

Comments on the Climate Change Bill

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and

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Comments on the Climate Change Bill

University of Cape Town, May 2022 ¹

OVERVIEW

We welcome the opportunity to provide comments on the Climate Change Bill, as introduced in the National Assembly in February 2022 (B 9—2022).

Having framework legislation to guide our country’s response to the climate crisis is a very important basis for an effective climate change response. Climate change is a socio-economic issue as much as an environmental one. Climate impacts threatens the livelihoods of poor communities in particular. We must leave a liveable planet to our children, as a matter of inter-generational equity, and as enshrined in paragraph 24 of the Bill of Rights in the South African Constitution. We cannot ‘eat off our childrens’ plates. At the same time, there are huge opportunities in a just transition to a zero carbon and climate-resilient economy and society, while ensuring no one is left behind. The Climate Change Act must lay a firm legal foundation to address these challenges.

There are many positive elements in the Bill as drafted. The comments below focus on possible improvements, and should be read bearing in mind this positive assessment. This document provides an overview of comments, and is submitted together with a tracked changes version of the text, where we have made suggestions.

GENERAL COMMENTS

Highest level of ambition, equity and progression

South Africa as a responsible global citizen must fulfil its international obligations. While the Paris Agreement and its nationally determined contributions are listed in the “Definitions” section of the Bill, there are no further references to these. The Paris Agreement provides that “each Party’s successive nationally determined contribution will represent a progression beyond the Party’s then current nationally determined contribution and reflect its highest possible ambition, reflecting

¹ With written contributions from Andrew Marquard, Harald Winkler, Penny Price, Emily Tyler, Nicolas Simpson, Christopher Trisos, Britta Rennkamp and verbal inputs by the team at the African Climate Development Initiative and its associates. For queries please contact andrew.marquard@uct.ac.za

its common but differentiated responsibilities and respective capabilities, in the light of different national circumstances” (Article 4.3). Equity and ambition must be reflected in the Act. A minimum requirement in the Paris Agreement is progression, and the Act must provide for more stringent mitigation targets and more ambitious adaptation goals, in each nationally determined contribution (NDC).

Policy coordination with the NDC

While the Paris Agreement and its Nationally Determined Contributions are listed in the “Definitions” section of the Bill, there are no further references to these in the text of the Bill. There is no mention of long-term low-emissions development strategies (Article 4.19 of the Paris Agreement). The Bill should coordinate these with national climate change policy, and clarify institutional roles in relation to NDC implementation and associated international reporting (see below).

Stakeholder consultation and advice

It is proposed in section 7(2) that organised labour, civil society and business “may advise on the Republic’s climate change response”. There is no institutional mechanism for this in the Bill. This should be remedied, and such a mechanism or mechanisms should be transparent and inclusive.

Include responsibilities for Loss & Damage

The Act must provide a legal basis for dealing with Loss and Damage (L&D). The recent floods in KwaZulu-Natal have made all too real that L&D is here and now. L&D must form part of the **Objects** of the Act, and responsibilities for L&D must be assigned, across national government and where its capacity is exceeded, state clearly South Africa’s expectations of the international community. It is proposed that this be done under **Principles**, adding at the end of **4 (i)** “ a recognition that the state has responsibility to avert loss and damage suffered by its citizens, in particular poorer and vulnerable communities and households; “ and in **4 (j)** as second clause “and of loss and damage where residual impacts exceed the state’s ability to assist its citizens,” The Minister should also be required to make regulations, by adding in **27 (2)** “to address adequately the adverse impacts of climate change on South Africa and loss and damage suffered, as well as costs of the foregoing; in order to inform how the Republic may comply with any international obligations;”. Information systems for reporting loss and damage internationally should also be established.

A Just transition to net zero emissions around 2050

The Bill must include a just transition to net zero CO₂ emissions for South Africa around 2050, and make clear that this is part of providing a better life for all South Africans. Both the latest science and the outcome of COP 26 (the Glasgow Climate Pact) emphasise the necessity of reaching net zero CO₂ emissions around 2050, to prevent catastrophic climate change, and the Glasgow Climate Pact “urges” countries to develop long-term strategies to reach net zero emissions “by or around mid-century” (1/CMA.3, paragraph 32), in the light of national circumstances. South Africa’s long-term strategy, and the PCC’s just transition framework both contain references to the goal of net zero CO₂ emissions around 2050.

A national GHG emissions budget

We propose the introduction of a national GHG emissions budget, consisting of a five-year budget, with two indicative five-year budgets for the following ten years. The national GHG emissions budget will be derived from the national GHG emissions trajectory, and used for benchmarking national mitigation measures in each budget period. This not only provides flexibility, but is also consistent with the science. Conforming to a yearly GHG trajectory very challenging, given uncertainties such as economic growth, and GHG emissions from the land sector. The national GHG emissions budget would then be used as an overall benchmark for allocating SETs.

Establish a scientific body on climate change

The Act should provide for a transdisciplinary scientific body which will provide independent advice to policymakers, based on assessing the best available and latest science relevant to climate change policymaking in South Africa, including in relation to socioeconomic development and addressing poverty and inequality.

Functions of the Presidential Climate Commission

The Presidential Climate Commission was intended to be a statutory body, and it is very welcome that the Act will provide a legal basis for the PCC. The provisions for the PCC should be enhanced. The PCC’s review role should be formally established in legislation, and similarly the PCC’s role in building consensus amongst stakeholders for the just transition should be affirmed in legislation. The review role should cover both mitigation and adaptation policies and measures, long-term strategies for both, and the question of South Africa’s fair contribution to the global effort

to combat climate change, and evaluate the status of policy harmonization / alignment contemplated in section 7.

[Provide a legal basis for mandatory annual reporting](#)

Reliable data is a fundamental basis for action. South Africa has an international obligation to account for its NDC in terms of the Paris Agreement and subsequent decisions. The TACCC principles (Transparency, Accuracy, Completeness, Comparability, Consistency), central to reporting under the UNFCCC and its Paris Agreement, ensuring environmental integrity and avoiding double counting, are not sufficiently reflected in the Bill. It is proposed, at a minimum, that the Minister must make annual reporting mandatory in the Bill.

[Access to information](#)

In its current iteration, the Bill provides for very limited access to information. Climate change affects every person in society in increasingly profound ways, and information concerning GHG emissions and their management, as well as adaptation measures, must be publicly-accessible. Our research of climate laws applied in other jurisdictions has yielded some very innovative approaches to access to information through legislation, which we would be happy to share with the Committee in detail.

[Institutional arrangements for international reporting and for managing activities under Article 6 of the Paris Agreement](#)

The Bill is currently not specific about fulfilling transparency obligations under the Paris Agreement, from 2024 on. This function in relation to the UNFCCC is currently undertaken by the DFFE, i.e. the Minister, and this should be formally stated in the Bill.

Managing activities under Article 6 of the Paris Agreement is not addressed in the Bill at all. If South Africa decides to enter into co-operative arrangements with other countries under Article 6.2, or even authorises credits for transfer under Article 6.4, then it will be necessary to decide which part of government will be responsible for concluding such an agreement, how such an agreement will be implemented, and how corresponding adjustments will be carried out. In addition, there are additional reporting requirements under Article 6. Entering into such an arrangement will also require careful consideration of the consequences of such an arrangement for meeting South Africa's NDC target would be. The Bill should at a minimum establish a process to address this, and allocate this responsibility to the Minister.

Fiscal support for climate change action, and capacity-building in government

The Bill tasks many organs of state, including national, provincial and local government, with additional functions related to climate change. There is no provision in the Bill to fund these additional activities. Similarly, there is no provision for the considerable capacity-building efforts which will be required across government to implement the Bill.

Climate change actions will rapidly become a priority in the country, and the Bill should provide for both a review of the budgetary implications of requirements in the Bill, and a process to review this from time to time. Similarly, current capacity-building efforts regarding the implementation of climate policy should be formalised and extended for all spheres of government, and provision for this should be made in the Bill.

International climate support

There is no guidance in the Bill as to how South Africa should engage with the potential providers of international climate support, including finance, technology transfer and capacity-building. Accessing this support, as specified by the Paris Agreement, is vital for the implementation of South Africa's climate response, and the Bill should clearly allocate an institutional home for this engagement.

The challenges of cross-sectoral governance and implementation

The preamble of the Bill rightly states that:

“responding to climate change raises unique challenges to effective governance as its impact transcends and challenges traditionally sectoral governance approaches, which require a nationally driven, coordinated and cooperative legal and administrative response”

This very challenging requirement is not given adequate effect in the Bill. Although recognising the need for mainstreaming climate change response into sectoral plans and across multiple levels and actors, this needs to be driven by a strong oversight function which can align plans, policies and strategies, set and ensure standards and accountability, identify and co-ordinate cooperation, and streamline monitoring and reporting.

A wide range of sectors will be impacted by, or contribute to climate change, and rapid socio-economic transformation is required in order to reduce vulnerability and mitigate climate change. This will require fairly rapid changes to the way people and goods are transported, the way energy

is produced, new skills being available in the labour market, changes to the food and water systems, changes to the built environment, amongst others. All countries are facing the same governance and coordination problems in addressing climate change, and South Africa is not an exception. This raises the question as to whether the co-ordination and oversight functions proposed in the Bill, which rest very heavily on one Department, are sufficient? Implementation of climate policy in the Bill requires co-operation across national departments and between different spheres of government, which seems to us to require more co-ordination than the current framework for intergovernmental relations can provide

This is not an easy problem to solve, in South Africa or elsewhere. The original draft of the Bill contained a proposal for an Interministerial Committee on Climate Change. The reintroduction of this proposed structure could address some of these problems, and the IMCCC could be jointly chaired by the Minister of Environment and a Minister in the Presidency, to provide a direct connection to the executive.

SPECIFIC TEXTUAL PROPOSALS PER CHAPTER AND SECTION

These should be read with the tracked changes version of the Bill provided below.

Preamble

- Added “change” to “climate in the Republic” – to be more precise
- Added “observed and” to “anticipated impacts” – we are already experiencing climate change impacts in South Africa, and it is important to note this in the Preamble.
- Adding “including an environment that is not harmful to health or well-being” – this is contained in our Constitution as a right as noted above in the Preamble. This should also be placed in the context of a just transition, since part of what a just transition must accomplish is to remediate air, water and ground pollution in coal mining areas and elsewhere.

Chapter 1

Section 1: Definitions

Add the following definitions:

- “exceeding” – definition of “exceeding” in the context of firm-level carbon budgets
- “feasible mitigation technology” – defined as technology or process modification which is commercially available
- “national GHG emissions budget” – as above, the national GHG emissions trajectory should be used as the basis for a national GHG emissions budget, for rolling 5-year periods.
- “progression” – this is defined in relation to its proposed use in section 21. The Paris Agreement requires each successive NDC to demonstrate progression, and this is an important consideration in setting the national GHG emissions trajectory
- “South African Panel on Climate Change” – as above. We have proposed establishing this body in paragraph 14

Section 2:

- 2(b) – replacement of “inevitable” with “unavoidable”. This is more scientifically accurate.
- 2(b) – add a reference to the avoidance of loss and damage. It is imperative that the Act refers to loss and damage, and allocates responsibility for addressing this.
- 2(d) – include the long-term goal, contained in South Africa’s low-emissions development strategy, of reaching net zero CO₂ emissions around 2050, and pursuing internationally the Paris Agreement goal of limiting temperature rise to 1.5 degrees

Section 3:

- 3(a) – include a reference to the precautionary principle as an important basis for climate action
- 3(c) – ‘common but differentiated responsibilities and respective capabilities, in light of different national circumstances’ is rightly included, but ascribed to “each country” – this does not make sense, as equity here applies across countries. Suggest using the plural possessive, refer to “countries”. Replace “each country’s” with “countries”
- 3(d) – Add “reduction of inequality” after “social inclusion”
- 3(e) – We have added the bracketed section to emphasize the importance of a cross-cutting and integrated approach to managing climate change challenges

- 3(g) – We have proposed the reformulation of this paragraph to remove the ambiguity. The original draft can be read to *discourage* climate action. The science supports our view that a cautious approach to climate change should apply the precautionary principle, and be aware of the massive risks of inaction to South Africa and internationally. We have added a specific reference to the risks of inaction.
- 3(i) – addition of “to mitigate the effects of climate change” clarifies the purpose of this paragraph, and the addition of the reference to averting loss and damage emphasizes the state’s responsibility in application of the Act;
- 3(j) – inclusion of the costs of loss and damage in the consideration of the costs of mitigation and adaptation

Chapter 2

Section 7:

- 7.(1) – There is no mention in this section of state organs and/or functions which relate to activities which result in GHG emissions. An effective mitigation response must include the review and revision of policies and measures which have the effect of increasing or decreasing GHG emissions. These should also require harmonization of policies and measures, programmes and decisions so that these are directed at achieving national mitigation goals, and do not inadvertently or deliberately result in outcomes which are contrary to these goals
- 7.(1)a bis – to give further effect to the above, insert a further subsection between (a) and (b) which to read “ensure that the implementation of such policies and measures, programmes and decisions is consistent with the national greenhouse gas trajectory specified in section 21, the applicable sectoral emissions targets specified in section 22, and any international mitigation commitments which the Republic has undertaken, including South Africa’s Nationally Determined Contribution under the Paris Agreement”

Section 10:

- 10(1) – the latest science, and the outcome of COP 26, strongly support setting national goals of reducing CO₂ emissions to zero around mid-century. This is also contained in the PCC’s draft just transition framework.

