

REPUBLIC OF SOUTH AFRICA

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# WOMEN EMPOWERMENT AND GENDER EQUALITY BILL

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*(As introduced in the National Assembly (proposed section 75); explanatory summary of  
the Bill published in Government Gazette No. 37005 of 6 November 2013)  
(The English text is the official text of the Bill)*

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(MINISTER OF WOMEN, CHILDREN AND PEOPLE WITH DISABILITIES)

[B 50—2013]

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# BILL

**To give effect to section 9 of the Constitution of the Republic of South Africa, 1996, in so far as the empowerment of women and gender equality is concerned; to establish a legislative framework for the empowerment of women; to align all aspects of laws and implementation of laws relating to women empowerment, and the appointment and representation of women in decision making positions and structures; and to provide for matters connected therewith.**

## PREAMBLE

**AS** the Republic's constitutional and international commitments in the field of human rights include the promotion of gender equality and the prohibition of unfair discrimination against women and the elimination of gender based violence;

**AND AS** measures to address discrimination against women are essential to the transformation of gender relations in the Republic,

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

## ARRANGEMENT OF SECTIONS

### *Sections*

#### CHAPTER 1 5

#### GENERAL PROVISIONS

1. Definitions
2. Application of Act
3. Objectives of Act

#### CHAPTER 2 10

#### SOCIAL

4. Education and training
5. Access to health care, including reproductive health
6. Public education on prohibited practices, including gender based violence

#### CHAPTER 3 15

#### EQUAL REPRESENTATION AND EMPOWERMENT

7. Equal representation and participation
8. Gender mainstreaming

9. Measures to empower women and to eliminate discrimination
10. Economic empowerment
11. Socio-economic empowerment of women in rural areas
12. Socio-economic empowerment of women with disabilities

**CHAPTER 4** 5

**GOVERNANCE**

13. Powers of Minister
14. Guidance by Minister
15. Gender Units and compliance

**CHAPTER 5** 10

**ENFORCEMENT**

16. Enforcement

**CHAPTER 6**

**CODE OF GOOD CONDUCT, NORMS AND STANDARDS AND REGULATIONS** 15

17. Code of good conduct
18. Framework on gender mainstreaming and women empowerment
19. Regulations

**CHAPTER 7**

**MISCELLANEOUS** 20

20. Delegation
21. Short title and commencement

**SCHEDULE 1**

**CHAPTER 1**

**GENERAL PROVISIONS** 25

**Definitions**

1. In this Act, unless the context otherwise indicates—
  - “**applicable legislation**” means the laws specified in Schedule 1;
  - “**Constitution**” means the Constitution of the Republic of South Africa, 1996;
  - “**Department**” means the Department of Women, Children and People with Disabilities;
  - “**Discrimination**” means discrimination as defined in the Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 (Act No. 4 of 2000);
  - “**gender**” means the roles, duties and responsibilities which are culturally or socially ascribed to women, men, girls and boys; 35
  - “**gender based violence**” means all acts perpetrated against women, girls, men and boys on the basis of their gender and sex which cause or could cause them physical, sexual, psychological, emotional or economic harm, and includes any threat to cause such harm;
  - “**gender discrimination**” means any distinction, exclusion or restriction made on the basis of gender and sex which has the effect or purpose of impairing or nullifying the equal recognition, enjoyment or exercise by a person of her or his human rights and fundamental freedoms in any spheres of life; 40
  - “**gender equality**” means the full and equal enjoyment of rights and freedoms and equal access to resources, opportunities and outcomes, by women, men, girls and boys; 45

- “**gender mainstreaming**” means the process of identifying gender gaps and making women’s, men’s, girls’ and boys’ concerns and experiences integral to the design, implementation, monitoring and evaluation of policies and programmes in all sectors of life to ensure that they benefit equally;
- “**Minister**” means the Minister for Women, Children and People with Disabilities; 5
- “**political party**” means a party as defined in the Electoral Commission Act, 1996 (Act No. 51 of 1996);
- “**prescribed**” means prescribed by regulation in terms of this Act;
- “**private body**” means—
- (a) a natural person who carries on any trade, business or profession, but only in 10 such capacity;
  - (b) a partnership which carries on any trade, business or profession; or
  - (c) any juristic person, but excludes a public body;
- “**public body**” means—
- (a) any department of state or administration in the national or provincial sphere 15 of government or any municipality in the local sphere of government; or
  - (b) any other functionary or institution when—
    - (i) exercising a power or performing a duty in terms of the Constitution or a provincial constitution; or
    - (ii) exercising a public power or performing a public function in terms of any 20 legislation;
- “**substantive gender equality**” means gender equality in fact and in law;
- “**this Act**” includes any regulation made under this Act; and
- “**women empowerment**” means the advancement of women as contemplated by section 9(2) of the Constitution. 25

### Application of Act

2. (1) Unless otherwise indicated in this Act, this Act applies to all public bodies and private bodies designated under subsection (2).
- (2) The Minister may, in order to achieve the progressive realisation of this Act, by notice in the *Gazette*, designate public bodies and private bodies which must comply 30 with one or more provisions of this Act specified in the notice.
- (3) The Minister may from time to time, for the purposes of subsection (2), designate different public bodies and private bodies which must comply with the relevant provisions.

