

REPUBLIC OF SOUTH AFRICA

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# DISASTER MANAGEMENT AMENDMENT BILL

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*(As amended by the Select Committee on Cooperative Governance and  
Traditional Affairs)  
(The English text is the official text of the Bill)*

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(MINISTER OF COOPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS)

[B 10D—2015]

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**GENERAL EXPLANATORY NOTE:**

- [                    ]      Words in bold type in square brackets indicate omissions from existing enactments.
- \_\_\_\_\_              Words underlined with a solid line indicate insertions in existing enactments.
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## **BILL**

**To amend the Disaster Management Act, 2002, so as to substitute and insert certain definitions; to clarify policy focus on rehabilitation and functioning of disaster management centres; to align the functions of the National Disaster Management Advisory Forum to accommodate the South African National Platform for Disaster Risk Reduction; to provide for the South African National Defence Force, South African Police Service and any other organ of state to assist the disaster management structures; to provide for an extended reporting system by organs of state on information regarding occurrences leading to the declarations of disasters, expenditure on response and recovery, actions pertaining to risk reduction and particular problems experienced in dealing with disasters; to strengthen reporting on implementation of policy and legislation relating to disaster risk reduction and management of allocated funding to municipal and provincial intergovernmental forums established in terms of the Intergovernmental Relations Framework Act, 2005; to strengthen the representation of traditional leaders in national, provincial and municipal disaster management advisory forums; to expand the contents of disaster management plans to include the conducting of disaster risk assessments for functional areas and the mapping of risks, areas and communities that are vulnerable to disasters; to provide measures to reduce the risk of disaster through adaptation to climate change and developing of early warning mechanisms; to provide for regulations on disaster management education, training and research matters and declaration and classification of disasters; and to provide for matters incidental thereto.**

**B**E IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

**Amendment of section 1 of Act 57 of 2002**

1. Section 1 of the Disaster Management Act, 2002 (hereinafter referred to as the principal Act), is hereby amended—

- (a) by the insertion before the definition of “Department” of the following definitions:

“ ‘adaptation’ means—

- (a) in relation to human systems, the process of adjustment to actual or expected climate and its effects, in order to moderate harm or exploit beneficial opportunities; and

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- (b) in relation to natural systems, the process of adjustment to actual climate and its effects;  
**'climate change'** means a change in the state of the climate that can be identified by changes in the variability of its properties and that persists for an extended period, typically decades or longer;";
- (b) by the substitution for the definition of "Department" of the following definition:  
**'Department'** means the principal department that supports the Cabinet member referred to in section 3;";
- (c) by the substitution for subparagraph (iii) of paragraph (a) of the definition of "disaster" of the following subparagraph:  
 "(iii) significant disruption of the life of a community; and";
- (d) by the insertion after the definition of "disaster management" of the following definition:  
**'disaster risk reduction'** means either a policy goal or objective, and the strategic and instrumental measures employed for—  
 (a) anticipating future disaster risk;  
 (b) reducing existing exposure, hazard or vulnerability; and  
 (c) improving resilience;";
- (e) by the insertion after the definition of "district municipality" of the following definition:  
**'ecosystem'** means a system of relationships between animals and plants and their environment;";
- (f) by the substitution for the definition of "emergency preparedness" of the following definition:  
**'emergency preparedness'** means—  
 (a) a state of readiness which enables organs of state and other institutions involved in disaster management, the private sector, communities and individuals to mobilise, organise and provide relief measures to deal with an impending or current disaster or the effects of a disaster; and  
 (b) the knowledge and capacities developed by governments, professional response and recovery organisations, communities and individuals to effectively anticipate, respond to and recover from the impacts of likely, imminent or current hazard events or conditions;";
- (g) by the substitution for the definition of "mitigation" of the following definition:  
**'mitigation'**, in relation to—  
 (a) a disaster or disaster risk, means the lessening of the potential adverse impacts of physical hazards, including those that are human-induced, through actions that reduce hazard, exposure and vulnerability; or  
 (b) climate change, means a human intervention to reduce the sources or enhance the sinks of greenhouse gases;";
- (h) by the insertion after the definition of "municipal entity" of the following definition:  
**'municipality'** means a municipality as contemplated in section 2 of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000);";
- (i) by the substitution for the definition of "organ of state" of the following definition:  
**'organ of state'** means [a national, provincial or municipal organ of state] any organ of state referred to in section 239 of the Constitution of the Republic of South Africa, 1996;";
- (j) by the substitution for the definition of "post-disaster recovery and rehabilitation" of the following definition:  
**'post-disaster recovery and rehabilitation'** means efforts, including development, aimed at creating a situation where—  
 (a) normality in conditions caused by a disaster is restored by the restoration, and improvement, where appropriate, of facilities, livelihoods and living conditions of disaster-affected communities, including efforts to reduce disaster risk factors;

- (b) the effects of a disaster are mitigated; or
- (c) circumstances are created that will reduce the risk of a similar disaster occurring;";
- (k) by the insertion after the definition of "response" of the following definition: 5  
 " 'risk assessment' means a methodology to determine the nature and extent of risk by analysing potential hazards and evaluating existing conditions of vulnerability that together could potentially harm exposed people, property, services, livelihoods and the environment on which they depend;"; and
- (l) by the substitution for the definition of "vulnerability" of the following 10 definition:  
 " 'vulnerability' means the conditions determined by physical, social, economic and environmental factors or processes, which increase the susceptibility of a community to the impact of hazards."