Section 11:

- 11(b) – add a reference to carbon sinks as an important area of mitigation policy
- 11(c-f – see the tracked changes version) – specify the PCC’s function of review to include the review of the implementation and adequacy of specific policies and measures to achieve the government’s mitigation and adaptation goals; to provide for the PCC to review from time to time the country’s long-term climate strategies; provide advice on the fairness (as specified in Section 2 of the Bill and in the NCCRWP) of South Africa’s contribution to the international effort to combat climate change; to build consensus amongst stakeholders for the just transition

Section 12:

- 12(1) – to increase certainty and continuity in the PCC, we propose that Commissioners are appointed for a fixed term of five years
- 12(2)b – We propose that the characteristics of Commissioners should be more precisely defined to include climate-specific expertise, and that the Commission have a range of expertise collectively that covers all key areas of climate policy

Section 14:

- 14 bis – a proposal, as described above, to establish a “South African Panel on Climate Change”

Section 15:

- 15(3)d – consideration of climate change mitigation and adaptation policies should form part of each infrastructure planning and procurement process

Chapter 4

Section 16:

- 16(1)a – add a reference to sustainable development
- 16(3) – this proposed subsection aims to provide a clear connection between national adaptation objectives and South Africa’s adaptation communication (contained in the NDC) under the Paris Agreement



Section 17:

- 17(2)c – inclusion of reference to environmental rights to tie environmental impacts to socioeconomic impacts

Chapter 5

Section 21:

- 21(2)a – specify the period of years to be covered by the national greenhouse gas trajectory
- 21(2)b – we have included a reference to “technological advances or new science, evidence and information” (from the NNCRWP) to ensure that changes in the economics of mitigation measures and new information on global mitigation goals is taken into account
- 21(2)c – we have added a specific reference to the Paris Agreement and South Africa’s NDC to include the international legal context for mitigation; this INCLUDES the principle that countries’ NDCs must be “fair and ambitious”
- 21(2)d – add the long-term goal of reaching net zero CO₂ emissions around 2050
- 21(3) – we have added this provision in the expectation that as per the Department’s presentation to the Parliamentary Portfolio Committee, Schedule 3 will be deleted.
- 21(4)b(v) – it is important to emphasise that there are very often significant co-benefits to the implementation of mitigation measures – for instance reductions in air pollution – and that these should be considered when reviewing the national GHG emissions trajectory
- 21(5-6) – we have added a provision to establish a national GHG emissions budget, as above, consisting of five-year GHG emissions budgets derived from the national GHG emissions trajectory; 21(6) provides for the Minister to ensure that additional mitigation measures are implemented
- 21(7) – this proposed subsection assigns responsibility for the achievement of South Africa’s NDC target to the Minister (since this responsibility is not clearly allocated elsewhere in the Bill), and to ensure that subsequent NDC targets are progressions on previous ones (as stipulated in the Paris Agreement)

Section 22:

- 22(1 and 2) – this addition ensures that SETs are allocated to all major emitting sectors
- 22(4)d – SETs should also take into account the way in which the specific sector will contribute to the long-term decarbonization of South Africa, which may impact on shorter-term decisions, especially with regard to infrastructure
- 22(5)a – this addition is necessary for balance in this subsection, and more importantly, to consider SETs as a tool to promote sustainable development, and to take advantage of the opportunities arising from the energy and other transitions. This is essential for a just transition.
- 22(8) – this provides for the SETs to be adjusted if the sum of the SETs exceeds the national GHG emissions budget / GHG emissions trajectory
- 22(12) – The progress reports should be placed in the public domain once Cabinet has considered these, to provide adequate transparency on mitigation policy implementation

Section 23:

- 23(1) – The Minister should consider the latest science, in the form of the IPCC's Assessment Reports, when deciding to list GHGs. At a minimum, the list should contain the GHGs that South Africa is required to report on in terms of the Paris Agreement.
- 23(2) – The second half of the sentence is unnecessary and confusing, since this is already achieved in (1)
- 23(4)d – the allocation of carbon budgets should also consider the role of mitigation in each sector in the overall long-term decarbonization of the economy
- 23(5)e – this should be deleted, since the listing of GHGs in 23(1) is distinct from any action taken to mitigate their emissions

Section 24:

- 24(7)b and c – this provides for stronger enforcement of firm-level carbon budgets, and will depend on implementation of the same measures in an amendment to the Carbon Tax Act

Section 26:

- 26(1) – this addition requires the Minister to review and if necessary, update the GHG reporting regulations.

Chapter 6

Section 27:

- 27(1)c and d, d bis – specification that reporting must be mandatory and annual, and have a significant level of detail for policymaking and international reporting
- 27(2)b – inclusion and emphasis of the necessity for mandatory reporting; inclusion of information on loss and damage
- 27(2)c – alignment of EIA regulations with this Act

Section 31:

- 31 – all information provided to the Department must be publicly accessible, and must also be published annually by the Department, including in electronic format. This is the norm in many other jurisdictions, since climate change affects all citizens.

ANNEXURE: CLIMATE CHANGE BILL WITH TRACK CHANGES

REPUBLIC OF SOUTH AFRICA

CLIMATE CHANGE BILL

(As introduced in the National Assembly (proposed section 76); explanatory summary of Bill and prior notice of its introduction published in Government Gazette No. 45299 of 11 October 2021)
(The English text is the official text of the Bill)

(MINISTER OF FORESTRY, FISHERIES AND THE ENVIRONMENT)

[B 9—2022]

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GENERAL EXPLANATORY NOTE:

Words underlined with a solid line indicate insertions in existing enactments.

BILL

To enable the development of an effective climate change response and a long-term, just transition to a low-carbon and climate-resilient economy and society for South Africa in the context of sustainable development; and to provide for matters connected therewith.

PREAMBLE

WHEREAS everyone has the Constitutional right to an environment that is not harmful to their health and well-being, and to have the environment protected for the benefit of present and future generations through reasonable legislative and other measures that secure ecologically sustainable development and the use of natural resources while promoting justifiable economic and social development;

AND WHEREAS anthropogenic climate change represents an urgent threat to human societies and the planet and requires an effective, progressive and incremental response;

AND WHEREAS the Republic—

- (a) has a role to play in the global effort to reduce the greenhouse gas emissions identified by the international community as the primary drivers of anthropogenic climate change, and for which the implementation of appropriate mitigation responses is urgently required;
- (b) is especially vulnerable to those impacts of climate change which require urgent and appropriate adaptation responses; and
- (c) has made international commitments and obligations, including to communicate and implement an effective nationally determined climate change response, encompassing mitigation and adaptation actions, that represents the Republic's fair contribution to the global climate change response;

AND WHEREAS climate ~~variability-change~~ in the Republic, including the increased frequency and intensity of extreme weather events, will affect, amongst other things, human health, access to food and water, biodiversity, habitats and ecosystems, the coast and coastal infrastructure and human settlements;

AND WHEREAS ~~observed and~~ anticipated impacts arising as a result of climate change have the potential to undermine achieving the Republic's developmental goals;

AND WHEREAS implementing an effective climate change response is a national sustainable development priority as set out in the National Climate Change Response White Paper, while the Republic's Nationally Determined Contribution under the Paris Agreement, as may be varied from time to time, anticipates—

- (a) the realisation of significant socio-economic and environmental benefits in a manner that is driven and customised in the light of national circumstances, developmental, transformational, empowering and participatory, dynamic and evidence-based, balanced, cost-effective, integrated and aligned; and

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- (b) supports a just transition to a climate-resilient, equitable and internationally competitive low- to zero-carbon economy and society, including an environment that is not harmful to health or well-being, that takes into account the risks and opportunities that are expected to arise as a consequence of implementing the national climate change response;

AND WHEREAS responding to climate change raises unique challenges to effective governance as its impact transcends and challenges traditionally sectoral governance approaches, which require a nationally driven, coordinated and cooperative legal and administrative response that acknowledges the significant role of the provincial and municipal spheres taking into account the Intergovernmental Relations Framework Act, 2005 (Act No. 13 of 2005);

AND WHEREAS climate change policy needs to be implemented in the context of sustainable development objectives and the achievement of national development goals, it is desirable to develop a legal and institutional framework for the implementation of the Republic's national climate change response, in order to address these matters,

BE IT THEREFORE ENACTED by the Parliament of the Republic of South Africa, as follows:—

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INTERPRETATION, OBJECTS AND APPLICATION**Definitions**

- In this Act, unless the context indicates otherwise—
 - “**adaptation**” means any adjustment in natural or human systems in response to actual or expected climatic stimuli or their effects which moderates harm or exploits beneficial opportunities;
 - “**adaptive capacity**” means the ability of systems, institutions, humans and other organisms to adjust to potential damage, to take advantage of opportunities, or to respond to consequences;
 - “**carbon budget**” means an assigned amount of greenhouse gas emissions allocated to a person in terms of section 25 for direct emissions arising from the operations of that person over a defined time period;
 - “**Carbon dioxide equivalent or CO₂e**” means the number of metric tons of carbon dioxide emissions with the same global warming potential as one metric ton of another greenhouse gas;

