



# Wes-Kaapse Provinsiale Parlement Western Cape Provincial Parliament IPalamente yePhondo leNtshona Koloni

Ref Number: 11/4/8

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(Negotiating *mandate stage*) Report of the Standing Committee on Agriculture, Environmental Affairs and Development Planning on the Climate Change Bill [B 9B—2022] (NCOP), dated 20 March 2024 as follows:

The Standing Committee on Agriculture, Environmental Affairs and Development Planning, having considered the subject of the Climate Change Bill [B 9B—2022] (NCOP) referred to the Committee in accordance with Standing Rule 217, confers on the Western Cape's delegation in the NCOP the authority to support the Bill subject to the NCOP giving serious consideration to the substantive and numerous proposed amendments as set out in this submission.

## 1. General:

### 1.1 Relationship of the Bill to other legislation

The relationship between the Bill and other legislation, such as the Carbon Tax Act, 2019 (Act 15 of 2019) (e.g., its references to carbon budgets) and the National Environmental Management: Air Quality Act, 2004 (Act 39 of 2004) ("NEMAQA") (e.g. s 43(1)(l)) is unclear.

It is submitted that the relationship between the Bill and other relevant legislation should be explicit or made explicit to ensure that the legislation can be read together to form a coherent whole.

### 1.2 Guidelines

The Bill should include an enabling provision for the development of Guidelines.

It is recommended that the Bill includes an enabling provision for the development of Guidelines.

### 1.3 Timelines

The Bill in many draft clauses lacks defined timelines. This is likely due to the lead Department or Minister not reaching agreement on the implementation requirements with key stakeholders, such as the private sector, but places the Bill at risk of being ineffective, which would undermine the object of the Bill from being achieved. See for example draft subclauses 7(2), 25(1), 26(1), and draft paragraphs 9(3)(b) and 24(4)(a).

It is suggested that further consultation be undertaken with key stakeholders towards reaching agreement on the outcomes required, roles and responsibilities, sequencing and phasing of actions and the requirements and support mechanisms for implementation, amongst others.

It is also suggested that the National Minister promotes an industry-led approach to propose solutions to the above as a means towards enabling more effective implementation of the Bill. This would assist in setting and defining timelines that would be palatable by all parties and which could then be included in the Bill.

The Committee was pleased to be informed by the Department of Forestry, Fisheries and the Environment during its meeting on 27 February 2024 that some of the timeframes will be included in the regulations, but would prefer for these to be included in the bill.

#### **1.4 Nationally Determined Contribution (“NDC”)**

A primary objective of the Bill must be to ensure the implementation of the NDC, within the framework provided by the Paris Agreement to which South Africa is a signatory.

It is submitted that the Bill must recognise the key role played by the private sector and other non-state entities in implementing the NDC. The Paris Agreement specifically makes provision for this.

It is suggested that the Bill recognises and possibly spells out the roles of non-state entities in achieving the objective.

#### **1.5 Capacity constraints**

Climate change and the nature of the work set out in the Bill requires expertise. Most provincial government departments and municipalities do not have the required expertise. Therefore, in order for the Bill to be successfully implemented, adequate support (including capacitation) should be provided to provinces, departments and municipalities. This could be done in a similar manner to the support given in the development of Disaster Management Plans in collaboration and with support from respective Disaster Management Centres - in this case with support from respective departments and experts in the field.

It is recommended that provision be made to include a support plan (capacity, grants and funding mechanisms which can be accessed to implement Climate Change Programmes) for provinces, departments and municipalities to ensure that the Bill can be fully implemented.

#### **1.6 Local municipalities**

Many of the response actions contemplated in the Bill will be required from local municipalities, not districts. Those municipalities need support and capacitation.

It is submitted that the bill provides for a finance mechanism for the Minister to assist local municipalities.

#### **1.7 Monitoring and Evaluation**

The Bill makes no provision for Monitoring and Evaluation (“M&E”). The M&E role of the Presidential Climate Commission, included in the previous version of the Bill, has been removed. It is unclear who will track implementation of adaptation and mitigation responses. The National database is currently not at a ‘fit-for-purpose’ stage, making it a burden because it cannot be forced onto provinces and municipalities.

## **1.8 General: Air Quality Management**

Anthropogenic air pollution is a huge contributor to climate change, hence the strong link between air quality management and climate change.

Draft clauses 24 and 34 of the Bill make reference to specific sections in NEMAQA, yet is silent on sections 15, 16 and 17 of NEMAQA which deals with the requirements of Air Quality Management Plans.

In terms of section 15(2) of NEMAQA, *“each municipality must include in its integrated development plan contemplated in Chapter 5 of the Municipal Systems Act, an air quality management plan.”* Every air quality management plan must also seek to *“implement the Republic’s obligations in respect of international agreements”* as contemplated in terms of section 16(1)(a)(vii) of NEMAQA.