#### Amendment of section 5 of Act 57 of 2002 15

2. Section 5 of the principal Act is hereby amended—

- (a) by the substitution for subparagraph (vi) of paragraph (e) of subsection (1) of the following subparagraph:  
 "(vi) traditional leaders as recommended by the National House of Traditional Leaders established by section 2 of the National House of Traditional Leaders Act, 2009 (Act No. 22 of 2009);" 20
- (b) by the deletion in paragraph (e) of subsection (1) of the word "and" at the end of subparagraph (xii), the insertion of the word "and" at the end of subparagraph (xiii) and the addition to that paragraph of the following subparagraph: 25  
 " (xiv) representatives of national umbrella organisations for women, children, the elderly and people with disabilities;"; and
- (c) by the addition of the following subsection:  
 "(4) The Forum serves as the South African National Platform for Disaster Risk Reduction." 30

#### Substitution of section 8 of Act 57 of 2002

3. The following section is hereby substituted for section 8 of the principal Act:

##### **"Establishment**

- 8. [(1)] A National Disaster Management Centre is established as an institution within the public service. 35
- [(2) **The National Centre forms part of, and functions within, a department of state for which the Minister is responsible.**]"

#### Amendment of section 10 of Act 57 of 2002

4. Section 10 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection: 40

- "(2) A person appointed as the Head of the National Centre reports to the Minister and holds office [in the Department] on terms and conditions set out in a written employment contract which must include terms and conditions setting performance standards."

#### Substitution of section 11 of Act 57 of 2002 45

5. The following section is hereby substituted for section 11 of the principal Act:

##### **"Acting Head**

- 11. When the Head of the National Centre is absent or otherwise unable to perform the functions of office, or during a vacancy in the office of Head of the National Centre, the [Director-General of the Department] Minister may designate another person in the service of, or seconded to, the Department to act as Head of the National Centre." 50

**Amendment of section 13 of Act 57 of 2002**

6. Section 13 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) An employee of an organ of state or other organisation may be seconded to the National Centre by agreement between the [Director-General of the Department] Head of the National Centre and that organ of state or organisation.” 5

**Amendment of section 15 of Act 57 of 2002**

7. Section 15 of the principal Act is hereby amended—

(a) by the insertion after paragraph (a) of subsection (2) of the following paragraph: 10

“(aA) in any event of a disaster, or a potential disaster, call on the South African National Defence Force, South African Police Service and any other organ of state to assist the disaster management structures;” and

(b) by the addition of the word “and” at the end of paragraph (b) of subsection (3) and the deletion of paragraph (c) of that subsection. 15

**Amendment of section 22 of Act 57 of 2002**

8. Section 22 of the principal Act is hereby amended by the substitution for paragraph (f) of the following paragraph:

“(f) acting in any other way approved by the [Director-General of the Department] Minister.” 20

**Amendment of section 23 of Act 57 of 2002**

9. Section 23 of the principal Act is hereby amended—

(a) by the deletion in subsection (1) of the word “and” at the end of paragraph (b) and the insertion after that paragraph of the following paragraph: 25

“(bA) inform the relevant provincial disaster management centre of the decision on the classification of the disaster made in terms of paragraph (b); and” and

(b) by the substitution for paragraph (a) of subsection (5) of the following paragraph: 30

“(a) it affects—

(i) more than one metropolitan or district municipality in the same province; or

(ii) a single metropolitan or district municipality in the province and that metropolitan municipality, or that district municipality with the assistance of the local municipalities within its area, is unable to deal with it effectively; [or] and 35

[(iii) a cross-boundary municipality in respect of which only one province exercises executive authority as envisaged by section 90(3)(a) of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998); and]” 40

**Amendment of section 24 of Act 57 of 2002**

10. Section 24 of the principal Act is hereby amended—

(a) by the substitution for the heading of the following heading: 45

“[Annual reports] Reporting”; and

(b) by the addition of the following subsections:

“(4) Each organ of state must, on any occurrence leading to the declaration of a disaster, report on a quarterly basis to the National Centre on—

(a) information reflecting the type, severity, loss in terms of lives, damage to property, crop and other goods; 50

(b) the spatial attributes of the areas, communities and households affected by the disaster;

- (c) an analysis of the impact of the disaster in accordance with gender, age, disability and cultural perspectives;
- (d) a list of the measures implemented in order to restore communities and the reconstruction and rehabilitation of infrastructure in a manner that makes those communities less vulnerable to disasters and strengthens their resilience;
- (e) information on the expenditure incurred on response and post-disaster recovery and rehabilitation;
- (f) listing of any actions in terms of risk reduction;
- (g) particular problems that were experienced in dealing with the 10 disasters; and
- (h) any other information that may be prescribed.

(5) Progress reports on the implementation of policy and legislation relating to disaster risk reduction and management in municipalities and provinces must be submitted on a quarterly basis to the municipal and provincial intergovernmental forums established in terms of the Intergovernmental Relations Framework Act, 2005 (Act No. 13 of 2005).

(6) If money has been allocated to a national department, province or municipality from the national revenue for purposes of disaster mitigation, relief and post-disaster recovery and rehabilitation, whether in the form of new funding or from current institutional funds, a progress report on the spending of that money must be submitted on a quarterly basis to the municipal, provincial and national intergovernmental forums established in terms of the Intergovernmental Relations Framework Act, 2005.

(7) Expenditure and performance reports for all funds received must be compiled by each organ of state and submitted to the transferring national officers and the National Treasury in accordance with the annual Division of Revenue Act.

(8) Copies of reports referred to in subsections (4), (5) and (6) must be submitted simultaneously to the National Treasury and the relevant disaster management centres in the respective spheres of government.

