

REPUBLIC OF SOUTH AFRICA

NATIONAL YOUTH DEVELOPMENT AGENCY BILL

*(As introduced in the National Assembly (proposed section 75); explanatory summary of
Bill published in Government Gazette No. 31530 of 24 October 2008
(The English text is the official text of the Bill)*

(AD HOC COMMITTEE ON NATIONAL YOUTH DEVELOPMENT AGENCY BILL)

[B 82—2008]

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BILL

To provide for the establishment of the National Youth Development Agency aimed at creating and promoting coordination in youth development matters; to provide for the objects and functions of the Agency; to provide for the manner in which it is to be managed and governed; to provide for the regulation of its staff matters and financial affairs; to provide for the administration of the fund referred to in the Demutualisation Levy Act, 1998 by the Agency under a new name; to repeal the National Youth Commission Act, 1996; and to provide for matters connected therewith.

Preamble

RECOGNISING the heroic struggles of generations of the youth to bring about freedom and democracy in South Africa;

AND SINCE youth development is central in the reconstruction and development of South Africa;

AND WHEREAS the government must take reasonable measures, within its available resources, to achieve progressive development of South Africa's youth;

AND WHEREAS the interventions on youth development in South Africa must be implemented in a cohesive, seamless and integrated manner;

THEREFORE the spirit and form of the National Youth Development Agency must give resonance to youth development in South Africa.

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

ARRANGEMENT OF SECTIONS

1.	Definitions	
2.	Establishment of the Agency	5
3.	Objects of the Agency	
4.	Principles of youth development	
5.	Functions of the Agency	
6.	Reporting by the Agency	
7.	Role of organs of state, companies and civil society organisations in youth development	10
8.	Control and management of affairs of Agency	
9.	Composition, appointment and conditions of service of the Board	
10.	Disqualification, removal from office and resignation of director of Board	
11.	Meetings of Board	15
12.	Committees of Board	
13.	Appointment of Chief Executive Officer	
14.	Employment contract and performance agreement of Chief Executive Officer	

15. Duties of Chief Executive Officer
16. Appointment of staff
17. Delegation and assignment
18. Funding and investments
19. Regulations 5
20. Judicial management and liquidation of Agency
21. Transitional provisions
22. Repeal of laws
23. Short title and commencement

Definitions 10

1. In this Act, unless the context otherwise indicates—
 - “**Agency**” means the National Youth Development Agency established by section 2;
 - “**Board**” means the Board of the Agency referred to in section 8;
 - “**organ of state**” has the meaning assigned in 239 of the Constitution of the Republic of South Africa, 1996; 15
 - “**Integrated Youth Development Strategy**” means the Integrated Youth Development Strategy for South Africa referred to in section 3(a);
 - “**financial year**” means the period from 1 April in any year to 31 March in the next year; 20
 - “**members**” means members of the Board appointed in terms of section 9;
 - “**prescribed**” means prescribed by regulation in terms of section 19;
 - “**Public Finance Management Act**” means the Public Finance Management Act, 1999 (Act No. 1 of 1999);
 - “**regulation**” means any regulation made in terms of section 19; 25
 - “**this Act**” includes any regulation promulgated in terms of this Act;
 - “**Umsobomvu Fund**” means the Umsobomvu Fund as referred to in the Demutualisation Levy Act, 1998 (Act No. 50 of 1998);
 - “**Umsobomvu Youth Fund**” means the section 21 company established in 2001 and funded from proceeds of the Demutualisation Levy Act, 1998; and 30
 - “**youth**” means persons between the ages of 14 and 35.

