

REPUBLIC OF SOUTH AFRICA

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# NATIONAL SPORT AND RECREATION AMENDMENT BILL

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*(As introduced in the National Assembly (proposed section 76); explanatory summary of  
Bill and prior notice of its introduction published in Government Gazette No. 41918  
of 21 September 2018)  
(The English text is the official text of the Bill)*

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(MINISTER OF SPORT AND RECREATION)

[B 43—2018]

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**GENERAL EXPLANATORY NOTE:**

[                    ]     Words in bold type in square brackets indicate omissions from existing enactments.

                         Words underlined with a solid line indicate insertions in existing enactments.

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## **BILL**

**To amend the National Sport and Recreation Act, 1998, so as to delete, amend and insert certain definitions; to provide for the promotion and development of sport and recreation; to establish a Sport Arbitration Tribunal to resolve disputes between sport or recreation bodies; to provide for and regulate combat sport; to provide for and regulate the fitness industry; to provide for the procedure in bidding for and hosting of international sports and recreation events; to provide for the delegation of powers; to provide for offences and penalties; and to provide for matters connected therewith.**

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

**Amendment of section 1 of Act 110 of 1998, as amended by section 1 of Act 18 of 2007**

1. Section 1 of the National Sport and Recreation Act, 1998 (hereinafter referred to as “the principal Act”), is hereby amended— 5

(a) by the insertion before the definition of “high performance sport” of the following definitions:

“ **‘club’** means an organisation or professional body constituted for a particular code of sport affiliated either to a provincial or national federation; 10

**‘committee’** means a committee of inquiry established by the Minister to investigate any matter that put sport or recreation in disrepute, financial mismanagement, good governance, but does not include any permanent commission, board, council, committee or similar body, whether appointed pursuant to any law or otherwise; 15

**‘Director-General’** means the Director-General responsible for Sport and Recreation;”;

(b) by the insertion after the definition of “high performance sport” of the following definition: 20

“ **‘MEC’** means a Member of the Executive Council responsible for sport and recreation in the province;”;

- (c) by the insertion after the definition of “National Coaching and Accreditation Institute” of the following definitions:
- “**‘national colours’** means green with gold used as part of a prescribed uniform or dress in connection with a national team participating in an international event; 5
- ‘national colours board’** means the board appointed by the Minister to award national colours in terms of section 11;
- ‘national emblem’** means the name, title or designation of King Protea or the word King Protea used as a badge or emblem or part thereof on, formal and informal clothing, including but not limited to sports clothing, replica;” 10
- (d) by the substitution for the definition of “national federation” of the following definition:
- “**‘national federation’** means a national governing body of a code of sport **[or recreational activity]** in the Republic with affiliate members of not less than five provinces recognised by— 15
- (a) Sport and Recreation South Africa as the only authority for the administration and control of the relative code of sport in the Republic; and
- (b) the relevant international controlling body [as the only authority for the administration and control of the relative code of sport or recreational activity in the Republic] for that particular code of sport;”; 20
- (e) by the insertion after the definition of “prescribe” of the following definition:
- “**‘recreational activity’** means all forms of physical activity that contribute to physical fitness, mental wellbeing and social interaction organised as a non-competitive sport or recreational activity, including but not limited to leisure sport;” 25
- (f) by the deletion of the definition of “recreation service”;
- (g) by the insertion after the definition of “regulation” of the following definition: 30
- “**‘sport or recreation agent’** means a person, including a juristic person, who represents or negotiates the employment and endorsement of a contract for a sport or recreation person or body as contemplated in section 6A;” and
- (h) by the substitution for the definition of “sport or recreation body” of the following definition: 35
- “**‘sport or recreation body’** means any national federation, agency, club or body, including a trust, professional league, or registered company of such a national federation, agency, club or body, involved in the administration of sport or recreation at local, provincial or national level;” 40

**Amendment of section 2 of Act 110 of 1998, as amended by section 2 of Act 18 of 2007**

2. Section 2 of the principal Act is hereby amended— 45
- (a) by the substitution for subsection (2) of the following subsection:
- “(2) The Sports Confederation may, in consultation with the Minister, from time to time, develop guidelines for the promotion and development of high performance sport.”; and
- (b) by the addition of the following subsections: 50
- “(7) The Sports Confederation contemplated in subsection (1) must, amongst others, perform the following functions:
- (a) Co-ordinate all activities relating to high performance sport in the Republic, including team preparation for major international events as contemplated in subsection (4);
- (b) develop and implement guidelines for the promotion and development of high performance sport as contemplated in subsection (2); 55
- (c) provide training to sport and recreation leaders as contemplated in section 7(1);
- (d) develop an incentive policy for high performance sport achievers in consultation with the Minister; 60

- (e) provide incentives for high performance sport achievers and practitioners;
- (f) provide support to high performance athletes in relation to major international events;
- (g) comply with the guidelines or policies to promote equity, representivity and redress in sport and recreation as contemplated in section 13A; 5
- (h) monitor and submit recommendations for the bidding and hosting relative to an application to host international events to the Minister as prescribed; and 10
- (i) develop coaching framework guidelines in order to establish a professional body for sports coaching and the South African Coaching Council in the Republic so as to facilitate all issues relating to the— 15
- (i) development;
- (ii) education;
- (iii) training; and
- (iv) licensing,
- of aspiring persons or current qualified coaches who want to practise or improve his or her skills as a sports coach in the Republic: Provided that anyone who wishes to practise as a sports coach in the Republic in order to train or guide athletes or participants preparing in any sport must— 20
- (aa) be a licensed member of the professional body for sports coaching contemplated in paragraph (h) above; 25
- (bb) be subject to the rules and guidelines of such a professional body;
- (cc) must be of good standing in terms of attendance of refresher courses; and
- (dd) comply with any applicable regulations prescribed in terms of this Act from time to time. 30
- (8) If the Sports Confederation fails to comply with the provision of subsection (7), the Minister may, by written notice to the Sports Confederation, insist on compliance within 30 days as from the date of the said notice. 35
- (9) If the Sports Confederation failed to comply with the compliance notice in terms of subsection (8), the Minister may—
- (a) institute the inquiry in terms of section 13(5) of the Act;
- (b) review the recognition of the Sports Confederation either by— 40
- (i) suspending its recognition wholly or partially;
- (ii) withdrawing its recognition and national colours; or
- (iii) withdraw its funding.
- (10) Before issuing a notice under subsection (8), the Minister must—
- (a) notify the Sports Confederation of his or her intention to issue the notice; and 45
- (b) give the Sport Confederation a reasonable opportunity to respond to the notice.
- (11) The Sports Confederation may not use the national colours or the national emblem if its recognition is withdrawn by the Minister.”.

