**Submission of a Legislative Proposal to Amend the National Small Enterprise Act, 1998 (Act 102 Of 1996): Memorandum in terms of Rule 273 of the Rules of the National Assembly by the Portfolio Committee on Small Business Development, Dated 22 February 2023**

The Portfolio Committee on Small Business Development (“the Committee") hereby requests permission of the House in terms of National Assembly Rule 273(1) to institute and introduce the bill, namely, National Small Enterprise Amendment Bill, 2023 (“the Bill”).

**Particulars of the Bill**

1. The Bill seeks to strengthen the small, medium and micro enterprises and co-operative (“SMME”) ecosystem, which is regarded across the world as the engine for economic development. It is estimated that SMMEs generate half of gross domestic product and nearly 60 percent of employment in South Africa. A large and growing set of challenges is facing SMMEs. New business risks and threats choking the fluidity and growth of this sector are emerging. The Committee intends to amend and amplify the National Small Enterprise Act, 1998 (Act 102 of 1996) through the creation of a Small Enterprise Commission (“the Commission”) to be responsible for, *inter alia:*

1.1 the provision of dispute resolution service which will deals with business to business and supplier-contractor disputes;

1.2 the receipt and administration of complaints made by or on behalf of SMMEs regarding their dealings with other businesses and government agencies;

1.3 the investigation of complaints and referring any such complaints to another appropriate person or body;

1.4 making representations or taking any action on behalf of SMMEs;

1.5 conducting investigations into the way in which SMMEs are treated by other businesses or government;

1.6 facilitating the development of codes of good practice by industry that deal with issues concerning the SMME sector, and

1.7 considering complaints by SMME suppliers about payment issues with larger businesses and the state sector in particular.

1. The proposed Bill shall further explore the establishment of a Small Enterprise Appeals Tribunal (“the Appeals Tribunal”) to adjudicate and mediate on matters referred to it by the aggrieved or disgruntled parties. The role of the Appeals Tribunal would be, among others, to conduct an independent review of the decisions or awards made by the Commission.
2. It is envisaged that these amendments should be effected through the insertion of new definitions and new sections into the National Small Enterprise Act, 1996 (Act No. 102 of 1996) as well as any consequential amendments that may be necessary.

**Background and Objects of the Bill**

1. The Committee has received several complaints from SMMEs concerning the behavior of its customers, mainly regarding business with the State and larger businesses. Most of the complaints received vary from non-payment to late payment of services rendered, product delivery issues, contractual disputes, and uncompetitive behavior of big businesses (i.e. business practices aimed at eliminating competition by driving SMMEs out of business). The late payments, in particular, are at an all-time high as SMMEs wait too long to be paid. This phenomenon is not only rampant in government but in the private sector as well. SMMEs often do not have adequate resources to afford the high cost of litigation and therefore succumb to the dictates of big businesses or the government itself.
2. It is imperative to note that during the fifth Parliament, the predecessor of this Committee held several sessions with SMMEs following numerous complaints from the sector, ranging from allegations of corporate bullying, non-payment of services rendered, price discrimination, unfair terms of trade, red tape, to deliberate supply chain harassment often used by big conglomerates to stamp out competition. That Committee had then concluded that the practice was widespread to the degree that it deemed it appropriate to adopt a resolution to pursue a legislative response. The delayed action in executing that resolution brought forth the Private Members Bill sponsored by then Member of Parliament, Honorable Toby Chance, the Small Enterprises Ombud Service Bill [B14-2018]. The motion of desirability on that Bill was not adopted as that Committee was of the view that the Bill would duplicate what the Department was already working on both in terms of National Small Business Amendment Act and the Co-operative Amendment Act.
3. Now in this sixth Parliament, the Committee continues to receive complaints relating to unethical behavior by big businesses, and public sector conduct, especially in the area of supply chain management and disputes among small enterprises themselves. With the SMME sector projected to create more than 11 million jobs by 2030, a favorable environment must be created for that goal to be achieved. The Committee remains of the view that pursuance of lawsuits to resolve disputes can be costly and SMMEs require mechanisms that are accessible and affordable to smaller business concerns. Commercial disputes suppress the sector's vibrancy and ability to create jobs. Messy and drawn-out litigations stifle growth, drain resources and require experience that most small businesses do not have.

The importance of putting in place a dedicated dispute resolution mechanism cannot, therefore, be overemphasized. There is a reasonable expectation from the general public that Parliament, as the people's representative, has to tackle these issues. However, Parliament, or Committees of Parliament, are unable to exercise powers they do not enjoy. Hence, once more, this Committee has overwhelmingly resolved that amendment to the National Small Enterprise Act is necessary and should be expedited. The Committee is convinced, especially after having consulted extensively, that this phenomenon is indicative of a market failure that calls for a statutory response.

