

REPUBLIC OF SOUTH AFRICA

**NATIONAL YOUTH
DEVELOPMENT AGENCY
AMENDMENT BILL**

*(As introduced in the National Assembly (proposed section 75); explanatory summary
of Bill and prior notice of its introduction published in Government Gazette No. 46210 of
7 April 2022)*
(The English text is the official text of the Bill)

(MINISTER IN THE PRESIDENCY FOR WOMEN, YOUTH AND PERSONS WITH DISABILITIES)

[B 13—2022]

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Amendment of section 3 of Act 54 of 2008

2. Section 3 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

- “(1) The objects of the Agency are to—
- (a) initiate, design and pilot youth development programmes to be implemented by the Agency, in collaboration with organs of state, private sector and civil society organisations; 5
 - (b) report to the Minister on the implementation of the annual youth development priorities; 10
 - (c) promote the interests of the youth, particularly youth who fall within the designated groups contemplated in the Employment Equity Act, 1998 (Act No. 55 of 1998);
 - (d) contribute to development of a National Youth Policy and an Integrated Youth Development Strategy for South Africa; and
 - (e) lobby private, public and civil society organisations towards achieving the national youth development priorities.” 15

Amendment of section 5 of Act 54 of 2008

3. Section 5 of the principal Act is hereby amended—

- (a) by the substitution in subsection (1) for paragraph (a) of the following paragraph: 20

“(a) establish competencies and capabilities in its operations, including the following functional areas[—]:

 - (i) **[National Youth Service and Social Cohesion]** national youth service;
 - (ii) **[Economic Participation]** economic transformation, job creation and entrepreneurial support; 25
 - (iii) **[Policy, Research and Development]** research and development;
 - (iv) **[Governance, Training and Development]** governance, skills development and training; 30
 - (v) **[Youth Advisory and Information Services]** youth advisory and information services; **[and]**
 - (vi) **[National Youth Fund]** national youth fund; and
 - (vii) management of interventions needed to assist the youth to find employment.”; 35
- (b) by the deletion in subsection (2) of paragraph (a);
- (c) by the substitution for subsection (4) of the following subsection:

“(4) The Agency must, for purposes of subsection (3) and within its available resources, amongst others—

 - (a) provide youth advisory and information services, including information on the products and services of the Agency; 40
 - (b) provide skills training to youth, including personal development and life skills;
 - (c) support youth work, education and training;
 - (d) provide funding in the prescribed manner and capacity building to small, micro and medium enterprises, youth-owned cooperatives, individual youth, youth serving and youth-led organisations that advance the Agency’s mandate; 45
 - (e) support and mentor young entrepreneurs;
 - (f) design and support youth employment programmes; 50
 - (g) assist in promoting healthy lifestyles amongst the youth;
 - (h) assist in designing and implementing programmes that reduce risky behaviour;
 - (i) assist in promoting mental health amongst the youth;
 - (j) coordinate and implement the national youth service; 55
 - (k) assist in developing norms and standards, as well as implementation guidelines;

- (l) assist by providing technical support in legislation, policy and strategy development; and
 (m) conduct research that impacts on youth.”; and
 (d) by the addition of the following subsection:
“(5) The Agency must perform any other function as determined by the Minister.”. 5

Substitution of section 6 of Act 54 of 2008

4. The following section is hereby substituted for section 6 of the principal Act:

“Reporting by Agency

6. (1) The Agency must, at least once every two years, in the prescribed manner, prepare and submit to the Minister a report on the status of youth in the Republic. 10
 (2) The Agency must—
 (a) in accordance with the Public Finance Management Act, submit to the Minister a report on the financial status of the Agency; and 15
 (b) supply the Minister with information in connection with the activities of the Agency, upon written request of the Minister.
 (3) The Minister must table the reports contemplated in subsections (1) and (2) in Parliament within 90 days of receipt thereof.
 (4) The Agency must, by notice in the *Gazette*, publish the reports contemplated in subsections (1) and (2) within a reasonable time after they have been tabled in Parliament.”. 20

Substitution of section 7 of Act 54 of 2008

5. The following section is hereby substituted for section 7 of the principal Act:

“Role of organs of state in supporting Agency 25

7. Organs of state must assist the Agency as may reasonably be required for the effective exercise of its powers and the performance of its functions, and all other obligations outlined in the Intergovernmental Relations Framework Act of 2005 (Act No. 13 of 2005).”.

