

REPUBLIC OF SOUTH AFRICA

DISASTER MANAGEMENT BILL

*(As introduced in the National Assembly as a section 76 Bill; explanatory summary of Bill
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(The English text is the official text of the Bill)*

(MINISTER FOR PROVINCIAL AND LOCAL GOVERNMENT)

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BILL

To provide for 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; for the establishment of national, provincial and municipal disaster management centres; and for matters incidental thereto.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

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CHAPTER 1

INTERPRETATION, APPLICATION AND ADMINISTRATION OF ACT

Definitions

1. In this Act, unless the context indicates otherwise—
 - “**Department**” means the department of state referred to in section 8(2); 25
 - “**disaster**” means a progressive or sudden, widespread or localised, natural or human-caused occurrence which—
 - (a) causes or threatens to cause—
 - (i) death, injury or disease;
 - (ii) damage to property, infrastructure or the environment; or 30
 - (iii) disruption of the life of a community; and
 - (b) is of a magnitude that exceeds the ability of those affected by the disaster to cope with its effects using only their own resources;
 - “**disaster management**” means a continuous and integrated multi-sectoral, multi-disciplinary process of planning and implementation of measures aimed at— 35
 - (a) preventing or reducing the risk of disasters;
 - (b) mitigating the severity or consequences of disasters;
 - (c) emergency preparedness;
 - (d) a rapid and effective response to disasters; and
 - (e) post-disaster recovery and rehabilitation; 40
 - “**district municipality**” means a municipality that has municipal executive and legislative authority in an area that includes more than one municipality, and which is described in section 155(1) of the Constitution as a category C municipality;
 - “**emergency preparedness**” means a state of readiness which enables organs of state and other institutions involved in disaster management, the private sector, 45 communities and individuals to mobilise, organise, and provide relief measures to deal with an impending or current disaster or the effects of a disaster;

“integrated development plan”, in relation to a municipality, means a plan envisaged in section 25 of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000);

“local disaster” means a disaster classified as a local disaster in terms of section 23; 5

“local municipality” means a municipality that shares municipal executive and legislative authority in its area with a district municipality within whose area it falls, and which is described in section 155(1) of the Constitution as a category B municipality;

“MEC” means a Member of the Executive Council of a province; 10

“metropolitan municipality” means a municipality that has exclusive executive and legislative authority in its area, and which is described in section 155(1) of the Constitution as a category A municipality;

“Minister” means the Cabinet member designated in terms of section 3 to administer this Act; 15

“mitigation”, in relation to a disaster, means measures aimed at reducing the impact or effects of a disaster;

“municipal disaster management centre” means a centre established in the administration of a municipality in terms of section 42;

“municipal entity” means a municipal entity defined in section 1 of the Local 20 Government: Municipal Systems Act, 2000;

“municipal legislation” means municipal by-laws or any subordinate legislation made in terms of a by-law;

“municipal manager” means a person appointed as such in terms of section 82 of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998); 25

“municipal organ of state” means—

- (a) a municipality;
- (b) a department or other administrative unit within the administration of a municipality, including an internal business unit referred to in section 76(a)(ii) of the Local Government: Municipal Systems Act, 2000; or 30
- (c) a municipal entity;

“National Centre” means the National Disaster Management Centre established by section 8(1);

“national disaster” means a disaster classified as a national disaster in terms of section 23; 35

“national disaster management framework” means the national disaster management framework established in terms of section 5;

“national organ of state” means a national department or national public entity defined in section 1 of the Public Finance Management Act, 1999 (Act No. 1 of 1999); 40

“organ of state” means a national, provincial or municipal organ of state;

“post-disaster recovery and rehabilitation” means efforts, including development, aimed at restoring normality in conditions caused by a disaster;

“prescribe” means prescribe by regulation in terms of section 54;

“prevention”, in relation to a disaster, means measures aimed at stopping a 45 disaster from occurring or preventing an occurrence from becoming a disaster;

“provincial disaster” means a disaster classified as a provincial disaster in terms of section 23;

“provincial disaster management centre” means a centre established in the administration of a province in terms of section 29(1); 50

“provincial organ of state” means a provincial department or provincial public entity defined in section 1 of the Public Finance Management Act, 1999 (Act No. 1 of 1999);

“response”, in relation to a disaster, means measures taken during or immediately after a disaster in order to bring relief to people and communities affected by the 55 disaster;

“statutory functionary” means a person performing a function assigned to that person by national, provincial or municipal legislation;

“this Act” includes any regulations made in terms of section 54.

Application of Act

2. (1) This Act does not apply to an occurrence falling within the definition of “disaster” in section 1—
- (a) if, and from the date on which, a state of emergency is declared to deal with that occurrence in terms of the State of Emergency Act, 1997 (Act No. 64 of 1997); or
 - (b) to the extent that that occurrence can be dealt with effectively in terms of other national legislation—
 - (i) aimed at reducing the risk, and addressing the consequences, of occurrences of that nature; and
 - (ii) identified by the Minister by notice in the *Gazette*.
- (2) The Minister may, in consultation with Cabinet members responsible for the administration of national legislation referred to in subsection (1)(b), issue guidelines on the application of that subsection.
- (3) Where provincial legislation regulating disaster management in a province is inconsistent with this Act, this Act prevails over the provincial legislation, subject to section 146 of the Constitution.

Administration of Act

3. This Act is administered by a Cabinet member designated by the President.

CHAPTER 2

INTER-GOVERNMENTAL STRUCTURES AND POLICY FRAMEWORK

Inter-governmental Committee on Disaster Management

4. (1) The President must establish an Inter-governmental Committee on Disaster Management consisting of—
- (a) Cabinet members involved in disaster management or the administration of legislation referred to in section 2(1)(b);
 - (b) MECs of each province involved in disaster management in their respective provinces, selected by the Premier of the province concerned; and
 - (c) representatives of organised local government, selected by the South African Local Government Association.
- (2) The Minister is the chairperson of the Committee.
- (3) The Committee—
- (a) must give effect to the principles of co-operative government in Chapter 3 of the Constitution on issues relating to disaster management;
 - (b) is accountable and must report to Cabinet on the co-ordination of disaster management among the spheres of government;
 - (c) must advise and make recommendations to Cabinet—
 - (i) on issues relating to disaster management; and
 - (ii) on the establishment of a national framework for disaster management aimed at ensuring an integrated and common approach to disaster management in the Republic by all national, provincial and municipal organs of state, statutory functionaries, non-governmental institutions involved in disaster management, the private sector, communities and individuals.

National disaster management framework

5. (1) The Minister, by notice in the *Gazette*—
- (a) must establish a national disaster management framework, taking into account any recommendations of the Inter-governmental Committee on Disaster Management made in terms of section 4; and
 - (b) may, from time to time, amend the national disaster management framework.

(2) Before establishing or amending the national disaster management framework, the Minister must publish particulars of the proposed framework or amendment in the *Gazette* for public comment.

Contents of national disaster management framework

6. The national disaster management framework must outline a coherent, transparent and inclusive policy on disaster management appropriate for the Republic as a whole with a proportionate emphasis on disasters of different kinds, severity and magnitude that occur or may occur in Southern Africa, and must— 5
- (a) guide the development and implementation of the concept of disaster management envisaged by this Act; 10
 - (b) establish prevention and mitigation as the core principle of the disaster management policy;
 - (c) facilitate—
 - (i) South Africa's co-operation in international disaster management;
 - (ii) regional co-operation in disaster management in Southern Africa; and 15
 - (iii) the establishment of joint standards of practice;
 - (d) give effect to the application of co-operative governance on issues concerning disasters and disaster management among the spheres of government and—
 - (i) determine the relationship between the sphere of government exercising primary responsibility for the co-ordination and management of a disaster in terms of sections 26(1), 39(1) and 50(1) or (2) and the spheres of government performing supportive roles; 20
 - (ii) allocate specific responsibilities in this regard to the different spheres;
 - (e) guide the development and implementation of disaster management within national, provincial and municipal organs of state on a cross-functional and multidisciplinary basis and allocate responsibilities in this regard to different organs of state; 25
 - (f) facilitate—
 - (i) the involvement of the private sector, non-governmental organisations, communities and volunteers in disaster management; and 30
 - (ii) partnerships in this regard between organs of state and the private sector, non-governmental organisations and communities;
 - (g) provide incentives for disaster management capacity-building and training; and
 - (h) provide a framework within which organs of state may fund disaster management, including grants to contribute to post-disaster recovery and rehabilitation and the payment of compensation to victims of disasters and their dependants. 35