### Objectives of Act 35

3. The objectives of this Act are to—
- (a) give effect to the letter and spirit of the Constitution, in particular—
    - (i) the equal enjoyment of all rights and freedoms by every person;
    - (ii) the promotion of equality, specifically gender equality; and
    - (iii) the values of non-racialism and non-sexism contained in section 1 of the 40 Constitution;
  - (b) facilitate compliance by designated public bodies and designated private bodies, with the country’s commitments to international agreements, including—
    - (i) the Convention on the Elimination of All Forms of Discrimination 45 Against Women (December 1979);
    - (ii) the Beijing Declaration and Platform for Action (September 1995);
    - (iii) the Millennium Declaration and Development Goals (September 2000);
    - (iv) the Solemn Declaration on Gender Equality in Africa (July 2004); and
    - (v) the SADC Protocol on Gender and Development (August 2008); 50
  - (c) align all aspects of the laws and the implementation of the laws relating to women empowerment and the appointment and representation of women in decision-making positions and structures;
  - (d) facilitate the development and implementation of plans and strategies by designated public bodies and designated private bodies for the promotion of 55 women empowerment and gender equality, and the submission of those plans and strategies to the Minister for consideration, evaluation and guidance;
  - (e) provide for the implementation of measures to achieve a progressive realisation of a minimum of 50 per cent representation and meaningful

participation of women in decision-making structures including Boards by designated public bodies and designated private bodies, as contemplated in section 7;

- (f) provide for the implementation of gender mainstreaming by designated public bodies and designated private bodies as contemplated in section 8; and 5
- (g) provide for the development and implementation of public education programmes on practices that unfairly discriminate on grounds of gender as contemplated in the applicable legislation and in international agreements in order to promote gender equality and social cohesion.

## CHAPTER 2

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### SOCIAL DEVELOPMENT

#### **Education and training**

**4.** (1) Designated public bodies and designated private bodies must develop and implement plans and measures in compliance with applicable legislation and international agreements, to— 15

- (a) address the pervasive discriminatory patriarchal attitudes and the lingering effects of apartheid faced by women in the education system, and ensure that woman's childbearing responsibilities are not the cause for drop out or exclusion, in order to achieve the progressive realisation of access to education for all; 20
- (b) educate and train women in order to achieve the progressive realisation of equitable and sustainable development for women and gender equality;
- (c) capacitate and enable women to assimilate and develop knowledge, requisite skills and values, in order to achieve the progressive realisation of at least a minimum of 50 percent equal representation and meaningful participation of women in all decision-making position and structures, contemplated in section 7(1) and their economic empowerment contemplated in section 10(1); 25
- (d) improve access to education on reproductive rights for women, particularly young women; and
- (e) eliminate prejudices and current practices that hinder the achievement and enjoyment of gender equality and social cohesion. 30

(2) Designated public bodies and designated private bodies must submit to the Minister their plans and measures in compliance with subsection (1) within one year of being designated, for consideration, review and guidance.

(3) The Minister may, at any time after the submission of the plan or measures contemplated in subsection (2), require a designated public body or a designated private body to submit to the Minister a report on its implementation of subsection (1), for consideration, review and guidance. 35

#### **Access to health care, including reproductive health**

**5.** (1) Designated public bodies and designated private bodies must, within its available resources, develop and implement a model for delivering women's health, including reproductive health, in order to achieve the progressive realisation of access to health and reproductive rights for women, in compliance with the applicable legislation and international agreements such as the Millennium Declaration and Development Goals. 40 45

(2) Designated public bodies and designated private bodies must submit to the Minister their plans and measures in compliance with subsection (1) within one year of being designated, for consideration, review and guidance.

(3) The Minister may, at any time after the submission of the plan or measures contemplated in subsection (2), require a designated public body or a designated private body to submit to the Minister a report on its implementation of subsection (1), for consideration, review and guidance. 50

#### **Public education on prohibited practices, including gender based violence**

**6.** (1) Designated public bodies and designated private bodies must develop and implement plans to educate the public on practices that unfairly discriminate on grounds 55

of gender, including gender based violence, in compliance with applicable legislation and international agreements such as the Beijing Declaration and Platform for Action (September 1995), in order to achieve substantive gender equality in society and the workplace.