Substitution of section 8 of Act 54 of 2008 30

6. The following section is hereby substituted for section 8 of the principal Act:

“Governance responsibilities of Board

8. The control and management of the affairs of the Agency is managed by the Board, and the Board must—
 (a) within 12 months of this section coming into operation, determine— 35
 (i) a strategic plan;
 (ii) an operational plan;
 (iii) a succession plan; and
 (iv) an Agency charter, including a Governance checklist; 40
 (b) monitor and evaluate compliance by the Agency with this Act and any other functions that the Minister may determine; and
 (c) manage the financial and other resources in accordance with the Public Finance Management Act and any other applicable law.”.

Amendment of section 9 of Act 54 of 2008 45

7. Section 9 of the principal Act is hereby amended—

- (a) by the substitution for the heading of the following heading:
“Composition, appointment and conditions of service of [the] Board”;

- (b) by the substitution for subsection (1) of the following subsection:
 “(1) The Board consists of—
 (a) seven **[members, two (2) of whom are executive]** non-executive directors appointed by the President on the recommendation of the National Assembly; **[and]**
 (aA) two members designated by the Minister as *ex-officio* members without voting rights; and
 (b) the Chief Executive Officer, who is an *ex-officio* member of the Board without voting rights.”;
- (c) by the deletion of subsection (2);
- (d) by the substitution for subsection (4) of the following subsection:
 “(4) Members must reflect the demographics and geographical spread of the Republic, and must—
 (a) be South African citizens between the ages of 18 and 35 years;
 (b) have relevant qualifications, knowledge, expertise or experience in the field of youth development, policy development, social development, business, economics, public management or law;
 (c) be allowed to finish their term of office, if they go beyond the age of 35 years whilst in office; and
 (d) be committed to advance the vision, mission, goal, objectives, values and principles as enunciated in the National Youth Policy.”;
- (e) by the substitution in subsection (5) for paragraph (a) of the following paragraph:
 “(a) The President must, from the members contemplated in subsection (1)(a), designate one of the members as the chairperson and another member as **[a]** the deputy chairperson and both are **[executive]** non-executive directors **[referred in subsection (1)]**.”;
- (f) by the substitution for subsection (6) of the following subsection:
 “(6) Members hold office for a period of three **[(3)]** years and shall not be reappointed for more than two consecutive terms.”;
- (g) by the addition to subsection (7) of the following paragraph, the existing subsection becoming paragraph (a):
 “(b) Should both the chairperson and deputy chairperson not be able to fulfil their responsibilities, the Minister may appoint any of the members contemplated in subsection (1)(a) to temporarily act as chairperson or deputy chairperson for a period not exceeding six months.”;
- (h) by the substitution for subsection (10) of the following subsection:
 “(10) The conditions of service of members are determined by the **[President]** Minister in consultation with the Minister of Finance.”; and
- (i) by the substitution for subsection (11) of the following subsection:
 “(11) Members who are employed by an organ of state are not entitled to remuneration, or any allowance, but must be reimbursed for out-of-pocket expenses by the **[Board]** Agency.”.

Amendment of section 10 of Act 54 of 2008 45

8. Section 10 of the principal Act is hereby amended—

- (a) by the insertion in subsection (1) after paragraph (a) of the following paragraph:
 “(aA) has not submitted their financial disclosures in the prescribed form and manner;”;
- (b) by the substitution for subsection (2) of the following subsection:
 “(2) The President may, on recommendation **[of]** by the **[Parliament]** Minister, remove a member from office if the member—
 (a) **[commits a]** is found guilty of misconduct;
 (b) is unable to perform his or her duties efficiently;
 (c) is **[absence]** absent from three **[(3)]** consecutive meetings of the Board without permission of the Board or good cause; or
 (d) **[becomes]** is disqualified as contemplated in subsection (1).”;

(c) by the substitution for subsection (4) of the following subsection:

“(4) The President, on recommendation by the Minister, may suspend a member from office any time after the start of the proceedings **[of Parliament]** for the removal of a member on any of the grounds contemplated in subsection (2).”; and

(d) by the addition of the following subsections:

“(5) A vacancy in the Board occurs if a member—

- (a) is subject to a disqualification contemplated in subsection (1);
- (b) is removed from office in terms of subsection (2);
- (c) resigns from office; or
- (d) dies.

