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Vodacom (Proprietary) Limited's written submissions in response to the Parliamentary Portfolio Committee request for comments in respect of the Women Empowerment and Gender Equality Bill (B50-2013)

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## **1. INTRODUCTION**

Vodacom (Proprietary) Limited ("Vodacom") welcomes the opportunity to make written submissions in relation to the Women Empowerment and Gender Equality Bill [B50-2013] (herein referred to as WEGE Bill) as published in Government Gazette No 37005 on 6 November 2013 and the subsequent invitation for comments by the Parliamentary Portfolio Committee on Women, Children and People with Disabilities. Vodacom wishes to actively participate in any further consultation process which may be available.

Vodacom's submission is comprised of specific preliminary comments in relation to certain of the key proposals.

## **2. WOMEN EMPOWERMENT AND GENDER EQUALITY BILL, 2013**

### **2.1 Section 1 Definitions**

Vodacom appreciates the amendment to the definition of "gender mainstreaming".

Vodacom submits that the WEGE Bill should define what a "designated" private or public body is as the Bill leaves it entirely up to the Minister to determine this.

Vodacom proposes that the WEGE Bill should define what a "decision making structure" is. This is significant as the requirement of 50% representivity of women applies in respect of decision making structures. The special advisor to the Minister has been reported as saying that a "decision making structure is *"management, special committees or task teams i.e. audit committees, etc."* but uncertainty in this regard remains and it ought to be clarified and defined in the WEGE Bill.

Vodacom further submits that more clarity should be provided as to the interpretation of "decision-making positions and structures" which may be substantively different in various private or public bodies

### **2.2 Section 2 Application of Bill**

Vodacom submits that clarity needs to be provided in the WEGE Bill as to what constitutes a "designated" private or public body and which criteria the Minister would apply to determine which bodies are to be designated. Further clarity should be provided regarding the application of the legislation to companies that have global operations (i.e. multinationals and SA multinationals as defined in the BBBEE Codes of Good Practice) and second employees internationally.

### **2.3 Section 3 Objectives of the Bill**

One of the objectives of the WEGE Bill is to align all aspects of legislation and the implementation of the legislation relating to women empowerment and the appointment and representation of women in decision making positions and structures to the WEGE Bill.

The objectives of the WEGE are commendable, however, Vodacom submits that it would be more beneficial to address the root causes of women disempowerment such as poor education, unwanted teenage pregnancy and domestic violence.

There is a plethora of legislation dealing with the promotion of women empowerment and equality (e.g. BBBEE Act and Codes) and Vodacom respectfully submits that it is unclear how the alignment of legislation will take place or how it will be enforced. The proposed legislation may result in a duplication of functions of the Commission for Gender Equality.

Vodacom submits that in its current form the WEGE Bill may not be entirely congruent with sections 42 and 63 of the Employment Equity Act (in its unamended form) in that those sections may effectively provide for different representivity requirements in relation to women. To the extent that the EEA trumps the provisions of the WEGE Bill because it provides that it will prevail over any other legislation that conflicts with it, the 50% representivity requirements in terms of the WEGE Bill will in any event arguably not be of any force notwithstanding that the WEGE Bill provides that *"Despite any other law, targets for women ....shall be at least 50%"*.

### **2.4 Section 4 Education and training**

Vodacom submits that the education and training should be expanded to include specific focus on primary, secondary and tertiary education of girls, thereby empowering women at a much earlier stage. It is respectfully submitted that the responsibility to increase the number of skilled and qualified women remains that of Government and should not be passed onto the private sector.

### **2.5 Section 9 Measures to empower women and to eliminate discrimination**

This section provides that targets for women shall be at least 50%. Vodacom respectfully submits that consideration should be given to the fact that the pool of economically active, suitably skilled and qualified women available at the higher occupational levels may be insufficient to ensure that the minimum 50 % threshold for representation and meaningful participation of women in decision-making structures is capable of being complied with by designated private or public bodies. In other words, if the demographics of the economically active population are such that there are only 46% active women, the WEGE Bill is requiring a higher level of representation of women in decisions making

positions than the percentage of economically active women in the population. We propose that the level of representation required should be aligned to the actual percentage of economically active women in the regional and national population as required by the EEA.

