MEMORANDUM ON OBJECTS OF DRAFT LOCAL GOVERNMENT: MUNICIPAL FINANCE MANAGEMENT BILL, 2026

1. PURPOSE OF BILL

1.1 The Bill proposes amendments to the Local Government: Municipal Finance Management Act, 2003 (Act No. 56 of 2003) ("the MFMA"), in order to secure sound and sustainable management of the financial affairs of municipalities and other institutions in the local sphere of government; to provide for provisions necessary to facilitate mandatory and voluntary interventions; and to provide for incidental matters thereto.

1.2 The Bill proposes to—

- insert, and amend certain definitions; to expand National Treasury's investigative, oversight, and enforcement powers; to empower the MEC for finance to sub-delegate a delegated power to the head of provincial treasury and treasury staff; to provide for the assignment of functions or powers by an organ of state to municipalities; to require the municipality to submit bank account details to National Treasury; to provide for control of municipal accounts and withdrawals from municipal accounts during a national or a provincial intervention; to require municipalities to develop policies regulating relief or charitable, trusts and other funds; to provide for the termination of trusts; to remove the requirement for the Minister to act with the concurrence of the Cabinet member responsible for local government when prescribing cash management frameworks; to require the annual budget to not be funded from current cash or investment committed for certain purposes; to require a municipality to develop a tariff policy; to empower municipalities to recover fees; to require a municipality to develop customer care systems; to require a municipal council to adopt by-laws for tariff implementation; to require a municipal council to adopt and implement an indigent management; to require a municipality to commit money on capital projects only in certain circumstances; to remove the requirement for the Minister to act with the concurrence of the Cabinet member responsible for local government when prescribing municipal budget forms; to require reviews of previous financial year budgets by the mayor and accounting officer; to specify the manner of annual budget publication; to require the municipal council to consider any views on the annual budget; to provide for assessment of municipal budgets before approval; to regulate the timing and conditions for adjustment budgets and tax or tariff changes; to require a municipality to shift funds in line with its virement policy; to clarify unauthorised, irregular or fruitless, and wasteful expenditure; to provide for projects or arrangements with future municipal budget implications; to require the MEC for finance notification before the National Treasury stops municipal funds; to clarify the National Treasury's role in dispute resolution in a municipality's financial disputes; to require municipalities to inform the National Treasury before incurring short-term debt; to regulate municipal borrowing from international lenders; to enhance the mayor's role in

financial guidance and reporting; to include the MEC for finance as one of the functionaries performance agreements must be submitted to; to require the mayor to notify the MEC for finance of serious municipal financial issues; to provide for the MEC for finance's role in addressing municipal financial issues; to update general financial management functions; to remove references to the Municipal Systems Act; to insert provisions with credit control, debt collection policies, related by-laws powers of the supervisory authority, powers of the implementing authority, the municipality's right of access to premises, municipal accounts and agreements with employers; to require financial statements from entities receiving municipal funds and to develop a fund transfer policy; to add provincial treasuries for reporting and notification purposes; to include accruals and provisions in monthly budget statements and disclose outstanding debtors; to require additional information on municipal websites and comply with the Protection of Personal Information Act; to protect municipal and municipal entity officials against unfair actions; to add information technology and risk management to municipal officials' responsibilities and strengthen disciplinary measures of officials who are responsible for losses; to expand the chief financial officer's responsibilities; to provide for the National Treasury's and the provincial treasury's oversight role in the appointment of chief financial officers; to require municipalities to explain their response to provincial treasury recommendations; to adjust timelines for municipal entity budget approvals; to require the Auditor General to audit and report on the accounts of municipal entities and for municipal entities to submit audit reports to parent municipalities and relevant treasuries; to provide for recovery of irregular or wasteful expenditure from responsible parties; to improve revenue collection systems for municipal entities; to specify reporting deadlines for financial irregularities and losses; to reduce timeframes for preparing annual reports and standardise report formats; to broaden debt disclosure requirements in financial statements; to mandate inclusion of unauthorised expenditures of municipal entities in financial statements; to ensure submission of audit-related documents to the relevant treasuries; to update submission timelines for annual reports and related documents; to provide for oversight report submission timelines and address findings; to include a request for the preparation of a financial recovery plan; to require consultation with Municipal Financial Recovery Services when preparing a financial recovery plan; to provide for the period within which to submit the recovery plan and recommendations; to suspend the powers and functions of accounting officers and chief financial officers during an intervention; to extend the criteria for determining serious financial problems; to enhance procedures for provincial interventions in financially distressed municipalities; to include relevant treasuries during municipal financial recovery processes; to extend the criteria for determining serious or persistent material breach of financial commitments; to provide for a period within which the provincial executive may take steps to ensure implementation of the financial recovery plan; to provide for the inclusion of the Municipal Financial Recovery Service in the implementation and the reporting of a financial recovery plan; to

