

MEMORANDUM ON THE OBJECTS OF THE CLIMATE CHANGE BILL, 2018

1. PURPOSE OF BILL

The purpose of the Bill is to communicate and implement an effective nationally determined climate change response, including mitigation and adaptation actions, that represents the Republic's fair contribution to the global climate change response.

2. OBJECTS OF BILL

The main object of the Bill is to build the Republic's effective climate change response and the long-term, just transition to a climate-resilient and lower-carbon economy and society in the context of an environmentally sustainable development framework; and to provide for matters connected therewith.

3. LEGISLATIVE ANALYSIS

3.1. Clause 1

Clause 1 provides for the definitions of various words used in the Bill.

3.2. Clause 2

This clause sets out the objectives of the Bill.

3.3. Clause 3

The clause sets out the principles that will guide the interpretation and application of the Bill.

3.4. Clause 4

Clause 4 clearly state that the Bill is applicable within the borders of the Republic of South Africa, and that it binds all organs of state as defined in section 239 of the Constitution of the Republic of South Africa, 1996.

3.5. Clause 5

Clause 5 deals with conflicts with other legislation. In the event of any conflict between a section of this Bill and other legislation specifically relating to climate change, the section of this Bill prevails.

3.6. Clause 6

This clause empowers the Minister to develop a national framework intended to provide for clear appropriate mechanisms, systems and procedures for achieving the objects of the Bill. The national framework may also assign responsibilities for the implementation of the Bill amongst the spheres of government and organs of state.

3.7. Clause 7

This clause places a legal obligation on every organ of state to co-ordinate and harmonise their various policies, plans, programmes and decisions relating to climate change, in order to ensure that the risks of climate change impacts and associated vulnerabilities are taken into consideration and give effect to the national adaptation and mitigation objectives set out in this Act.

3.8. Clause 8

Clause 5 deals with Institutional Arrangements and Coordination. The clause establishes the Ministerial Committee on Climate Change responsible for the coordination of climate change efforts across all spheres of government and organs of state. The clause provides for the composition of the Committee, functions and powers. The clause also provides for the establishment of nine Provincial Committees on Climate Change comprising of the relevant MEC responsible for environment and all municipal mayors within a province. The clause further sets out the responsibilities and functions of a Provincial Committee on Climate Change.

3.9. Clause 9

Clause 9 empowers an MEC responsible for environment or a Mayor of a municipality to develop a climate change response implementation plan within two after the date of coming into operation of the Act. The clause also sets out the content of a climate change response implementation plan. The clause further requires a climate change response implementation plan to be integrated and to inform provincial or municipal development planning processes and tools.

3.10. Clause 10

Clause 10 of the Bill deals with the national adaptation to the impacts of climate change.

This clause empowers the Minister, in consultation with the sector national departments, provinces and municipalities, to set national adaptation objectives, within one year after the date of coming into operation of the Act, and to publish indicators to measure progress towards the achievement of the national adaptation

objectives. The clause also empowers the Minister, in consultation with sector national departments and all provinces, to develop and publish a National Adaptation Strategy. The clause further empowers the Minister, in consultation with the sector national departments and provinces, to develop adaptation scenarios which anticipate the likely impacts of climate change in the Republic over the short, medium and longer term. The adaptation scenarios must inform the development of the national adaptation objectives, National Adaptation Strategy and support decision-making under the Act.

In addition, the Minister responsible for sector national department and a State Owned Entity of the sector department must develop and implement a climate change response implementation plan within two years after the date of coming into operation of this Act. A Minister responsible for a sector national department is also responsible for the submission of progress reports on the implementation of the climate change response implementation plan to the Minister. The Minister responsible for environmental affairs is responsible for the compilation and publication of a Synthesis Report on Climate Change Adaptation.

3.11. Clause 11

Clause 6 of the Bill empowers the Minister, in consultation with the Ministerial Committee on Climate Change, to determine a national greenhouse gas emissions trajectory for the Republic of South Africa. The clause also sets out the contents of a national greenhouse gas emissions trajectory for the Republic of South Africa. A national greenhouse gas emissions trajectory is binding on all spheres of government, organs of state and persons to the extent applicable.

This clause further requires the Minister to follow a consultation process as set in the Act in the development or amendment of a national greenhouse gas emissions trajectory for the Republic of South Africa.

3.12. Clause 12

The clause empowers the Minister, in consultation with the with the Ministerial Committee on Climate Change, to determine sectoral emissions targets for emitting sectors and subsectors on a five yearly basis. The sectoral emissions targets are reviewable every five years from the initial publication, and the Minister must follow a consultation process as set out in the Act in the determination or amendment of the sectoral emissions targets.

This clause also places a legal obligation on Ministers responsible for sector departments to prepare sector emissions reduction plan and submit to the Minister within six months after the publication of the sectoral emissions targets. A sector emissions reduction plan must set out how the relevant sector and subsector will meet the sectoral emissions targets within five years of the publication, and must be reviewed and updated as and when the sectoral emissions targets are reviewed. The sectoral emissions targets will be part of government planning cycle once published. The provincial or municipal climate change response implementation plan must be aligned with the sectoral priorities and targets.

The clause further requires the Ministers responsible for sector departments to annually report to the Presidency on progress on the implementation of the relevant

sector emissions reduction plan and the achievement of the relevant sectoral emissions targets. The Minister responsible for environmental affairs is responsible for the submission of an annual progress report on the implementation of the sectoral emissions reduction plan to Cabinet.