**Amendment of section 4 of Act 110 of 1998, as amended by section 4 of Act 18 of 2007 50**

3. Section 4 of the principal Act is hereby amended by the insertion after subsection (3) of following subsection:

“(4) The Minister may from time to time determine and publish policy objectives to be achieved by Sports and Recreation South Africa, the Sports Confederation and sports or recreation bodies.”. 55

**Amendment of section 6 of Act 110 of 1998, as amended by section 7 of Act 18 of 2007**

**4. Section 6 of the principal Act is hereby amended—**

- (a) by the substitution for the heading of the following heading: 5  
 “[**National federations**] **Sport or recreation bodies**”;
- (b) by the substitution for subsections (1) and (2) of the following subsections, respectively:
- “(1) [**National federations**] Sport or recreation bodies must assume full responsibility for the safety [**issues**] and security of its members, participants, children, spectators who attend sport or recreation events and physical facilities where such events take place within their sport and recreation disciplines. 10
- (2) [**National federations**] Sport or recreation bodies must actively participate in and support programmes and services of Sport and Recreation South Africa and the Sports Confederation[, **in so far as**] relating to high performance sport [**is concerned**] and the promotion and development of sport.”]; 15
- (c) by the insertion after subsection (2) of the following subsections:
- “(2A) Sport or recreation bodies must fulfil the obligations imposed on them by the relevant international controlling body for their respective codes of sport. 20
- (2B) Sport or recreation bodies must—
- (a) ensure that—
- (i) selected players comply with any national call to participate in a sport; 25
- (ii) the selection process for its national team is open and transparent;
- (iii) any person who fails to comply with the obligations of the international controlling body is guilty of an offence and liable on conviction to a fine or to imprisonment not exceeding two years; 30
- (iv) all players, officials or managers selected for a national team must be vetted for any criminal offences; and
- (v) if a player, official or manager has been convicted of an offence and sentenced to imprisonment without the option of a fine, he or she may not participate in an international sport event; 35
- (b) abide by the principles of good governance and ethical practices;
- (c) notify the Minister of its intention to—
- (i) lobby for candidates at an international body;
- (ii) lobby for bidding and hosting of international events; or 40
- (iii) seek election to an international body;
- (iv) vote in any elections of an international body;
- (v) vote in any matter dealt with by an international body;
- (d) act after consultation with the Minister and in a manner that does not bring the Republic into disrepute when any action contemplated in paragraph (c) is taken; 45
- (e) comply with the procedures and protocol for bidding and hosting of international sport events; and
- (f) comply with and support the following key government priorities as communicated by Sport and Recreation South Africa: 50
- (i) Combating HIV and AIDS;
- (ii) anti-xenophobia;
- (iii) anti-crime;
- (iv) promotion of nation-building and social cohesion;
- (v) promotion of national symbols and heritage; 55
- (vi) disaster management and environmental protection;
- (vii) educational promotion on issues of sports; and
- (viii) health-related messages.
- (2C) The Minister must determine and allocate responsibilities to national federations by notice in the *Gazette* from time to time.”]; 60

- (d) by the substitution in subsection (3) for the words preceding paragraph (a) of the following words:  
 “[**National federations**] Sport or recreation bodies must—”;
- (e) by the substitution in subsection (3) for paragraph (a) of the following paragraph: 5  
 “(a) before recruiting a foreign sport person to participate in formal and professional sport in the Republic[,]—  
 (i) satisfy themselves that there are no other persons in the Republic suitable to participate in such a sport; and  
 (ii) do vetting and criminal record verification in the foreign person’s country of origin and any other country deemed necessary by the sport or recreation body concerned;”;
- (f) by the deletion in subsection (3) of the word “and” at the end of paragraph (c), the deletion of the full stop at the end of paragraph (d) and the insertion of the word “and” at the end of paragraph (d); 10 15
- (g) by the addition to subsection (3) of the following paragraph:  
 “(e) ensure that the recruited foreign sport person has represented or coached his or her country in the manner as prescribed by the Minister;”;
- (h) by the insertion after subsection (3) of the following subsections: 20 25  
 “(3A) The Minister must, after consultation with the Minister of Home Affairs, publish the procedure and compliance requirements for the recruitment of a foreign sport person in the *Gazette*.  
 (3B) No foreign person may participate in sport without complying with the procedures as contemplated in subsection (3A).  
 (3C) Any person who assists or allows a foreign sports person to participate in sport in the Republic without fully complying with the provisions of section 6 is guilty of an offence.”.

#### Insertion of sections 6A and 6B in Act 110 of 1998

5. The following sections are hereby inserted in the principal Act after section 6: 30

#### “Sport or recreation agents

6A. A sport or recreation agent must be registered and licensed as an agent in the prescribed manner.

#### Recognition of sport or recreation body

- 6B. (1) A sport or recreation body may apply in the prescribed manner for recognition as the only sport or recreation body for a particular sport code or recreation activity. 35
- (2) The Director-General must issue a certificate recognising a sport or recreation body as the only sport or recreation body for a particular sport code or recreational activity— 40
- (a) on the written recommendation of an advisory committee appointed in the prescribed manner and consisting of such members as may be prescribed; and
- (b) subject to the sport or recreation body conforming to the definition in section 1 of a national federation and meeting the criteria prescribed by the Minister in terms of subsection (3). 45
- (3) The Minister must prescribe criteria for the recognition of sport and recreation bodies as the only sport or recreation body for a particular sport code or recreational activity.
- (4) The criteria contemplated in subsection (3) may differ for different sport bodies and recreation bodies. 50
- (5) The Director-General may, in the prescribed manner and by notice in the *Gazette*, exclude a sport body from complying with the criteria contemplated in subsection (3) on receipt of a written application by a sport body containing good grounds for such exemption. 55

(6) The regulations referred to in subsection (3) may provide for the withdrawal by the Director-General of an exemption granted in terms of subsection (5) on reasonable grounds.”.

**Amendment of section 8 of Act 110 of 1998, as amended by section 9 of Act 18 of 2007**

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6. Section 8 of the principal Act is hereby amended—

(a) by the substitution for subsections (1) and (2) of the following subsections, respectively:

“(1) Sport and Recreation South Africa **[must]** may, in accordance with its funding policy and section 10, provide physical facilities for sports and recreation nationally, as prescribed, depending on the availability of funds.