It is submitted that the Bill should make reference to sections 15, 16 and 17 of NEMAQA. Municipal air quality management plans must include a section on how the Municipality will address and implement the Republic’s obligations in respect of international agreements.

## **1.9 Areas requiring strengthening in the Bill**

The Bill is well-aligned with the Paris Agreement on climate change and is generally consistent with South Africa's National Climate Change Response Policy.

Overall, the Bill is a positive step forward in the fight against climate change. However, the Bill needs to be strengthened in some areas to ensure that it is effective. All levels of government must be given a role, and each must ensure that there is strong political and public support for the Bill to increase the chances of its successful implementation.

The Bill lacks clarity in some areas, such as how the carbon budget will be allocated and how the just transition will be implemented.

The Bill relies heavily on the implementation of regulations, which could be delayed or weakened by political or economic pressures. Consideration should be given to the cost of compliance.

It is not clear how the government will be able to achieve the ambitious emission reduction targets set out in the Bill. More clarity should be provided on how the Bill will be implemented, particularly about the allocation of the carbon budget and the implementation of just transition measures.

The Bill must include greater investments for public awareness and education campaigns to raise awareness of climate change and the importance of climate action; more ambitious targets for renewable energy deployment; specific measures to address the impacts of climate change on vulnerable communities; specific provisions to ensure that the transition to a low-carbon economy is just and equitable; the provision for more support for vulnerable communities to adapt to the impacts of climate change; and stronger measures to address climate injustice.

It is submitted that consideration must be given to strengthening the Bill in the areas as mentioned above.

## **1.10 Language and drafting errors:**

The Bill contains language and drafting errors. Some of the errors are, amongst others: Incorrect use of capital letters, e.g. “Constitutional” in the Preamble; some paragraphs do not make sense when read with the introductory part (para (b) of the third last part of the Preamble; draft paragraph 12(2)(b)); and there should not be any articles in Schedule headings.

It is submitted that the Bill should be vetted by an experienced legislative drafter or legal editor familiar with legislative drafting practices, including Commonwealth conventions, to ensure that there are no language errors and that the Bill is consistent with the applicable drafting practices.

## **2. Specific Clauses:**

### **2.1 Draft long title**

The Bill speaks to enabling the response and transition for the economy and society. The climate change discourse has, for many years, spoken of the need to build ‘adaptive capacity’ in government, economies and societies. i.e., that the role should be on helping everyone to become part of the solution and to be responsible for building their own resilience and the resilience of the economy and society at large.

The Bill does not appear to adequately cover how government will enable other, non-public sector players to partner in the building of a just transition to a low-carbon and climate resilient economy and society.

It is suggested that the Bill states more clearly how government will enable other, non-public sector players to partner in the building of a just transition to a low-carbon and climate resilient economy and society. This will be required, amongst others, to agree on the timing of implementation and to overcome the resource constraints of implementing the country’s climate change policy.

### **2.2. Page 13, lines 14 and 29; and Page 15, line 21: term “periodically”**

The term “*periodically*” is used three separate times in the Bill. The use of the word periodically is very vague and open-ended.

It is recommended that periodically be changed to an exact timeframe i.e., not less than 5 years. This will contribute to the consistency around timeframes in the Bill.

The Committee welcomed the response from the Department of Forestry, Fisheries and the Environment at a meeting on 27 February 2024 that this proposal would be discussed with the office of the Chief State Law Adviser and the Parliamentary Legal Adviser for incorporation in the bill.

### **2.3 Draft clause 1: Definition “carbon dioxide equivalent or CO<sub>2</sub>e”**

The symbol in the definition of “Carbon dioxide equivalent or CO<sub>2</sub>e” should be subscript.

It is submitted that the symbol in the definition should be subscript and must therefore be amended to read “CO<sub>2</sub>e”.

The Committee welcomed the response from the Department of Forestry, Fisheries and the Environment at a meeting on 27 February 2024 that this proposed change would be discussed with the office of the Chief State Law Adviser and the Parliamentary Legal Adviser.

### **2.4 Draft clause 1: Definition of “mayor”**

The definition incorrectly states that the executive mayor and speaker mentioned in paragraphs (a) and (b) are elected in terms of section 48 of the Local Government: Municipal Structures Act, 1998 (Act 117 of 1998) (Structures Act) (and paragraph (a) therefore contradicts the introductory sentence to the definition). There is an incorrect cross-reference to section 36(5) of the Structures Act.

It is submitted that the introductory sentence to the definition should be its own paragraph, and all three paragraphs should follow after the word “means” in the first line of the definition. It is proposed that the cross-reference be corrected.

The Committee welcomed the response from the Department of Forestry, Fisheries and the Environment at a meeting on 27 February 2024 that this would be discussed with the office of the Chief State Law Adviser and the Parliamentary Legal Adviser.