Establishment of Agency

2. (1) A juristic person to be known as the National Youth Development Agency is hereby established.
- (2) The Agency is a national public entity as defined in section 1 of the Public Finance Management Act. 35

Objects of Agency

3. (1) The objects of the Agency are to—
 - (a) develop an Integrated Youth Development Plan and Strategy for South Africa;
 - (b) develop guidelines for the implementation of an integrated national youth development policy and make recommendations to the President; 40
 - (c) initiate, design, co-ordinate, evaluate and monitor all programmes aimed at integrating the youth into the economy and society in general;
 - (d) guide efforts and facilitate economic participation and empowerment, and achievement of education and training; 45
 - (e) partner and assist organs of state, the private sector and non-governmental organisations and community based organisations on initiatives directed at attainment of employment and skills development;
 - (f) initiate programmes directed at poverty alleviation, urban and rural development and the combating of crime, substance abuse and social decay amongst youth; 50
 - (g) establish annual national priority programmes in respect of youth development;
 - (h) promote a uniform approach by all organs of state, the private sector and non-governmental organisations, to matters relating to or involving youth development ; and 55

- (i) endeavour to promote the interest generally of the youth, particularly young people with disabilities.
- (2) Nothing contained in this Act precludes the Agency from directly implementing any programme or intervention aimed at advancing its objects in terms of this Act.

Principles of youth development

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4. Youth development interventions and programmes must be guided by the following principles:

- (a) recognition of the manner in which youth has been affected by the imbalances of the past and the need to redress these imbalances through more equitable policies, programmes and the allocation of resources; 10
- (b) promotion of equal opportunity and equal treatment of youth and the promotion of a gender-inclusive approach to the development of youth, where the social influences of gender, disability, the impact of sexism and the particular circumstances of young women are recognised;
- (c) creation of an environment which supports the continued development and learning of youth; 15
- (d) promotion of youth's participation in—
 - (i) democratic processes;
 - (ii) community and civic decision-making; and
 - (iii) development at all levels; 20
- (e) recognition of youth development as an important mandate;
- (f) responsiveness to the needs, aspirations and challenges of youth in a realistic and participatory manner;
- (g) recognition of the importance of cultural and spiritual diversity as a basis for youth development; 25
- (h) promotion of the value of sustainability in order to ensure that the needs of youth are met without compromising the ability of future generations to meet their own needs;
- (i) recognition in youth development initiatives of the peculiar needs of rural youth; and 30
- (j) transparency, accountability and accessibility.

Functions of Agency

- 5. (1) The Agency must, in order to achieve its objects,—
 - (a) establish competencies and capabilities in its operations including the following functional areas— 35
 - (i) National Youth Service and Social Cohesion;
 - (ii) Economic Participation;
 - (iii) Policy, Research and Development;
 - (iv) Governance, Training and Development;
 - (v) Youth Advisory and Information Services; and 40
 - (vi) National Youth Fund;
 - (b) establish offices of the Agency at provincial and local levels and appoint the necessary personnel to those offices.
- (2) The Agency may, in order to achieve its objects,—
 - (a) carry out or cause to be carried out any investigation that it deems necessary; 45
 - (b) consider such recommendations, suggestions and requests concerning youth affairs as it may receive from any source; or
 - (c) conduct or cause to be conducted such research as it may deem necessary.
- (3) The Agency must manage and administer Umsobomvu Fund.
- (4) The Agency must, for purposes of subsection (3) and within its available 50 resources, amongst others—
 - (a) provide career guidance services;
 - (b) provide access to information regarding products and services of the National Youth Fund;
 - (c) create and administer databases of employment opportunities; 55
 - (d) provide financial assistance to youths to enable them to further their careers;
 - (e) provide financial assistance to small, micro and medium enterprises, and cooperatives owned by youth;
 - (f) provide mentoring services aimed at empowering youths in the economy;

- (g) provide bridging programmes for youths to facilitate the transition from school or training to the work environment;
- (h) provide training regarding the concepts and principles of entrepreneurship and business to youths;
- (i) provide training relating to the personal development of youths; 5
- (j) provide training and guidance relating to the establishing and managing of businesses for youths;
- (k) provide training for unemployed youths to enhance their life and professional skills which would enable them to be integrated into the economy;
- (l) provide opportunities for training, that will promote service to communities and the nation at large; and 10
- (m) provide such other services as may be necessary to achieve the aim contemplated in subsection (3).

Reporting by Agency

- 6. (1) The Agency must, every three (3) years, submit to the President a report on the status of youth. 15
- (2) The Agency must annually submit to the President a report on—
 - (i) the progress on the implementation of this Act;
 - (ii) the financial status of the Agency; and
 - (iii) any other matter relating to youth development. 20
- (3) The President must table reports referred to in subsection (1) in Parliament within a reasonable time.

