

REPUBLIC OF SOUTH AFRICA

GENERAL FINANCE LAWS 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. 55193 of 14
August 2026)
(The English text is the official text of the Bill)*

(MINISTER OF FINANCE)

[] Words in bold type in square brackets indicate omissions from existing enactments.

Words underlined with a solid line indicate insertions in existing enactments.

To amend—

- the Financial Sector Regulation Act, 2017, so as to insert a Chapter to provide for the designation of replacement benchmarks; to provide for the effect of replacement benchmarks on legacy contracts; to provide for the limitation of liability arising from the selection or utilisation of a replacement benchmark or a designated adjustment spread; to provide for a consultation process for designations or determinations made by the Reserve Bank in relation to benchmark replacement;
- the Public Procurement Act, 2024, so as to amend the timeframe within which the Minister must review the implementation of the Act, make a report public and submit such report to Parliament, and to provide for matters connected therewith.

Insertion of Chapter 2A in Act 9 of 2017

1. The Financial Sector Regulation Act, 2017, is hereby amended by the insertion after Chapter 2 of the following Chapter:

“CHAPTER 2A

OFFICIAL BENCHMARKS

Interpretation of Chapter

31A. In this Chapter, unless the context indicates otherwise—

‘adjustment spread’, in relation to a replacement benchmark, means a spread, which may be positive, negative or zero, which must be applied to the replacement benchmark in order to reduce or eliminate, to the extent reasonably practicable in the relevant circumstances, any economic prejudice or benefit, as applicable, to the parties to a legacy contract as a result of the replacement of the discontinued benchmark with the replacement benchmark:	10 15
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‘benchmark cessation date’, in relation to a discontinued benchmark, means—

(a) the date on which the benchmark is permanently discontinued or otherwise ceases to be published or provided;

- (b) the date specified by the Reserve Bank, by notice on its website, as the date on which the benchmark will permanently cease to be provided or published; or
- (c) the designated benchmark effective date,
whichever date is earlier; 5
- ‘benchmark conforming changes’** means essential technical, administrative or operational changes to any legacy contract designated and determined by the Reserve Bank in terms of section 31C(1)(c);
- ‘designated adjustment spread’**, in relation to a designated replacement benchmark, means the adjustment spread, including the methodology or formula for determining such adjustment spread, which is to be applied to the designated replacement benchmark as designated and determined by the Reserve Bank in terms of section 31C(1)(b); 10
- ‘designated benchmark effective date’** means a date that is designated and published by the Reserve Bank as the date from which the designated replacement benchmark applies in terms of section 31C(1)(d); 15
- ‘designated replacement benchmark’** means an official benchmark that is designated and published by the Reserve Bank as a replacement benchmark to replace a discontinued benchmark in terms of section 31C(1)(a);
- ‘determining person’**, in relation to a legacy contract, means a person with the authority, right or obligation as identified by the legacy contract, or as identified by the law applicable to the legacy contract, to determine a replacement benchmark; 20
- ‘discontinued benchmark’** means any official benchmark in respect of which the Reserve Bank has issued a statement, or has published by notice on its website— 25
 - (a) that benchmark no longer reflects the underlying market or economic reality; and
 - (b) the Reserve Bank will commence the orderly wind-down of that benchmark, or will cease to provide that benchmark or certain tenors or certain currencies for which that benchmark is calculated, permanently or indefinitely; 30
- ‘fallback provisions’** means contractual terms specifying a replacement benchmark, or a methodology for determining a replacement benchmark, in the event that an official benchmark is, or becomes, or will become, a discontinued benchmark, including any terms relating to the date on which the replacement benchmark becomes effective; 35
- ‘legacy contract’** means a contract, financial agreement or financial instrument that, by its terms, uses an official benchmark that has been, or will be, discontinued; 40
- ‘official benchmark’** means a benchmark administered or designated as critical by the Reserve Bank in fulfilment of its responsibility to protect and enhance financial stability; and
- ‘replacement benchmark’** means an official benchmark that replaces a discontinued benchmark. 45

