

REPUBLIC OF SOUTH AFRICA

**NATIONAL COUNCIL ON
GENDER-BASED VIOLENCE AND
FEMICIDE BILL**

*(As introduced in the National Assembly (proposed section 75); explanatory
summary of Bill and prior notice of its introduction published in
Government Gazette No. 46991 of 30 September 2022)
(The English text is the official text of the Bill)*

(MINISTER OF WOMEN, YOUTH AND PERSONS WITH DISABILITIES)

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BILL

To establish the National Council on Gender-Based Violence and Femicide; to provide for the objects and functions of the Council; to appoint the Board of the Council; to provide for the appointment of members of the Board; to provide for the term of office of members of the Board; to provide for the termination of membership of the Board; to provide for meetings of the Board; to provide for the establishment of committees of the Board; to provide for the appointment of the Chief Executive Officer and the Secretariat Unit of the Council; to provide for the establishment of norms and standards for the provincial and local working groups; to provide for the making of regulations; and to provide for matters connected therewith.

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

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Definitions

- 1.** In this Act, unless the context indicates otherwise— 30
- “**Board**” means the Board of the Council appointed in terms of section 6;
- “**Chairperson**” means the Chairperson of the Board, elected in terms of section 6(6);
- “**Chief Executive Officer**” means the Chief Executive Officer appointed in terms of section 15;
- “**civil society**” includes non-governmental organisations, labour and structures or 35 institutions that represent the interests of citizens in the field of gender-based violence and femicide;
- “**committee**” means a committee of the Board, established in terms of section 14;
- “**Constitution**” means the Constitution of the Republic of South Africa, 1996;
- “**Council**” means the National Council on Gender-Based Violence and Femicide, 40 established by section 3;
- “**femicide**” means the killing of a female person or perceived female person on the basis of gender identity, whether committed by a person within a domestic relationship, interpersonal relationship or by any other person;

- “**gender-based violence**” means violence associated with gender, which includes physical, sexual, verbal, emotional, economic, educational or psychological abuse or threats of such acts of abuse in public or private life;
- “**inter-sectoral**” includes co-ordinated action between ministries, departments or different levels of government that is necessary to address or combat gender-based violence and femicide; 5
- “**member**” means a member of the Board appointed in terms of section 6;
- “**Minister**” means the Cabinet member responsible for women, youth and persons with disabilities;
- “**multi-sectoral**” means the collaboration between the relevant stakeholders to jointly prevent and respond to gender-based violence and femicide; 10
- “**National Strategic Plan**” means the National Strategic Plan on Gender-Based Violence and Femicide developed by the Interim Steering Committee, established in terms of Article 3 of the Presidential Summit Declaration against Gender-Based Violence and Femicide of 2018; 15
- “**Parliament**” means the National Assembly and the National Council of Provinces referred to in section 42(1) of the Constitution;
- “**prescribe**” means prescribe by regulation under this Act;
- “**Public Finance Management Act**” means the Public Finance Management Act, 1999 (Act No. 1 of 1999); 20
- “**relevant stakeholders**” include the private sector, all organs of state and civil society responsible for the implementation of the National Strategic Plan;
- “**Secretariat**” means the Secretariat Unit of the Council established in terms of section 17; and
- “**this Act**” includes the regulations made under this Act; 25

Purpose of Act

2. The purpose of this Act is to provide a legislative framework—
- (a) for the establishment of the Council as a statutory body, which acts through its Board and is responsible for providing strategic leadership on the elimination of gender-based violence and femicide in South Africa; 30
 - (b) to provide for a multi-sectoral and an inter-sectoral approach towards the implementation of the National Strategic Plan at national, provincial and local level and at community and other forums;
 - (c) to give effect to Chapters 1 and 2 of the Constitution, which uphold human dignity, equality, life, security of persons, freedom and the advancement of human rights, as well as non-racialism and non-sexism, as its founding principles; 35
 - (d) to affirm a national commitment to building a society that is free from all forms of gender-based violence and femicide;
 - (e) to provide for the appointment of the Chief Executive Officer and the Secretariat by the Board; and 40
 - (f) to provide for reporting mechanisms to facilitate the effective performance monitoring, evaluation and corrective action in the prevention of, and response to, gender-based violence and femicide in South Africa.

Establishment of National Council on Gender-Based Violence and Femicide 45

3. (1) The National Council on Gender-Based Violence and Femicide is hereby established.
- (2) The Council is a statutory body responsible for providing strategic leadership in the prevention of, and response to, gender-based violence and femicide in South Africa, in line with the objects contemplated in section 4. 50
- (3) The Council acts through its Board.
- (4) The Public Finance Management Act applies to the Council.