### **2.5 Draft clause 1: Definition of “Presidential Climate Commission”**

The definition has not been updated in line with the new draft clause 10 in the Bill, as draft clause 10 does not establish the Presidential Climate Commission, but rather continues the existence of the existing Commission (in terms of subsection (1)).

It is submitted that the words “established in terms of section 10” in the draft definition should be replaced with “referred to in section 10”.

The Committee welcomed the response from the Department Forestry, Fisheries and the Environment at a meeting on 27 February 2024 that this would be discussed with the office of the Chief State Law Adviser and the Parliamentary Legal Adviser for possible incorporation into the bill.

### **2.6. Draft clause 1: Definition of “sub-sector”**

The draft definition of “sub-sector” is a very specific definition which is linked to and defined by the Intergovernmental Panel on Climate Change (“IPCC”). However, the draft definition of “sector” is a generic definition which is not linked to the IPCC. Considering that, in the context of this Bill, “sectors” and “sub-sectors” are used in very specific contexts, particularly linked to carbon budgets, greenhouse gas reporting and other associated activities, it would make sense that the definitions be more closely linked and that they both refer to the IPCC documentation or definitions where appropriate.

A review of the definition of “sector” is recommended to ensure better alignment with the IPCC definitions of sectors.

The Committee welcomed the response from the Department of Forestry, Fisheries and the Environment at the meeting on 27 February 2024 that this would be discussed with the office of the Chief State Law Adviser and the Parliamentary Legal Adviser before the bill is discussed by the Select Committee.

**2.7 Page 7: draft paragraph 3(h):**

The word “*should*” is ambiguous. The phrase “*best available science, evidence and information*” is used throughout the Bill. This phrase, without further clarification, can be subjectively interpreted.

It is submitted to replace the word “*should*” with the word “*must*” and that the principles used to determine what the “*best available science, evidence and information*” should be clarified.

The Committee welcomed the acknowledgement from the Department of Forestry Fisheries and the Environment at a meeting on 27 February 2024 that this would be discussed with the office of the Chief State Law Adviser and the Parliamentary Legal Adviser before the meeting of the Select Committee to deal with this bill.

**2.8 Page 8: draft clause 4**

The draft clause can possibly be interpreted to mean that it only applies to the state.

Clarity on draft clause 4 is required.

**2.9 Page 8: draft subclauses 4(3) and (4)**

The new draft subclauses which were inserted in this draft clause are misplaced, as the heading of the draft clause is “*Application of Act,*” whereas the draft subclauses do not relate to the scope of application of the Act, but rather the reporting requirements of the Presidential Climate Commission.

It is submitted that the draft subclauses must be moved to the appropriate draft clause in the Bill, which may be draft clause 13.

The Committee welcomed the response from the Department of Forestry, Fisheries and the Environment at a meeting on 27 February 2024 that this would be discussed with the office of the Chief State Law Adviser and the Parliamentary Legal Adviser again as this was raised previously in the National Assembly but not addressed.

**2.10 Page 9: draft paragraph 8(3)(b)**

This draft paragraph makes reference to a “*President’s Coordinating Council,*” however section 6 of the Intergovernmental Relations Framework Act, 2005 (Act 13 of 2005) (“the IGRFA”) establishes a body called the “*President’s Co-ordinating Council*”, which is the same term used in section 20(a) of that Act.

It is submitted that the term in the Bill should be consistent with the IGRFA.

The Bill also does not adequately explain the relationship between the Presidential Climate Commission and the President’s Co-ordinating Council, and why the report in question is not also sent to the Presidential Climate Commission.

It is submitted that the dash in the term “President’s Co-ordinating Council” must be included in the name, and the Bill should expand on the relationship between the Presidential Climate Commission and the President’s Co-ordinating Council and why the report in question is not also sent to the Presidential Climate Commission.

The Committee welcomed the response from the Department of Forestry, Fisheries and the Environment at a meeting on 27 February 2024 that this would be discussed with the office of the Chief State Law Adviser and the Parliamentary Legal Adviser.

#### **2.11 Page 9: draft paragraph 9(3)(a)**

Incorrect wording.

It is submitted that the word “*its*” be replaced with the word “the.”

The Committee welcomed the response from the Department of Forestry, Fisheries and the Environment at a meeting on 27 February 2024 that this would be discussed with the office of the Chief State Law Adviser and the Parliamentary Legal Adviser.

#### **2.12 Page 9: draft clause 10**

Draft subclause (2) does not state which person is obligated to list the Commission as a public entity, and by when they must do this.

Draft subclause (4) states “[b] *servicing member of Parliament, including a member of a provincial legislature and a member of a municipal council...*”, however, section 42(1) of the Constitution provides that Parliament only consists of the National Assembly and the National Council of Provinces.

Draft subclause (2) must state which person is obligated to list the Commission as a public entity, and by when they must do this.

It is submitted that the word “including” must be removed from draft subclause (4).

