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GENERAL NOTICE

Notice 2702 of 1999

DEPARTMENT OF WELFARE

PUBLICATION FOR PUBLIC COMMENT: DEVELOPMENTAL WELFARE GOVERNANCE BILL, 1999

The draft Developmental Welfare Governance Bill, 1999, is hereby published for public comment.

Interested parties are invited to submit written comment to:

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0001

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Comments must be received not later than **17 January 2000**.

BILL

To provide for a national governance structure in the welfare sector with the aim of building and consolidating partnerships between government and organs of civil society; for that purpose to establish a juristic person to be known as the South African Developmental Welfare Council who shall promote transformation toward securing sustainable, accessible welfare rights for all South Africans based on non discrimination, equity, transparency and accountability through the implementation of developmental social welfare services; to provide for the composition, objectives and functions of the Council and to provide for matters connected therewith

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

Definitions

1. In this Act, unless the context indicates otherwise—

- i. **"civil society"** means institutions, organisations and individuals outside of government and includes trade unions, consumer organisations, the formal and informal welfare sectors, non-governmental organisations, community-based organisations, religious and other organisations delivering social welfare services and social welfare personnel and practitioners;
- ii. **"consultation"** means an active, mutual process between government, organs of civil society and civil society which facilitates the democratic participation of stakeholders in decision-making, policy formulation, planning and implementation of developmental social welfare programmes;
- iii. **"Council"** means the South African Developmental Welfare Council established

- by section 2;
- iv. **"Department"** means the Department of Welfare in the national sphere of government;
 - v. **"developmental social welfare"** means planned social change designed to promote social and economic development of the people of South Africa by utilising social welfare services, programmes, methods and approaches which are responsive to social, cultural, economic and political conditions and are accessible to the needs and problems of the people and are directed at the prevention, alleviation and elimination or eradication of the social problems of individuals, groups and communities;
 - vi. **"Director-General"** means the Director-General of the Department;
 - vii. **"governance"** means government and civil society structures engaged in the promotion of partnerships which recognise the responsibility of all stakeholders in formulating and implementing effective and equitable developmental social welfare policy and programmes for South Africa;
 - viii. **"Minister"** means the Minister for Welfare and Population Development in the national sphere of government;
 - ix. **"partnership"** means the national collective responsibility of government and organs of civil society in meeting the welfare needs of the people of South Africa;
 - x. **"prescribed"** means prescribed by regulation;
 - xi. **"regulation"** means a regulation made under this Act;
 - xii. **"rule"** means a rule made under this Act;
 - xiii. **"social welfare personnel and practitioners"** means all categories of personnel in the social service and welfare sector, and includes social workers, social security personnel, community development workers, social auxiliary workers and child and youth care workers.
 - xiv. **"stakeholders"** means the formations and sectors from all organs of government and civil society which have a direct and vested interest in social welfare policies and programmes and related fiscal issues.

Establishment of South African Developmental Welfare Council

- 2. There is hereby established a Council to be known as the South African Developmental Welfare Council, which shall exercise and perform the objectives and functions conferred and imposed upon it by this Act.

Objectives of Council

- 3. The objectives of the Council shall be—
 - a. to advise the Minister on—
 - i. measures to promote the transformation and continuous improvements of welfare services in South Africa;
 - ii. measures to promote social development initiatives in South Africa;
 - iii. measures to promote poverty relief, poverty reduction and poverty elimination;
 - iv. measures to include local government in the provision of welfare services;
 - v. proposals for new legislative frameworks for the welfare sector and amendments to existing legislation; and
 - vi. the introduction of local and international best practices in welfare services;
 - b. to act as a consultative forum for the Minister to discuss matters of welfare governance, including, but not limited to:
 - i. improving the quality of provincial and national governance;
 - ii. the introduction of new policy and successful policy implementation

- in the government and non-governmental environment;
- iii. facilitating active, creative, representative and inclusive consultative partnerships of stakeholders regarding the implementation of developmental social welfare;
- iv. ensuring effective review of formulation, implementation and evaluation of welfare policies, programmes and legislation, as informed by the needs and priorities of society;
- v. assisting provincial and local governments in the formation and development of consultative, developmental social welfare governance structures at all levels of government;
- vi. measures to ensure effective welfare governance in South Africa; and
- vii. inputs from the welfare sector to international forums and protocols.