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“ carbon sink ” means any process, activity or mechanism which removes a greenhouse gas, an aerosol or a precursor of a greenhouse gas from the atmosphere;	
“ Carbon Tax Act ” means the Carbon Tax Act, 2019 (Act No. 15 of 2019);	
“ climate change ” means a change of climate that is attributed directly or indirectly to human activity that alters the composition of the global atmosphere and that is in addition to natural climate variability observed over comparable time periods;	5
“ Department ” means the national department responsible for environmental affairs;	
“ direct greenhouse gas emissions ” means greenhouse gas emissions from 10 sources that are owned or controlled by a person;	
“ Disaster Management Act ” means the Disaster Management Act, 2002 (Act No. 57 of 2002);	
“ district municipality ” means a district municipality established in terms of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998);	15
“ ecosystem ” means a dynamic system of plant, animal and micro-organism communities and their non-living environment, interacting as a functional unit;	
“ environment ” has the meaning assigned to it in section 1 of the National Environmental Management Act;	
<u>“exceeding” means that a person has emitted more than the assigned amount of greenhouse gas emissions in their allocated carbon budget over a defined time period;</u>	
<u>“feasible mitigation technology” means technology which is commercially available to reduce or eliminate GHG emissions by augmenting, replacing or modifying existing equipment, or by modifying an emissions-producing process to reduce or eliminate GHG emissions;</u>	
“ Gazette ”, when used in relation to—	20
(a) a Minister, means the Government <i>Gazette</i> ;	
(b) an MEC, means the Provincial <i>Gazette</i> of the province concerned; and	
(c) a municipality, means the Provincial <i>Gazette</i> of the province in which the municipality is situated;	
“ greenhouse gas ” means gaseous constituents of the atmosphere, both natural and anthropogenic, that absorb and re-emit infrared radiation;	25
“ greenhouse gas mitigation plan ” means the mitigation plan contemplated in section 24(4) which contains mitigation measures prepared specifically for the mitigation of greenhouse gas emissions;	
“ indirect greenhouse gas emissions ” means emissions that are a consequence of the activities of a person, but occur at sources owned or controlled by another person;	30
“ Intergovernmental Relations Framework Act ” means the Intergovernmental Relations Framework Act, 2005 (Act No. 13 of 2005);	
“ just transition ” means a shift towards a low-carbon, climate-resilient economy and society and ecologically sustainable economies and societies which contribute toward the creation of decent work for all, social inclusion and the eradication of poverty;	35
“ mayor ”, in respect of the different types of municipalities, means a mayor elected in terms of section 48 of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998), and may include—	40
(a) an executive mayor elected in terms of section 55 of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998); or	
(b) a speaker who is called a mayor elected in terms of section 36(5) of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998);	45
“ MEC ” means the member of the Executive Council to whom a Premier has assigned responsibility for the environment;	
“ metropolitan municipality ” means a metropolitan municipality established in terms of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998);	50
“ Minister ” means the Cabinet Minister responsible for environmental affairs;	
“ mitigation ” means a human intervention to reduce the sources or enhance the carbon sinks of greenhouse gases;	
“ Municipal Forum on Climate Change ” means a Municipal Forum on Climate Change contemplated in section 9;	55
“ National Climate Change Response White Paper ” means the White Paper on the National Climate Change Response published under Government Notice No. 757 in <i>Gazette</i> No. 34695 of 19 October 2011;	
“ national department ” means a department listed in Schedule 1 to the Public Service Act, 1994 (Proclamation No. 103 of 1994);	60

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“Nationally Determined Contribution” means the Nationally Determined Contribution, as amended from time to time, prepared in terms of Article 4(2) of the Paris Agreement and submitted by the Republic to the Secretariat of the United

Nations Framework Convention on Climate Change in terms of Article 4(12) of the Paris Agreement;

“**National Environmental Management Act**” means the National Environmental Management Act, 1998 (Act No. 107 of 1998);

“**national carbon budget**” means the amount of greenhouse gas emissions under the national greenhouse gas emissions trajectory over its time period;

“**national greenhouse gas emissions trajectory**” means the national greenhouse gas emissions trajectory contemplated in section 21; 5

“**National Greenhouse Gas Inventory**” means the National Greenhouse Gas Inventory contemplated in section 26;

“**organ of state**” means an organ of state as defined in section 239 of the Constitution of the Republic of South Africa, 1996; 10

“**Paris Agreement**” means the Paris Agreement adopted by the Twenty-First Conference of the Parties to the United Nations Framework Convention on Climate Change in Paris, France, on 12 December 2015, and ratified by the Republic on 1 November 2016;

“**policies and measures**” means the manner in which an organ of state exercises a power or performs a function in response to climate change through implementing planning instruments, policies and programmes to mitigate emissions relating to the requirements stipulated by the United Nations Framework Convention on Climate Change, the Paris Agreement or any other global climate change agreement under the United Nations Framework Convention on Climate Change; 15 20

“**prescribe**” means prescribe by regulation;

“**Presidential Climate Commission**” means the Presidential Climate Commission established in terms of section 10;

“**progression**” means progression that climate policies and measures are more stringent the previously, and in line with the Republic’s international obligations are more stringent than those in South Africa’s then current nationally determined contribution and reflect our highest possible ambition;

“**Provincial Forum on Climate Change**” means a Provincial Forum on Climate Change contemplated in section 8; 25

“**regulation**” means a regulation made, and includes a notice issued, under this Act;

“**South African Panel on Climate Change**” means the South African Panel on Climate Change contemplated in section 14 *bis*;

“**sector**” means a collective term for a group of activities with similar characteristics which either emit greenhouse gases or are vulnerable to climate change; 30

“**sectoral emissions targets**” means quantitative or qualitative goals informed by sectoral policies and measures that may lead to greenhouse gas emission reductions, for the sector or sub-sector, over a defined time period as determined in terms of section 22; 35

“**sub-sector**” means, in respect of mitigation, a further subdivision of a group of greenhouse gas emitting activities as defined by the latest version of the guidelines of the Intergovernmental Panel on Climate Change, established by the World Meteorological Organisation and the United Nations Environment Programme in 1988; 40

“**sustainable development**” has the meaning assigned to it in section 1 of the National Environmental Management Act;

“**synthetic greenhouse gas**” means an artificial greenhouse gas as declared by the Minister in terms of section 25;

“**this Act**” includes the Schedules to this Act and any regulations or notices issued under this Act; 45

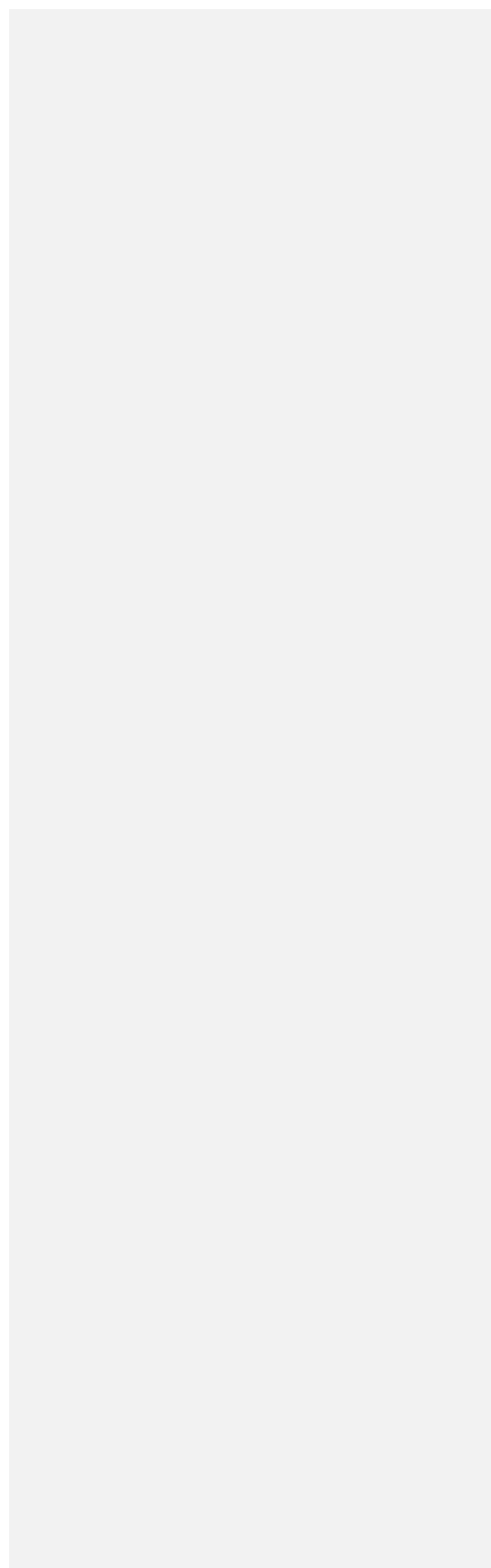
“**United Nations Framework Convention on Climate Change**” means the United Nations Framework Convention on Climate Change adopted by the United Nations General Assembly in New York in 1992, and ratified by the Republic on 29 August 1997; and 50

“**vulnerability**” means the degree to which a system is susceptible to, or unable to cope with, adverse effects of climate change, including climate variability and extremes.

Objects of Act

2. The objects of this Act are to—

- (a) provide for a coordinated and integrated response by the economy and society to climate change and its impacts in accordance with the principles of cooperative governance;



- (b) provide for the effective management of ~~inevitable-unavoidable~~ climate change impacts by enhancing adaptive capacity, strengthening resilience and reducing vulnerability to climate change, with a view to building social, economic and environmental resilience and an adequate national adaptation response in the context of the global climate change response, so as to avert loss and damage; 5
- (c) make a fair contribution to the global effort to stabilise greenhouse gas concentrations in the atmosphere at a level that avoids dangerous anthropogenic interference with the climate system;
- (d) to ensure a just transition towards an ~~low-carbon~~ economy and society with net zero CO₂ emissions by around 2050, ensuring a good life for all in South Africa under 1.5 °C, considering national circumstances; 10
- (e) give effect to the Republic's international commitments and obligations in relation to climate change; and
- (f) protect and preserve the planet for the benefit of present and future generations of humankind.

Principles

15

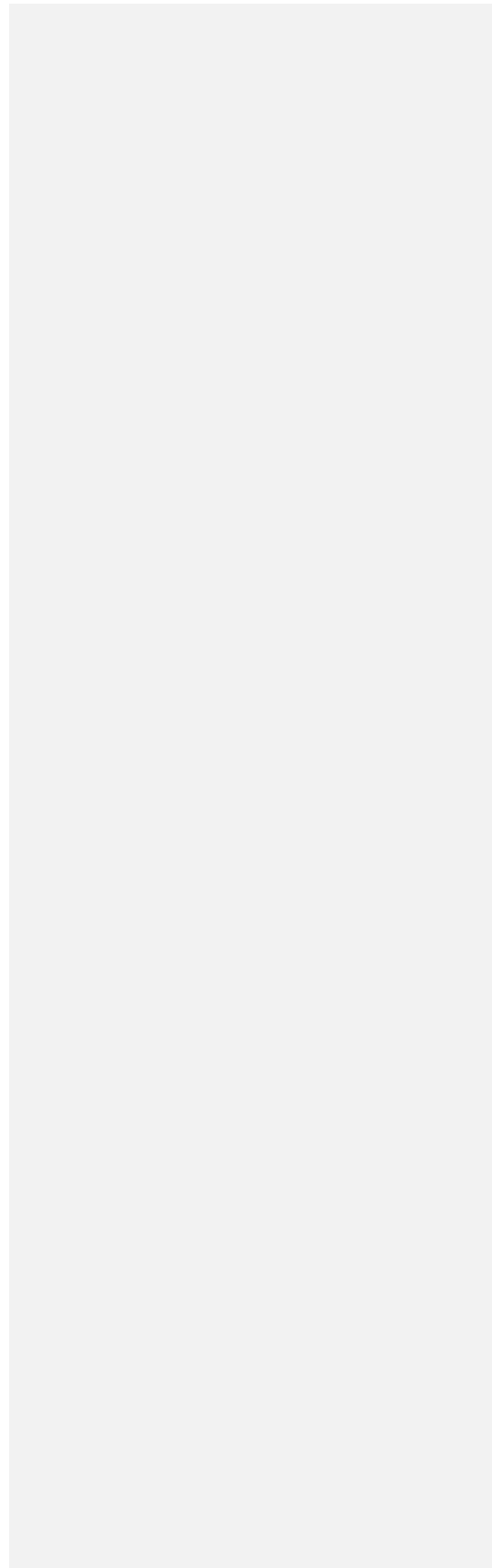
3. The interpretation and application of this Act must be guided by—
- (a) the national environmental management principles set out in section 2 of the National Environmental Management Act where applicable in this Act, including the precautionary principle;
 - (b) the principle that the climate system should be protected for the benefit of present and future generations of humankind; 20
 - (c) the principle that acknowledges international equity and ~~each~~ country's/countries' common but differentiated responsibilities and respective capabilities, in light of different national circumstances;
 - (d) a contribution to a just transition towards low-carbon, climate-resilient and ecologically sustainable economies and societies which contribute to the 25 creation of decent work for all, social inclusion, reduction of inequality and the eradication of poverty;
 - (e) the need for integrated management (including cross-sectoral, multi-level, cross-boundary, and nexus based approaches), in the context of climate change, which requires climate change considerations to be integrated into the making of decisions which may have a significant effect on the Republic's ability to mitigate or which exacerbate its vulnerability to climate change; 30
 - (f) the need for decision-making to consider the special needs and circumstance of localities and people that are particularly vulnerable to the adverse effects of climate change, including vulnerable workers and groups such as women, especially poor and rural women, children, especially infants and child-headed families, the aged, the poor, the sick and the physically challenged; 35
 - (g) the need for a responsive, risk-averse and cautious approach to be adopted, consistent with the precautionary principle, which takes into account the ~~limits of current knowledge about~~ known and projected risks associated with causes and effects of climate change and the consequences of decisions and actions in relation thereto, including the risks associated with an inadequate mitigation and adaptation response;
 - (h) the need for climate change mitigation and adaptation responses to be 40 informed by evolving climate change scientific knowledge and decisions which should be based on the best available science, evidence and information;
 - ~~(i) an effective climate change response which requires preventative measures to mitigate the causes of climate change and to strengthen resilience through the~~ 45 ~~adoption of adaptation measures to mitigate the effects of climate change, and ;~~
 - ~~(i) a recognition that the state has responsibility to avert loss and damage suffered by its citizens, in particular poorer and vulnerable communities and households;~~
 - (j) the costs of responding to the adverse impacts of climate change and of mitigation, and of loss and damage where residual impacts exceed the state's ability to assist its citizens, which must be paid for by those responsible for causing the adverse impact;
 - (k) an integrated climate change response which requires the enhancement of 50 public awareness of climate change causes and impacts and the promotion of participation and action at all levels; and
 - (l) a recognition that a robust and sustainable economy and a healthy society depends on the services that well-functioning ecosystems provide, and that

