

ANNEXURE 1: BUSA PROPOSED AMENDEMENTS TO THE DRAFT CLIMATE CHANGE BILL

	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 by ensuring compliance with South Africa's Nationally Determined Contribution subject to the receipt of support as contemplated in the Paris Agreement.-
(d)	<u>ensure a just transition towards a lower carbon economy and society in the light of national circumstances and developmental goals.</u>
	Principles
3.	The interpretation and application of the 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.- <u>need to ensure a just transition to a lower carbon and climate change resilient economy in compliance with the Paris Agreement</u>
	Application of the Act
4. (1)	This Act applies to the Republic, including -

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(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 the Act and other legislation specifically relating to climate change, the section of this Act prevails.
	Chapter 2
	Policy Alignment and Institutional Arrangements
	National Framework (Delete whole section 6 – Refer to General Comments)
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.

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(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 <u>(transferred to Functions of New Institutions see new section 8)</u>
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 <u>Act, but only as appropriate</u> <u>Act.</u>
	Institutional arrangements and coordination <u>(Replace with new section 8 (See Annexure 2))</u>
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.

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(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/Presidential Climate Change Response Coordinating Commission 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-

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(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: <u>Provinces and Municipalities</u> (Delete – refer to General Comments)
	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

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(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 must , in consultation with <u>Presidential Climate Change Response Coordinating Commission</u> the sector departments, provinces and municipalities - within one year of the coming into operation of this Act, develop and publish in the Gazette, a National Adaptation Plan which:

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(a)	within one year of the coming into operation of this Act, sets 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 <u>climate resilient society</u> , which objectives may be periodically reviewed by the Minister;
(b)	includes <u>publish</u> 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)(d)	Climate change adaptation within the Republic must be <u>ensures that climate change adaptation</u> is 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 Plan at least once every five years.
(4)	The National Adaptation Strategy Plan will be aimed <u>must promote the at achieving achievement</u> of 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 Plan 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;

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(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; <u>Presidential Climate Change Response Coordination Commission</u> -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 <u>National Adaptation Plan</u> and support the decision making required in terms of this Act.
(9)	A Minister responsible for a sector department responsible for functional areas listed in schedule 1A and any State-Owned Entity for which a sector such a- 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 <u>ensure that relevant elements of the National Adaptation Plan are incorporated into any planning instrument developed by the Department contemplate in subsection (9) on</u> -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 implementing relevant elements of the National Adaptation Plan in the sector for which he is responsible to the Presidential Climate Change Response Coordinating Commission <u>made in relation to the implementation of the climate change response implementation plan.</u>

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(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 <u>NATIONAL CLIMATE CHANGE MITIGATION SYSTEM</u>
	<u>National Climate Change Mitigation System</u>
11. (1)	The <u>National Climate Change Mitigations System</u> is hereby established
(i)	<u>National Greenhouse gas emissions trajectory</u>
(ii)	<u>National Greenhouse gas emissions reporting system</u>
(iii)	<u>Sectoral greenhouse gas emission targets</u>
(iv)	<u>Sectoral emission reduction plans</u>
(v)	<u>Carbon budgets</u>
(vi)	<u>Greenhouse gas mitigation plans.</u>
	National greenhouse gas emissions trajectory
12. (1)	The Minister must, in consultation with the Ministerial Committee on Presidential Climate Change <u>Response Coordinating Commission</u> , 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;

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(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
<u>(d)</u>	<u>Inform international negotiations towards any amendments to the Republic's international obligations</u>
(2)	The national greenhouse gas emissions trajectory <u>must be used as prescribed in the determination of Sectoral Emission targets</u> 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.
	<u>National Greenhouse Gas Reporting System</u>
13. (1)	<u>Any person undertaking an activity which is categorised as a source of greenhouse gas emissions by the IPCC and which emits a total amount of Greenhouse gases above a prescribed threshold, must report its emissions to the Department on an annual basis in the prescribed manner.</u>
<u>(2)</u>	<u>National Greenhouse Gas inventory must be compiled and published at frequency prescribed by international agreements</u>
	<u>Sectoral Emissions Targets</u>
14. (1)	The Minister must, in consultation with the Ministerial Committee on <u>Presidential Climate Change Response Coordinating Commission Climate Change</u> , by notice in the Gazette, every five years, determine <u>in the prescribed manner</u> , 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

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(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, and may amend the SETs <u>in shorter interval if a change in the Republic's international obligations necessitates it-</u>
(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 <u>ensure that any sector planning instrument for which he is responsible includes details of how the relevant sector and sub -sector will meet the SETs or if no such planning instrument exist, prepare a SERP in the prescribed manner</u> 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 <u>Minister-Presidential Climate Change Response Coordinating Commission</u> 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 <u>Presidency-Presidential Climate Change Response Coordinating Commission</u> on progress on the implementation of the relevant SERP and the achievement of the relevant SETs.
(8)	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
<u>14.(1)</u>	<u>Any person undertaking activities which are categorised as a source of greenhouse gas emissions by the IPCC, may be subject to the allocation of a carbon budget as determined by the Minister in terms of this section.</u>