(6) When a vacancy arises as contemplated in subsection (5), the Minister may make a recommendation to the President on a nominee to fill the vacancy, from the recent previous shortlist of the Board candidates.

(7) Where the Board is no longer quorate due to vacancies resulting from mass resignations or there are unanticipated delays in filling the vacancies of the Board, the Minister shall—

- (a) make a recommendation to the President to dissolve the Board;
- (b) manage the appointment process of an interim Board in the prescribed manner; and
- (c) make recommendations of candidates to the President for appointment to the interim Board.

(8) The President must designate one of the members of the interim Board as the chairperson and another member as the deputy chairperson, both of whom shall be non-executive members of the interim Board.

(9) The interim Board shall perform the functions of the Board until a new Board is appointed.

(10) A majority of Board members constitutes a quorum at a Board meeting.”.

Amendment of section 11 of Act 54 of 2008

9. Section 11 of the principal Act is hereby amended by the insertion after subsection (7) of the following subsection:

“(7A) If a Board member fails to disclose any interest as required by subsection (7) and where he or she is present at the venue where the meeting of the Board is held or in any manner whatsoever participates in the proceedings of the Board, the relevant proceedings of the Board shall be null and void.”.

Amendment of section 12 of Act 54 of 2008

10. Section 12 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) The Board may establish Committees, including the [:]—

- (a) Executive **[Management]** Committee;
- [(b) Credit Risk Committee;]**
- (c) Human Resource and Remuneration Committee;
- (d) Audit and Risk Committee **[in accordance with Treasury guidelines regarding the formation of Audit Committees as provided for in section 77 of the PFMA; and];**
- (e) Development Committee;
- (f) Social and Ethics Committee;
- (g) Information Communication Technology Committee; and
- (h) any other Committee,

to assist in the performance of its functions.”.

Amendment of section 17 of Act 54 of 2008

11. Section 17 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) The Board may delegate any of its powers or assign any of its duties to the Chief Executive Officer or [**any employee of the Agency**] a Committee referred to in section 12.” 5

Amendment of section 18 of Act 54 of 2008

12. Section 18 of the principal Act is hereby amended by the deletion of paragraph (a) in subsection (1).

Amendment of section 19 of Act 54 of 2008 10

13. Section 19 of the principal Act is hereby amended by substitution of the words preceding paragraph (a) of the following words:

“The [**President**] Minister may, after consultation with the Board, make regulations regarding—”.

Amendment of Arrangement of Sections of Act 54 of 2008 15

14. The Arrangement of sections of the principal Act is hereby amended—

- (a) by the substitution for the item relating to section 2 of the following item: “2 Establishment of [**the**] Agency”;
- (b) by the substitution for the item relating to section 3 of the following item: “3 Objects of [**the**] Agency”; 20
- (c) by the substitution for the item relating to section 5 of the following item: “5 Functions of [**the**] Agency”;
- (d) by the substitution for the item relating to section 6 of the following item: “6 Reporting by [**the**] Agency”;
- (e) by the substitution for the item relating to section 7 of the following item: “7 Roles of organ of state in supporting Agency”; 25
- (f) by the substitution for the item relating to section 8 of the following item: “8 Governance responsibilities of Board”; and
- (g) by the substitution for the item relating to section 9 of the following item: “9 Composition, appointment and conditions of service of [**the**] Board”. 30

Short title and commencement

15. This Act is called the National Youth Development Agency Amendment Act, 2022, and takes effect on a date determined by the President by proclamation in the *Gazette*.

MEMORANDUM OF OBJECTS OF THE NATIONAL YOUTH DEVELOPMENT AGENCY AMENDMENT BILL, 2022

1. OBJECTS OF THE BILL

- 1.1 The National Youth Development Agency Amendment Bill, 2022 (“Bill”), seeks to amend the National Youth Development Agency Act, 2008 (Act No. 54 of 2008) (“the Act”), in order to insert new definitions; to amend the provisions relating to the objects of the Agency; to amend provisions relating to reporting by the Agency; to provide for organs of state to assist the Agency; to provide for the governance responsibilities of the Board; to provide for additional Board members; to provide that a Board member may not be reappointed for more than two consecutive terms; to provide that Board members must submit financial disclosures; to amend matters pertaining to the meetings of the Board; to amend the funding of the Agency; to authorise the Minister to make regulations; and to provide for matters connected therewith.