(2) The Minister may establish mechanisms to undertake research, educational programmes and other measures to strengthen efforts of designated public bodies and designated private bodies to prevent and respond to gender-based violence. 5

(3) Designated public bodies and designated private bodies must submit to the Minister their plans and measures in compliance with subsection (1) within one year of being designated, for consideration, review and guidance. 10

(4) The Minister may, at any time after the submission of the plan or measures contemplated in subsection (3), require a designated public body or a designated private body to submit to the Minister a report on its implementation of subsection (1), for consideration, review and guidance.

## CHAPTER 3 15

### EQUAL REPRESENTATION AND EMPOWERMENT

#### Equal representation and participation

7. (1) Despite any other law, designated public bodies and designated private bodies must, within their ambit of responsibilities and available resources, develop and implement measures, in order to achieve the progressive realisation of a minimum of 50 per cent representation and meaningful participation of women in decision-making structures including Boards, which must include— 20

- (a) building women's capacity to participate;
- (b) enhancing the understanding and attitudes of communities to accept the capabilities and participation of women as their equals; and 25
- (c) developing support mechanisms for women.

(2) Despite any other law, all political parties must develop and implement measures for the progressive realisation of a minimum of 50 per cent representation and meaningful participation of women in decision-making positions and structures.

(3) The Minister may develop guidelines to assist designated public bodies and designated private bodies to comply with subsection (1). 30

(4) Designated public bodies and designated private bodies must submit to the Minister their plans and measures in compliance with subsection (1) within one year of being designated, for consideration, review and guidance.

(5) The Minister may, at any time after the submission of the plan or measures contemplated in subsection (2), require a designated public body or a designated private body to submit to the Minister a report on its implementation of subsection (1), for consideration, review and guidance. 35

#### Gender mainstreaming

8. (1) Designated public bodies and designated private bodies must develop and implement plans and measures which seek to ensure gender mainstreaming. 40

(2) The measures may include—

- (a) the integration of gender considerations by all managers into all policies, structures, systems and processes relating to the designated public bodies and designated private bodies; 45
- (b) steps to ensure that decisions and activities of the designated public body or designated private body are preceded by a gender equality analysis;
- (c) remedial measures to—
  - (i) prevent or alleviate actual and potential prejudice on the basis of gender; and 50
  - (ii) reduce disparities between women and men;
- (d) steps aimed at ensuring compliance with obligations contained in applicable legislation and the international agreements; and
- (e) assessing the implications of its planned measures, in relation to gender mainstreaming. 55

(3) The policies, plans, programmes and strategies must, in the case of the designated public bodies, be approved by the Gender Focal Point contemplated in section 15, and

in the case of designated private bodies, by the accounting officer also contemplated in that section.

(4) The Minister may require a designated public body or a designated private body to submit its plan and measures contemplated in subsection (1) within one year of being designated to the Minister, for consideration, evaluation and guidance. 5

(5) The Minister may, at any time after the submission of the plan or measures contemplated in subsection (2), require a designated public body or a designated private body to submit to the Minister a report on its implementation of subsection (1), for consideration, review and guidance.

(6) The Minister may develop guidelines to assist designated public bodies and designated private bodies to comply with subsection (1). 10

### **Measures to empower women and to eliminate discrimination**

**9.** (1) Despite any other law, targets for women in all laws and policies on empowerment shall be at least 50%.

(2) Designated public bodies and designated private bodies must, within their ambit of responsibilities, develop and implement plans and strategies to align their laws and policies with subsection (1) within two years of coming into operation of this Act. 15

(3) Designated public bodies and designated private bodies must, within their ambit of responsibilities, develop and implement plans and strategies which will assist women to gain power and control over decisions and resources that determine the quality of their lives, in order to achieve the progressive realisation of women empowerment and gender equality. 20

(4) Designated public bodies and designated private bodies must promote women empowerment by taking measures such as—

(a) changing the conditions and circumstances which hinder the achievement of sustainable and substantive gender equality; 25

(b) establishing appropriate and relevant measures designed to recognise and support the roles of women in various sectors of life; and

(c) implementing the applicable legislation, policies and strategies within their mandate and— 30

(i) aligning targets to improve compliance with such legislation, policies and strategies; and

(ii) auditing factors that cause and contribute to non-compliance with such legislation, policies and strategies.

(5) Designated public bodies and designated private bodies must develop and implement policies or programmes— 35

(a) designed to protect and advance women who have been disadvantaged by unfair discrimination;

(b) ensuring and promoting equal opportunities for women;

(c) seeking to eliminate— 40

(i) gender discrimination;

(ii) exploitation of women in the labour market; and

(iii) gender-based violence.

(6) The policies or programmes may include—

(a) economic and land reform initiatives that benefit women; and 45

(b) initiatives that aim to promote the rights and benefits of women and achieve the requisite conditions for women empowerment in the workplace.

(7) Designated public bodies and designated private bodies must submit within one year of being designated, the—

(a) plans and strategies contemplated in subsection (2); 50

(b) plans and strategies contemplated in subsection (3);

(c) measures contemplated in subsection (4); and

(d) policies or programmes contemplated in subsection (5),

to the Minister for consideration, evaluation and guidance.

