

REPUBLIC OF SOUTH AFRICA

DEVELOPMENTAL WELFARE GOVERNANCE BILL

*(As introduced in the National Assembly as a section 75 Bill) (Explanatory summary of Bill
published in Government Gazette No. 21369 of 21 July 2000) (The English text is the
official text of the Bill)*

(MINISTER FOR WELFARE AND POPULATION DEVELOPMENT)

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BILL

To provide for a national governance structure in the welfare sector with the aim of building and consolidating partnership between government and civil society; for that purpose, to establish a juristic person to be known as the South African Developmental Welfare Council; to provide for the composition, objectives and functions of the Council; and to provide for matters connected therewith.

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

Definitions

1. In this Act, unless the context indicates otherwise—

- (i) “civil society” means institutions, organisations and individuals outside of government, and includes trade unions, consumer organisations, the formal and informal welfare sectors, non-governmental organisations, community-based organisations, religious organisations and other organisations delivering social welfare services; 5
- (ii) “Council” means the South African Developmental Welfare Council established by section 2; 10
- (iii) “Department” means the Department of Welfare in the national sphere of government;
- (iv) “developmental social welfare” means planned social change designed to promote social and economic development of the people by utilising social welfare services, programmes, methods and approaches which are— 15
 - (a) responsive to social, cultural, economic and political conditions;
 - (b) accessible to the needs and problems of the people; and
 - (c) directed at the prevention, alleviation and elimination of the social problems of individuals and communities; 20
- (v) “Director-General” means the Director-General of the Department;
- (vi) “governance” means government and civil society structures engaged in the promotion of partnership which recognise the responsibility of all stakeholders in formulating and implementing effective and equitable developmental social welfare policy and programmes; 25
- (vii) “Minister” means the Minister for Welfare and Population Development in the national sphere of government;
- (viii) “partnership” means the national collective responsibility of government and civil society in meeting the welfare needs of the people;
- (ix) “prescribed” means prescribed by regulation; 30
- (x) “regulation” means a regulation made under this Act;
- (xi) “rule” means a rule made under this Act;
- (xii) “social welfare personnel and practitioners” means all categories of personnel in the social service and welfare sector, and includes social workers, social security personnel, community development workers, social auxiliary workers and child and youth care workers; 35
- (xiii) “stakeholders” means the structures and sectors from all organs of government and civil society which have a direct and vested interest in social welfare policies and programmes.

Establishment of South African Developmental Welfare Council

2. A juristic person to be known as the South African Developmental Welfare Council is established.

Objectives of Council

3. The objectives of the Council are— 5
- (a) to advise the Minister on—
- (i) measures to promote the transformation and continuous improvement of welfare services;
 - (ii) measures to promote social development initiatives;
 - (iii) measures to promote poverty relief, poverty reduction and poverty elimination; 10
 - (iv) measures to include local government in the provision of welfare services;
 - (v) proposals for new legislative frameworks for the welfare sector and amendments to existing legislation; and 15
 - (vi) the introduction of local and international best practices in welfare services;
- (b) to act as a consultative forum for the Minister to discuss matters of welfare governance, including—
- (i) improving the quality of provincial and national welfare governance; 20
 - (ii) the introduction of new policy and successful policy implementation in the government and non-governmental environment;
 - (iii) facilitating consultation between stakeholders and government regarding the implementation of developmental social welfare;
 - (iv) ensuring effective review of formulation, implementation and evaluation of welfare policies, programmes and legislation, as informed by the needs and priorities of society; 25
 - (v) assisting provincial and local governments in the formation and development of consultative, developmental social welfare governance structures at all levels of government; 30
 - (vi) inputs from the welfare sector to international forums and protocols.

Powers of Council

4. The Council may—
- (a) undertake research on evaluating and enhancing the effective implementation of developmental social welfare services and programmes; 35
 - (b) arrange consultative conferences and workshops;
 - (c) review national budgetary allocations in order to promote intersectoral co-operation and assess the implications of budgetary resource allocations for the developmental social welfare sector;
 - (d) exercise any power conferred and must perform any duty imposed upon it by or under this Act or any other law. 40

Duties of Council

5. (1) The Council, in order to achieve its objectives, must—
- (a) respond to, and advise the Minister on, developmental social welfare issues identified by, or referred to, the Council; 45
 - (b) identify, promote, monitor and evaluate policy, legislation and programmes with regard to developmental social welfare and its impact on the quality of life of the people;
 - (c) consider all proposed developmental social welfare legislation before it is introduced in Parliament; 50
 - (d) facilitate dialogue between government and civil society on developmental social welfare issues;
 - (e) promote stakeholder participation in developmental social welfare, particularly consumer and grassroots sector participation;

