



CLIMATE CHANGE BILL

Presentation to the Portfolio Committee on the Environment, Forestry and Fisheries

13 May 2022

AIM OF THE PRESENTATION

The aim of the presentation is to:

- Provide a clause by clause briefing on the Climate Change Bill to the Portfolio Committee.

PURPOSE & OBJECTS OF THE BILL and Clause 1

PURPOSE OF THE BILL

- The purpose of the Bill is to enable the development of an effective national 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.

DEFINITIONS (most important definitions)

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

CLAUSE BY CLAUSE SUMMARY: CLAUSE 1

- "**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.
- "**direct greenhouse gas emissions**" means greenhouse gas emissions from sources that are owned or controlled by a person.
- "**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.
- "**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.
- "**mitigation**" means a human intervention to reduce the sources or enhance the carbon sinks of greenhouse gases.
- "**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;

CLAUSE BY CLAUSE SUMMARY: CLAUSE 1

- "**sector**" means a collective term for a group of activities with similar characteristics which either emit greenhouse gases or are vulnerable to climate change.
- "**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.
- "**sub-sector**" means, in respect of mitigation, a further sub-division 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.

CLAUSE BY CLAUSE SUMMARY: CLAUSE 2

OBJECTS OF THE BILL

- To provide for a coordinated and integrated response by the economy and society to climate change and its impacts in accordance with the principles of co-operative governance.
- To 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.
- To make a fair contribution to the global effort to stabilise greenhouse gas (GHG) concentrations in the atmosphere at a level that avoids dangerous anthropogenic interference with the climate system.
- To ensure a just transition towards a low carbon economy and society considering national circumstances.
- To give effect to the Republic's international commitments and obligations in relation to climate change.
- To protect and preserve the planet for the benefit of the present and future generations of humankind.

CLAUSE BY CLAUSE SUMMARY: CLAUSE 3

Principles

- 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;
- The national environmental management principles set out in section 2 of the National Environmental Management Act where applicable in this Act;
- Climate system should be protected for the benefit of present and future generations of humankind;
- Acknowledges international equity and each country's common but differentiated responsibilities and respective capabilities, *in light of different national circumstances*;
- 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;
- The need for integrated management, in the context of climate change, which requires climate change considerations

CLAUSE BY CLAUSE SUMMARY: CLAUSE 3

Principles

- 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.
- 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.
- 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.
- 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.

CLAUSE BY CLAUSE SUMMARY: CLAUSE 3

Principles

- 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;
- 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
- 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.

CLAUSE BY CLAUSE SUMMARY: CLAUSE 4-5

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.

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.

CLAUSE BY CLAUSE SUMMARY : CLAUSE 6-7

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.

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.
- It enjoins 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 climate resilient and low carbon economy and society.

CLAUSE BY CLAUSE SUMMARY : 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.

CLAUSE BY CLAUSE SUMMARY: CLAUSE 9-10

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.
- A Municipal Forum on Climate Change may, where necessary, establish an intergovernmental technical support structure in terms of section 30 of the IGRFA.

Clause 10

- Provides for the establishment of the Presidential Climate Commission comprising of government, organised labour, civil society and business to advise on the Republic's climate change response.
- Not more than 30 members appointed by the President, for a period determined by the President.
- The Commission determines its own procedures to be followed at meetings
- The Department responsible for environmental affairs provides administrative and secretariat support functions to the Commission.

CLAUSE BY CLAUSE SUMMARY: CLAUSE 11-12

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.
 - advising 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
 - providing monitoring and evaluation of progress towards government's emissions reduction and adaptation goals.

Clause 12

- Provides for the process for the appointment of members of the Presidential Climate Commission.

CLAUSE BY CLAUSE SUMMARY : CLAUSE 13-15

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.

Clause 14

- Provides for the administrative and secretariat support for the Presidential Climate Commission.

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.
- Requires the 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.

CLAUSE BY CLAUSE SUMMARY : CLAUSE 16-18

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.