(8) The Minister may, at any time after the submission of the plans, strategies or measures contemplated in subsection (7), require a designated public body or a designated private body to submit to the Minister a report on its implementation of subsection (1), for consideration, review and guidance. 55

(9) The Minister may develop guidelines to assist designated public bodies and designated private bodies to comply with this section. 60

### **Economic empowerment**

- 10.** (1) Despite any other law, targets for women in all laws and policies on economic empowerment shall be at least 50%.
- (2) Designated public bodies and designated private bodies must, within their ambit of responsibilities, develop and implement plans and strategies to align their laws and policies with subsection (1) within two years of coming into operation of this Act. 5
- (3) Designated public bodies and designated private bodies must, within their ambit of responsibilities and available resources, develop and implement plans and measures, to—
- (a) promote the economic empowerment of women; 10
  - (b) promote women's access to economic and educational opportunities and productive resources;
  - (c) increase access to financing, procurement, land rights, skills development, especially entrepreneurial skills and capacity building of women;
  - (d) facilitate employment opportunities and access to the markets for women; 15
  - (e) compile such data relating to economic empowerment of women as may be prescribed; and
  - (f) comply with prescribed measures aimed at achieving the economic empowerment of women as contemplated by the applicable legislation.
- (4) Designated public bodies or designated private bodies must submit its plans and measures contemplated in subsection (3) within one year of being designated to the Minister for consideration and evaluation. 20
- (5) The Minister may, at any time after the submission of the plan or measures contemplated in subsection (2), require a designated public body or a designated private body to submit to the Minister a report on its implementation of subsection (1), for consideration, review and guidance. 25
- (6) The Minister may develop guidelines to assist designated public bodies and designated private bodies to comply with subsection (1).

### **Socio-economic empowerment of women in rural areas**

- 11.** (1) Despite any other law, designated public bodies and designated private bodies must develop and implement plans and measures, to— 30
- (a) facilitate sustainable livelihoods and decent work for women in rural areas, largely but not solely within agriculture;
  - (b) mainstream gender in land reform programme to ensure more land in the hands of women in rural areas, together with the skills and financial resources necessary for them to use the land productively; 35
  - (c) improve conditions for women on farms, women farm workers and women married to farm workers, to achieve a progressive realisation of security of tenure, housing and improved living conditions for women in rural areas; and
  - (d) ensure equal representation and meaningful participation of women in traditional councils. 40
- (2) The Minister may require a designated public body or a designated private body to submit to the Minister its plan and measures contemplated in subsection (1) within one year of being designated, for consideration, evaluation and guidance.
- (3) The Minister may, at any time after the submission of the plan or measures contemplated in subsection (2), require a designated public body or a designated private body to submit to the Minister a report on its implementation of subsection (1), for consideration, review and guidance. 45

### **Socio-economic empowerment of women with disabilities**

- 12.** (1) Designated public bodies and designated private bodies must develop and implement plans and measures for the economic empowerment of women with disabilities, including special measures to facilitate equal access to education and employment, and their meaningful participation in all areas of economic, social and cultural life, to achieve the progressive realisation of their right to substantive gender equality. 50 55
- (2) A designated public body or a designated private body must submit its plans and measures contemplated in subsection (1) within one year of being designated to the Minister for consideration and evaluation.



(3) The Minister may, at any time after the submission of the plan or measures contemplated in subsection (2), require a designated public body or a designated private body to submit to the Minister a report on its implementation of subsection (1), for consideration, evaluation and guidance.

## CHAPTER 4

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### GOVERNANCE

#### Powers of Minister

**13.** (1) The Minister may, in order to promote women empowerment and the achievement of substantive gender equality for women, in consultation with designated public bodies and designated private bodies— 10

- (a) develop frameworks in relation to the promotion of women empowerment and gender equality;
- (b) require the development and implementation of plans and strategies by designated public bodies and designated private bodies for the promotion of women empowerment and gender equality in compliance with applicable legislation and the submission of those plans and strategies for consideration, evaluation and guidance by the Minister; 15
- (c) collect and analyse information on the plans and strategies submitted by the designated public bodies and designated private bodies for the promotion of women empowerment and gender equality; 20
- (d) collaborate with designated public bodies and designated private bodies to maximise the effectiveness of this Act and the implementation of the applicable legislation;
- (e) undertake research, educational programmes and other measures for the purpose of promoting and improving gender equality socially and in the workplace; 25
- (f) by notice in the *Gazette*—
  - (i) establish mechanisms to promote substantive gender equality;
  - (ii) establish mechanisms to support and strengthen the implementation of applicable legislation; and 30
  - (iii) issue an integrated, co-ordinated and uniform framework to achieve women empowerment and substantive gender equality.