3.13. Clause 13

Clause 13 deal with carbon budgets.

The clause empowers the Minister to determine greenhouse gas emissions threshold for purposes of allocation of a carbon budget to a person. The Minister must follow a public participation process set out in the Act before publication of the greenhouse gas emissions threshold. This clause also empowers the Minister to allocate carbon budget to a person for a specified period. A person who has been allocated a carbon budget will be required to prepare and submit to the Minister a greenhouse gas mitigation plan. A greenhouse gas implementation plan must comply with all legal requirements set out in the Act and as may be prescribed by the Minister.

The clause also provides a person, under extreme circumstances, to apply to the Minister for an extension of the compliance timeframes with a carbon budget allocated that person. Such an application must be supported by a detailed explanation of the reasons for the extension and any supporting documents.

3.14. Clause 14

Clause 14 deals with the phase down and phase out of synthetic greenhouse gas.

This clause empowers the Minister, in consultation with the Ministers responsible for energy, trade and industry and any affected person, to develop a plan to phase down

or phase out synthetic greenhouse gas. The plan must comply with the legal requirements set out in the Act, and must be reviewed and updated on a five year basis. The clause also empowers the Minister to declare further synthetic greenhouse gases on the basis of best available science and the Republic's international obligations.

3.15. Clause 15

Clause 15 empowers the Minister to develop regulations relating to the implementation of the Act.

3.16. Clause 16

Clause 16 deals with the consultation process that the Minister or MEC must follow when exercising a power in terms of the Act. This consultation involves consultation with all affected Ministers whose areas of responsibilities and all other national organs of state whose areas of responsibilities will be affected.

3.17. Clause 17

Clause 17 sets out the public participation process that the Minister or MEC must follow when exercising a power in terms of the Act. This process involves consultation with members of the public.

3.18. Clause 18

Clause 18 deals with delegation of power.

This clause 18 empowers the Minister to delegate any power or duty to an official within the department subject to certain conditions. The clause also empowers the

Minister to delegate any power or duty to an MEC subject to the publication of such delegation in the *Gazette*.

3.19. Clause 19

Clause 19 provides for the offences and penalties under the Act.

3.20. Clause 20

Clause 20 deals with appeals. Any person may appeal to the Minister against a decision taken by any person acting under a power delegated by the Minister under this Act.

The clause state that any appeal lodged under this Act must be processed in terms of the section 43 of the National Environmental Management Act, 1998 and any regulation developed in terms of section 43 of the National Environmental Management Act, 1998.

3.21. Clause 21

Clause 21 deal with savings and transitional provisions relating to the relating to the declaration of the greenhouse gas as a priority air pollutant, the National Pollution Prevention Plans Regulations and the National Greenhouse Gas Emissions Reporting Regulations published in terms of the National Environmental Management: Air Quality Act, 2004. These subordinate legislation remains in force and legal until replaced under this Act.

4. DEPARTMENTS CONSULTED

The following national and provincial Departments were consulted:

- Energy;
- National Treasury;
- Trade and Industry;
- Economic development;
- all provincial departments responsible for environmental affairs through Environment MINMEC.

5. FINANCIAL IMPLICATIONS FOR STATE

The Bill will create financial liability for the State. Implementation costs relating to the following:

- Development of climate change response and implementation plans by spheres and sectors of Government;
- Development of a National Adaptation Strategy and the National Framework by the DEA;
- Human resource capacity for supporting the development and implementation all plans, strategies and framework under the Bill; and
- Human resource capacity for compliance monitoring and enforcement.

6. PARLIAMENTARY PROCEDURE

6.1 The Constitution prescribes the procedure for the classification of Bills. Therefore a Bill must be correctly classified otherwise it will be constitutionally out of order.

6.2 The State Law Advisers have considered the Bill against the provisions of the Constitution relating to the tagging of Bills and against the functional areas listed in

Schedule 4 (functional areas of concurrent national and provincial legislative competence) and Schedule 5 (functional areas of exclusive provincial legislative competence) to the Constitution.

6.3 The established test for the classification of a Bill is that any Bill whose provisions in substantial measure fall within a functional area listed in Schedule 4 to the Constitution must be classified in terms of that Schedule. The process is concerned with the question of how the Bill should be considered by the provinces and in the National Council of Provinces, and how a Bill must be considered by the provincial legislatures depends on whether it affects the provinces. The more it affects the interests, concerns and capacities of the provinces, the more say the provinces should have on its content.

6.4 Therefore the issue to be determined is whether the Bill, in substantial measure, fall within a functional area listed in schedule 4 to the Constitution.

6.5 The stated general purpose of the Bill is to address practical challenges which have been identified in the application of the various Acts that are sought to be amended. In this respect the Bill seeks to build the Republic's effective climate change response and the long-term, just transition to a climate-resilient and lower-carbon economy and society; and to provide for matters connected therewith.

6.6 Each of the clauses have been carefully examined to establish whether, in substantial measure, they fall within any of the functional areas listed in Schedule 4 to the Constitution.

6.7 In our view the subject matter of the Bill falls within the functional areas listed in Schedule 4, namely “environment”, and it affects provinces. We are therefore of the opinion that this Bill must be dealt with in accordance with the procedure set out in section 76 of the Constitution.

6.8 The State Law Advisers are also of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.