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.
- Prescribes relevant considerations and the minimum content of the adaptation scenarios.

Clause 18

- Provides that the Minister, in consultation with the Ministers responsible for the functions listed in Schedule 2 to the Bill, develop and publish a National Adaptation Strategy and Plan.
- Sets out the purpose of the National Adaptation Strategy and Plan and its contents.
- The Minister may review and amend the National Adaptation Strategy and Plan at a five-yearly intervals.

CLAUSE BY CLAUSE SUMMARY : CLAUSE 19-20

Clause 19

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

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 responsible for the compilation and publication of a Synthesis Adaptation Report.

CLAUSE BY CLAUSE SUMMARY : 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.
- It is proposed that clause 21(3) be amended as follows “Until such time as the Minister publishes a national greenhouse gas emissions trajectory, the mitigation commitment under the updated Nationally Determined Contribution submitted to the United Nations Framework Convention on Climate Change in year 2021 will serve as an interim national greenhouse gas emissions trajectory for the Republic”
- 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.

CLAUSE BY CLAUSE SUMMARY : CLAUSE 22-23

Clause 22

- Empowers the Minister to list the sectors and subsectors which are subject to the allocation of a sectoral emissions target.
- 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.
- 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.

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 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.

CLAUSE BY CLAUSE SUMMARY : CLAUSE 24-25

Clause 24

- Requires the Minister to allocate a carbon budget to every person undertaking a listed activity.
- 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.

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.

CLAUSE BY CLAUSE SUMMARY : CLAUSE 26-27

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.

Clause 27

- Empowers the Minister to develop regulations relating to the implementation of the envisaged Act.

CLAUSE BY CLAUSE SUMMARY : CLAUSE 28-30

Clause 28

- Determine the consultation process that the Minister, the MEC or a Mayor must follow when exercising a power in terms of the envisaged Act.
- The consultation must be appropriate for the circumstances.
- 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.

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.

Clause 30

- Empowers the Minister and an MEC to delegate powers vested in terms of the Bill in accordance with the relevant provisions of the NEMA.

CLAUSE BY CLAUSE SUMMARY : CLAUSE 31-33

➤ 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).

➤ Clause 32

- Provides for the offences and penalties under the envisaged Act.

➤ 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.
- Appeals are processed in terms of section 43(4) of NEMA.



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CLAUSE BY CLAUSE SUMMARY : 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 this envisaged Act until they are amended, replaced or repealed.
- Provides for an amendment to NEMA in accordance with Schedule 4 to the envisaged Act.

CLAUSE BY CLAUSE SUMMARY : CLAUSE 35 & Schedules 1-4

➤ Clause 35

- Provides the short title and commencement of the envisaged Act.

➤ Schedule 1

- Lists the functions that are relevant to the development of Sectoral Emission Targets.

➤ Schedule 2

- Lists National Departments and State-Owned Entities responsible for certain functions required to develop a Sector Adaptation Strategy and Plan.

➤ Schedule 3

- Provides for the Interim National Greenhouse Gas Emissions Trajectory.

➤ Schedule 4

- Lists legislation that must be amended.



Interim National Greenhouse Emission Trajectory (Schedule 3)

The Republic's greenhouse gas emissions will—

- Schedules 3 describes the National Greenhouse Emission Trajectory that was developed and outlined in the 2012 National Climate Change Response White Paper prior to the NDC revision;
- Since the development of the Bill, the scientific committee through IPCC in its latest Sixth Assessments Report underscored the urgency for countries to increase ambition by developing targets that are compatible towards the 1.5°C the objectives.
- South Africa through its Nationally Determined Contribution (NDC) revised its target in response to this scientific evidence requiring raising of ambition for its contribution to global efforts to keep within the 1.5°C climate objective.
- The revised NDC was widely accepted by all stakeholders and reflected the urgency for climate action noting the critical role played by the Presidential Climate Commission in finding consensus on the NDC;
- In light of the above, consideration should be given to the removal of Schedule 3 from the draft bill.

