

GOVERNMENT NOTICES • GOEWERMENTSKENNISGEWINGS

DEPARTMENT OF ENVIRONMENTAL AFFAIRS

NO. 580

08 JUNE 2018

CLIMATE CHANGE BILL, 2018

The Minister of Environmental Affairs, Dr Bomo Edna Edith Molewa, hereby publishes the Climate Change Bill, 2018 in the Schedule hereto, for public comment. Copies of the socio-economic impact assessment report and memorandum of objects are available at www.environment.gov.za

Members of the public are invited to submit to the Minister, within 60 days of publication of this notice in the Gazette, written inputs or comments to the following addresses:

By post to: The Director General: Department of Environmental Affairs
Attention: Ms Dineo Ngobeni
Private Bag X447
Pretoria, 0001

By hand at: Environment House, 473 Steve Biko Street, Arcadia, Pretoria, 0001.

By email to: Climate@environment.gov.za

Any inquiries in connection with the National Climate Change Bill, 2018 can be directed to Mr Tlou Ramaru at (012) 399 9252, and Ms Deborah Ramalope at (012) 399 9160.

Public comments or Inputs received after 08 August 2018 may not be considered.

SCHEDULE

REPUBLIC OF SOUTH AFRICA

CLIMATE CHANGE BILL

(As introduced in the National Assembly (proposed section 76); explanatory summary of Bill published in Government Gazette 41689 of 8 June 2018) (The English text is the official text of the Bill)

(MINISTER OF ENVIRONMENTAL AFFAIRS)

[B—2018]

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BILL

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

PREAMBLE

WHEREAS everyone has the Constitutional right to dignity, life and 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 while allowing justifiable environmentally sustainable economic and social development;

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

AND WHEREAS the Republic—

- (a) is an emitter of the greenhouse gases identified by the international community as the primary drivers of anthropogenic climate change, and for

which the implementation of appropriate mitigation responses are urgently required;

- (b) is especially vulnerable to those impacts of climate change that require urgent and appropriate adaptation responses; and
- (c) has committed, internationally, to communicate and implement an effective nationally determined climate change response, including mitigation and adaptation actions, that represents the Republic's fair contribution to the global climate change response;

AND WHEREAS anticipated domestic climate change impacts have the potential to undermine many of the gains made in meeting the Republic's developmental goals, while implementing an effective national climate change response, set out in the White Paper on National Climate Change Response and South Africa's Nationally Determined Contribution communicated to the United Nations Convention on Combating Climate Change secretariat in terms of its Paris Agreement, as may be varied from time to time, will—

- (a) contribute to the realisation of significant macro-economic, 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 and cost effective; and integrated and aligned; and
- (b) support a just transition to a climate resilient, equitable and internationally competitive lower carbon economy and society, that takes into account the economic, employment and societal 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 centrality of the provincial and municipal spheres in achieving its objectives, thus making it desirable to develop a legislative framework for the implementation of the Republic's national climate change response in order to address these matters;

AND WHEREAS climate change policy need to be implemented in the context of an environmentally sustainable development framework that integrates environmental, economic and social development as well as employment objectives to achieve national development goals.

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

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SCHEDULE

FUNCTIONAL AREAS

CHAPTER 1

INTERPRETATION, OBJECTS AND APPLICATION

Definitions

1. In this Act, unless the context indicates otherwise—

"adaptation" in relation to natural, human, social and ecological systems, means the process of adjustment to actual or expected climate and its effects, in order to moderate harm or exploit beneficial opportunities; in relation to natural systems, the process of adjustment to actual climate and its effects;

"adaptive capacity" means the ability of a system to adapt to the impacts, cope with the consequences, minimise potential damages, or to take advantage of opportunities offered by climate change or climate variability;

"carbon budget" means a greenhouse gas emissions allowance allocated to a person in terms of section 13, over a defined time period;

"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; **"Disaster Management Act"** means the Disaster Management Act, 2002 (Act No. 57 of 2002);

"direct greenhouse gases emissions" means emissions from sources that are owned or controlled by the person;

"ecosystem" means a system of relationships between animals and plants and their environment;

"environment" has the meaning assigned to it in section 1 of the National Environmental Management Act;

"Functional Area" means the functional areas listed in Schedule;

"greenhouse gas" means gaseous constituents of the global atmosphere, both natural and anthropogenic, that absorb and re-emit infrared radiation;