(2) The beneficiary **[of the provision]** of such facilities must ensure the maintenance of **[every]** each facility **[erected]** provided, by way of—

(a) a maintenance agreement; **[and]**

(b) the establishment of management structures to **[run]** operate such facilities **[in commercially viable ways]** efficiently and effectively; and

(c) ensuring that sport or recreational activities take precedence over any other activities as far as the use of such sport or recreational facilities are concerned.”; and

(b) by the addition of the following subsections:

“(4) The Minister may, from time to time, publish by notice in the *Gazette* norms and standards for the building of new sports facilities.

(5) The Minister may prescribe the procedures for the building of new sport and recreation facilities in terms of the published norms and standards contemplated in subsection (4).

(6) Sport and Recreation South Africa must—

(a) oversee the efficient and effective governance of any newly established facilities that have been allocated to a municipality; and

(b) inspect sport and recreation facilities for compliance with the applicable norms and standards, including but not limited to the safety and security measures in terms of the Safety at Sports and Recreational Events Act, 2010 (Act No. 2 of 2010).”.

**Insertion of section 8A in Act 110 of 1998**

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7. The following section is hereby inserted in the principal Act after section 8:

**“Appointment and functions of sport and recreation facilities inspectors**

**8A.** (1) The Minister may—

(a) appoint any person in the public service as a sport and recreational facilities inspector; or

(b) designate any person in the public service or any person registered as a sport or recreation agent in terms of section 6A to perform any prescribed function of a sport and recreation facilities inspector.

(2) Any person appointed or designated under subsection (1) must perform his or her functions as sport and recreational facilities inspector subject to the direction and control of the Minister.

(3) The Minister must provide each sport and recreational facilities inspector with a signed certificate in the prescribed form, stating—

(a) that the person is a sport and recreation facilities inspector; and

(b) which of the functions of a sport and recreation facilities inspector such inspector may perform.

(4) The Minister must prescribe, in order to promote, monitor and enforce compliance with this Act—

(a) the functions of a sport and recreation facilities inspector, which may include the power to enter and inspect any sport and recreation facility during business hours;

- (b) that a sport and recreation facilities inspector may—
- (i) question any person at a sport and recreation facility who the inspector believes may have information relevant to the inspection;
  - (ii) require the person in charge of such sport and recreation facility to produce for inspection, or for the purpose of obtaining copies or extracts thereof or therefrom, any document, including any record which such person is required to maintain in terms of any law; and
  - (iii) take samples of any substance or photographs relevant to the inspection;
- (c) provide that a sport and recreation facilities inspector may issue a compliance order to the owner of a sport or recreational facility requiring such owner to comply with that compliance order; and
- (d) provide that the Director-General may apply to a court of law in order to make a compliance order contemplated in paragraph (c) to be made an order of that court of law.
- (5) The regulations referred to in subsection (4) must provide that any entry upon or search of any sport and recreation facility in terms of a provision of the regulations referred to in that subsection must be conducted with strict regard to decency and good order, including—
- (a) the right of a person to dignity;
  - (b) the right of a person to freedom and security; and
  - (c) the right of a person to privacy.”.

**Amendment of section 9 of Act 110 of 1998, as amended by section 10 of Act 18 of 2007**

8. Section 9 of the principal Act is hereby amended by the addition of the following subsections:

- “(3) The Minister may make regulations for vulnerable communities to participate in sport and to be protected from any sexual abuse and exploitation.
- (4) For the purpose of subsection (3), ‘vulnerable community’ means children under the age of 18, women or people living with disabilities.”.

**Amendment of section 11 of Act 110 of 1998, as amended by section 12 of Act 18 of 2007**

9. Section 11 of the principal Act is hereby amended—
- (a) by the substitution for subsection (1) of the following subsection:
 

“(1) The [**Sports Confederation must with the concurrence of** Minister must[,)] establish a national colours board which [**will**] must consider all applications for the awarding of national colours.”;
  - (b) by the insertion after subsection (1) of the following subsection:
 

“(1A) Members of the national colours board must be appointed in the prescribed manner ensuring—

    - (a) the participation by the public and sport and recreation bodies in the nomination process;
    - (b) transparency and openness; and
    - (c) that a shortlist of candidates for appointment is published and every appointment of a member is published in the *Gazette*.”; and
  - (c) by the deletion of subsection (3).

**Insertion of sections 11A, 11B, 11C, and 11D in Act 110 of 1998**

10. The following sections are hereby inserted in the principal Act after section 11: 50

**“Bidding and hosting of international sport and recreational event**

**11A.** (1) The Minister must approve all applications for the bidding and hosting of major international sport and recreation events in accordance with the applicable regulations.



(2) The relevant Sport or Recreation Body must apply in writing in the prescribed manner to the Minister to host a prescribed international event.

(3) The Sports Confederation, in support of the application for the bidding and hosting of an international sport and recreation event, must submit a letter of support from the hosting municipality to the Minister.

### Prohibition

**11B.** No person may bid or host an international sport and recreation event in the Republic without the—

- (a) written submission of an application to the Sports Confederation; and
- (b) approval in writing by the Minister.

### Combat sport

**11C.** (1) The Minister may establish a Combat Sport Regulatory Authority by notice in the *Gazette* which must oversee, administer and govern all forms of combat sport in the prescribed manner and which notice may include but are not limited to the following:

- (a) The establishment, objects, functions and governance of the Combat Sport Regulatory Authority;
- (b) the registration and requirements as combat sport controlling bodies and combat sport licensees;
- (c) the broadcasting of combat sport;
- (d) the constitutions and powers of combat sport controlling bodies;
- (e) combat sport tournament requirements;
- (f) the protection of combat sport controlling bodies and combat sport licensees;
- (g) proper conduct by combat sport role-players and appeal procedures;
- (h) monitoring and investigation by inspectors of the Regulatory Authority; and
- (i) the provision of offences, penalties and dispute resolution mechanisms.

(2) The Combat Sport Regulatory Authority consists of at least seven members appointed by the Minister in writing.

(3) The members must be appointed in a manner ensuring—

- (a) participation by the public in a nomination process;
- (b) transparency and openness;
- (c) that a short list of candidates for appointment is published in the *Gazette*.

(4) The terms of office of members are as prescribed.