#### Amendment of section 25 of Act 57 of 2002

11. Section 25 of the principal Act is hereby amended—

- (a) by the substitution for subsection (1) of the following subsection:
  - “(1) Each national organ of state must—
  - (a) conduct a disaster risk assessment for its functional area;
  - (b) identify and map risks, areas, ecosystems, communities and households that are exposed or vulnerable to physical and human-induced threats;
  - (c) prepare a disaster management plan setting out—
    - (i) the way in which the concept and principles of disaster management are to be applied in its functional area, including expected climate change impacts and risks for the organ of state;
    - (ii) its role and responsibilities in terms of the national or provincial disaster management framework;
    - (iii) its role and responsibilities regarding emergency response and post-disaster recovery and rehabilitation;
    - (iv) its capacity to fulfil its role and responsibilities;
    - (v) particulars of its disaster management strategies;
    - (vi) contingency strategies and emergency procedures in the event of a disaster, including measures to finance these strategies; and
    - (vii) specific measures taken to address the needs of women, children, the elderly and persons with disabilities during the disaster management process;
  - (d) co-ordinate and align the implementation of its plan with those of other organs of state and institutional role-players;

- (e) provide measures and indicate how it will invest in disaster risk reduction and climate change adaptation, including ecosystem and community-based adaptation approaches;
- (f) develop early warning mechanisms and procedures for risks identified in its functional area; and
- (g) regularly review and update its plan.”;
- (b) by the insertion in subsection (3) after paragraph (a) of the following paragraph:  
 “(aA) A major public entity, listed in Schedule 2 to the Public Finance Management Act, 1999 (Act No.1 of 1999), must submit its disaster management plan prepared in terms of subsection (1) to the National Centre at the same time the major public entity submits its disaster management plan to the relevant national organ of state.”;
- (c) by the substitution in subsection (3) for paragraph (b) of the following paragraph:  
 “(b) If a national organ of state or major public entity fails to submit a copy of its disaster management plan or of any amendment to the plan in terms of paragraph (a) or (aA), as the case may be, the National Centre must report the failure to the Minister, who must take such steps as may be necessary to secure compliance with [that] the relevant paragraph, including reporting the failure to Parliament.”; and
- (d) by the addition to subsection (3) of the following paragraph:  
 “(c) The National Centre must make available applicable disaster management plans of organs of state to relevant provincial and municipal disaster management centres.”.

#### Insertion of section 31A in Act 57 of 2002

12. The following section is hereby inserted in the principal Act after section 31:

##### “Staff of provincial disaster management centre

- 31A. The staff of a provincial disaster management centre consists of—
- (a) the head of the provincial disaster management centre; and
- (b) suitably qualified persons, designated by the Head of the department within which the provincial disaster management centre is established.”.

#### Amendment of section 37 of Act 57 of 2002

13. Section 37 of the principal Act is hereby amended—
- (a) by the substitution for subparagraph (v) of paragraph (e) of subsection (1) of the following subparagraph:  
 “(v) a traditional [leaders] leader recommended by the Provincial House of Traditional Leaders established by the Premier of a province in terms of section 212 of the Constitution of the Republic of South Africa, 1996; and
- (b) by the insertion of the word “and” at the of subparagraph (xi) of paragraph (e) of subsection (1) and the addition to that paragraph of the following subparagraph:  
 “(xii) representatives of provincial umbrella organisations for women, children, the elderly and people with disabilities;”.

#### Amendment of section 38 of Act 57 of 2002

14. Section 38 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

- “(1) Each provincial organ of state must—
- (a) conduct a disaster risk assessment for its functional area;
- (b) identify and map risks, areas, ecosystems, communities and households that are exposed or vulnerable to physical and human-induced threats;

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| <ul style="list-style-type: none"> <li>(c) prepare a disaster management plan setting out—           <ul style="list-style-type: none"> <li>(i) the way in which the concept and principles of disaster management are to be applied in its functional area, including expected climate change impacts and risks for the organ of state;</li> <li>(ii) its role and responsibilities in terms of the national or provincial disaster management framework;</li> <li>(iii) its role and responsibilities regarding emergency response and post-disaster recovery and rehabilitation;</li> <li>(iv) its capacity to fulfil its role and responsibilities;</li> <li>(v) particulars of its disaster management strategies;</li> <li>(vi) contingency strategies and emergency procedures in the event of a disaster, including measures to finance these strategies; and</li> <li>(vii) specific measures taken to address the needs of women, children, the elderly and persons with disabilities during the disaster management process;</li> </ul> </li> <li>(d) co-ordinate and align the implementation of its plan with those of other organs of state and institutional role-players;</li> <li>(e) provide measures and indicate how it will invest in disaster risk reduction and climate change adaptation, including ecosystem and community-based adaptation approaches;</li> <li>(f) develop early warning mechanisms and procedures for risks identified in its functional area; and</li> <li>(g) <u>regularly review and update its plan.</u>”.</li> </ul> | <p>5</p> <p>10</p> <p>15</p> <p>20</p> |
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**Amendment of section 39 of Act 57 of 2002**

15. Section 39 of the principal Act is hereby amended by the substitution for 25 subsection (1) of the following subsection:

- “(1) Each province must—
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| <ul style="list-style-type: none"> <li>(a) conduct a disaster risk assessment for its provincial area;</li> <li>(b) identify and map risks, areas, ecosystems, communities and households that are exposed or vulnerable to physical and human-induced threats;</li> <li>(c) prepare a disaster management plan for the province as a whole, setting out—           <ul style="list-style-type: none"> <li>(i) the way in which the concept and principles of disaster management are to be applied in its provincial area, including expected climate change impacts and risks for the province;</li> <li>(ii) its role and responsibilities in terms of the national and provincial disaster management framework;</li> <li>(iii) its role and responsibilities regarding emergency response and post-disaster recovery and rehabilitation;</li> <li>(iv) its capacity to fulfil its role and responsibilities;</li> <li>(v) particulars of its disaster management strategies;</li> <li>(vi) contingency strategies and emergency procedures in the event of a disaster, including measures to finance these strategies; and</li> <li>(vii) specific measures taken to address the needs of women, children, the elderly and persons with disabilities during the disaster management process;</li> </ul> </li> <li>(d) co-ordinate and align the implementation of its plan with those of other organs of state and institutional role-players;</li> <li>(e) provide measures and indicate how it will invest in disaster risk reduction and climate change adaptation, including ecosystem and community-based adaptation approaches;</li> <li>(f) develop early warning mechanisms and procedures for risks identified in the provincial area; and</li> <li>(g) <u>regularly review and update its plan.</u>”.</li> </ul> | <p>30</p> <p>35</p> <p>40</p> <p>45</p> <p>50</p> |
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**Amendment of section 43 of Act 57 of 2002**

16. Section 43 of the principal Act is hereby amended by the addition of the following 55 subsections:

- “(3) A local municipality must establish capacity for the development and co-ordination of a disaster management plan and the implementation of a disaster management function for the municipality which forms part of the disaster



management plan as approved by the relevant municipal disaster management centre.