provide for matters to be prescribed; to provide for an internal audit unit; to provide for information that must be submitted to the council by the municipality or municipal entity on the appointment or dismissal of an official of the internal audit unit; to provide for the implementation of a risk management system; to provide for regulations and guidelines; to provide for the publishing of draft regulations; to provide for the establishment of Municipal Financial Misconduct Investigation Committee, composition of the Committee, power to obtain information for investigation and the referral of matters to the Committee; to strengthen the provisions for offences; to provide for the imposition of personal administrative monetary penalties; to provide for an interpretation ruling by the Minister;

- insert, amend and repeal certain provisions of the Local Government: Municipal Systems Act, 2000;

amend certain provisions of the Local Government: Municipal Property Rates Act, 2004 (Act No. 6 of 2004);and to provide for matters connected therewith.

2. CLAUSE BY CLAUSE SUMMARY OF AMENDMENTS

2.1 Clause 1 of the Bill seeks to amend section 1 of the MFMA to provide for insertion and amendment of certain definitions that will assist in the interpretation of the Bill.

2.2 Clause 2 of the Bill seeks to amend section 5 of the MFMA to allow the National Treasury to investigate any system of information technology, prescribe uniform treasury norms and standards and perform oversight and enforce improvements in for audit outcomes. Moreover, to promote and enforce transparency and effective management in municipalities and municipal entities. This clause further proposes that the provincial treasury must monitor the quarterly or annual outcome of budgets. Clause 2 amends section 5 to allow the National Treasury to publish any document required to be published by a municipality in terms of the MFMA.

2.3 Clause 3 of the Bill seeks to amend section 6 of the MFMA to provide for the MEC for finance to sub-delegate power or duty to the staff member of a relevant provincial treasury or delegate any power assigned to a provincial treasury to the head of that provincial treasury. Furthermore, to allow the head of a provincial treasury to subdelegate a delegated power or duty to a staff member of that treasury.

2.4 Clause 4 of the Bill seeks to insert section 6A to the MFMA to provide for the assignment of functions or powers by an organ of state to municipalities.

2.5 Clause 5 of the Bill seeks to amend section 9 of the MFMA to deal with submission of bank account details and includes the National Treasury in the list of institutions to which the accounting officer must submit the bank account details of the municipality.

2.6 Clause 6 of the Bill seeks to insert section 10A to the MFMA to provide for the control of the accounts of the municipality during a national or provincial intervention in terms of section 139 of the Constitution of South Africa, 1996 (‘the Constitution’).

2.7 Clause 7 of the Bill seeks to insert section 11A to the MFMA to provide for withdrawals from municipal bank accounts during a national or provincial intervention in terms of section 139 of the Constitution.

2.8 Clause 8 of the Bill seeks to amend section 12 of the MFMA to require a municipality to develop a policy to regulate relief, charitable, trust or other funds of a municipality.

2.9 Clause 9 of the Bill seeks to insert section 12A to the MFMA to provide for the termination of trusts established by a municipality.

2.10 Clause 10 of the Bill seeks to amend section 13 of the MFMA to remove the requirement for the Minister to act with the concurrence of the Cabinet member responsible for local government to prescribe a framework for cash management and investments by municipalities.