PUBLIC PARTICIPATION AND CONSULTATION

- The Bill provide provisions for consultations as well as public participation in clauses 28 & 29 thus allowing a transparent process in the decision making.
- The Bill makes provisions for integration of climate change in the various spheres of government in chapter 3 and chapter 4.
- There is further ongoing collaboration with various organs of state, state entities and donor partners on the implementation of various interventions;

SOCIO-ECONOMIC IMPACT ASSESSMENT SYSTEM (SEIAS)

- Vulnerable low-income households and the marginalised unemployed will face the most severe impacts unless urgent steps are taken to reduce South Africa's vulnerability to climate and economic shocks.
- The climate change response will attempt to reduce the impact of job losses and promote job creation during the shift towards the new green economy.
- The poor are also the most vulnerable to climate change so introducing measures to mitigate and adapt to it will also serve to foster equality.
- The climate change adaptation can contribute to infrastructure that is climate resilient thus enabling services to communities that live in the climate hotspot areas.
- Building the capacity for local government to respond to challenges associated to climate change will be central to the implementation of the bill.

SOCIO-ECONOMIC IMPACT ASSESSMENT SYSTEM (SEIAS)

- The proposals set out in the Climate Change Bill serve as a critical defence against climate change impacts, by reducing the vulnerability of South Africa's food, water, health, ecosystems and human settlements to the impacts of a changing climate and in turn fostering social cohesion.
- Early adaptive measures will decrease the exposure to or enhance adaptive capacity to respond to impacts associated with increased incidences of extreme, weather related events, particularly on the most vulnerable, such as poor and low-income households, women and children and rural farmers.
- Government (including relevant Sector Departments, Provinces and Municipalities) will likely need to carry the costs for planning (development of planning instruments); intervention programmes; capacity across the three spheres of government to enforce the legal framework; and undertaking the necessary studies and plans contemplated in the Climate Change Bill.

Court cases that relate to the Bill and how the Bill will prevent such cases in the future [E.g. Thabametsi, Philipi Horticultural Area, Shell Seismic Survey etc.]

- The Bill is framework legislation.
- The Environmental Impact Assessment Regulations published in terms of the National Environmental Management Act in the case of the Thabametsi judgment determines what assessments must be done.

ONGOING ACTIVITIES

- Climate Change Sectoral Adaptation Plans have been developed by the following sectors at national level: Water, Agriculture, Forestry, Fisheries, Health, Biodiversity and a Climate Change Policy Framework for State Owned Companies and Rural Human Settlements;
- All 9 provinces have developed climate change response plans. All 44 district municipalities and metros have been capacitated to mainstream climate change into Integrated Development Plans (IDPs);
- Supported the All district municipalities in developing the climate change adaptation plans and integrating the mitigation component;
- National Climate Change Adaptation Strategy approved by Cabinet for implementations;
- Implemented a voluntary carbon budget approach since 2017 where companies are allocated the budget for 5 year period;
- Companies are also submitting the mitigation plans (pollution prevention plans) since 2016 for approval by DFFE for five year period with annual progress reporting;
- Implemented greenhouse gas reporting system where companies report their emissions annually, since 2017.

ELEMENTS OF THE CLIMATE MITIGATION SYSTEM?

Mitigation Goal

National GHG Emissions Trajectory Range, against which outcome of all mitigation actions will be measured

Monitoring of GHG emissions

Data collection, GHG inventory and M&E system

Sectoral Targets

Defining Desired Emission Reduction Outcomes (DEROs), now **Sectoral Emissions Targets (SETs)**, for each significant sector or sub-sector of the economy

Industry emissions limits

Adopting a **carbon budget** approach to provide for flexibility and least cost mitigation in sectors and/or sub-sectors

Industry implementation

Mitigation plans to demonstrate how mitigation by companies is to be achieved

Sector policies to drive mitigation

Policies and Measures (PAMS), economic measures to drive mitigation (e.g. IRP 2019 – REIPPP)



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Thank You