

MEMORANDUM ON OBJECTS OF DRAFT PUBLIC FINANCE MANAGEMENT AND RELATED LAWS AMENDMENT BILL, 2026

1. INTRODUCTION

1.1 The draft Public Finance Management and Related Laws Amendment Bill ('the Bill'), proposes amendments to the Financial and Fiscal Commission Act, 1997 (Act No. 99 of 1997), the Public Finance Management Act, 1999 (Act No. 1 of 1999), the Public Audit Bill, 2004 (Act No. 25 of 2004) and the Money Bills and Related Matters Act, 2009 (Act No. 9 of 2009). The object of the Bill is to enhance transparency, accountability and sound management of public resources.

1.2 The Bill proposes to—

- repeal the Exchequer Act, 1975;
- amend the Financial and Fiscal Commission Act, 1997; so as to require the Financial and Fiscal Commission to report to Parliament on whether the fiscal plan is consistent with fiscal sustainability, whether the fiscal framework and the medium term budget policy statement are consistent with the fiscal plan and fiscal sustainability, and on the adequacy of the reporting on implementation of the fiscal plan; to require the Commission to publish a report on the fiscal plan;
- amend the Public Finance Management Act, 1999, so as to insert and amend certain definitions; to delete reference to accounting authority throughout the Act; to clarify the powers and functions of the National Treasury; to provide for stopping of funds to provinces; to provide for stopping of funds to institutions; to provide for the establishment of the Office of the Accountant-General and set out its functions; to clarify aspects relating to banking processes for institutions, to require certain public entities to invest surplus funds with the Corporation for Public Deposits; to require the Accountant-General to prepare consolidated financial statements for institutions and to submit to the Auditor-General; to require the National Treasury to publish financial statistics and aggregations concerning all spheres of government on the National Treasury website; to clarify the National Treasury's role with regards to the control of the National Revenue Fund; to outline a timeframe for the South African Revenue Service to make deposits into the National Revenue Fund; to clarify withdrawal from the National Revenue Fund by the National Treasury; to revoke the power of the National Treasury to withdraw exclusions; to empower the Minister of Finance to impose conditions when authorising the use of funds in emergency situations; to clarify the functions and powers of a provincial treasury; to require Provincial Treasuries to prepare consolidated financial statements for institutions and submit to the Auditor-General; to outline a timeframe for money received by a provincial government to be deposited into the National Revenue Fund; to provide for a provincial treasury to temporarily invest funds in the Corporation for Public Deposit; to require the Minister of Finance to table the fiscal framework with the annual budget; to empower the Minister of Finance to table a multi-year budget projection that contain key macro-economic projections; clarify that expenditure funds may be withdrawn from the relevant Revenue Fund for the requirement of the state or province; to

require that the Minister of Finance must table an explanation of how appropriations are consistent with the fiscal plan when tabling an adjustment budget; to require the Accountant-General to publish a statement of actual revenue and expenditure with regard to the National Revenue Fund; to provide for fiscal sustainability and fiscal plan; to empower the relevant Treasury to impose conditions when withholding appropriated funds; to empower Parliament or a provincial legislature to determine when an additional amount for the amount of any overspending must be charged against a vote; to provide requirements for unfunded mandates; to require accounting officers to implement technology for financial management; to clarify the general responsibilities of accounting officers and to provide for the protection of accounting officers and officials acting in good faith when performing any function or exercising any duty; to provide for the fiduciary responsibilities of accounting officers; to provide for accounting officers' responsibilities relating to budgetary control for constitutional institutions and trading entities; to clarify the reporting requirements for institutions; to clarify accounting officers' responsibilities when assets and liabilities are transferred; to provide for the utilisation of unspent funds within a vote; to provide for transfer of funds; to provide for sub-delegation by an official; to provide for the appointment of a chief financial officer of a department, constitutional institution or trading entity; to provide for the amendment of Schedule 2 by notice in the *Gazette*; to empower the Minister to classify public entities listed in Schedule 2 or 3 as national government business enterprise which is a major public entity; to clarify the retention of surplus requirements and provide for certain exclusions; to provide for the concurrence of, and imposition of conditions by the relevant treasury in respect of certain transactions; to require a public entity must, on request, provide the National Treasury with information on guarantees, contingent liabilities and other material fiscal exposures; to provide for the assignment of powers and duties by board or controlling body; to provide for the appointment of a chief financial officer of a public entity; to provide for intervention by Minister if a public entity is in financial distress; to clarify the financial responsibilities of executive authorities; to provide for the protection of accounting officers from unlawful directives from executive authorities; to clarify timelines for tabling in legislatures; to provide for the concurrence of the Minister for conditions of services of institutions; to provide for the concurrence of Minister for determinations of remuneration for members of controlling bodies of public entities; to empower the Minister to impose conditions when granting an approval to borrow money in foreign currency; to clarify that payment under a guarantee, indemnity or security must in the first instance be defrayed from the funds budgeted for a department and thereafter defrayed as a direct charge; to clarify matters relating to regulations and instructions; to empower the National Treasury to issue interpretation ruling regarding the application of this Act; to empower accounting officers to establish governance structures; to enhance provisions on financial misconduct; to require the National Treasury to publish draft regulations on the National Treasury's Website; to revoke the power of the National Treasury to approve a departure; to empower the Minister of Finance to determine uniform interest rate payable to a public entity; to provide that failure to comply with a condition imposed by the Minister constitutes financial misconduct; to provide for financial misconduct by executive authority; to empower a disciplinary structure to impose administrative fine as determined by the Minister of Finance; to provide for