"Indirect greenhouse gases emissions" means emissions that are a consequence of the activities of the reporting company, but occur at sources owned or controlled by another company;

"Mayor" means an elected Mayor of a metropolitan, district or local municipality;

"MEC" means the member of the Executive Council to whom the Premier has assigned responsibility for the environment;

"Minister" means the Cabinet Minister responsible for environmental affairs;

"Ministerial Committee on Climate Change" means the committee established in terms of section 8(1) responsible for the coordination of climate change responses within the Republic;

"mitigation" means a human intervention to reduce the emissions of greenhouse gases by sources or enhancing their removal from the atmosphere by sinks;

"National Environmental Management Act" means the National Environmental Management Act, 1998 (Act No. 107 of 1998);

"national greenhouse gas Inventory" means the National Greenhouse Gas Inventory which catalogues all the emissions of greenhouse gases from all sectors in South Africa;

"national greenhouse gas emissions trajectory" means a benchmark against which the efficacy of greenhouse gas emissions reduction actions will be measured;

"organ of state" has the meaning assigned to it in section 239 of the Constitution of

the Republic of South Africa, 1996;

"person" means a natural person and includes a juristic person;

"prescribe" means to prescribe by regulation;

"Provincial Committee on Climate Change" means the committees established in terms of section 8(9) responsible for the coordination of climate change responses within a province;

"regulation" means a regulation made, and includes a notice issued, under this Act;

"resilience" means the ability of a social, economic or ecological system to absorb disturbances while retaining the same basic structure and ways of functioning, the capacity for self organisation and the capacity to adapt to stress and change;

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

"sector department" means a department responsible for a Functional Area listed in Schedule;

"SETs" means Sectoral Emissions Targets which are greenhouse gas emission allowances allocated to an emitting sector or sub-sector over a defined time period;

"SERP" means a sector emissions reduction plan required in terms of section 12(4) of this Act;

"sub-sector" means a further sub-division of a sector of the economy according to the activity or process that gives rise to greenhouse gas reporting requirements under this Act;

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

"synthetic greenhouse gas" means a man-made greenhouse gas such as hydrofluorocarbons (HFCs); perfluorocarbons (PFCs); and sulphur hexafluorides

(SFe);

"this Act" includes the Schedule to this Act, and any regulations or notices issued under this Act.

"vulnerability" means the conditions determined by physical, social, economic and environmental factors or processes, which increase the susceptibility of a system to the impact of hazards.

Objects of Act

2. The objects of the Act are to—

- (a) provide for the coordinated and integrated response to climate change and its impacts by all spheres of government in accordance with the principles of cooperative governance;**
- (b) provide for the effective management of inevitable climate change impacts through 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;**
- (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 within a timeframe and in a manner that enables economic, employment, social and environmental development to proceed in a sustainable manner.**

Principles

3. The interpretation and application of this Act must be guided by the—

- (a) national environmental management principles set out in section 2 of the National Environmental Management Act;
- (b) principle that the climate system should be protected for the benefit of present and future generations of humankind;
- (c) principle that acknowledges international equity and each country's common but differentiated responsibilities and respective capabilities, in light of different national circumstances; and
- (d) need to ensure a just transition for all towards an environmentally sustainable economy and society in the light of national circumstances and developmental goals.

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
- (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.

Conflict with other legislation

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

CHAPTER 2

POLICY ALIGNMENT AND INSTITUTIONAL ARRANGEMENTS

National framework

6. (1) The Minister must, within two years of the date on which this section takes effect, by notice in the Gazette, establish a national environmentally sustainable development framework for achieving the objects of this Act, which must include—

- (a) appropriate mechanisms, systems and procedures to achieve such objects;**
- (b) mechanisms, systems and procedures to give effect to the Republic's obligations in terms of international climate change related agreements; and**
- (c) any other matter which the Minister considers necessary for achieving the objects of this Act.**

(2) The national environmentally sustainable development framework may assign and delineate responsibilities for the implementation of this Act amongst—

- (a) the different spheres of government; and**
- (b) different organs of state.**

(3) An organ of state must give effect to the national environmentally sustainable development framework when exercising a power or performing a duty in terms of this Act, or any other legislation regulating climate change responses.

(4) The national environmentally sustainable development framework—

- (a) may provide for the phasing in of its provisions;
- (b) may be amended; and
- (c) must be reviewed by the Minister at intervals of not more than five years.