Purpose and application of Chapter

31B. (1) The purpose of this Chapter is to—

- (a) enhance the resilience and stability of the financial system by ensuring the continuity of official benchmarks; and
- (b) provide mechanisms to address the risks arising from the discontinuation of official benchmarks in legacy contracts, including through the designation of replacement benchmarks, the determination of the status of fallback provisions and the designation and determination of benchmark conforming changes. 50
- (2) This Chapter applies to— 55
 - (a) official benchmarks used in contracts within the financial sector and financial markets in the Republic, including contracts referencing an official benchmark, irrespective of the location or domicile of any counterparty; and
 - (b) legacy contracts. 60

Designation of replacement benchmarks

- 31C.** (1) If the Reserve Bank determines that it is necessary to protect and promote the stability and integrity of the financial markets, the Reserve Bank may, by notice published on its website, designate and determine—
- (a) one or more replacement benchmarks for a discontinued benchmark; 5
 - (b) a designated adjustment spread;
 - (c) the corresponding essential conforming technical, administrative or operational changes to any legacy contract that are associated with, and reasonably necessary for the use or application of the replacement benchmark and, if applicable, the designated adjustment spread; or 10
 - (d) the date from which the designated replacement benchmark applies.
- (2) In exercising its power in subsection (1), the Reserve Bank must take into account—
- (a) the stability and integrity of the financial markets;
 - (b) the impact that the designated replacement benchmark, designated adjustment spread, any benchmark conforming changes or the date from which the designated replacement benchmark applies, has on financial customers and market participants; 15
 - (c) any views expressed and any information reported by the financial sector regulators; 20
 - (d) any views and recommendations of the Financial Stability Oversight Committee; and
 - (e) any views and recommendations of any working group or subcommittee established by the Financial System Council of Regulators or the Reserve Bank in relation to the replacement or discontinuation of an official benchmark. 25
- (3) The Reserve Bank may, by notice published on its website—
- (a) identify, designate and determine different categories of legacy contracts;
 - (b) designate and determine that different or alternative designated replacement benchmarks, designated adjustment spreads, benchmark conforming changes or designated benchmark effective dates apply to the different categories of legacy contracts identified under paragraph (a); and 30
 - (c) designate and determine a synthetic benchmark, which is a rate created to replicate the characteristics of a discontinued benchmark, as a replacement benchmark, including any necessary adjustment spread, to maintain economic equivalence to the discontinued benchmark, either on a permanent or temporary basis. 35

Effect of replacement benchmarks on legacy contracts 40

- 31D.** (1) On the designated benchmark effective date, the designated replacement benchmark, as adjusted by the designated adjustment spread, is the replacement benchmark for any category or categories of legacy contracts identified by the Reserve Bank in terms of section 31C(3)(a) that— 45
- (a) contains no fallback provisions; or
 - (b) contains fallback provisions that—
 - (i) do not identify a specific replacement benchmark;
 - (ii) do not identify a determining person;
 - (iii) do not provide for a permanent replacement of the discontinued benchmark; or 50
 - (iv) require consent from third parties for their application that has not been obtained or granted or that has been denied as of the benchmark cessation date.
- (2) On the benchmark cessation date, any reference in the fallback provisions of a legacy contract to— 55
- (a) a replacement benchmark that is based in any way on any discontinued benchmark value, except to account for the difference between the discontinued benchmark and the replacement benchmark; or