National Disaster Management Advisory Forum

7. (1) The Minister must establish a National Disaster Management Advisory Forum consisting of— 40
- (a) the Head of the National Centre;
 - (b) a senior representative of each national department whose Minister is a member of the Inter-governmental Committee on Disaster Management, designated by that Minister; 45
 - (c) a senior representative of each provincial department whose MEC is a member of that Committee, designated by that MEC;
 - (d) representatives of organised local government;
 - (e) the representatives of other disaster management role players designated by the Minister, which may include— 50
 - (i) organised business;
 - (ii) the Chamber of Mines;
 - (iii) organised labour;
 - (iv) the insurance industry;

- (v) religious and welfare organisations;
- (vi) medical, paramedical and hospital organisations;
- (vii) organisations representing the disaster management professions in South Africa;
- (viii) other relevant non-governmental organisations, which may include international organisations and relief agencies; 5
- (ix) statutory bodies regulating safety standards in particular industries;
- (x) institutions of higher education; and
- (xi) institutions that can provide scientific and technological advice or support to disaster management; 10
- (f) experts in disaster management designated by the Minister; and
- (g) persons co-opted by the Forum for a specific period or specific discussions.
- (2) The Head of the National Centre is the chairperson of the Forum.
- (3) The Forum is a body in which national, provincial and local government and other disaster management role players consult, and co-ordinate their actions, on matters relating to disaster management, and it may, in performing this function— 15
- (a) make recommendations concerning the national disaster management framework to the Inter-governmental Committee on Disaster Management; and
- (b) advise any organ of state, statutory functionary, the private sector, non-governmental organisation or community on any matter relating to disaster management. 20

CHAPTER 3

NATIONAL DISASTER MANAGEMENT

Part 1: National Disaster Management Centre

Establishment 25

8. (1) A National Disaster Management Centre is established as an institution within the public service.

(2) The National Centre forms part of, and functions within, a department of state for which the Minister is responsible.

Objective 30

9. The objective of the National Centre is to promote an integrated and co-ordinated system of disaster management, with a special emphasis on prevention and mitigation, by national, provincial and municipal organs of state, statutory functionaries, other role players involved in disaster management and communities.

Administration 35

Appointment of Head

10. (1) The Minister must, subject to subsection (2) and legislation governing the public service, appoint a person as the Head of the National Centre.

(2) A person appointed as the Head of the National Centre 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. 40

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 may designate another person in the service of, or seconded to, the Department to act as Head of the National Centre. 45

Responsibilities of Head

- 12.** (1) The Head of the National Centre—
- (a) is responsible for the performance by the National Centre of its duties and the exercise of its powers; and
 - (b) takes all decisions of the National Centre in the performance of its duties and the exercise of its powers, except decisions of the National Centre taken in consequence of a delegation or instruction in terms of section 14.
- (2) The Head of the National Centre performs the functions of office subject to section 15(3).

Staff 10

- 13.** (1) The staff of the National Centre consists of—
- (a) the Head of the National Centre; and
 - (b) persons in the service of the Department designated by the Director-General of the Department to perform the duties of the National Centre.
- (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 and that organ of state or organisation.
- (3) Persons seconded to the National Centre perform their functions of office subject to the control and directions of the Head of the National Centre.

Delegation 20

- 14.** (1) The Head of the National Centre may delegate, in writing, any of the powers or assign any of the duties entrusted to the National Centre in terms of this Act to—
- (a) a member of the staff of the National Centre; or
 - (b) a provincial or municipal disaster management centre, by agreement with that centre.
- (2) A delegation in terms of subsection (1)—
- (a) is subject to the limitations or conditions that the Head of the National Centre may impose; and
 - (b) does not divest the Head of the National Centre of the responsibility concerning the exercise of the delegated power or the performance of the assigned duty.
- (3) The Head of the National Centre may confirm, vary or revoke any decision taken in consequence of a delegation in terms of subsection (1), but no such variation or revocation of a decision may detract from any rights that may have accrued as a result of the decision.

Duties and powers of National Centre

General duties and powers

- 15.** (1) The National Centre must, subject to other provisions of this Act, do all that is necessary to achieve its objective mentioned in section 9, and, for this purpose—
- (a) must specialise in issues concerning disasters and disaster management;
 - (b) must monitor whether organs of state and statutory functionaries comply with this Act and the national disaster management framework and must monitor progress with post-disaster recovery and rehabilitation;
 - (c) must act as a repository and conduit for information concerning disasters, impending disasters and disaster management;
 - (d) may act as an advisory and consultative body on issues concerning disasters and disaster management for—
 - (i) organs of state and statutory functionaries;
 - (ii) the private sector and non-governmental organisations;
 - (iii) communities and individuals; and
 - (iv) other governments and institutions in Southern Africa;

- (e) must initiate and facilitate efforts to make funds available for disaster management;
 - (f) must make recommendations to any relevant organ of state or statutory functionary—
 - (i) on draft legislation affecting this Act, the national disaster management framework or any other disaster management issue; 5
 - (ii) for the alignment of national, provincial or municipal legislation with this Act and the national disaster management framework; or
 - (iii) in the event of a national disaster, on whether a national state of disaster should be declared in terms of section 27; 10
 - (g) must promote the recruitment, training and utilisation of volunteers to participate in disaster management;
 - (h) must promote disaster management capacity-building and training in the Republic and, to the extent that may be appropriate, in other Southern African states; 15
 - (i) may assist in the implementation of legislation referred to in section 2(1)(b) to the extent required by the administrator of such legislation and approved by the Minister; and
 - (j) must perform any other duties assigned to it and may exercise any other powers conferred on it in terms of this Act. 20
- (2) The National Centre may—
- (a) engage in any lawful activity, whether alone or together with any other organisation in the Republic or elsewhere, aimed at promoting the proper performance of its duties or the exercise of its powers;
 - (b) exchange information relevant to disaster management with institutions performing functions similar to those of the National Centre in the Republic and elsewhere. 25
- (3) The National Centre must perform its duties and exercise its powers—
- (a) within the national disaster management framework;
 - (b) subject to the directions of the Minister; 30
 - (c) in accordance with the administrative instructions of the Director-General of the Department; and
 - (d) subject to the Public Finance Management Act, 1999 (Act No. 1 of 1999).
- (4) The National Centre must liaise and strive to co-ordinate its activities with the provincial and local disaster management centres. 35

National Centre to identify and establish communication links with disaster management role players

- 16.** (1) The National Centre must—
- (a) develop and maintain a directory of institutional role players that are or should be involved in disaster management in Southern Africa showing— 40
 - (i) their names, telephone and fax numbers and physical, postal and electronic addresses;
 - (ii) particulars of their involvement in disaster management; and
 - (iii) the nature, capacity and location of emergency and relief services under their control; and 45
 - (b) establish effective communication links with contact persons identified by those role players.
- (2) The directory must include particulars of—
- (a) all national, provincial and municipal organs of state and statutory functionaries involved in disaster management; 50
 - (b) non-governmental organisations involved in disaster management;
 - (c) private sector organisations with specialised equipment, skills or knowledge relevant to disaster management;
 - (d) private sector voluntary agencies involved in disaster management; and
 - (e) foreign voluntary agencies involved in disaster management in Southern Africa. 55

(3) The National Centre must establish communication links with foreign disaster management agencies, including institutions performing functions similar to those performed by the National Centre, to exchange information and to have access to international expertise in and assistance in respect of disaster management.