(4) A local municipality may establish a disaster management centre in consultation with the relevant district municipality in accordance with the terms set out in a service level agreement between the two parties, in alignment with national norms and standards.” 5

#### Insertion of section 45A in Act 57 of 2002

17. The following section is hereby inserted in the principal Act after section 45:

##### “Staff of municipal disaster management centre

45A. The staff of a municipal disaster management centre consists of— 10  
 (a) the head of the municipal disaster management centre; and  
 (b) suitably qualified persons appointed in the administration of the municipality.”

#### Substitution of heading to Part 3 of Chapter 5 of Act 57 of 2002

18. The following heading is hereby substituted for the heading to Part 3 of Chapter 5 of the principal Act:

“Powers and duties of [municipalities and municipal entities] municipal organs of state”.

#### Amendment of section 51 of Act 57 of 2002

19. Section 51 of the principal Act is hereby amended— 20

(a) by the substitution for subparagraph (iv) of paragraph (d) of subsection (1) of the following subparagraph:

“(v) one traditional [leaders] leader elected from the traditional council or traditional councils in a municipality recognised by the Premier of a province in terms of section 212 of the Constitution of the Republic of South Africa, 1996; and 25

(b) by the insertion of the word “and” at the of subparagraph (xi) of paragraph (e) of subsection (1) and the addition to that paragraph of the following subparagraph:

“(xii) representatives of local umbrella organisations for women, children, the elderly and people with disabilities;” 30

#### Amendment of section 52 of Act 57 of 2002

20. Section 52 of the principal Act is hereby amended—

(a) by the substitution for the heading of the following heading:

“**Preparation of disaster management plans by municipal [entities] organs of state other than municipalities**” 35

(b) by the substitution for subsection (1) of the following subsection:

“(1) Each municipal organ of state other than a municipality must—

(a) conduct a disaster risk assessment for its functional area;

(b) identify and map risks, areas, ecosystems, communities and 40 households that are exposed or vulnerable to physical and human-induced threats;

(c) prepare a disaster management plan setting out—

(i) the way in which the concept and principles of disaster management are to be applied in its functional area, including 45 expected climate change impacts and risks for that municipal entity or administrative unit;

(ii) its role and responsibilities in terms of the national, provincial or municipal disaster management framework;

(iii) its role and responsibilities regarding emergency response and 50 post-disaster recovery and rehabilitation;

(iv) its capacity to fulfil its role and responsibilities;

(v) particulars of its disaster management strategies;

- (vi) contingency strategies and emergency procedures in the event of a disaster, including measures to finance these strategies; and
- (vii) specific measures taken to address the needs of women, children, the elderly and persons with disabilities during the disaster management process; 5
- (d) co-ordinate and align the implementation of its plan with those of other organs of state and institutional role-players;
- (e) provide measures and indicate how it will invest in disaster risk reduction and climate change adaptation, including ecosystem and community-based adaptation approaches; 10
- (f) develop early warning mechanisms and procedures for risks identified in its functional area; and
- (g) regularly review and update its plan.”; and
- (c) by the substitution for subsection (2) of the following subsection: 15
  - “(2) (a) A municipal [entity] organ of state referred to in subsection (1) must submit a copy of its disaster management plan, and of any amendment to the plan, to the [National Centre and the] relevant [provincial and] municipal disaster management [centres] centre.
  - (b) If a municipal [entity] organ of state fails to submit a copy of its disaster management plan or of any amendment to the plan in terms of paragraph (a), the [National Centre or] relevant [provincial or] municipal disaster management centre must report the failure to the executive mayor or mayor, as the case may be, of the municipality concerned, who must take such steps as may be necessary to secure compliance with that paragraph, including reporting the failure to the municipal council.”. 20 25

#### Amendment of section 53 of Act 57 of 2002

21. Section 53 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection: 30
- “(1) Each municipality must—
- (a) conduct a disaster risk assessment for its municipal area;
  - (b) identify and map risks, areas, ecosystems, communities and households that are exposed or vulnerable to physical and human-induced threats;
  - (c) prepare a disaster management plan setting out— 35
    - (i) the way in which the concept and principles of disaster management are to be applied in its municipal area, including expected climate change impacts and risks for the municipality;
    - (ii) its role and responsibilities in terms of the national, provincial or municipal disaster management framework; 40
    - (iii) its role and responsibilities regarding emergency response and post-disaster recovery and rehabilitation;
    - (iv) its capacity to fulfil its role and responsibilities;
    - (v) particulars of its disaster management strategies;
    - (vi) contingency strategies and emergency procedures in the event of a disaster, including measures to finance these strategies; and 45
    - (vii) specific measures taken to address the needs of women, children, the elderly and persons with disabilities during the disaster management process;
  - (d) co-ordinate and align the implementation of its plan with those of other organs of state and institutional role-players; 50
  - (e) provide measures and indicate how it will invest in disaster risk reduction and climate change adaptation, including ecosystem and community-based adaptation approaches;
  - (f) develop early warning mechanisms and procedures for risks identified in the municipal area; 55
  - (g) regularly review and update its plan; and
  - (h) through appropriate mechanisms, processes and procedures established in terms of Chapter 4 of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000), consult the local community on the preparation or amendment of its plan.” 60