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enhancing the sustainability of the economic, social and ecological services is an integral component of an effective and efficient climate change response. 55



Application of Act

4. (1) This Act applies to the Republic, including—
- (a) its internal waters, territorial waters, exclusive economic zone and continental shelf of the Republic as referred to in sections 3, 4, 7 and 8 of the Maritime Zones Act, 1994 (Act No.15 of 1994), respectively; and 5
 - (b) the Prince Edward Islands referred to in the Prince Edward Islands Act, 1948 (Act No. 43 of 1948).
- (2) This Act binds all organs of state.

Application of National Environmental Management Act

5. (1) This Act must, in relation to climate change, be read, interpreted and applied in 10
conjunction with the National Environmental Management Act.
- (2) This Act must be regarded as a specific environmental management Act as defined in section 1 of the National Environmental Management Act.

Conflict with other legislation

6. In the event of any conflict between a provision of this Act and other legislation 15
specifically relating to climate change, this Act prevails.

CHAPTER 2

POLICY ALIGNMENT AND INSTITUTIONAL ARRANGEMENTS

Alignment of policies

7. (1) Every organ of state that exercises a power or performs a function that is 20
affected by climate change, or is related to the regulation or promotion of an activity which results in GHG emissions, or is entrusted with powers and duties aimed at the achievement, promotion and protection of a sustainable environment, must review and if necessary revise, amend, coordinate and harmonise their policies and measures, programmes and decisions in order to—

- (a) ensure that the risks of climate change impacts and associated vulnerabilities 25
are taken into consideration;

(a bis) ensure that the implementation of such policies and measures, programmes and decisions is consistent with the national greenhouse gas trajectory specified in section 21, the applicable sectoral emissions targets specified in section 22, and any international mitigation commitments which the Republic has undertaken, including South Africa's Nationally Determined Contribution under the Paris Agreement"
that domestic mitigation policies and measures show progression, consistent with sections 11 and 21, and

- (b) give effect to the principles and objects set out in this Act.

(2) In order to give effect to the principles and objects set out in this Act, organised labour, civil society and business may advise on the Republic's climate change response, the mitigation of climate change impacts and adaptation to the effects of climate change 30
towards the attainment of the just transition to a climate resilient and low carbon economy and society.

Provincial Forums on Climate Change

8. (1) Every Premier's intergovernmental forum, established in terms of section 16 of the Intergovernmental Relations Framework Act, also serves as a Provincial Forum on 35
Climate Change.

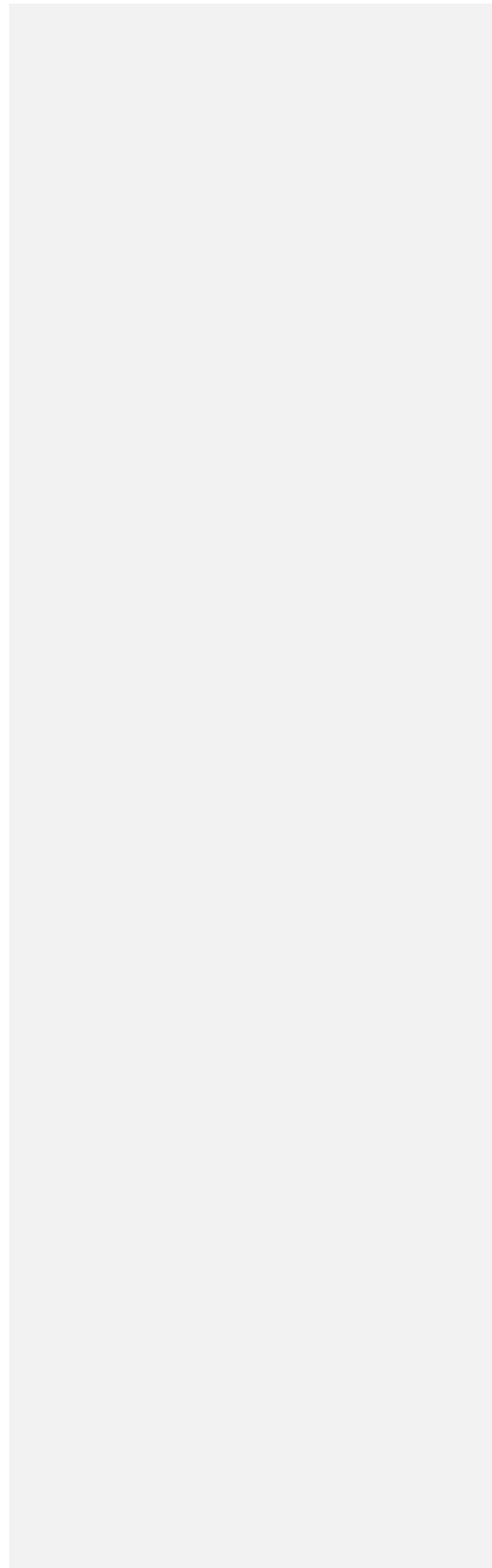
(2) Sections 17 and 19 of the Intergovernmental Relations Framework Act apply to a Provincial Forum on Climate Change.

(3) A Provincial Forum on Climate Change must—

- (a) coordinate climate change response actions in the relevant province in 40
accordance with this Act; and
- (b) provide a report to the President's Coordinating Council in terms of section 20(a) of the Intergovernmental Relations Framework Act, which report must include climate change considerations.

(4) A Provincial Forum on Climate Change may establish an intergovernmental 45
technical support structure in terms of section 30 of the Intergovernmental Relations Framework Act if there is a need for formal technical support to the Provincial Forum on

Climate Change.



Municipal Forums on Climate Change

9. (1) Every district intergovernmental forum, established in terms of section 24 of the Intergovernmental Relations Framework Act, also serves as a Municipal Forum on Climate Change.
- (2) Sections 25 and 27 of the Intergovernmental Relations Framework Act apply to a Municipal Forum on Climate Change.
- (3) A Municipal Forum on Climate Change must—
- (a) coordinate climate change response actions for those activities within its operational control of the relevant municipality in accordance with this Act; and 10
 - (b) provide a report on such actions to the relevant Provincial Forum on Climate Change.
- (4) A Municipal Forum on Climate Change may establish an intergovernmental technical support structure in terms of section 30 of the Intergovernmental Relations Framework Act if there is a need for formal technical support to the Municipal Forum on Climate Change. 15

Presidential Climate Commission

10. (1) The President may establish a Presidential Climate Commission and appoint not more than 30 members comprising representatives of government, organised labour, civil society and business to advise on the Republic’s climate change response, the mitigation of climate change impacts and adaptation to the effects of climate change towards the attainment of the just transition to a low- or zero-carbon and climate-resilient economy and society. 20
- (2) The members of the Presidential Climate Commission may be appointed for a period determined by the President. 25
- (3) The Presidential Climate Commission is chaired by the President.
- (4) The Department is responsible for providing administrative and secretariat support services to the Commission.
- (5) The Presidential Climate Commission may determine its own procedures to be followed at its meetings. 30

Functions of Presidential Climate Commission

11. The functions of the Presidential Climate Commission are to—
- (a) advise on the Republic’s climate change response to ensure realisation of the vision for effective climate change response and the long-term just transition to a low-carbon and climate-resilient-economy and society; 35
 - (b) advise government on the mitigation of climate change impacts, including through the reduction of emissions of greenhouse gases and enhancement of removals by sinks, and adapting to the adverse effects of climate change;
 - ~~(b) seek to build consensus among all stakeholders, in support of our just transition; and~~
 - (c) ~~provide monitoring and evaluation of review~~ progress towards government’s emissions reduction and adaptation goals, ~~and including domestic policies and measures necessary to achieve them, and provide advice to the Minister and other Ministers responsible for relevant policies and measures, of the adequacy of these goals.~~
 - (d) ~~Review the extent to which policies and measures, programmes and decisions across government are aligned as contemplated in section 7, on an annual basis; and whether they present a fair contribution to the global long-term goals of the Paris Agreement.~~
 - (e) ~~Review at least every five years the country’s long-term low emissions development strategy and climate resilient development pathways.~~
 - (f) ~~Advise the Minister on whether South Africa’s mitigation contribution represents a fair contribution to the global long-term goals of the Paris Agreement, based on the best available science.~~
 - (g) ~~seek to build consensus among all stakeholders, in support of our just transition.~~
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Process of appointment

12. (1) The President will appoint representatives from civil society, business, government and organised labour to serve on the Presidential Climate Commission for a period determined by the President five years.

(2) The composition of the Presidential Climate Commission must— 45

(a) broadly reflect the demographics and gender composition of the Republic; and

(b) be appropriately qualified and have expertise in the socio-economic, environmental and broader sustainability fields related to climate change and climate change mitigation and adaptation policy, generally and as relevant to the constituencies identified in section 12(1).

(b)(c) Reflect a balance of expertise to cover key areas of climate policy.

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Reporting to government

13. The President may require the Presidential Climate Commission to provide a 50 report on any advice it provided to government in terms of section 11(b).

Administrative and secretariat support

14. The administrative and secretariat support contemplated in section 10(4) will consist of—

- (a) the management of the administrative affairs of the Presidential Climate Commission and assist in performing the duties assigned to the Presidential Climate Commission; and
- (b) the preparation of meetings and the running of the day-to-day operations, communications and research of the Presidential Climate Commission.

South African Climate Change Panel

14 bis The Minister must, within one year of the promulgation of this Act, establish an independent specialist advisory body, which will be known as the South African Climate Change Panel

- (c) with working groups on
 - (i) the physical science basis;
 - (ii) impacts, vulnerability and adaptation; and
 - (iii) mitigation.

(2) The Panel must produce an assessment of the best available scientific information, with at least the frequency of the Intergovernmental Panel on Climate Change.

(3) The members of the Panel will be appointed for a period determined by the Minister.

(4) The Minister will appoint two co-chairs of each working group, and the co-chairs will collectively manage the work of the SAPCC.

(5) The Department is responsible for providing administrative and secretariat support services to the SAPCC.

(6) The South African Climate Change Panel may determine its own procedures to be followed at its meetings.

(7) The South African Climate Change Panel should interact with other research organisations in South Africa, and science councils shall support the activities of the Panel.

(8) The Minister will ensure that the SAPCC has resources for its operations.

CHAPTER 3

CLIMATE CHANGE RESPONSE: PROVINCES AND MUNICIPALITIES 10

Climate change response

15. (1) An MEC and a mayor of a metropolitan or district municipality, as the case may be, must—

- (a) within one year of the publication of the National Adaptation Strategy and Plan contemplated in section 18, undertake a climate change needs and response assessment for the province, metropolitan or district municipality, as the case may be;
- (b) for the purposes of paragraph (c), assess the extent to which its constitutionally mandated functions are affected by climate change and formulate steps to address these effects in the performance of its functions; 20
- (c) review and, to the extent necessary, amend the climate change needs and response assessment at least once every five years;
- (d) within two years of undertaking the climate change needs and response assessment contemplated in paragraph (a), develop and implement a climate change response implementation plan as a component of, and in conjunction with, provincial, metropolitan or district municipal planning instruments, policies and programmes; and 25
- (e) review and, to the extent necessary, amend the climate change response implementation plan at least once every five years.

