

Ref Number #776555

20 June 2024

The Director General
The Department of Forestry, Fisheries and the Environment (DFFE)

By Email: jsibande@dffe.gov.za

Dear Mr Sibande

Submission on the National Environmental Management: Waste Act, 2008 (Act No.59 of 2008) NEMWA: Proposed Amendments to the Regulations Regarding the Exclusion of a Waste Stream or a Portion of a Waste Stream from the definition of Waste, 2018

The South African Institute of Chartered Accountants (SAICA) appreciates the opportunity to provide input on the proposed amendments to the Regulations regarding the exclusion of a waste stream or a portion of a waste stream from the definition of Waste, 2018 (the “proposed amendments to the Regulations”).

SAICA is South Africa’s pre-eminent accountancy body which is widely recognised as one of the world’s leading accounting institutes. The Institute provides a wide range of support services to more than 59 000 members and associates who hold positions as chief executive officers, managing directors, board members, business owners, chief financial officers, auditors, and leaders in their spheres of business operation.

In our comments set out below, we have raised matters of concern regarding the consistency with which the proposed external audit may be conducted on the risk management report and have highlighted significant matters of principle on which we believe further engagement is required between the DFFE, SAICA, and the Independent Regulatory Board for Auditors (IRBA). Our comments seek to question whether the proposed regulations as they relate to the external audit requirement will result in the assurance outcome that DFFE is seeking. SAICA has encountered similar concerns in other legislation requiring external assurance to validate a specific outcome where the legislation or regulation does not achieve the desired outcome.

For ease of reference, we have provided extracts from the proposed amendments to the Regulations and pertinent assurance literature in Appendices to this letter. Our letter is set out as follows:

- Comments on proposed Regulation 10(2)
- Appendix A – Extracts from the proposed amendments to the Regulations
- Appendix B – Extracts from the International Auditing and Assurance Standards Board Glossary of Terms
- Appendix C – Extracts from International Standard on Assurance Engagements (ISAE) 3000 (Revised), *Assurance Engagements Other Than Audits or Reviews of Historical Financial Information*

Please do not hesitate to contact us if you would like further clarification. We welcome further engagement.



Thandokuhle Myoli
Head: SAICA Standards – Audit and Assurance



COMMENTS ON PROPOSED REGULATION 10(2)

Matter requiring clarification: Intended level of assurance to be provided and persons eligible for the performance of the “external audit” referred to in proposed Regulation 10(2)

Audit and assurance framework

1. Proposed Regulation 10(2) requires an exclusion authorisation holder to develop a risk management report and to “*subject the risk management report to an external audit by a qualified/independent person*”.
2. The Independent Regulatory Board for Auditors (IRBA) prescribes the use of the pronouncements of the International Auditing and Assurance Standards Board (IAASB) by registered auditors in South Africa.
3. The suite of IAASB standards distinguishes between assurance engagements conducted on *historical financial information* and assurance engagements conducted on information other than historical financial information. Please refer to Annexure B for extracts from the IAASB Glossary of Terms for the definition of this term.
4. The IAASB’s assurance standards furthermore distinguish between two levels of assurance engagements, namely *reasonable assurance engagements* and *limited assurance engagements*. Please refer to Annexure B for extracts from the IAASB Glossary of Terms for the definitions of these terms.
5. To summarise the suite of IAASB Assurance Standards, the subject matter addressed in the respective standards and the level of assurance that is provided by the practitioner when applying the respective standards:

Standards	Subject matter of the assurance engagement	Level of assurance provided by the practitioner
International Standards on Auditing (ISAs)	Historical financial information	Reasonable assurance
International Standards on Review Engagements (ISREs)	Historical financial information	Limited assurance
International Standards on Other Assurance Engagements (ISAEs)	Information other than historical financial information	Reasonable assurance or limited assurance (The level of assurance would depend on the specific engagement. The standards address both levels of assurance.)
International Standards on Sustainability Assurance (ISSAs)	Sustainability information	Reasonable assurance or limited assurance (The level of assurance would depend on the specific engagement. The standards address both levels of assurance.)