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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 <u>may be subject to the allocation of</u> a carbon budget as contemplated in 13(1) .
	<u>The greenhouse gas emissions threshold, contemplated in subsection (2), may be different for different sectors.</u>
(32)	The greenhouse gas emissions threshold, contemplated in subsection (24) , 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 <u>in consultation with affected parties</u> , allocate a carbon budget that is applicable to a specified person <u>identified in terms of 13(1)</u> for not less than three successive five-year periods.
(4A)	<u>In allocating a carbon budget the Minister must take the following factors into account:</u>
(i)	<u>Sources and nature of greenhouse gas emissions</u>
(ii)	<u>Mitigation potential for the sources identified in (i)</u>
(iii)	<u>Support mechanisms contemplated in which may be applicable (See General Comments)</u>
(iv)	Advice from the Independent Panel established in terms of new section. See Annexure 1 and must
	Allow flexibility in response to potential changes in market conditions
(5)	The Minister must review a carbon budget allocated to a person every five year's.
(6)	The Minister must <u>may</u> 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. Such review must be undertaken in conjunction with a review of the sectoral emission reduction targets
(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, <u>provided that</u>
(8)	A greenhouse gas mitigation plan must comply with the requirements, process and procedures as may be prescribed by the Minister.

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(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
	<u>If any circumstances on which the original mitigation plan relied change during the year for which the report is submitted and necessitate a change in the plan, such amendment to the plan should be included in the annual report.</u>
(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.

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	Phase Down and Phase Out of Synthetic Greenhouse Gas Emissions and Declaration <u>(See General Comments)</u>
15. (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 the use of synthetic greenhouse gases; HFCs and SF ₆ 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 <u>down</u> of the synthetic greenhouse gases <u>referred to in 14(1)(a)</u> ;
(c)	setting and prescribing thresholds for the use of synthetic greenhouse gases; and
(d)	timeframes for phasing <u>down the</u> out synthetic greenhouse gases <u>referred to in 14(1) (a)</u> .
(3)	The Minister may prescribe a carbon budget applicable to emitters of synthetic greenhouse gases. Management of PFCs may be dealt with as part of carbon budget
(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
16. (1)	The Minister may make regulations — <u>To be reviewed to ensure that all issues that should be covered by regulation are listed</u>

Commented [u1]: An exporter does not have to account for emissions which do not occur in RSA

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(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.

Commented [u2]: No reference to cancellation in relevant section. If cancellation is to be contemplated it must be included in the relevant section

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(b)	Paragraph (a) need not be complied with if the regulation is amended in a non-substantive manner.
	Consultation
17. (1)	Before exercising a power in terms 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
18. (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

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(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
19. (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.

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(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 <u>(See General Comments)</u>
20. (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 exceeded the greenhouse gas emissions allowance prescribed by that person's carbon budget, during the applicable period.
	Fails to register or report GHG emissions in the prescribed manner
(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 contemplate 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
21. (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.

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	Savings and Transitional Provision
22.	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. See repeals
	<u>ADDITIONAL SECTION</u>
	<u>Compliance with international reporting requirements</u>
23. (1)	<u>The Minister must:</u>
(i)	<u>Compile a National Communication, which complies with the requirements of the UNFCCC for non-annex 1 countries and submit it to the Secretariat of the UNFCCC at the frequency required by the UNFCCC considering the provision of financial resources to cover the costs incurred.</u>
(ii)	<u>Compile a Biennial Update Report, which complies with the requirements of the UNFCCC and submit it to the Secretariat of the UNFCCC at the required frequency, considering the level of support received for this purpose.</u>
(2)	<u>The National Communication must cover at least the following:</u>
(i)	<u>National circumstances</u>
(ii)	<u>Description of steps taken to implement the Convention</u>
(iii)	<u>Measures to facilitate adequate adaptation to climate change</u>
(iv)	<u>Measures to mitigate climate change</u>
(v)	<u>Technology transfer</u>

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(vi)	<u>Systematic observation, monitoring and research</u>
(vii)	<u>Public Awareness, training and capacity building</u>
(viii)	<u>Constraints, gaps and related financial technical and capacity needs.</u>
(3)	<u>The Biennial report may form part of the National Communication in the year when the National Communication is submitted or as a stand-alone update report in the intervening years, and must cover at least the following:</u>
(i)	<u>National circumstances and institutional arrangements</u>
(ii)	<u>National inventory report</u>
(iii)	<u>Mitigation actions and their effects - methodologies and assumptions</u>
(iv)	<u>Financial, technology and capacity building needs and support received.</u>
(v)	<u>Domestic Measurement, Reporting and Verification</u>
(vi)	<u>Any other relevant information</u>
	REPEALS
	Section 43(1)(l) of the National Air Quality Act is hereby repealed.