Objects of Council

4. The objects of the Council are to—
- (a) facilitate a co-ordinated and structured multi-sectoral approach between relevant stakeholders for the prevention and elimination of, and response to, gender-based violence and femicide; 55

- (b) set short term, medium term and long term priorities, aligned with the National Development Plan outcomes, Medium Term Strategic Framework, Medium Term Expenditure Framework priorities and National Strategic Plan on Gender Based Violence; and
- (c) ensure the establishment and maintenance of a platform for sharing of information and best practices on the prevention of, and response to, gender-based violence and femicide. 5

Functions of Council

5. (1) In order to achieve the purpose of this Act, the Council must—
- (a) develop an action plan, not later than six months after its establishment, for the implementation of the National Strategic Plan, which must—
 - (i) be adequately costed and implemented effectively;
 - (ii) set indicators to be complied with by all relevant stakeholders; and
 - (iii) monitor and evaluate the implementation of the National Strategic Plan by all relevant stakeholders on a regular basis; 15
 - (b) ensure that resources are equitably distributed for a comprehensive response to gender-based violence and femicide;
 - (c) ensure the development of programmes and measures for education and training concerning the prevention and combating of gender-based violence and femicide; 20
 - (d) encourage co-ordination between all structures established in terms of this Act in matters relating to the implementation of the National Strategic Plan;
 - (e) facilitate strategic partnerships between the Council and relevant stakeholders, as and when required;
 - (f) administer funds appropriated by an Act of Parliament; 25
 - (g) source and administer funding from sources other than that appropriated by an Act of Parliament;
 - (h) in consultation with the Minister, facilitate the establishment of inter-sectoral and multi-sectoral structures to jointly prevent and respond to gender-based violence and femicide; 30
 - (i) co-ordinate the monitoring and evaluation of the implementation of the National Strategic Plan at national, provincial and local level, and at community and other forums;
 - (j) in consultation with the Minister, report on the progress of the implementation of the National Strategic Plan to the Inter-Ministerial Committee on Gender-Based Violence and Femicide and all relevant stakeholders; and 35
 - (k) support the Inter-Ministerial Committee on Gender-Based Violence and Femicide on matters that relate to gender-based violence and femicide, including during parliamentary oversight meetings on gender-based violence and femicide. 40
- (2) The Council may advise the Minister, Inter-Ministerial Committee on Gender-Based Violence and Femicide and other relevant stakeholders on—
- (a) any developments relating to the prevention of, and response to, gender-based violence and femicide;
 - (b) relevant international standards to be adhered to; and 45
 - (c) any matter falling within the purpose of this Act.
- (3) The Council must, after consultation with the Minister and relevant stakeholders—
- (a) review the National Strategic Plan and its action plan within five years after the date of commencement of this Act, and at least once every five years thereafter; and 50
 - (b) amend the National Strategic Plan and its action plan when required, in which case such amendments must be approved by Cabinet.

Board of Council

6. (1) The Board must consist of not more than 13 members, with 80% women representation, comprising— 55
- (a) seven persons from civil society organisations;
 - (b) one representative from each of the following organs of state:
 - (i) The Department of Women, Youth and Persons with Disabilities;

- (ii) the Department of Justice and Constitutional Development;
 - (iii) the Department of Social Development;
 - (iv) the Department of Health;
 - (v) the Department of Co-operative Governance and Traditional Affairs; and
 - (vi) the South African Police Service; and 5
 - (c) the Chief Executive Officer, who is an *ex officio* member of the Board without voting rights.
- (2) Only members of the Board referred to in subsection (1)(a) must be appointed by the Minister, and must before appointment be subjected to a security screening as envisaged in section 2A of the National Strategic Intelligence Act, 1994 (Act No. 39 of 1994). 10
- (3) The members referred to in subsection (1)(a) must be appointed in a manner ensuring—
- (a) participation by civil society in the nomination process as prescribed; and
 - (b) transparency and openness. 15
- (4) Each member referred to in subsection (1)(b) must—
- (a) be nominated by the respective Cabinet members responsible for women, youth and persons with disabilities, justice and constitutional development, social development, health, co-operative governance and traditional affairs and police; and 20
 - (b) hold a rank that is not lower than that of Deputy Director-General.
- (5) Members appointed in terms of this section must—
- (a) be fit and proper persons to hold office;
 - (b) be persons with applicable knowledge and expertise with regard to matters that are related to the purpose of this Act; and 25
 - (c) reflect the demographics and geographical spread of South Africa.
- (6) (a) At the first meeting of the Board, the Minister must appoint one of the members as Chairperson and another member as Deputy Chairperson.
- (b) The Minister must ensure that the positions of Chairperson and Deputy Chairperson are held alternately by a person contemplated in subsection (1)(a) and (b). 30
- (7) Whenever the Chairperson is for any reason unavailable, the Deputy Chairperson must perform the responsibilities and duties of Chairperson.
- (8) The Board, in managing the execution of the functions of the Council, as contemplated in section 5, must—
- (a) monitor the implementation of the action plan of the Council; and 35
 - (b) exercise general control over the Council's powers and the execution of the Council's functions.
- (9) The Minister may co-opt any person at the request of the Board, to assist the Board with regard to its functions in order to—
- (a) advise and provide the necessary expertise in their specific field; or 40
 - (b) represent a relevant stakeholder.
- (10) A person co-opted in terms of subsection (9) may take part in the proceedings of the Board or its committee but is not entitled to vote.