(2) The climate change needs and response assessment, contemplated in subsection (1)(a), must— 30

- (a) identify climate change response considerations and options;
- (b) analyse the nature and characteristics of the province or metropolitan or district municipality, as the case may be, and the particular and unique climate change needs and risks that arise as a result of such nature and characteristics; 35
- (c) identify a spatial map, within the sphere of operations of the province,

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district or metropolitan municipality, as the case may be, risks, vulnerabilities, areas, ecosystems and communities that will arise, or that are vulnerable to the impacts of climate change;

- (d) be based on the best available science, evidence and information; and 40
- (e) identify and determine measures and mechanisms to manage and implement the required climate change response.

(3) A climate change response implementation plan, contemplated in subsection (1)(d), must—

(a) be informed by the climate change needs and response assessment contemplated in subsection (1)(a);

(b) include measures or programmes relating to both adaptation and mitigation in line with the constitutional mandate of the province, or the metropolitan or district municipality; and

~~(b)(c)~~ comply with any requirements as may be prescribed by the Minister inclusive of the relevant technical guidelines

~~(e) comply with any requirements as may be prescribed by the Minister inclusive of the relevant technical guidelines~~

~~(d) of the relevant technical guidelines include procedures in all infrastructure procurement decisions pertaining to climate mitigation and adaptation~~

(4) A provincial climate change response implementation plan, contemplated in subsection (1)(d), must form a component of the province’s environmental implementation plan developed in terms of section 11(1) of the National Environmental Management Act.

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(5) A metropolitan or district municipal climate change response implementation plan, contemplated in subsection (1)(d), must form a component of the relevant municipality's integrated development plan adopted in terms of section 25 of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000).

CHAPTER 4

5

NATIONAL ADAPTATION TO IMPACTS OF CLIMATE CHANGE

Adaptation objectives

16. (1) The Minister must, within one year of the coming into operation of this Act, determine by notice in the *Gazette*—

- (a) national adaptation objectives which will guide the Republic's adaptation to climate change impacts, ~~and be aligned with the adaptation goals in successive nationally determined contributions, in the context of the development of a climate resilient ee and sustainable development pathway, which also meets sustainable development objectives;~~ 10
- (b) indicators for measuring progress towards achieving the national adaptation objectives; and
- (c) a date by which the national adaptation objectives should be incorporated into all relevant national planning instruments, policies and programmes which address, or are affected by, the actual and potential impacts of climate change. 15

(2) The Minister may, periodically, review and amend the national adaptation objectives contemplated in subsection (1)(a).

(3) The national adaptation objectives shall inform South Africa's adaptation communication under the Paris Agreement as part of its Nationally Determined Contribution

Adaptation scenarios

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17. (1) The Minister must, within one year of the coming into operation of this Act, develop adaptation scenarios which anticipate the likely impacts of climate change in the Republic and associated vulnerabilities over the short, medium and longer term.

(2) The adaptation scenarios must—

- (a) be based on best available science, evidence and information; 25
- ~~(b) include a systematic observation of the climate system and early warning systems;~~
- (b) include a consideration of the potential impacts of climate change on the environment of the Republic and associated vulnerabilities, and the need to safeguard an environment that is not harmful to health and wellbeing; and
- (d) contain available adaptation response options to reduce identified vulnerabilities by building adaptive capacity and resilience, in the context of actual or anticipated social, economic and environmental costs. 30

(3) The Minister may, periodically, review and amend the national adaptation scenarios contemplated in subsection (1).

National Adaptation Strategy and Plan

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18. (1) Climate change adaptation within the Republic must be managed in a coherent and coordinated manner and in accordance with a National Adaptation Strategy and Plan.

(2) The Minister must, in consultation with the Ministers responsible for the functions listed in Schedule 2, develop and publish a National Adaptation Strategy and Plan by notice in the *Gazette* within two years of the coming into operation of this Act. 40

(3) The Minister may review and amend the National Adaptation Strategy and Plan at a five-yearly interval to take into account—

- (a) monitoring and evaluation results;
- (b) technological advances; 45
- (c) the best available science, evidence or information; or
- (d) the Republic's international commitments and obligations.

(4) The purpose of the National Adaptation Strategy and Plan is to—

- (a) achieve a reduction in the vulnerability of society, the economy and the environment to the effects of climate change, strengthen the resilience of the 50

- socio-economic and environmental system and enhance the adaptive capacity of society, the environment and economy to the impacts of climate change;
- (b) reduce the risk and vulnerabilities to current and future climate scenarios;
 - (c) achieve the national adaptation objectives contemplated in section 16;

- (d) provide a strategic and policy directive for adaptation to the impacts of climate change; and
 - (e) provide an integrated and coordinated approach to the management of adaptation measures in response to the impacts of climate change by organs of state in all spheres of government, and where relevant it should also include non-governmental organisations, the private sector and local communities. 5
- (5) The National Adaptation Strategy and Plan must include—
- (a) the national adaptation objectives contemplated in section 16;
 - (b) a consideration of the Republic's climate change scenarios as informed by the adaptation scenarios contemplated in section 17; 10
 - (c) an assessment of the Republic's vulnerability to climate change and related risks at sectoral, cross-sectoral and geographic levels, including a consideration of relevant disaster risk assessments in terms of the Disaster Management Act;
 - (d) available adaptation response options to reduce identified vulnerabilities by building adaptive capacity and resilience, in the context of actual or anticipated social, economic and environmental costs; and 15
 - (e) a plan that details the implementation of adaptation responses informed by the objectives and indicators contemplated in section 16. 20

Sector Adaptation Strategy and Plan

19. (1) A Minister responsible for functions listed in Schedule 2 must—
- (a) within one year of the publication of the National Adaptation Strategy and Plan, and in alignment with such National Adaptation Strategy and Plan, conduct an assessment of the functions under the Minister's operational control which— 25
 - (i) identifies and spatially maps risks and vulnerabilities, areas, ecosystems and communities that will arise and that are vulnerable to the impacts of climate change; and
 - (ii) determines measures and mechanisms to manage and implement the required adaptation response; 30
 - (b) within two years of the publication of the National Adaptation Strategy and Plan, develop and implement a Sector Adaptation Strategy and Plan which must be informed by the assessment undertaken in terms of paragraph (a)(i) and serve to implement the measures and mechanisms determined in terms of paragraph (a)(ii); and 35
 - (c) every five years, review a Sector Adaptation Strategy and Plan and, if required, amend the Sector Adaptation Strategy and Plan to take into account— 40
 - (i) monitoring and evaluation results;
 - (ii) technological advances;
 - (iii) the best available science, evidence or information; and
 - (iv) the Republic's international commitments and obligations.
- (2) A Minister responsible for functions listed in Schedule 2, within five years of the publication of a Sector Adaptation Strategy and Plan, and at five-yearly intervals thereafter, submit reports to the Minister on the progress made in relation to the implementation of the relevant Sector Adaptation Strategy and Plan. 45

Adaptation Information and Synthesis Adaptation Report

20. (1) The Minister may by notice in the *Gazette*, or in writing, require any person to provide, within a reasonable time or on a regular basis, data, information, documents, samples or materials to the Minister that are reasonably required for the purposes of the National Climate Change Response White Paper. 50
- (2) A notice under subsection (1) must indicate the manner and time-frames in which the information must be furnished and, if required, how the information must be verified.
- (3) The Minister must collate, compile and synthesise information relevant to the achievement of the national adaptation objectives and the objectives of this Act and thereafter publish a Synthesis Adaptation Report for consideration by Cabinet and to be used in the Republic's national and international reporting processes. 55

CHAPTER 5

GREENHOUSE GAS EMISSIONS AND REMOVALS

National greenhouse gas emissions trajectory

21. (1) The Minister must, in consultation with Cabinet, by notice in the *Gazette* determine a national greenhouse gas emissions trajectory for the Republic. 5

(2) The national greenhouse gas emissions trajectory must—

(a) specify a national greenhouse gas emissions reduction objective represented by a quantitative description of the total amount of greenhouse gas emissions projected to be emitted ~~during a specified period~~ in the Republic ~~for a 40-year period, defining a national carbon budget for that period which shall not be exceeded;~~

(b) be informed by relevant and up to date information regarding the total current 10 and projected amounts of greenhouse gas emissions in the Republic, ~~and technological advances or new science, evidence and information;~~

(c) be consistent with the principles and objectives of this Act and the Republic's international obligations, ~~including the provisions of the Paris Agreement and South Africa's Nationally Determined Contribution;~~

~~(d) Reach net zero CO₂ emissions by around 2050, enabled by a just transition;~~

(3) Until such time as the Minister publishes the national greenhouse gas emissions trajectory in terms of subsection (1), the ~~trajectory mitigation commitment in Schedule 3 under the updated nationally determined contribution submitted communicated to the United Nations Framework Convention on Climate Change in year 2021 will serve as the~~ national 15 greenhouse gas emissions trajectory for the Republic.

(4) The Minister, in consultation with Cabinet—

(a) must review the national greenhouse gas emissions trajectory ~~and national carbon budget~~ every five years from the coming into operation of this Act; and

(b) may periodically review the national greenhouse gas emissions trajectory ~~and national carbon budget~~ 20

when national circumstances require such a review, including when such requirement is demonstrated by—

(i) monitoring and evaluation results;

(ii) technological advances;

(iii) the best available science, evidence or information; 25

(iv) the Republic's international commitments and obligations; or

(v) constraints and opportunities ~~to in the~~ implementation of policies and mea-sures, ~~including co-benefit of such policies and measures,~~

~~If projected greenhouse gas emissions exceed the national carbon budget for a given period, the Minister must act to reduce sectoral emissions targets and company level carbon budgets, so that the trajectory and national carbon budget are achieved.~~

(5) ~~The Minister must take all reasonable steps to ensure that domestic mitigation policies and measures are in place, achieve the mitigation targets in the then current nationally determined contribution, and demonstrate significant progression over time. The Minister must determine a national carbon budget national GHG emissions budget on the basis of the national greenhouse gas emissions trajectory, consisting of three five-year greenhouse gas emissions budgets consistent with the trajectory; the national carbon budget national GHG emissions budget must be reviewed and revised if necessary following the review of the national greenhouse gas trajectory contemplated in section 4(a).~~

(6) ~~If projected greenhouse gas emissions exceed the national carbon budget national GHG emissions budget for a given five-year period, the Minister, in consultation with the relevant Ministers, ensure that additional mitigation measures are implemented, so that the trajectory and national carbon budget national GHG emissions budget are achieved.~~

(7) The Minister must take all reasonable steps, in consultation with the Ministers responsible for each sector, to ensure that domestic mitigation policies and measures are in place, achieve the mitigation targets in the then current nationally determined contribution, and demonstrate significant progression over time.

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(v) —

Sectoral emissions targets

22. (1) The Minister must, within one year of the coming into operation of this Act, 30
by notice in the *Gazette*, list the greenhouse gas emitting sectors and sub-sectors that are
subject to sectoral emissions targets. This list must appropriately reflect the
greenhouse gas emissions profile of the country.

(2) The Minister may vary the list of sectors and sub-sectors that are subject to
sectoral emissions targets, provided that the list continues to appropriately reflect the
greenhouse gas emissions profile of the country.

(3) The Minister must, in consultation with the Ministers responsible for each sector 35
and sub-sector listed in terms of subsections (1) and (2), determine by notice in the
Gazette the prescribed framework and the sectoral emissions targets for sectors and sub-
sectors.

(4) Sectoral emissions targets must—

(a) be implemented by the Ministers responsible for the administration of sectors 40
or sub-sectors listed in terms of subsections (1) and (2) through the relevant
planning instruments, policies and programmes;

(b) be aligned with the national greenhouse gas emissions trajectory and national
carbon budgetnational GHG emissions budget, noting that the cumulative
amount of greenhouse gas emissions which the sectoral
emissions targets represent are may not be equivalent thereto; and 45

(c) include quantitative and qualitative greenhouse gas emission reduction goals
for the first five years, the subsequent five to 10 years and for a 10- to 15-year
period thereafter.