Powers and functions of Council

4. (1) The Council shall, in order to achieve its objectives—

- a. exercise or perform any power or function conferred or imposed upon it by or under this Act or any other Act;
- b. respond to and advise the Minister on developmental social welfare issues identified by or referred to the Council;
- c. identify, promote, monitor and evaluate policy, legislation and programmes with regard to developmental social welfare and its impact on the quality of life of all the people of South Africa;
- d. consider all proposed developmental social welfare legislation before the introduction thereof in Parliament;
- e. facilitate mutual dialogue and critique between government and civil society on developmental social welfare issues;
- f. promote stakeholder participation in developmental social welfare, particularly consumer and grassroots sector participation;
- g. facilitate consultation between the stakeholders, various tiers of government and the Minister in order to identify developmental social welfare matters requiring attention;
- h. develop an information and communication strategy to ensure that communication between government and civil society is facilitated;
- i. submit a report on the activities of the Council to the Minister at least once a year and whenever else requested by the Minister;
- j. undertake or cause to be undertaken research geared towards evaluating and enhancing the effective implementation of developmental social welfare services and programmes;
- k. make formal reports available to the general public to ensure Council's commitment to transparency and accountability;
- l. arrange consultative conferences and workshops;
- m. review national budgetary allocations in order to promote intersectoral co-operation and assess the implications of budgetary resource allocations for the developmental social welfare sector;
- n. keep abreast of international developments in the developmental social welfare policy; and
- o. investigate the availability of additional funding for the work of the Council.

(2) The Council shall establish clear lines of communication including formal meetings with structures that it will have to interface with, including the Portfolio Committee for Welfare and the Departmental Committee on Developmental Social Services.

(3) Any advice or recommendation to the Minister shall include the minority views of any one or more members of the Council and any relevant report emanating from a committee of the Council, even where such a report represents a minority view.

(4) Nothing in this section shall preclude the Council from considering any matter pertaining to developmental social welfare policy.

Composition of Council

5. (1) The Council shall consist of nine members of whom not more than four shall be government officials or representatives, namely —
- a. one representative from the Ministry for Welfare and Population Development appointed by the Minister;
 - b. one representative from the Department of Welfare in the national sphere of government appointed by the Minister;
 - c. one representative from the Departmental Committee on Developmental Social Services appointed by the Minister;
 - d. a representative from a national professional co-ordinating association which represents social welfare personnel and practitioners;
 - e. a representative from the South African Council for Social Service Professions;
 - f. a representative from national forums and networks in the developmental social welfare sector;
 - g. a representative from organisations representing persons who use social welfare services;
 - h. a representative from a national funder body;
 - i. a representative from a national training body representing institutions involved in the training of social welfare personnel
- (2) The Minister shall ensure that the Council must, when viewed collectively, represent a broad cross-section of the population of South Africa and comprise of persons who reflect South African society with special attention to race, gender disability and geographic distribution.
- (3) The members referred to in subsection (1) (d) up to and including (i) shall be appointed by the Minister from nominations by organisations in the developmental social welfare sector and by the general public.
- (4) For the purpose of nominations the Minister shall through the media, by notice in the *Gazette* and two national newspapers and by approaching organisations in the developmental social welfare sector invite such nominations.
- (5) The names of the members of the Council and the date of commencement of their period of office shall be published by the Minister by notice in the *Gazette* as soon as possible after the appointment of such members.
- (6) The members of the Council shall hold office for a period of four years reckoned from the date on which the notice referred to in subsection (5) is published in respect of them.
- (7) Members shall at the expiry of their terms of office be eligible for reappointment, but no member will serve for more than two consecutive terms.
- (8) A member of the Council shall be paid such remuneration and allowances as may be determined by the Minister in consultation with the Minister of Finance.

Qualifications of members of Council, vacation of office and filling of vacancies

6. (1) No person shall be appointed as a member of the Council unless —
1. he or she is a South African citizen who is resident in the Republic;
 2. he or she has experience and knowledge of South African developmental social welfare sector;

3. he or she is committed to the objectives and principles enunciated in the White Paper for Social Welfare;
4. he or she is committed to fairness, freedom of expression, accountability and the right of stakeholders to be consulted.

(2) A member of the Council shall vacate his or her office if—

- a. the member has been absent from more than two consecutive ordinary meetings of the Council without the Council's leave of absence;
- b. the member is disqualified under any law from practising his or her profession;
- c. the member ceases to be a South African citizen or to be permanently resident in the Republic;
- d. the member was convicted of an offence, whether in the Republic or elsewhere, in respect whereof he or she was sentenced to imprisonment without the option of a fine, unless it has been established that such an offence was politically motivated and that the member had been granted amnesty in respect of such offence;
- e. the member ceases to represent the constituency required for his or her appointment or submits his or her resignation in writing to the Minister;
- f. the Minister, after consultation with the Council, terminates his or her membership for reasons which are just and fair, as prescribed in terms of the Code of Conduct for Council Members.

