) requiring the registration of persons, game farms, professional hunters, outfitters and trainers; and

(ii) the inclusion of Section 97(dA) and (fA) granting the Minister the power to make regulations respectively for:

(a) a system and requirements for the compulsory or voluntary registration of persons, institutions, ranching operations, game farms, nurseries, captive breeding or keeping operations and other facilities or operations, and

(b) self-administration and the recognition of associations relating to persons, operations or facilities contemplated in section 59.
Comment: The reference to persons, institutions, other facilities or operations is too wide. It should be made clear which persons, institutions, other facilities or operations are to be regulated and the activities they are to perform. Care should be taken that persons who are registered (either compulsory or voluntary) are not allowed to perform any veterinary procedures. Veterinary professionals registered with the South African Veterinary Council should not be required to be registered and regulated by the Minister who perform restricted activities for the sole purpose of rendering veterinary services.

c. The amendment of section 88 by deferring the issuing of a permit as well as the inclusion of section 93B(1)(b) making provision for the suspension of a permit if: the applicant/permit holder is under investigation for either the contravention or failure to comply with the provisions of the Act.

Comment: The kind of investigation contemplated and time frame for the completion of the investigation is not specified. Applications should not be deferred or suspended if the purpose of the restricted activity is to render a veterinary service only (should veterinary services not be exempted from permit requirements).

d. The repeal of sections 94, 95 and 96 which made provision for an appeal process, appeal panel and decisions that the Minister and appeal panel were entitled to take.
Comment: The explanatory notes to the proposed amendment (clauses 27, 28 and 29) state that the purpose is to ensure a single and aligned appeal process under section 43 of the National Environmental Management Act (NEMBA). Reference thereto should be included in NEM: BA

e. The amendment of section 97(1)(b) by the addition of subparagraph (xii) granting the Minister the power to make regulations pertaining to the collection of samples for genetic analyses.

Comment: Care should be taken that non-veterinarians are not allowed to perform veterinary procedures as defined in the Veterinary and Para-veterinary Professions Act, 19 of 1982. The collection of samples with the purpose of diagnosing, treating or preventing any pathological or physiological condition is a veterinary function.

f. The inclusion of section 101(3)(e) which makes it an offence if a person permits or allows any other person to do, or to omit to do, anything which is an offence in terms of subsection (1) or (2).
Comment: The explanatory notes to the proposed amendment (clause 32) state that the purpose is to create offences for persons who:

(i) engage in the bioprospecting discovery phase without proper notification to the Minister;

(ii) carry out a restricted activity, which has been prohibited, involving a listed invasive specie; and

(iii) to make it an offence for any person who is involved in an illegal restricted activity but who does not physically carry out the restricted activity.

To achieve the objectives set out in (i) and (ii) above separate clearly defined offences should rather be created.

Regarding (iii) a person does not have to physically carry out a restricted activity to commit an offence. If there is a perpetrator (physically carrying out the offence) our law already makes provision for criminal liability for:

(a) An accomplice; and

(b) Common purpose.  

1 See Hiemstra’s Criminal Procedure, Lexis Nexis South Africa 2008, p 446: “Accomplices—An accomplice, on the other hand, is a participant who is not a perpetrator. The accomplice lacks the actus reus. The perpetrator commits the actus reus and the accomplice acquiesces therein by knowingly providing information, the means or the opportunity for the advancement of the commission of the offence. Such advancement or aid can even be in the nature of an omission – for instance, an accomplice may intentionally fail to intervene even though he or she is under a legal duty to thwart the commission of the offence, or give consent where the offence could have been prohibited (R v Pendeke 1967 (3) SA 200 (RA)).”

2 Supra p 448: “The doctrine can be formulated as follows: if two or more persons collude in an undertaking with an unlawful purpose, each is responsible for the acts which the other performed in furtherance of the common purpose if he or she:

(i) foresaw the possibility that the other could perform that act in the furtherance of their common purpose; and

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Furthermore the Riotous Assemblies Act 17 of 1956 makes provision for the offences of uncompleted conspiracy and soliciting and incitement upon which no offence followed.\footnote{3}

Yours faithfully

\[Signature\]

Lynette Havinga
Registrar

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\(\text{\footnote{3}}\) See section “18 (2) Any person who—
(a) conspires with any other person to aid or procure the commission of or to commit; or 
(b) incites, instigates, commands, or procures any other person to commit, any offence, whether at common law or against a statute or statutory regulation, shall be guilty of an offence and liable on conviction to the punishment to which a person convicted of actually committing that offence would be liable”. 