the establishment of the Financial Misconduct Investigation Committee and its functions; to empower the National Treasury to issue compliance orders; to clarify offences and penalties; to provide that the chief executive officer of the Accounting Standards Board is the accounting officer; to empower the Accounting Standards Board to set standards of generally recognised accounting practice for the annual financial statements of trading entities; to empower the Minister of Finance to impose conditions when granting an exemption; to repeal certain sections; to substitute Schedule 2;

- amend the Public Audit Act, 2004, so as to empower the Minister responsible for finance to determine the accounting framework for institutions not subject to the Public Finance Management Act;
- amend the Money Bills and Related Matters Act, 2009, so as to include the definition of “fiscal plan” and “fiscal sustainability”; to require a committee on finance to report on the performance of the Minister of Finance against the fiscal plan, published budget reviews and medium term budget policy statements; to require the National Assembly through its Committees to assess the expenditure report relating to a department as published by the National Treasury; that the medium term budget policy statement must include an explanation of the macro-economic and fiscal policy position, the macroeconomic projections and the assumptions underpinning the fiscal framework to achieve debt sustainability; to determine the process for considering the fiscal plan and for the finance committees of Parliament to report on whether the fiscal framework is consistent with fiscal sustainability and the fiscal plan; to require that the fiscal framework is consistent with fiscal sustainability and fiscal plan; to enable the National Assembly to require the Minister of Finance to set out the measures and time frame proposed to ensure that the fiscal framework is consistent with fiscal sustainability and the fiscal plan.

2. SUMMARY OF BILL

- 2.1 Clause 1 of the Bill seeks to repeal of the Exchequer Act, 1975 (Act No. 66 of 1975).
- 2.2 Clause 2 of the Bill seeks to amend section 3 of the Financial and Fiscal Commission Act, 1997 (‘the FFC Act’) to require the Financial and Fiscal Commission to review and report to Parliament on the consistency of the fiscal sustainability and the fiscal plan with the fiscal framework.
- 2.3 Clause 3 of the Bill seeks to amend section 27 of the FFC Act to require the Financial and Fiscal Commission to publish its report on the consistency of the fiscal sustainability and the fiscal plan with the fiscal framework.
- 2.4 Clause 4 of the Bill seeks to amend section 1 of the Public Finance Management Act, 1999 (‘the PFMA’) to provide for the insertion, deletion, and substitution of certain definitions for the purpose of interpreting the PFMA.
- 2.5 Clause 5 of the Bill seeks to substitute the heading of Chapter 2 of the PFMA to include reference to the Office of the Accountant-General.