Role of Organs of State, Companies and Civil Society organisations in Youth Development

- 7. (1) Organs of state must— 25
 - (a) take national priorities in respect of youth development into account in planning their activities; and
 - (b) submit, in the prescribed manner, annual reports to the Agency regarding their implementation of youth development priorities.
- (2) The Agency must publish a report after it has been tabled in Parliament. 30
- (3) The Agency must lobby companies and close corporations which employ more than twenty (20) employees, and civil society organisations to implement youth development priorities established by it.

Control and management of affairs of Agency

- 8. The affairs of the Agency must be managed by the Board, which must— 35
 - (a) determine the operational policy of the Agency; and
 - (b) exercise control generally over the exercise of its powers and the execution of its functions.

Composition, appointment and conditions of service of the Board

- 9. (1) The Board consists of— 40
 - (a) seven members, two (2) of whom are executive directors; and
 - (b) the Chief Executive Officer, who is an ex-officio member of the Board without voting rights.
- (2) Members must be appointed by the President on the recommendation of Parliament. 45
- (3) Members must be appointed in a manner ensuring—
 - (a) participation by youth in the nomination process;
 - (b) transparency and openness; and
 - (c) that a short-list of candidates for appointment is published.
- (4) Members must reflect the demographics and geographical spread of the Republic. 50
- (5) (a) The President must designate one of the members as the chairperson and another member as a deputy chairperson and both are executive directors referred in subsection (1).

- (b) Members who are not executive directors serve on a part-time basis.
- (6) Members hold office for a period of three (3) years.
- (7) The deputy chairperson must, when the chairperson is absent or unable to perform his or her duties, act in his or her stead and when so acting, perform any function of the chairperson. 5
- (8) The President must publish the appointment of a member in the *Government Gazette*.
- (9) A member appointed to fill a vacancy holds office for the unexpired portion of the term of the member he or she replaces.
- (10) The conditions of service of members are determined by the President in consultation with the Minister of Finance. 10
- (11) Members who are employed by an organ of state are not entitled to remuneration, or any allowance, but must be reimbursed for out-of-pocket expenses by the Board.

Disqualification, removal from office and resignation of members

- 10. (1) A person may not be appointed or continue to serve as a member if he or she— 15
 - (a) is an unrehabilitated insolvent;
 - (b) has been convicted and imprisoned without the option of a fine, or fined more than the prescribed amount, for theft, fraud, forgery, perjury, an offence in connection with the promotion, formation or management of a company, any violation of the Public Finance Management Act or any offence involving dishonesty; 20
 - (c) has, as a result of improper conduct, been removed from an office of trust; or
 - (d) has been declared by a court to be mentally ill or unfit.
- (2) The President may, on recommendation of the Parliament, remove a member from office if the member— 25
 - (a) commits a misconduct;
 - (b) is unable to perform his or her duties efficiently;
 - (c) is absent from three (3) consecutive meetings of the Board without permission of the Board or good cause;
 - (d) becomes disqualified as contemplated in subsection (1). 30
- (3) A member may resign by giving thirty (30) days notice in writing to the Chairperson of the Board.
- (4) The President may suspend a member from office any time after the start of the proceedings of Parliament for the removal of a member.

Meetings of Board 35

- 11. (1) The Board must meet at least four times a year at such times and places as the Chairperson may determine.
- (2) The Chairperson may, on two (2) days notice, call a special meeting of the Board, which must be held at such time and place as he or she may direct.
- (3) A decision of the Board must be taken by resolution of the majority of the members present, and in the event of an equality of votes, the person presiding at the meeting in question has a casting vote in addition to his or her deliberative vote. 40
- (4) A quorum is constituted by four (4) members, which must include the Chairperson or the Deputy Chairperson.
- (5) A member must act impartially, in good faith and without fear, favour or prejudice and is subject only to the Constitution and law. 45
- (6) If a member has, in relation to a matter to be considered at a meeting of the Board, any interest which precludes that member from acting in a fair, unbiased and proper manner, the member may not—
 - (a) participate in that meeting of the Board; or 50
 - (b) be present at the venue where the meeting is held.
- (7) If, during the course of any proceedings of the Board, there is reason to believe that a member has any interest contemplated in subsection (6), that member must immediately disclose the nature of his or her interest and leave the meeting in question so as to enable the remaining members to discuss the matter and determine whether that member may be allowed to participate in the proceedings. 55
- (8) The disclosure and the decision taken by the remaining members, must be recorded in the minutes of the proceedings in question.