**Objects of the Bill**

1. The primary aim of the Bill is to guarantee that a beneficial environment for the SMME sector exists. The proposed amendments strive to pursue the creation of a Small Enterprise Commission and a Small Enterprise Appeals Tribunal with powers to investigate, improve the operating environment, issue sanctions against unscrupulous businesses, penalize unethical behavior, investigate unfair terms of trade, set aside unfair and unreasonable contracts and act as a voice for small business concerns against costly red tape and excessive enforcement. Lastly, the Bill shall provide supplementary layer of quality assurance for reconsideration and review of certain decisions or sanctions made by the Commission, through the creation of a Small Enterprise Appeals Tribunal. The draft Bill will therefore provide:

Part A – Small Enterprise Commission

* Establishment of the Small Enterprise Commission;
* Receipt of complaints, prescription, jurisdiction, and investigation;
* Enforcement, functions and powers of the Small Enterprise Commission;
* Relations with other regulatory authorities;
* Reporting requirements of the Small Enterprise Commission;
* Governance of the Small Enterprise Commission;
* Appointment of the Commissioner, Deputy Commissioner, and Commissioners;
* Qualifications for Commissioners;
* Term of office;
* Conflicting interests of the Commissioners;
* Resignation, removal from office and vacancies;
* The functions, mandate, staff and funding of the Small Enterprise Commission;

Part B – Small Enterprise Appeals Tribunal

* Establishment of the Appeals Tribunal;
* Functions of the Appeals Tribunal;
* Qualifications of members of the Appeals Tribunal;
* Term of office of members of the Appeals Tribunal;
* Chairperson and Deputy Chairperson of Tribunal;
* Tribunal proceedings;
* Conflicts and disclosure of interest;
* Acting by a member of the Tribunal after the expiry of the term of office;
* Remuneration and benefits.

1. During the Budget Review and Recommendation Report (BRRR: 2022), the Committee noted that the Department of Small Business Development (‘the Department”) had struggled to refer the National Small Enterprise Amendment Bill to Parliament as pledged in its consecutive annual performance plans since 2015. Several reasons have been cited. The Department reported in its annual report (DSBD Annual Report: 2021/22) that the reason for yet another postponement in tabling the Bill was due to the pending incorporation of the Small Enterprise Finance Agency (“Sefa”) and Co-operatives Banks Development Agency (“CBDA”) into Small Enterprise Development Agency (“Seda”) – and for that reason, Cabinet had approved a 20-month extension to give the Department leeway to include a chapter or section on the merger in the Bill. As a result, it has been made clear to the Committee that the earliest the Bill may be referred to Parliament is only in December 2023. Considering the period that has lapsed since the bill had been in the drafting phase, the Committee is adamant that a staggered approach to the development of the Bill should be considered. There is a precedent already set by the Department of Trade and Industry when it successively amended the National Small Enterprise Business Act, 1996 (Act No. 102 of 1996) in 2003 and 2004.
2. The Committee was and remain of the view that in light of a variety of challenges besetting the sector, and hundreds of complaints from small business owners before the Committee, a segmented approach should indeed be given primacy. Therefore, in its meeting on 9 November 2022, wherein the petition report concerning complaints against Telkom Openserve was adopted, the Committee resolved as follows:

9.1 Having noted the growth in the number of grievances, disputes, and one petition referred to the Committee since its inauguration, the Committee supports the fifth Parliament’s recommendation that the Small Enterprise Commission created through an Act of Parliament be considered;

9.2 As envisioned during the fifth Parliament when sessions between big and small businesses were conducted to ascertain the extent of victimization of small businesses, the Committee is of the opinion that a Committee Bill should be pursued. The process may include synthesizing elements of the Private Members Bill (Small Enterprises Ombud Service Bill) and components of the National Small Enterprise Amendment Bill - specific propositions that dealt with the creation of the Small Enterprise Ombud Service.

1. The Committee is resolute that this process cannot wait for the review of the Small Enterprise Act in its entirety. It is accordingly requesting permission to introduce a Committee Bill in terms of Rule 271 that will address this gap in the law.

**Financial Implications for the State**

1. There will be costs involved in the implementation of the Bill. But this can only be determined once the Bill has been finalised. Determinations proposed by the Department in this regard, and considered by the Committee, will be presented to the House with the draft Bill.

**Views of the Executive on the objects of the proposed legislation**

1. The Committee has had several discussions with the Department concerning policies and legislations due for referral to Parliament. The proposed Bill will consist of measures that have already been discussed and agreed with the Department during Committee meetings. The Department has indicated that it is in agreement with these measures.

Report to be considered.