2.11 Clause 11 of the Bill seeks to amend section 18 of the MFMA to strengthen the provisions in respect of funding of expenditure by municipalities.

2.12 Clause 12 of the Bill seeks to insert sections 18A to 18E to the MFMA to enable the municipal council to adopt a tariff policy, to provide for the municipality to levy and recover fees and charges. To further require the municipality to develop a customer care and management system, and for municipal council to adopt by-laws to give effect to the tariff policy and the implementation of an indigent management policy.

2.13 Clause 13 of the Bill seeks to amend section 19 of the MFMA to clarify how a municipality may spend or commit money on a capital project.

2.14 Clause 14 of the Bill seeks to amend section 20 of the MFMA to remove the requirement for the Minister to act with the concurrence of with the Cabinet member responsible for local government and to prescribe the form of the annual budget of municipalities and other matters.

2.15 Clause 15 of the Bill seeks to amend section 21 of the MFMA to allow the accounting officer together with the mayor to compile a review of the previous financial year budget process and budget.

2.16 Clause 16 of the Bill seeks to amend section 22 of the MFMA to provide for the manner and form of the publication of annual budget.

2.17 Clause 17 of the Bill seeks to amend section 23 of the MFMA to enhance the consultation by the municipal council on tabled budgets.

2.18 Clause 18 of the Bill seeks to amend section 24 of the MFMA to provide for the tabling of an annual budget for consideration and approval by the municipal council.

2.19 Clause 19 of the Bill seeks to amend section 28 of the MFMA to provide for the date on which the mayor may table an adjustment budget and to provide for instances where the municipal tax and tariffs may not be increased by a municipality and instances where the municipal tax and tariffs may be decreased during a financial year.

2.20 Clause 20 of the Bill seeks to amend section 31 of the MFMA to provide for the development of a virement policy to be used by municipalities when shifting funds during a financial year.

2.21 Clause 21 of the Bill seeks to substitute section 32, in respect of irregular or fruitless and wasteful expenditure and to provide for unauthorised expenditure.

2.22 Clause 22 of the Bill seeks to substitute section 33 of the MFMA to provide for projects or arrangements having future budgetary implications on a municipality.

2.23 Clause 23 of the Bill seeks to amend section 38 of the MFMA to ensure that the MEC for finance is informed before the National Treasury stops funds to a municipality.

2.24 Clause 24 of the Bill seeks to substitute section 44 of the MFMA to clarify the involvement of the National Treasury in the dispute resolution in an event of a financial dispute between a municipality or a municipal entity and an organ of state.

2.25 Clause 25 of the Bill seeks to amend section 45 of the MFMA to provide that National Treasury and relevant provincial treasury must be informed before a municipality incurs a short-term debt.

2.26 Clause 26 of the Bill seeks to insert section 51A to deal with borrowing by municipalities from international lenders.

2.27 Clause 27 of the Bill seeks to amend section 52 of the MFMA to require a mayor of a municipality to provide political guidance on policies and to provide for a mayor of a municipality to table a report in council and submit it to the National Treasury and the relevant provincial treasury on the financial performance of a municipality.

2.28 Clause 28 of the Bill seeks to amend section 53 of the MFMA to require the assistance of accounting officer in the coordination of the annual revision of the integrated development plan. The clause proposes that a mayor of municipality must table the municipality's service delivery and budget implementation plan and to submit the copies of performance agreement to the MEC for finance.

2.29 Clause 29 of the Bill seeks to amend section 54 of the MFMA to require the mayor of a municipality to advise the MEC for finance if a municipality faces serious financial problems and to set a period within which the service delivery and budget implementation plans are to be made public.

2.30 Clause 30 of the Bill seeks to amend section 55 of the MFMA to provide for the role of the MEC for finance where there are serious financial problems in a municipality.

2.31 Clause 31 of the Bill seeks to amend section 62 of the MFMA to provide for—

2.31.1 additional general and financial management functions; and

2.31.2 the deletion of reference to the Local Government: Municipal Systems Act, 2009 (Act No.32 of 2009 - 'Municipal Systems Act').