**Amendment of section 59 of Act 57 of 2002**

22. Section 59 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

- “(1) The Minister may make regulations not inconsistent with this Act—
- (a) concerning any matter that— 5
    - (i) may or must be prescribed in terms of a provision of this Act; or
    - (ii) is necessary to prescribe for the effective carrying out of the objects of this Act; **[and]**
  - (b) providing for the payment, out of moneys appropriated by Parliament for this purpose, of compensation to any person, or the dependants of any person, whose death, bodily injury or disablement results from any event occurring in the course of the performance of any function entrusted to such person in terms of this Act; 10
  - (c) concerning the focus areas of the national disaster management education, training and research frameworks; and 15
  - (d) concerning the declaration and classification of disasters.”.

**Substitution of long title of Act 57 of 2002**

23. The following long title is hereby substituted for the long title of the principal Act:

“ACT

- To provide for— 20
- **an integrated and co-ordinated disaster management policy that focuses on preventing or reducing the risk of disasters, mitigating the severity of disasters, emergency preparedness, rapid and effective response to disasters and post-disaster recovery and rehabilitation;**
  - **the establishment and functioning of national, provincial and municipal disaster management centres;** 25
  - **disaster management volunteers; and**
  - **matters incidental thereto.**”.

**Short title and commencement**

24. This Act is called the Disaster Management Amendment Act, 2015, and comes into operation on a date determined by the President by proclamation in the *Gazette*. 30

## MEMORANDUM ON OBJECTS OF THE DISASTER MANAGEMENT AMENDMENT BILL, 2015

### 1. BACKGROUND

- 1.1 Since the promulgation of the Disaster Management Act, 2002 (Act No. 57 of 2002) ('principal Act'), in 2003 and during the subsequent commencement of the legislation in the various spheres of government, some challenges were experienced to a varying extent in implementing all aspects of the legislation effectively.
- 1.2 During 2010 practitioners and stakeholders in the field of disaster management, as well as research undertaken by the South African Local Government Association (SALGA), and the African Centre for Disaster Studies (ACDS) amongst others, highlighted some areas which were identified either as gaps in the principal Act or as issues which are impeding or hampering the effective implementation of the Act. In addition, an analysis by a National Interdepartmental Legislative Review Committee (NILRC) on legislation which has an impact on service delivery also highlighted the principal Act as an example of legislation requiring review.
- 1.3 Considering some of the views that have been expressed by the political leadership, SALGA, the Disaster Management Institute of Southern Africa (DMISA), the National Disaster Management Advisory Forum (NDMAF), practitioners, academics and others in the disaster management fraternity, the need was acknowledged to call for a review of the principal Act.
- 1.4 The main thrust of the principal Act and the National Disaster Management Framework, 2005 (NDMF), centres around the creation of appropriate institutional arrangements for disaster management. It is argued that the ideals of disaster management cannot be achieved without structures to support its myriad of actions.
- 1.5 Essentially, the focus of the principal Act is four-fold:
  - it establishes an elaborate institutional framework for disaster management;
  - it entrenches a detailed policy development and strategic planning framework for disaster management;
  - it provides for the classification and declaration of disasters; and
  - it deals provisionally with the funding of post-disaster recovery and rehabilitation.
- 1.6 The principal Act also deals with disaster management volunteers and a few other ancillary matters. Through the process of reviewing the principal Act, the National Disaster Management Centre (NDMC) also intends to confirm the Priority Action 1 of the International Hyogo Framework of Action (IHFA) to ensure that disaster risk reduction is a national and a local priority with a strong institutional basis for implementation.
- 1.7 Contact was also made with the Global Facility for Disaster Reduction and Recovery (GFDRR) of the World Bank as well as the International Federation of Red Cross and Red Crescent Societies (IFRC) to obtain input on international good practice, more specifically on legislating issues of disaster risk reduction. A study was also undertaken by the research unit in the Department of Cooperative Governance and Traditional Affairs to analyse international good practice models.

## 2. OBJECTS OF THE BILL

The main object of the amendment Bill is to address the problems that have been experienced in the implementation of the principal Act since its promulgation in 2003 and to promote the effective and efficient implementation of the principal Act.

## 3. SUMMARY OF THE BILL

- 3.1 **Clause 1** of the Bill seeks to amend some of the definitions of the principal Act to be in line with the generally accepted definitions used in the international context and across sectors nationally so as to make the principal Act simpler and easier to understand. To this end, the definitions for department, disaster, emergency preparedness, mitigation, organ of state, post disaster recovery and rehabilitation, and vulnerability are substituted. Clause 1 of the Bill also seeks to insert definitions in the principal Act to define adaptation, climate change, disaster risk reduction, ecosystem, municipality and risk assessment.
- 3.2 **Clause 2** of the Bill seeks to amend section 5 of the principal Act to make provision for the National House of Traditional Leaders to recommend traditional leaders to serve on the National Disaster Management Advisory Forum (NDMAF). Clause 2 (*b*) of the Bill also amends section 5 of the principal Act to provide for the NDMAF to serve as the South African National Platform for Disaster Risk Reduction, thereby fulfilling its obligations in terms of the Hyogo Framework of Action adopted by the United Nations in 2005.
- 3.3 **Clause 3** of the Bill seeks to amend section 8 of the principal Act to provide for the legal consequences of the establishment of the NDMC as a government component in terms of the Public Service Act, should this take place by deleting the reference to the National Centre forming part of, and functioning within a department of state for which the Minister is responsible.
- 3.4 **Clause 4** of the Bill seeks to amend section 10 of the principal Act to provide for the legal consequences of the establishment of the NDMC as a government component in terms of the Public Service Act, should this take place.
- 3.5 **Clause 5** of the Bill seeks to amend section 11 of the principal Act to provide for the legal consequences of the establishment of the NDMC as a government component in terms of the Public Service Act, should this take place.
- 3.6 **Clause 6** of the Bill seeks to amend section 13 of the principal Act to provide for the legal consequences of the establishment of the NDMC as a government component in terms of the Public Service Act, should this take place.
- 3.7 **Clause 7** of the Bill seeks to amend section 15 of the principal Act to make provision for the NDMC to call on the South African National Defence Force (SANDF), the South African Police Service (SAPS) and any organ of state to assist the disaster management structures in any event of a disaster or a potential disaster.
- 3.8 **Clause 8** of the Bill seeks to amend section 22 of the principal Act to provide for the legal consequences of the establishment of the NDMC as a government component in terms of the Public Service Act, should this take place.
- 3.9 **Clause 9** of the Bill seeks to amend section 23 of the principal Act by providing for the National Centre to inform the relevant provincial disaster management centre of the decision on the classification of a disaster. Clause 9 also seeks to repeal subparagraph (iii) of paragraph (*a*) of subsection (5) of section 23 of the principal Act which refers to a cross-boundary municipality as those have been abolished since the promulgation of the Cross-Boundary Municipalities Laws Repeal and Related Matters Act, 2005 (Act No. 23 of 2005).