(5) For the purposes of this section, ‘**combat sport**’ includes any competitive sport that ranges from no contact to full contact where two or more combat sport fighters fight against each other using certain rules of engagement, typically with the aim of simulating parts of real hand to hand combat and involving techniques which encompass—

- (a) strikes by attacking with a part of the human body or with an inanimate object, such as a weapon, intended to cause an effect upon an opponent or to simply cause harm to an opponent;
- (b) kicks by using a combat sport fighter’s feet, legs or knees (also known as a knee strike either with a kneecap or the surrounding area of the knee);
- (c) the elbows by striking an opponent—
  - (i) with the point of the elbow;
  - (ii) with the part of the forearm nearest to the elbow;
  - (iii) with the part of the upper arm nearest to the elbow;
  - (iv) sideways with the elbow similar to a hook;
  - (v) upwards with the elbow similar to an uppercut; or
  - (vi) downwards with the elbow;
- (d) knees;
- (e) grappling by way of—
  - (i) gripping, handling and controlling of an opponent without the use of striking, typically through the application of various

- grappling holds, choke holds and counters to various hold attempts;
- (ii) a grappling position by the positioning and holding of combat sport fighters engaged in grappling as referred to in subparagraph (i);
- (iii) a neutral position, if neither of the combat sport fighters is in a more favourable grappling position relative to the other; or
- (iv) a superior position, if one of the combat sport fighters is in a more favourable grappling position relative to the other;
- (f) throws by way of a grappling technique that involves—
- (i) off-balancing or lifting an opponent;
- (ii) tossing him or her to the ground; and
- (iii) a rotating motion as opposed to a takedown;
- (g) mixed martial arts that allows—
- (i) a wide variety of fighting techniques from a mixture of martial arts of different styles, to be used in competitions of combat sport;
- (ii) the use of striking and grappling techniques, while standing or on the ground; and
- (iii) martial artists of different styles to compete against each other, on a full contact combat sport basis; and
- (h) weaponry where the combat sport fighters, amongst others—
- (i) compete against each other by using weapons, including types of blunt swords and sticks; and
- (ii) may also wear complex armour when they compete against each other.

### **Fitness Industry**

- 11D.** (1) The Minister may establish a Fitness Industry Regulatory Authority by notice in the *Gazette* which must oversee, administer and govern a safe environment for the fitness industry in the prescribed manner and which notice may include but are not limited to the following:
- (a) The establishment, objects, functions and governance of the Fitness Industry Regulatory Authority;
- (b) the registration of fitness controlling bodies and fitness professionals and accreditation and requirements of fitness establishments;
- (c) the constitutions and powers of fitness controlling bodies;
- (d) the inspection of fitness establishments by inspectors of the Regulatory Authority;
- (e) the issuing of sanctions against fitness establishments; and
- (f) the provision of offences, penalties and dispute resolution mechanisms.
- (2) The Fitness Industry Regulatory Authority must award licences to fitness professionals and accredit fitness establishments in accordance with prescribed procedures.
- (3) The Fitness Industry Regulatory Authority consists of five members appointed by the Minister in writing in the prescribed manner.
- (4) The Fitness Industry Regulatory Authority may inspect fitness establishments in the prescribed manner for their compliance with applicable law.
- (5) The Fitness Industry Regulatory Authority may, in the prescribed manner—
- (a) close a fitness establishment or suspend the accreditation of a fitness establishment;
- (b) withdraw or suspend the registration of a person as a fitness professional,
- if a fitness establishment or fitness professional is found to be guilty of non-compliance of the Act or its regulations.
- (6) The Fitness Industry Regulatory Authority may, in the prescribed manner—

- (a) determine the subscription fee payable by fitness establishments and fitness professionals on an annual basis in accordance with an appropriate grading system; and
  - (b) issue grading certificates according to the size and capacity of a fitness establishment.
- (7) The Fitness Industry Regulatory Authority must ensure that all safety measures are in place at a fitness establishment before issuing a grading certificate.”.

**Amendment of section 13 of Act 110 of 1998, as amended by section 13 of Act 18 of 2007**

**11. Section 13 of the principal Act is hereby amended—**

- (a) by the substitution in subsection (4) for the words preceding paragraph (a) of the following words:
  - “**[The Sports Confederation]** The Minister may, at any time, **[of its]** on his or her own accord, cause an investigation to be undertaken to ascertain the truth within a sport or recreation body, where allegation of—”; and
- (b) by the addition of the following subsections:
  - “(9) The Minister may, if he or she deems it fit, appoint a Ministerial Committee of Inquiry to investigate matters contemplated in subsection (4)(a) or (b) or any matter that may bring a sport or recreational activity or body into disrepute.
  - (10) (a) The Ministerial Committee of Inquiry appointed by the Minister in terms of subsection (9) may investigate, make findings and recommendations and must report its findings and recommendations to the Minister.
  - (b) The report to the Minister may include information relating to—
    - (i) compliance with all relevant safety and security measures in place for a sport or recreational event in terms of the Safety at Sports and Recreational Events Act, 2010 (Act No. 2 of 2010);
    - (ii) any failure to comply with the provisions of section 13A of this Act and the Transformation Charter as endorsed and approved by the Minister; and
    - (iii) any failure to comply with the principles of good governance by a sport or recreation body.
  - (11) The Ministerial Committee of Inquiry must be chaired by a retired judge and assisted by any members appointed by the chairperson in consultation with the Minister.
  - (12) At any time during an investigation being conducted in terms of subsection (1), the Ministerial Committee of Inquiry may issue a summons to any person who is believed to be able to furnish any information on the subject of the investigation, or to have possession or control of any book, document or other object that has a bearing on that subject—
    - (a) to appear before the Ministerial Committee of Inquiry to be questioned at a time and place specified in the summons; or
    - (b) to deliver or produce to the Ministerial Committee of Inquiry any book, document or other object referred to in this subsection at a time and place specified in the summons.
  - (13) A summons contemplated in subsection (12)—
    - (a) must be signed by the chairperson, or by a member of the Ministerial Committee of Inquiry designated by the chairperson; and
    - (b) may be served in the same manner as a subpoena in a criminal case issued by the magistrate’s court.
  - (14) The chairperson may require a witness, before giving his or her evidence, to take an oath or to make an affirmation which oath or affirmation must be administered by the chairperson or such member of the Ministerial Committee of Inquiry as the chairperson may designate.
  - (15) Any person who has been summoned to appear before the Ministerial Committee of Inquiry as a witness or who has given evidence before the Committee is entitled to the same witness fees from public funds in the same manner as in criminal proceedings.