The Committee welcomed the response from the Department of Forestry, Fisheries and the Environment at a meeting on 27 February 2024 that this would be discussed with the office of the Chief State Law Adviser and the Parliamentary Legal Adviser before the meeting of the Select Committee to consider this bill.

#### **2.13 Page 10: draft paragraph 11(1)(b)**

Climate Risks are not defined, and this should include climate hazards (or this should be added as an additional term), i.e., climate hazards (such as floods), and Disaster Risk Reduction and Management (DRRM) should be much more visible and articulated in the Bill. This clause should specifically include DRRM.

It is submitted that clause paragraph 11(1)(b) be reworded to read: "advise government on the mitigation of climate change impacts, including through the reduction of emissions of greenhouse gases, strengthening of disaster risk reduction and management capacities, and adapting to the effects of climate change; and..."

## **2.14 Pages 9 - 11: Draft clauses 10 - 14**

Clauses 10 to 14 discusses the Presidential Climate Commission's functions, the process of appointment, financial administration, and reporting. The Presidential Commission should involve officials who are responsible for Climate Change. Departmental officials should engage these Climate Change experts on a technical level and should provide input on all research reports, studies, or strategies.

It is recommended that the Climate Change Bill should consider including a technical forum that will include officials from local, provincial, and national governments to engage the Climate Change experts. Furthermore, it is suggested that departmental officials be appointed as the Executive Director to ensure the sharing of information and avoid duplication of efforts between the three spheres of government and the Presidential Climate Commission.

## **2.15 Page 12: draft clause 15**

Environmental Management Frameworks (EMFs) are key instruments used by provinces towards environmental planning and often forms the foundation of interaction with municipalities on integrated planning i.e. drafting integrated Spatial Development Frameworks (SDFs) and EMFs.

The Bill needs clearer goals as to what level of integration of climate change response plans are required from municipalities in their Integrated Development Plans (IDPs) and SDFs.

It is recommended that draft clause 15 be amended to add an additional new draft subclause 15(6), along the following lines:

“(6) A metropolitan or district municipal climate change response implementation plan, contemplated in subsection (1)(d), must form a component of the relevant environmental management framework adopted in terms of Environmental Management Framework Regulations, 2010”.

It is recommended that the Bill outline clearer goals as to what level of integration of climate change response plans are required from municipalities in their IDPs and SDFs.

## **2.16 Page 12: draft paragraph 15(1)(c)**

Paragraph (b) refers to paragraph (c), so (c) should be moved to before (b).

Amend accordingly.

## **2.17 Page 12: draft subclause 15 (1)**

“15. (1) An MEC and a mayor of a metropolitan or district municipality, as the case may be, must— (a) at least 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...”

It is submitted that municipal constraints be assessed and assistance provided in terms of resources and capacity to municipalities that will face challenges in complying with this Bill, in terms of its development of climate change needs and response assessment reports.



**2.18 Page 12: draft paragraph 15(2)(c)**

2.18.1 The paragraph does not include economic sectors or businesses. The wording does not make sense.

It is suggested that the paragraph includes economic sectors and businesses and it is submitted to amend along the following lines: "...risks and vulnerabilities that may arise, and areas, ecosystems and communities that are vulnerable...."

2.18.2 Disaster risks (or hazards) should be specifically mentioned and mapped, particularly noting vulnerable communities.

It is submitted that the words " and hazards" be inserted after the word "risks" - "risks and hazards".

**2.19 Page 12: draft paragraph 15(2)(e)**

This draft paragraph is reflected under the climate change needs and response assessment but speaks to the climate change implementation plan (draft subclause 15(3)).

The climate change needs and response assessment should not only "*identify and determine measures and mechanisms to manage and implement the required climate change response*" but prior to this also identify the human and financial resources that are needed but lacking.

It is suggested that the draft paragraph be amended to reflect measures and mechanisms that have been implemented or are already underway and that a reference is added to the identification of human and financial needs required for implementation.

**2.20. Page 12: draft paragraph 15(3)(a)**

It is not clear whether the climate change response implementation plan must also include consideration of the "*nature and characteristics of the province or metropolitan or district municipality, ..., and the particular and unique climate change needs and risks that arise*" (as in draft paragraph 15(2)(b)) and the spatial risks, vulnerabilities, areas, ecosystems and communities that are vulnerable to the impacts of climate change (as in draft paragraph 15(2)(c)).

It is submitted that consideration be given to amending the wording so that contextual and spatial considerations must also inform the response implementation plan (draft subclause 15(3)), and not only the needs and response assessment (draft subclause 15(2)).

**2.21 Page 13: draft subclause 16(2)**

See earlier feedback on this.

The use of the term "*periodically*" is vague.

It is suggested that a regular period, perhaps every 5 years, be referred to, to ensure that it is still appropriate. If retained, clarification of "*periodically*" must be provided in subordination legislation or guidelines.