6. In our view, if we had to use the above classification methodology, the prescribed elements of a risk management report, as determined by proposed Regulation 10(2), would not constitute *historical financial information* as defined in the IAASB pronouncements. An assurance engagement on the risk management report would therefore be conducted in terms of the ISAEs or ISSAs rather than in terms of the ISAs or ISREs.
7. The Auditing Profession Act, Act No. 26 of 2005 (the APA), defines the term “audit” as follows:

“audit” means the examination of, in accordance with prescribed or applicable auditing standards-

- (a) *financial statements with the objective of expressing an opinion as to their fairness or compliance with an identified financial reporting framework and any applicable statutory requirements; or*
 - (b) *financial and other information, prepared in accordance with suitable criteria, with the objective of expressing an opinion on the financial and other information.”*
 - 8. The APA continues to state that a person who is not a registered auditor may not perform any audit¹. A registered auditor is defined in the APA as an individual or firm registered as an auditor with the Regulatory Board (that is, the Independent Regulatory Board for Auditors (the IRBA)).
 - 9. SAICA is one of two professional bodies that have been accredited by the IRBA, which accreditation renders members of SAICA eligible to apply for registration as registered auditors.
 - 10. Our reading of the reference in proposed Regulation 10(2) to “external audit” is that a reasonable assurance engagement (as opposed to a limited assurance engagement) is required by the proposed Regulations.
 - 11. In our view, a reasonable assurance engagement on the risk management report would meet the definition of an “audit” in terms of paragraph (b) of the definition of “audit” in terms of the APA. The assurance engagement must therefore be performed by a registered auditor.
12. Submission: If the DFFE did not intend for:

 - a) a *reasonable assurance* engagement (as opposed to a limited assurance engagement) to be conducted on the risk management report or
 - b) for the assurance engagement to be performed by a **registered auditor**; the wording in proposed Regulation 10(2) should be reconsidered.

Matter requiring clarification: Applicable IAASB assurance standard

- 13. If it is intended that an “audit” as defined in the APA applies, there are two IAASB standards that may possibly apply to these assurance engagements, namely ISAE 3000 (Revised), *Assurance Engagements Other Than Audits or Reviews of Historical Financial Information* and ISSA 5000, *General Requirements for Sustainability Assurance Engagements*. ISSA 5000 is a new standard that becomes effective on assurance engagements on sustainability information reported for periods beginning on or after 15 December 2026. The IRBA is expected to adopt ISSA 5000 for use by registered auditors in 2026.
 - 14. However, if DFFE did not intend an “audit” as defined in the APA, an audit standard that sets out the expected assurance to be provided and the process to achieve such assurance should be prescribed.
15. Submission: To enhance consistency in the assurance engagements performed, we propose that the DFFE should engage with SAICA and the IRBA regarding the assurance standard that would apply in these engagements. While we are not proposing that the applicable assurance standard should be specified in the Regulations, we are of the view that it would be beneficial to the DFFE and to registered auditors if consistent messaging regarding the applicable standard were conveyed to registered auditors in this regard.

¹ Auditing Profession Act, section 41(2)(a)(i).

Matter of concern: Preconditions for the acceptance of an assurance engagement may not be present

16. The IAASB's assurance standards contain preconditions that have to be present before a practitioner is permitted to accept an assurance engagement. See, for example, extracts in Appendix C from ISAE 3000 (Revised), *Assurance Engagements Other Than Audits or Reviews of Historical Financial Information*.
17. We question whether the requirements regarding the *appropriateness of the underlying subject matter* and the *suitability of the criteria* (two of the preconditions for accepting an assurance engagement) would be met, which puts into question whether a registered auditor would be in a position to accept an assurance engagement on the risk management report as required by proposed Regulation 10(2).
18. Therefore the current regulations possibly exclude registered auditors from performing the relevant audit service.

19. Submission: We recommend that the DFFE should engage further with SAICA and the IRBA on this matter. This is a matter of significant concern as it affects the appropriateness of registered auditors accepting such assurance engagements. We have previously encountered similar challenges in other South African legislation and, based on our experiences from trying to resolve such challenges, urge the DFFE to address and resolve this point before finalising the Regulations.

Matter of concern: Implications of the reference to “qualified/independent” person in proposed Regulation 10(2)

20. Registered auditors are required to comply with the IRBA Code of Professional Conduct for Registered Auditors (the IRBA Code). The fundamental principles of the IRBA Code include *integrity, objectivity, and professional competence and due care*.
21. Independence is linked to the fundamental principles of objectivity and integrity. Registered auditors are required to be independent when performing assurance engagements².
22. A registered auditor is prohibited from undertaking or continuing with any engagement that the registered auditor is not competent to perform, unless the registered auditor obtains advice and assistance that enables the registered auditor to carry out the engagement satisfactorily³.
23. The manner in which proposed Regulation 10(2) is drafted appears to permit *either* a “qualified” *or* an “independent” person to conduct the external audit. The IRBA Code requires registered auditors to be both qualified and independent.