- (16) Any person who—
- (a) willfully interrupts the proceedings of the Ministerial Committee of Inquiry; or
  - (b) willfully hinders or obstructs the Ministerial Committee of Inquiry in the performance of its functions,
- is guilty of an offence.” 5

**Insertion of sections 13D, 13E, 13F, 13G, 13H, 13I, 13J, 13K, 13L, 13M and 13N in Act 110 of 1998**

12. The following sections are hereby inserted in the principal Act after section 13C: 10

**“Establishment, composition and appointment of Sport Arbitration Tribunal**

**13D.** (1) There is hereby established an independent Tribunal known as the Sport Arbitration Tribunal to hear disputes in the first instance and decide upon appeals against decisions made in terms of section 13: Provided that notwithstanding anything contained otherwise in any provision in the Act dealing with any dispute procedure, the Minister may participate as a party in any proceedings before the Tribunal, in the prescribed manner. 15

(2) The Tribunal consists of at least five members appointed by the Minister. 20

(3) The members of the Tribunal must be appointed in a manner ensuring—

- (a) participation by the public in a nomination process;
- (b) transparency and openness; 25
- (c) that a short-list of candidates for appointment is published in the *Gazette*; and
- (d) that every appointment of a member of the Sport Arbitration Tribunal is published in the *Gazette*. 30

(4) At least one member appointed by the Minister must be a retired judge or senior Advocate with relevant experience in sport matters. 30

(5) The members of the Tribunal must, when viewed collectively, be persons who—

- (a) possess special knowledge and expertise relating to sport and legal matters; and 35
- (b) are committed to fairness, openness and accountability on the part of those holding public office. 35

(6) A member of the Tribunal is appointed for a period of two years, but is eligible for re-appointment. 40

**Functions of Sport Arbitration Tribunal 40**

**13E.** The Sport Arbitration Tribunal may—

- (a) adjudicate on any conduct prohibited in terms of this Act, to determine whether prohibited conduct has occurred and, if so, to impose any remedy provided for in this Act;
- (b) adjudicate on any other matter that may, in terms of this Act, be considered by it, and make any order provided for in this Act; 45
- (c) hear appeals from, or review any decision of, a sport and recreational body or Sport Confederation that may in terms of this Act be referred to it; and
- (d) make any ruling or order necessary or incidental to the performance of its functions in terms of this Act. 50

**Qualifications of members of Sport Arbitration Tribunal**

**13F.** (1) The Chairperson and other members of the Sport Arbitration Tribunal, viewed collectively, must—

- (a) represent a broad cross-section of the population of the Republic; and 55
- (b) comprise sufficient persons with legal training and experience to satisfy the requirements of section 13D(5)(a).

- (2) Each member of the Sport Arbitration Tribunal must—
- (a) be a citizen of South Africa, who is ordinarily resident in South Africa;
  - (b) have suitable qualifications and experience in economics, law, commerce, industry or public affairs; and
  - (c) be committed to the promotion and development of sport and recreation in the Republic enunciated in section 2.
- (3) A person may not be a member of the Sport Arbitration Tribunal if that person—
- (a) is an office-bearer of any party, movement, organisation or body of a partisan political nature;
  - (b) is an unrehabilitated insolvent;
  - (c) is subject to an order of a competent court holding that person to be mentally unfit or disordered; or
  - (d) has been convicted of an offence committed after the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993), took effect, and sentenced to imprisonment without the option of a fine.

### **Term of office of members of Sport Arbitration Tribunal**

- 13G.** (1) Subject to subsection (2), the Chairperson and each member of the Sport Arbitration Tribunal serves for a term of five years.
- (2) The Minister may re-appoint a member of the Sport Arbitration Tribunal at the expiry of that member's term of office, but no person may be appointed to the office of the Chairperson of the Tribunal for more than two consecutive terms.
- (3) The Chairperson, on one month written notice addressed to the Minister, may—
- (a) resign from the Sport Arbitration Tribunal; or
  - (b) resign as Chairperson, but remain as a member of the Tribunal.
- (4) A member of the Sport Arbitration Tribunal other than the Chairperson may resign by giving at least one month's written notice to the Minister.
- (5) The Minister, following an appropriate investigation must—
- (a) must remove the Chairperson or any other member of the Sport Arbitration Tribunal from office if that person becomes subject to any of the disqualifications referred to in section 13F; and
  - (b) other than as provided in subsection (a), may remove the Chairperson or a member from office only for—
    - (i) serious misconduct;
    - (ii) permanent incapacity; or
    - (iii) engaging in any activity that may undermine the integrity of the Tribunal.

### **Chairperson and Deputy Chairperson of Sport Arbitration Tribunal**

- 13H.** (1) The Minister must designate the member of the Sport Arbitration Tribunal referred to section 13D(4) as Chairperson of the Tribunal and another member as Deputy Chairperson.
- (2) The Deputy Chairperson performs the functions of Chairperson whenever—
- (a) the office of the Chairperson is vacant; or
  - (b) the Chairperson is for any other reason temporarily unable to perform the functions of the Chairperson.

### **Sport Arbitration Tribunal proceedings**

- 13I.** (1) The Chairperson is responsible to manage the caseload of the Sport Arbitration Tribunal and must assign each matter referred to the Tribunal to a panel composed of any three members of the Tribunal.
- (2) When assigning a matter in terms of subsection (1), the Chairperson must—
- (a) ensure that at least one member of the panel is a person who has legal training and experience; and

- (b) designate a member of the panel to preside over the panel's proceedings.
- (3) If, because of withdrawal from a hearing in terms of section 13J, resignation, illness or death, a member of the panel is unable to complete the proceedings in a matter assigned to that panel, the Chairperson must—
- (a) direct that the hearing of that matter proceed before any remaining members of the panel, subject to the requirements of subsection (2)(a); or
- (b) terminate the proceedings before that panel and constitute another panel, which may include any member of the original panel, and direct that panel to conduct a new hearing.
- (4) The decision of a panel on a matter referred to it must be in writing and include reasons for that decision.
- (5) If the Sport Arbitration Tribunal may extend or reduce a prescribed period in terms of this Act, the Chairperson of the Tribunal or another member of the Tribunal assigned by the Chairperson, sitting alone, may make an order—
- (a) extending or reducing that period; or
- (b) condoning late performance of an act that is subject to that period.
- (6) A decision of the Chairperson or other person contemplated in subsection (5), or of a majority of the members of a panel in any other matter, is the decision of the Tribunal.