(3) Every vacancy on the Council shall be filled by the appointment of another member nominated from the same constituency by the Minister and every member so appointed shall hold the office for the unexpired portion of the period on the recommendation of the Council for which the member whose office became vacant was appointed.

Chairperson and vice-chairperson of Council

7. (1) (a) Before the first meeting of every newly constituted Council the Minister shall appoint a chairperson, and at the first meeting of every newly constituted Council the vice-chairperson shall be elected from among themselves by the members of the Council.

- b. The position of the chairperson and vice-chairperson shall be separate from any other executive or employee position within the Council and any governmental structure.

(2) If the office of the chairperson or vice-chairperson becomes vacant, the Minister or the members of the Council, as the case may be, shall, at the first meeting after such vacancy has occurred or as soon thereafter as may be convenient, appoint a new chairperson or elect from among themselves a new vice-chairperson, as the case may be, and the member shall hold office for the unexpired portion of the period for which his or her predecessor was elected.

(3) The chairperson or vice-chairperson of the Council may vacate his or her office without terminating his or her membership of the Council.

Meetings of Council

8. (1) The Council shall meet for the first time at a place determined by the Minister and thereafter at a time and place determined by the chairperson, or if he or she is absent, the vice-chairperson.

(2) When the chairperson is absent or unable to perform his or her functions, the vice-chairperson shall act as chairperson and, if both the chairperson and vice-chairperson are absent from a meeting or unable to perform their functions, the members present shall elect a person from among themselves to preside at that meeting.

- (3) The Council shall determine and prescribe the procedure for calling meetings, the procedures to be followed at meetings and the times and manner in which members shall be notified of meetings.
- (4) The majority of the Council shall constitute a quorum for a meeting of the Council.
- (5) The Council shall hold at least three meetings each year at such places as the Council may determine, and may in addition hold such special meetings as the Council may from time to time determine.
- (6) A special meeting of the Council may at any time be convened by the chairperson and shall be convened by him or her at the written request of the Minister or of at least 7 members of the Council.
- (7) No decision or recommendation taken by the Council, or action taken on authority of such decision or recommendation, shall be invalid merely because of a casual vacancy in the Council or because a person who was entitled to sit as a member of the Council did not sit when the decision was taken or the recommendation was formulated, if the decision or recommendation was agreed upon by a majority of the members of the Council who were then present and entitled to sit as members of the Council.

Executive committee

9. (1) There shall be an executive committee of the Council consisting of the chairperson, the vice-chairperson and three other members of the Council, designated by the Council.
- (2) (a) Subject to the provisions of this Act and the directions of the Council, the executive committee may during periods between meetings of the council perform all the functions of the Council.
- b. The provisions of paragraph (a) do not empower the executive committee to set aside or amend any decision of the Council.
- c. Any decision taken or act performed by or on the authority of the executive committee shall be of full force and effect, unless it is set aside or amended by the Council at its first meeting following the meeting of the executive committee at which such decision was taken or such action was authorised.
- (3) The quorum for and the procedure at meetings of the executive committee shall be as prescribed.

Other committees

10. (1) The Council may, with the approval of the Minister, from time to time establish in the prescribed manner such other committees as it may deem necessary, to assist it in the performance of its functions. Such committees may include persons not serving on the Council.
- (2) (a) A committee shall perform such functions as may from time to time be imposed upon it under this Act.
- a. The Council shall not be divested of any power or function imposed upon a committee.
- b. The Council may designate a member of a committee as the chairperson of such committee, and if no member is so designated, the members of such committee may elect a chairperson from among themselves.
- c. The quorum for and procedure at meetings of committees shall be as prescribed.
- (3) Should the Council establish a committee to consider a particular issue it shall, as far as possible, give directly affected groups the opportunity to comment on such issue, and

in any report which the Council transmits to the Minister on such an issue, the full spectrum of comments received by the Council shall be presented as far as possible.

(4) Any committee established by the Council in terms of subsection (1) may be dissolved by a decision of the Council.

Personnel and finances of Council

11. (1) (a) Such officers or employees appointed in terms of the Public Service Act, 1994, as may be necessary for the proper performance by the Council of its functions, shall be designated for that purpose on a full-time basis by the Director-General after consultation with the Council.

b. The personnel referred to in subsection (a) shall be responsible to the chairperson of the Council and accountable to the Department.

(2) The Council may, with the approval of the Director-General, enter into agreements with persons for the performance of specific duties or the provision of specific services.