(2) The Minister may, in exercising her or his powers in terms of subsection (1), request a designated public body or a designated private body to provide any information relating to compliance with this Act or applicable legislation. 35

(3) When requesting information from a designated public body or a designated private body in terms of subsection (2), the Minister may issue a direction on the submission of those reports.

#### Guidance by Minister

**14.** (1) The Minister may, on the basis of the information obtained in exercising her or his powers in terms of this Act and with regard to the applicable legislation, in consultation with the relevant Minister, provide guidance to the relevant designated public body or designated private body, for them to promote women empowerment and gender equality. 40

(2) Failure or refusal to comply with the guidance provided by the Minister to a designated public body or a designated private body will be addressed in terms of the enforcement procedures as contemplated in section 16. 45

#### Gender Units and compliance

**15.** (1) Every designated public body must, within a period of three years from the commencement of this Act, establish a Gender Focal Point and appoint suitable personnel, at senior management level, to assist the designated public body to implement gender mainstreaming and, generally, to assist the designated public body to comply with this Act. 50

(2) The accounting officer of the designated public body referred to in the Public Finance Management Act, 1999 (Act No. 1 of 1999), and the accounting officer of the 55

designated private body must ensure that the designated public body or designated private body, as the case may be, implements gender mainstreaming and women empowerment.

(3) The Minister must, by notice in the *Gazette*, make regulations on the qualifications, skills and duties of the personnel to be appointed in the Gender Focal Point. 5

## CHAPTER 5

### ENFORCEMENT

#### Enforcement

16. Subject to the Intergovernmental Relations Framework Act, 2005 (Act No. 13 of 2005), the Minister, acting in the interests of women as a group or class of persons, may use any dispute resolution mechanisms to address non-compliance with this Act or applicable legislation. 10

## CHAPTER 6

### CODE OF GOOD CONDUCT, NORMS AND STANDARDS AND REGULATIONS 15

#### Code of good conduct

17. The Minister may, by notice in the *Gazette*, publish a code of good conduct on gender mainstreaming and women empowerment.

#### Framework on gender mainstreaming and women empowerment 20

18. The Minister may, by notice in the *Gazette*, publish frameworks on gender mainstreaming and women empowerment.

#### Regulations

19. The Minister may, by notice in the *Gazette*, make regulations regarding—
- (a) the establishment of institutional mechanisms to advise the Minister on— 25
    - (i) the promotion of substantive gender equality;
    - (ii) the promotion of the economic empowerment of women; and
    - (iii) monitoring and evaluation of progress on women empowerment and gender equality;
  - (b) gender mainstreaming; 30
  - (c) the competencies required for appointment of personnel in the Gender Focal Point; 30
  - (d) equal representation and participation; and
  - (e) any other administrative or procedural matter that it is necessary or expedient to prescribe in order to achieve the objectives of this Act. 35

## CHAPTER 7

### MISCELLANEOUS

#### Delegation

20. (1) The Minister may delegate any power conferred, or assign any duty imposed, upon the Minister in terms of this Act, except the powers and duties contemplated by sections 14, 17, 18 and 19, to the Director-General or to other officials in the Department. 40

(2) A delegation or assignment under subsection (1)—

- (a) is subject to any limitations, conditions and directions the Minister may impose; 45
- (b) must be in writing;
- (c) may include the power to subdelegate or reassign; and

- (d) does not divest the Minister of the responsibility concerning the exercise of the power or the performance of the duty.

**Short title and commencement**

**21.** This Act is called the Women Empowerment and Gender Equality Act, 2013, and takes effect on a date determined by the President by proclamation in the *Gazette*. 5