Disqualification from membership of Board

7. A person is disqualified from being appointed to the Board or from remaining a member if such person— 45
- (a) has been convicted of—
 - (i) a gender-based violence and femicide-related offence; or
 - (ii) any other criminal offence and sentenced to a term of imprisonment without the option of a fine; 50
 - (b) is or becomes insolvent;
 - (c) is or has been declared by a competent court to be of unsound mind;
 - (d) is directly or indirectly doing business with the Council and fails to declare the interest and the nature thereof in the manner required by this Act;
 - (e) is a person under curatorship; 55
 - (f) has, at any time, been removed from an office of trust on account of misconduct involving theft or fraud; or
 - (g) fails to disclose an interest in accordance with section 8 or attended or participated in the proceedings of the Board while having an interest contemplated in section 8. 60

Declaration of financial or other interests of members

8. (1) A person who has been appointed or nominated as a member of the Board in terms of section 6 must, within 10 days after being appointed or nominated, submit a declaration, in writing, to the Minister of all the direct or indirect interests in a company, a non-governmental organisation or any other business interests. 5

(2) A member must, at the beginning of every financial year, submit a declaration, in writing, to the Minister, of the member's direct or indirect interest in a company, a non-governmental organisation or any other business interest.

(3) Where a member acquires an interest in a company, a non-governmental organisation or any other business interest, at any time during the tenure as a member, the member must, within 10 days of the date of the acquisition of such an interest, submit a declaration, in writing, to the Minister of such an interest. 10

(4) Failure on the part of a member to disclose the interest as contemplated in subsections (2) and (3), constitutes a ground for disqualification in terms of section 7 and a justifiable reason for the removal of such member in terms of section 12. 15

Term of office

9. (1) (a) Subject to sections 11 and 12, a member holds office for a period not exceeding three years, but is eligible for re-appointment for one consecutive term, not exceeding three years, and is also eligible for an extension of office for a period not exceeding six months. 20

(b) A member may resign from office by submitting at least one month's written notice to the Minister.

(2) The names of the members and the date of commencement of their term of office must be published by the Chief Executive Officer in the *Gazette* not later than 30 days after nomination or appointment to the Board. 25

Remuneration of members

10. (1) A member of the Board, a relevant stakeholder co-opted by the Minister or a member of any committee of the Board, may, from the funds of the Board for that purpose—

(a) in the case of members of the civil society, be paid such an remuneration and allowances, determined by the Minister in consultation with the Minister of Finance; and 30

(b) in the case of government employees, be paid any subsistence and other allowances in accordance with such member's conditions of service as the Public Service Regulations may determine. 35

(2) The Minister in consultation with the Minister of Finance must determine the applicable payment rates and criteria for the payment of the remuneration and allowances contemplated in subsection (1).

Vacancies in Board

11. (1) A vacancy in the Board occurs— 40

(a) when a member's term of office expires;

(b) when a member is disqualified from being appointed to the Board or from remaining a member as set out in section 7;

(c) when a member dies;

(d) when a member's resignation, submitted in terms of section 9(1)(b) takes effect; or 45

(e) when a member is removed from office in terms of section 12.

(2) If a vacancy occurs on the Board, such vacancy must be filled within six months by the Minister, who must comply with section 6.

(3) A member appointed or nominated to fill a vacancy holds office for the unexpired portion of the term of the member who that member replaces. 50

Removal from office

12. (1) The Minister may remove a member from office—

(a) on the ground of misconduct, incapacity or incompetence;

- (b) for being absent from three consecutive meetings of the Board without permission of the Board;
- (c) for engaging in any activity that is reasonably capable of undermining the purpose of this Act and the functions of the Council; or
- (d) for failure on the part of a member to disclose any interests as contemplated in section 8. 5

(2) Before removing a member from the Board in terms of subsection (1), the Minister must afford the member in question an opportunity to be heard.

Meetings of Board

13. (1) The first meeting of the Board must be held on a date and at a time and a place determined by the Minister in consultation with the Chairperson of the Board, where after the date, time and place of all future meetings must be determined by the Chairperson. 10

(2) The Board must meet at least four times a year, as determined by the Chairperson in terms of subsection (1). 15

(3) The Chief Executive Officer must, at any time, on request, in writing, by the Chairperson or majority of the members, convene a special meeting of the Board, to be held on a date and at a time and a place as the Chairperson may determine.

