

REPUBLIC OF SOUTH AFRICA

**EXECUTIVE MEMBERS'
ETHICS BILL**

(As introduced in the National Assembly)

(MINISTER OF WATER AFFAIRS AND FORESTRY)

[B 64—98]

REPUBLIEK VAN SUID-AFRIKA

**WETSONTWERP OP DIE ETIEK
VAN LEDE VAN DIE
UITVOERENDE GESAG**

(Soos ingedien in die Nasionale Vergadering)

(MINISTER VAN WATERWESE EN BOSBOU)

[W 64—98]

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BILL

To provide for a code of ethics governing the conduct of members of the Cabinet, Deputy Ministers and members of provincial Executive Councils; 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) “Cabinet” means the Cabinet referred to in section 91(1) of the Constitution; 5
 - (ii) “Cabinet member” includes the President; (iii)
 - (iii) “code of ethics” means the code of ethics contemplated in section 2; (i)
 - (iv) “Executive Council” means a provincial Executive Council contemplated in section 132 of the Constitution; (vii) 10
 - (v) “government”, in relation to—
 - (a) a Cabinet member or Deputy Minister, means the national government; and
 - (b) an MEC, means the provincial government of which that MEC is a member; (vi) 15
 - (vi) “MEC” means a member of an Executive Council, and includes the Premier; (iv)
 - (vii) “Public Protector” means the Public Protector contemplated in section 181 of the Constitution. (v)

Code of ethics 20

2. (1) The President must, by proclamation in the *Gazette*, publish a code of ethics prescribing standards and rules aimed at promoting open, democratic and accountable government and with which Cabinet members, Deputy Ministers and MECs must comply in performing their official responsibilities.
- (2) The code of ethics must include provisions— 25
- (a) requiring Cabinet members, Deputy Ministers and MECs—
 - (i) at all times to act in good faith and in the best interest of the government; and
 - (ii) to meet all the obligations imposed on them by law; and
 - (b) prohibiting Cabinet members, Deputy Ministers and MECs from— 30
 - (i) undertaking any other paid work;
 - (ii) acting in a way that is inconsistent with their office;
 - (iii) exposing themselves to any situation involving the risk of a conflict between their official responsibilities and their private interests;
 - (iv) using their position or any information entrusted to them, to enrich 35 themselves or improperly benefit any other person; and
 - (v) acting in a way that may compromise the credibility or integrity of the government.
- (3) The code of ethics may— 40
- (a) require Cabinet members and Deputy Ministers to disclose to an official in the office of the President designated for this purpose, and MECs to disclose to an official in the office of the Premier concerned designated for this purpose—
 - (i) all their financial interests when assuming office; and

- (ii) any financial interests acquired after their assumption of office, including any gifts, hospitality and other benefits of a material nature received by them or by such persons having a family or other relationship with them as may be determined in the code of ethics; and
- (b) prescribe any matter that may be necessary for the effective implementation of the code of ethics. 5

Public Protector to investigate breaches

- 3. (1) The Public Protector must investigate any alleged breach of the code of ethics on receipt of a complaint contemplated in section 4.
- (2) The Public Protector must submit a report on the alleged breach of the code of ethics within 30 days of receipt of the complaint— 10
 - (a) to the President, if the complaint is against a Cabinet member, Premier or Deputy Minister; and
 - (b) to the Premier of the province concerned, if the complaint is against an MEC.
- (3) If the Public Protector reports at the end of the period referred to in subsection (2) that the investigation has not yet been completed, the Public Protector must submit another report when the investigation has been completed. 15
- (4) When conducting an investigation in terms of this section, the Public Protector has all the powers vested in the Public Protector in terms of the Public Protector Act, 1994 (Act No. 23 of 1994). 20
- (5) (a) The President must within a reasonable time, but not later than 14 days after receiving a report referred to in subsection 2(a), submit a copy of the report and any comments thereon, together with a report on any action taken or to be taken in regard thereto, to the National Assembly.
- (b) Paragraph (a) does not apply in respect of a report on a Premier. 25
- (6) The Premier must within a reasonable time, but not later than 14 days after receiving a report referred to in subsection 2(b), submit a copy of the report and any comments thereon, together with a report on any action taken or to be taken in regard thereto, to the provincial legislature.