(5) Before publishing the national environmentally sustainable development framework, or any amendment thereto—

- (a) the Minister must follow a consultative process in accordance with sections 16 and 17; and
- (b) the consultative process referred to in paragraph (a) need not be complied with should the national environmentally sustainable development framework be amended in a non-substantive way.

Alignment of laws and policies

7. Every organ of state must coordinate and harmonise the policies, plans, programmes and decisions of the national, provincial and local spheres of government that exercise functions that effect or are affected by climate change or are entrusted with powers and duties aimed at the achievement, promotion, and protection of a sustainable environment, in order to—

- (a) ensure that the risks of climate change impacts and associated vulnerabilities are taken into consideration; and
- (b) give effect to the national adaptation and mitigation objectives set out in this Act.

Institutional arrangements and coordination

8. (1) The Ministerial Committee on Climate Change is hereby established comprising of the Minister responsible for planning, monitoring and evaluation in the Presidency, the Minister, the Ministers responsible for the Functional Areas listed in Schedule, and all MECs responsible for the environment.

(2) Ministers from other relevant departments may be appointed by invitation where necessary.

(3) The Minister is responsible for convening the Ministerial Committee on Climate Change.

(4) The Minister and the Minister responsible for planning, monitoring and evaluation in the Presidency are co-chairpersons of the Ministerial Committee on Climate Change.

(5) At least six members, excluding MEC's responsible for the environment, of the core members referred to in subsection (1) will constitute a quorum of the Ministerial Committee on Climate Change and decisions will be by majority vote. In the event of equality of votes, the Minister responsible for planning, monitoring and evaluation in the Presidency will have a casting vote.

(6) The Ministerial Committee on Climate Change must—
(a) coordinate efforts across all sector departments and spheres of government

towards a transition to a climate resilient and lower carbon economy and society in accordance with the White Paper on the National Climate Change Response and South Africa's Nationally Determined Contribution, and as may be varied from time to time; and

(b) determine areas requiring regulations in terms of this Act;

(7) The Ministerial Committee on Climate Change may invite contributions from other relevant departments or stakeholders, to inform the coordination of efforts towards a transition to a climate resilient and lower carbon economy and society.

(8) The Ministerial Committee on Climate Change may establish an advisory committee in terms of section 3A of the National Environmental Management Act, to assist the Committee in the performance of its functions.

(9) A Provincial Committee on Climate Change is hereby established for each province in the Republic, which must be comprised of all relevant departments in a province and all Mayors of municipalities located within a province.

(10) The Provincial Committee on Climate Change contemplated in subsection (9) must be convened within and part of the existing Provincial intergovernmental forums established in terms of Chapter 2 of the Intergovernmental Relations Framework Act, 2005 (Act No. 13 of 2005).

(11) The relevant MEC responsible for the environment in a province is responsible for convening the Provincial Committee on Climate Change and, is the chairperson of the relevant Provincial Committee on Climate Change.

(12) The relevant Provincial Committee on Climate Change must develop its own rules concerning its meetings and decision making processes.

(13) The Provincial Committee on Climate Change must—

- (a) coordinate climate change response actions in the relevant province towards a transition to a climate resilient and lower carbon economy and society in accordance with the White Paper on National Climate Change Response and South Africa's Nationally Determined Contribution, as may be varied from time to time;**
- (b) recommend any climate change matter to the Ministerial Committee on Climate Change; and**
- (c) provide progress reports on climate change response actions in the relevant province to the Ministerial Committee on Climate Change.**

CHAPTER 3

CLIMATE CHANGE RESPONSE: PROVINCES AND MUNICIPALITIES

Climate change response

9. (1) An MEC responsible for the environment or a Mayor of a municipality, as the case may be, must—

- (a) within one year of the coming into operation of this Act, undertake a climate change needs and response assessment for the province or municipality, as the case may be, and such climate change needs and response assessment must be reviewed at least once every five years; and**
- (b) within two years of the coming into operation of this Act, develop and implement a climate change response implementation plan which must be informed by the climate change needs and response assessment as**

contemplated in paragraph (a) and review and publish the provincial or municipal climate change response implementation plans, as the case may be, every five years.