(4) (a) The Chairperson presides at all meetings of the Board.

(b) Where the Chairperson is absent from a meeting of the Board, the Deputy Chairperson must preside at that meeting. 20

(c) In the event where both the Chairperson and Deputy Chairperson are absent from a meeting of the Board, the members present must elect one member from amongst those present to preside at that meeting.

(5) The quorum at any meeting of the Board is half of its members, plus one. 25

(6) The decision of 50% plus one of the members present at a meeting constitutes a decision of the Board, and in the event of an equality of votes concerning any matter, the member presiding at the meeting has a casting vote in addition to such member's deliberative vote.

(7) The Board must determine the procedure for its meetings and ensure that the principles of transparency, openness, respect, integrity and participation are observed at such meetings. 30

(8) The Board may regulate the proceedings at meetings as it considers fit and must cause minutes to be kept of its proceedings.

Committees of Board 35

14. (1) The Board may, in consultation with the Minister and in writing, establish one or more committees, including—

- (a) the Executive Management Committee;
- (b) the Human Resource and Remuneration Committee;
- (c) the Audit Committee, in accordance with National Treasury guidelines regarding the formation of Audit Committees as provided for in section 77 of the Public Finance Management Act; and 40
- (d) the Development Committee,

to assist in the performance of the Board's functions which may be delegated to the committee by the Board. 45

(2) A committee established in terms of subsection (1)—

- (a) consists of so many members of the Board or other persons as the Board considers necessary;
- (b) must perform its duties and exercise its powers subject to this Act and such directives as may be issued by the Board; and 50
- (c) must designate one of the members of a committee as chairperson and, if it considers it necessary to do so, may designate another member of a committee as deputy chairperson.

(3) Subject to section 6, the Board may invite persons who are not members of the Board to serve on any of its committees— 55

- (a) for a specific purpose and for the period determined by the committee for the purposes of advising the Board; or
- (b) may make recommendations to the committee in respect of a matter for which the committee has been established.

- (4) The Board may remove a member of a committee or dissolve or reconstitute a committee as it considers necessary.
- (5) Subject to the directions of the Board, a committee—
- (a) may exercise such powers as entrusted by the Board to it; and
 - (b) must perform such functions of the Board as the Board may delegate to it, and must follow such procedure during such exercising of powers and functions performance of functions as the Board may direct. 5
- (6) Upon completion of the functions delegated to it in terms of subsection (5), a committee must submit a written report thereon, including recommendations, if any, for consideration by the Board. 10
- (7) Any decision taken by a committee established under this section must be ratified by the Board.
- (8) The Board is not absolved from responsibility for the performance of any powers, functions or duties entrusted to any committee in terms of this section.
- (9) Each committee must comprise of at least 80% women representation. 15

Appointment of Chief Executive Officer

- 15.** (1) The Board must appoint a Chief Executive Officer, who must—
- (a) have qualifications and experience relevant to the functions of the Council;
 - (b) be a fit and proper person to hold office; and
 - (c) have applicable knowledge and expertise with regard to matters that are related to the purpose of this Act. 20
- (2) The Chief Executive Officer is an employee of the Council and is accountable to the Board.
- (3) The Chief Executive Officer—
- (a) holds office for a period of five years and may be re-appointed for one additional term of office not exceeding five years; and 25
 - (b) is entitled to remuneration, allowances and other service benefits as the Board may determine, in consultation with the Minister, the Minister of Finance and the Minister responsible for public service and administration.
- (4) The Chief Executive Officer must sign a contract of employment within 10 working days of appointment. 30
- (5) The Board must conclude a written performance agreement with the Chief Executive Officer—
- (a) within a reasonable time after the appointment of the Chief Executive Officer; and 35
 - (b) thereafter annually, within one month of the commencement of each financial year.
- (6) The performance agreement must include—
- (a) measurable performance objectives and targets that must be met, and must provide for the time-frames within which those performance objectives and targets must be met; 40
 - (b) standards and procedures for evaluating performance and intervals for evaluation; and
 - (c) the consequences of substandard performance.