~~(e)~~(d) Be set and implemented in a way which is consistent with South
Africa's long term decarbonization plans, including South Africa's Low-
emissions Development Strategy

(5) When determining the sectoral emissions targets, the Minister must take all relevant
considerations into account, including, amongst others— 50

(a) the socio-economic impacts of introducing the sectoral emissions targets, including
consideration of the co-benefits of mitigation policies and measures, inter alia reduction
in local air pollution and the potential for green industrialisation; and

(b) the best available science, evidence and information.

(6) The Minister responsible for each sector or sub-sector for which sectoral
emissions targets have been determined, in accordance with subsection (3), must adopt
policies and measures towards the achievement of the sectoral emissions targets. 55

(7) The Minister must, in consultation with the Ministers responsible for each sector
and sub-sector listed in terms of subsections (1) and (2), ~~must~~, every five years, review
the sectoral emissions targets and, when the outcome of the review or national

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circumstances require it, revise and amend the sectoral emissions targets, including when the need for such revision and amendment is demonstrated by—

- (a) monitoring and evaluation results;
- (b) technological advances;
- (c) the best available science, evidence or information; 5
- (d) the Republic's international commitments and obligations;
- (e) the strategic importance of the sector or sub-sector as a catalyst for growth and job creation in the economy; or
- (f) the agreed approach to the just transition.

~~(f)(g) Inconsistency between the aggregate effect of sectoral emissions targets and the national GHG emissions budget~~

~~If the sum of sectoral emissions targets exceed the national greenhouse gas emissions trajectory national carbon budget, the Minister must consult all Ministers responsible for each sector or sub-sector, and reduce the sectoral emissions targets so that they sum to the national greenhouse gas emissions trajectory over each relevant five year periods.~~

(8) An amended sectoral emissions target must contain quantitative and qualitative 10 mitigation targets for the first five years, for the subsequent five to 10 years and for a 10- to 15-year period thereafter.

(9) The Minister responsible for each sector and sub-sector for which sectoral emissions targets have been determined, within one year of the publication of the 15 sectoral emissions targets, must—

- (a) develop or amend the relevant sectoral and sub-sectoral policies and measures for which that Minister is responsible in terms of the achievement of the sectoral emissions targets;
- (b) publish such amendment in the *Gazette*;
- (c) implement the policies and measures within the relevant sectors and 20 sub-sectors; and
- (d) monitor the effectiveness of implementing such policies and measures in achieving the relevant sectoral emissions target.

(10) The Minister responsible for each sector and sub-sector for which sectoral emissions targets have been revised and amended in terms of subsection (7) must— 25

- (a) within six months of the publication of the revised and amended sectoral emissions targets and to the extent required by such revision and amendment, revise and amend the policies and measures provided for in subsection (9);
- (b) publish such revisions and amendments by notice in the *Gazette*; and
- (c) ensure that the duly revised and amended policies and measures are 30 implemented and monitored for effectiveness.

(11) The Minister responsible for each sector and sub-sector for which sectoral emissions targets have been determined in terms of subsection (3), or for which revised and amended sectoral emissions targets have been determined in terms of subsection (7), must annually report to The Presidency on progress towards the achievement of the 35 relevant sectoral emissions targets.

(12) The Minister must collate, compile and synthesise the reports provided in terms of subsection (11) and submit progress reports on the implementation of the sectoral emissions targets to Cabinet on an annual basis. Such progress reports will be made publicly available when these have been considered by Cabinet.

Listed greenhouse gases and activities 40

23. (1) The Minister must, by notice in the *Gazette*, publish a list of greenhouse gases which the Minister reasonably believes cause or are likely to cause or exacerbate climate change, having given due consideration to the most recent Assessment Report of the Intergovernmental Panel on Climate Change. Such a list must include all GHGs the emissions of which South Africa is required to report on in terms of Article 13 of the Paris Agreement.

(2) The Minister must, by notice in the *Gazette*, publish a list of activities which emit one or more of the greenhouse gases listed in terms of subsection (1) ~~and which the 45 Minister reasonably believes cause or are likely to cause or exacerbate climate change.~~

(3) A notice published in terms of subsection (2)—

- (a) must apply to greenhouse gas emitting activities which have already commenced and new greenhouse gas emitting activities;
- (b) must determine quantitative greenhouse gas emission thresholds expressed in 50 carbon dioxide equivalent to identify persons to be assigned a carbon budget, in terms of section 24(1), and who are required, in terms of section 24(4), to submit greenhouse gas mitigation plans to the Minister;

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- (c) must specify that the notice does not apply to listed activities which emit quantities of greenhouse gases below the quantitative greenhouse gas 55 emission thresholds determined in terms of paragraph (b);
- (d) may contain transitional provisions and other special arrangements in respect of the activities contemplated in paragraph (a); and
- (e) must determine the date on which the notice takes effect.

- (4) The thresholds contemplated in subsection (3)(b)—
- (a) must be expressed in carbon dioxide equivalents for carbon budgets and greenhouse gas mitigation plans and shall be applicable at company level based on operational control;
 - (b) must be based on the availability of feasible mitigation technology; and 5
 - (c) must take into account any opportunities and constraints to implementation of policies and measures; and,
 - ~~(e)(d)~~ Must consider national strategic priorities, including the requirements for fulfilling the country's long-term mitigation goals
- (5) The Minister may review the lists published in terms of subsections (1) and (2) in line with the requirements of national and international mitigation goals for the purposes of determining whether such lists require revision and amendment, including when the need for such review is demonstrated by— 10
- (a) monitoring and evaluation results;
 - (b) technological advances;
 - (c) the best available science, evidence or information;
 - (d) the Republic's international commitments and obligations; or 15
 - (e) opportunities and constraints to implementation of policies and measures.
- (6) In the event that a review undertaken in terms of subsection (5) indicates the need for revision and amendment of one or both of the lists, the Minister may, by notice in the *Gazette*, revise and amend the relevant list, by— 20
- (a) adding or removing greenhouse gases from the greenhouse gases list;
 - (b) adding or removing activities from the activities list; or
 - (c) making other changes to the particulars on the list, such as the applicability of greenhouse gases to certain activities.

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Carbon budgets

24. (1) The Minister must allocate a carbon budget to any person that conducts an activity listed in terms of section 23(2). 25
- (2) When allocating carbon budgets, the Minister must take all relevant considerations into account, including, amongst others—
- (a) the socio-economic impacts of imposing the carbon budget;
 - (b) the best available science, evidence and information; 30
 - (c) the best practicable environmental options available and alternatives that could be taken to mitigate the emission of greenhouse gases;
 - (d) national strategic priorities;
 - (e) the alignment of the carbon budgets with the national greenhouse gas emissions trajectory, noting that the cumulative amount of greenhouse gas emissions which the carbon budgets represent are not equivalent thereto; and 35
 - (f) progress on the implementation of the greenhouse gas mitigation plans.
- (3) A carbon budget—
- (a) must have a duration of at least three successive five-year periods; and
 - (b) must specify the maximum amount of greenhouse gas emissions that may be emitted during the first five-year period. 40
- (4) (a) A person to whom a carbon budget has been allocated in terms of sub-section (1) must prepare and submit to the Minister, for approval, a greenhouse gas mitigation plan. 45
- (b) A greenhouse gas mitigation plan must—
- (i) describe the mitigation measures that the person, to whom a carbon budget is allocated, proposes to implement in order to remain within the person's allocated carbon budget; and
 - (ii) comply with the content requirements of such plans as may be prescribed by the Minister in terms of section 27, including requirements pertaining to processes, procedures and reporting. 50
- (5) At the time when the carbon budget is assigned for the first mandatory carbon budget cycle, all approved pollution prevention plans as contemplated in section 29 of the National Environmental Management: Air Quality Act, 2004 (Act No. 39 of 2004), and the National Pollution Prevention Plans Regulations, 2017, published under Government Notice No. 712 of 21 July 2017, must be deemed to be greenhouse gas mitigation plans. 55
- (6) A person to whom a carbon budget has been allocated must—
- (a) implement the approved greenhouse gas mitigation plan;
 - (b) monitor annual implementation of the greenhouse gas mitigation plan in accordance with the prescribed methodology; 60

- (c) evaluate progress on the allocated carbon budget;
- (d) annually report on the progress against the allocated carbon budget to the Minister in the manner prescribed; and
- (e) in the event that such reporting indicates that the person has failed, is failing or will fail to comply with the allocated carbon budget, provide a description of measures the person will implement in order to remain within the allocated carbon budget. 5

(7) (a) The Minister must review a carbon budget allocated to a person in terms of subsection (1) at the end of the five-year carbon budget commitment period, or upon request by a person subject to a carbon budget. 10

(b) The Minister must ensure compliance with and enforcement of an allocated carbon budget, and in consultation with the Minister of Finance, ensure that any person whose greenhouse gas emissions exceed the assigned amount in its carbon budget in a five-year carbon budget commitment period shall pay a carbon tax at a rate ten (10) times higher than set by National Treasury;

(c) The Minister must take all necessary steps to ensure the effective, timeous and rigorous implementation of the regulations for compliance with and enforcement of allocate carbon budgets (see section 27).

~~(b)(d)~~ A person to whom a carbon budget has been allocated may apply for a revision or cancellation of the budget under prescribed circumstances.

~~(e)(e)~~ The factors listed in subsection (2) must be taken into consideration when a carbon budget is reviewed.

(8) The Minister must, within a reasonable time of the review provided for in subsection (7), revise a carbon budget— 15

- (a) to ensure that it always has a duration of at least three successive five-year periods; and
- (b) if the National Greenhouse Gas Inventory demonstrates an increase in national greenhouse gas emissions above the national and international climate change mitigation commitments and obligations. 20

(9) An allocated carbon budget may be amended if the activity for which the carbon budget has been issued is transferred or acquired in part or fully and the affected person must request a reallocation of a carbon budget from the Minister in the prescribed manner. 25

Phase-down and phase-out of synthetic greenhouse gas emissions and declaration

25. (1) The Minister, in consultation with the Ministers responsible for the greenhouse gas emitting sectors and sub-sectors contemplated in section 22, must by notice in the *Gazette*—

- (a) declare certain greenhouse gases to be synthetic greenhouse gases; 30
- (b) specify, in respect of each of the gases listed in the declaration contemplated in paragraph (a), whether such gases are required to be phased out or phased down;
- (c) prescribe thresholds for the use of synthetic greenhouse gases in terms of section 23(3)(b); and 35
- (d) contain timeframes for the phase-down or phase-out of synthetic greenhouse gases.

(2) The Minister, in consultation with the Ministers responsible for the greenhouse gas emitting sectors and sub-sectors contemplated in section 22, and any affected party, in the prescribed manner, must— 40

- (a) develop a plan to phase down or phase out synthetic greenhouse gases declared in terms of subsection (1); and
- (b) review and update the plan provided for in paragraph (a) every five years.

(3) A plan developed in accordance with subsection (2)(a) must—

- (a) address how importers and exporters of synthetic greenhouse gases must account for their emissions of synthetic greenhouse gases; 45
- (b) contain measures that facilitate the phase-down or phase-out of synthetic greenhouse gases; and
- (c) be consistent with the Republic's international obligations.

(4) The Minister may allocate a carbon budget to persons undertaking activities that give rise to emissions of the synthetic greenhouse gases declared pursuant to subsection (1), in which event the Minister must follow the process for the allocation of carbon budgets provided for in section 24. 50

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National Greenhouse Gas Inventory

26. (1) The Minister must establish an institutional arrangement to facilitate a national system of data collection for the creation of a National Greenhouse Gas Inventory and the annual compilation of the National Greenhouse Gas Inventory Report.

