
GENERAL NOTICES • ALGEMENE KENNISGEWINGS

PARLIAMENT OF THE REPUBLIC OF SOUTH AFRICA

NOTICE 46 OF 2021

MR CILLIERS BRINK, MP

NOTICE OF INTENTION TO INTRODUCE A PRIVATE MEMBER'S BILL AND INVITATION FOR COMMENT ON THE DRAFT DISASTER MANAGEMENT AMENDMENT BILL, 2021

Mr Cilliers Brink, MP, acting in accordance with section 73(2) of the Constitution of the Republic of South Africa, 1996, intends to introduce the Disaster Management Amendment Bill, 2021, in Parliament. An explanatory summary of the Bill is hereby published in accordance with Rule 276(1)(c) of the Rules of the National Assembly (9th Edition).

Section 27(1) of the Disaster Management Act, 2002 (Act No. 57 of 2002) ("the Act"), empowers 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 the disaster' or if 'other special circumstances warrant the declaration of a national state of disaster.' The phrase 'special circumstances' is, however, not defined.

Section 1 of the Act defines 'disaster' in extremely broad terms. In terms of section 23(6) of the Act, a disaster is a national disaster if it affects more than one province or if a single province is unable to deal with it effectively. Any 'occurrence' can potentially be interpreted as a disaster, as defined in section 1, if it merely threatens to cause one of a vague list of ills, including 'significant disruption of the life of a community' and if those affected cannot deal with this on their own.

If the Minister has declared a national state of disaster in terms of section 27(1) of the Act, then section 27(2) empowers the same Minister to make regulations and issue directions on a wide array of topics that are not ordinarily the subject of subordinate legislation and are usually the preserve of Parliament. The law-making powers so conferred are wide enough to significantly impede and even deprive the constitutional rights of ordinary people.

It may be argued that the scope of the Minister's powers under a national state of disaster are necessary to enable the national executive to deal effectively with phenomena such as the Covid-19 pandemic, but save for the requirement of publication, the Act does not provide for any formal procedural constraints on how these powers are to be exercised. The risks so created for the abuse of state power resemble the risks that have historically been associated with a state of emergency.

But unlike the State of Emergency Act, 1997 (Act No. 64 of 1997), in respect of the analogous state of emergency, the Disaster Management Act does not allow Parliament to review the extension of a national state of disaster or to disapprove of the subordinate legislation made pursuant thereto. The Disaster Management Amendment Bill, 2021 (“the draft Bill”), will seek to end the aforementioned anomaly by establishing similar Parliamentary supervision over national states of disaster, thereby also acting as a bulwark against executive encroachment on the legislative authority of Parliament.

The draft Bill therefore seeks to subject the wide-ranging powers of the Minister to declare and extend a national state of disaster, and to make subordinate legislation pursuant to such a declaration, subject to Parliamentary supervision. The draft Bill also seeks to limit the initial period a national state of disaster can be declared to the same 21 (twenty one) day limit that our law currently places on a state of emergency, the latter resembling the former in key respects.

Interested parties and institutions are invited to submit written representations on the proposed content of the draft Bill to the Speaker of the National Assembly within 30 days of the publication of this notice. Representations can be delivered to the Speaker, New Assembly Building, Parliament Street, Cape Town; mailed to the Speaker, PO Box 15, Cape Town, 8000; or emailed to speaker@parliament.gov.za and copied to cilliersb@da.org.za

Copies of the Disaster Management Amendment Bill, 2021, may, after introduction, be obtained from:

Democratic Alliance
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