(2) A provincial or municipal climate change response implementation plan, contemplated in subsection (1)(b), must—

- (a) include measures or programmes relating to both adaptation and mitigation;
- (b) take account of the risks and vulnerabilities associated with climate change;
- (c) include mechanisms for their effective implementation that align with national sector plans;
- (d) cover all priority sectors; and
- (e) comply with any requirements as may be prescribed by the Minister or MEC.

(3) In relation to mitigation, the climate change needs and response assessment, contemplated in subsection (1)(a), must be aligned with relevant national sectoral emission targets, including—

- (a) an analysis of the nature and characteristics of the province or 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; and
- (b) the identification and establishment of measures and mechanisms to manage and implement the required climate change response.

(4) In relation to adaptation, the climate change needs and response assessment, contemplated in subsection (1)(a), must address the following minimum requirements—

- (a) adaptation considerations and options;
- (b) an analysis of the nature and characteristics of the province or 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; and

(c) identification and mapping, within the sphere of operations of the province or municipality, as the case may be, of risks, vulnerabilities, areas, ecosystems, communities and households that will arise or that are vulnerable to the impacts of climate change, and identification and establishment of measures and mechanisms to manage and implement the required climate change response.

(5) A provincial or municipal climate change response implementation plan, contemplated in subsection (1)(b), must be integrated and must inform provincial or municipal development planning processes and instruments.

(6) The preparation of a climate change response implementation plan, contemplated in subsection (1)(b), may take into consideration any existing provincial or municipal plan, which plan may require a review and an amendment to include climate change responses.

CHAPTER 4

NATIONAL ADAPTATION TO IMPACTS OF CLIMATE CHANGE

Adaptation to climate change impacts

10. (1) The Minister may, in consultation with the sector departments, provinces and municipalities—

(a) within one year of the coming into operation of this Act, set out national adaptation objectives which will guide the Republic's adaptation to climate change impacts, the development of resilience and the Republic's contribution

to a sustainable development agenda, which objectives may be periodically reviewed by the Minister;

- (b) publish indicators for measuring progress towards achieving the national adaptation objectives; and
- (c) determine 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.

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

(3) The Minister must, in consultation with the sector departments and provinces, develop and publish by notice in the *Gazette*:

- (a) a National Adaptation Strategy; and
- (b) review the National Adaptation Strategy at least once every five years.

(4) The National Adaptation Strategy will be aimed at achieving the following—

- (a) a reduction in the vulnerability of society, the economy and the environment to the effects of climate change, strengthening resilience of the socio-economic and environmental system and enhancing the adaptive capacity of the national environment and economy to the impacts of climate change;
- (b) minimising the risk and vulnerabilities to current and future climate scenarios;
- (c) achieving national adaptation objectives;
- (d) providing a strategic and policy directive for adaptation to the impacts of climate change; and

(e) providing an integrated and coordinated approach to managing adaptation measures to the impacts of climate change by organs of state in all spheres of government, and where relevant should also include non-governmental organisations, the private sector and local communities.

(5) The National Adaptation Strategy must include, but not be limited to, the following minimum components—

- (a) an outline of the national adaptation objectives and priorities to inform an adaptation response in the Republic;
- (b) a consideration of the Republic's current and future climate change scenarios as informed by the adaptation scenarios developed in terms of this Act;
- (c) an assessment of the Republic's vulnerability to climate change and related risks at a sectoral, cross-sectoral, and geographic level, including a consideration of relevant national disaster risk assessments in terms of the Disaster Management Act; and
- (d) an outline of adaptation options available to reduce identified vulnerabilities by building adaptive capacity and resilience, in the context of actual or anticipated social, economic and environmental costs.

(6) The Minister may, in consultation with the sector departments and provinces, develop adaptation scenarios which anticipate the likely impacts of climate change in the Republic over the short, medium and longer term.

(7) The adaptation scenarios must include a consideration of—

- (a) a systematic observation of the climate system and early warning systems;
- (b) the anticipated impacts of climate change on the environment of the Republic and associated vulnerabilities;
- (c) the socio-economic implications of the impacts of climate change within the

Republic and associated vulnerabilities; and

(d) the adaptation response options available to respond to the anticipated impacts of climate change.

(8) The adaptation scenarios must inform the development of the national adaptation objectives, the National Adaptation Strategy and support the decision making required in terms of this Act.