- 2.6 Clause 6 of the Bill seeks to amend section 6 of the PFMA to clarify the functions of the National Treasury to include monitoring compliance in national public entities and constitutional institutions; establishing a financial misconduct committee to investigate financial misconduct; and providing governance support. In addition, to enable the National Treasury to impose conditions in the performance of its functions in terms of the PFMA. Moreover, to empower the National Treasury to suspend or stop payment to a supplier if there is a suspicion of criminal activity relating to the payment. Section 6 of the PFMA is also amended to include the digitalisation of financial management as a function of the National Treasury.
- 2.7 Clause 7 of the Bill seeks to insert sections 6A and 6B to align it with section 216(2) and (3) of the Constitution, to empower the National Treasury to stop funds to provinces and institutions if there is a serious and persistent breach of the measures referred to in section 216(1) of the Constitution. The proposed clause 6B further expands on the considerations by the National Treasury when deciding to stop funds in respect of an institution. Clause 7 further proposes to insert section 6C and 6D in order to establish the Office of the Accountant-General and set out its functions.
- 2.8 Clause 8 of the Bill seeks to amend section 7 of the PFMA to allow an institution to open a bank account with a bank registered in terms of the Banks Act, 1990 (Act No. 94 of 1990) and designated by the National Treasury by notice in the *Gazette*. The Bill also proposes a requirement for certain public entities to invest surplus funds with the Corporation for Public Deposits. In addition, the Minister of Finance is empowered to determine an investment framework for public entities. Public entities are also proposed to have an investment policy approved by the board or controlling body.
- 2.9 Clause 9 of the Bill seeks to amend section 8 of the PFMA to require the Auditor-General to audit the consolidated financial statements and submit an audit report on the statements to the Accountant-General within two months of receipt of the statements. The Auditor-General must submit the audit report with reasons if it is unable to submit the audit report to Parliament and notify the National Treasury. The clause further proposes extending the timelines for the Minister of Finance to submit consolidated financial statements to Parliament and to provide for the tabling of a written explanation to Parliament in the instance of late tabling of these statements.
- 2.10 Clause 10 of the Bill seeks to amend section 9 of the PFMA to provide for the publication of financial statistics and aggregations concerning all spheres of government on the National Treasury's website.
- 2.11 Clause 11 of the Bill seeks to amend section 10 of the PFMA by deleting reference to 'accounting authority'.
- 2.12 Clause 12 of the Bill seeks to amend section 11 of the PFMA by deleting subsection (2) which it is submitted is in conflict with section 73(2) of the Constitution insofar as it provides that only the Cabinet member responsible for national financial matters may introduce a money Bill in the National Assembly.

- 2.13 Clause 13 of the Bill seeks to amend section 12 of the PFMA to clarify the timeframes within which the South African Revenue Service must pay revenue collected into the National Revenue Fund, and the time within which the Accountant-General must transfer funds to provinces.
- 2.14 Clause 14 of the Bill seeks to repeal section 14 of the PFMA insofar as that section empowers the National Treasury to withdraw an exclusion made in terms of section 13(1) of the PFMA. The withdrawal of an exclusion has the effect of amending section 13(1) of the PFMA which may be deemed as usurping the legislative authority of Parliament.
- 2.15 Clause 15 of the Bill seeks to amend section 15 of the PFMA to omit the requirement that a direct charge authorised in terms of an Act of Parliament must be listed in Schedule 5 to the PFMA. The status as a direct charge is derived from the Constitution or an Act of Parliament which was enacted through the money Bill process. In addition, to provide for investment of funds in the National Revenue Fund in the Corporation for Public Deposits or offshore.
- 2.16 Clause 16 of the Bill seeks to amend section 16 of the PFMA to empower the Minister of Finance to impose conditions when authorising expenditure in emergency situations. In addition, to set limits on expenditure that can be authorised in terms of section 16(1) of the PFMA.
- 2.17 Clause 17 of the Bill seeks to amend section 18 of the PFMA to clarify the functions of provincial treasuries which entails monitoring compliance in provincial departments, provincial public entities; providing governance support and investigating financial misconduct. In addition, to empower provincial treasuries with the concurrence of the National Treasury to suspend or stop payment if there is a suspicion of criminal activity in respect of the payment. Furthermore, to enable a provincial treasury to impose conditions in the performance of its functions in terms of the PFMA.
- 2.18 Clause 18 of the Bill seeks to amend section 19 of the PFMA to provide for the timelines for the MEC for finance to submit consolidated financial statements to the relevant legislature as audited by the Auditor-General. To further provide for the tabling of a written explanation to the relevant provincial legislature if the MEC for finance tables these statements late.
- 2.19 Clause 19 of the Bill seeks to amend section 20 of the PFMA by deleting references to 'accounting authority'.
- 2.20 Clause 20 of the Bill seeks to amend section 21 of the PFMA to provide for a timeframe within which funds must be paid into the Provincial Revenue Fund.
- 2.21 Clause 21 of the Bill seeks to repeal section 23 of the PFMA. Akin to section 14 of the PFMA, the effect of the power conferred on the National Treasury may be deemed as usurping the legislative authority of Parliament. As such, it is proposed that section 23 be repealed entirely.