- (b) a requirement that a person, other than a benchmark administrator, conduct a poll, survey or inquiries for quotes or information concerning interbank lending or deposit rates, must be disregarded as if not included in the fallback provisions of such legacy contract and is deemed to be without any force or effect. 5
- (3) Subject to subsection (8)(b), a determining person under a legacy contract may—
- (a) select the designated replacement benchmark as the benchmark replacement for a discontinued benchmark under that legacy contract;
 - (b) utilise the designated adjustment spread as the spread adjustment for the purposes of that legacy contract; or 10
 - (c) utilise the benchmark conforming changes for the purposes of that legacy contract.
- (4) A selection by a determining person of the designated replacement benchmark permitted by subsection (3)— 15
- (a) is irrevocable;
 - (b) must be made by the earlier of the benchmark cessation date and the latest date for selecting a benchmark replacement according to the terms of such legacy contract; and
 - (c) must be used in any determinations of the benchmark under or in respect of such legacy contract occurring on and after the benchmark cessation date. 20
- (5) If a determining person is entitled under subsection (3) to select a replacement benchmark, but does not select a replacement benchmark by the date specified in terms of subsection (4)(b), the designated replacement benchmark becomes the replacement benchmark for such legacy contract on the benchmark cessation date. 25
- (6) If the designated replacement benchmark becomes the replacement benchmark for a legacy contract pursuant to subsection (1) or (3), all benchmark conforming changes are deemed to be included in the legacy contract. 30
- (7) A determining person is not required to obtain consent from any other person prior to the adoption of any benchmark conforming changes.
- (8) Despite any other law or legacy contract, neither— 35
- (a) the selection or use of a designated replacement benchmark as a replacement benchmark; nor
 - (b) the determination, implementation or performance of benchmark conforming changes,
- in terms of subsection (1), (2), (3) or (6) will— 40
- (i) impair or affect the right of any person to receive payment, or affect the amount or timing of such payment under a legacy contract;
 - (ii) have the effect of discharging or excusing performance under a legacy contract for any reason or claim;
 - (iii) constitute a basis for the unilateral termination or suspension of performance of a legacy contract; 45
 - (iv) constitute a breach of any legacy contract; or
 - (v) render void or nullify any legacy contract.
- (9) Subsection (8) does not affect the rights of financial customers or consumers to be timeously notified of the changes of the terms of any contract or the changes to any rate of interest under any contract, in terms of any financial sector law or any other law that protects the rights of financial customers or consumers. 50
- (10) Despite section 31B(2)(b), this Chapter does not—
- (a) alter or impair— 55
 - (i) any written agreement specifying that a legacy contract is not subject to this Chapter;
 - (ii) any legacy contract that contains fallback provisions that identify a replacement benchmark that is not based in any way on any discontinued benchmark value, except that such legacy contract is subject to subsection (2); 60
 - (iii) any legacy contract subject to subsection (3) as to which a determining person does not elect to use a designated replace-

- ment benchmark pursuant to subsection (3), except to the extent that such legacy contract is subject to subsection (2) or subsection (5); or
- (iv) the application to a designated replacement benchmark of any cap, floor, modifier or spread adjustment to which the discontinued benchmark had been subject to, pursuant to the terms of a legacy contract; or
- (b) apply where all parties or the required majority of the parties to a legacy contract have agreed to apply a different replacement benchmark, which is not a discontinued benchmark, in place of the designated replacement, whether before or after the benchmark cessation date.

Limitation of liability

- 31E.** (1) A person is not liable for any loss, costs or damage suffered or incurred by any person, arising out of the—
- (a) selection or use of a designated replacement benchmark or a designated adjustment spread; or
- (b) implementation or determination of benchmark conforming changes, as contemplated in section 31D.
- (2) Despite subsection (1), parties, including a determining person, remain bound to the terms of a legacy contract that are not affected by this Chapter.