- (f) facilitate consultation between the stakeholders, various spheres of government and the Minister in order to identify developmental social welfare matters requiring attention;
 - (g) develop an information and communication strategy between government and civil society; 5
 - (h) submit a report on the activities of the Council to the Minister at least once a year and whenever requested by the Minister;
 - (i) keep abreast of international developments in developmental social welfare policy;
 - (j) investigate the availability of additional funding for the work of the Council; 10 and
 - (k) make formal reports available to the public to ensure the commitment of the Council to transparency and accountability.
- (2) The Council must establish clear lines of communication, including formal meetings, with structures that it interacts with, including the Portfolio Committee on Welfare and the Departmental Committee on Developmental Social Services. 15
- (3) Any advice or recommendation to the Minister must include the minority views of one or more members of the Council.
- (4) Nothing in this section precludes the Council from considering any matter pertaining to developmental social welfare policy. 20

Composition of Council

6. (1) The Council consists of nine members appointed by the Minister, of whom not more than four must be government officials or representatives, namely—
- (a) one representative from the office of the Minister;
 - (b) one representative from the Department; 25
 - (c) one representative from the Departmental Committee on Developmental Social Services;
 - (d) a representative from a national professional coordinating body which represents social welfare personnel and practitioners;
 - (e) a representative from the South African Council for Social Service Professions; 30
 - (f) a representative from national forums and networks in the developmental social welfare sector;
 - (g) a representative from organisations representing persons who use social welfare services; 35
 - (h) a representative from national funder bodies; and
 - (i) a representative from a national training body representing institutions involved in the training of social welfare personnel.
- (2) In appointing members to the Council, the Minister must ensure that the Council represents a broad cross-section of the population of South Africa and comprises of persons who reflect South African society with special attention to race, gender and disability. 40
- (3) The members referred to in subsection (1)(d) to (i) must be nominated by organisations in the developmental social welfare sector or by the public.
- (4) For the purpose of nominations, the Minister must invite such nominations by notice in the *Gazette*, by publication in two national newspapers and by approaching organisations in the developmental social welfare sector. 45
- (5) The names of the members of the Council and the date of commencement of their period of office must be published by the Minister by notice in the *Gazette* within 30 days after the appointment of such members. 50
- (6) The members of the Council hold office for a period of four years reckoned from the date of their appointment.
- (7) Members are at the expiry of their terms of office eligible for reappointment.
- (8) A member of the Council, excluding a member who is in the employ of the State, must be paid remuneration and allowances as may be determined by the Minister in consultation with the Minister of Finance. 55

Qualifications of members of Council, vacation of office and filling of vacancies

7. (1) A person may not be appointed as a member of the Council unless he or she—
- (a) is a South African citizen who is resident in the Republic;

- (b) has experience or knowledge of developmental social welfare;
 - (c) is committed to the objectives and principles enunciated in the White Paper for Social Welfare;
 - (d) is committed to fairness, freedom of expression, accountability and the right of stakeholders to be consulted; 5
 - (e) was granted amnesty in respect of an offence of which he or she was convicted, whether in the Republic or elsewhere, and was sentenced to imprisonment without the option of a fine, and it has been established that such offence was politically motivated.
- (2) A member of the Council vacates his or her office if that member— 10
- (a) has been absent from more than two consecutive ordinary meetings of the Council without the permission of the Council;
 - (b) is disqualified under any law from practising his or her profession;
 - (c) ceases to be a South African citizen or is no longer resident in the Republic;
 - (d) ceases to represent the constituency required for his or her appointment; or 15
 - (e) submits his or her resignation in writing to the Minister.
- (3) A member of the Council vacates his or her office if the Minister, on the recommendation of the Council, terminates his or her membership for reasons which are just or fair.
- (4) (a) A vacancy on the Council must be filled in the same manner in which the member's predecessor was appointed, by the appointment of another member nominated from the same organisation. 20
- (b) A member referred to in paragraph (a) holds office for the unexpired portion of the period of office of his or her predecessor.