(9) A Minister responsible for a sector department and any State Owned Entity for which a sector department is responsible must—

(a) identify and map, within the sphere of operations of the relevant Functional Area, risks and vulnerabilities, areas, ecosystems, communities and households that will arise and that are vulnerable to the impacts of climate change; and identification and establishment of measures and mechanisms to manage and implement the required response; and

(b) within two years of the coming into operation of this Act, develop and implement a climate change response implementation plan which must be informed by the assessments undertaken pursuant to paragraph (a) and be reviewed and published every five years.

(10) A Minister responsible for a sector department must submit, every four years of the coming into operation of this Act, reports on the progress made in relation to the implementation of the climate change response implementation plan.

(11) 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 a Synthesis Report on Climate Change Adaptation to be used in the

Republic's national and international reporting processes.

CHAPTER 5

GREENHOUSE GAS EMISSIONS AND REMOVALS

National greenhouse gas emissions trajectory

11. (1) The Minister must, in consultation with the Ministerial Committee on Climate Change, by notice in the Gazette, determine a national greenhouse gas emissions trajectory for the Republic of South Africa, which must—

- (a) specify a national greenhouse gas emissions reduction objective through quantitative descriptions of volumes of greenhouse gas emissions expected to be emitted over a specified period in the Republic;
- (b) be informed by relevant and up to date information regarding the total current and projected volumes of greenhouse gases emitted in the Republic; and
- (c) be consistent with the objectives of this Act and the Republic's international obligations.

(2) The national greenhouse gas emissions trajectory binds all organs of state in all spheres of government, and all persons to the extent applicable.

(3) The national greenhouse gas emissions trajectory may be reviewed.

(4) Before publishing the national greenhouse gas emissions trajectory, or any amendment thereto, the Minister must follow a consultative process in accordance with sections 16 and 17.

Sectoral emissions targets

12. (1) The Minister must, in consultation with the Ministerial Committee on Climate Change, by notice in the *Gazette*, every five years, determine SETs for greenhouse gas emitting sectors and sub-sectors, which must—

(a) address, as a minimum, the following considerations—

- (i) the cost and benefits;**
- (ii) be based on the best available science; and**
- (iii) the best available mitigation options; and**

(b) be consistent with the national greenhouse gas emissions trajectory.

(2) The Minister must review the SETs every five years from the date of initial publication, and when necessary, may amend the SETs.

(3) Before publishing the SETs, or any amendments thereto, the Minister must follow a consultative process in accordance with sections 16 and 17.

(4) The Minister responsible for each sector and sub-sector for which SETs have been determined in accordance with subsection (1) must prepare a SERP which provides how the relevant sector and sub-sector will meet the SETs within five years of the publication of the SETs.

(5) A SERP, contemplated in subsection (4), must be published in the *Gazette* by the Minister responsible for each sector and sub-sector for implementation, and after the publication must be submitted to the Minister within six months of the publication of the SETs in the *Gazette*, and must be reviewed and updated upon every subsequent revision of the SETs as contemplated in subsection (2).

(6) SETs must be included in the government planning cycles and their implementation must be monitored and reported on by the Presidency, to ensure that the national climate change response is properly and coherently implemented across government.

(7) The Minister responsible for each sector and sub-sector must annually report to the Presidency on progress on the implementation of the relevant SERP and the achievement of the relevant SETs.

(8) The Minister must collate, compile and synthesise SERPs and, thereafter, submit progress reports on the implementation of the SERPs to Cabinet, on an annual basis.

(9) The Minister, in consultation with the Ministers responsible for each sector and sub-sector for which SETs have been determined in accordance with subsection (1), must prescribe the minimum requirements for the content of the SERPs.

(10) An MEC responsible for the environment and a Mayor of a municipality, as the case may be, must support the implementation of the SETs by preparing and implementing a climate change response implementation plan which must be aligned with sectoral priorities and targets.

Carbon budgets

13. (1) The Minister must, by notice in the Gazette, determine a greenhouse gas emissions threshold for the purpose of determining persons that will be allocated a carbon budget.

(2) The greenhouse gas emissions threshold, contemplated in

subsection (1), may be reviewed.

(3) Before publishing the greenhouse gas emissions threshold, or any amendment thereto, the Minister must follow a consultative process in accordance with sections 16 and 17.

(4) In accordance with the greenhouse gas emissions threshold contemplated in subsection (1), the Minister must allocate a carbon budget that is applicable to a specified person for not less than three successive five year periods.

(5) The Minister must review a carbon budget allocated to a person every five years.