#### **Conflicts and disclosure of interest by members of Sport Arbitration Tribunal**

- 13J.** (1) A member of the Sport Arbitration Tribunal may not represent any person before a panel of the Tribunal.
- (2) If, during a hearing, it appears to a member of the Sport Arbitration Tribunal that a matter concerns a financial or other interest of that member, that member must—
- (a) immediately and fully disclose the fact and nature of that interest to the Chairperson and to the presiding member at that hearing; and
- (b) withdraw from any further involvement in that hearing.

#### **Acting by member of Sport Arbitration Tribunal after expiry of term of office**

- 13K.** If, on the expiry of the term of office of a member of the Sport Arbitration Tribunal, that member is still considering a matter before the Tribunal, that member may continue to act as a member in respect of that matter only.

#### **Remuneration and benefits of members of Sport Arbitration Tribunal**

- 13L.** (1) The Minister may determine the remuneration, allowances, and other benefits of the Chairperson, Deputy Chairperson and other members of the Sport Arbitration Tribunal.
- (2) The Minister may not, during the term of office of a member of the Sport Arbitration Tribunal, reduce the member's salary, allowances or benefits.
- (3) The Minister may determine any other conditions of appointment not provided for in this section.

#### **Offences and penalties**

- 13M.** (1) Any person who—
- (a) contravenes or fails to comply with section 6(3)(a)(i) or (ii) and (e);
- (b) contravenes or fails to comply with sections 11A and 11B,
- is guilty of an offence.
- (2) A person who—
- (a) manipulates the outcome of a sport or recreational match event;

- (b) accepts, agrees or offers to accept any gratification from any other person, whether for the benefit of himself or herself or for the benefit of another person;
- (c) gives, agrees or offers to give any person any gratification, whether for the benefit of another person in return for—
- (i) engaging in any act which constitutes a threat to undermine the integrity of any sporting event, including in any way, influencing the run of play or outcome of sporting event; or
  - (ii) not reporting the act contemplated in this section to the authority or to any other person holding a senior position in the sport and recreation body or to the Minister or delegated person or at his or her nearest police station; or
- (d) gives effect to any scheme which constitutes a threat to or undermines the integrity of any sporting event, including, in any way, influencing the run of play or outcome of a sporting event, is guilty of an offence.
- (3) A person convicted of an offence in terms of—
- (a) section 13(16)(a) or (b) is liable to a fine or imprisonment for a period not exceeding one year, or both a fine and such imprisonment; or
  - (b) this section is liable to a fine or imprisonment for a period not exceeding 20 years, or both a fine and such imprisonment.

#### Delegation of powers

- 13N.** (1) The Minister may delegate any power conferred, or assign any duty imposed, by this Act, excluding the power to make regulations, to any official or employee of Sport and Recreation South Africa holding the rank of at least a Deputy Director-General.
- (2) Any delegation or assignment contemplated in subsection (1)—
- (a) is subject to such conditions as the Minister may determine;
  - (b) must be in writing; and
  - (c) does not divest the Minister of the power delegated.
- (3) The Minister may, at any time, withdraw a delegation or assignment in writing.
- (4) The Director-General may, subject to the conditions that he or she may deem necessary, delegate any power conferred on him or her by this Act, to any officer or employee of Sport and Recreation South Africa, but the delegation does not divest the Director-General of the power delegated.”.

#### Amendment of section 14 of Act 110 of 1998, as amended by section 15 of Act 18 of 2007

- 13.** Section 14 of the principal Act is hereby amended—
- (a) by the substitution for the words preceding paragraph (a) of the following words:  
 “The Minister may, [**after consultation with the Sports Confederation in so far as high-performance sport is concerned,**] make regulations—”;
  - (b) by the substitution for paragraph (jC) of the following paragraph:  
 “(jC) as to procedure for the hosting of and bidding for major international sports events;”;
  - (c) by the deletion of the word “and” at the end of paragraph (jI) and the insertion after that paragraph of the following paragraphs:  
 “(jJ) as to the school sport development programme;  
 (jK) as to the fees for a sport or recreation agent;  
 (jL) as to the training of sport coaches; and”.

**Amendment of long title of Act 110 of 1998, as amended by Act 18 of 2007**

**14.** The following long title is hereby substituted for the long title of the principal Act:

**“To provide for the promotion and development of sport and recreation and the co-ordination of the relationships between Sport and Recreation South Africa and the Sports Confederation, national federations and other agencies; to provide for measures aimed at correcting imbalances in sport and recreation; to provide for dispute resolution mechanisms in sport and recreation; to provide for the appointment of the Sport Arbitration Tribunal; to provide for offences and penalties; to establish the combat sport regulatory authority; to establish the fitness regulator; to provide for the procedure in bidding for and hosting of the international sports and recreation events; to provide for the delegation of powers; to empower the Minister to make regulations; and to provide for matters connected therewith.”**

**Short title and commencement**

**15.** This Act is called the National Sport and Recreation Amendment Act, 2018, and comes into operation on a date to be fixed by the President by proclamation in the *Gazette*.



## **MEMORANDUM ON THE OBJECTS OF THE NATIONAL SPORT AND RECREATION AMENDMENT BILL, 2018**

### **1. BACKGROUND**

- 1.1 The National Sport and Recreation Amendment Bill, 2018 (“the Bill”), seeks to amend the National Sport and Recreation Act, 1998 (Act No. 110 of 1998) (“the Act”). The Bill recognises that there is a need in South Africa to create a new dispensation that will govern and regulate the sport and recreation industry in the best interest of all the role-players by clarifying the roles of Sport and Recreation South Africa, the Sports Confederation and the national federations respectively.
- 1.2 The Bill seeks to delete, amend and insert certain definitions, to provide for the promotion and development of sport and recreation; to establish a Sport Arbitration Tribunal to resolve disputes in sport or recreation bodies, to provide for offences and penalties and to provide for matters connected therewith.
- 1.3 The Bill intends to amend the Act in order to cater for the manner in which the disputes can be finalised and also provides, amongst others, for a penalty clause in the case of any non-compliance with the Act.
- 1.4 The Bill seeks to clarify the role and responsibilities of the South African Sports Confederation, Olympic Committee and national federations as opposed to the current responsibilities of these institutions in terms of the Act.
- 1.5 Furthermore, the Bill provides for the regulation of sport or recreation agents in the performance of their responsibilities and their recognition as agents.
- 1.6 Currently, the Act is silent on the recognition of sport or recreation bodies and only empowers the Minister to create regulations for such purposes. Thus, the lack of empowering provisions in the Act makes it difficult to recognise sports or recreation bodies in terms of regulations only.
- 1.7 The Bill also intends to provide a framework relative to the development of coaching and also encourages young coaches to be provided with relevant training.
- 1.8 Lastly, the Bill attempts to ensure that sport and recreation are managed effectively in terms of transformation and accessibility by the community.