Disaster management information system

5

17. (1) The National Centre must act as a repository of, and conduit for, information concerning disasters and disaster management, and, must for this purpose—

- (a) collect information on all aspects of disasters and disaster management;
- (b) process and analyse such information; and
- (c) develop and maintain an electronic database envisaged in subsection (2). 10

(2) The electronic database developed by the National Centre must contain extensive information concerning disasters that occur or may occur in Southern Africa and disaster management issues, including information on—

- (a) phenomena, occurrences, activities and circumstances that cause or aggravate disasters; 15
- (b) risk factors underlying disasters and ways and means to reduce such risks;
- (c) prevention and mitigation;
- (d) early warning systems;
- (e) areas and communities that are particularly vulnerable to disasters;
- (f) the directory of role players referred to in section 16 and the names and particulars of their respective contact persons; 20
- (g) emergency response resources and capacity in the national, provincial and local spheres of government and in the non-government sectors, including the location, size and other relevant data relating to—
 - (i) police stations; 25
 - (ii) hospitals, clinics and other health institutions;
 - (iii) emergency medical services;
 - (iv) school, church and public buildings and other facilities that could be used as emergency shelters or hospitals in the event of a disaster;
 - (v) fire-fighting services; and 30
 - (vi) airports, airstrips, harbours, seaports and railway stations;
- (h) emergency response resources and capacity in neighbouring states and relevant international relief agencies;
- (i) the state of emergency preparedness in the different spheres of government;
- (j) each disaster classified by the National Centre in terms of section 23, including the assessment of the National Centre of the disaster and the information recorded in the register referred to in subsection (1)(c) of that section; and 35
- (k) research and training facilities for disaster management disciplines. 40

(3) The National Centre must take reasonable steps to ensure that the database is electronically accessible by any person free of charge. 40

(4) Subsection (3) does not prevent the National Centre from—

- (a) establishing security safeguards to protect the database from abuse; and
- (b) classifying parts of the database as restricted areas and limiting access to those parts to persons authorised by the National Centre. 45

Gathering of information

18. (1) The National Centre may, in writing, request any organ of state or other person in possession of information required by the National Centre for the purpose of section 16 or 17, to provide such information free of charge to the National Centre within a reasonable period determined by the National Centre. 50

(2) An organ of state must comply with a request in terms of subsection (1).

(3) If an organ of state fails to comply with a request, the National Centre must report the failure to the Minister, who must take such steps as may be necessary to secure compliance with the request, including reporting the failure to Parliament.

Disaster management plans and strategies

19. The National Centre must—
- (a) develop guidelines for, and initiate, support and assist in the preparation, and regular review and updating of disaster management plans and strategies by organs of state and other institutional role players involved in disaster management; 5
 - (b) assist in aligning the plans and strategies;
 - (c) assist in co-ordinating the implementation of these plans and strategies by the respective organs of state and other role players; and
 - (d) develop guidelines for, and initiate support and assist in, the integration of the concept and principles of disaster management, and particularly strategies on prevention and mitigation, with national, provincial and local development plans, programmes and initiatives. 10

Prevention and mitigation

20. (1) The National Centre, to the extent that it has the capacity, must give guidance to organs of state, the private sector, non-governmental organisations, communities and individuals to assess and prevent or reduce the risk of disasters, including— 15
- (a) ways and means to—
 - (i) determine levels of risk;
 - (ii) assess the vulnerability of communities to potential disasters; 20
 - (iii) increase the capacity of communities to deal with disasters; and
 - (iv) monitor the likelihood of, and the state of alertness to, disasters;
 - (b) the development and implementation of appropriate prevention and mitigation methodologies;
 - (c) the integration of prevention and mitigation methodologies with development plans, programmes and initiatives; and 25
 - (d) the management of high risk developments.
- (2) The National Centre must promote formal and informal initiatives that encourage risk avoidance behaviour by organs of state, the private sector, non-governmental organisations, communities and individuals. 30

Monitoring, measuring performance and evaluating disaster management plans and prevention, mitigation and response initiatives

21. The National Centre must—
- (a) monitor—
 - (i) progress with the preparation and regular updating in terms of sections 25, 37, 38, 48 and 49 of disaster management plans and strategies by organs of state and institutional role players involved in disaster management; and 35
 - (ii) formal and informal prevention, mitigation and response initiatives by organs of state, the private sector, non-governmental organisations and communities, including the integration of these initiatives with development plans; and 40
 - (b) from time to time, measure performance and evaluate such progress and initiatives.

Giving of advice and guidance 45

22. The National Centre may give advice and guidance by—
- (a) publishing guidelines and recommendations in the *Gazette* or a *provincial gazette*;
 - (b) interacting on an individual basis;
 - (c) facilitating access to its electronic database; and 50
 - (d) acting in any other way approved by the Director-General of the Department.

Classification and recording of disasters

- 23.** (1) When a disastrous event occurs or threatens to occur, the National Centre may, for the purpose of the proper application of this Act, determine whether the event is a disaster in terms of this Act, and if so, the National Centre must immediately—
- (a) assess a magnitude and severity or potential magnitude and severity of the disaster; 5
 - (b) classify the disaster as a local, provincial or national disaster in accordance with subsections (4), (5) and (6); and
 - (c) record the prescribed particulars concerning the disaster in the prescribed register. 10
- (2) When assessing the magnitude and severity or potential magnitude and severity of a disaster, the National Centre—
- (a) must consider any information and recommendations concerning the disaster received from a provincial or municipal disaster management centre in terms of section 35 or 46; and 15
 - (b) may enlist the assistance of an independent assessor to evaluate the disaster on site.
- (3) The National Centre may reclassify a disaster classified in terms of subsection (1)(b) as a local, provincial or national disaster at any time after consultation with the relevant provincial or municipal disaster management centres, if the magnitude and severity or potential magnitude and severity of the disaster is greater or lesser than the initial assessment. 20
- (4) A disaster is a local disaster if—
- (a) it affects a single metropolitan, district or local municipality only; and
 - (b) the municipality concerned, or, if it is a district or local municipality, that municipality either alone or with the assistance of local municipalities in the area of the district municipality, is able to deal with it effectively. 25
- (5) A disaster is a provincial disaster if—
- (a) it affects—
 - (i) more than one metropolitan or district municipality in the same province; or 30
 - (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; and 35
 - (b) the province concerned is able to deal with it effectively.
- (6) A disaster is a national disaster if it affects—
- (a) more than one province; or
 - (b) a single province which is unable to deal with it effectively.
- (7) Until a disaster is classified in terms of this section, the disaster must be regarded as a local disaster. 40
- (8) The classification of a disaster in terms of this section designates primary responsibility to a particular sphere of government for the co-ordination and management of the disaster, but an organ of state in another sphere may assist the sphere having primary responsibility to deal with the disaster and its consequences. 45

Annual reports

- 24.** (1) The National Centre must annually submit a report to the Minister on—
- (a) its activities during the year;
 - (b) disasters that occurred during the year in each province;
 - (c) the classification, magnitude and severity of these disasters; 50
 - (d) the effects they had;
 - (e) particular problems that were experienced—
 - (i) in dealing with these disasters; and
 - (ii) generally in implementing this Act and the national disaster management framework; 55

- (f) the way in which these problems were addressed and any recommendations the Centre wishes to make in this regard;
 - (g) progress with the preparation and regular updating in terms of sections 25, 37, 38, 48 and 49 of disaster management plans and strategies by organs of state and other institutional role players involved in disaster management; and 5
 - (h) an evaluation of the implementation of such plans and strategies.
- (2) The Minister must submit the report to Parliament within 30 days after receipt of the report from the National Centre.
- (3) The National Centre must submit a copy of its report to each provincial and municipal disaster management centre. 10

Part 2: Duties and powers of national government

Preparation of disaster management plans

- 25.** (1) Each national organ of state indicated in the national disaster management framework must—
- (a) prepare a disaster management plan setting out— 15
 - (i) the way in which the concept and principles of disaster management are to be applied in its functional area;
 - (ii) its role and responsibilities in terms of the national disaster management framework;
 - (iii) its role and responsibilities regarding emergency response and post-disaster recovery and rehabilitation; 20
 - (iv) its capacity to fulfil its role and responsibilities;
 - (v) particulars of its disaster management strategies; and
 - (vi) contingency strategies and emergency procedures in the event of a disaster, including measures to finance these strategies; 25
 - (b) co-ordinate and align the implementation of its plan with those of other organs of state and institutional role players; and
 - (c) regularly review and update its plan.
- (2) The disaster management plan of a national organ of state referred to in subsection (1) must form an integral part of its planning. 30
- (3) A national organ of state must submit a copy of its disaster management plan and of any amendment to the plan to the National Centre.

