

Environmental Law

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South Africa

- Understanding the newly proposed flexible EIA framework



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Understanding the newly proposed flexible EIA framework

South Africa's environmental impact assessment (EIA) regime established under the National Environmental Management Act 107 of 1998 (NEMA) and the Environmental Impact Assessment Regulations, 2014 (EIA Regulations), is under active review following publication, by the Department of Forestry, Fisheries and the Environment (DFFE) of a draft discussion document dated 22 August 2025 (Draft Discussion Document) on the possible introduction of a more flexible, risk-based EIA framework (Flexible EIA Framework).

Although the DFFE conducted national stakeholder consultation sessions in March and April 2026 in relation to the Draft Discussion Document (the comment window closed on 31 May 2026), this consultation represents only the first step in a broader reform process. No draft amendments to NEMA or the EIA Regulations have been published for comment, and any legislative changes will be subject to further public consultation processes.

What is changing?

The proposed reforms would mark a significant departure from the current EIA regime. Under the current system, the requirement for, and level of, environmental assessment is determined by whether a proposed development triggers a listed activity contained in one of three listing notices published in terms of the EIA Regulations. The applicable assessment process (either a basic assessment or a full scoping and environmental impact reporting process) is prescribed by the Listing Notice in which the activity appears, with limited discretion afforded to the competent authority. Under the proposed Flexible EIA Framework, the level and type of assessment would instead be determined by the competent authority on a case-by-case basis, informed by the nature and scale of the development, the sensitivity of the receiving environment and the anticipated significance of environmental impacts.

The proposed reforms are informed by longstanding concerns that the existing system may, in some instances, impose assessment requirements that are disproportionate to the environmental risks presented by a development. The objective is therefore to ensure that assessment requirements are better aligned with an individual development's environmental risk and context, while preserving rigorous scrutiny for developments with potentially significant impacts.

The Draft Discussion Document builds on recommendations contained in a 2019 report titled "*Evaluation of the Environmental Impact Assessment System Report*" and the 2023 "*Report on the Consideration and Prioritisation of Integrated Environmental Management Instruments*", both of which identified the need for a more responsive and context-specific approach to environmental assessment. A national EIA task team has now been established to address implementation of these recommendations.

The proposed Flexible EIA Framework

The Draft Discussion Document proposes replacing the current, predominantly activity-based screening system with a more flexible screening process. Rather than automatically prescribing a fixed basic assessment or scoping and environmental impact reporting process when a listed activity is triggered, the Flexible EIA Framework would allow the competent authority to determine the applicable assessment pathway based on environmental risk and site-specific circumstances.

Phase 1: Mandatory pre-application phase

The process would commence with a mandatory pre-application phase, during which the applicant submits a pre-application form containing preliminary information regarding the proposed development (a brief project description) and a description of the receiving environment. Based on this information, the competent authority may, at its discretion, convene a pre-application meeting to clarify certain issues.

This phase is intended to identify developments for which alternative environmental management instruments (such as general norms and standards or exemption mechanisms) may apply, negating the need to proceed to the screening phase and a formal EIA process. This would provide an "*early exit*" for developments where the EIA Regulations do not apply or where an exclusion is applicable.

Phase 2: Screening phase

The screening phase forms the cornerstone of the proposed Flexible EIA Framework. During this stage, an applicant would submit a formal application for environmental authorisation containing detailed information, including a detailed project description, description of the receiving environment (including screening tool outputs), the policy and strategic spatial context

(spatial development frameworks, environmental management frameworks and other relevant planning instruments), a motivation of need and desirability, a public participation plan and a proposed assessment route. Based on this information, the competent authority would determine the assessment route to be followed.

No specialist information may be submitted at the screening stage to motivate for a lesser assessment route, only existing information on the project impacts. The competent authority would retain discretion to amend the assessment route if new information emerges during the process. Screening criteria are still to be developed which would guide the authority's determination and govern the exercise of the authority's discretion at this phase.