2.32 Clause 32 of the Bill seeks to amend section 64 of the MFMA to remove reference to the Municipal Systems Act.

2.33 Clause 33 of the Bill seeks to insert sections 64A to 64Gof the MFMA to provide for—

2.33.1 credit control and debt control policy;

2.33.2 by-laws to give effect to credit control and debt control policy;

2.33.3 supervision of the implementation and enforcement of the municipality's credit control and debt control policy;

2.33.4 the payments of the accounts;

2.33.5 the right of a municipality to access premises of residents where they provide services; and

2.33.6 agreements with employers to deduct from the salaries of persons liable to the municipality for the payment of rates, taxes or fees for municipal services.

2.34 Clause 34 of the Bill seeks to amend section 65 of the MFMA to delete reference to 'creditors' and replace it with 'liabilities'.

2.35 Clause 35 of the Bill seeks to amend section 67 of the MFMA to provide that before a municipality transfers funds to any organisation or body outside of government, that organisation or body must submit audited or unaudited financial statements; and that a municipality develops a policy for the allocation and transfer of funds to organisations and bodies outside of government and for the prescription for the list of organisations that municipalities may transfer funds to.

2.36 Clause 36 of the Bill seeks to amend section 70 of the MFMA to provide for the addition of the relevant provincial treasury for purposes of reporting and notification as required by this section.

2.37 Clause 37 of the Bill seeks to amend section 71 of the MFMA to require the accounting officer to submit the monthly budget to the National Treasury, to include accruals and provisions in the monthly budget, and to further provide for disclosures of outstanding debtors and age analysis in the monthly budget statements.

2.38 Clause 38 of the Bill seeks to amend section 72 of the MFMA to require that the accounting officer must submit the performance assessment to the municipal council as well.

2.39 Clause 39 of the Bill seeks to amend section 75 of the MFMA to provide for additional information to be placed on the websites of municipalities and the publication of documents must exclude personal information in terms of the Protection of Personal Information Act, 2013 (Act No. 4 of 2013).

2.40 Clause 40 of the Bill seeks to substitute section 76 of the Act to provide for the protection of the municipal officials against any action instituted by a political structure and office-bearer of a municipality, and if such action is taken it will amount to an unfair labour practice.

2.41 Clause 41 of the Bill seeks to amend section 78 of the MFMA to provide for risk management in addition to the financial management responsibilities of officials of municipalities and to provide for disciplinary actions and criminal proceedings against other officials of the municipality under the supervision of senior managers and officials of a municipality responsible for financial management.

2.42 Clause 42 of the Bill seeks to amend section 81 of the MFMA to provide for additional roles of a chief financial officer of a municipality.

2.43 Clause 43 of the Bill seeks to insert section 81A to the MFMA to include the involvement of treasuries in the appointment of chief financial officers.

2.44 Clause 44 of the Bill seeks to amend section 84 of the MFMA to require that the municipality must provide an explanation to the relevant provincial treasury to the extent that it has taken into account the relevant provincial treasury’s views and recommendations and to provide for a period within which the municipality must submit the explanation.

2.45 Clause 45 of the Bill seeks to amend section 87 of the MFMA to provide for the change in the period within which a municipal entity must approve its budget.

2.46 Clause 46 of the Bill seeks to substitute section 92 to the MFMA to provide that municipal entities must submit the audit report by the Auditor-General to the parent municipality, National Treasury and the relevant provincial treasury.

2.47 Clause 47 of the Bill seeks to amend section 95 of the MFMA to require that irregular, fruitless and wasteful expenditure is recovered from the person liable for such expenditure.

2.48 Clause 48 of the Bill seeks to amend section 97 of the MFMA to provide for the system for the collection of revenue that is due to the municipal entity.

2.49 Clause 49 of the Bill seeks to amend section 99 of the MFMA to provide for the replacement of reference to ‘creditors’ with ‘liabilities’.