Functions of Chief Executive Officer 45

- 16.** The Chief Executive Officer must—
- (a) drive the achievement of the purpose of this Act in alignment with the pillars of the National Strategic Plan;
 - (b) establish operational arrangements, including the establishment of multi-sectoral and inter-sectoral technical teams, as and when necessary; 50
 - (c) actively manage the affairs and operations of the Council;
 - (d) ensure that the Council performs its functions as contemplated in section 5;
 - (e) subject to the approval of the Board appoint such staff to assist the Council in the performance of its financial, administrative and clerical functions;
 - (f) ensure that the strategies of the Council are effectively implemented with timely reports towards meeting the strategic objectives; 55
 - (g) receive and manage resources consistent with the strategic objectives, and make timely adjustments in strategies when conditions and circumstances change;

- (h) carry out a comprehensive budgeting process and monitor the Council's financial performance against the budget;
- (i) submit annual reports, financial statements and the financial position of the Council to the Board;
- (j) develop a budget in accordance with section 53 of the Public Finance Management Act; 5
- (k) establish the financial management and internal control of the Council;
- (l) ensure the organisation and management of, and administrative control over, all members of staff appointed in terms of section 16(e);
- (m) attend to the maintenance of discipline in respect of the members of staff; and 10
- (n) carry out the decisions of the Board and is for those purposes accountable to the Board and must provide reports to the Board as often as may be required by the Board.

Secretariat of Council

17. (1) Subject to subsection (4), the Board must establish the Secretariat of the Council. 15
- (2) The Chief Executive Officer—
 - (a) is the Head of the Secretariat; and
 - (b) must, in consultation with the Board, appoint and supervise the Secretariat.
 - (3) The Secretariat, under the direction of the Chief Executive Officer— 20
 - (a) is governed by the six pillars of the National Strategic Plan;
 - (b) consists of fit and proper persons who possess applicable knowledge and experience, as may be necessary to assist the Board in the exercise of its powers and the performance of its functions;
 - (c) is responsible for the day to day operation of the Council; and 25
 - (d) provides technical and administrative support to the Board.
 - (4) The Board must, in consultation with the Minister, the Minister of Finance and the Minister responsible for public service and administration, determine the conditions of employment and remuneration of the Secretariat.
 - (5) The Labour Relations Act, 1995 (Act No. 66 of 1995), and the Public Service Act, 1999 (Act No. 103 of 1999), are applicable to the conditions of employment contemplated in subsection (4).

Funds of Council

18. (1) The funds of the Council consist of—
- (a) monies appropriated by Parliament for this purpose; 35
 - (b) donations or contributions received from any source;
 - (c) trust funds vested in the Council;
 - (d) interest derived from investments; and
 - (e) money received from any other source.
 - (2) Monies appropriated by Parliament for this purpose— 40
 - (a) constitute earmarked funds on the applicable vote; and
 - (b) may not be used for any other purpose, unless the Board has been consulted and the National Treasury approves such use.
 - (3) Subject to the Public Finance Management Act, the Board—
 - (a) is charged with the responsibility of accounting for monies received or paid out for or on account of the administration and functioning of the Council and for donations, contributions or gifts in accordance with National Treasury regulations; and 45
 - (b) may cause the necessary accounting and other related records to be kept, which records must be audited in terms of section 4(3) of the Public Audit Act, 2004 (Act No. 25 of 2004). 50
 - (4) The Board must utilise the funds—
 - (a) to cover costs in connection with—
 - (i) the day to day operation and administration of the Council; and
 - (ii) the performance of the duties and functions of the Council and the exercise of its powers in terms of this Act; and 55
 - (b) for the payment of remuneration, allowances and subsistence and travelling expenses of the members, the Chief Executive Officer and the Secretariat.

(5) Any donations or contributions contemplated in subsection (1)(b) must be utilised in accordance with the conditions, if any, imposed by the donor or contributor concerned, which conditions must not be contrary to purpose of the Act.

(6) The Chief Executive Officer must, in compliance with the Public Finance Management Act and in consultation with the Board— 5

- (a) open an account in the name of the Council with an institution registered as a bank in terms of the Banks Act, 1990 (Act No. 94 of 1990); and
- (b) deposit therein all money received in terms of this section.

Financial management

19. (1) The Chief Executive Officer must— 10

- (a) maintain full and proper books of account and all the necessary records in relation thereto to be kept; and
- (b) ensure that the Council's annual budgets, annual reports and audited financial statements are prepared and submitted in accordance with the Public Finance Management Act. 15

(2) In a financial year, the Chief Executive Officer must submit to the Board for approval adjusted or supplementary statements of the estimated income and expenditure of the Council for that financial year.

(3) The Board may not enter into any financial commitment beyond— 20

- (a) its approved budget;
- (b) the prescribed transaction limits, without reporting to the Minister; and
- (c) its accumulated reserves.