(3) The Minister shall be responsible for approving the budget for the Council after consultation with the Minister of Finance, and the expenses of the Council and committees of the Council shall be funded by the Department from money appropriated for that purpose by Parliament or received from other sources approved by the Minister.

(4) The chairperson of the Council shall ensure that proper books and financial records are kept by the Council, which books and records shall be audited by the Auditor-General.

Limitation of liability

12. Subject to the provisions of the Act, no legal proceedings, whether civil or criminal, shall lie against the Council or committee or any member or officer thereof in respect of anything done in good faith in terms of this Act.

Rules

13. The Council may, with the approval of the Minister, make rules relating to any matter which the Council deems necessary or expedient for the achievement or promotion of its objects or the performance of its functions, including rules relating to the course of conduct to be followed by members of the Council in the performance of their functions.

Regulations

14. The Minister may, on the recommendation of the Council, make regulations relating to any matter which he or she considers necessary or expedient in order to attain the objects of this Act.

Repeal of certain provisions of Act 100 of 1978

15. The National Welfare Act, 1978, is hereby repealed in so far as it relates to provisions which have not been assigned to a competent authority within the jurisdiction of the government of a province in terms of Proclamation No. R. 7 of 1996.

Short title and commencement

16. This Act shall be called the Developmental Welfare Governance Act, 1999, and shall come into operation on a date determined by the President by proclamation in the Gazette.

MEMORANDUM ON THE OBJECTS OF THE DEVELOPMENTAL WELFARE GOVERNANCE BILL, 1999

Background and main objects

South Africa has made a commitment to a developmental social welfare approach, the aim of which is to build a self-reliant nation in partnership with all stakeholders. This will be achieved through an integrated social welfare system which maximises its existing potential, and which is premised on principles of equity, sustainability, access and people-centredness (White Paper for Social Welfare, 1996). Arising from these principles is the need for institutional arrangements which are guided by the key operational concepts of partnership and co-operative governance.

The White Paper for Social Welfare acknowledges the inadequacy of past governance structures which amongst other things, lacked legitimacy and inclusivity and perpetuated disparity and selective delivery of services.

In attempting to redress the past inadequacies of governance mechanisms and imbalances in service delivery, the White Paper for Social Welfare (Section 26 of Chapter 3) acknowledges the need for appropriate, legitimate, transparent and effective governance mechanisms. An envisaged governance structure should be viewed as one of the critical and strategic mechanisms to facilitate meaningful and relevant civil society participation in policy, legislation, programmes and social services activities.

The provisions of this Bill are part of the overall transformation of the welfare system from a purely residual one to a developmental one. A structure as advocated that will promote maximum influence of political decision-making and maximum dialogue between the Ministry and the developmental welfare sector.

The main objection of the Bill is to make provision for the establishment and constitution of the contemplated new council which shall be known as the South African Development Welfare Council (the "Council").

The Council is intended to facilitate and consolidate participation of civil society and government interaction and public policy formulation at various levels. These levels of participation and interaction on policy, legislation and development welfare issues will be informed and empowered by the strengths of existing organised formations rooted at national, provincial, and local levels of society. The Council will enhance dialogue between civil society developmental welfare structures and the different tiers of government.

Main features

The Bill provides for certain welfare related definitions and for the establishment, objects and functions of the South African Development Welfare Council. The Bill also provides for the composition, objectives and functions of the Council.

Financial implications of the Bill for the State

The Council shall consist of nine members of whom not more than four shall be Government officials or representatives. The Council shall hold at least three meetings each year and it is assumed that those meetings will last two days.

Based on current tariffs the chairperson and members will be paid fees and travelling and subsistence allowances amounting to R93 700,00. Entertainment, cellular phones and additional remuneration may amount to R36 000,00. Professional advisory services may amount to R100 000,00.

The Bill also provides that the Director-General shall designate officers on a full-time basis to the Council to assist the Council in the proper performance of its functions.

Should one person at the level of Assistant Director and two Senior Administrative Officers be appointed by the Department, their full packages together with the purchase of equipment, furniture, stationery, cellular phones, transport and travel and subsistence allowances will amount to approximately R456 000,00.

All in all the financial implications of this Bill for the State may amount to approximately R686 000,00 per annum.

Consultation

The said provisions arise out of a consultative process in which the views of stakeholders (well over seventy submissions were received) both within government and civil society were canvassed concerning an initial set of recommendations and a series of critical questions.

Parliamentary procedure

The Department of Welfare and the State Law Advisers are of the opinion that the Bill must be dealt with by Parliament in accordance with the procedure set out in section 76 (1) or (2) of the Constitution of the Republic of South Africa, 1996.