The Committee welcomed the response by the Department of Forestry, Fisheries and the Environment at a meeting on 27 February 2024 that the wording be revised in consultation with the office of the Chief State Law Adviser and the Parliamentary Legal adviser.

**2.22 Page 13: draft paragraph 17(2)(a)**

The Bill does not make reference to financing or making resources available to downscale existing available science to local context across many municipal scales, which use national scenarios for adaptation planning that is not ideal for adaptation responses.

Financing for downscaling climate science is required.

It is suggested that the paragraph be amended along the following lines:

*“be based on best available scientific evidence and peer-reviewed scientific information;”*

**2.23 Page 13: draft paragraph 17(2)(c)**

The current wording could be interpreted to mean that vulnerabilities are linked only to the environmental sector.

It is submitted that consideration be given to amending the wording to read along the following lines: “include a consideration of the potential impacts of climate change on the environment of the Republic and associated social, economic and environmental vulnerabilities.”

**2.24 Page 14: draft clause 20**

Climate change researchers in South Africa are obstructed from delivering the “best” high quality science and information to inform the State on climate change risks, by the very high costs of access to state or parastatal climate data resources.

This draft clause should also cover the data and information needs of the country’s researchers.

It is submitted that consideration be given to including a sub-clause that deals with the data and information needs of *bona fide* climate change researchers, specifically to make these available at no cost or for only an administrative fee.

**2.25 Page 15: draft Chapter 5**

The draft clauses dealing with emissions inventory and reporting are inadequate.

The Bill does not require the publication of or disclosure of carbon budgets, greenhouse gas mitigation plans, and annual reports on compliance with carbon budgets.

It is suggested that the emissions inventory and reporting be dealt with more comprehensively.

## **2.26 Page 15: draft clause 22**

This draft clause deals with “[s]ectoral emissions targets.” The draft clause makes no mention of provinces and local government in the support on Sectoral Emissions Targets (“SETs”). A draft guideline in this regard has been developed for provinces and local government and this has been workshopped and circulated for comment. This Guideline highlights the role of provinces and local government in achieving the SETs and refers to the importance of alignment with the line departments responsible for the SETs.

Inconsistent use of the singular and plural is used in the draft clause, for example: “[M]inisters responsible for each sector and sub-sector” vs “Ministers responsible for the administration of sectors or sub-sectors...”

The list of greenhouse gas emitting sectors and sub-sectors will be listed by the Minister (draft subclauses 22(1) and 22(2)). It is not clear whether Ministers responsible for each sector will participate in this decision by the Minister (draft subclause 22(3) only applies to the framework and targets, not to the identification of the sectors and sub-sectors). In the agriculture sector (if this sector is identified under clause 22(1)), there are strong reasons to use sub-sectors for the actions outlined in draft clause 22. Failure to do so could have negative consequences for the sector.

It is submitted that reference to the role of provincial and local government in terms of SETs must be included in the Bill.

It is further submitted that there should be consistency in the wording of the draft clause and that it should be established more clearly who will participate in the identification of the greenhouse gas emitting sectors and sub-sectors, and what method of appeal would be available to sectoral role players.

## **2.27 Page 15: draft subclause 22(1)**

There is some confusion about the difference between the sector emission targets and the carbon budget approach and how they work together and who is responsible for what.

It is not clear to what extent there has been consultation with the private sector and relevant sectoral departments on the sectoral emissions targets. It could be argued that without the Bill in place, the sector would not necessarily respond to meet sectoral targets and may be using the opportunity to avoid higher costs of compliance. Additionally, the likelihood that the sector targets may not be fairly distributed in the sector would probably also arise. Given that other Ministers would be responsible for implementing the sectoral targets, the draft subclause may not achieve the intended outcome if these Ministers are not in agreement. Amongst these would be the Ministers of Mineral Resources and Energy and the Department of Trade Industry and Competition (DTIC) (covering the sectors that account for the highest emissions targets based on current emissions inventory). It should also be noted that the Department of Minerals Resources and Energy (DMRE) and the DTIC’s policy may not be aligned with the trajectory - e.g., the gas focus of the DMRE.

It is submitted that there is a need for greater clarity on the different functions.

It is suggested that extensive consultation be undertaken with the private sector and relevant sectoral departments to ensure buy-in to, setting of, and effective implementation of the sectoral emissions targets.

**2.28 Page 15: draft paragraph 22(1)(a)**

“22. (1) (a) 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.”

Sectoral emission targets should be inclusive of a transition plan depicting a timeframe wherein targets should be achieved and realised.

It is unclear how the implementation of the sectoral emission targets will be regulated and enforced.

**2.29 Page 15: draft paragraph 22(4)(c)**

The wording in this draft paragraph needs to be clarified – it is unclear whether this refers to five-year increments.

The Committee welcomed the Department of Forestry, Fisheries and the Environment’s response at a meeting on 27 February 2024 that this aspect (clause 22(4)(c)) will be reconsidered and finalised in consultation with the office of the Chief State Law Adviser and the Parliamentary Legal Adviser.