Responsibilities in event of national disaster

- 26.** (1) The national executive is primarily responsible for the co-ordination and management of national disasters irrespective of whether a national state of disaster has been declared in terms of section 27. 35
- (2) The national executive must deal with a national disaster—
- (a) in terms of existing legislation and contingency arrangements, if a national state of disaster has not been declared in terms of section 27(1); or
 - (b) in terms of existing legislation and contingency arrangements in terms of section 27(2), if a national state of disaster has been declared. 40
- (3) This section does not preclude a provincial or municipal organ of state from providing assistance to the national executive to deal with a national disaster and its consequences, and the national executive, in exercising its primary responsibility, must act in close co-operation with the other spheres of government. 45

Declaration of national state of disaster

- 27.** (1) In the event of a national disaster, the Minister may, by notice in the *Gazette*, declare a national state of disaster if—
- (a) existing legislation and contingency arrangements do not adequately provide for the national executive to deal effectively with the disaster; or 50
 - (b) other special circumstances warrant the declaration of a national state of disaster.

(2) If a national state of disaster has been declared in terms of subsection (1), the Minister may, subject to subsection (3) and after consulting the responsible Cabinet member, make regulations or issue directions or authorise the issue of directions concerning—

- (a) the release of any available resources of the national government, including stores, equipment, vehicles and facilities; 5
 - (b) the release of personnel of a national organ of state for the rendering of emergency services;
 - (c) the implementation of all or any of the provisions of a national disaster management plan that are applicable in the circumstances; 10
 - (d) the evacuation to temporary shelters of all or part of the population from the disaster-stricken or threatened area if such action is necessary for the preservation of life;
 - (e) the regulation of traffic to, from or within the disaster-stricken or threatened area; 15
 - (f) the regulation of the movement of persons and goods to, from or within the disaster-stricken or threatened area;
 - (g) the control and occupancy of premises in the disaster-stricken or threatened area;
 - (h) the provision, control or use of temporary emergency housing; 20
 - (i) the suspension or limiting of the sale, dispensing or transportation of alcoholic beverages in the disaster-stricken or threatened area;
 - (j) the maintenance or installation of temporary lines of communication to, from or within the disaster area;
 - (k) the dissemination of information required for dealing with the disaster; 25
 - (l) emergency procurement procedures;
 - (m) the facilitation of response and post-disaster recovery and rehabilitation;
 - (n) other steps that may be necessary to prevent an escalation of the disaster, or to alleviate, contain and minimise the effects of the disaster; or
 - (o) steps to facilitate international assistance. 30
- (3) The powers referred to in subsection (2) may be exercised only to the extent that this is necessary for the purpose of—
- (a) assisting and protecting the public;
 - (b) providing relief to the public;
 - (c) preventing or combating disruption; or 35
 - (d) dealing with the destructive and other effects of the disaster.
- (4) Regulations made in terms of subsection (2) may include regulations prescribing penalties for any contravention of the regulations.

CHAPTER 4

PROVINCIAL DISASTER MANAGEMENT 40

Part 1: Provincial disaster management policy

Provincial policy framework

28. (1) Each province must establish and implement a policy framework for disaster management in the province aimed at ensuring an integrated and common approach to disaster management in the province by all provincial organs of state, provincial statutory functionaries, non-governmental institutions involved in disaster management in the province and the private sector. 45

(2) A provincial disaster management policy framework must be—

- (a) consistent with the provisions of this Act; and
- (b) within the national disaster management framework. 50

Part 2: Provincial disaster management centres

Establishment

29. (1) Each province must establish a disaster management centre for the province.

(2) A provincial disaster management centre forms part of, and functions within, a department designated by the Premier in the provincial administration.

Duties and powers

- 30.** (1) A provincial disaster management centre—
- (a) must specialise in issues concerning disasters and disaster management in the province; 5
 - (b) must promote an integrated co-ordinated approach to disaster management in the province, with a special emphasis on prevention and mitigation, by—
 - (i) provincial organs of state in the province; and
 - (ii) other role players involved in disaster management in the province; 10
 - (c) must act as a repository and conduit for information concerning disasters, impending disasters and disaster management in the province;
 - (d) may act as an advisory and consultative body for organs of state, statutory functionaries, the private sector, non-governmental organisations, communities and individuals, on issues concerning disasters and disaster management in the province; 15
 - (e) must initiate and facilitate efforts to make funds available for disaster management in the province;
 - (f) may make recommendations to any relevant organ of state or statutory functionary—
 - (i) on draft legislation affecting this Act, the national disaster management framework or any other disaster management issue;
 - (ii) for the alignment of provincial or municipal legislation with this Act and the national disaster management framework; or
 - (iii) in the event of a provincial disaster, whether a provincial state of disaster should be declared in terms of section 40; 20
 - (g) must promote the recruitment, training and utilisation of volunteers to participate in disaster management in the province;
 - (h) must perform any duties and may exercise any powers delegated to it in terms of section 14; 30
 - (i) may assist in the implementation of legislation referred to in section 2(1)(b) to the extent required by the administrator of such legislation and approved by the MEC responsible for the department in which the centre is located; and
 - (j) must perform any other duties assigned to it and may exercise any other powers conferred on it in terms of this Act. 35
- (2) A provincial disaster management centre may engage in any lawful activity in the province, whether alone or together with any other organisation, aimed at promoting the proper performance of its duties or exercise of its powers.
- (3) A provincial disaster management centre must perform its duties and exercise its powers—
- (a) within the national disaster management framework and the provincial policy framework referred to in section 28;
 - (b) subject to the policy directions of the MEC responsible for disaster management in the province acting within the national disaster management framework and the provincial policy framework; 40
 - (c) in accordance with the administrative instructions of the head of the provincial department in which it is located; and
 - (d) subject to the Public Finance Management Act, 1999. 45
- (4) A provincial disaster management centre must liaise and co-ordinate its activities with those of the National Centre and the municipal disaster management centres in the province. 50

Head of provincial disaster management centre

- 31.** (1) The head of a provincial disaster management centre—
- (a) is responsible for the performance by the centre of its duties and the exercise of its powers; and 55

- (b) takes all decisions of the centre in the performance of its duties and the exercise of its powers, except decisions taken by another person in consequence of a delegation by the head of the centre.
- (2) The head of a provincial disaster management centre performs the functions of office subject to section 30(3). 5

Assistance to National Centre

- 32.** (1) A provincial disaster management centre must assist the National Centre, at the request of the National Centre, to—
- (a) identify and establish communication links with provincial organs of state and other disaster management role players in the province for the purposes of section 16; 10
 - (b) develop and maintain the disaster management electronic database envisaged in section 17 in so far as the database applies to the province; and
 - (c) develop guidelines in terms of section 19 for the—
 - (i) preparation and regular review of disaster management plans and strategies, including contingency plans and emergency procedures; and 15
 - (ii) the integration of the concept and principles of disaster management, and particularly prevention and mitigation strategies, with development plans and programmes.
- (2) (a) A provincial disaster management centre may, in writing, request any provincial organ of state or other person in possession of information required by that centre for the purpose of subsection (1)(a) or (b), to provide such information free of charge to the centre within a reasonable period determined by the centre.
- (b) A provincial organ of state must comply with a request in terms of paragraph (a).
- (c) If a provincial organ of state fails to comply with a request, the provincial disaster management centre must report the failure to the MEC responsible for disaster management in the province, who must take such steps as may be necessary to secure compliance with the request, including reporting the failure to the provincial legislature. 25

Prevention and mitigation

- 33.** (1) A provincial disaster management centre, to the extent that it has the capacity, must give guidance to organs of state, the private sector, non-governmental organisations, communities and individuals in the province to assess and prevent or reduce the risk of disasters, including—
- (a) ways and means to—
 - (i) determine levels of risk; 35
 - (ii) assess the vulnerability of communities to potential disasters;
 - (iii) increase the capacity of communities to deal with disasters; and
 - (iv) monitor the likelihood of, and the state of alertness to, disasters;
 - (b) the development and implementation of appropriate prevention and mitigation methodologies; 40
 - (c) the integration of prevention and mitigation methodologies with development plans, programmes and initiatives; and
 - (d) the management of high risk developments.
- (2) A provincial disaster management centre must promote formal and informal initiatives that encourage risk avoidance behaviour by organs of state, the private sector, non-governmental organisations, communities and individuals in the province. 45

Monitoring, measuring performance and evaluating disaster management plans and prevention, mitigation and response initiatives

- 34.** (1) A provincial disaster management centre must—
- (a) monitor— 50
 - (i) progress with the preparation and regular updating in terms of sections 37, 38, 48 and 49 of disaster management plans and strategies by

- provincial and municipal organs of state and institutional role players involved in disaster management in the province; and
- (ii) formal and informal prevention, mitigation and response initiatives by provincial and municipal organs of state, the private sector, non-governmental organisations and communities, including the integration of these initiatives with development plans; and
- (b) from time to time, measure performance and evaluate such progress and initiatives.

