

MEMORANDUM ON THE OBJECTS OF THE DISASTER MANAGEMENT AMENDMENT BILL, 2020

1. INTRODUCTION

On 30 January 2020, the Director-General of the World Health Organisation (“the WHO”) declared the novel coronavirus (COVID-19) outbreak a public health emergency of international concern, which is the WHO's highest level of alarm. Following this announcement, the Minister responsible for cooperative government and traditional affairs declared a national state of disaster in terms of section 27 of the Disaster Management Act, 2002 (Act No. 57 of 2002) (“The Disaster Management Act”). Various sets of regulations were also published following the declaration of the national state of disaster, which imposed a national lockdown.

The national state of disaster as well as the accompanying regulations had severe consequences and a negative impact on the lives of every citizen in South Africa. Citizens’ basic human rights were restricted and certain behaviours and actions were prohibited. The economic consequences were disastrous and millions of people lost their jobs.

The Disaster Management Act does not currently provide adequate legislative accountability and oversight over the regulations published in terms of it, the duration of a state of disaster, nor in respect of the extension of a state of disaster.

In a constitutional democracy, any legislation, which has such severe consequences and which impacts all the citizens and their human rights should be subject to more legislative accountability and oversight.

2. OBJECTS OF THE BILL

The purpose of the Bill is to amend the Disaster Management Act, 2002 (Act No. 57 of 2002) in order to amend the duration of a state of disaster. The Bill further seeks to provide that only the National Assembly, provincial legislature or municipal council may resolve to extend a declaration of a national, provincial or local state of disaster respectively and for how long. The Bill also provides for the requisite majorities required in the National Assembly, provincial legislature and municipal council in order to extend a national, provincial or local state of disaster respectively. The Bill further provides that a resolution to extend a national, provincial or local state of disaster may only be adopted after a public debate. The Bill finally seeks to provide for oversight by the National Assembly over a national state of disaster, and oversight a by provincial legislature over a provincial state of disaster.

3. CONTENTS OF THE BILL

3.1 Clause 1 amends section 27 of the Act by the substitution for subsection (5) of a new subsection (5) as well as the addition of four further subsections. The clause now provides *inter alia* that a national state of disaster may be effective only prospectively and for no more than 21 days, unless the National Assembly resolves otherwise. It also provides that a Minister may terminate a national state of disaster before it lapses. It further provides that a copy of the notice declaring a national state of disaster must be tabled in the National Assembly. The clause also provides that the National Assembly may disapprove of any regulations or directions made under such a declaration or may make recommendations to the Minister pertaining to such regulations and directions.

3.2 Clause 2 inserts clause 27A into the Act. This clause provides for the lapsing of a national state of disaster. The clause further regulates the validity of anything done under or by virtue of any

regulation or direction from the time of the declaration of the national state of disaster to the time it lapses.

- 3.3 Clause 3 amends section 41 to provide *inter alia* that a provincial state of disaster may be effective only prospectively and for no more than 21 days, unless a provincial legislature resolves otherwise. It also provides that a Premier may terminate a national state of disaster before it lapses. It further provides that a copy of the notice declaring a national state of disaster must be tabled in a provincial legislature. The clause also provides that a provincial legislature may disapprove of any regulations or directions made under such a declaration or may make recommendations to the Premier pertaining to such regulations and directions.
- 3.4 Clause 4 inserts clause 41A into the Act. This clause provides for the lapsing of a provincial state of disaster. The clause further regulates the validity of anything done under or by virtue of any regulation or direction during the time from the declaration of the provincial state of disaster until the time it lapses.
- 3.5 Clause 5 amends section 55 to provide that a local state of disaster may be effective only prospectively and for no more than 21 days, unless a municipal council resolves to extend it. It also provides that a council may terminate a national state of disaster before it lapses. The clause further sets out how a council may extend a local state of disaster.
- 3.6 Clause 6 inserts clause 55A into the Act. This clause provides for the lapsing of a local state of disaster. The clause further regulates the validity of anything done under or by virtue of any by-law or direction during the time from the declaration of the local state of disaster until the time it lapses.
- 3.7 Clause 7 contains the short title.

4. FINANCIAL IMPLICATIONS FOR THE STATE

There will be no financial implications for the state.

5. DEPARTMENTS, BODIES OR PERSONS CONSULTED

None

6. PARLIAMENTARY PROCEDURE

- 6.1 The Member proposes that the Bill must be dealt with in accordance with the procedure established by section 76(3) of the Constitution, as its provisions in a substantial manner deal with “disaster management”, a functional area of concurrent national and provincial legislative competence listed under Schedule 4 to the Constitution.
- 6.2 The Member is 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 customs of traditional communities.