**2.30 Page 15: draft subclause 22(5)**

2.30.1 “(5) When determining the sectoral emissions targets, the Minister must take all relevant considerations into account, including, amongst others— (a) the socio-economic impacts of introducing the sectoral emissions targets...”.

It is submitted that a job resilience plan (transition plan) must be developed for the sectors greatly impacted by emission targets (for example the fossil fuel sector), referred to in the National Climate Change Response White Paper. The National Climate Change Response White Paper requires the development of a Sector Jobs Resilient Plan to protect vulnerable groups whose livelihoods will be impacted as a result of climate change, as well as through plans prepared to transition to a low carbon resilient economy.

2.30.2 It is unclear whether sectoral role players (especially the private sector and affected persons or entities) will be able to give inputs, or to appeal the determination of sectoral or sub-sectoral emissions targets.

It is submitted that clarity is needed.

**2.31 Page 15: draft paragraph 22(5)(a)**

The socio-economic impacts of the Renewable Energy Independent Power Producers Procurement Programme (REIPPPP) are indicated in the latest Independent Power Producers Procurement Programme (IPP) office report and shows that the impact of the shift towards renewable energy and that more renewable energy beyond the Integrated Resource Plan

2019 (IRP) determinations is likely to build on this track record. It is unclear whether broader socio-economic impact assessments have been undertaken beyond the 2017 work done by the Department of Planning, Monitoring and Evaluation (DPME), which is outdated, particularly given multiple crises and programmes over the past five years that have provided significant learnings and information.

It is suggested that updated socio-economic impacts of introducing the sectoral emissions targets are undertaken to better understand and mitigate negative impacts while promoting any positive impacts.

**2.32 Page 16: draft subclause 22(7)**

No provision is made for a review in less than five years.

It is submitted that the words “at least” be inserted before the words “every five.”

**2.33 Page 16: draft paragraph 22(7)(f)**

Incorrect wording.

It is submitted that the word “the” is deleted.

The Committee welcomed the Department of Forestry, Fisheries and the Environment’s response at a meeting on 27 February 2024 that this will be reconsidered and finalised in consultation with the office of the State Law Adviser and the Parliamentary Legal Adviser.

**2.34 Page 16: draft subclause 22(8)**

It is unclear whether this is referring to five-year increments.

It is submitted that clarity is needed.

**2.35 Page 16: draft subclauses 22(11) and (12)**

It is recommended that these reports become publicly available.

Amend accordingly.

Also, no penalties are provided for non-compliance to sectoral emissions targets.

Ensure alignment.

Draft subclause (11) refers to “*The Presidency*” (which should be “the Presidency”), whilst (12) refers to the Minister.

The Committee welcomed the Department of Forestry, Fisheries and the Environment’s response at a meeting on 27 February 2024 that the editorial input relating to “The Presidency” will be addressed in consultation with the office of the State Law Adviser and the Parliamentary Legal Adviser.

### **2.36 Page 16 and 17: Draft clause 23**

Clause 23 indicates that the Minister must publish a list of Greenhouse Gases (GHGs) which cause or are likely to cause or exacerbate climate change. Additionally, the Minister must publish a list of activities which emit or have the potential to emit, one or more of the GHGs listed in Clause 23 (1).

Clause 23 (3) indicated that the Minister must determine quantitative GHG emission thresholds expressed in carbon dioxide equivalent to identify persons to be assigned a carbon budget.

Clause 23 and its sub-sections have not prescribed the timeframes within which the Minister must publish the list of GHGs and activities which emit or have the potential to emit GHGs. Similarly, there is no prescribed timeframe for the identification and allocation of carbon budgets.

It is recommended that Clause 23 should include timeframes that can hold persons/ entities accountable for failure to comply with the legislation and facilitate a “just transition”.

The Committee welcomed the Department of Forestry, Fisheries and the Environment’s response on 27 February 2024 that this will be discussed and finalised in consultation with the office of the Chief State Law Adviser and the Parliamentary Legal Adviser.

### **2.37 Page 17: draft paragraph 23(4)(c)**

A word is missing.

It is submitted that the word “the” be inserted before the word “*implementation.*”

### **2.38 Page 17: draft paragraph 23(5)(e)**

"Constraints" for threshold implementation may be ballooned by ministries not wishing to be hindered by certain thresholds. There needs to be a descriptions of what constitutes a reasonable constraint which should be taken into account.

It is submitted that the word "justifiable" be added to characterise the types of constraints which will be considered.

The Committee welcomed that the Department of Forestry, Fisheries and the Environment, at a meeting on 27 February 2024, agreed to this proposal as this is relevant for companies instead of Ministries.

### **2.39 Page 17: draft subclause 24(2)**

Superfluous wording.

It is submitted that the words “*amongst others*” be deleted.