Committees of Board

- 12.** (1) The Board may establish Committees, including the:
- (a) Executive Management Committee;
 - (b) Credit Risk Committee;
 - (c) Human Resource and Remuneration Committee; 5
 - (d) Audit Committee, in accordance with Treasury guidelines regarding the formation of Audit Committees as provided for in section 77 of the PFMA; and
 - (e) Development Committee
- to assist in the performance of its functions. 10
- (2) The Board must determine the composition, rules and procedures of committees established in terms of this section.
- (3) The Board may invite persons who are not members of the Board to serve on any of its committees, but such persons may not be appointed as chairpersons of such committees. 15
- (4) The Board may dissolve or reconstitute a committee as is necessary.
- (5) Any decision taken by a committee established under this section must be ratified by the Board.

Appointment of Chief Executive Officer

- 13.** (1) The Board must appoint a suitably qualified person as the Chief Executive Officer. 20
- (2) The Chief Executive Officer is an employee of the Agency and is accountable to the Board.
- (3) The Chief Executive Officer must—
- (a) ensure that the functions of the Agency in terms of this Act are performed; 25
 - (b) report to the Board on the proper functioning of the Agency; and
 - (c) complete a report on the activities of the Agency for each financial year in accordance with the Public Finance Management Act and submit the report to the Board for approval.
- (4) The Chief Executive Officer holds office for an agreed term not exceeding five years and may be reappointed upon the expiry of that term of office. 30
- (5) If the Chief Executive Officer is unable to fulfil his or her functions, the Board must appoint an acting Chief Executive Officer to perform the functions of the Chief Executive Officer until the Chief Executive Officer resumes his or her duties or a new Chief Executive Officer is appointed. 35

Employment contract and performance agreement of Chief Executive Officer

- 14.** (1) 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 40
 - (b) thereafter, annually within one month of the commencement of each financial year.
- (2) 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; 45
 - (b) standards and procedures for evaluating performance and intervals for evaluation; and
 - (c) the consequences of substandard performance.
- (3) The employment contract of the Chief Executive Officer must incorporate in an appropriate form, section 57 of the Public Finance Management Act. 50

Duties of Chief Executive Officer

- 15.** The Chief Executive Officer is responsible for, amongst others:
- (a) exercising an appropriate level of leadership for the organization;
 - (b) effectively communicating a vision, management philosophy, and business strategy to the Agency's employees; 55

- (c) the general and active management of the business affairs of the Agency;
- (d) the general supervision and direction of all other officials of the Agency;
- (e) developing and recommending to the Board a sound long-term strategy for the Agency that meets the needs of the Agency, government, communities, employees, and other stakeholders; 5
- (f) ensuring that the strategies of the Agency are effectively implemented with timely progress towards strategic objectives;
- (g) obtaining and allocating resources consistent with strategic objectives and making timely adjustments in strategies when market conditions and other forces demand a change; 10
- (h) carrying out a comprehensive budgeting process and monitoring the Agency's financial performance against the budget;
- (i) submitting annual reports, financial statements and financial position of the Agency to the Board; and
- (j) develop an annual strategic plan and budget in accordance with the Public Finance Management Act. 15

Appointment of staff

- 16.** (1) The Chief Executive Officer must—
- (a) in consultation with the Board, appoint executive managers of the Agency, which may include a Chief Operations Officer and a Chief Financial Officer; 20
 - and
 - (b) appoint staff to assist the Agency in carrying out its functions.
- (2) The Board must in consultation with the Minister of Finance approve the remuneration, allowances, benefits and other terms and conditions of appointment of members of staff. 25