24. Submission: To enable interoperability between the Regulations and the IRBA Code, we propose that “qualified/independent” in proposed Regulation 10(2) be replaced with “qualified **and** independent”.

² IRBA Code paragraph R900.11

³ IRBA Code paragraph R113.4 SA

Annexure A - Extracts from the proposed amendments to the Regulations

Amendments of regulation 8 of the Regulations

6. Regulation 8 of the Regulations is hereby amended by the substitution for regulation 8 of the following regulation:

“Elements of the Risk Assessment Report

8. A risk assessment report must include, but is not limited to, the following elements:
- (1) information that is facility-based;
 - (2) the description and source of the waste;
 - (3) the intended uses of the excluded waste;
 - (4) the description of the methodology used to assess the hazardous characteristics of the waste that is to be excluded;
 - (5) identification and assessment of any potential risks relating to all the activities associated with the intended beneficial use of the excluded waste;
 - (6) identification of mitigation measures that can be used to manage the risks identified in subregulation (5);
 - (7) the laboratory results or results of trials that were conducted in relation to waste excluded or products produced from the excluded waste; and
 - (8) a mechanism to record the amount of waste distributed to specific users for an Intended beneficial use, including the number of jobs and enterprises established or supported and the extent to which previously disadvantaged individuals have been supported.”

Amendment of regulation 9 of the Regulations

7. Regulation 9 of the Regulations is hereby amended by the substitution for regulation 9 of the following regulation:

“Contents of the Risk Management Plan

9. A risk management plan must include, but is not limited to, the following elements:
- (1) the risk identified; and
 - (2) mitigation measures to address the risk identified in the risk assessment report.”

Amendment of regulation 10 of the Regulations

8. Regulation 10 of the Regulations is hereby amended by the substitution for regulation 10 of the following regulation:

“Reporting

10. An exclusion authorisation holder, must on an annual basis, on a platform provided for by the Department, must:
- (1) Develop a risk management report;
 - (2) Subject the risk management report to an external audit by a qualified/independent person, which audited risk management report must include, but is not limited to, the following elements:
 - (a) assessment of compliance with the Risk Management Plan;
 - (b) volumes of waste diverted through beneficiation;
 - (c) jobs created;
 - (d) SMMEs / enterprises established or supported; and
 - (e) the extent to which previously disadvantaged individuals have been supported.;
 - (3) Submit an external audited risk management report to the Department by 28 February of each year.”

Appendix B - Extracts from the International Auditing and Assurance Standards Board Glossary of Terms

Assurance engagement—An engagement in which a practitioner aims to obtain sufficient appropriate evidence in order to express a conclusion designed to enhance the degree of confidence of the intended users other than the responsible party about the subject matter information (that is, the outcome of the measurement or evaluation of an underlying subject matter against criteria). Each assurance engagement is classified on two dimensions:

(i) Either a reasonable assurance engagement or a limited assurance engagement:

- a. **Reasonable assurance engagement**—An assurance engagement in which the practitioner reduces engagement risk to an acceptably low level in the circumstances of the engagement as the basis for the practitioner's conclusion. The practitioner's conclusion is expressed in a form that conveys the practitioner's opinion on the outcome of the measurement or evaluation of the underlying subject matter against criteria.
- b. **Limited assurance engagement**—An assurance engagement in which the practitioner reduces engagement risk to a level that is acceptable in the circumstances of the engagement but where that risk is greater than for a reasonable assurance engagement as the basis for expressing a conclusion in a form that conveys whether, based on the procedures performed and evidence obtained, a matter(s) has come to the practitioner's attention to cause the practitioner to believe the subject matter information is materially misstated. The nature, timing and extent of procedures performed in a limited assurance engagement is limited compared with that necessary in a reasonable assurance engagement but is planned to obtain a level of assurance that is, in the practitioner's professional judgment, meaningful. To be meaningful, the level of assurance obtained by the practitioner is likely to enhance the intended users' confidence about the subject matter information to a degree that is clearly more than inconsequential.