- 3.10 **Clause 10** of the Bill seeks to amend section 24 of the principal Act to provide for an extended reporting system by organs of state to the National Centre on progress on the implementation of policy and legislation. On any occurrence leading to the declaration of a disaster, reports must reflect information relating to the losses and damages, spatial attributes of the affected area, information on expenditure incurred on response and post disaster recovery and rehabilitation, disaster risk reduction actions performed, particular problems experienced in dealing with disasters and other relevant information.
- 3.11 **Clause 10** of the Bill also seeks to amend section 24 of the principal Act so as to provide for progress reports on the implementation of policy and legislation as well as expenditure and performance reports for all funds received from the national revenue for purposes of disaster mitigation, relief and post-disaster recovery and rehabilitation to intergovernmental forums established in terms of the Intergovernmental Relations Framework Act, 2005 (Act No. 13 of 2005).
- 3.12 **Clause 11** of the Bill seeks to amend section 25 of the principal Act by providing for the logical sequence of events, i.e. conducting a risk assessment prior to planning and to ensure that disaster management plans of national organs of state indicate the way in which the concept and principles of disaster management are to be applied in its functional area, including expected climate change impacts and risks for the organ of state. National organs of state should also identify and map risks, areas, ecosystems, communities and households that are exposed and vulnerable to physical and human-induced threats. It also provides for national organs of state to indicate how it will invest in disaster risk reduction and climate change adaptation, including ecosystem and community—based approaches and develop early warning mechanisms and procedures for risks identified in its functional area.
- 3.13 **Clause 11** of the Bill also seeks to amend section 25 of the principal Act so as to clarify the responsibility of national public entities such as Eskom, Telkom, etc. in terms of disaster management planning and communication with the National Centre and makes provision for the sharing of disaster management plans between the national centre and relevant provincial and municipal disaster management centres.
- 3.14 **Clause 12** of the Bill seeks to amend section 37 of the principal Act to make provision for the National House of Traditional Leaders to recommend traditional leaders to serve on the Provincial Disaster Management Advisory Forums (PDMAFs).
- 3.15 **Clause 13** of the Bill seeks to amend section 38 of the principal Act by providing for the logical sequence of events, i.e. conducting a risk assessment prior to planning and to ensure that disaster management plans of provincial organs of state indicate the way in which the concept and principles of disaster management are to be applied in its functional area, including expected climate change impacts and risks for the organ of state. Provincial organs of state should also identify and map risks, areas, ecosystems, communities and households that are exposed and vulnerable to physical and human-induced threats. It also provides for provincial organs of state to indicate how it will invest in disaster risk reduction and climate change adaptation, including ecosystem and community-based approaches and develop early warning mechanisms and procedures for risks identified in its functional area.
- 3.16 **Clause 14** of the Bill seeks to amend section 43 of the principal Act by making provision for a local municipality to establish capacity for the development and coordination of a disaster management plan and the implementation of a disaster management function for the municipality which forms part of the disaster management plan as approved by the relevant district municipality. The clause also provides for a mechanism whereby a local municipality may establish a disaster management centre in consultation with the relevant

district municipality and in accordance with a suitable service level agreement.

- 3.17 **Clauses 15** of the Bill deals with an amendment which is consequential to the amendment of section 52 of the principal Act by referring to the preparation of disaster management plans by municipal organs of state other than municipalities.
- 3.18 **Clause 16** of the Bill seeks to amend section 51 of the principal Act to make provision for the National House of Traditional Leaders to recommend traditional leaders to serve on the Municipal Disaster Management Advisory Forums (MDMAFs).
- 3.19 **Clause 17** of the Bill seeks to deal with the amendment of section 52 of the principal Act by providing for the logical sequence of events, i.e. conducting a risk assessment prior to planning and to ensure that disaster management plans of municipal organs of state other than municipalities (i.e. municipal entities, functional units and departments within a municipality) indicate the way in which the concept and principles of disaster management are to be applied in its functional area, including expected climate change impacts and risks for the organ of state. They should also identify and map risks, areas, ecosystems, communities and households that are exposed and vulnerable to physical and human-induced threats. It also provides for these organs of state to indicate how it will invest in disaster risk reduction and climate change adaptation, including ecosystem and community-based approaches and develop early warning mechanisms and procedures for risks identified in its functional area.
- 3.20 **Clause 18** of the Bill seeks to amend section 53 of the principal Act by providing for the logical sequence of events, i.e. conducting a risk assessment prior to planning and to ensure that a disaster management plan of a municipality indicate the way in which the concept and principles of disaster management are to be applied in its municipal area, including expected climate change impacts and risks for the municipality. It should also identify and map risks, areas, ecosystems, communities and households that are exposed and vulnerable to physical and human-induced threats. It also provides for the municipality to indicate how it will invest in disaster risk reduction and climate change adaptation, including ecosystem and community-based approaches and develop early warning mechanisms and procedures for risks identified in its municipal area.
- 3.21 **Clause 19** of the Bill seeks to amend section 59 of the principal Act to provide for additional regulations to be made by the Minister concerning the focus areas of the national disaster management education and training framework and concerning the declaration and classification of disasters.
- 3.22 **Clause 20** of the Bill seeks to provide for the substitution of the long title of the principal Act.
- 3.23 **Clause 21** of the Bill introduces the short title of the Amendment Act and provides for the date of the Amendment Act coming into operation.