- 2.22 Clause 22 of the Bill seeks to amend section 24 of the PFMA to require provinces to invest funds in the Provincial Revenue Fund, which are not immediately required, in the Corporation for Public Deposits or elsewhere in the Republic.
- 22.23 Clause 23 of the Bill seeks to amend section 27 of the PFMA to require the Minister of Finance to table the fiscal framework with the annual budget. To further require the annual budget to include debt sustainability analysis as well as indication of intentions to borrow.
- 22.24 Clause 24 of the Bill seeks to amend section 28 of the PFMA to require that a multi-year budget projection includes the debt to the gross domestic product ratio and debt servicing costs for each year. Furthermore, it is proposed to provide that the macro-economic projects include assumptions about economic growth, inflation, and all the relevant interest rates that underpin the debt sustainability analysis, and sensitivity analyses showing the impact of different economic scenarios on debt sustainability.
- 2.25 Clause 25 of the Bill seeks to amend section 29 of the PFMA to substitute the word “service”, where it appears, for “requirements of the State”, to clarify that if the Appropriation Bill is not enacted before the start of the financial year, funds could be withdrawn in terms of that section for the requirement of the State. Further, to omit the limitation of the withdrawal of funds for requirements that were appropriated funds in the previous year.
- 2.26 Clause 26 of the Bill seeks to amend section 30(2)(f) of the PFMA to substitute the term “savings” with “unspent funds”. A new subsection is also added to require the Minister of Finance to table an explanation of how appropriations are consistent with the fiscal plan adopted in terms of section 32A.
- 2.27 Clause 27 of the Bill seeks to amend section 32 of the PFMA so as to substitute reference to ‘National Treasury’ with ‘Accountant-General’ to align with the functions of the Office of the Accountant-General referred to in the proposed new sections 6A and 6B.
- 2.28 Clause 28 of the Bill seeks to insert section 32A which provides for fiscal sustainability and fiscal plan. This clause will require Cabinet to approve a fiscal plan that is consistent with fiscal sustainability, and will require the Minister of Finance to prepare, advise on, report on, and implement the fiscal plan.
- 2.29 Clause 29 of the Bill seeks to amend section 33 of the PFMA to empower the relevant treasury to impose conditions in the exercise of its power to withhold funds.
- 2.30 Clause 30 of the Bill seeks to amend section 34 of the PFMA to clarify that Parliament determines that authorised expenditure may be a charge against future allocations if additional funding is not approved in terms of section 34(1)(a) of the PFMA.
- 2.31 Clause 31 of the Bill seeks to substitute section 35 of the PFMA to set out requirements for unfunded mandates.

- 2.32 Clause 32 of the Bill seeks to amend section 38 of the PFMA to clarify the responsibilities of accounting officers and to require accounting officers to use technology for implementing the PFMA and for financial management. Provision is also made for the protection of accounting officers that exercise a power or perform a duty in terms of the PFMA from civil liability if a decision is taken in good faith.
- 2.33 Clause 33 of the Bill seeks to insert section 38A in the PFMA which sets out fiduciary responsibilities for accounting officers. In light of the proposed insertion of section 38(3) in the PFMA which provides for protection of accounting officers from criminal and civil liability if they act in good faith, it is important to impose further responsibilities on accounting officers to act in honesty, with integrity and in the best interests of their institutions.
- 2.34 Clause 34 of the Bill seeks to insert section 39A to the PFMA to provide for the responsibilities of accounting officers of constitutional institutions and trading entities relating to budgetary control. It aims to impose an obligation on these accounting officers to incur expenditure in accordance with their approved budget. In addition, it aims to regulate the retention of surpluses by constitutional institutions and trading entities.
- 2.35 Clause 35 of the Bill seeks to amend section 40 of the PFMA to clarify what must be contained in financial statements and annual reports of departments, trading entities and constitutional institutions.
- 2.36 Clause 36 of the Bill seeks to amend section 42 of the PFMA to substitute the term “institution” with “person” since the former is defined with reference to section 3(1) of the PFMA whereas transfer is not limited to institutions subject to the PFMA.
- 2.37 Clause 37 of the Bill seeks to amend section 43 to regulate the use of unspent funds. The clause empowers accounting officers to shift funds between and within main divisions of a vote. However, the shifting of funds is subject to limitations, reporting requirements and where applicable, approval by the relevant treasury.
- 2.38 Clause 38 of the Bill seeks to insert section 43A in the PFMA to set out requirements for the transfer of funds. Accounting officers are required have and maintain a system for reporting by the transferee, inspections and review of performance. An accounting officer is empowered to withhold the transfer of funds if conditions imposed by the Minister of Finance are not complied with, the funds are no longer required, or the transfer does not provide value for money.
- 2.39 Clause 39 of the Bill seeks to amend section 44 of the PFMA to empower the accounting officer to authorise sub-delegation by an official to any other suitable official. Provision is also made for the imposition of conditions and limitations that are not subject to regulations made under the PFMA.
- 2.40 Clause 40 of the Bill seeks to insert section 45A in the PFMA to empower accounting officers to appoint chief financial officers with appropriate qualifications and experience to support the accounting officer in fulfilling responsibilities in terms of the PFMA.