(6) The Minister must review and revise a carbon budget allocated to a person within a reasonable time if the national greenhouse gas inventory demonstrates an increase in national greenhouse gas emissions above the national greenhouse gas emissions trajectory.

(7) The Minister must, by notice in the *Gazette*, require a person to whom a carbon budget has been allocated to prepare, submit to the Minister for approval and implement a greenhouse gas mitigation plan which describes the mitigation actions that such a person will implement to comply with the allocated carbon budget.

(8) A greenhouse gas mitigation plan must comply with the requirements, process and procedures as may be prescribed by the Minister.

(9) A person to whom a carbon budget has been allocated is obliged:

- (a) To comply with the carbon budget;
- (b) to implement the approved greenhouse gas mitigation plan properly; and
- (c) in accordance with the methodology contained in the approved greenhouse

gas mitigation plan—

- (i) monitor its annual greenhouse gas emissions;
- (ii) evaluate its progress towards compliance with the carbon budget;
- (iii) annually report on the progress towards compliance with the carbon budget; and
- (iv) in the event that such reporting indicates that the person has failed, is failing or will fail to comply with the carbon budget, to provide an explanation of measures the person will implement in order to achieve compliance.

(10) A person contemplated in subsection (4), may, under extreme circumstances, make an application to the Minister for an extension of the compliance timeframes with a carbon budget allocated that person.

(11) An application contemplated in subsection (10) must be accompanied by the following documents:

- (a) a detailed explanation of the reasons for the extension being applied for, including but not limited to technological, environmental, economic, financial, social and employment reasons; and
- (b) any supporting documents.

(12) The Minister may, by notice in the *Gazette*, grant an extension subject to such conditions as the Minister may determine, or refuse to grant the extension with written reasons.

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

14. (1) The Minister, in consultation with the Minister responsible for energy, the Minister responsible for trade and industry and any affected party, must—

- (a) develop a plan to phase down or phase out the use of synthetic greenhouse gases; and
- (b) review and update the plan contemplated in paragraph (a) every five years.

(2) A plan developed in accordance with subsection (1)(a), must address the following minimum considerations—

- (a) how importers and exporters of synthetic greenhouse gases must account for their emissions of synthetic greenhouse gases;
- (b) measures that facilitate the phase out of synthetic greenhouse gases;
- (c) setting and prescribing thresholds for the use of synthetic greenhouse gases; and
- (d) timeframes for phasing out synthetic greenhouse gases.

(3) The Minister may prescribe a carbon budget applicable to emitters of synthetic greenhouse gases.

(4) The Minister may, by notice in the *Gazette*, further declare certain gas emissions as synthetic greenhouse gases on the basis of best available science and the Republic's international obligations.

(5) Before publishing the notice contemplated in subsection (4), or any amendment thereto, the Minister must follow a consultative process in accordance with sections 16 and 17.

CHAPTER 6

GENERAL MATTERS AND TRANSITIONAL ARRANGEMENTS

Regulations

15. (1) The Minister may make regulations—

(a) **that will promote the effective implementation of the national framework, including—**

(i) **in relation to any matter necessary to give effect to the Republic's obligations in terms of an international agreement relating to climate change; and**

(ii) **in relation to the management of emissions of greenhouse gases including—**

(aa) **the determination, review, amendment and cancellation of a carbon budget allocation and all matters related thereto;**

(bb) **the phasing down or phasing out of synthetic greenhouse gases, including the development of timeframes, inventories and mechanisms for reporting; and**

(cc) **Incentives and disincentives to encourage a change in behaviour towards the generation of greenhouse gases amongst all sectors of society;**

(b) **that will promote effective monitoring, evaluation and assessment of national progress in relation to climate change adaptation matters, including—**

(i) **in relation to the progress made by Departments responsible for Functional Areas, Provinces and Municipalities with the development**

and implementation of climate change needs and response assessments and climate change response implementation plans;

(ii) in relation to the performance of Departments responsible for Functional Areas, Provinces and Municipalities in respect of the national adaptation objectives and related target indicators, including the extent of any deviation in such progress; and

(iii) in relation to the consequences for the failure of sector departments responsible for Functional Areas, Provinces and Municipalities to report in the prescribed manner; and

(c) that will promote the effective monitoring, evaluation and assessment of national progress in relation to climate change matters, including in relation to climate change data and information, including—

(i) information relating to direct and indirect greenhouse gas emissions, including for the purposes of planning, analysis and monitoring; and to inform how the Republic may comply with any international obligations;

(ii) information necessary to determine climate change vulnerability and to foster resilience; and

(iii) any matter that may or must be prescribed in terms of this Act.