Disasters occurring or threatening to occur in provinces

35. (1) When a disastrous event occurs or threatens to occur in a province, the disaster management centre of the province concerned must determine whether the event is a disaster in terms of this Act, and, if so, the centre must immediately—

- (a) initiate efforts to assess the magnitude and severity or potential magnitude and severity of the disaster;
- (b) inform the National Centre of the disaster and its initial assessment of the magnitude and severity or potential magnitude and severity of the disaster;
- (c) alert disaster management role players in the province that may be of assistance in the circumstances; and
- (d) initiate the implementation of any contingency plans and emergency procedures that may be applicable in the circumstances.

(2) When informing the National Centre in terms of subsection (1)(b), the provincial disaster management centre may make such recommendations regarding the classification of the disaster as may be appropriate.

Annual reports

36. (1) The disaster management centre of a province must annually submit a report to the MEC responsible for the provincial department in which the centre is located, on—

- (a) its activities during the year;
- (b) disasters that occurred during the year in the province;
- (c) the classification, magnitude and severity of these disasters;
- (d) the effects they had;
- (e) particular problems that were experienced—
 - (i) in dealing with these disasters; and
 - (ii) generally in implementing this Act and the national disaster management framework;
- (f) the way in which these problems were addressed and any recommendations the centre wishes to make in this regard;
- (g) progress with the preparation and regular updating in terms of sections 37 and 38 of disaster management plans by provincial organs of state and other institutional role players involved in disaster management in the province; and
- (h) an evaluation of the implementation of such plans.

(2) The MEC must submit the report to the provincial legislature within 30 days after receipt of the report from the provincial disaster management centre.

(3) The provincial disaster management centre must submit a copy of its report to the National Centre and to each municipal disaster management centre in the province.

Part 3: Duties and powers of provincial government

Preparation of disaster management plans

37. (1) Each provincial organ of state indicated in the national or provincial disaster management framework must—

- (a) 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;

- (ii) its role and responsibilities in terms of the national 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; 5
 - (v) particulars of its disaster management strategies; and
 - (vi) contingency strategies and emergency procedures in the event of a disaster, including measures to finance these strategies;
 - (b) co-ordinate and align the implementation of its plan with those of other organs of state and institutional role players; and 10
 - (c) regularly review and update its plan.
- (2) The disaster management plan of a provincial organ of state referred to in subsection (1) must form an integral part of its development plans.
- (3) A provincial organ of state must submit a copy of its disaster management plan, and of any amendment to the plan, to the National Centre and the relevant provincial disaster management centre. 15

Disaster management plans for provinces

- 38.** (1) Each province must—
- (a) prepare a disaster management plan for the province as a whole;
 - (b) co-ordinate and align the implementation of its plan with those of other organs of state and institutional role players; and 20
 - (c) regularly review and update its plan.
- (2) A disaster management plan for a province must—
- (a) form an integral part of development planning in the province;
 - (b) anticipate the types of disaster that are likely to occur in the province and their possible effects; 25
 - (c) identify the communities at risk;
 - (d) provide for appropriate prevention and mitigation strategies;
 - (e) identify and address weaknesses in capacity to deal with possible disasters;
 - (f) facilitate maximum emergency preparedness; and 30
 - (g) contain contingency plans and emergency procedures to be applied in the event of a disaster, providing for—
 - (i) the allocation of responsibilities to the various role players and co-ordination in the carrying out of those responsibilities;
 - (ii) prompt disaster response and relief; 35
 - (iii) the procurement of essential goods and services;
 - (iv) the establishment of strategic communication links;
 - (v) the dissemination of information; and
 - (vi) other matters that may be prescribed.
- (3) Municipal organs of state in the province, to the extent required by the province, must co-operate with the province in preparing a disaster management plan for the province. 40
- (4) A province must submit a copy of its disaster management plan, and of any amendment to the plan, to the National Centre and each municipal disaster management centre in the province. 45

Responsibilities in event of provincial disasters

- 39.** (1) The executive of a province is primarily responsible for the co-ordination and management of provincial disasters that occur in the province, irrespective of whether a provincial state of disaster has been declared in terms of section 40.
- (2) The provincial executive must deal with a provincial disaster— 50
- (a) in terms of existing legislation and contingency arrangements, if a provincial state of disaster has not been declared in terms of section 40(1); or
 - (b) in terms of existing legislation and contingency arrangements in terms of section 40(2), if a provincial state of disaster has been declared.

(3) This section does not preclude a national or municipal organ of state from providing assistance to a provincial executive to deal with a provincial disaster and its consequences.

Declaration of provincial state of disaster

40. (1) In the event of a provincial disaster, the Premier of a province, after consultation with the other MECs, may, by notice in the *provincial gazette*, declare a provincial state of disaster if—

- (a) existing legislation and contingency arrangements do not adequately provide for the provincial executive to deal effectively with the disaster; or
- (b) other special circumstances warrant the declaration of a provincial state of disaster.

(2) If a provincial state of disaster has been declared in terms of subsection (1), the Premier of the province concerned may, subject to subsection (3), make regulations or issue directions or authorise the issue of directions, concerning—

- (a) the release of any available resources of the provincial government, including stores, equipment, vehicles and facilities;
- (b) the release of personnel of a provincial organ of state for the rendering of emergency services;
- (c) the implementation of all or any of the provisions of a provincial disaster management plan that are applicable in the circumstances;
- (d) the evacuation to temporary shelters of all or part of the population from the disaster-stricken or threatened area if such action is necessary for the preservation of life;
- (e) the regulation of traffic to, from or within the disaster-stricken or threatened area;
- (f) the regulation of the movement of persons and goods to, from or within the disaster-stricken or threatened area;
- (g) the control and occupancy of premises in the disaster-stricken or threatened area;
- (h) the provision, control or use of temporary emergency housing;
- (i) the suspension or limiting of the sale, dispensing or transportation of alcoholic beverages in the disaster-stricken or threatened area;
- (j) the maintenance or installation of temporary lines of communication to, from or within the disaster area;
- (k) the dissemination of information required for dealing with the disaster;
- (l) emergency procurement procedures;
- (m) the facilitation of response and post-disaster recovery and rehabilitation;
- (n) steps to facilitate international assistance; or
- (o) other steps that may be necessary to prevent an escalation of the disaster, or to alleviate, contain and minimise the effects of the disaster.

(3) The powers referred to in subsection (2) may be exercised only to the extent that this is necessary for the purpose of—

- (a) assisting and protecting the public;
- (b) providing relief to the public;
- (c) preventing or combating disruption; or
- (d) dealing with the destructive and other effects of the disaster.

(4) Regulations made in terms of subsection (2) may include regulations prescribing penalties for any contravention of the regulations.

CHAPTER 5

MUNICIPAL DISASTER MANAGEMENT

Part 1: Municipal disaster management policy

Municipal policy framework

41. (1) Each metropolitan and each district municipality must establish and

implement a policy framework for disaster management in the municipality aimed at ensuring an integrated and common approach to disaster management in its area by—

- (a) the municipality and statutory functionaries of the municipality, including, in the case of a district municipality, the local municipalities and statutory functionaries of the local municipalities in its area; 5
 - (b) all municipal entities operating in its area;
 - (c) all non-governmental institutions involved in disaster management in its area; and
 - (d) the private sector.
- (2) A district municipality must establish its disaster management policy after consultation with the local municipalities in its area. 10
- (3) A municipal disaster management policy framework must be—
- (a) consistent with the provisions of this Act;
 - (b) within the national disaster management framework; and
 - (c) consistent with the disaster management policy framework of the province 15 concerned.

