

## **MEMORANDUM ON THE OBJECTS OF THE SOUTH AFRICAN WEATHER SERVICE AMENDMENT BILL, 2013**

### **1. PURPOSE OF THE BILL**

The purpose of the South African Weather Service Amendment Bill, ("the Bill"), is to amend the South African Weather Services Act, 2001 (Act No. 8 of 2001), ("the Act"), so as to substitute and insert certain definitions; to provide the Minister with policy determination and supervisory powers; to extend the powers, functions and objectives of the South African Weather Service ("Weather Service") so as to provide the Weather Service with a legal mandate to provide ambient air quality services and to act as custodian of the South African Air Quality Information Service; to provide for the appointment and removal of the Chief Executive Officer; to align the Act with the Public Finance Management Act, 1999 (Act No. 1 of 1999), ("PFMA"), by providing for the Board to be the accounting authority for the Weather Service; to delete certain obsolete provisions; to provide for the limitation of liability of the Weather Service; to provide for offences and penalties; and to amend the Schedules to the Act; and to provide for matters connected therewith.

### **2. BACKGROUND**

2.1 The purpose of the Act was to establish the Weather Service; to determine its objects, functions and method of work; to prescribe the manner in which it is to be managed and governed; and to regulate its staff and financial matters.

2.2 In order to meet the information requirements for good air quality governance and to ensure compliance with the National Environmental Management: Air Quality Act, 2004 (Act No. 39 of 2004), ("NEM: AQA"), the Department of Environmental Affairs ("DEA"), together with the Weather Service developed the South African Air Quality Information System ("SAAQIS"), and the National Ambient Air Quality Monitoring Network ("NAAQMN"), since the promulgation of the NEM: AQA in 2005. The partnership between DEA and Weather Service is managed in accordance with a Memorandum of Understanding.

2.3 SAAQIS is an electronic web-based information system that has the stated objective of providing all stakeholders with easy access to all relevant information

about ambient air quality in South Africa and further provides different stakeholders with different useful on-line applications to support the effective and efficient management of ambient air quality. The Weather Service requires a clear mandate and empowering clause to be the custodian of the SAAQIS.

2.4 The NAAQMN collects and feeds information into the SAAQIS and consists of a network of government-owned ambient air quality monitoring stations located around the country.

2.5 To ensure the sustainability of these systems, and also to ensure that the Weather Service is provided with the necessary mandate and powers to implement these systems efficiently and effectively, both parties have agreed that an amendment to the Act is desirable.

### **3. OBJECTS OF AMENDMENT BILL**

#### **3.1 Clause 1: Amendment of section 1**

Clause 1 inserts and substitutes certain definitions in the Bill. The term “ambient air” is included in various amendments due to the extension of the objectives and functions of the Weather Service to include ambient air quality information.

#### **3.2 Clause 2: Insertion of sections 2A and 2B**

Clause 2 insert sections 2A and 2B providing the Minister with a legal power to determine the policy within which the Weather Service must exercise its powers and perform its functions. The policy will be determined and published in the *Gazette* after consultation with the Board. This amendment also provides the Minister with supervisory powers over the Weather Service. The amendment will allow the Minister to monitor the exercise of powers and performance of functions by the Weather Service against the policy determined by the Minister. In this regard, the Minister may set norms and standards for the performance by the Weather Service of its functions, or issue directives to the Weather Service on non-compliance with the policy in order to ensure the effective and efficient functioning of the Weather Service.

### **3.3 Clause 3: Amendment of section 3**

Clause 3 seeks to amend section 3 of the Act by extending the objectives of the Weather Service to include ambient air quality information. Clause 3 further seeks to add to the objectives of the Weather Service the implementation of the SAAQIS and the NAAQMN. The Weather Service will be the custodian of the SAAQIS.

### **3.4 Clause 4: Amendment of section 4**

Clause 4 seeks to extend the functions of the Weather Service to provide ambient air quality information services; to collect ambient air quality data over the Republic of South Africa; to act as the custodian of the SAAQIS; to manage, operate, maintain and develop NAAQMN; and to issue ambient air quality forecasts and warnings. The Weather Service will also be required to consult the Minister before issuing ambient air quality warnings.