Chairperson and vice-chairperson

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8. (1) Before the first meeting of a newly constituted Council the Minister must appoint a chairperson, and at that first meeting the members of the Council must elect from among themselves the vice-chairperson.
- (2) (a) If the office of the chairperson or vice-chairperson becomes vacant, the Minister or the members of the Council, as the case may be, must, at the first meeting after such vacancy occurred, appoint a new chairperson or elect from among themselves a new vice-chairperson, as the case may be. 30
- (b) The chairperson or vice-chairperson holds office for the unexpired portion of the period of office of his or her predecessor.
- (3) The chairperson or vice-chairperson of the Council may vacate his or her office without terminating his or her membership of the Council, in which case such a vacancy must be filled in terms of subsection (2)(a). 35

Meetings of Council

9. (1) The Council must meet for the first time at a place determined by the Minister and thereafter at a time and place determined by the chairperson, or if he or she is absent, the vice-chairperson. 40
- (2) (a) When the chairperson is absent or unable to perform his or her functions, the vice-chairperson must act as chairperson.
- (b) If both the chairperson and vice-chairperson are absent from a meeting or unable to perform their functions, the members present must elect a person from among themselves to preside at that meeting. 45
- (3) The Council must determine the procedure for calling meetings and the procedures to be followed at meetings.
- (4) The majority of the members of the Council constitute a quorum for a meeting of the Council. 50
- (5) The Council must hold at least three meetings each year.
- (6) (a) The Council may hold such special meetings as the Council may, from time to time, determine.

(b) The chairperson may at any time convene a special meeting of the Council, but must convene such special meeting at the written request of the Minister or of at least seven members of the Council.

(7) A decision or recommendation taken by the Council, or an action taken on authority of such decision or recommendation, is not invalid merely because— 5

(a) of a casual vacancy in the Council; or

(b) a person who was entitled to sit as a member of the Council did not sit when the decision was taken.

Executive committee

10. (1) (a) There is an executive committee of the Council consisting of— 10

(i) the chairperson;

(ii) the vice-chairperson; and

(iii) three other members of the Council designated by the Council.

(b) The executive committee is the accounting authority of the Council.

(2) (a) Subject to the provisions of this Act and the directions of the Council, the executive committee may perform any function of the Council. 15

(b) The provisions of paragraph (a) do not empower the executive committee to set aside or amend any decision of the Council.

(c) Any decision taken or act performed by, or on the authority of, the executive committee is of full force and effect, unless it is set aside or amended by the Council at its first meeting following the meeting of the executive committee at which such decision was taken or such action was authorised. 20

(3) The quorum for, and the procedure at, meetings of the executive committee must be as prescribed.

Other committees

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11. (1) (a) The Council may, with the approval of the Minister, from time to time, establish in the prescribed manner such other committees as it may deem necessary, to assist it in the performance of its functions.

(b) Such committees may include persons not serving on the Council.

(2) (a) A committee must exercise such powers or perform such duties as may, from time to time, be conferred or imposed upon it by the Council. 30

(b) The Council is not divested of any power or duty conferred or imposed upon a committee.

(c) The Council may designate a member of a committee as the chairperson of such committee, and if no member is so designated, the members of such committee may elect a chairperson from among themselves. 35

(d) The quorum for a meeting of a committee is the majority of its members, and the procedure at a meeting of a committee must be as determined by the Council.

(3) Should the Council establish a committee to consider a particular matter, the committee must, as far as possible, give directly affected groups the opportunity to comment on such matter, and submit a report to the Council who must transmit that report to the Minister. 40

(4) Any committee established by the Council in terms of subsection (1) may be dissolved by a decision of the Council.

Personnel and finances of Council

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12. (1) (a) The Director-General must, after consultation with the Council, designate, on a full-time basis, officers or employees appointed in terms of the Public Service Act, 1994 (Proclamation No. 103 of 1994), for the proper performance by the Council of its functions.

(b) The personnel referred to in paragraph (a) is responsible to the chairperson of the Council and accountable to the Department. 50

(2) The Council may, with the approval of the Director-General, enter into agreements with persons for the performance of specific duties or for the provision of specific services.

(3) (a) The Minister must, in consultation with the Minister of Finance, approve a budget for the Council. 55

(b) The expenses of the Council and committees of the Council are funded by the Department from money appropriated for that purpose by Parliament or received from other sources approved by the Minister.

Rules

13. The Council may, with the approval of the Minister, make rules relating to any matter which the Council deems necessary for the achievement of its objects, including rules relating to a code of conduct for members of the Council. 5

Regulations

14. The Minister may, on the recommendation of the Council, make regulations relating to any matter which is necessary in order to achieve the objects of this Act. 10

Repeal of certain provisions of Act 100 of 1978

15. The National Welfare Act, 1978, is repealed in so far as it relates to provisions which have not been assigned to a competent authority within the jurisdiction of the government of a province in terms of Proclamation No. R.7 of 1996.