(4) The Chief Executive Officer may, in accordance with the Public Finance Management Act and with the approval of the Board, invest any unexpended portion of its funds with the Corporation for Public Deposits, established in terms of section 2 of the Corporation for Public Deposits Act, 1984 (Act No. 46 of 1984), or another institution approved by the National Treasury. 25

Audit, annual and financial report

20. (1) The accounts and financial statements of the Council must be audited in terms of section 4(3) of the Public Audit Act, 2004 (Act No. 25 of 2004). 30

(2) The Board must—

- (a) at any stage furnish such information to the Minister which the Minister may require in connection with the activities and financial position of the Council; and
- (b) not later than 31 August of every year, submit to the Minister an audited annual report and such other particulars as the Minister may require. 35

(3) The report contemplated in subsection (2)(b) must—

- (a) include audited accounts and financial statements certified by Auditors;
- (b) state the extent to which the Council has achieved or advanced its objects referred to in section 4 and the measurable objectives during the financial year concerned; and 40
- (c) contain relevant performance information regarding the economic, efficient and effective application of resources and specifically a comparison between planned and actual performance indicators.

(4) The Board may, through the Minister, make recommendations to the President regarding legislative and other interventions which have a bearing on the prevention and combating of gender-based violence and femicide. 45

(5) The Minister must table the report contemplated in subsection (3) in Parliament within 30 days after receipt thereof if Parliament is then in ordinary session or, if Parliament is not in ordinary session, within 30 days after commencement of the next ordinary session. 50

Use of name of Council

- 21.** (1) No person may, without the prior written authorisation of the Council, represent or make use of the name, acronym, logos, designs or material used or owned by the Council.
- (2) No person may falsely claim to be acting on behalf of the Council. 5
- (3) A person who contravenes subsection (1) or (2) is guilty of an offence and is liable on conviction to a fine or to imprisonment for a period not exceeding three years or to both a fine and such imprisonment.

Provincial and local structures

- 22.** The Minister must, after consultation with the Board, Premiers and Mayors, prescribe norms and standards for co-ordination and accountability of the provincial and local gender-based violence and femicide structures consistent with this Act, the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000), and the Intergovernmental Relations Framework Act, 2005 (Act No. 13 of 2005). 10

Delegations 15

- 23.** (1) The Minister may delegate to the Board—
- (a) any power conferred on the Minister by this Act, except the power to make regulations referred to in section 24; or
- (b) any duty imposed on the Minister by this Act, except any duty regarding the appointment and removal from office of the members of the Board contemplated in sections 6 and 12. 20
- (2) The Board may, by special resolution, delegate any power or duty entrusted or delegated to the Board by this Act to—
- (a) an employee of the Council;
- (b) a board member; or 25
- (c) a committee of the Board.
- (3) The Board may, by special resolution, delegate to the Chief Executive Officer any power or duty conferred or imposed on the Board by this Act.
- (4) The Chief Executive Officer may delegate to a member of staff any power or duty conferred or imposed on the Chief Executive Officer by this Act. 30
- (5) Any power or duty delegated in terms of subsection (1), (2) or (3) must be exercised or performed subject to such conditions as the person or body that made the delegation considers necessary.
- (6) A delegation referred to in subsection (1), (2) or (3)—
- (a) must be in writing; 35
- (b) does not prohibit the person or body that made the delegation from exercising that power or performing that duty; and
- (c) may be withdrawn or amended, in writing, by that person or body.

Regulations

- 24.** The Minister may, after receipt of recommendations of the Council, make regulations relating to— 40
- (a) participation by civil society in the nomination process of the Board members;
- (b) transaction limits contemplated in section 19(3)(b);
- (c) norms and standards for co-ordination of the provincial and local gender-based violence and femicide structures; 45
- (d) norms and standards for co-ordination of the provincial and local structures; and
- (e) any matter which it is necessary or expedient to prescribe for the proper implementation and administration of this Act.

Short title and commencement 50

- 25.** This Act is called the National Council on Gender-Based Violence and Femicide Act, 2022, and comes into operation on a date determined by the President by proclamation in the *Gazette*.

MEMORANDUM ON THE OBJECTS OF THE NATIONAL COUNCIL ON GENDER-BASED VIOLENCE AND FEMICIDE BILL

1. BACKGROUND

- 1.1 The National Council on Gender-Based Violence and Femicide Bill, 2022 (“the Bill”), emanates from the National Strategic Plan on Gender-Based Violence and Femicide (“NSP”) produced by the Interim Steering Committee established in April 2019 to respond to gender-based violence and femicide (“GBVF”). The NSP was called for at the landmark Presidential Summit on GBVF held in Pretoria on 1 and 2 November 2018.
- 1.2 The Bill, as the enabling legislation, will facilitate the effective implementation of the institutional arrangements for the roll-out of the NSP in relation to the setting up of an independent structure, known as the National Council on Gender-Based Violence and Femicide (“the Council”). The structure of the Council comprises 51% civil society representation, with key operational mechanisms in place to effectively and urgently respond to GBVF.