2.50 Clause 50 of the Bill seeks to substitute section 102 of the MFMA and to provide for the inclusion of unauthorised expenditure.

2.51 Clause 51 of the Bill seeks to insert section 103A to the MFMA to provide for the protection of municipal entity officials responsible for financial management in a municipal entity against unfair labour practice by the board of directors.

2.52 Clause 52 of the Bill seeks to amend section 105 of the MFMA to include unauthorised expenditure and to provide the period within which a responsible official must report the incurrence of any unauthorised, fruitless and wasteful expenditure and losses.

2.53 Clause 53 of the Bill seeks to amend section 121 of the MFMA to reduce the period within which a municipality or a municipal entity must prepare the annual report and to provide the prescribed form for the annual report.

2.54 Clause 54 of the Bill seeks to amend section 122 of the MFMA to delete the reference to the Municipal Systems Act.

2.55 Clause 55 of the Bill seeks to amend section 124 of the MFMA to replace reference to ‘rates or services’ with ‘any debt’ and to provide for the disclosure of any debt due to the municipality or municipal entity.

2.56 Clause 56 of the Bill seeks to amend section 125 of the MFMA to delete reference to ‘material’ and to require that unauthorised expenditure be included in the notes to the annual financial statements to be disclosed.

2.57 Clause 57 of the Bill seeks to amend section 126 of the MFMA to require the accounting officer to submit the audited financial report, audit report and other documents to the National Treasury and the relevant provincial treasury.

2.58 Clause 58 of the Bill seeks to amend section 127 of the MFMA to provide for—

2.58.1 the change of period within which a municipal entity must submit its annual report to the parent municipality;

2.58.2 the completed components that must accompany the annual report;

2.58.3 the accounting officer to submit the annual report of the audit committee for tabling in the municipal council and to delete reference to local government; and

2.58.4 the Auditor-General to submit financial statements and audit report and to include the MEC for finance as one of functionaries to which the financial statement and audit report is submitted.

2.59 Clause 59 of the Bill seeks to amend section 129 of the MFMA to provide for the period within which the annual report or any components of the annual report must be submitted to the council and provides for the period within which the accounting officer must address the matters in the oversight report.

2.60 Clause 60 of the Bill seeks to amend section 131 of the MFMA to provide for the amendment of the heading to include reference to management report and to delete reference to ‘MEC for local government’ and refer to the ‘MEC for finance’.

2.61 Clause 61 of the Bill seeks to amend section 132 of the MFMA to delete reference to ‘MEC local government’ and refer to the ‘MEC for finance’ and to provide for the period within which recommendations on further actions must be taken after receiving reports.

2.62 Clause 62 of the Bill seeks to substitute section 134 of the MFMA to delete reference to Cabinet member responsible for local government, the MEC for local government and the Municipal Systems Act.

2.63 Clause 63 of the Bill seeks to amend section 135 of the Act to include a request for the preparation of a financial recovery plan.

2.64 Clause 64 of the Bill to seeks to amend 136 of the MFMA to delete reference to ‘MEC for local government’ and refer to ‘MEC for finance’ and to make reference to a budget in terms of section 18.

2.65 Clause 65 of the Bill seeks to amend section 137 of the MFMA to—

2.65.1 delete reference to ‘any suitably qualified person’ and refer to the ‘relevant provincial treasury’;

2.65.2 require consultation with Municipal Financial Recovery Services when preparing a financial recovery plan;

2.65.3 provide for the period within which to submit the recovery plan and recommendations; and

2.65.4 delete reference to ‘Cabinet member responsible for local government’, ‘MEC for local government’ and replaced with ‘Minister’ and ‘MEC for finance’, respectively.

2.66 Clause 66 of the Bill seeks to insert section 137A to the MFMA to suspend the powers and functions of accounting officers and chief financial officers during an intervention.

2.67 Clause 67 of the Bill seeks to amend section 138 of the MFMA to extend the criteria for determining serious financial problems.