(ii) Either an attestation engagement or a direct engagement:

- a. **Attestation engagement**—An assurance engagement in which a party other than the practitioner measures or evaluates the underlying subject matter against the criteria. A party other than the practitioner also often presents the resulting subject matter information in a report or statement. In some cases, however, the subject matter information may be presented by the practitioner in the assurance report. In an attestation engagement, the practitioner's conclusion addresses whether the subject matter information is free from material misstatement. The practitioner's conclusion may be phrased in terms of:
 - i. The underlying subject matter and the applicable criteria;
 - ii. The subject matter information and the applicable criteria; or
 - iii. A statement made by the appropriate party(ies).
- b. **Direct engagement**—An assurance engagement in which the practitioner measures or evaluates the underlying subject matter against the applicable criteria and the practitioner presents the resulting subject matter information as part of, or accompanying, the assurance report. In a direct engagement, the practitioner's conclusion addresses the reported outcome of the measurement or evaluation of the underlying subject matter against the criteria.

Historical financial information – Information expressed in financial terms in relation to a particular entity, derived primarily from that entity's system, about economic events occurring in past time periods or about economic conditions or circumstances at points in time in the past.

Annexure C – Extracts from International Standard on Assurance Engagements (ISAE) 3000 (Revised), Assurance Engagements Other Than Audits or Reviews of Historical Financial Information

“Preconditions for the Assurance Engagement

24. In order to establish whether the preconditions for an assurance engagement are present, the practitioner shall, on the basis of a preliminary knowledge of the engagement circumstances and discussion with the appropriate party(ies), determine whether: (Ref: Para. A35–A36)

- (a) The roles and responsibilities of the appropriate parties are suitable in the circumstances; and (Ref: Para. A37–A39)
- (b) The engagement exhibits all of the following characteristics:
 - (i) The underlying subject matter is appropriate; (Ref: Para. A40–A44)
 - (ii) The criteria that the practitioner expects to be applied in the preparation of the subject matter information are suitable for the engagement circumstances, including that they exhibit the following characteristics: (Ref: Para. A45–A50)
 - a. Relevance.
 - b. Completeness.
 - c. Reliability.
 - d. Neutrality.
 - e. Understandability.
 - (iii) The criteria that the practitioner expects to be applied in the preparation of the subject matter information will be available to the intended users; (Ref: Para. A51–A52)
 - (iv) The practitioner expects to be able to obtain the evidence needed to support the practitioner’s conclusion; (Ref: Para. A53–A55)
 - (v) The practitioner’s conclusion, in the form appropriate to either a reasonable assurance engagement or a limited assurance engagement, is to be contained in a written report; and
 - (vi) A rational purpose including, in the case of a limited assurance engagement, that the practitioner expects to be able to obtain a meaningful level of assurance. (Ref: Para. A56)

25. If the preconditions for an assurance engagement are not present, the practitioner shall discuss the matter with the engaging party. If changes cannot be made to meet the preconditions, the practitioner shall not accept the engagement as an assurance engagement unless required by law or regulation to do so. However, an engagement conducted under such circumstances does not comply with ISAE. Accordingly, the practitioner shall not include any reference within the assurance report to the engagement having been conducted in accordance with this ISAE or any other ISAE(s).”

Application and Other Explanatory Material

Appropriateness of the Underlying Subject Matter (Ref: Para. 24(b)(i))

- A40. An appropriate underlying subject matter is identifiable and capable of consistent measurement or evaluation against the applicable criteria such that the resulting subject matter information can be subjected to procedures for obtaining sufficient appropriate evidence to support a reasonable assurance or limited assurance conclusion, as appropriate.
- A41. The appropriateness of an underlying subject matter is not affected by the level of assurance, that is, if an underlying subject matter is not appropriate for a reasonable assurance engagement, it is also not appropriate for a limited assurance engagement, and vice versa.

- A42. Different underlying subject matters have different characteristics, including the degree to which information about them is qualitative versus quantitative, objective versus subjective, historical versus prospective, and relates to a point in time or covers a period. Such characteristics affect the:
- (a) Precision with which the underlying subject matter can be measured or evaluated against criteria; and
 - (b) The persuasiveness of available evidence.
- A43. Identifying such characteristics and considering their effects assist the practitioner when assessing the appropriateness of the underlying subject matter and also in determining the content of the assurance report (see paragraph A164).
- A44. In some cases, the assurance engagement may relate to only one part of a broader underlying subject matter. For example, the practitioner may be engaged to report on one aspect of an entity's contribution to sustainable development, such as a number of programs run by an entity that have positive environmental outcomes. In determining whether the engagement exhibits the characteristic of having an appropriate underlying subject matter in such cases, it may be appropriate for the practitioner to consider whether information about the aspect on which the practitioner is asked to report is likely to meet the information needs of intended users as a group, and also how the subject matter information will be presented and distributed, for example, whether there are more significant programs with less favorable outcomes that the entity is not reporting upon.