**SCHEDULE 1****APPLICABLE LEGISLATION**

<b>Number and year of law</b>	<b>Short Title</b>
Act No. 70 of 1979	Divorce Act
Act No. 27 of 1990	Maintenance of Surviving Spouse Act
Proclamation No. 103 of 1994	Public Service Act
Act No. 3 of 1996	Land and Reform (Labour Tenants) Act
Act No. 66 of 1995	Labour Relations Act
Act No. 78 of 1996	Land Restitution and Reform Laws Amendment Act
Act No. 84 of 1996	South African Schools Act
Act No. 92 of 1996	Choice on Termination of Pregnancy Act
Act No. 46 of 1997	Public Service Commission Act
Act No. 75 of 1997	Basic Conditions of Employment Act
Act No. 101 of 1997	Higher Education Act
Act No. 107 of 1997	Housing Act
Act No. 108 of 1997	Water Services Act
Act No. 19 of 1998	Prevention of Illegal Eviction from and Unlawful Occupation of Land Act
Act No. 55 of 1998	Employment Equity Act
Act No. 73 of 1998	Electoral Act
Act No. 95 of 1998	Housing Consumers Protection Measures Act
Act No. 97 of 1998	Skills Development Act
Act No. 99 of 1998	Maintenance Act
Act No. 105 of 1998	National Empowerment Fund Act
Act No. 108 of 1998	National Development Agency Act
Act No. 116 of 1998	Domestic Violence Act
Act No. 117 of 1998	Local Government: Municipal Structures Act
Act No. 120 of 1998	Recognition of Customary Marriages Act
Act No. 1 of 1999	Public Finance Management Act
Act No. 6 of 1999	Statistics Act
Act No. 4 of 2000	Promotion of Equality and Prevention of Unfair Discrimination Act
Act No. 5 of 2000	Preferential Procurement Policy Framework Act
Act No. 27 of 2000	Local Government: Municipal Electoral Act
Act No. 63 of 2000	Home Loan and Mortgage Disclosure Act
Act No. 63 of 2001	Unemployment Insurance Act
Act No. 53 of 2003	Broad-Based Black Economic Empowerment Act
Act No. 61 of 2003	National Health Act
Act No. 36 of 2004	Securities Services Act
Act No. 34 of 2005	National Credit Act
Act No. 38 of 2005	Children's Act
Act No. 13 of 2006	Older persons Act
Act No. 32 of 2007	Criminal Law (Sexual Offences and Related Matters) Amendment Act
Act No. 54 of 2008	National Youth Development Agency Act
Act No. 68 of 2008	Consumer Protection Act
Act No. 71 of 2008	Companies Act
Act No. 11 of 2009	Reform of Customary Law of Succession and Regulation of Related Matters Act
Act No. 17 of 2011	Protection from Harassment Act

## MEMORANDUM ON THE OBJECTS OF WOMEN EMPOWERMENT AND GENDER EQUALITY BILL, 2013

### 1. INTRODUCTION

The draft Women Empowerment and Gender Equality Bill, 2013 (“Bill”), was drafted by the Department of Women, Children and People with Disabilities (the “DWCPD”), to promote equality perspectives in relation to women and to identify and prevent discrimination against women on the basis of gender and race.

### 2. BACKGROUND

- 2.1 Under section 1 of the Constitution, the founding values of the democratic state of the Republic of South Africa are human dignity, the achievement of equality and the advancement of human rights and freedoms, non-racialism and non-sexism. Section 2 of the Constitution provides that obligations imposed by the Constitution as the supreme law of the Republic must be fulfilled.
- 2.2 Section 9 of the Constitution creates the basis for the obligation of the public sector, the private sector and civil society to eliminate and remedy gender and race inequalities. Section 9(2) of the Constitution guarantees the full and equal enjoyment of all rights and freedoms by people of all genders. Section 9(2) of the Constitution furthermore provides that legislative and other measures designed to protect or advance persons or categories of persons disadvantaged by unfair discrimination, may be taken to promote the achievement of equality.
- 2.3 Section 9(3) and (4) of the Constitution prohibit unfair discrimination by the state or another person against anyone on the ground of gender, race and other factors. Based on section 9(3) and (4) of the Constitution, legislation such as the Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 (Act No. 4 of 2000), the Basic Conditions of Employment Act, 1997 (Act No. 75 of 1997), the Employment Equity Act, 1998 (Act No. 55 of 1998), and the Preferential Procurement Policy Framework Act, 2000 (Act No. 4 of 2000), seek to prevent and prohibit unfair discrimination on the basis of, *inter alia*, race, class, gender and people with disabilities and to promote equality.
- 2.4 Based on section 9(2) of the Constitution, legislation such as the Employment Equity Act, 1998 (Act No. 55 of 1998), and the Broad Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003), seek to provide for the implementation of affirmative action programmes aimed at advancing blacks, women and people with disabilities.
- 2.5 In 2000, Cabinet adopted the South African National Policy Framework for Women’s Empowerment and Gender Equality, 2000 (Policy Framework), which provided for the establishment of the National Gender Machinery (NGM). The NGM is a network of coordinated structures within and outside government which operate cooperatively in facilitating political, social, economic and other forms of transformation to dismantle systemic gender inequality and promote equality between women and men. Since the adoption of the NGM model, there have been a number of developments in the operations of government and societal behaviour. This has led to calls for a re-look at the model with emphasis on the highest executive coordination point hence the call for a dedicated women’s ministry.
- 2.6 In view of continued inequalities and poverty faced by women and governance challenges in mainstreaming gender as well as the need to update the Policy Framework, the Ministry initiated a review of the Policy Framework with the intention to develop a National Gender Policy. At consultations in the revision phase, women called for a binding legal framework that will ensure that all the entities to whom legislation on gender equality applies, comply with its requirements.