It is unclear how the WEGE Bill will ensure that the target is met because 50% black female representation at managerial level as per the Broad Based Black Economic Empowerment Act has not been achieved. It is unclear what is expected from designated bodies following the two year period, which we submit is too short a period to put strategies in place to fast track the development of women to function at board level.

## **2.6 Section 10 Economic Empowerment**

This section provides that notwithstanding any other law, targets regarding women and men in all laws and policies on economic empowerment shall be at least 50% women. It further provides that designated public bodies and designated private bodies must develop and implement plans and strategies to align their laws and policies with subsection (1) within two years of being designated. Vodacom respectfully submits that consideration should be given to the fact that the pool of economically active, suitably skilled and qualified women may be insufficient to achieve the prescribed target.

## **2.7 Sections 11 and 12**

Vodacom appreciates the specific reference to the empowerment of women in rural area and women with disabilities. However, further guidelines are required as to what the expectations would be for designated private bodies in respect of empowerment of rural women and women with disabilities.

## **2.8 Section 13 Powers of the Minister**

This section provides for the Minister to promote and coordinate, in consultation with public and private designated bodies, the achievement of women empowerment and substantive gender equality by developing frameworks which require the development and implementation of plans and strategies by designated public and private bodies, collect and analyse information, collaborate and undertake research to promote and improve gender equality. Vodacom submits that the Minister may not have sufficient resources to meet the objective of the Ministerial responsibility. The WEGE Bill only makes provision for delegation within the department and not for inter departmental delegation which may assist the Minister to meet the objectives of the WEGE Bill. It may be necessary for Parliament to establish a structure in terms of the Intergovernmental Relations Framework Act, 2005 to facilitate the interdepartmental compliance with the WEGE Bill.

## **2.9 Section 14 Guidance by the Minister**

The Minister may provide guidance to the designated public bodies and designated private bodies to promote women empowerment and gender equality. However, it is unclear what "guidance" would

entail or how the designated bodies would be required to implement or respond to Ministerial guidance or whether it will be obliged to follow such guidance.

#### **2.10 Section 15 Gender Units and Accountability**

This section provides that the Accounting Officers of the designated public bodies and designated private bodies are accountable for implementing gender mainstreaming and women empowerment. The extent of the meaning of “accountability” is unclear, as well as the consequences should the accounting officers fail to implement gender mainstreaming.

#### **2.11 Section 16 Enforcement**

Vodacom submits that further clarity should be provided regarding the meaning of “any dispute resolution mechanisms” as well as the consequences of non-compliance. It is unclear if the decisions of the dispute resolution mechanisms will be regarded as precedents and if so, in which tribunal the decisions would be enforceable.

#### **General**

The Minister may require designated bodies to submit reports on its implementation of the WEGE Bill. Vodacom respectfully submits that this will result in a duplication of administrative functions as employers are already required to submit various reports in terms of the Employment Equity Act as well as the Broad Based Black Economic Empowerment Act. Further reports would create an additional costly administrative burden for employers. Further guidance should be provided as to what criteria the Minister would consider when reports are evaluated. It is unclear how the various reports would contribute to the social and economic welfare and empowerment of women. Would business be required to consolidate the various reports?

Vodacom submits that the WEGE Bill is also likely to be found to be unconstitutional because section 3(e) of WEGE Bill provides for a “minimum of 50 % representation of women” which implies that more than 50% representivity of women is required. This would clearly be a contravention of the Equality Clause contained in the Constitution. Further, the Constitution requires gender equality and not mandatory quotas.

Vodacom appreciates the opportunity to make written submissions and is committed to gender equality and the eradication of any form of discrimination.