#### 4. PARTIES CONSULTED

- 4.1 The National Disaster Management Advisory Forum (NDMAF) which serves as the multi-disciplinary stakeholder platform in which national, provincial and local government as well as other disaster management role-players consult one another and coordinate their actions on matters relating to disaster management, supports the amendments contained in the draft Disaster Management Amendment Bill. In the process of amending the principal Act, each sphere of government, sector departments as well as other stakeholders such as relevant public entities were consulted and had the opportunity to comment and give their inputs.

- 4.2 The Departments of Justice and Constitutional Development and the National Treasury were also consulted on the proposed amendments to the draft Amendment Bill.

## **5. FINANCIAL IMPLICATIONS FOR THE STATE**

- 5.1 None currently envisaged that cannot be covered by existing provisions.
- 5.2 In terms of current legislative provisions, each national organ of state already has a responsibility to develop a disaster management plan for its area of responsibility in terms of section 25 of the existing Disaster Management Act, 2002. One of the requirements of the plan is to set out its capacity to fulfil its role and responsibilities. Furthermore, it is stipulated that the disaster management plan must form an integral part of the planning of respective organs of state.
- 5.3 The proposed amendments in relation to these functions could therefore be incorporated into the existing financial arrangements of organs of state. There is therefore no immediate need for an increase in financial expenditure as the proposed amendments can be addressed within the current fiscal framework.

## **6. FINANCIAL IMPLICATIONS FOR PROVINCES**

None envisaged that cannot be covered by existing provisions for these functions. Funds for disaster management activities in provinces are currently allocated through a number of conditional grants, the equitable share and own budgets of provinces.

## **7. FINANCIAL IMPLICATIONS FOR MUNICIPALITIES**

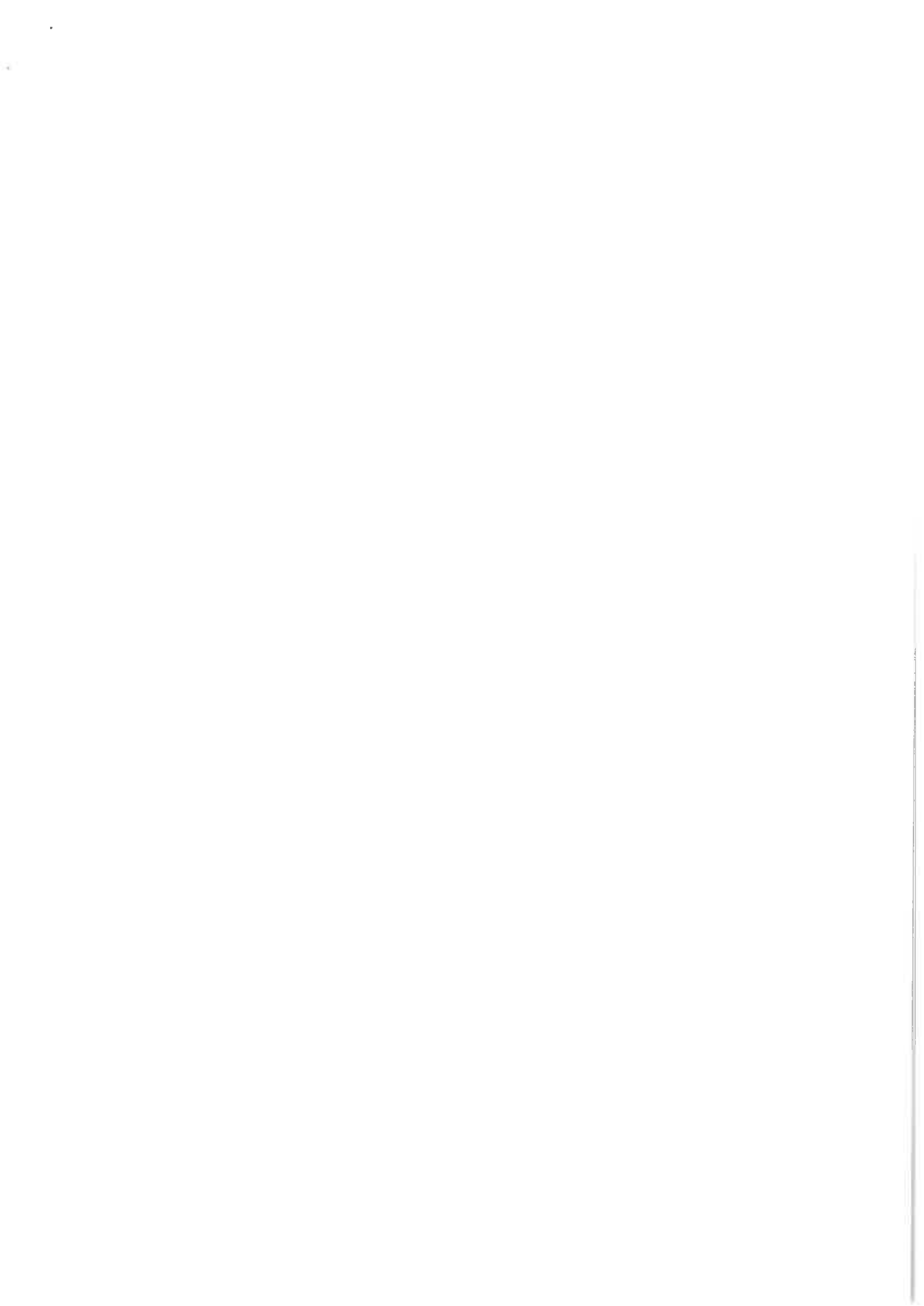
- 7.1 Funds for disaster management activities in municipalities are currently allocated through a number of conditional grants, the equitable share and own budgets of municipalities.
- 7.2 The amendment of section 43 of the principal Act will re-affirm the function of district municipalities regarding the responsibility to establish capacity for the development and coordination of a disaster management plan and the implementation of a disaster management function for the municipal area. The capacity building will be done in accordance with the municipality's existing human resources skills development plans and Integrated Development Plans.
- 7.3 Local municipalities may also establish a Disaster Management Centre in consultation with the District Municipality which is primarily responsible for the Disaster Management Centre. This provision of services will be aligned with other disaster management activities in the district. Service level agreements should be entered into to support such arrangements. The Minister of Cooperative Governance and Traditional Affairs can issue norms and standards in this regard. This assignment of a function, must be done in accordance with the processes outlined in the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000) and Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998) and will include a financial impact study and approval from the Financial and Fiscal Commission and the Minister of Finance.

