

## **MEMORANDUM ON THE OBJECTS OF THE NATIONAL SPORT AND RECREATION AMENDMENT BILL, 2020**

### **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 for sport in South Africa to create a new dispensation that will govern and regulate the sport and recreation industry for the best interest of all the role players by clarifying of 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 and 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. WHAT THE BILL SEEKS TO ACHIEVE**

The main purpose of the Bill is to provide for the improvement of the regulation of 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**

3.1.1 Clause 1 of the Bill seeks to amend section 1 of the Act. A definition of "club" is inserted to refer to a club that plays a major role in terms of sport development and to further ensures that such club is accountable to the national federation.

3.1.2 The definition of "committee" is inserted to clarify the role of the committee in dealing with disputes which the Sports Confederation fails on numerous occasions to resolve as proclaimed in the Act.

3.1.3 The definition of the "national colours" is inserted to clarify the prescribed uniform or dress in connection with national team participating in an international event. In this regard this clause also provides for the insertion of a definition of "national colours board" and "national emblem".

3.1.4 The definition of "national federation" is amended to clarify that a national governing body of a code of sport in the Republic with affiliate members in all provinces is recognised by Sport and Recreation South Africa as the only authority for the administration and control of the relative code of sport in the Republic.

3.1.5 This clause also inserts a definition for "Director-General", "MEC", "recreational activity", "sport or recreation agent", and "sport or recreation body".

## **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 the 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 subsection (3) of the Act to give the Minister powers 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 which provides for national federations by substituting the heading "national federation" to "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, spectators who attend sport or recreation events and physical facilities where such events take place within their sport and recreation discipline.

3.4.2 Clause 4 of the Bill seeks to insert clause (2B) to the Act to give the Sport or recreation bodies power to ensure that selected players comply with any national call to participate in a sport, and 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.

### **3.5 Clause 5**

3.5.1 Clause 5 of the Bill seeks to insert the new sections 6A, 6B, 6D and 6E in the Act. Section 6A provides that a sport or recreation body must recognise a sport or recreation agent in writing, before such an agent may operate in the Republic and further issue a licence to a sport or recreation agent as prescribed by the Minister. Section 6A further provides for the disqualification of the agent if, the agent has been convicted of an offence and sentenced to imprisonment without the option of a fine.

3.5.2 Section 6B provides for the appointment of the advisory committee which must advise and recommend to the Director-General pertaining to the application received from the sports body for recognition. Section 6C deals with the criteria for recognition of sport bodies and provides that the sport body must be properly constituted and operate on democratic principles. Section 6D deals with the exemption and provides that the Director-General may on application in the prescribed manner by notice in the *Gazette* exclude a sport body from complying with section 6C(d) upon submission by the sport body of good grounds in writing to the Director –General. Section 6E provides for the criteria for recognition of recreation bodies to be properly constituted and operate on democratic principles.

### **3.6 Clause 6**

Clause 6 of the Bill seeks to amend section 8 of the Act which provides for resources for sport and recreation by substituting the word "must" and insert "may" in subsection (1). Clause 6 further inserts the new section 3(A) to provide the Minister

with the power to publish norms and standards for the building of the new sport facilities.

### **3.7 Clause 7**

Clause 7 of the Bill seeks to insert new sections 8A, 8B, 8C, 8D, 8E, 8F, 8G, 8H and 8I in the principal Act to provide for the appointment of inspectors, functions of inspectors, powers of entry, powers to question and inspect, cooperation with sport and recreation facilities, securing an undertaking compliance order limitation and order may be made order of court.

### **3.8 Clause 8**

Clause 8 of the Bill seeks to amend section 9 which provides for programmes to promote equity in sport and recreation by inserting after subsection (2), the new subsections (3) and (4) of the Act 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 to ensure for the participation by the public and sport and recreation bodies in the nomination process to be transparent and open.

### **3.10 Clause 10**

Clause 10 of the Bill seeks to insert new sections 11A, 11B, 11C and 11D. Section 11A provides for the bidding and hosting of international sport and recreation event. Section 11B provides for the prohibition to bid and host an international sport and recreation event in the Republic without the written approval of the Minister. Section 11C deals with the combat sport and lists all the different kind of combat sport. Section 11D provides for 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 include amongst others, the establishment, object, 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 by amending subsection (1) and inserting the new section dealing with appointment of the Ministerial Committee of Inquiry to investigate matters that may bring a sport recreational activity or body into disrepute.

### **3.12 Clause 12**

3.12.1 Clause 12 of the Bill seeks to insert the new sections 13D to 13O after section 13C which deals, amongst others, the establishment, composition appointment of Sport Arbitration, qualifications of members, term of office of the members, appointment of Chairperson and Deputy Chairperson, Sport Arbitration Tribunal proceedings, conflicts and disclosure of interest by members of Sport Tribunal and staff of Sport Tribunal.

3.12.1 Sections 13O and 13N of the Bill provide for the offences and delegation of powers.

### **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 regulations in the Act to provide for the school sport development programme and the fees for a sport or recreation agent.

### **3.14 Clause 14**

Clause 14 of the Bill seeks to amend the Long title of the Act.

### **3.15 Clause 15**

Clause 14 of the Bill provides for the short title 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 This law has been under implementation and the budget of the Department has been utilised to implement it.

5.2 There will be financial implications for the amendments only.



5.3 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

---

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

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* [1999] ZACC 15; 2000 (1) SA 732 (CC); 2000 (1) BCLR 1(CC), 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 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.

7.6 The Constitutional Court stated that:

*"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."*

7.7 The 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 NCOP, and how a Bill must be considered by the provincial legislatures depends on whether it affects the provinces.

7.8 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.

7.9 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.

7.10 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).

7.11 In the light of the above, we are of the opinion that the Bill is correctly tagged

as a section 76 Bill.

7.12 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.