- 2.41 Clause 41 of the Bill seeks to amend section 47 of the PFMA to require the Minister of Finance to amend Schedule 2 to the PFMA by notice in the *Gazette* if an entity meets the criteria or no longer meets the criteria.
- 2.42 Clause 42 of the Bill seeks to amend section 48 to empower the Minister of Finance to classify public entities in the relevant Schedule and to make regulations regarding the reclassification and disestablishment of public entities.
- 2.43 Clause 43 of the Bill seeks to amend the heading of Part 2 of Chapter 6 to clarify that that Part provides for duties and responsibilities of accounting officers, boards and controlling bodies of public entities.
- 2.44 Clause 44 of the Bill seeks to amend section 49 of the PFMA to clarify that the chief executive officer or another person in charge of the public entity is the accounting officer for the public entity. Furthermore, to clarify that if the relevant treasury instructs or approves that another person be the accounting authority of a public entity, that person so instructed or approved must be within that public entity, or if there is no suitable person, the relevant treasury may approve that a functionary from another institution be approved the accounting authority. Provision is also made for specifying the timeframe within which the Auditor-General must be informed of the approval or instruction or withdrawal thereof in terms of section 49(3) of the PFMA. Furthermore, the proposed amendment requires the employment contract of an accounting officer to be in writing, include performance standards, and deems sections 51 to 56 as part of that contract. Finally, it provides that if the accounting officer is absent or there is a vacancy, the person acting in the post is the accounting officer.
- 2.45 Clause 45 of the Bill seeks to amend section 50 of the PFMA to replace the term “accounting authority” with “board or controlling body”. This is necessitated by the introduction of accounting officer for a public entity as provided for in clause 39.
- 2.46 Clause 46 of the Bill seeks to amend section 51 of the PFMA to include a provision for public entities to pay all debt owing within a specified or agreed period. The Bill also obliges public entities to use technology in the implementation of the PFMA and any financial management system. Furthermore, the clause proposes to protect accounting officers of public entities from civil and criminal liability if a decision is taken in good faith.
- 2.47 Clause 47 of the Bill proposes to amend section 52 of the PFMA to substitute “accounting authority” with “accounting officer”.
- 2.48 Clause 48 of the Bill seeks to amend section 53 of the PFMA to clarify that public entities listed in Parts A and C of Schedule 3 to the PFMA are required to submit a budget six months before the start of a financial year to the executive authority for approval. The clause also proposes a requirement that an adjustment to the approved budget must also be approved by the executive authority. Furthermore, the Bill clarifies that if the accumulation of surpluses is not approved by the relevant treasury, the surpluses must be surrendered to the relevant Revenue Fund. Moreover, the clause

proposes to exclude public entities that generate their revenue from levies, taxes, duties or surcharges from requesting approval from the relevant treasury to retain surpluses.

- 2.49 Clause 49 of the Bill seeks to amend section 54 of the PFMA to require information to be submitted by accounting officers and for certain transactions to be approved by an executive authority with the concurrence of the Minister of Finance. Furthermore, public entities are required to, before the start of each financial year, submit acceptable levels of significant and materiality for approval by the executive authority and concurrence by the Minister of Finance. A new subsection is proposed to require a public entity to provide the National Treasury with a statement of guarantees, contingent liabilities and other material fiscal exposures, disclose the economic growth, revenue and other key assumptions underlying its corporate plan; and any further information reasonably required to assess those exposures.
- 2.50 Clause 50 of the Bill seeks to amend section 55 of the PFMA to clarify information required in financial statements and annual reports of public entities.
- 2.51 Clause 51 of the Bill seeks to amend section 56 of the PFMA to empower the accounting officer to authorise a sub-delegation by an official of the public entity to another suitable official.
- 2.52 Clause 52 of the Bill seeks to insert section 56A in the PFMA to empower the board or controlling body to assign powers and duties to accounting officers and other officials of the public entity.
- 2.53 Clause 53 of the Bill seeks to insert section 57A in the PFMA to require accounting officers to appoint chief financial officers with appropriate qualifications and experience to support the accounting officer in fulfilling responsibilities in terms of the PFMA.
- 2.54 Clause 54 of the Bill seeks to insert a part in Chapter 6 to insert section 57B to enable the Minister of Finance to appoint an administrator if a public entity is in financial distress or has failed to comply with the PFMA.
- 2.55 Clause 55 of the Bill seeks to amend section 63 of the PFMA to align with the amended definition of executive authority in clause 4.
- 2.56 Clause 56 of the Bill seeks to substitute section 64 of the PFMA to allow an accounting officer, board or controlling body to object to a directive by an executive authority if such directive is not authorised in terms of this Act.
- 2.57 Clause 57 of the Bill seeks to amend section 65 of the PFMA to deal with the submission of financial statements and annual reports to the relevant legislature.
- 2.58 Clause 58 of the Bill seeks to insert Chapter 7A in the PFMA to provide that conditions of service of officials of institutions and that the determination of remuneration of members of boards of public entities requires the concurrence of the Minister of Finance.