2.68 Clause 68 of the Bill seeks to amend section 139 of the MFMA to provide for the period within which the provincial executive must submit to the MEC for finance the determination and assessment by the Municipal Financial Recovery Services.

2.69 Clause 69 the Bill seeks to amend section 140 of the MFMA to extend the criteria for determining serious or persistent material breach of financial commitments.

2.70 Clause 70 the Bill seeks to amend section 141 of the MFMA to provide for—

2.70.1 the replacement of reference to ‘any suitably qualified person’ with ‘the relevant provincial treasury’;

2.70.2 steps to be taken by the Municipal Financial Recovery Services when preparing a financial recovery plan; and

2.70.3 the deletion of reference to MEC for local government.

2.71 Clause 71 the Bill seeks to amend section 143 of the MFMA to delete reference to ‘MEC for local government’ with the reference to ‘MEC for finance’.

2.72 Clause 72 the Bill seeks to amend section 144 of the MFMA to delete reference to the ‘MEC for local government’ and to delete reference to ‘any suitably qualified person’ with reference to ‘the relevant provincial treasury’.

2.73 Clause 73 of the Bill seeks to amend section 145 of the MFMA to delete reference to the ‘MEC for local government’ with the reference to ‘MEC for finance’ and provides for a period within which the provincial executive may take steps to ensure implementation of the financial recovery plan.

2.74 Clause 74 of the Bill seeks to amend section 146 of the MFMA to provide for the inclusion of the Municipal Financial Recovery Service in the implementation and the reporting of a financial recovery plan.

2.75 Clause 75 of the Bill seeks to amend section 147 of the MFMA to substitute reference to the ‘MEC for local government’ and ‘Cabinet member responsible for local government’ with reference to the ‘MEC for finance’ and ‘Minister’, respectively.

2.76 Clause 76 of the Bill seeks to amend section 152 of the MFMA to extend the time frame to 120 days for an application to stay legal proceedings.

2.77 Clause 77 of the Bill seeks to amend section 153 of the MFMA to extend the time frame to 120 days to facilitate the application to stay legal proceedings.

2.78 Clause 78 of the Bill seeks to amend section 156 of the MFMA to provide for matters to be prescribed.

2.79 Clause 79 of the Bill seeks to amend section 164 of the MFMA to include payment of personal legal fees of any political office-bearers, councillors or officials of the municipality; or directors or officials of the entity in the list of forbidden activities.

2.80 Clause 80 of the Bill seeks to amend section 165 of the MFMA to provide—

2.80.1 for approval by the audit committee and submission to the accounting officer for implementation of the risk-based audit plan;

2.80.2 that the municipal official must be the chief audit executive in the event the internal audit is outsourced;

2.80.3 for an internal audit charter; and

2.80.4 that the municipality or municipal entity must submit information on the appointment or dismissal of an internal audit unit official or the outsourcing of internal audit function and report to the provincial treasury and National treasury in the case of a municipality and the board of directors in the case of a municipal entity.

2.81 Clause 81 of the Bill seeks to insert section 165A of the MFMA to provide for the implementation of a risk management system for municipalities and municipal entities.

2.82 Clause 82 of the Bill seeks to amend section 166 of the MFMA to require an audit committee to have an audit committee charter approved by council and requires the charter to, amongst other things, outline the mandate of the audit committee.

2.83 Clause 83 of the Bill seeks to amend section 167 of the MFMA to delete reference to ‘MEC for local government’ and to replace it with ‘MEC for finance’.

2.84 Clause 84 of the Bill seeks to amend section 168 of the MFMA to give power to the National Treasury to issue instructions, remove the requirement for the Minister to act with the concurrence the ‘Cabinet member responsible for local government’; and to include various other matters for which the Minister may make regulations.

2.85 Clause 85 of the Bill seeks to amend section 169 of the MFMA to provide for the inclusion of the Cabinet member responsible for local government in the consultation on the substance of regulations to provide for the publication of the draft regulations on the National Treasury website and by a notice in the *Government Gazette*.