2. CLAUSE BY CLAUSE ANALYSIS

2.1 Clause 1

Clause 1 seeks to amend section 1 of the Act by the insertion of definitions for the following expressions: chairperson; Chief Executive Officer; civil society organisation; Minister; National Youth Policy; non-executive director; and youth development programmes.

2.2 Clause 2

Clause 2 seeks to amend section 3 of the Act. The objects of the Agency have been narrowed as they were previously deemed to be too broad and not feasible for implementation. The objects included the mandate to develop the policy, which is the competency of the Department of Women, Youth and Persons with Disabilities. This clause further clarifies that the mandate of the Agency is primarily within the youth sector and the aim is limiting the Agency’s mandate to the objects that can be funded.

2.3 Clause 3

Clause 3 seeks to amend section 5 of the Act which provides for the functions of the Agency.

2.4 Clause 4

Clause 4 seeks to substitute section 6 of the Act by amending the reporting lines of the Agency. The Act provides that the Agency must report to the President. The Bill seeks to provide for the Agency to report to the Minister.

2.5 Clause 5

Clause 5 seeks to substitute section 7 of the Act by providing for the role of other organs of state in supporting the Agency.

2.6 Clause 6

Clause 6 seeks to substitute section 8 of the Act by providing for the governance and responsibilities of the Board.

2.7 Clause 7

- 2.7.1 Clause 7 seeks to amend section 9 of the Act, which provides for the composition, appointment and conditions of service of the Board.

- 2.7.2 Clause 7 also seeks to amend the composition of the Board; to provide for two additional members; to provide that members of the Board must be South African citizens between the ages of 18 and 35; and to provide that members must have the relevant qualifications and cannot be reappointed for more than 2 consecutive terms. These provisions are inserted to achieve better representation and for the Board to benefit from young, skilled and experienced candidates. They also aim to strengthen governance and ensure that the Board is not crippled by resignations which has occurred in the past.
- 2.7.3 Clause 7 further seeks to provide that the chairperson and deputy chairperson of the Board must be non-executive directors. The conditions of service of the members will be determined by the Minister.

2.8 Clause 8

- 2.8.1 Clause 8 of the Bill seeks to amend section 10 of the Act, which provides for matters pertaining to the disqualification, removal from office and the resignation of members.
- 2.8.2 Clause 8(a) seeks to provide that members must submit their financial disclosures in the prescribed form and manner. Clause 8 further provides that the President may, on the recommendation of the Minister, suspend a member from office or remove a member on certain listed grounds.
- 2.8.3 Clause 8(d) seeks to provide for the filling of a vacancy in the Board, for the Minister to make recommendations to the President to dissolve the Board and manage the process of an interim Board. The interim Board will perform the functions of the Board until a new Board is appointed.

2.9 Clause 9

Clause 9 seeks to amend section 11 of the Act, which provides for matters pertaining to meetings of the Board. Clause 9 provides for proceedings of the Board and for such proceedings to be null and void in an event where a Board member participates in the proceedings of the Board and fails to disclose any interest which would preclude the said member from acting unbiased.

2.10 Clause 10

Clause 10 seeks to amend section 12 of the Act, which provides for the establishment and matters pertaining to the committees of the Board. Clause 10 further seeks to provide for the establishment of additional Committees to assist the Board in the performance of its functions.

2.11 Clause 11

Clause 11 seeks to amend section 17 of the Act, which provides for the delegation of powers and the assignment of functions by the Board and the Chief Executive Officer. Clause 11 seeks to authorise the Board to assign any of its duties to the Chief Executive Officer or to a Committee referred to in section 12 of the Act.

2.12 Clause 12

Clause 12 seeks to amend section 18 of the Act by the deletion of subsection (1)(a). Clause 12 seeks to delete reference to the money received from the Umsobomvu Fund in terms of the Demutualisation Levy Act, 1998

(Act No. 50 of 1998), because the Demutualisation Levy Act was repealed by the Taxation Laws Amendment Act, 2013 (Act No. 31 of 2013).