Part 2: Municipal disaster management centres

Establishment

42. (1) Each metropolitan and each district municipality must establish in its administration a disaster management centre for its municipal area. 20
- (2) A district municipality—
- (a) must establish its disaster management centre after consultation with the local municipalities within its area; and
 - (b) may operate such centre in partnership with those local municipalities.

Duties and powers 25

43. (1) A municipal disaster management centre—
- (a) must specialise in issues concerning disasters and disaster management in the municipal area;
 - (b) must promote an integrated and co-ordinated approach to disaster management in the municipal area, with a special emphasis on prevention and mitigation, by— 30
 - (i) departments and other internal units within the administration of the municipality, and, in the case of a district municipality, also by departments and other internal units within the administration of the local municipalities in the area of the district municipality; 35
 - (ii) all municipal entities operating in the municipal area; and
 - (iii) other role players involved in disaster management in the municipal area;
 - (c) must act as a repository and conduit for information concerning disasters, impending disasters and disaster management in the municipal area;
 - (d) may act as an advisory and consultative body for organs of state, the private sector, non-governmental organisations, communities and individuals, on issues concerning disasters and disaster management in the municipal area; 40
 - (e) must initiate and facilitate efforts to make funds available for disaster management in the municipal area;
 - (f) may make recommendations to any relevant organ of state or statutory functionary— 45
 - (i) on draft legislation affecting this Act, the national disaster management framework or any other disaster management issue;
 - (ii) for the alignment of municipal legislation with this Act and the national disaster management framework; or 50
 - (iii) in the event of a local disaster, whether a local state of disaster should be declared in terms of section 51;

- (g) must promote the recruitment, training and utilisation of volunteers to participate in disaster management in the municipal area;
 - (h) must perform any duties assigned, and may exercise any powers delegated, to it in terms of section 14; and
 - (i) may assist in the implementation of legislation referred to in section 2(1)(b) to the extent required by the administrator of such legislation and approved by the municipal council. 5
- (2) A municipal disaster management centre may engage in any lawful activity in the municipal area, whether alone or together with any other organisation, aimed at promoting its objectives. 10
- (3) A municipal disaster management centre must perform its functions—
- (a) within the national disaster management framework;
 - (b) subject to the municipality's integrated development plan and other directions of the municipal council acting within the national disaster management framework; and 15
 - (c) in accordance with the administrative instructions of the municipal manager.
- (4) A municipal disaster management centre must liaise and co-ordinate its activities with those of the National Centre and the relevant provincial disaster management centre.

Head of municipal disaster management centre 20

- 44.** (1) The head of a municipal disaster management centre—
- (a) is responsible for the performance by the centre of its duties and the exercise of its powers; and
 - (b) in accordance with the directions of the council, takes all decisions of the centre in the performance of its duties and the exercise of its powers, except decisions taken by another person in consequence of a delegation by the head of the centre. 25
- (2) The head of a municipal disaster management centre performs the functions of office subject to section 43(3).

Assistance to National Centre and provincial disaster management centre 30

- 45.** (1) A municipal disaster management centre must assist the National Centre and the relevant provincial disaster management centre at that centre's request to—
- (a) identify and establish communication links with disaster management role players in the municipal area for the purposes of section 16;
 - (b) develop and maintain the disaster management electronic database envisaged in section 17 in so far as the database applies to the municipality; and 35
 - (c) develop guidelines in terms of section 19 for the—
 - (i) preparation and regular review of disaster management plans and strategies, including contingency plans and emergency procedures; and
 - (ii) the integration of the concept and principles of disaster management, and particularly prevention and mitigation strategies, with development plans and programmes. 40
- (2) (a) The disaster management centre of a municipality may, in writing, request any person in possession of information required by the centre for the purpose of subsection (1)(a) or (b), including any statutory functionary, or any department or other internal unit within the administration, of the municipality, or, if it is a district municipality, also any statutory functionary, or any department or other internal unit within the administration, of a local municipality in the area of the district municipality to provide the required information free of charge to the centre within a reasonable period determined by the centre. 50
- (b) If a department or other internal unit or a statutory functionary of a municipality, or a municipal entity under the control of the municipality, fails to comply with a request in terms of paragraph (a), the municipal disaster management centre must report the failure to the municipal manager, who must take such steps as may be necessary to secure compliance with the request. 55

Disaster occurring or threatening to occur in municipal areas

- 46.** (1) When a disastrous event occurs or is threatening to occur in the area of a municipality, the disaster management centre of the municipality concerned must determine whether the event is a disaster in terms of this Act, and, if so, must immediately— 5
- (a) initiate efforts to assess the magnitude and severity or potential magnitude and severity of the disaster;
 - (b) inform the National Centre and the relevant provincial disaster management centre of the disaster and its initial assessment of the magnitude and severity or potential magnitude and severity of the disaster; 10
 - (c) alert disaster management role players in the municipal area that may be of assistance in the circumstances; and
 - (d) initiate the implementation of any contingency plans and emergency procedures that may be applicable in the circumstances.
- (2) When informing the National Centre and the relevant provincial disaster management centre in terms of subsection (1)(b), the local disaster management centre may make such recommendations regarding the classification of the disaster as may be appropriate. 15

Annual reports

- 47.** (1) The disaster management centre of a municipality must annually submit a report to the municipal council on— 20
- (a) its activities during the year;
 - (b) disasters that occurred during the year in the area of the municipality;
 - (c) the classification, magnitude and severity of these disasters;
 - (d) the effects they had; 25
 - (e) particular problems that were experienced—
 - (i) in dealing with these disasters; and
 - (ii) generally in implementing this Act and the national disaster management framework;
 - (f) the way in which these problems were addressed and any recommendations the centre wishes to make in this regard; 30
 - (g) progress with the preparation and regular updating in terms of sections 44 and 49 of disaster management plans by municipal organs of state and other institutional role players involved in disaster management in the municipal area; and 35
 - (h) an evaluation of the implementation of such plans.
- (2) (a) A municipal disaster management centre must submit a copy of its report to the National Centre and the disaster management centre of the province concerned.
- (b) The disaster management centre of a district municipality must submit a copy of its report to each local municipality in the area of the district municipality. 40

Part 3: Duties and powers of municipalities and municipal entities

Disaster management plans for municipal areas

- 48.** (1) Each municipality must—
- (a) prepare a disaster management plan for its area according to the circumstances prevailing in the area; 45
 - (b) co-ordinate and align the implementation of its plan with those of other organs of state and institutional role players; and
 - (c) regularly review and update its plan.
- (2) A disaster management plan for a municipal area must—
- (a) form an integral part of the municipality's integrated development plan; 50
 - (b) anticipate the types of disaster that are likely to occur in the municipal area and their possible effects;
 - (c) identify the communities at risk;

- (d) provide for appropriate prevention and mitigation strategies;
 - (e) identify and address weaknesses in capacity to deal with possible disasters;
 - (f) facilitate maximum emergency preparedness; and
 - (g) contain contingency plans and emergency procedures in the event of a disaster, providing for—
 - (i) the allocation of responsibilities to the various role players and co-ordination in the carrying out of those responsibilities;
 - (ii) prompt disaster response and relief;
 - (iii) the procurement of essential goods and services;
 - (iv) the establishment of strategic communication links;
 - (v) the dissemination of information; and
 - (vi) other matters that may be prescribed.
- (3) A district municipality and the local municipalities within the area of the district municipality must prepare their disaster management plans after consultation with each other.
- (4) A municipality must submit a copy of its disaster management plan, and of any amendment to the plan, to the National Centre and the disaster management centre of the relevant province.