2.86 Clause 86 of the Bill seeks to amend section 172 of the MFMA to provide that unauthorised expenditure may amount to financial misconduct.

2.87 Clause 87 of the Bill seeks to insert sections 172A to 172D in the MFMA to provide for the establishment of the Municipal Financial Misconduct Investigation Committee, the Composition of the Committee, the power to obtain information for investigation and referral of matters to the Committee.

2.88 Clause 88 of the Bill seeks to amend section 173 of the MFMA to create new offences.

2.89 Clause 89 of the Bill seeks to impose personal administrative monetary penalties on councillors and officials of the municipalities.

2.90 Clause 90 of the Bill seeks to amend section 175 of the MFMA to provide for the deletion of reference to concurrence with the 'Cabinet member responsible for local government' and including reference to the 'MEC for finance'.

2.91 Clause 91 of the Bill seeks to insert section 177A in the MFMA to provide for the interpretation ruling by the Minister of Finance. The interpretation rulings will be issued with the objective of promoting certainty, consistency and uniformity in the interpretation and application of the relevant provisions of the Act. Where a party does not agree with the National Treasury's interpretation or considers that the application of the legislation to the facts of its particular matter gives rise to a different conclusion, the appropriate recourse remains through the courts.

2.92 Clause 92 of the Bill seeks to a**mend the arrangement of sections.**
2.93 **Clause 63 of the Bill provides for t**he legislation in the Schedule to be repealed or amended to the extent set out in the Schedule.

2.94 Clause 94 provides for the short title of the Act.

3. ORGANISATIONS AND INSTITUTIONS CONSULTED

All departments in the national and provincial spheres of government; public entities (national and provincial); constitutional institutions; and the Auditor-General.

4. FINANCIAL IMPLICATIONS FOR STATE

None.

5. PARLIAMENTARY PROCEDURE

5.1 The Constitution of the Republic of South Africa, 1996 ("the Constitution"), provides for various procedures or ways through which Bills must be introduced in Parliament. Consequently, all Bills must be "tagged" to indicate the section of the Constitution that regulates their consideration and adoption.

5.2 A Bill must therefore be correctly classified. The category of legislation is, section 74 Bills amending the Constitution, section 75 ordinary Bills not affecting the provinces, section 76 ordinary Bills affecting provinces and section 77 Money Bills. The test for tagging is not concerned with determining the sphere of government that has competence to legislate on a matter, nor the process concerned with preventing interference in the legislative competence of another sphere of government. In *Tongoane v Minister of Agriculture and Land Affairs* 2010 (6) SA 214 (CC), the Constitutional Court ruled on the test to be used when tagging a Bill. The Court held, in paragraph 70, that the ‘‘*test for determining how a Bill is to be tagged must be broader than that for determining legislative competence*’’. Whether a Bill is a section 76 Bill is determined in two ways.

5.3 We have considered the Bill against the functional areas listed in Schedule 4 (functional areas of concurrent national and provincial legislative competence) and Schedule 5 (functional areas of exclusive provincial legislative competence) to the Constitution. The Bill does not provide for the amendment of the Constitution in terms of section 74 or affect money matters in terms of section 77 of the Constitution. Further the Bill is not, an ordinary Bill not affecting provinces. Therefore, the provisions of section 74, 75 and 77 do not need to be considered.

5.4 The State Law Advisers and the National Treasury are of the opinion that this Bill must be dealt with in accordance with the procedure established by section 76 of the Constitution, since it contains no provision to which the procedure set out in section 74 or 77 of the Constitution applies, however it contains matters that impact on the provinces.

5.5 Further, the State Law Advisers and the National Treasury are of the view that it is not necessary to refer the Bill to the National House of Traditional and Khoi-San leaders in terms of section 39(1)(a) of the Traditional and Khoi-San Leadership Act, 2019 (Act No. 3 of 2019), since it does not contain provisions pertaining to traditional or Khoi-San communities or pertaining to customary law or customs of traditional or Khoi-San communities or provisions pertaining to any matter referred to in section 154(2) of the Constitution.