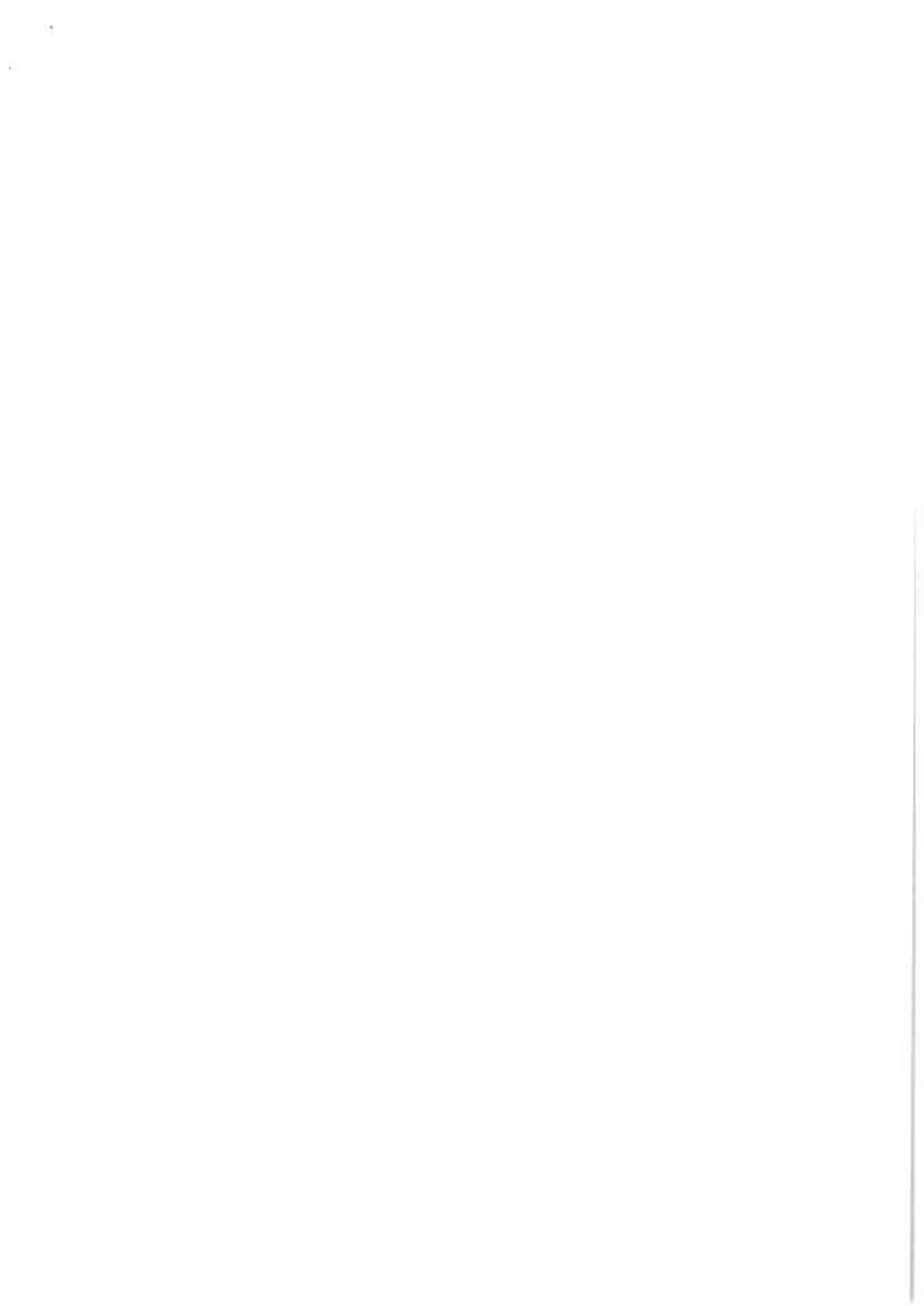
## **8. PARLIAMENTARY PROCEDURE**

- 8.1 The State Law Advisers and the Department of Co-operative Governance are of the opinion that this Amendment Bill must be dealt with in accordance with the procedure prescribed by section 76 of the Constitution. The Bill falls within the functional areas listed in Schedule 4 to the Constitution.



- 8.2 The State Law Advisers are of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.





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