Preparation of disaster management plans by municipal entities

- 49.** (1) Each municipal entity indicated in the national or the relevant provincial or municipal disaster management framework must—
- (a) 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;
 - (ii) its role and responsibilities in terms of the national, provincial or municipal disaster management frameworks;
 - (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; and
 - (vi) contingency strategies and emergency procedures in the event of a disaster, including measures to finance these strategies;
 - (b) co-ordinate and align the implementation of its plan with those of other organs of state and institutional role players; and
 - (c) regularly review and update its plan.
- (2) A municipal entity 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.

Responsibilities in event of local disaster

- 50.** (1) Irrespective of whether a local state of disaster has been declared in terms of section 51—
- (a) a metropolitan municipality is primarily responsible for the co-ordination and management of local disasters that occur in its area; and
 - (b) a district municipality, acting after consultation with the relevant local municipality, is primarily responsible for the co-ordination and management of local disasters that occur in its area.
- (2) A district municipality and the relevant local municipality may, despite subsection (1)(b), agree that the local municipality assumes primary responsibility for the co-ordination and management of a local disaster that has occurred or may occur in the area of the local municipality.
- (3) The municipality having primary responsibility for the co-ordination and management of a local disaster must deal with a local disaster—
- (a) in terms of existing legislation and contingency arrangements, if a local state of disaster has not been declared in terms of section 51(1); or

- (b) in terms of existing legislation and contingency arrangements in terms of section 51(2), if a local state of disaster has been declared.

(4) This section does not preclude a national or provincial organ of state from providing assistance to a municipality to deal with a municipal disaster and its consequences.

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Declaration of local state of disaster

51. (1) In the event of a local disaster the council of a municipality having primary responsibility for the co-ordination and management of the disaster, may by notice in the *provincial gazette* declare a local state of disaster if—

- (a) existing legislation and contingency arrangements do not adequately provide for that municipality to deal effectively with the disaster; or

- (b) other special circumstances warrant the declaration of a local state of disaster.

(2) If a local state of disaster has been declared in terms of subsection (1), the municipal council concerned may, subject to subsection (3), make by-laws or issue directions, or authorise the issue of directions, concerning—

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- (a) the release of any available resources of the municipality, including stores, equipment, vehicles and facilities;

- (b) the release of personnel of the municipality for the rendering of emergency services;

- (c) the implementation of all or any of the provisions of a municipal disaster management plan that are applicable in the circumstances;

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- (d) the evacuation to temporary shelters of all or part of the population from the disaster-stricken or threatened area if such action is necessary for the preservation of life;

- (e) the regulation of traffic to, from or within the disaster-stricken or threatened area;

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- (f) the regulation of the movement of persons and goods to, from or within the disaster-stricken or threatened area;

- (g) the control and occupancy of premises in the disaster-stricken or threatened area;

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- (h) the provision, control or use of temporary emergency housing;

- (i) the suspension or limiting of the sale, dispensing or transportation of alcoholic beverages in the disaster-stricken or threatened area;

- (j) the maintenance or installation of temporary lines of communication to, from or within the disaster area;

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- (k) the dissemination of information required for dealing with the disaster;

- (l) emergency procurement procedures;

- (m) the facilitation of response and post-disaster recovery and rehabilitation; and

- (n) other steps that may be necessary to prevent escalation of the disaster, or to alleviate, contain and minimise the effects of the disaster.

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(3) The powers referred to in subsection (2) may be exercised only to the extent that this is necessary for the purpose of—

- (a) assisting and protecting the public;

- (b) providing relief to the public;

- (c) preventing or combating disruption; or

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- (d) dealing with the destructive and other effects of the disaster.

(4) By-laws made in terms of subsection (2) may include by-laws prescribing penalties for any contravention of the by-laws.

CHAPTER 6

FUNDING OF POST-DISASTER RECOVERY AND REHABILITATION

50

Guiding principles

52. (1) This chapter is subject to sections 16 and 25 of the Public Finance Management Act, 1999, which provide for the use of funds in emergency situations.

- (2) When a disaster occurs the following principles apply:
- (a) National, provincial and local organs of state may financially contribute to post-disaster recovery and rehabilitation.
 - (b) The cost of repairing or replacing public sector infrastructure should be borne by the organ of state responsible for the maintenance of such infrastructure. 5
- (3) Any financial assistance provided by a national, provincial or local organ of state in terms of subsection (2)(a) must be in accordance with the national disaster management framework and any applicable post-disaster recovery and rehabilitation policy of the relevant sphere of government, and must take into account—
- (a) whether any prevention and mitigation measures have been taken, and if not, the reasons for the absence of such measures; 10
 - (b) whether the disaster could have been avoided or minimised had prevention and mitigation measures been taken;
 - (c) whether it is reasonable to expect that prevention and mitigation measures should have been taken in the circumstances; 15
 - (d) whether the damage caused by the disaster is covered by adequate insurance, and if not, the reasons for the absence or inadequacy of insurance cover;
 - (e) the extent of financial assistance available from community, public or other non-governmental support schemes; and
 - (f) the financial capacity of the victims of the disaster and their accessibility to commercial insurance. 20

National contributions to alleviate effects of local and provincial disasters

- 53.** When a municipality or a province in the event of a local or provincial disaster requests the national government to financially contribute to post-disaster recovery and rehabilitation, the following factors must be taken into account: 25
- (a) Whether any prevention and mitigation measures have been taken or initiated by the municipality or province, and if not, the reasons for the absence of such measures;
 - (b) whether the disaster could have been avoided or minimised had prevention and mitigation measures been taken; 30
 - (c) whether it is reasonable to expect that prevention and mitigation measures should have been taken or initiated in the circumstances by the municipality or province;
 - (d) whether the damage caused by the disaster is covered by adequate insurance, and if not, the reasons for the absence or inadequacy of insurance cover; and 35
 - (e) whether or not available financial resources at local level, or if it is a provincial disaster, at provincial level, are exhausted.

CHAPTER 7

MISCELLANEOUS

Regulations 40

- 54.** (1) The Minister may make regulations not inconsistent with this Act concerning any matter that—
- (a) may or must be prescribed in terms of a provision of this Act; or
 - (b) is necessary to prescribe for the effective carrying out of the objects of this Act. 45
- (2) The Minister may in terms of subsection (1) prescribe a penalty not exceeding imprisonment for a period of six months or a fine for any contravention of or failure to comply with a regulation.

Offences

- 55.** (1) A person is guilty of an offence if that person fails to comply with a request 50 made by the National Centre in terms of section 18(1) or a provincial or local disaster management centre in terms of section 32(2)(a) or 45(2)(a).

(2) A person convicted of an offence mentioned in subsection (1) is liable on conviction to a fine or to imprisonment not exceeding six months or to both a fine and such imprisonment.

Indemnity

56. The Minister, the National Centre, a provincial or municipal disaster management centre, an employee designated for the purpose of the National Centre or a provincial or municipal disaster management centre, a representative of the National Centre or a provincial or municipal disaster management centre, or any other person performing a duty or exercising a power in terms of this Act, is not liable for anything done in good faith in terms of, or in furthering the objects of this Act. 5
10

Repeal of Act 67 of 1977

57. (1) (a) The Civil Protection Act, 1977 (Act No. 67 of 1977), to the extent that provisions of that Act have not been assigned to a province, is repealed.

(b) Provisions of that Act that were assigned to a province, continue to apply in the province until repealed by the provincial legislature. 15

(2) Despite the repeal of provisions of the Civil Protection Act, 1977, section 9 of that Act continues to apply to any death, injury or disablement as described in that section, which occurred before the repeal of that section.

Short title and commencement

58. This Act is called the Disaster Management Act, 2001, and comes into operation on a date determined by the President by proclamation in the *Gazette*. 20

MEMORANDUM ON THE OBJECTS OF THE DISASTER MANAGEMENT BILL, 2001

INTRODUCTION

1. The Disaster Management Bill, 2001, gives effect to the White Paper on disaster management which was published in January 1999 and which advocated a new approach to disaster management. Unlike previous policies contained in existing legislation that focuses predominantly on relief and recovery efforts, the White Paper emphasises the importance of measures to avoid and minimise human and economic losses and establishes prevention and mitigation as the core principle of a future disaster management policy.