~~26. The Minister must review every five years, and as necessary update, the GHG reporting regulations referred to in section 34, to enhance ensure the transparency, accuracy, completeness, comparability and consistency of the -National Greenhouse Gas Inventory, in line with best international practice, South Africa’s international obligations, including under the Paris Agreement, and national policymaking requirements.~~

(2) The National Greenhouse Gas Inventory Report contemplated in subsection (1) 5 must—

- (a) set out and analyse emissions trends, including detailed reports on changes in the greenhouse gas emissions intensity in the economy; and
- (b) compare actual greenhouse gas emissions against the national greenhouse gas emissions trajectory and national and international climate change mitigation 10 commitments and obligations.

(3) The Minister may by notice in the *Gazette* or in writing identify a list of activities and thresholds for which measurements or estimations of greenhouse gas emissions and carbon sinks from stationary, mobile, fugitive, process, agriculture, land use and waste sources must be carried out. 15

(4) The thresholds stipulated in subsection (3) must be expressed as a function of activity for greenhouse gas emissions reporting and may be different for different activities, taking into account the significance of the contribution of these activities to total national greenhouse gas emissions as well as its completeness.

(5) A notice under subsection (3) must indicate the manner in which the information 20 must be furnished and, if required, how the information must be verified.

CHAPTER 6

GENERAL MATTERS AND TRANSITIONAL ARRANGEMENTS

Regulations

27. (1) The Minister may make regulations— 25

- (a) in relation to any matter necessary to give effect to this Act and the Republic’s international climate change commitments and obligations;
- (b) in relation to the management of climate change response including incentives and disincentives to encourage a change in behaviour towards the generation of greenhouse gases amongst all sectors of society; 30
- (c) that will ensure mandatory annual reporting and promote—effective monitoring, evaluation and the assessment of national progression in relation to climate change mitigation and adaptation matters, including—
 - (i) in relation to the progress made by national departments, provinces and municipalities with the development and implementation of Sector 35 Adaptation Strategy and Plans, climate change needs and response assessments and climate change response implementation plans;
 - (ii) in relation to the performance of the departments responsible for the functions contemplated in Schedule 2, as well as provinces and municipalities, in respect of the national adaptation objectives; and 40
 - (iii) in relation to the consequences for the failure of the departments responsible for functions listed in Schedule 2 as well as provinces and municipalities, to report in the prescribed manner;
- (d) that will ~~promote the ensure mandatory annual reporting and effective~~ monitoring, evaluation and assessment of national progress in relation to climate change matters and climate change 45
 - data and information, including information necessary to determine climate change vulnerability and to foster resilience;
 - (d bis) with sufficient detail in order to promote environmental integrity, transparency, accuracy, completeness, comparability and consistency, and ensure the avoidance of double counting, in line with international obligations and
- (e) in relation to the administration and operation of any committee established in

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terms of this Act, to ensure the achievement of its purpose, functions and responsibilities.

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(2) The Minister must make regulations—

(a) in relation to the management of climate change response, including—

(i) the determination, review, revision, compliance with and enforcement of an allocated carbon budget, amendment and cancellation of a carbon budget allocation, the content, implementation and operation of a 55 greenhouse gas mitigation plan, and all matters related thereto; and

- (ii) the phasing down or phasing out of synthetic greenhouse gases, including the development of timeframes, inventories and mechanisms for reporting;
- ~~(b) that will promote ensure mandatory annual reporting and the effective monitoring, evaluation and assessment of national progress in relation to climate change matters and climate change.~~ 5
- ~~(b) and that will to address adequately the adverse impacts of climate change on South Africa and loss and damage suffered, as well as costs of the foregoing; in order to inform how the Republic may comply with any international obligations; and~~
- ~~(c) to align the EIA regulations and guidelines (including listing notices) with the principles of the Act for both greenhouse gas mitigation of both direct and indirect emissions, and local level adaptation and community level resilience to climate change;~~ 10
- ~~(e)(d)~~ in relation to any other matter which the Minister must prescribe in terms of this Act.

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(3) A regulation made in terms of this Act may provide that any person who contravenes or fails to comply with a provision thereof commits an offence and will be liable, upon conviction, to the penalties contemplated in section 49B(2) of the National Environmental Management Act. 15

Consultation

28. (1) Before exercising a power in terms of section 15(1), 16, 17, 18(2), 18(3), 19(1)(b), 19(1)(c), 20(1), 21(1), 21(4), 22(1), 22(2), 22(3), 22(7), 22(9), 22(10), 23(1), 23(2), 23(5), 23(6), 24(2), 24(7), 24(8), 24(9), 25, 26(3) or 27, the Minister, MEC or 20 mayor must follow such consultative processes as may be appropriate in the circumstances.

(2) When conducting a consultation contemplated in subsection (1), the Minister must—

- (a) consult all Cabinet members whose areas of responsibility will be affected by 25 the exercise of the power; and
- (b) in accordance with the principles of cooperative governance as set out in Chapter 3 of the Constitution, consult the MEC in each province that will be affected by the exercise of the power.

(3) When conducting a consultation contemplated in subsection (1), an MEC must— 30

- (a) consult all members of the Executive Council whose areas of responsibility will be affected by the exercise of the power; and
- (b) in accordance with the principles of cooperative governance as set out in Chapter 3 of the Constitution, consult the Minister and all other national 35 organs of state that will be affected by the exercise of the power.

(4) In respect of the carbon budgets issued in terms of section 24, the Minister must follow a fair procedure prior to the issue of the carbon budget including consultation with the person to whom a carbon budget is allocated.

(5) When conducting a consultation contemplated in subsection (1), a Mayor must follow such consultative processes in accordance with the principles of cooperative 40 governance as set out in Chapter 3 of the Constitution.

Public participation

29. (1) Before exercising a power in terms of section 15(1), 16(1), 16(2), 17(1), 17(2), 18(2), 19(1)(b), 19(1)(c), 20(1), 20(3), 21(1), 21(4), 22(1), 22(2), 22(3), 22(7), 22(9), 22(10), 23(1), 23(2), 23(5), 23(6), 25 or 27, the Minister, MEC or mayor must give 45 notice of the proposed exercise of the relevant power—

- (a) in the *Gazette*; and
- (b) in at least one newspaper distributed nationally or, if the exercise of the power will affect only a specific area, in at least one newspaper distributed in that 50 area.

(2) The notice must—

- (a) invite members of the public to submit to the Minister, MEC or mayor, as the case may be, within 30 days of publication of the notice in the *Gazette*, written representations on or objections to the proposed exercise of the power; and
- (b) contain sufficient information to enable members of the public to submit 55

meaningful representations or objections.

(3) The Minister, MEC or mayor may in appropriate circumstances allow any interested person or community to present oral representations or objections to the Minister, MEC or mayor, or to a person designated by the Minister or MEC or mayor.

(4) The Minister, MEC or mayor must give due consideration to all representations and objections received or presented before exercising the power concerned.

Delegation

30. (1) The Minister may delegate a power or duty vested in him or her, excluding the power to make regulations in terms of section 27, in accordance with section 42 of the National Environmental Management Act. 5

(2) An MEC may delegate a power or duty vested in or delegated to him or her in terms of this Act in accordance with section 42A of the National Environmental Management Act.

Access to information 10

31. Information provided to the Minister or the Department in terms of this Act must be published annually and made available in electronic format by the Minister subject to the provisions of the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000), and the Protection of Personal Information Act, 2013 (Act No. 4 of 2013).

Offences and penalties 15

32. (1) A person commits an offence if that person fails to prepare and submit a greenhouse gas mitigation plan to the Minister in terms of section 24(4).

(2) A person convicted of an offence in terms of subsection (1) is liable to the penalties contemplated in section 49B(2) of the National Environmental Management Act.

Appeals 20

33. (1) 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.

(2) Any person may appeal to an MEC against a decision taken by any person acting under a power delegated by that MEC under this Act.

(3) An appeal lodged in terms of subsection (1) or (2) must be noted and dealt with in terms of section 43(4) of the National Environmental Management Act. 25

Savings, transitional provisions and amendment of laws

34. (1) The notice relating to the Declaration of Greenhouse Gases as Priority Air Pollutants, 2017, published under Government Notice No. 710 of 21 July 2017, the National Pollution Prevention Plans Regulations, 2017, published under Government Notice No. 712 of 21 July 2017, and the National Greenhouse Gas Emissions Reporting Regulations, 2016, published under General Notice No. 275 of 3 April 2017, made in terms of the National Environmental Management: Air Quality Act, 2004 (Act No. 39 of 2004), will serve as regulations and notices published in terms of this Act, as soon as this Act comes into operation and will remain in force and effect until they are amended, replaced or repealed in terms of this Act. 30 35

(2) The National Environmental Management Act is hereby amended to the extent reflected in Schedule 4.

Short title and commencement

35. This Act is called the Climate Change Act, 2022, and comes into operation on a date fixed by the President by proclamation in the *Gazette*. 40

SCHEDULE 1**Functions relevant to the development of Sectoral Emissions Targets**

Agriculture;
Forestry;
Fisheries;
Cooperative Governance;
Traditional Affairs;
Economic Development;
Energy;
Environment;
Health;
Human Settlements;
International Relations;
Mineral Resources;
National Treasury;
Public Enterprises;
Public Works;
Rural Development;
Land Reform;
Science;
Technology;
Trade;
Industry;
Transport;
Water Affairs; and
Sanitation.

SCHEDULE 2**National Departments and State-Owned Entities responsible for certain functions required to develop a Sector Adaptation Strategy and Plan**

Agriculture;
Forestry;
Fisheries;
Disaster Risk Reduction;
Energy;
Environment;
Health;
Human Settlements;
Manufacturing;
Public Enterprises;
Rural Development;
Land Reform;
Science;
Technology;
Transport;
Water Affairs; and
Sanitation.

SCHEDULE 3**Commented [A1]:** We assume that this will be deleted**Interim National Greenhouse Gas Emissions Trajectory**

The Republic's greenhouse gas emissions will—

- ~~(a) peak in the period 2020 to 2025 in a range with a lower limit of 398 Megatonnes (10⁹kg) (Mt) CO₂-eq and upper limits of 583 Mt CO₂-eq and 614 Mt CO₂-eq for 2020 and 2025, respectively;~~
- ~~(b) plateau for up to 10 years after the peak within the range with a lower limit of 398 Mt CO₂-eq and an upper limit of 614 Mt CO₂-eq; and~~
- ~~(c) from 2026 onwards, decline in absolute terms to a range with a lower limit of 212 Mt CO₂-eq and an upper limit of 428 Mt CO₂-eq by 2050.~~

SCHEDULE 4**Amendment of laws: Section 34**

Act no.	Year	Title	Extent of amendment or repeal
107	1998	National Environmental Management Act	<p>1. The National Environmental Management Act is hereby amended by the addition in section 1 to the definition of "specific environmental management Act" of the following paragraph:</p> <p>“(i) the Climate Change Act, 2022.”</p>

MEMORANDUM ON THE OBJECTS OF THE CLIMATE CHANGE BILL, 2022

1. PURPOSE OF BILL

The purpose of the Bill is to craft and implement an effective national 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 enable the development of an 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.

3. LEGISLATIVE ANALYSIS

3.1 Clause 1

Clause 1 provides for the definition of certain words, terms and expressions used in the Bill.

3.2 Clause 2

Clause 2 sets out the objectives of the Bill.

3.3 Clause 3

Clause 3 sets out the principles that will guide the interpretation and application of the Act.

3.4 Clause 4

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

3.5 Clause 5

Clause 5 renders the Bill a specific environmental management Act, as defined in the National Environmental Management Act, 1998 (Act No. 107 of 1998) ("NEMA"), and requires the Bill to be read, interpreted and applied in conjunction with that Act.

3.6 Clause 6

Clause 6 regulates conflicts with other legislation. In the event of any conflict between a section of the envisaged Act and other legislation specifically relating to climate change, the section of the envisaged Act prevails.

3.7 Clause 7

Clause 7 places a legal obligation on every organ of state to coordinate and harmonise their various policies, plans, programmes, decisions and decision-making processes 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 principles and objectives set out in the envisaged Act.