2. OBJECTS OF BILL

- 2.1 The Bill, in addition to establishing the Council, provides for its functions and composition, the appointment and term of office of its members, the termination of membership, meetings of the Council, the establishment of committees of the Council, for the appointment of the Chief Executive Officer and the Secretariat of Council and for matters connected therewith.
- 2.2 The Bill further seeks to provide for the objects of the Council, which are to—
 - (a) facilitate a co-ordinated multi-sectoral approach between the State and civil society to address challenges related to GBVF;
 - (b) set short term, medium term and long term priorities, aligned with the National Development Plan outcomes, Medium Term Strategic Framework, Medium Term Expenditure Framework priorities and the NSP;
 - (c) facilitate research on issues related to the prevention of, and response to, GBVF; and
 - (d) ensure the establishment and maintenance of a platform for sharing of information and best practices on the prevention of, and response to, GBVF.
- 2.3 The affairs of the Council are to be managed by the Board. The Bill empowers the Board to determine the operational policy of the Council and to exercise general control over the exercise of the powers of the Council and the execution of its functions.

3. SUMMARY OF BILL

- 3.1 Clause 1 provides for the definitions within the context of the Bill.
- 3.2 In terms of clause 2, the purpose of the Bill is, amongst others, to provide for a multi-sectoral and an inter-sectoral approach towards the implementation of the NSP at national, provincial and local levels, at community and other forums. The Bill also gives effect to Chapters 1 and 2 of the Constitution which uphold human dignity, equality, life, security of persons, freedom and the advancement of human rights as well as non-racialism and non-sexism as its founding principles. Furthermore the Bill affirms the national commitment to building a society that is free from all forms of GBVF.
- 3.3 Clause 3 provides for the establishment of the Council as a juristic person which acts through its Board. The Council is a public entity in terms of Schedule 3 to the Public Finance Management Act, 1999 (Act No. 1 of 1999) (“PFMA”), responsible for providing strategic leadership for the elimination of GBVF in South Africa in terms of the NSP.

- 3.4 Clause 4 sets out the objects of the Council which, amongst others, are to facilitate a co-ordinated multi-sectoral approach between relevant stakeholders for the prevention of, and response to GBVF; and to set short term, medium term and long term priorities, aligned with the National Development Plan outcomes, Medium Term Strategic Framework and Medium Term Expenditure Framework priorities.
- 3.5 In terms of clause 5 the functions of the Council are, amongst others and in consultation with the Minister of Women, Youth and Persons with Disabilities (“Minister”), to facilitate the establishment of the inter-sectoral and multi-sectoral structures of the Council; co-ordinate the monitoring of the implementation of the NSP at national, provincial and local levels, at community and other forums; and report on progress of the implementation of the NSP to the Inter-Ministerial Committee and all relevant stakeholders.
- 3.6 Clause 6 deals with the composition of the Board, namely a maximum of 13 members of whom seven must be from civil society structures; six representatives from relevant government departments; and the Chief Executive Officer, who is an *ex officio* member of the Board without voting rights.
- 3.7 Clauses 7 to 14 provide for the disqualification from membership of the Board, declaration of financial and other interests of members, term of office of Board members, remuneration of members, vacancies in the Board, removal from office, meetings of the Board and committees of the Board.
- 3.8 Clause 15 provides for the appointment of the Chief Executive Officer, who is an employee of the Council and is accountable to the Board. The Chief Executive Officer holds office for a period of five years, may be re-appointed for one additional term of office not exceeding five years; and receives the remuneration, allowances and other service benefits as the Board may determine in consultation with the Minister, the Minister responsible for finance and the Minister responsible for public service and administration.
- 3.9 Clause 16 provides for the functions of the Chief Executive Officer, which includes, but are not limited to, active management of the affairs of the Council. The Chief Executive Officer must carry out a comprehensive budgeting process and monitoring the Council’s financial performance against the budget; submit annual reports, financial statements and financial position of the Council to the Board; and developing an budget in accordance with the PFMA.
- 3.10 Clause 17 empowers the Board to establish the Secretariat Unit of the Council, to provide technical and administrative support to the Council. The Chief Executive Officer is the head of the Secretariat. The conditions of employment and remuneration of the Secretariat are determined by the Board in consultation with the Minister, the Minister responsible for finance and the Minister responsible for public service and administration.
- 3.11 Clause 18 provides for the funds of the Council which consist of monies appropriated by Parliament for this purpose; donations or contributions received from any source; trust funds vested in it; interest derived from investments; and money received from any other source.
- 3.12 In terms of Clause 19, the financial management of the Council is the responsibility of the Chief Executive Officer. The Chief Executive Officer is required to cause full and proper books of account and all the necessary records in relation thereto to be kept; and ensure that the Council’s annual budgets, annual reports and audited financial statements are prepared and submitted in accordance with the PFMA.