The Committee welcomed the Department of Forestry, Fisheries and the Environment’s response at a meeting on 27 February 2024, where the Department stated that this does not change the core substance of the clause. And that the deletion of the words “*amongst others*”

will be discussed with the office of the Office of the Chief State Law Adviser and the Parliamentary Legal Adviser.

**2.40. Page 19: draft paragraph 27(1)(b)**

It is submitted that the draft paragraph be rephrased to, " to encourage a change in behaviour that leads to a phase-down or phase-out of greenhouse gases amongst all sectors of society".

**2.41. Page 20: draft subclause 28(1)**

Not all the cross-references seem to be correct (e.g., 24(2) should be 24(1)).

It is submitted that cross-references are checked and to ensure all relevant clauses are referred to.

The Committee welcomed the Department of Forestry, Fisheries and the Environment's response at a meeting on 27 February 2024 that reference to clause 24(2) will be changed to clause 24(1) in consultation with the office of the Chief State Law Adviser and the Parliamentary Legal Adviser.

**2.42 Page 20: draft subclause 28(4)**

The draft subclause only covers the carbon budgets element of the Bill. The draft subclause also speaks to '*the person to whom...*,' and not to the relevant industry, which may become a challenge as the scope of those covered by carbon budgets is extended to companies beyond the largest emitters. It is not clear whether the person to whom a carbon budget is allocated will be able to appeal the decision, beyond the Minister.

It is suggested that the draft subclause is extended to cover all relevant clauses e.g. draft clauses 23 (Listed greenhouse gases and activities), 25 (Phase-down and phase-out of synthetic greenhouse gas emissions and declaration), and 26 (National Greenhouse Gas Inventory).

It is further suggested that a draft clause be added to include consultation with the industry for draft clause 22: sectoral emissions targets.

**2.43 Page 20: draft clause 29**

The minimum requirements for public participation notices should be reconsidered given that the number of people who still read national newspapers has reduced significantly over time. The cost of these advertisements should also be considered in the time of budgetary challenges within all spheres of government.

It is submitted that social media, online media sources or other forms of communication should be considered. This is particularly important given instances where community members or stakeholders question how and where the notices were placed if the department responsible only refers to the minimum requirements. These measures can be regarded as dated, as these platforms do not always reach the masses.

It is further submitted that consideration be given to expanding the public participation mechanism inclusive of ICT (Information and Communications Technology) platforms or mechanisms.

**2.44 Page 20: draft subclause 29(1)**

2.44.1 Not all the cross-references seem to be correct (e.g., 17(2) should be 17(3), 22(9) and (10) deal with the Ministers responsible for the sectors (not the Minister), there is no reference to draft clauses 18(3), 19(1), 22(12), 24, 26(3)).

It is submitted that cross-references are checked and that all relevant draft clauses are referred to.

The Committee welcomed the Department of Forestry, Fisheries and the Environment's response at a meeting on 27 February 2024 that references in clause 29(1) will be reviewed and cross-checked with the rest of the Bill in consultation with the office of the Chief State Law Adviser and the Parliamentary Legal Adviser.

2.44.2 Climate change will mostly impact the disconnected and vulnerable people and communities. These communication methods will not easily reach these population groups.

It is submitted that consideration be given to adding text that would require the government to make these communications widely available, e.g., to rural people, also through other established and more modern channels.

2.45.3 The development of adaptation scenarios (17 (1) and 17 (2)) requires public participation. However, the review of these scenarios (17 (3)) is not included in the Bill. Public participation should also occur for any review or amendments made to these scenarios.

It is submitted that clause 17 (3) be added to the list of sections specified in 29 (1).

The Committee welcomed the Department of Forestry, Fisheries and the Environment's response at a meeting on 27 February 2024 that references in clause 29(1) will be reviewed to include clause 17(3) in consultation with the office of the Chief State Law Adviser and the Parliamentary Legal Adviser.

**2.46 Page 21: draft subclause 29(4)**

There is no reference to the period.

It is submitted that the words "*within the period specified*" be inserted.

**2.47 Page 21: draft clause 30**

There are inconsistencies between draft subclauses 30(1) and (2), and section 42 and 42A of NEMA (e.g., NEMA states that certain powers and duties may not be delegated, e.g., the publication of notices in the Gazette, etc.).

It is submitted that consistency and alignment be ensured.



#### **2.48 Page 23: draft Schedule 1**

The functions are not in alphabetical order.

It is submitted to amend accordingly.

The Committee welcomed the Department of Forestry, Fisheries and the Environment's response at a meeting on 27 February 2024 that the functions in Schedule 1 will be placed in alphabetical order.

#### **2.49 Page 23: draft Schedule 2**

2.49.1 There is no indication under the heading in which draft clause reference is made to the Schedule.

It is submitted to amend accordingly.

2.49.2 The functions are not in alphabetical order.

It is submitted to amend accordingly and to ensure that all relevant departments are referred to and to consider referring to other departments too, e.g., DMRE.