3.8 Clause 8

Clause 8 requires the existing Premier intergovernmental forums established in terms of the Intergovernmental Relations Framework Act, 2005 (Act No. 13

of 2005) (“IGRFA”), to also serve as Provincial Forums on Climate Change. A Provincial Forum on Climate Change is charged with coordinating climate change actions in the relevant province and reports to the President’s Coordinating Council in terms of section 20(a) of the IGRFA.

3.9 Clause 9

Clause 9 provides for all district intergovernmental forums, established in terms of the IGRFA, to also serve as Municipal Forums on Climate Change. A Municipal Forum on Climate Change is charged with coordinating climate change actions in the relevant municipality and reports to the relevant Provincial Forum on Climate Change.

3.10 Clause 10

Clause 10 provides for the establishment of the Presidential Climate Commission for organised labour, civil society and business to advise on the Republic’s climate change response.

3.11 Clause 11

Clause 11 provides the functions of the Presidential Climate Commission, which includes providing advice on the Republic’s climate change response to ensure the realisation of the vision for effective climate change response and the long-term just transition to a climate resilient and low carbon economy and society.

3.12 Clause 12

Clause 12 provides for the process for the appointment of members of the Presidential Climate Commission.

3.13 Clause 13

Clause 13 provides that the President may require that the Presidential Climate Commission report on matters relating to reducing the emission of greenhouse gases and adapting to the effects of climate change.

3.14 Clause 14

Clause 14 provides for the administrative and secretariat support for the Presidential Climate Commission.

3.15 Clause 15

Clause 15 requires an MEC responsible for the environment, or a Mayor of a District or Metropolitan municipality, as the case may be, to undertake a climate change needs and response assessment within one year of the publication of the National Adaptation Strategy and Plan. It further requires a climate change response implementation plan to be developed within two years of undertaking the climate change needs and response assessment. The clause sets out the prescribed content of a climate change needs and response assessment and a climate change response implementation plan. It further requires a climate change response implementation plan to be integrated into the relevant environmental implementation plan of the Province or the relevant integrated development plan of the District or Metropolitan Municipality.

3.16 Clause 16

Clause 16 provides for the establishment of adaptation objectives in the Republic. The objective is to guide the adaptation response which is to be accompanied by indicators for measuring progress. The Minister is also

required to determine the date by which the objectives must be incorporated into national planning instruments, policies and programmes.

3.17 Clause 17

Clause 17 requires the Minister to develop adaptation scenarios which anticipate the likely impacts of climate change in the Republic over the short, medium and longer term. The scenarios must be developed within one year of the envisaged Act coming into operation. It prescribes relevant considerations and the minimum content of the adaptation scenarios.

3.18 Clause 18

Clause 18 provides that the Minister, in consultation with the Ministers responsible for the functions listed in Schedule 2 to the envisaged Act, and is required to establish a National Adaptation Strategy and Plan in terms of this clause. The clause sets out the purpose of the National Adaptation Strategy and Plan and its contents.

3.19 Clause 19

Clause 19 provides that within one year of the publication of the National Adaptation Strategy and Plan, a Minister responsible for a function listed in Schedule 2 must undertake an assessment of its vulnerabilities to climate change and determine measures to respond thereto. The relevant Minister must then develop and implement a Sector Adaptation Strategy and Plan which is based on the vulnerability assessment. The relevant Minister is also responsible for the submission of progress reports on the implementation of the Sector Adaptation Strategy and Plan to the Minister. This clause further provides for the periodic review, and amendment if required, of the Sector Adaptation Strategy and Plan.

3.20 Clause 20

Clause 20 empowers the Minister to request and obtain data and other information held by any person which is required for the purposes of the National Climate Change Response White Paper. The Minister is also responsible for the compilation and publication of a Synthesis Adaptation Report.

3.21 Clause 21

Clause 21 empowers the Minister, in consultation with Cabinet, to determine, by notice in the *Gazette*, a national greenhouse gas emissions trajectory for the Republic. Until such time as the Minister publishes a national greenhouse gas emissions trajectory, the trajectory in Schedule 3 will serve as an interim national greenhouse gas emissions trajectory for the Republic. The clause provides for the mandatory review of the trajectory every five years as well as for a review at any other time should the circumstances require.

3.22 Clause 22

Clause 22 empowers the Minister to list the sectors and subsectors which are subject to the allocation of a sectoral emissions target. After having published such a list, the Minister must determine sectoral emissions targets for the listed sectors and subsectors. The sectoral emissions targets must be aligned with the national greenhouse gas emissions trajectory. The sectoral emissions targets are reviewable every five years from their initial publication. The clause further requires the relevant Ministers to annually report to the Presidency on the progress in achieving the relevant sectoral emissions targets. The Minister must synthesise these reports and submit annual progress reports on the sectoral emissions targets to Cabinet.

3.23 Clause 23

Clause 23 provides that the Minister must publish a list of greenhouse gases which the Minister reasonably believes cause or are likely to cause or exacerbate climate change. The Minister must further publish a list of activities which emit one or more of the listed greenhouse gases and which the Minister reasonably believes cause or are likely to cause or exacerbate climate change.

3.24 Clause 24

Clause 24 requires the Minister to allocate a carbon budget to every person undertaking a listed activity. The clause specifies the minimum requirements to be taken into account when allocating a carbon budget and its prescribed content. A person who has been allocated a carbon budget is required to prepare and submit to the Minister a greenhouse gas mitigation plan. A greenhouse gas mitigation plan must comply with all the requirements set out in this clause and as may be prescribed by the Minister.

3.25 Clause 25

Clause 25 requires the Minister to identify synthetic greenhouse gases which must either be phased out or phased down. This clause empowers the Minister, in consultation with the relevant Ministers and any affected person, to develop a plan for the phase down or phase out of the synthetic greenhouse gas. The plan must comply with the requirements set out in the clause and must be reviewed and updated on a five-year basis. The clause also empowers the Minister to allocate carbon budgets to persons who undertake activities which give rise to the emission of synthetic greenhouse gases.

3.26 Clause 26

Clause 26 provides for the development of the National Greenhouse Gas Inventory and the compilation of the National Greenhouse Inventory Report on an annual basis.

3.27 Clause 27

Clause 27 empowers the Minister to develop regulations relating to the implementation of the envisaged Act.

3.28 Clause 28

Clause 28 is concerned with the consultation process that the Minister, the MEC or a Mayor must follow when exercising a power in terms of the envisaged Act. This consultation must be appropriate for the circumstances and in the case of the Minister it includes consultation with all Ministers whose areas of responsibility will be affected by the exercise of the power and the relevant MEC in each province that will be affected by the exercise of the power. In the case of an MEC, it includes consultation with the members of the Executive Council whose areas of responsibility will be affected by the exercise of the power and the Minister and all other national organs of state that will be affected by the exercise of the power.

3.29 Clause 29

Clause 29 sets out the public participation process that the Minister, an MEC or a mayor must follow when exercising the powers listed in the clause.

3.30 Clause 30

Clause 30 empowers the Minister and an MEC to delegate powers vested in terms of the envisaged Act in accordance with the relevant provisions of the NEMA.

3.31 Clause 31

Clause 31 concerns the right of access to information and provides that information must be provided subject to the provisions of the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000), and the Protection of Personal Information Act, 2013 (Act No. 4 of 2013).

3.32 Clause 32

Clause 32 provides for the offences and penalties under the envisaged Act.

3.33 Clause 33

Clause 33 provides that any person may appeal to the Minister or an MEC against a decision taken by any person acting under a power delegated by the Minister or that MEC and further provides that such an appeal must be processed in terms of section 43 of NEMA.

3.34 Clause 34

Clause 34 deals with the savings and transitional provisions relating to the Declaration of Greenhouse Gases as Priority Air Pollutants, 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 (Act No. 39 of 2004). The aforementioned subordinate legislation will remain in force and effect and serve as regulations under the envisaged Act until they are amended, replaced or repealed. This clause further provides for an amendment to NEMA in accordance with Schedule 4 to the envisaged Act.

3.35 Clause 35

Clause 35 provides the short title and commencement of the envisaged Act.

4. DEPARTMENTS CONSULTED

The national and provincial departments responsible for the following functions were consulted:

- Human Settlements, Water and Sanitation;
- Higher Education, Science and Technology;
- Agriculture, Land Reform and Rural Development;
- Trade, Industry and Competition;
- International Relations and Cooperation;
- Cooperative Governance and Traditional Affairs;
- Forestry, Fisheries and the Environment;
- Mineral Resources and Energy;
- Public Enterprises;
- Small Business Development;
- Health;
- Transport;
- Tourism;
- Treasury;

- all provincial departments responsible for environmental affairs through the Ministers and Members of Executive Councils Meeting (MINMEC) and provincial stakeholder workshops; and
- all municipalities through provincial stakeholder workshops and the South African Local Government Association.

5. FINANCIAL IMPLICATIONS FOR STATE

The Bill will create financial liability for the State in the form of implementation costs relating to the following:

- Development of climate change response and implementation plans by spheres of Government; Sector Adaptation Strategy and Plan by relevant Ministers and the amendment of existing policies and plans to take sectoral emissions targets into account;
- development of a National Adaptation Strategy and Plan;
- human resource capacity for supporting the development and implementation of all plans, strategies and frameworks under the Bill; and
- human resource capacity for compliance monitoring and enforcement.

6. PARLIAMENTARY PROCEDURE

6.1 The State Law Advisers and the Department are of the opinion that the Bill must be dealt with in accordance with the procedure established in section 76 of the Constitution.

6.2 Chapter 4 of the Constitution specifies the manner in which legislation must be enacted by Parliament. It prescribes different procedures for Bills, including ordinary Bills not affecting provinces (section 75 procedure), and ordinary Bills affecting provinces (section 76 procedure). The determination of the procedure to be followed in processing the Bill is referred to as tagging.

6.3 In terms of section 76(3) of the Constitution, a Bill must be dealt with in accordance with section 76 if it falls within a functional area listed in Schedule 4. Schedule 4 to the Constitution lists functional areas of concurrent national and provincial legislative competence. In the Constitutional Court judgment of *Ex-Parte President of the Republic of South Africa In Re: Constitutionality of the Liquor Bill*¹ (“*Liquor Bill* judgment”), Cameron AJ held the following:

“[27] It must be borne in mind that section 76 is headed ‘ordinary Bills affecting provinces’. This is my view, a strong textual indication that section 76(3) must be understood as requiring that any Bill whose provisions in substantial measure fall within a functional area listed in Schedule 4 be dealt with under section 76.

...

[29] Once a Bill falls within a functional area listed in Schedule 4, it must be dealt with not in terms of section 75, but by either the section 76 (1) or the section 76(2) procedure. . .”.

6.4 Following the *Liquor Bill* judgment, the Constitutional Court in the judgment of *Tongoane and Others vs Minister for Agriculture and Land Affairs and Others*² (“*Tongoane* judgment”) confirmed the following:

“[59]... the tagging test focuses on all the provisions of the Bill in order to determine the extent to which they substantially affect functional areas listed in Schedule 4, and not on whether any of its provisions are incidental to its substance.”.

1. (CCT/12/99) [1999] ZACC 15.

2. 2010 (8) BCLR 741 (CC).

6.5 Furthermore, the Constitutional Court held that:

“[66]... procedural safeguards are designed to give more weight to the voice of the provinces in legislation substantially affecting them. . .they are fundamental to the role of the NCOP in ensuring that provincial interests are taken into account in the national sphere of government. . .”.

6.6 As the Court held in the *Tongoane* judgment, a Bill must be tagged as a section 76 Bill if its provisions in substantial measure deal with a Schedule 4 functional area. We are therefore of the view that the Bill should be classified as a section 76 Bill, which is an ordinary Bill affecting province, as its provisions in a substantial measure fall within a functional area listed in Schedule 4 to the Constitution, namely “Environment”.

6.7 The State Law Advisers are of the opinion that it is not necessary to refer the Bill to the National House of Traditional and Khoi-San Leaders in terms of section 39(1)(a)(i) of the Traditional and Khoi-San Leadership Act, 2019 (Act No. 3 of 2019), as it does not contain any provisions which directly affect traditional or Khoi-San communities or provisions which pertain to customary law or customs of traditional or Khoi-San communities.