

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)

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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 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 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

- (b) supports a just transition to a climate-resilient, equitable and internationally competitive low-carbon economy and society, 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; 35
 - “**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; 40
 - “**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; 45

“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;

“Department” means the national department responsible for environmental affairs;

“direct greenhouse gas emissions” means greenhouse gas emissions from 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);

“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;

“Gazette”, when used in relation to—

(a) a Minister, means the *Government Gazette*;

(b) an MEC, means the *Provincial Gazette* of the province concerned; and

(c) a municipality, means the *Provincial Gazette* 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;

“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;

“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;

“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—

(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);

“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);

“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;

“National Climate Change Response White Paper” means the White Paper on the National Climate Change Response published under Government Notice No. 757 in *Gazette* 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);

“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 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;

“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;

“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— 55
- (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 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; 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 a low carbon economy and society 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;
 - (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 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 creation of decent work for all, social inclusion and the eradication of poverty; 25
 - (e) the need for integrated management, 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 risk-averse and cautious approach to be adopted, which takes into account the limits of current knowledge about causes and effects of climate change and the consequences of decisions and actions in relation thereto;
 - (h) the need for climate change mitigation and adaptation responses to be informed by evolving climate change scientific knowledge and decisions which should be based on the best available science, evidence and information; 40
 - (i) an effective climate change response which requires preventative measures to mitigate the causes of climate change and to strengthen resilience through the adoption of adaptation measures; 45
 - (j) the costs of responding to the adverse impacts of climate change and of mitigation which must be paid for by those responsible for causing the adverse impact;
 - (k) an integrated climate change response which requires the enhancement of public awareness of climate change causes and impacts and the promotion of participation and action at all levels; and 50
 - (l) a recognition that a robust and sustainable economy and a healthy society depends on the services that well-functioning ecosystems provide, and that 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 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; 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 35
the Intergovernmental Relations Framework Act, also serves as a Provincial Forum on 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. 5
- (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-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 adapting to the effects of climate change; and
 - (c) provide monitoring and evaluation of progress towards government's emissions reduction and adaptation goals. 40

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.
- (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 field.

Reporting to government

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

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 5
 - (b) the preparation of meetings and the running of the day-to-day operations, communications and research of the Presidential Climate Commission.

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; 15
 - (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 and spatially map, within the sphere of operations of the province, 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— 45
- (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
 - (c) comply with any requirements as may be prescribed by the Minister inclusive of the relevant technical guidelines. 50
- (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. 55

(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, the development of resilience and sustainable development; 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).

Adaptation scenarios

20

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;
- (c) include a consideration of the potential impacts of climate change on the environment of the Republic and associated vulnerabilities; 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 socio-economic and environmental system and enhance the adaptive capacity of society, the environment and economy to the impacts of climate change; 50
- (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.

Sector Adaptation Strategy and Plan 20

- 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—
 - (i) monitoring and evaluation results;
 - (ii) technological advances; 40
 - (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;
 - (b) be informed by relevant and up to date information regarding the total current and projected amounts of greenhouse gas emissions in the Republic; and 10
 - (c) be consistent with the principles and objectives of this Act and the Republic's international obligations.
- (3) Until such time as the Minister publishes the national greenhouse gas emissions trajectory in terms of subsection (1), the trajectory in Schedule 3 serves as the national greenhouse gas emissions trajectory for the Republic. 15
- (4) The Minister, in consultation with Cabinet—
- (a) must review the national greenhouse gas emissions trajectory every five years from the coming into operation of this Act; and
 - (b) may periodically review the national greenhouse gas emissions trajectory when national circumstances require such a review, including when such requirement is demonstrated by— 20
 - (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 implementation of policies and measures.

Sectoral emissions targets

- 22.** (1) The Minister must, within one year of the coming into operation of this Act, by notice in the *Gazette*, list the greenhouse gas emitting sectors and sub-sectors that are subject to sectoral emissions targets. 30
- (2) The Minister may vary the list of sectors and sub-sectors that are subject to sectoral emissions targets.
- (3) The Minister must, in consultation with the Ministers responsible for each sector 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. 35
- (4) Sectoral emissions targets must—
- (a) be implemented by the Ministers responsible for the administration of sectors 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, noting that the cumulative amount of greenhouse gas emissions which the sectoral emissions targets represent are not 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.
- (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; 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

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.

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

(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 sectoral emissions targets, must— 15

- (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 sub-sectors; and 20
- (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 relevant sectoral emissions targets. 35

(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.

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.

(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 Minister reasonably believes cause or are likely to cause or exacerbate climate change. 45

(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 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; 50
- (c) must specify that the notice does not apply to listed activities which emit quantities of greenhouse gases below the quantitative greenhouse gas emission thresholds determined in terms of paragraph (b); 55
- (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
 - (c) must take into account any opportunities and constraints to implementation of policies and measures.
- (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—
- (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
 - (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—
- (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.

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).
- (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;
 - (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
 - (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.
- (4) (a) A person to whom a carbon budget has been allocated in terms of subsection (1) must prepare and submit to the Minister, for approval, a greenhouse gas mitigation plan.
- (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.
- (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.
- (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;

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

(c) 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

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.
- (2) The National Greenhouse Gas Inventory Report contemplated in subsection (1) must— 5
- (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 commitments and obligations. 10
- (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 must be furnished and, if required, how the information must be verified. 20

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 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 promote effective monitoring, evaluation and the assessment of national progress 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 Adaptation Strategy and Plans, climate change needs and response assessments and climate change response implementation plans; 35
 - (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 effective monitoring, evaluation and assessment of national progress in relation to climate change matters and climate change data and information, including information necessary to determine climate change vulnerability and to foster resilience; and 45
 - (e) in relation to the administration and operation of any committee established in terms of this Act, to ensure the achievement of its purpose, functions and responsibilities. 50
- (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 greenhouse gas mitigation plan, and all matters related thereto; and 55

- (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 the effective monitoring, evaluation and assessment of national progress in relation to climate change matters and climate change data and information, including information relating to direct and indirect greenhouse gas emissions, for the purposes of planning, analysis and monitoring and the compilation of the National Greenhouse Gas Inventory, and that will inform how the Republic may comply with any international obligations; and
 - (c) in relation to any other matter which the Minister must prescribe in terms of this Act.
- (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.

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 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 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—

- (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 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 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 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 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 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 made available 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**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 2036 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 <u>Climate Change Act, 2022.</u>”.</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 Section 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.