- 2.59 Clause 59 of the Bill seeks to amend section 66 of the PFMA to require public entities listed in Schedule 2 to seek approval from their executive authorities and the concurrence of the Minister of Finance in respect of their borrowing requirements.
- 2.60 Clause 60 of the Bill seeks to amend section 70 of the PFMA to clarify that payment of a guarantee, security or indemnity must first be paid from the budget of the department concerned with that transaction and thereafter payment can be defrayed as a direct charge against the National Revenue Fund.
- 2.61 Clause 61 of the Bill seeks to amend section 76 of the PFMA to provide that regulations are made by the Minister of Finance and that the Director-General of the National Treasury issues instructions on specified matters.
- 2.62 Clause 62 of the Bill seeks to insert section 76A in the PFMA to empower the National Treasury to issue an interpretation ruling to promote clarity, consistency and certainty in the interpretation and application of the PFMA.
- 2.63 Clause 63 of the Bill seeks to substitute section 77 of the PFMA to provide for governance structures including internal audit function, financial risk management and audit committee.
- 2.64 Clause 64 of the Bill seeks to amend section 78 of the PFMA to require the Minister of Finance to publish draft regulations on the National Treasury's website, instead of the *Gazette*, for public comments before their enactment.
- 2.65 Clause 65 of the Bill proposes the repeal of section 79 of the PFMA as the power to grant a departure from treasury instructions is proposed in section 76(2)(b) of the PFMA.
- 2.66 Clause 66 of the Bill seeks to amend section 80 of the PFMA to empower the Minister of Finance to determine interest rate applicable to debts payable to a public entity.
- 2.67 Clause 67 of the Bill seeks to amend section 81 of the PFMA to provide that non-compliance with a condition imposed by the Minister of Finance is financial misconduct. The clause also provides that an official of a department, constitutional institution or trading entity commits an act of financial misconduct if that official wilfully or negligently fails to exercise that power or perform duties delegated in terms of section 44 or responsibilities referred to in section 45 of the PFMA, and such failure results in fruitless and wasteful expenditure, unauthorised expenditure or irregular expenditure or a financial loss from criminal conduct.
- 2.68 Clause 68 of the Bill seeks to amend section 83 of the PFMA to provide for financial misconduct by an accounting officer, board or controlling body of a public entity. Furthermore, the clause aims to clarify that for an official to commit an act of financial misconduct, that official must have wilfully or negligently failed to exercise a power or duty delegated in terms of section 56 or responsibilities referred to in section 57, and

such conduct resulted in fruitless and wasteful expenditure or irregular expenditure or a financial loss from criminal conduct.

- 2.69 Clause 69 of the Bill seeks to insert section 83A in the PFMA to provide for financial misconduct by executive authorities.
- 2.70 Clause 70 of the Bill seeks to amend section 84 of the PFMA to substitute the term “accounting authority” with “board or controlling body”. This clause also proposes that a disciplinary structure may impose an administrative fine as determined by the Minister of Finance on an accounting officer, treasury official or a person referred to in section 83.
- 2.71 Clause 71 of the Bill seeks to insert sections 84A, 84B and 84C in the PFMA to establish a financial misconduct investigation committee, provide for its composition and its powers to conduct investigations into financial misconduct, and to empower the committee to obtain information for this purpose.
- 2.72 Clause 72 of the Bill seeks to amend section 85 of the PFMA to delete provisions relating to disciplinary boards since section 84 of the PFMA states that disciplinary proceedings must be investigated, heard and disposed of in terms of the applicable legislation relating to the employment of the accounting officer or authority, or official, such as the Public Service Act, 1994.
- 2.73 Clause 73 of the Bill seeks to insert section 85A in the PFMA to empower the National Treasury to issue compliance order institutions that fail to comply with the PFMA.
- 2.74 Clause 74 of the Bill seeks to amend section 86 of the PFMA to clarify that financial misconduct must have resulted in unauthorised expenditure, irregular expenditure, or financial loss from criminal conduct. In addition, the Bill proposes charging officials exercising delegated power with financial misconduct. Furthermore, the Bill proposes imposition of administrative sanctions for financial misconduct.
- 2.75 Clause 75 of the Bill seeks to amend section 87 of the PFMA to clarify that the chief executive officer of the Accounting Standards Board is the accounting officer of the Board.
- 2.76 Clause 76 of the Bill seeks to amend section 89 of the PFMA to clarify that the standards of generally recognised accounting practices set by the Accounting Standards Board also apply to trading entities. It also aims to clarify the functions of the Accounting Standards Board.
- 2.77 Clause 77 of the Bill seeks to amend section 91 of the PFMA to clarify that regulations prescribing standards must be published for public comment on the National Treasury’s website, instead of the *Government Gazette*, before their enactment.
- 2.78 Clause 78 of the Bill seeks to amend section 92 of the PFMA to allow the Minister of Finance to impose conditions when granting an exemption.