Consultation requirements

- 31F.** (1) The Reserve Bank must, subject to subsection (3), before making a designation or determination envisaged under section 31C, publish a notice—
- (a) of the proposed designation or determination with a statement that—
- (i) provides the reasons for the proposed designation or determination; and
- (ii) includes any other information that it considers necessary; and
- (b) inviting any interested persons to make submissions to the Reserve Bank in relation to the proposed designation or determination within a reasonable period specified in the notice, which period must not be less than 30 days from the date of publication of the notice, and stating where, how and by when submissions are to be made.
- (2) In deciding whether to make a designation or determination envisaged under this Chapter, the Reserve Bank must consider the submissions referred to in subsection (1)(b) and publish a statement responding to the submissions as soon as practicable.
- (3) The procedure in subsection (1) does not apply if compliance with subsection (1) is likely to adversely affect financial stability or defeat the object of the proposed designation or determination.
- (4) If the procedure in subsection (1) does not apply, the Reserve Bank must publish a statement setting out the reasons the procedure in subsection (1) is not applicable.”.

Amendment of Arrangement of Sections of Act 9 of 2017, as amended by section 61 of Act 23 of 2021, section 4, read with item 19, of Schedule to Act 12 of 2022 and by section 65 of Act 22 of 2022

2. The Arrangement of Sections of the Financial Sector Regulation Act, 2017, is hereby amended by the insertion after the item “31. Winding-up and similar steps in respect of systemically important financial institutions” of the following items:

“CHAPTER 2A

OFFICIAL BENCHMARKS

31A. Interpretation of Chapter	
31B. Purpose and application of Chapter	
31C. Designation of replacement benchmarks	
31D. Effect of replacement benchmarks on legacy contracts	
31E. Limitation of liability	
31F. Consultation requirements”.	5

Amendment of section 68 of Act 28 of 2024

- 3.** Section 68 of the Public Procurement Act, 2024, is hereby amended— 10
- (a) by the substitution for paragraph (a) of the following paragraph:
- “(a) within [24] 12 months after this Act **[is first published as an Act in the *Gazette*]** comes into operation, review the implementation of this Act and the need for amendments to this Act;”;
- (b) by the substitution for paragraph (c) of the following paragraph: 15
- “(c) within [27] 15 months after this Act **[is first published as an Act in the *Gazette*]** comes into operation, make public a report on the review and submit it to Parliament.”.

Short title and commencement

- 4.** This Act is called the General Finance Laws Amendment Act, 2026, and comes into 20
operation on a date determined by the President by Proclamation in the *Gazette*.

MEMORANDUM ON OBJECTS OF GENERAL FINANCE LAWS AMENDMENT BILL, 2026

1. INTRODUCTION

- 1.1 The General Finance Laws Amendment Bill (the “Bill”) proposes amendments to the Financial Sector Regulation Act, 2017 (Act No. 9 of 2017) (“FSR Act”) and the Public Procurement Act, 2024 (Act No. 28 of 2024) (“Public Procurement Act”).
- 1.2 In respect of the proposed amendments to the FSR Act:
 - 1.2.1 The South African Reserve Bank (“Reserve Bank”) contemplates a transition from the Johannesburg Interbank Average Rate (“Jibar”) to the South African Rand Overnight Index Average (“ZARONIA”) as a benchmark for financial contracts. The transition will affect markets where Jibar is used as a benchmark. These include the loan market, the derivatives market, bonds, securitised products and short-term instruments. In each of these markets, parties may have entered into contracts which reference Jibar as the applicable benchmark against which to calculate the interest payable. These contracts are commonly referred to as “tough legacy contracts”, which often cannot be amended readily, or at all, in anticipation of the cessation of Jibar.
 - 1.2.2 As part of the transition, it is envisaged that not all contracts will be capable of being amended to provide for fallback language to ZARONIA ahead of the cessation of Jibar (envisaged to take place in December 2026, subject to the enactment of this Bill). Therefore, in order to address tough legacy contracts, it is proposed that the FSR Act be amended.
 - 1.2.3 The proposed amendments will enable the Reserve Bank to identify and designate different categories of legacy contracts, determine the replacement benchmarks, determine and designate a synthetic benchmark and adjustment spreads and related matters.
 - 1.2.4 The proposed amendments will enhance the resilience and stability of the financial markets by ensuring the continuity of official benchmarks and providing for the designation of replacement benchmarks.
- 1.3 The Public Procurement Act is proposed to be amended to reduce the periods within which the Minister must review the implementation of the Act, make a report public and submit the report to Parliament.