Suitability and Availability of the Criteria

Suitability of the criteria (Ref: Para. 24(b)(ii))

A45. Suitable criteria exhibit the following characteristics:

- (a) **Relevance:** Relevant criteria result in subject matter information that assists decision-making by the intended users.
- (b) **Completeness:** Criteria are complete when subject matter information prepared in accordance with them does not omit relevant factors that could reasonably be expected to affect decisions of the intended users made on the basis of that subject matter information. Complete criteria include, where relevant, benchmarks for presentation and disclosure.
- (c) **Reliability:** Reliable criteria allow reasonably consistent measurement or evaluation of the underlying subject matter including, where relevant, presentation and disclosure, when used in similar circumstances by different practitioners.
- (d) **Neutrality:** Neutral criteria result in subject matter information that is free from bias as appropriate in the engagement circumstances.
- (e) **Understandability:** Understandable criteria result in subject matter information that can be understood by the intended users.

- A46. Vague descriptions of expectations or judgments of an individual's experiences do not constitute suitable criteria.
- A47. The suitability of criteria for a particular engagement depends on whether they reflect the above characteristics. The relative importance of each characteristic to a particular engagement is a matter of professional judgment. Further, criteria may be suitable for a particular set of engagement circumstances, but may not be suitable for a different set of engagement circumstances. For example, reporting to governments or regulators may require the use of a particular set of criteria, but these criteria may not be suitable for a broader group of users.
- A48. Criteria can be selected or developed in a variety of ways, for example, they may be:
- Embodied in law or regulation.

- Issued by authorized or recognized bodies of experts that follow a transparent due process.
- Developed collectively by a group that does not follow a transparent due process.
- Published in scholarly journals or books.
- Developed for sale on a proprietary basis.
- Specifically designed for the purpose of preparing the subject matter information in the particular circumstances of the engagement. How criteria are developed may affect the work that the practitioner carries out to assess their suitability.

A49. In some cases, law or regulation prescribes the criteria to be used for the engagement. In the absence of indications to the contrary, such criteria are presumed to be suitable, as are criteria issued by authorized or recognized bodies of experts that follow a transparent due process if they are relevant to the intended users' information needs. Such criteria are known as established criteria. Even when established criteria exist for an underlying subject matter, specific users may agree to other criteria for their specific purposes. For example, various frameworks can be used as established criteria for evaluating the effectiveness of internal control. Specific users may, however, develop a more detailed set of criteria that meet their specific information needs in relation to, for example, prudential supervision. In such cases, the assurance report:

(a) Alerts readers that the subject matter information is prepared in accordance with special purpose criteria and that, as a result, the subject matter information may not be suitable for another purpose (see paragraph 69(f)); and

(b) May note, when it is relevant to the circumstances of the engagement, that the criteria are not embodied in law or regulation, or issued by authorized or recognized bodies of experts that follow a transparent due process.

A50. If criteria are specifically designed for the purpose of preparing the subject matter information in the particular circumstances of the engagement, they are not suitable if they result in subject matter information or an assurance report that is misleading to the intended users. It is desirable for the intended users or the engaging party to acknowledge that specifically developed criteria are suitable for the intended users' purposes. The absence of such an acknowledgement may affect what is to be done to assess the suitability of the criteria, and the information provided about the criteria in the assurance report. Availability of the criteria (Ref: Para. 24(b)(iii))

A51. Criteria need to be available to the intended users to allow them to understand how the underlying subject matter has been measured or evaluated. Criteria are made available to the intended users in one or more of the following ways:

- (a) Publicly.
- (b) Through inclusion in a clear manner in the presentation of the subject matter information.
- (c) Through inclusion in a clear manner in the assurance report (see paragraph A165).
- (d) By general understanding, for example, the criterion for measuring time in hours and minutes.

A52. Criteria may also be available only to intended users, for example the terms of a contract, or criteria issued by an industry association that are available only to those in the industry because they are relevant only to a specific purpose. When this is the case, paragraph 69(f) requires a statement alerting readers to this fact. In addition, the practitioner may consider it appropriate to indicate that the assurance report is intended solely for specific users (see paragraph A167–A168).