- 2.79 Clause 79 of the Bill seeks to substitute Schedule 2 to the PFMA to update the list of major public entities.
- 2.80 Clause 80 of the Bill seeks to amend Schedule 3 to the PFMA as a consequential amendment to the proposed definition of control.
- 2.81 Clause 81 of the Bill seeks to amend the arrangement of sections of the PFMA.
- 2.82 Clause 82 of the Bill seeks to amend section 14 of the Public Audit Act, 2004, to empower the Minister of Finance to determine the accounting framework for institutions that are not subject to the PFMA.
- 2.83 Clause 83 of the Bill seeks to amend section 1 of the Money Bills and Related Matters Act, 2009, to insert the definition of 'fiscal plan' and 'fiscal sustainability'.
- 2.84 Clause 84 of the Bill seeks to amend section 4 of the Money Bills and Related Matters Act, 2009, to provide for the relevant Parliamentary committees to consider the performance of the Minister of Finance against the fiscal plan, published budget reviews and medium term budget policy statements.
- 2.85 Clause 85 of the Bill seeks to amend section 5 of the Money Bills and Related Matters Act, 2009, in order to provide for the inclusion of the assessment of the Minister of Finance's performance against the 5-year fiscal strategy in the committee's annual evaluations. The insertion of this clause promotes a comprehensive evaluation of the performance of departments, including adherence to long-term fiscal strategy.
- 2.86 Clause 86 of the Bill seeks to amend section 6 of the Money Bills and Related Matters Act, 2009, to provide that the explanation of the macroeconomic and fiscal policy position, the macroeconomic projections and the assumptions underpinning the fiscal framework are required in order to achieve debt sustainability within the current Medium Term Expenditure Framework and the targets outlined in the fiscal strategy.
- 2.87 Clause 87 of the Bill seeks to insert section 6A of the Money Bills and Related Matters Act, 2009, which provides for the consideration of the fiscal plan by the relevant Parliamentary committees.
- 2.88 Clause 88 of the Bill seeks to amend section 7 of the Money Bills and Related Matters Act, 2009, to require that a proposed fiscal framework includes a statement demonstrating that the fiscal framework is consistent with the fiscal sustainability and the fiscal plan.
- 2.89 Clause 89 of the Bill seeks to amend section 8 of the Money Bills and Related Matters Act, 2009, to require the relevant Parliamentary committees to report as to whether the fiscal framework is consistent with fiscal sustainability and the fiscal plan and to state how the report of the FFC was taken into account.
- 2.90 Clause 90 of the Bill seeks to amend the arrangement of sections of the Money Bills and Related Matters Act, 2009.

2.91 Clause 91 of the Bill provides for the short title and commencement of the Act.

3. ORGANISATIONS AND INSTITUTIONS CONSULTED

National and provincial departments; public entities; constitutional institutions, and the Auditor-General. On the fiscal sustainability provisions, the National Treasury published a discussion document with the 2025 Budget and consulted, including social partners at the National Economic Development and Labour Council. The Financial and Fiscal Commission and the Parliamentary Budget Office were also consulted in engaged on provisions affecting their functions.

4. FINANCIAL IMPLICATIONS FOR STATE

None.

5. PARLIAMENTARY PROCEDURE

5.1 Section 44 of the Constitution of the Republic of South Africa, 1996 ("Constitution"), deals with the national legislative authority. Section 44(1) of the Constitution provides that the national legislative authority is vested in Parliament. The National Assembly has the power to amend the Constitution, to pass legislation regarding any matter, including a matter listed in Schedule 4 to the Constitution, but excluding, subject to section 44(2) of the Constitution, a matter listed in Schedule 5 to the Constitution.

5.2 The National Council of Provinces ("NCOP") has the power to participate in the amendment of the Constitution, to pass legislation in accordance with section 76 of the Constitution and to consider, in accordance with section 75 of the Constitution, any other legislation passed by the National Assembly.

5.3 The Constitution distinguishes between four categories of Bills as follows:

- (a) Bills amending the Constitution (section 74);
- (b) ordinary Bills not affecting the provinces (section 75);
- (c) ordinary Bills affecting the provinces (section 76); and
- (d) money Bills (section 77).