3.13 In terms of clause 20, the Board is expected to submit an annual report to the Minister by 31 August each year and such other particulars as the Minister may require.

3.14 Clause 21 provides for the use of the name of the Council.

3.15 Clause 22 empowers the Minister, after consultation with the relevant organs of state in the provincial and local spheres of government, to prescribe norms and standards for the establishment, co-ordination and accountability of the Provincial and Local GBVF structures consistent with the Bill once enacted, the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000), the Intergovernmental Relations Framework Act, 2005 (Act No. 13 of 2005), and any other applicable legislation.

3.16 Clauses 23-35 include general provisions relating to, amongst others, delegations, regulations and commencement and short title.

4. FINANCIAL IMPLICATIONS

The current allocation for the Council for the 2022 MTEF (three-year period) is R15 million, allocated in trenches of R5 million per financial year over the MTEF period. The implementation of the Act will be accommodated within the funds received by the Council from appropriation by an Act of Parliament, interest on its investments, donations or contributions and monies received from any other source upon implementation of the Bill once enacted.

5. COMMUNICATION IMPLICATIONS

A structured communication strategy will be developed for the Minister to announce and inform all stakeholders of the legislation and its impact.

6. DEPARTMENTS/BODIES/PERSONS CONSULTED

The Bill was deliberated at the Directors-General Clusters, namely the Justice, Crime Prevention and Security Cluster (JCPS) and the Social Protection, Community and Human Development Cluster (SPCHD). Upon recommendation by the SPCHD Cluster, the Department presented the Bill to the National Treasury to solicit inputs before submission to the Cabinet. The Bill was published in the government *gazette* for public comment on 5 October 2022. In addition, during November 2022, the department conducted public consultations in all the nine provinces. The Bill was also submitted to NEDLAC for deliberation.

7. PARLIAMENTARY PROCEDURE

7.1 The State Law Advisers and the Department of Women, Youth and Persons with Disabilities are of the opinion that this Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution since it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.

7.2 Chapter 4 of the Constitution specifies the manner in which legislation must be enacted by Parliament. It prescribes different procedures for Bills, including ordinary Bills not affecting provinces (section 75 procedure), and ordinary Bills affecting provinces (section 76 procedure). The determination of the procedure to be followed in processing the Bill is referred to as tagging.

7.3 In terms of section 76(3) of the Constitution, a Bill must be dealt with in accordance with section 76 if it falls within a functional area listed in Schedule 4. Schedule 4 to the Constitution lists functional areas of concurrent national and provincial legislative competence. In the Constitutional Court judgment of *Ex-Parte President of the Republic of South Africa In Re:*

*Constitutionality of the Liquor Bill*¹ (“*Liquor Bill* judgment”), Cameron AJ held the following:

“[27] It must be borne in mind that section 76 is headed ‘ordinary Bills affecting provinces’. This is my view, a strong textual indication that section 76(3) must be understood as requiring that any Bill whose provisions in substantial measure fall within a functional area listed in Schedule 4 be dealt with under section 76.

[28] . . .

[29] Once a Bill falls within a functional area listed in Schedule 4, it must be dealt with not in terms of section 75, but by either the section 76 (1) or the section 76(2) procedure . . .”.

7.4 Following the *Liquor Bill* judgment, the Constitutional Court, in the judgment of *Tongoane and Others vs Minister for Agriculture and Land Affairs and Others*² (“*Tongoane* judgment ”), confirmed the following:

“[59] . . . the tagging test focuses on all the provisions of the Bill in order to determine the extent to which they substantially affect functional areas listed in Schedule 4, and not on whether any of its provisions are incidental to its substance.”.

7.5 Furthermore, the Constitutional Court held that—

“[66] . . . procedural safeguards are designed to give more weight to the voice of the provinces in legislation substantially affecting them . . . they are fundamental to the role of the NCOP in ensuring that provincial interests are taken into account in the national sphere of government . . .”.

7.6 As the Court held in the *Tongoane* judgment, a Bill must be tagged as a section 76 Bill if its provisions, in substantial measure, deal with a Schedule 4 functional area. We are therefore of the view that the Bill should be classified as a section 75 Bill, which is an ordinary Bill affecting provinces, as its provisions do not fall within a functional area listed in Schedule 4 to the Constitution.

7.7 The State Law Advisers are of the opinion that it is not necessary to refer this Bill to the National House of Traditional and Khoi-San Leaders, in terms of section 39 of the Traditional and Khoi San Leadership Act, 2019 (Act No. 3 of 2019), since it does not contain provisions that affect traditional or Khoi-San communities or pertain to customary law or customs of traditional or Khoi-San communities.

1. (CCT/12/99) [1999] ZACC 15.

2. 2010 (8) BCLR 741 (CC).

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