### **2. MAIN PURPOSE OF BILL**

The main purpose of the Bill is to provide for the improvement of the regulation of the sport and recreation industry, to provide for the establishment of the Sport Arbitration Tribunal, to appoint the inspectors to carry out routine inspections to ensure compliance with the Act, to empower the Minister to oversee sport and recreation and to facilitate the improvement of the operations of sport or recreation bodies.

### **3. CLAUSE-BY-CLAUSE ANALYSIS**

#### **3.1 Clause 1**

Clause 1 of the Bill provides for definitions of certain words and expressions which are used in the Bill so as to remove any ambiguity. The defined words and expressions are therefore to be read and understood in the manner in which they have been defined and used in the Bill.

### **3.2 Clause 2**

Clause 2 of the Bill seeks to amend section 2 of the Act, which provides for the promotion and development of sport and recreation in the Republic. This clause seeks to insert new subsections after subsection (6) in order to provide for the functions of the Sport Confederation which include, amongst other things, the coordination of all activities relating to high performance sport in the Republic, including team preparation for major international events and to develop and implement guidelines for the promotion and development of high performance sport.

### **3.3 Clause 3**

Clause 3 of the Bill seeks to amend section 4 of the Act which provides for the determination of sport and recreation policy. This clause seeks to amend section 4 by adding a subsection to empower the Minister to determine and publish policy objectives to be achieved by Sports and Recreation South Africa, the Sports Confederation and sports and recreation bodies.

### **3.4 Clause 4**

3.4.1 Clause 4 of the Bill seeks to amend section 6 of the Act by replacing the heading “National federation” with “Sport or recreation bodies”. This clause further provides for the sport and recreation bodies to assume full responsibility for the safety and security of the members, participants, children and spectators who attend sport or recreation events and physical facilities where such events take place within their sport and recreation disciplines.

3.4.2 Clause 4 of the Bill further seeks to insert subsections (2A), (2B) and (2C) in section 6 of the Act to ensure that sport or recreation bodies fulfil the obligations imposed on them by the relevant international controlling body for their respective codes of sport. The clause also seeks to insert subsections (3A), (3B) and (3C) in section 6 in order to provide for the procedure and compliance requirements for the recruitment of foreign sport persons.

### **3.5 Clause 5**

3.5.1 Clause 5 of the Bill seeks to insert new sections 6A and 6B in the Act. Section 6A seeks to provide for the registering and licensing of sport or recreation agents.

3.5.2 Section 6B among others provides for the recognition of a sport or recreation body and provides that a sport or recreation body may apply in the prescribed manner for recognition as the only sport or recreation body for a particular sport code or recreation activity.

### **3.6 Clause 6**

Clause 6 of the Bill seeks to amend section 8 of the Act by replacing the word “must” with the word “may” in subsection (1). The result of the proposed amendment would be that Sport and Recreation South Africa is not obliged but now may provide physical facilities for sport and recreation nationally, as prescribed, depending on the availability of funding. Clause 6 further inserts new sections (3A), (3B) and (3C) in section 8 to provide the Minister with the power to publish norms and standards for the building of new sport facilities.

### **3.7 Clause 7**

Clause 7 of the Bill seeks to insert a new section 8A in the Act in order to provide for the appointment and functions of sport and recreation facilities inspectors and provides that the Minister may appoint any person in the public

service as a sport and recreational facilities inspector or designate any person in the public service or any person registered as a sport or recreation agent in terms of section 6A of the Act to perform any prescribed function of a sport and recreation facilities inspector.

### **3.8 Clause 8**

Clause 8 of the Bill seeks to amend section 9 of the Act which provides for programmes to promote equity in sport and recreation by the addition of subsections (3) and (4) in order to empower the Minister to make regulations for the vulnerable community to participate in sport and be protected from any sexual abuse and exploitation.

### **3.9 Clause 9**

Clause 9 of the Bill seeks to amend section 11 of the Act, which provides for national colours and incentives for sports achievers and recreation practitioners, by inserting a new subsection (1A) to provide for the appointment of the national colours board in order to ensure participation by the public and sport and recreation bodies in the nomination process, transparency and openness.

### **3.10 Clause 10**

Clause 10 of the Bill seeks to insert new sections 11A, 11B, 11C and 11D in the Act. Section 11A provides for the bidding and hosting of international sport and recreation events. Section 11B provides for the prohibition to bid and host an international sport and recreation events in the Republic without the written approval of the Minister. Section 11C deals with the combat sport and lists all the different kinds of combat sport. Section 11D empowers the Minister to establish a Fitness Industry Regulatory Authority to oversee, administer and govern a safe environment for the fitness industry in the prescribed manner, which section provides for, amongst others, the establishment, objects, functions and governance of the Fitness Industry Regulatory Authority.

### **3.11 Clause 11**

Clause 11 of the Bill seeks to amend section 13 of the Act, which provides for dispute resolution. It is firstly proposed that the Minister and not the Sports Federation may cause investigations to be undertaken in respect of a sport or recreation body. It is also proposed that the Minister may appoint a Ministerial Committee of Inquiry to investigate matters that may bring a sport recreational activity or body into disrepute.

### **3.12 Clause 12**

Clause 12 of the Bill seeks to insert new sections 13D to 13N in the Act after section 13C which are to provide for the establishment, composition and appointment of members of the Sport Arbitration Tribunal, functions of the Tribunal, terms of office of members of the Tribunal, designation of a deputy chairperson for the Tribunal, proceedings of the Tribunal, conflicts and disclosure of interests by members of the Tribunal, acting by members of the Tribunal after the expiry of their terms of office, remuneration and benefits of members of the Tribunal, the creation of offences under the Act and the delegation of powers by the Minister.

### **3.13 Clause 13**

Clause 13 of the Bill seeks to amend section 14 of the Act which provides for the making of regulations, by extending the Minister's power to make regulations to provide for the school sport development programme, fees for sport or recreation agents and the training of sport coaches.