### **3.5 Clause 5: Amendment of section 5**

Clause 5 seeks to ensure that the needs of air quality management stakeholders are taken into account by the Minister when appointing the Board of the Weather Service.

### **3.6 Clause 6: Amendment of section 6**

Clause 6 will ensure that ensure that the Board set operational policies that are within the policy determined by the Minister in terms of section 2A of the Act. The clause will also ensure that the Weather Service's policies for recruitment, training and transformation are developed within the Departmental human resources and transformation framework.

### **3.7 Clause 7: Amendment section 13**

Clause 7 seeks to provide for the selection, recruitment and appointment process for the Chief Executive Officer of the Weather Service. The amendment also provides for the terms and conditions of employment, remuneration and allowances and the powers and duties of the Chief Executive Officer.

### **3.8 Clause 8: Insertion of section 13A**

Clause 8 inserts new section 13A to provide for the removal process of the Chief Executive Officer. The clause also sets out the grounds for removal of the Chief Executive Officer.

### **3.9 Clause 9: Amendment of section 14**

Clause 9 seeks to allow the Chief Executive Officer to appoint, as the Board may determine, such number of employees to the Weather Service, in order to enable the Weather Service to perform its functions.

### **3.10 Clause 10: Amendment of section 17**

Section 17 of the Act provides for the Chief Executive Officer to be the accounting officer of the Weather Service. Section 49(2) of the Public Finance Management Act, 1999 provides that the Board is the accounting authority. Clause 10 seeks to align the Act with the relevant provisions of the Public Finance Management Act, 1999 by providing for the Board to be the accounting authority for the Weather Service.

### **3.11 Clause 11: Repeal of section 18**

Section 18 of the Act is a transitional provision providing for the transfer of staff from the former Chief Directorate Weather Bureau of the Department. Clause 11 seeks to repeal section 18 of the Act because section 18 is no longer relevant.

### **3.12 Clause 12: Amendment of section 26**

Clause 12 seeks to insert new subsections to provide that the ambient air quality data not collected by the Weather Service remains the property of the collector.

### **3.13 Clause 13: Amendment of section 27**

Clause 13 seeks to amend section 27 to extend the limitation of liability of the Weather Service under certain circumstances.

also empowers the court to award compensation where the offence causes damage to or loss of property. The aforesaid judgment will be of the same force and effect and be executable in the same manner as if it had been given in a civil action duly instituted before a competent court. This will also provide a more efficient and effective civil law remedy in respect of the offences in terms of the Act. The Magistrates' Court will also be given jurisdiction to impose the penalty prescribed in this Bill.

### **3.16 Clauses 16 and 17: Amendment of Schedules to the Act**

Clauses 16 and 17 seek to effect a certain grammatical correction and to amend Schedules 1 and 2 to the Act respectively by providing for additional public good services and commercial services which relate to ambient air quality information.

## **4. FINANCIAL IMPLICATIONS FOR THE STATE**

**4.1** The Department of Environmental Affairs budget for the Weather Service will increase to include additional funds for the implementation of the SAAQIS.

**4.2** In this regard, a Business Case Study was undertaken to assess and analyse the financial implications to the Weather Service for the implementation of the SAAQIS.

## **5. ORGANISATIONAL AND PERSONNEL IMPLICATIONS**

The amendments do not create new structures within the Department. The Department, in terms of the amendments, is transferring the operation, management and maintenance of the SAAQIS function to the Weather Service. In essence, the Department will monitor and support the Weather Service in the performance of the function. Accordingly, a new Air Quality Information Unit will be established at the Weather Service to implement the SAAQIS function.

## **6. COMMUNICATION IMPLICATIONS**

Appropriate communication measures will be implemented by the Government Communication and Information System.

**7. PROVINCIAL IMPLICATIONS**

None

**8. CONSTITUTIONAL IMPLICATIONS**

None

**9. PARLIAMENTARY PROCEDURE**

**9.1** The State Law Advisers and the Department of Environmental Affairs are of the opinion that the provisions of the Bill relates to amendments that fall within the meaning of any matter referred to in section 44(1)(a)(ii) of the Constitution and must be dealt with in accordance with the procedure established by section 75 of the Constitution.

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