2. SUMMARY OF BILL

- 2.1 Clause 1 seeks to insert a new Chapter 2A into the FSR Act to regulate “official benchmarks” so as to enhance the resilience and stability of the financial system by ensuring the continuity of official benchmarks; to provide for the designation of replacement benchmarks; to provide for the effect of replacement benchmarks on legacy contracts; to provide for the limitation of liability arising from the selection or utilisation of a replacement benchmark or a designated adjustment spread; and to provide for a consultation process for actions taken by the Reserve Bank in relation to benchmark replacement. The primary objective of Chapter 2A is to provide a statutory default mechanism for the transition of legacy contracts from a discontinued benchmark to a replacement benchmark by operation of law.
- 2.2 Clause 2 seeks to amend the Arrangement of Sections as a consequential amendment arising from the insertion of Chapter 2A in the FSR Act.

2.3 Clause 3 seeks to amend section 68 of the Public Procurement Act by reducing the timeframes within which the Minister must review the implementation of the Act, make a report public and submit such report to Parliament.

2.4 Clause 4 provides for the short title and commencement of the Act.

3. ORGANISATIONS AND INSTITUTIONS CONSULTED

The following organisations have been consulted:

- (a) Reserve Bank;
- (b) National Credit Regulator; and
- (c) Financial Sector Conduct Authority.

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.
- 5.11 What must be stressed is that the judgment went on to state that, “*the procedure envisaged in section 75 of the Constitution remains relevant to all Bills that do not, in substantial measure, affect the provinces.*” Therefore, a Bill which does not deal with a functional area listed in Schedule 4 or Schedule 5 to the Constitution must be considered in accordance with the procedure set out in section 75 of the Constitution.
- 5.12 The purpose of this Bill is to amend the FSR Act so as to insert a Chapter to provide for the designation of replacement benchmarks; to provide for the effect of replacement benchmarks on legacy contracts; to provide for the limitation of liability arising from the selection or utilisation of a replacement benchmark or a designated adjustment spread and to provide for a consultation process for designations or determinations made by the Reserve Bank in relation to benchmark replacement. These functions affect mainly the operations of the Reserve Bank and do not place any obligations on the provinces. The establishment of the Reserve Bank is provided for in section 223 of the Constitution, as follows:

“Establishment

223. The South African Reserve Bank is the central bank of the Republic and is regulated in terms of an Act of Parliament.”.

The primary objective of the Reserve Bank is set out in section 224 of the Constitution, which provides as follows:

“Primary object

224. (1) The primary object of the South African Reserve Bank is to protect the value of the currency in the interest of balanced and sustainable economic growth in the Republic.

(2) The South African Reserve Bank, in pursuit of its primary object, must perform its functions independently and without fear, favour or prejudice, but there must be regular consultation between the Bank and the Cabinet member responsible for national financial matters.”.

Therefore, the Reserve Bank performs a centralised function and the Constitution provides for the Reserve Bank to perform such functions independently and without fear, favour or prejudice.

- 5.13 In addition, the Bill seeks to amend section 68 of the Public Procurement Act, 2024. Currently, section 68 of the Public Procurement Act provides that the Minister must, *inter alia*, review the implementation of this Act within a period of 24 months, make public a report on the review and submit it to Parliament within 27 months. The proposed amendment seeks to reduce the timeframes to 12 and 15 months, respectively. This is a function for the Minister to perform at national level and does not, in substantial measure, affect the provinces.

- 5.14 Considering the clauses of the Bill, the Department and the State Law Advisers are of the view that the Bill must be tagged as a section 75 Bill because it does not affect the provinces and places obligations only on the Reserve Bank and the Minister of Finance, who function at a national level.

6. 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 It is 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.