2.13 Clause 13

Clause 13 seeks to amend section 19 of the Act. Section 19 of the Act authorises the President, after consultation with the Board, to make regulations regarding certain specified matters for the implementation and administration of the Act. Clause 13 also seeks to authorise the Minister to make regulations.

2.14 Clause 14

Clause 14 seeks to amend the Arrangement of Sections of the Act.

2.15 Clause 15

Clause 15 provides for the short title of the Act and that the Act will take effect on a date determined by the President by proclamation in the *Gazette*. This is consistent with section 81 of the Constitution of the Republic of South Africa, 1996.

3. FINANCIAL IMPLICATIONS FOR STATE

None

4. DEPARTMENT AND BODIES AND PERSONS CONSULTED

- National government departments;
- National Youth Development Agency;
- Provincial government departments;
- NEDLAC;
- Youth political parties/formations;
- Student bodies;
- Youth led organisations;
- Youth in business, civil society and youth in communities;
Youth with Disabilities;
SALGA; and
- Offices of the Premiers.

5. CONSTITUTIONAL IMPLICATIONS

None

6. COMMUNICATIONS IMPLICATIONS

To be undertaken by the Department of Women, Youth and Persons with Disabilities as well as the National Youth Development Agency.

7. PARLIAMENTARY PROCEDURE

- 7.1 The State Law Advisers and the Department of Women, Youth and Persons with Disabilities are of the opinion that the Bill should be dealt with in accordance with the procedure set out in section 75 of the Constitution, since it contains no provisions to which the procedure set out in section 74 or 76 of

the Constitution applies. Section 75 of the Constitution sets out a procedure to be followed when the National Assembly passes a Bill other than a Bill to which the procedure set out in section 74 or 76 of the Constitution applies.

- 7.2 The Constitution regulates the manner in which legislation may be enacted by Parliament. It prescribes different procedures for different kinds of Bills. The Constitution distinguishes between four categories of Bills, as follows: Bills amending the Constitution (section 74); ordinary Bills not affecting provinces (section 75); ordinary Bills affecting provinces (section 76); and Money Bills (section 77). A Bill must be correctly classified or tagged, otherwise it would be constitutionally invalid.
- 7.3 In **Tongoane v Minister of Agriculture and others CCT 100/09 [2010] ZACC 10**, at paragraph 56, the Constitutional Court confirmed and upheld the test for tagging that was formulated in **Ex Parte President of the Republic of South Africa: In re Constitutionality of the Liquor Bill [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”.

- 7.4 At paragraph 58 of the judgement, the Constitutional Court held 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”.

- 7.5 At paragraph 72 of the judgment, the Constitutional Court stated that any Bill whose provisions substantially affect the interest of the provinces must be enacted in accordance with the procedure stipulated in section 76. This also includes Bills providing for legislation envisaged in the further provisions set out in section 76(3)(a) to (f), as well as Bills, the main substance of which falls within the exclusive national competence, but the provisions of which nevertheless substantially affect the provinces. What must be stressed, however, is that the procedure envisaged in section 75 of the Constitution remains relevant to all Bills that do not in substantial measure affect the provinces.
- 7.6 We have considered the purpose and effect of the clauses in the Bill and we are of the view that the Bill in a substantial measure does not deal with any of the matters listed in Schedule 4 or Schedule 5 to the Constitution. Since the Bill does not in a substantial manner deal with a functional area listed in Schedule 4 or Schedule 5 to the Constitution, we are of the view that a procedure set out in section 76 of the Constitution cannot be applied and the Bill cannot be tagged as a section 76 Bill.
- 7.7 Youth is not listed under either Schedule 4 or 5 of the Constitution. It must be noted that this Bill seeks to amend the National Youth Development Agency that is a national Agency and the proposed amendments relate to the Agency.
- 7.8 The Department of Women, Youth and Persons with Disabilities and the State Law Advisers are of the opinion that the Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution because the Bill does not contain any provisions that affect the provinces since it regulates the business of the Agency only.

- 7.9 The Department of Women, Youth and Persons with Disabilities and the State Law Advisers are also of the opinion 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)(i) of the Traditional and Khoi-San Leadership Act, 2019 (Act No. 3 of 2019), since the Bill does not contain provisions pertaining to customary law or customs of traditional or Khoi-San communities.