Delegation and assignment

- 17.** (1) The Board may delegate any of its powers or assign any of its duties to the Chief Executive Officer or any employee of the Agency.
- (2) The Chief Executive Officer may delegate any power or assign any duty conferred or imposed upon the Chief Executive Officer by or under this Act to— 30
- (a) any other employee of the Agency with appropriate knowledge and experience; or
 - (b) any other person, after consulting the Board.
- (3) A delegation or assignment under subsections (1) and (2) must be in writing and—
- (a) may be subject to any conditions determined by the Board or the Chief Executive Officer; 35
 - (b) does not prevent the exercise of that power or the performance of that duty by the Board or the Chief Executive Officer; and
 - (c) may be withdrawn or amended by the Board or the Chief Executive Officer.
- (4) A delegation by the Board of any of the powers entrusted or delegated to it in terms of the Public Finance Management Act must be in accordance with section 56 of that Act.

Funding and investments

- 18.** (1) The funds of the Agency consist of—
- (a) money received from the Umsobomvu Fund in terms of the Demutualisation 45 levy Act 50 of 1998;
 - (b) money appropriated by Parliament for that purpose;
 - (c) interest on investments of the Agency;
 - (d) money lawfully received from any other source; and
 - (e) donations and contributions lawfully received by the Agency from any other 50 source.
- (2) The Agency may invest any of its funds not immediately required—
- (a) subject to any investment policy that may be prescribed in terms of section 7(4) of the Public Finance Management Act; and
 - (b) in such manner as may be approved by the Minister of Finance. 55

Regulations

19. The President may, after consultation with the Board, make regulations regarding—

- (a) any matter which in terms of this Act may or must be prescribed;
- (b) any action in order to promote compliance with this Act; and
- (c) any ancillary or incidental administrative or procedural matter that it is necessary to prescribe for the proper implementation or administration of this Act.

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Judicial management and liquidation of Agency

20. Despite the provisions of any other law, the Agency may not be placed under judicial management or in liquidation except if authorised by an Act of Parliament adopted specially for that purpose.

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Transitional provisions

21. (1) In order to effect the transitional arrangements envisaged in this section, representations must made to the Minister of Finance for the dissolution of Umsobomvu Youth Fund as a section 21 company in terms of the Companies Act, 1973 (Act No. 61 of 1973) and the classification of the Agency as a public entity.

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(2) As soon as possible after this Act takes effect the President must, in consultation with the Minister of Finance,—

- (a) transfer the assets, rights, obligations and liabilities of Umsobomvu Youth Fund and the National Youth Commission to the Agency; and
- (b) subject to section 197 of the Labour Relations Act, 1995 (Act No. 66 of 1995), transfer staff of Umsobomvu Youth Fund and the National Youth Commission to the Agency.

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(3) A person transferred to the Agency remains subject to any decisions, proceedings, rulings and directions applicable to that person immediately before the transfer date.

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(4) Any proceedings pending against such person immediately before the transfer date must be disposed of as if that person had not been transferred.

(5) For purposes of Income Tax, 1962 (Act No. 58 of 1962), no change of employer must be regarded as having taken place when employment is taken up at the Agency by a person contemplated in subsection (1).

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(6) The Registrar of Deeds must make the necessary entries and endorsement for the transfer of any property in terms of subsection (1) and no office fee or any other charge is payable in respect of that entry or endorsement.

(7) This Act does not affect the validity of any transaction, project, business deal and programmes which were already undertaken or pending by Umsobomvu Youth Fund and National Youth Commission before the fixed dated.

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(8) The operations of Umsobomvu Youth Fund and the National Youth Commission must be dealt with as if this Act had at all times been in force.

(9) In order to implement this Act, the President must on the recommendation of Parliament appoint a task team of consultants to perform joint audits in respect of personnel, budgets, finances, information management and equipment of Umsobomvu Youth Fund and National Youth Commission.

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(10) The President must report to Parliament on the progress of the task team.

Repeal of laws

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22. Subject to section 21, the National Youth Commission Act, 1996 (Act No. 19 of 1996), and the National Youth Commission Amendment Act, 2000 (Act No. 19 of 2000), are hereby repealed.