(2) A regulation made in terms of this Act may provide that any person who contravenes or fails to comply with a provision thereof is guilty of an offence and liable in the case of a first conviction to a fine not exceeding R5 million, or to imprisonment for a period not exceeding five years and in the case of a second or subsequent conviction, to a fine not exceeding R10 million or imprisonment for a period not exceeding 10 years, and in both instances to both such fine and such imprisonment.

(3) (a) Before publishing any regulation made in terms of this Act, or any amendment to such regulation, the Minister must follow a consultative process in accordance with sections 16 and 17.

(b) Paragraph (a) need not be complied with if the regulation is amended in a non-substantive manner.

Consultation

16. (1) Before exercising a power in terms of this Act, the Minister or MEC must follow such consultative processes as may be appropriate in the circumstances.

(2) When conducting the consultations 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;

(b) in accordance with the principles of cooperative governance as set out in Chapter 3 of the Constitution, consult the MEC responsible for the environment in each province that will be affected by the exercise of the power; and

(c) allow public participation in the process.

(3) When conducting the consultations contemplated in subsection (1), the MEC must—

(a) consult all members of the Executive Council whose areas of responsibility will be affected by the exercise of the power;

(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; and

- (c) allow public participation in the process.

Public participation

17. (1) Before exercising a power which, in terms of this Act, must be exercised in accordance with this section, the Minister or MEC 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 or MEC, 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 or MEC may in appropriate circumstances allow any interested person or community to present oral representations or objections to the Minister or MEC, or a person designated by the Minister or MEC.

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

Delegation

18. (1) The Minister may delegate to an official in the Department any power or duty conferred on the Minister, by or under this Act except—

- (a) the power to publish or amend a notice in terms of section 15 or publish or amend a regulation in terms of section 15; or
- (b) the duty imposed on the Minister by section 8.

(2) A delegation referred to in subsection (1)—

- (a) must be in writing;
- (b) may be made subject to conditions;
- (c) does not prevent the exercise of the power or the performance of the duty by the Minister himself or herself;
- (d) may include the power to sub-delegate; and
- (e) may be withdrawn by the Minister.

(3) The Minister must give notice in the *Gazette* of any delegation of a power or duty to an MEC.

(4) The Minister may confirm, vary or revoke any decision taken in consequence of a delegation or sub-delegation in terms of this section, subject to any rights that may have accrued to a person as a result of the decision.

Offences and penalties

19. (1) A person commits an offence if—

- (a) that person fails to prepare, submit and implement an approved greenhouse gas mitigation plan; and

(b) that person's greenhouse gas emissions exceed the greenhouse gas emissions allowance prescribed by that person's carbon budget, during the applicable period.

(2) A person convicted of an offence in terms of subsection (1) is liable, in the case of a first conviction, to a fine not exceeding R5 million or imprisonment for a period not exceeding five years, or to both such fine and such imprisonment, and in the case of a second or subsequent conviction, to a fine not exceeding R10 million or imprisonment for a period not exceeding 10 years, or to both such fine and such imprisonment.

(3) A fine contemplated in subsection (2) must be determined with due consideration of—

- (a) the severity of the offence in terms of its impact on health or well-being of the citizens of the country and the environment; and
- (b) the monetary or other benefits that accrued to the convicted person through the commission of the offence.

Appeals

20. (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) An appeal lodged in terms of subsection (1) of this Act must be noted and must be dealt with in terms of section 43 of the National Environmental Management Act and any regulation developed in terms section 44 of the National Environmental Management Act.

Savings and transitional provisions

21. The regulations and notice relating to the Declaration of Greenhouse Gases as Priority Air Pollutants, the National Pollution Prevention Plans Regulations and the National Greenhouse Gas Emission Reporting Regulations published in terms of the National Environmental Management: Air Quality Act, 2004 (Act No. 39 of 2004) which exist when this Act takes effect, remain in force and effect until they are amended, replaced or repealed in terms of this Act.

Short title and commencement

22. This Act is called the Climate Change Act and comes into operation on a date fixed by the President by proclamation in the Gazette.

SCHEDULE

Functional Areas

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