Phase 3: Assessment and review phase

Following screening, the development proceeds through the assessment route determined by the competent authority. The Draft Discussion Document presents three reform options for the number of "assessment routes", and further deliberation is required before a final selection is made. The key practical differences between the routes relate to who prepares the assessment, whether specialist studies are required, and the resulting implications for project timelines and cost. The description set out below is based on "Option 1", as detailed in the Draft Discussion Document, which proposes four assessment routes and provides the greatest degree of differentiation from the current EIA framework:

- **Route 1 (early exit):** The applicant submits a "statement of insignificant impact", based solely on existing information, to the effect that no significant impacts require further assessment. This would be the fastest and least costly pathway, suited to developments with negligible environmental risk where no meaningful impacts are anticipated. The applicant (rather than an appointed environmental assessment practitioner (EAP)) would be entitled to prepare the relevant statement.
- **Route 2 (known impacts, existing information):** An EAP would prepare a short "environmental impact statement", based solely on existing information, to the effect that all impacts can be mitigated to low significance. This route would require appointment of a registered EAP but avoids the cost and delay of commissioning specialist studies. It is suited to developments where the environmental impacts are well understood, and established mitigation measures exist.
- **Route 3 (specialist studies required):** An EAP prepares an environmental impact report supported by specialist studies, where the impacts are known but their significance requires clarification. This route would involve the commissioning of specialist studies (e.g. ecological, heritage, noise or visual impact assessments), which could significantly impact project timelines and cost.
- **Route 4 (full scoping and impact assessment):** An EAP prepares a scoping report to identify the impacts to be assessed, followed by a full environmental impact report supported by specialist studies. This is the most intensive pathway and is analogous to the current full scoping and environmental impact reporting process under the existing EIA Regulations.

What does this mean for stakeholders?

The proposed reforms have the potential to improve efficiency for both regulators and industry stakeholders. By introducing early-exit mechanisms and streamlined assessment pathways, low-risk developments may be able to proceed through less onerous and costly approval processes faster than is currently possible. This is particularly relevant for smaller-scale developments or developments in areas of low environmental sensitivity, where current assessment requirements may be disproportionate to the actual environmental risks involved.

At the same time, the proposed framework places significantly greater reliance on administrative discretion than the current system. Competent authorities would be required to determine the appropriate assessment pathway on a case-by-case basis, to specify the specialist inputs required and the level of public participation to be conducted, and to adjust as additional information becomes available.

While this flexibility may enable more context-sensitive decision-making, it could also create uncertainty for developers, investors and environmental practitioners seeking to predict approval requirements, timelines and project costs. Until the screening criteria are published and a track record of consistent decision-making is established, stakeholders may face difficulty in assessing regulatory risk for new projects.

The Draft Discussion Document contemplates that screening decisions (i.e. the determination of which assessment route to follow) would not be separately appealable but may form a ground of appeal against the final environmental authorisation decision. Whether this is consistent with other legislation concerning the appealability of administrative decisions remains to be seen.

Ultimately, the success of this proposed model would rely on the consistency, transparency and predictability of screening decisions, as well as the safeguards implemented to ensure accountability and meaningful public participation.

Conclusion

The proposed Flexible EIA Framework represents a significant potential evolution in South Africa's environmental assessment and legal framework. Stakeholders should note, however, that this is the first phase of a broader reform process. The legislative amendments required to implement the Flexible EIA Framework (to both NEMA and the EIA Regulations) will themselves be subject to further public consultation, and implementation is unlikely before at least 2027, based on the indicative timelines set out in the Draft Discussion Document.

If implemented effectively, these changes could improve administrative efficiency and reduce unnecessary regulatory burdens for low-risk developments. However, achieving these outcomes will depend on the publication of clear and objective screening criteria, consistent and transparent decision-making by competent authorities, adequate

institutional capacity, appropriate transitional provisions for developments already in the approval pipeline, and alignment with other regulatory frameworks (including the various specific environmental management acts, the National Water Act 36 of 1998, and the Mineral and Petroleum Resources Development Act 28 of 2002).

Stakeholders across all sectors should closely monitor developments and consider engaging with future commenting opportunities as draft legislation is published.

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Our BBBEE verification is one of several components of our transformation strategy and we continue to seek ways of improving it in a meaningful manner.

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