### 3.14 Clause 14

Clause 14 of the Bill seeks to amend the long title of the Act in order to align it with the amendments proposed in the Bill.

### 3.15 Clause 15

Clause 15 of the Bill provides for the short title and the commencement of the Bill.

## 4. DEPARTMENTS/BODIES/PERSONS CONSULTED

- All national Departments;
- All provincial Departments;
- The Sport Confederation; and
- All national sport and recreation federations

## 5. FINANCIAL IMPLICATIONS FOR STATE

- 5.1 There will be financial implications for the amendments only.
- 5.2 The associated costs relating to the amendments are estimated at 7 million per annum.

## 7. PARLIAMENTARY PROCEDURE

- 7.1 The Constitution of the Republic of South Africa, 1996 (“Constitution”) regulates the manner in which legislation may be enacted by the Legislature and thus prescribes the different procedures to be followed for such enactment. Section 76 of the Constitution sets out the procedure to be followed when Parliament passes a Bill other than a Bill to which the procedure set out in section 74 or section 75 of the Constitution applies. Section 76 of the Constitution provides for a procedure that must be followed for all Bills referred to in subsections (3), (4) and (5) of this section.
- 7.2 A Bill falling within a functional area listed in Schedule 4 or 5 to the Constitution must be dealt with in accordance with the procedure set out in section 76. Schedule 4 lists the functional areas of concurrent national and provincial legislative competence.
- 7.3 Schedule 5 of the Constitution lists the functional areas of exclusive provincial legislative competence. Therefore, those areas falling outside Schedule 4 and 5 fall within the exclusive national legislative competence.
- 7.4 In *Tongoane and Others v National Minister for Agriculture and Land Affairs and Others*<sup>1</sup> (“*Tongoane* judgment”), the Constitutional Court confirmed and upheld the test for tagging that was formulated in *Ex Parte President of the Republic of South Africa: In re Constitutionality of the Liquor Bill*<sup>2</sup>, where the Constitutional Court held that:

*“the heading of section 76, namely, ‘Ordinary Bills affecting provinces’ provides a strong textual indication that section 76(3) must be understood as requiring that any Bill whose provisions in substantial measure fall within a functional area listed in Schedule 4, be dealt with under section 76.”*

- 7.5 At paragraph 50 of the *Tongoane* judgment the Constitutional Court held that

<sup>1</sup> CCT 100/09 [2010] ZACC 10.

<sup>2</sup> [1999] ZACC 15; 2000 (1) SA 732 (CC); 2000 (1) BCLR 1 (CC).

the tagging test focuses on all the provisions of the Bill in order to determine the extent to which they substantially affect the functional areas listed in Schedule 4 and not on whether any of its provisions are incidental to its substance. The Constitutional Court stated as follows:

*“What matters for the purposes of tagging is not the substance or the true purpose and effect of the Bill, rather, what matters is whether the provisions of the Bill “in substantial measure fall within a functional area listed in Schedule 4.”*

- 7.6 The Constitutional Court further held that the test for tagging must be informed by its purpose. Tagging is not concerned with determining the sphere of government that has the competence to legislate on a matter. Nor is the purpose concerned with preventing interference in the legislative competence of another sphere of government. The process is concerned with the question of how the Bill should be considered by the provinces and in the National Council of Provinces, and how a Bill must be considered by the provincial legislatures depends on whether it affects the provinces.
- 7.7 Furthermore, at paragraph 72 of the judgment, the Constitutional Court held that any Bill whose provisions substantially affect the interests of the provinces must be enacted in accordance with the procedure stipulated in section 76. This naturally includes proposed legislation over which the provinces themselves have concurrent legislative power, but it goes further. It includes Bills providing for legislation envisaged in the further provisions set out in section 76(3)(a)-(f), over which the provinces have no legislative competence, as well as Bills the main substance of which falls within the exclusive national competence, but the provisions of such nevertheless substantially affect the provinces. What must be stressed, however, is that the procedure envisaged in section 75 remains relevant to all Bills that do not, in substantial measure, affect the provinces. Whether a Bill is a section 76 Bill is determined in two ways. First, by the explicit list of legislative matters in section 76(3)(a)-(f) and second, by whether the provisions of a Bill in substantial measure fall within a concurrent provincial legislative competence.
- 7.8 Schedule 4 to the Constitution lists the functional areas of concurrent national and provincial legislative competence. Schedule 5 lists functional areas of exclusive provincial legislative competence.
- 7.9 In terms of Part A and B of Schedule 5 to the Constitution “provincial sport” is a functional area of exclusive provincial legislative competence. “Local sport facilities” is an item listed in Part B of Schedule 5 to the Constitution, which is a local government matter to the extent set out for provinces in section 155(6)(a) and (7).
- 7.10 The Bill seeks to amend the Act in order to provide for the improvement in the regulation of the sport and recreation industry. The Bill determines the framework within which provinces and municipalities must execute their respective functions.
- 7.11 The Bill further seeks to provide for the establishment of the Sport Arbitration Tribunal which, amongst other things, will adjudicate on any conduct prohibited in terms of the Act, determine whether prohibited conduct has occurred and resolve disputes in sport and recreation bodies. The Bill proposes the appointment of inspectors to carry out routine inspections to ensure compliance with the Act and seeks to empower the Minister to effectively oversee sport and recreation and to facilitate the improvement of the operations of sport or recreation bodies.
- 7.12 Since “provincial sport” and “local sport facilities” are matters listed in Schedule 5 to the Constitution and since the Bill seeks to determine the framework within which provinces and municipalities must execute their

respective functions, the provisions of the Bill in substantial measure affect the provinces. In terms of section 44(2) of the Constitution<sup>3</sup>, the Bill must be passed by Parliament in accordance with section 76(1) of the Constitution and the Bill must therefore be tagged as a section 76(1) Bill.

7.13 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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<sup>3</sup> Section 44(2) of the Constitution provides as follows:

“(2) Parliament may intervene, by passing legislation in accordance with section 76 (1), with regard to a matter falling within a functional area listed in Schedule 5, when it is necessary—

- (a) to maintain national security;
- (b) to maintain economic unity;
- (c) to maintain essential national standards;
- (d) to establish minimum standards required for the rendering of services; or
- (e) to prevent unreasonable action taken by a province which is prejudicial to the interests of another province or to the country as a whole.”.