Short title and commencement 15

16. This Act is called the Developmental Welfare Governance Act, 2000, and comes into operation on a date determined by the President by proclamation in the *Gazette*.

MEMORANDUM ON THE OBJECTS OF THE DEVELOPMENTAL WELFARE GOVERNANCE BILL, 2000

Background and main objects

South Africa has made a commitment to a developmental social welfare approach, the aim of which is to build a self-reliant nation in partnership with all stakeholders. This will be achieved through an integrated social welfare system which maximises its existing potential, and which is premised on principles of equity, sustainability, access and people-centredness (White Paper for Social Welfare, 1996). Arising from these principles is the need for institutional arrangements which are guided by the key operational concepts of partnership and co-operative governance.

The White Paper for Social Welfare acknowledges the inadequacy of past governance structures which amongst other things, lacked legitimacy and inclusivity and perpetuated disparity and selective delivery of services.

In attempting to redress the past inadequacies of governance mechanisms and imbalances in service delivery, the White Paper for Social Welfare (Section 26 of Chapter 3) acknowledges the need for appropriate, legitimate, transparent and effective governance mechanisms. An envisaged governance structure should be viewed as one of the critical and strategic mechanisms to facilitate meaningful and relevant civil society participation in policy, legislation, programmes and social services activities.

The provisions of this Bill are part of the overall transformation of the welfare system from a purely residual one to a developmental one. A structure is advocated that will promote maximum influence of political decision-making and maximum dialogue between the Department and the developmental welfare sector.

The main object of the Bill is to make provision for the establishment and constitution of the contemplated new council which shall be known as the South African Developmental Welfare Council ("the Council").

The Council is intended to facilitate and consolidate participation of civil society and government interaction and public policy formulation at various levels. These levels of participation and interaction on policy, legislation and developmental welfare issues will be informed and empowered by the strengths of existing organisations at national, provincial and local levels of society. The Council will enhance dialogue between civil society developmental welfare structures and the different spheres of government.

Main features

The Bill provides for certain welfare-related definitions and for the establishment, objects and functions of the South African Developmental Welfare Council.

Financial implication of the Bill for State

The Council will consist of nine members of whom not more than four may be Government officials or representatives. The Council must hold at least three meetings each year and it is assumed that those meetings will each last two days.

Based on current tariffs the chairperson and members will be paid fees and travelling and subsistence allowances amounting to R93 700,00. Entertainment, cellular phones and additional remuneration may amount to R36 000,00. Professional advisory services may amount to R100 000,00.

The Bill also provides that the Director-General must designate officers on a full-time basis to the Council to assist the Council in the proper performance of its functions.

Should one person at the level of Assistant Director and two Senior Administrative Officers be appointed by the Department, their full remuneration packages, together with the purchase of equipment, furniture, stationery, cellular phones, transport and travel and subsistence allowances, will amount to approximately R456 000,00.

All in all the financial implications of this Bill for the State may amount to approximately R686 000,00 per annum.

Consultation

The said provisions arise out of a consultative process in which the views of stakeholders (well over seventy submissions were received) both within government and civil society were canvassed concerning an initial set of recommendations and a

series of critical questions. Among others the following bodies have been consulted on the provisions of the Bill:

- Black Sash Trust
- Catholic Women's League
- Child and Family Welfare Society
- Community Development and Family Care of South Africa
- Department of Welfare, Gauteng
- Department of Welfare, Free State
- Department of Health, Developmental Welfare and Environmental Affairs, Northern Cape
- Department of Health and Welfare, Northern Province
- Department of Welfare, KwaZulu-Natal
- Department of Social Services, Western Cape
- Greater Johannesburg WSSDF
- Mpumalanga Provincial Government
- National Welfare Social Services and Development Forum
- Rhodes University
- SABSWA
- SA National Council for the Aged
- SA National Council for Child Welfare
- SA Federation for Mental Health
- SA National Council for the Blind
- SKDB Dutch Reformed Church
- National Council for Persons with Disabilities in South Africa
- Universities of Pretoria, Free State, Cape Town and Natal

Parliamentary procedure

The Department of Welfare and the State Law Advisers are of the opinion that the Bill must be dealt with by Parliament in accordance with the procedure set out in section 75 of the Constitution of the Republic of South Africa, 1996. The Bill deals with national policy on welfare and not welfare services as contemplated in Schedule 4 of the Constitution. The national Minister for Welfare and Population Development will administer this Act.

Official text

The English text of this Bill is the official text.