The Committee welcomed the Department of Forestry, Fisheries and the Environment's response at a meeting on 27 February 2024 that Departments will be arranged in alphabetical order and that mineral resources/mining will be included.

#### **2.50 Page 24: draft Schedule 3**

Incomplete amendment.

Schedule 3 of the Bill provides for the amendment of NEMA by inserting a new paragraph (i) in the definition of "*specific environmental management Act*" in NEMA, however the existing definition in NEMA has "*or*" at the end of paragraph (g).

It is submitted that the word "*or*" must be deleted. It cannot remain at paragraph (g) as this is no longer the second-to-last paragraph in that definition.

The Committee welcomed the Department of Forestry, Fisheries and the Environment's response at a meeting on 27 February 2024 that this amendment to be effected in consultation with the office of the Chief State Law Adviser.

### **3. Memorandum on the objects of the Bill**

3.1 Page 27: clause 18 (3.21)

The word "and" should be omitted or there appears to be something missing from this sentence.

The Committee welcomed the Department of Forestry, Fisheries and the Environment's response at a meeting on 27 February 2024 that the Memorandum on the objects of the Bill will be updated in consultation with the office of the Chief State Law Adviser.

### 3.2 Page 28: clause 23 (3.26)

As stated in the actual clause, this clause should not allow the Minister to base this list on their own beliefs, but rather on the most recent science and evidence. Any reasons for including or excluding GHG from the inventory should be justified with robust scientific data.

The Committee welcomed the Department of Forestry, Fisheries and the Environment's response at a meeting on 27 February 2024 that the Memorandum on the objects of the Bill will be updated in consultation with the Office of the State Law Adviser.

### 3.3 Page 30: Financial implications for the state (5)

This has reference only to the implementation costs related to the development and amendments of plans, strategies and policies, the human resource capacity for compliance monitoring and enforcement and "the human resource capacity for supporting the development and implementation of all plans, strategies and frameworks under the Bill".

The human resource capacity required for the implementation of all plans, strategies and frameworks under the Bill is significant. Additionally, the financial resources required for the development and retrofitting of infrastructure and other goods and services to meet the obligations of the Bill are significant and are not mentioned.

There is no mention of the financial implications for other stakeholders who will be impacted by the enactment of the Bill, such as the private sector, on whom extensive reporting and implementation obligations are laid.

It is suggested that the human resource capacity required for the implementation of all plans, strategies and frameworks under the Bill is more thoroughly articulated (for example the provision of competent technical capacity to assist with the planning perspective and with procurement approaches and matters, as many aspects of climate change response implementation require new ways of working for government officials that need to still align with governance requirements), calculated and provided to enable effective implementation of the Bill.

It is also suggested that the financial resources required for the development and retrofitting of infrastructure and other goods and services to meet the obligations of the Bill are properly costed and provided for through alternative approaches or mechanisms, such as partnerships with DFIs and others. Additionally, officials need to be empowered with total cost of ownership tools / knowledge to enable them to make procurement decisions around infrastructure (and other) that provide both climate change resilience and long-term (versus short-term) cost effectiveness.

It is suggested that there be further consultation with the private sector to provide more explicit costing figures and to develop solutions for the mitigation of costing implications. It is suggested that an industry-led approach to bringing industry together to design fair and best practice and to incentivise best practice is promoted and enabled. It is also suggested that independent bodies facilitating the issuing of incentives to the private sector be explored as a mechanism.

The Committee welcomed the Department of Forestry, Fisheries and the Environment's response at a meeting on 27 February 2024 that the Memorandum on the objects of the Bill will be updated in consultation with the office of the Chief State Law Adviser.

#### **4. Offences and Penalties**

##### **4.1 Page 21: draft clause 32**

Clause 32 discusses the offences and penalties. This section refers to a person. However, it is unclear how government departments or state-owned Entities will be penalised for contravening the legislation.

The penalty in clause 32 includes a monetary fine or imprisonment. However, it is unclear who will manage these monies and how it will be used.

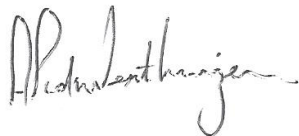
It is recommended that Clause 32 indicate the penalties for government departments and state-owned Entities.

Furthermore, it is suggested that the Bill explicitly indicates how the financial penalties will be managed and by whom.

##### **4.2 Page 21: draft subclause 32(2)**

The penalty stipulated is too low and would not encourage compliance with the Bill. In 2022, some of South Africa's largest greenhouse gas emitters earned gross profits of over R7 billion. A maximum penalty of R5 million is too low.

It is submitted that the maximum penalty needs to be adjusted to take the economic value of the transgressor into account. Perhaps the penalty can be specified as a maximum proportion/percentage of profit rather than a set value.



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**DEVELOPMENT PLANNING**

**DATE: 20 March 2024**