- 2.7 His Excellency, Mr GJ Zuma, President of the Republic of South Africa, announced the Ministry of the Department of Women, Children and People with Disabilities (the “DWCPD”), on 10 May 2009, with subsequent proclamation on 7 July 2009 (Government Gazette No. 32387, Proclamation No. 48 of 2009).
- 2.8 At the National Women’s Day celebrations on 9 August 2009, the President magnified the DWCPD’s role, stating that the Ministry will “monitor other government departments to ensure the mainstreaming of gender, children’s rights and disability considerations into all programmes of government and other sectors”.
- 2.9 The President reiterated in his State of the Nation Address in February 2010, the need to integrate gender equity measures into government’s programmes of action to ensure that women, children and people with disabilities can access developmental opportunities.

### 3. OBJECTS OF BILL

- 3.1 It is submitted that the proposed legislation does not aim to create new anti-gender discrimination legislation; however, its aim is to introduce measures and targets to strengthen existing legislation on the promotion of women empowerment and gender equality. The proposed legislation carries forward the constitutional vision of equality by requiring the development and implementation of plans and measures to redress gender imbalances and to submit those plans and measures to the Minister for consideration, evaluation and guidance.
- 3.2 Based on section 9 of the Constitution and with reference to sections 25(1)(c)(ii), and 28 of the Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 (Act No. 4 of 2000) (the date of commencement which still needs to be proclaimed), read with section 2 of that Act, the Bill seeks to establish a legislative framework—
- (a) to provide the Minister of Women, Children and People with Disabilities (the “Minister”), with the necessary governance authority to monitor, review and oversee gender mainstreaming, the promotion of women empowerment and equal representation and meaningful participation of women in all decision-making positions and structures;
  - (b) for the protection and advancement of women and girl children, as envisaged by section 9(2) of the Constitution, through—
    - (i) public education on prohibited practices that discriminate on the grounds of gender;
    - (ii) supporting and reinforcing the rights and remedies contained in applicable legislation, policies and mechanisms on the empowerment of women and the promotion of gender equality;
    - (iii) enhancing capacity for the implementation of applicable legislation through development of integrated strategies, frameworks, programmes, plans, activities and budgets which aim to eliminate structural and systemic inequalities and to enable women to gain power and control over decisions and resources that determine the quality of their lives in a sustainable manner;
    - (iv) advancing, developing, promoting and protecting the rights of women through capacity building and training, lobbying, advocacy, awareness raising, empowerment and monitoring of compliance by all entities;
    - (v) facilitating capacity building and the development of strategies for the implementation of gender mainstreaming and gender budgeting;
    - (vi) facilitating compliance, quality and timeous reporting on the country’s commitments to international treaties; and
    - (vii) the prohibition of all forms of practices with adverse effects on women.

#### 4. EXPLANATORY NOTES

4.1 **Preamble** affirms South Africa's commitments to the promotion of gender equality and prohibition of discrimination on the basis of gender.

#### 4.2 **Clause 1**

Clause 1 provides for definitions.

#### 4.3 **Clause 2 (Application of Bill)**

Clause 2 provides that unless otherwise indicated in the Act, the Bill applies to designated public bodies and designated private bodies.

#### 4.4 **Clause 3 (Objectives of the Bill)**

Clause 3 provides for the following objectives:

- To give effect to sections 1 and 9 of the Constitution;
- to provide for compliance with international agreements;
- to align laws and implementation of laws with this Act;
- to provide for the development and implementation of plans by designated public bodies and designated private bodies to promote women empowerment and gender equality; and
- to provide for implementation of measures to facilitate the progressive realisation of a minimum of 50% representation of women in decision making positions and structures

#### 4.5 **Clause 4 (Education and training)**

Clause 4 provides that designated public bodies and designated private bodies must develop and implement plans and measures to ensure access to education for all, to address the continued discriminatory practices, and ensure that the education programmes equip women with the requisite knowledge, skills and values to enable women to participate in the economy and all structures.

#### 4.6 **Clause 5 (Access to health care, including reproductive health)**

Clause 5 provides that designated public bodies and designated private bodies must develop and implement a model for delivering women's health, including reproductive health.

#### 4.7 **Clause 6 (Public education on prohibited practices, including gender based violence)**

Clause 6 provides that designated public bodies and designated private bodies must develop and implement plans and measures to educate the public on practices that unfairly discriminate on the grounds of gender, including gender based violence, in compliance with the applicable legislation and international agreements.

Clause 6(2) provides that the Minister may establish mechanisms to undertake research, educational programmes and other measures to strengthen the efforts of designated public bodies and private bodies.

#### 4.8 **Clause 7 (Equal representation and participation)**

Clause 7 provides that despite any other law, designated public bodies and designated private bodies must develop and implement measures in order to achieve the progressive realisation of at least 50 percent representation and meaningful participation of women in decision making structures.

Furthermore, clause 7(2) provides that despite any other law, all political parties must develop and implement measures in order to achieve the

progressive realisation of at least 50 percent representation and meaningful participation of women in decision making structures.

#### **4.9 Clause 8 (Gender Mainstreaming)**

Clause 8 provides for implementation of gender mainstreaming and the submission of plans to the Minister by the designated public bodies and designated private bodies within a year of being designated.