Short title and commencement

23. This Act is called the National Youth Development Agency Act, 2008, and comes into operation on a date to be fixed by the President by proclamation in the *Gazette*.

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MEMORANDUM ON THE OBJECTS OF THE NATIONAL YOUTH DEVELOPMENT AGENCY BILL, 2008

1. INTRODUCTION

Following the 1994 democratic breakthrough, youth formations and the government were seized with developing youth focused legislative and policy frameworks. Among these were the National Youth Commission Act (Act No. 19 of 1996), the National Youth Policy 2000 and the National Youth Development Policy framework 2002-2007. While these frameworks outlined country's perspective and institutional arrangements for youth development, some difficulties were experienced. As a result, a National Youth Convention was convened in June 2006 to review the policy perspective and institutional arrangements.

Various youth formations and bodies from all over the country attended the convention and identified the challenges and accordingly passed the necessary resolutions. In particular, the convention adopted an integrated and holistic approach to youth development and called for an integrated youth development strategy. It also decided that the National Youth Commission and Umsobomvu Youth Fund should be collapsed into a single institution, the National Youth Development Agency. This agency would be responsible for—among other things—developing an integrated youth development strategy; coordinating, monitoring and evaluating the implementation of the national youth development strategy.

2. OBJECTS OF THE BILL

The National Youth Development Agency Bill seeks to establish a National Youth Development Agency as a structure that would enable, co-ordinate, monitor and evaluate the implementation of a youth policy and integrated youth development strategy. The Bill also seeks to ensure responsiveness to the aspirations and challenges experienced by the South African youth. Furthermore, it aims to promote youth participation in governance, the economy and society at large.

3. CONTENT OF THE BILL

- 3.1 Clause 1 sets out the definitions of terms used in the Bill.
- 3.2 Clause 2 provides for the establishment of the Agency.
- 3.3 Clause 3 sets out the objects of the Agency.
- 3.4 Clause 4 outlines the principles of youth development.
- 3.5 Clause 5 sets out the functions of the Agency.
- 3.6 Clause 6 provides for Reporting by the Agency.
- 3.7 Clause 7 sets out the role of organs of state, companies and civil society organisations.
- 3.8 Clause 8 provides for the control and management of affairs of the Agency.
- 3.9 Clause 9 provides for the composition, appointment and conditions of service of the Board.
- 3.10 Clause 10 provides for disqualification, removal from office and resignation of director of Board.
- 3.11 Clause 11 sets out the process for meetings of the Board.
- 3.12 Clause 12 establishes committees of the Board.
- 3.13 Clause 13 provides for the appointment of the Chief Executive Officer.
- 3.14 Clause 14 requires the Chief Executive Officer to conclude a written performance agreement in accordance with the Public Finance Management Act.
- 3.15 Clause 15 provides for the duties of the CEO.
- 3.16 Clause 16 provides for the appointment of other staff.
- 3.17 Clause 17 provides for delegation and assignment.
- 3.18 Clause 18 provides for the funding and investments of the Agency.
- 3.19 Clause 19 deals with regulations.
- 3.20 Clause 20 provides for judicial management and liquidation of the Agency.
- 3.21 Clause 21 deals with transitional arrangements.
- 3.22 Clause 22 provides for the repeal of laws.
- 3.23 Clause 23 provides for the short title and commencement of the Bill.

4. DEPARTMENTS/BODIES/PERSONS CONSULTED

The Ad Hoc Committee invited comments on the Bill when the Bill was published in the *Government Gazette* No. 31530 (24 October 2008). Public hearings were held from 17-18 November 2008.

5. IMPLICATIONS FOR PROVINCES

None.

6. FINANCIAL IMPLICATIONS FOR THE STATE

The task team established by the President in terms of section 21 will look into the financial implications of the Bill. The cost should however not be substantial since the Bill seeks to integrate existing public entities which have budgets.

7. PARLIAMENTARY PROCEDURE

7.1 The Parliamentary Legal Advisor is of the opinion that the Bill must be dealt with in accordance with the procedure established in section 75 of the Constitution of the Republic of South Africa, 1996.

7.2 The Parliamentary Legal Advisor is further 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.