2. In terms of the White Paper the development of this new approach to disaster management calls for a two-pronged approach, viz:

- * a significant strengthened capacity to track, collate, monitor and disseminate information on phenomena and activities known to trigger disastrous events, supported by institutional emergency preparedness and response capacity by both government and the private sector, communities and other non-governmental role players.
- * an increased commitment to prevention and mitigation actions that will reduce the probability and severity of disastrous events by incorporating these actions into policies, plans and projects of both government and the private sector.

3. To this end the White Paper proposed seven key policy measures. These are:

- * The urgent integration of risk reduction strategies into all development initiatives.
- * The development of a strategy to reduce the vulnerability of people, especially poor and disadvantaged communities, to disasters.
- * The establishment of a National Disaster Management Centre—
 - to ensure that an effective disaster management strategy is established and implemented by all spheres of government and other disaster management role players;
 - to co-ordinate disaster management in all spheres of government; and
 - to promote and assist the implementation of disaster management measures in all sectors of society.
- * The introduction of a new disaster management funding system which—
 - ensures that risk reduction initiatives are taken;
 - builds sufficient capacity to respond to disasters; and
 - provides for adequate post-disaster recovery.
- * The introduction and implementation of new disaster management legislation which—
 - brings about a uniform approach to disaster management;
 - seeks to eliminate confusion by current legislation; and
 - addresses legislative shortcomings.
- * The establishment of a framework to enable communities to be informed, alert and self-reliant and capable of supporting and co-operating with government in disaster prevention and mitigation.
- * The establishment of a framework for co-ordinating and strengthening the current fragmented and inadequate training and community awareness initiatives.

4. The Disaster Management Bill provides for an integrated, co-ordinated and common approach to disaster management by all spheres of government. In order to achieve this, the Bill focuses on “disaster management” as a continuous and integrated multi-sectoral, multi-disciplinary process of planning, and implementation of measures, aimed at—

- preventing and reducing the risk of disasters;
- mitigating the severity or consequences of disasters;
- emergency preparedness and a state of readiness to deal with impending or current disasters or effects of disasters; and

- a rapid and effective response to disasters aimed at restoring normality in conditions caused by disasters.

5. The Bill defines a disaster as a progressive or sudden, widespread or localised, natural or human-caused occurrence which causes or threatens to cause death, injury or disease, damage to property, infrastructure or the environment or disruption of a community, and which is of a magnitude that exceeds the ability of those affected by the disaster to cope with the effects of the disaster using only their own resources. The Bill excludes from its application—

- occurrences that are dealt with in terms of the State of Emergency Act, 1997; and
- incidents of a kind for which specific legislation has been enacted to deal with the consequences of such incidents.

ANALYSIS

6. Chapter 2 of the Bill provides for the establishment of an Inter-governmental Committee on Disaster Management consisting of Cabinet members involved in disaster management, members of provincial Executive Councils involved in provincial disaster management and representatives of organised local government. The purpose of the Committee is to take recommendations on issues concerning disaster management and the establishment of a national disaster management policy framework. The national disaster management framework will be aimed at ensuring an integrated and common approach to disaster management in the Republic by all national, provincial and municipal organs of state, statutory functionaries, non-governmental institutions involved in disaster management, the private sector and communities, and will provide a coherent, transparent and inclusive policy on disaster management appropriate for the Republic as a whole.

7. The disaster management framework will, in addition, guide the development and the implementation of the new concept of disaster management, establish prevention and mitigation as the core principle of disaster management and lay the basis of regional co-operation in disaster management with other Southern African states.

8. The Chapter further provides for the establishment of a National Disaster Management Forum. The Forum will be chaired by the Head of the National Disaster Management Centre and will consist of senior administrative representatives of national and provincial departments, organised local government and other disaster management role players designated by the Minister. The Forum will be a body in which the various spheres of government and other disaster management role players consult and coordinate their actions.

9. Chapter 3 of the Bill establishes a National Disaster Management Centre as an institution inside the public service. The Centre will be located in a department of a Minister to whom the President allocates the administration of this Act. The functions of the Centre will be—

- to specialise in issues concerning disasters and disaster management;
- to monitor whether organs of state comply with this Act and the national disaster management policy framework;
- to act as a repository and conduit for information concerning disasters, impending disasters and disaster management;
- to act as an advisory and consultative body on issues concerning disasters and disaster management;
- to initiate and facilitate efforts to make funds available for disaster management;
- to make recommendations affecting disaster management issues;
- to promote disaster management capacity-building and training; and
- to liaise and co-ordinate its activities with provincial and local disaster management offices.

10. The National Disaster Management Centre is also given certain special functions which includes—

- the identification and establishment of communication links with disaster management role players in the public and private sectors, including the

- development and maintenance of a directory of institutional role players and contact persons;
- the establishment of an electronic database containing extensive information concerning disasters that occur or may occur in South Africa and other vital disaster management data, which must at all times be electronically accessible by any person free of charge;
- the gathering of information necessary for the development of the database; and
- the development of guidelines and the rendering of support and assistance in the preparation and maintenance of disaster management plans and strategies by organs of state and other institutional role players involved in disaster management.

11. One of the most important functions of the Disaster Management Centre will be the classification of disasters as local, provincial or national. Generally, a disaster will be classified as local disaster if it affects a single municipality and the municipality is able to deal with it effectively. A disaster will be a provincial disaster if the affected municipality is unable and the province is able to deal with it effectively. A disaster will be a national disaster if it affects more than one province or a province is unable to deal with it effectively. The classification of a disaster designates primary responsibility to a specific sphere of government but does not prevent an organ of state in any sphere of government to assist in dealing with the disaster and its consequences.

12. Chapter 3 also provides for the preparation of disaster management plans by national organs of state indicated in the national disaster management framework and confers special powers on the Minister to declare a national state of disaster if existing legislation and contingency arrangements do not adequately provide for the national executive to deal effectively with any particular national disaster or if other special circumstances warrant the declaration of a national state of disaster. If a national state of disaster has been declared, the Minister responsible for the National Disaster Management Centre may exercise certain special powers to augment existing legislation and contingency arrangements.

13. Chapters 4 and 5 of the Bill provide for provincial and municipal disaster management, respectively. These Chapters, along the lines set out in Chapter 3 in respect of national disaster management, require each province and each metropolitan and district municipality to establish a disaster management centre for the province or municipality. The functions of the provincial and municipal disaster management centres will generally be equivalent to those of the National Disaster Management Centre at their respective level, but in the case of functions that must be performed at national level only, eg. the development and maintenance of the electronic database, the provincial and municipal disaster management centres will be required to render support services to the National Centre. As is the case with national organs of state, each provincial organ of state and municipality indicated in the national disaster management framework will also be required to prepare disaster management plans within their respective areas of operation. Special powers are also given to provinces and municipalities to declare provincial and local states of disaster in order to augment their powers to deal with provincial and local disasters.

14. Chapter 6 of the Bill deals with funding of post-disaster recovery and rehabilitation and lays down certain guiding principles in this regard. This Chapter is subject to sections 16 and 25 of the Public Finance Management Act, 1999, which provide for the release of funds by way of direct charges against the National and Provincial Revenue Funds in the case of emergencies for which funds were not budgeted.

15. Chapter 7 of the Bill provides for the promulgation of regulations and declares certain contraventions of the Act as punishable offences. It also provides for the usual indemnities for functionaries when exercising their statutory powers in terms of the Act in good faith.

CONSULTATION

16. The Bill was published for public comment and appropriately adjusted in view of comments received. The following commented on the Bill:

- 15 national departments
- 7 provinces
- 18 municipalities
- 13 institutions and organisations
- 2 educational institutions
- 2 individuals
- 1 parastatal
- 1 organised business

FINANCIAL IMPLICATIONS FOR STATE

17. After in-depth consultation with officials of the National Treasury, it was agreed that the immediate financial implications for provinces and municipalities would be negligible as time progresses and depending on the way provinces and municipalities progress with the implementation of the Act, the financial implications may vary and will, therefore, be addressed on an ongoing basis.

PARLIAMENTARY PROCEDURE

18. The Department and the State Law Advisers are of the view that the Bill should be dealt with in accordance with the procedure set out in section 76 of the Constitution as it falls within a functional area listed in Schedule 4 to the Constitution, namely “Disaster management”.

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