

REPUBLIC OF SOUTH AFRICA

COMMISSION ON GENDER EQUALITY AMENDMENT BILL

*(As introduced in the National Assembly (proposed section 75); explanatory summary of
Bill published in Government Gazette No. 35572 of 10 August 2012)
(The English text is the official text of the Bill)*

(MINISTER OF WOMEN, CHILDREN AND PEOPLE WITH DISABILITIES)

[B 36—2012]

ISBN 978-1-4850-0022-8

No. of copies printed 1 800

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.

BILL

To amend the Commission on Gender Equality Act, 1996, so as to align it with the Constitution of the Republic of South Africa, 1996; and to provide for matters connected therewith.

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

Substitution of Preamble of Act 39 of 1996

1. The following Preamble is hereby substituted for the Preamble of the Commission on Gender Equality Act, 1996 (hereinafter referred to as the principal Act): 5

“PREAMBLE

WHEREAS section [119] 181 and item 20(2) of Schedule 6 to the Constitution [provides for the establishment of a Commission on Gender Equality; the determination of the members of the Commission; the requirements for appointment as members of the Commission] of the Republic of South Africa, 1996, provide 10 for the continued existence of the Commission for Gender Equality;

AND WHEREAS section 187 of the Constitution provides that [the object of the Commission on Gender Equality shall be to promote gender equality and to advise and to make recommendations to Parliament or any other legislature with regard to any laws or proposed legislation which affects gender equality and the status of 15 women] the Commission for Gender Equality—

- must promote respect for gender equality and the protection, development and attainment of gender equality;
- has the power, as regulated by national legislation, necessary to perform its functions, including the power to monitor, investigate, research, educate, lobby, advise and report on issues concerning gender equality; 20
- has additional powers and functions prescribed by national legislation;

AND WHEREAS [section 120] sections 193 and 194 of the Constitution [provides that an Act of Parliament shall provide for the composition, powers, functions and functioning of the Commission on Gender Equality and for all other matters in connection therewith] provide for a mechanism for the appointment and the removal of a member of the Commission for Gender Equality.” 5

Amendment of section 1 of Act 39 of 1996, as amended by section 35 of Act 47 of 1997

2. Section 1 of the principal Act is hereby amended—
- (a) by the substitution for the definition of “Commission” of the following definition: 10

“ ‘Commission’ means the Commission **[on] for Gender Equality [established by section 119] referred to in section 181** of the Constitution;”;
 - (b) by the insertion before the definition of “investigation” of the following definition: 15

“ **‘Constitution’** means the Constitution of the Republic of South Africa, 1996;” and
 - (c) by the substitution for the definition of “Minister” of the following definition: 20

“ **‘Minister’** means the Minister **[of Justice] responsible for women, children and people with disabilities;**”.

Amendment of section 3 of Act 39 of 1996

3. Section 3 of the principal Act is hereby amended—
- (a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words: 25

“**[Subject to section 119(2) of the Constitution, the]** The Commission shall consist of a chairperson and no fewer than seven and no more than eleven members, who shall—”;
 - (b) by the substitution in subsection (2) for paragraphs (a), (b) and (c) of the following paragraphs, respectively: 30
 - “(a) **[proposed by interested parties as contemplated in subsection (3)]** nominated by a committee of the National Assembly proportionally composed of members of all parties represented in the Assembly; 35
 - (b) **[nominated by a joint committee]** approved by the National Assembly by a resolution adopted with a supporting vote of a majority of the members of the Assembly; and
 - (c) **[approved by the National Assembly and the Senate by a resolution adopted by a majority of the total number of members of both Houses at a joint meeting;]** on the recommendation of the Assembly.”; 40
 - (c) by the deletion of the proviso to subsection (2);
 - (d) by the deletion of subsection (3);
 - (e) by the substitution for subsection (5) of the following subsection: 45

“(5) The President shall, subject to section 194(2) and (3) of the Constitution, remove any member from office **[if] only on—** 45

 - (a) **[such removal is requested by a joint committee contemplated in subsection (2)(b)]** the ground of misconduct, incapacity or incompetence; [and]
 - (b) **[such request is approved by the National Assembly and the Senate by a resolution adopted by a majority of the total number of members of both Houses at a joint meeting.]** a finding to that effect by a committee of the National Assembly; and 50
 - (c) the adoption by the National Assembly of a resolution calling for that person’s removal.”.

Amendment of section 9 of Act 39 of 1996

4. Section 9 of the principal Act is hereby amended by the substitution in paragraph (b) of subsection (2) for the words preceding subparagraph (i) of the following words:
 “shall, subject to the [Exchequer Act, 1975 (Act No. 66 of 1975)] Public Finance Management Act, 1999 (Act No. 1 of 1999)—”.

