



Feeling the heat: the draft Climate Change Bill, 2018

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On 8 June 2018, the South African Minister of Environmental Affairs (the “**Minister**”) published the draft Climate Change Bill, 2018 for public comment. Since then, the Department of Environmental Affairs (“**DEA**”) has undertaken a road show across the country to solicit comments to the Bill and held further bilateral meetings with stakeholders in August 2018. The written comments are currently being considered by the DEA with a view to incorporate these into a revised draft.

The Bill acknowledges that anthropogenic climate change represents an urgent threat to civilisation and that in order to respond to the challenges that climate change raises, an effective, progressive and well-coordinated legislative framework needs to be implemented. The purpose of the Bill is to communicate and implement an effective nationally determined climate change response, including mitigation and adaptation actions, that represents South Africa’s fair contribution to the global climate change response. One of the main guiding principles of the Bill is that the climate system should be protected for the benefit of present and future generations of humankind.

The Bill is primarily concerned with creating bodies, targets, objectives, plans and strategies in order to address both mitigation and adaptation imperatives. This includes climate change response assessments and implementation plans; national adaptation objectives, scenarios and reports; and a national greenhouse gas (“**GHG**”) emissions trajectory. The Bill also provides for the development of sectoral emissions targets and reductions plans; carbon budgets; and GHG mitigation plans. Industry’s participation in the anticipatory reporting schemes aided the collation of the emissions data required to enable government to chisel the mitigation plans and targets. This stems from the incremental introduction of air quality laws and legal obligations which have allowed government to develop a database of emitters and emission data in order to apply such information to levy a carbon tax and impose carbon budgets. We anticipate a more concerted public dialogue about potential incentives, credits and offsets in the near future.

Many commentators have labelled the Bill “toothless” as it fails to urgently respond to the need to address climate change and make suitable provision for holding both government and GHG polluters accountable and liable for contributing towards global warming and, thus, climate change. In order to adequately mitigate and adapt to climate change impacts as well as ensure that South Africa meets its Paris Agreement commitments, a robust and certain legal framework is required.

As the Bill currently reads, there are no measures to be followed by GHG polluters, ie, climate change contributors, until certain decisions are taken by the Minister. Industry enjoys a, perhaps unintended, respite as the Bill does not require immediate compliance from persons or companies once enacted. Various duties and powers are placed on organs of state to align and harmonise their policies, plans, programmes and decisions relating to climate change. Concerns relating to skill and capacity have been raised as ambitious decision-making responsibilities have been placed on the Minister.

In addition, the Bill fails to adequately make provision for the following:

- funding, capacity-building and/or oversight – this may lead to opportunities for delays and GHG polluters continuing with business-as-usual; and
- statutory disclosure and public access to all reports and assessments prepared by GHG emitters and records held by organs of state – in order to ensure accountability, such documents should be made publicly accessible.

The Bill does, however, align well with the highly-anticipated Integrated Resource Plan, 2018 (“**IRP**”) which was gazetted on 27 August 2018 for comment. The IRP promotes renewable energy while soberly recognising new coal generation capacity until 2030 given South Africa’s commitment to a fair contribution to the global climate change response. The Bill also advances the potential carbon trading scheme, which is a market-based tool to limit GHG emissions. Emissions can be traded within the carbon market by way of a cap-and trade scheme or with credits that offset GHG reductions. This will allow for the regulation of GHG emissions, such as carbon dioxide, as well as the reduction of such emissions over time, thus furthering the objectives of the Bill.

As climate change is one of the biggest threats to the global economy, the Bill will need to account for such a threat by incentivising the necessary public urgency and rigour to reduce GHG emissions. The impending legislation is complex but can be weathered with skilled legal and technical guidance and advice.

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