#### **4.10 Clause 9 (Measures to empower women and to eliminate discrimination)**

Clause 9 provides that despite any other law, targets on women and men in all laws and policies on empowerment shall be at least 50% women;

It provides that all designated public bodies and designated private bodies must develop and implement plans and special measures to protect and advance women as a category which has been disadvantaged by unfair discrimination.

#### **4.11 Clause 10 (Economic Empowerment)**

Clause 10 provides that despite any other law, targets on women and men in all laws and policies on economic empowerment, shall be at least 50% women.

It further provides that designated public bodies and designated private bodies must develop and implement plans and strategies to align their laws and policies with subsection (1) within two years of being designated.

#### **4.12 Clause 11 (Socio-economic empowerment of women in rural areas)**

Clause 11 provides for special measures for the socio-economic development for women in rural areas.

#### **4.13 Clause 12 (Socio-economic empowerment of women with disabilities)**

Clause 12 provides for special measures for the socio-economic development for women with disabilities.

#### **4.14 Clause 13 (Powers of Minister)**

Clause 13 provides for the role of the Minister to promote and coordinate the achievement of women empowerment and substantive gender equality.

#### **4.15 Clause 14 (Guidance by Minister)**

Clause 14 provides that the Minister may, in consultation with the relevant Minister, provide guidance to the designated public bodies and designated private bodies to promote women empowerment and gender equality.

#### **4.16 Clause 15 (Gender Units and Accountability)**

Clause 15 provides that every designated public body must within a period of three years from the commencement of this Act, establish a Gender Focal Point and appoint suitable personnel at an SMS level as prescribed and resource it appropriately.

It also provides that the Accounting Officers of the designated public bodies and designated private bodies are accountable for the mainstreaming of gender.



#### 4.17 Clause 16 (Enforcement)

Clause 16 provides that subject to the Intergovernmental Relations Framework Act, 2005 (Act No. 13 of 2005), the Minister, acting in the interests of women as a group or class of persons, may use any dispute resolution mechanisms to address non-compliance with this Act.

#### 4.18 Clause 17 (Code of good conduct)

Clause 17 provides that the Minister may, by notice in a *Gazette*, publish a code of good conduct on gender mainstreaming and women empowerment.

#### 4.19 Clause 18 (Framework)

Clause 18 provides that the Minister may develop a framework on gender mainstreaming and women empowerment.

#### 4.20 Clause 19 (Regulations)

Clause 19 provides that the Minister may develop regulations.

#### 4.21 Clause 20 (Delegations)

Clause 20 provides that the Minister may delegate any power conferred, or assign any duty imposed upon the Minister in terms of this Act, except the powers and duties contemplated in sections 14, 17, 18 and 19.

#### 4.22 Clause 21 (Short title)

Clause 21 contains the short title of the Bill.

**Schedule 1:** Applicable legislation.

## 5. BODIES CONSULTED

In August 2011, the DWCPD hosted the National Women's Conference at Birchwood in Johannesburg. After this Conference a number of consultative meetings and workshops were conducted with various organs of state and the private sector. Further, the Bill was published in the Government Gazette on the 29 August 2012 for public comments. Comments were received from organs of state, private sector and individuals respectively, which included—

- government departments;
- the South African Law Reform Commission;
- the Office of the Premiers of Gauteng and Free State;
- the Commission for Gender Equality;
- the Progressive Women's Movement of South Africa;
- the Human Sciences Resource Council;
- the Women's Legal Centre;
- Price and Waterhouse Coopers;
- Telkom;
- the Gender Health and Justice Research Unit, University of Cape Town; and
- Nedlac.

## 6. FINANCIAL IMPLICATIONS FOR STATE

6.1 The approved organisational structure of the DWCPD provides for monitoring and evaluation of sub-programmes within the Programmes: Women Empowerment and Gender Equality, Children's Rights and Responsibilities and Rights of People with Disabilities. The strategic objectives of these sub-programmes are to monitor and evaluate progress on women empowerment and gender equality, the realisation of children's rights into government's policies and programmes and the progressive realisation of the rights of people with disabilities.

- 6.2 In terms of the Policy Framework of 2000, all government Departments have gender units even though at different levels. The financial implications of implementing the required structure are therefore already incorporated in the Medium Term Strategic Framework budget processes of all departments. Provinces had already incorporated the budget on the National Gender Machinery through the Provincial Offices on the Status of Women. Similarly, local governments have established gender units which should thus already be in the finance structures of the local governments.
- 6.3 In view of the fact that the proposed legislation does not aim to create new anti-gender discrimination legislation, or additional mechanisms to enforce existing legislation and policies, it is submitted that the Bill will not have significant direct financial implications as all the above mentioned structures are supposedly already in place and funded.

## **7. PARLIAMENTARY PROCEDURE**

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



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