Complaints 30

- 4. (1) The Public Protector only investigates an alleged breach of the code of ethics on receipt of a complaint by—
 - (a) the President, a member of the National Assembly or a permanent delegate to the National Council of Provinces, if the complaint is against a Cabinet member or Deputy Minister; or 35
 - (b) the Premier or a member of the provincial legislature of a province, if the complaint is against an MEC of the province.
- (2) The complaint must be in writing and must contain—
 - (a) the name and address of the complainant;
 - (b) full particulars of the alleged conduct of the Cabinet member, Deputy Minister or MEC; and 40
 - (c) such other information as may be required by the Public Protector or prescribed in the code of ethics.

Appointment and dismissal of Cabinet members, Deputy Ministers and MECs not affected 45

5. Nothing in this Act may prevent or delay the appointment or the termination of the appointment of any Cabinet member, Deputy Minister or MEC or the amendment of any determination or allocation of a portfolio in terms of the Constitution.

Criminal prosecutions not affected

6. Nothing in this Act may prevent or delay the prosecution of a Cabinet member, Deputy Minister or MEC in a court. 50

Short title

7. This Act is called the Executive Members' Ethics Act, 1998.

MEMORANDUM ON THE OBJECTS OF THE EXECUTIVE MEMBERS' ETHICS BILL, 1998

1. Section 96(1) of the Constitution requires that Members of the Cabinet and Deputy Ministers, and section 136(1) that Members of Executive Councils, must act in accordance with a code of ethics prescribed by national legislation. The Bill seeks to make provision for the publication of such a code and matters connected therewith.

2. The main objects of the Bill are to—

2.1 empower the President to publish a code of ethics in the *Government Gazette* which will apply to the President, the Deputy President, Premiers, Ministers, Deputy Ministers and Members of Executive Councils. The code is not contained in the Bill itself. The expression “national legislation” used in sections 96(1) and 136(1) of the Constitution is to be distinguished from the expression “Act of Parliament” used elsewhere in the Constitution. “National legislation” is defined in section 239 of the Constitution to include “subordinate legislation made in terms of an Act of Parliament”.

2.2 empower the Public Protector to investigate and report to the President or a Premier on any alleged breach of the code of ethics. There is no requirement in the Constitution that the observance of the code should be enforced by way of criminal sanctions. Criminal conduct such as corruption and bribery is already catered for in our law and need not be dealt with by the code. It is accordingly proposed that the code should not affect any criminal prosecution in respect of any offence committed.

2.3 make it clear that the code of ethics will not affect the President's power to appoint or dismiss the members of Cabinet, even during the course of an investigation.

2.4 prescribe by whom and how complaints are to be submitted to the Public Protector.

3. CONSULTATION AND RESEARCH

3.1 The following persons and bodies were consulted in the drafting of the Bill:

3.1.1 Ministers of State and members of the Judiciary, Civil Service, Parliament or Congress, as the case may be, in the United Kingdom, United States of America and the Republic of Ireland.

3.1.2 President and Deputy President.

3.1.3 Minister of Water Affairs and Forestry.

3.1.4 The Public Protector.

3.2 Comparative research into African, Asian, European and American codes were conducted through the assistance of the National Democratic Institute and Transparency International.

4. PARLIAMENTARY PROCEDURE

The Office of the President and the State Law Advisers are of the opinion that the procedure established by section 75 of the Constitution should be followed in respect of the Bill since it is not a Bill to which the procedure set out in section 74 or 76 of the Constitution applies.