5

Amendment of section 11 of Act 39 of 1996

5. Section 11 of the principal Act is hereby amended by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:
 “In order to achieve its object referred to in section [119(3)] 187 of the Constitution, the Commission—”.

10

Substitution of short title of Act 39 of 1996

6. The following short title is hereby substituted for the short title and commencement of the principal Act:

“19. This Act shall be called the Commission [on] for Gender Equality Act, 1996, and shall come into operation on a date fixed by the President by proclamation in the *Gazette*.”.

Amendment of citation of laws referring to Act 39 of 1996

7. Any reference to the “Commission on Gender Equality Act, 1996 (Act No. 39 of 1996)”, contained in any law in force immediately prior to the commencement of this Act, must be construed as a reference to the “Commission for Gender Equality Act, 1996 (Act No. 39 of 1996)”.

Substitution of long title of Act 39 of 1996

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

“**To provide for the composition, powers, functions and functioning of the Commission [on] for Gender Equality; and to provide for matters connected therewith.**”.

Short title

9. This Act is called the Commission on Gender Equality Amendment Act, 2012.

MEMORANDUM ON THE OBJECTS OF THE COMMISSION ON GENDER EQUALITY AMENDMENT BILL, 2012

1. BACKGROUND

1.1 On 19 October 2010 the Acting Speaker of Parliament established the *Ad hoc* Committee on the Commission for Gender Equality Forensic Investigation (the *Ad hoc* Committee). The mandate of the *Ad hoc* Committee was to consider and report to the National Assembly on specific issues that were highlighted in reports of the Public Protector and the Auditor-General, respectively.

1.2 The National Assembly adopted the report of the *Ad hoc* Committee on 23 June 2011. The report recommended that the Commission on Gender Equality Act, 1996 (Act No. 39 of 1996) (the Act), be revised to bring it in line with the Constitution of the Republic of South Africa, 1996 (the Constitution), and the Public Finance Management Act, 1999 (Act No. 1 of 1999) (the PFMA).

1.3 Because of the assignment of the administration of the Act by the President to the Department of Women, Children and People with Disabilities, the Department is responsible for initiating the legislative processes to amend the Act.

2. OBJECTS OF THE BILL

2.1 The Commission on Gender Equality Amendment Bill, 2012 (the Bill), seeks to give effect to the recommendations of the *Ad Hoc* Committee.

2.2 The proposed amendments—

- are mainly of a technical nature and do not affect the establishment, composition, powers and functions of the Commission;
- aim to align the Act with the provisions of the Constitution;
- substitute the reference to the Exchequer Act, 1975 (Act No. 66 of 1975), with reference to the PFMA.

3. PROVISIONS OF THE BILL

3.2.1 Ad Clause 1

Clause 1 substitutes the Preamble of the Act to reflect the provisions of the Constitution.

3.2.2 Ad Clause 2

Clause 2 amends section 1 of the Act in order to substitute, insert and amend a definition.

3.2.3 Ad Clause 3

Clause 3 amends section 3 of the Act to align it with section 193(5) of the Constitution which provides for, amongst others, the appointment of Commissioners for the Commission.

3.2.4 Ad Clause 4

Clause 4 amends section 9 of the Act. The amendment to section 9 of the Act is required to align it with the PFMA.

3.2.5 Ad Clause 5

Clause 5 amends section 11 of the Act by correcting a reference to section 119(3) of the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993), to refer to section 187 of the Constitution.

3.2.6 Ad Clause 6

Clause 6 amends section 19 of the Act by changing the short title to reflect the correct name of the Act.

3.2.7 Ad Clause 7

Clause 7 caters for cross-references to the Act contained in other legislation by correcting references to the Act.

3.2.8 Ad Clause 8

Clause 8 amends the long title of the Act to reflect the correct name of the Commission.

4. DEPARTMENTS/BODIES/PERSONS CONSULTED

4.1 The Bill was presented to the Social Protection and Community Development Cluster, the Governance and Administration Cluster and the Justice, Crime Prevention and Security Cluster.

4.2 On 10 August 2012 the Bill was published in the *Gazette* for public comment. No comment was received.

5. IMPLICATIONS FOR PROVINCES

None.

6. FINANCIAL IMPLICATIONS FOR STATE

None.

7. PARLIAMENTARY PROCEDURE

7.1 The State Law Advisers and the Department of Women, Children and People with Disabilities are of the opinion that this Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution since it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.

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

Printed by Creda Communications

ISBN 978-1-4850-0022-8