5.4 Sections 74, 75, 76 and 77 require Parliament, firstly, to classify a Bill submitted to it, in order to determine which procedure should be followed in enacting the Bill. Section 76(1) of the Constitution provides that "[w]hen the National Assembly passes a Bill referred to in subsections (3), (4) or (5), the Bill must be referred to the National Council of Provinces and dealt with in accordance with the procedure set out in that provision". Section 76(3) of the Constitution, in turn, provides that "a Bill must be dealt with in accordance with the procedure established by either subsection (1) or (2) if it falls within a functional area listed in Schedule 4...".

5.5 In summary, a Bill will be considered as a section 76 Bill—

- if it provides for legislation mentioned in paragraphs (a) to (f) of section 76(3) of the Constitution;

- if it provides for legislation envisaged in section 44(2), 220(3) or Chapter 13 of the Constitution; or
- if its provisions in a substantial measure fall within a functional area of concurrent national and provincial legislative competence listed in Schedule 4 to the Constitution.

5.6 In *Tongoane and Others v Minister of Agriculture and Land Affairs and Others* 2010 (8) BCLR 838 (GNP) ("*Tongoane judgment*"), the Constitutional Court confirmed and endorsed the test for tagging that was formulated in *Ex Parte President of the Republic of South Africa: In re Constitutionality of the Liquor Bill* 2000 (1) BCLR 1 (CC), where Ngcobo CJ held as follows at paragraph 56:

"[56] ...[T]he 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.**" (Our emphasis.)

5.7 The Constitutional Court further, at paragraph 58, held as follows:

"[58] ...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'.**" (Our emphasis.)

5.8 The Constitutional Court also held that the tagging test focuses on all the provisions of the Bill in order to determine the extent to which they substantially affect functional areas listed in Schedule 4 to the Constitution, and not on whether any of the provisions of the Bill are incidental to the substance of the Bill. The following paragraphs from the *Tongoane judgment* are also important:

"[60] 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 process 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. **The more it affects the interests, concerns, and capacities of the provinces, the more say the provinces should have on its content.**

...

[64] The purpose of tagging is therefore to determine the nature and extent of the input of provinces on the contents of legislation affecting them. Indeed, **all the legislation mentioned in section 76(3) is legislation that substantially affects the interests of provinces**

...

- [71] On the other hand, **the “substantial measure” test permits a consideration of the provisions of the Bill and their impact on matters that substantially affect the provinces.** This test ensures that legislation that affects the provinces will be enacted in accordance with a procedure that allows the provinces to fully and effectively play their role in the law-making process. This test must therefore be endorsed.
- [72] To summarise: **any Bill whose provisions substantially affect the interests of the provinces must be enacted in accordance with the procedure stipulated in section 76.... 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.”** (Our emphasis.)

5.9 As indicated in the judgment, “*any Bill whose provisions in substantial measure*” fall within a function listed in Schedule 4 to the Constitution must be classified as a section 76 Bill. The question that needs to be asked therefore is whether the provisions of the Bill, in substantial measure, fall within a functional area listed in Schedule 4 to the Constitution, or whether the Bill provides for legislation envisaged in section 76(3)(a) to (f) of the Constitution.

5.10 In order to determine this, focus should be on all the provisions of the Bill to establish the extent to which they substantially affect functional areas listed in Schedule 4 and not on whether any of its provisions are incidental to its substance. It is thus necessary to examine all the provisions of the Bill in its entirety to determine the extent to which they substantially affect any of the matters listed in Schedule 4.

5.15 Considering the clauses of the Bill, we are of the view that the Bill must be tagged as a section 76 Bill because it affects the provinces.

Referral of Bill to National House of Traditional and Khoi-San Leaders

6.1 Section 39(1)(a) of the Traditional and Khoi-San Leadership Act, 2019 (Act No. 3 of 2019), provides for the referral of Bills to the National House of Traditional and Khoi-San Leaders (“National House”), and states as follows:

“Referral of Bills to National House

- 39. (1) (a) Any Parliamentary Bill—**
- (i) which directly affects traditional or Khoi-San communities or pertaining to customary law or customs of traditional or Khoi-San communities; or**
 - (ii) pertaining to any matter referred to in section 154(2) of the Constitution,**
- must, in the case of a Bill contemplated in subparagraph (i) and may, in the case of a Bill contemplated in subparagraph (ii), before it is passed by**

the house of Parliament where it was introduced, be referred by the Secretary to Parliament to the National House for its comments.” (Our emphasis.)

6.2 In our view that the Bill does not contain provisions pertaining to traditional or Khoi-San communities or to customary law or customs of traditional or Khoi-San communities, nor any matter referred to in section 154(2) of the Constitution and, therefore, the Bill does not need to be referred to the National House for comments.