

MEMORANDUM ON THE OBJECTS OF THE FUND-RAISING AMENDMENT BILL, 2020

1. PURPOSE OF BILL

The Fund-raising Amendment Bill ("the Bill") aims to rationalise the Fund-raising Act, 1978 (Act No. 107 of 1978) ("the principal Act"), by consolidating the Disaster Relief Fund, the Refugee Relief Fund, the Social Relief Fund and the State President's Fund into the Disaster Relief and National Social Development Fund, so as to focus on proactive mitigations of disasters and promote the social development of communities. The consolidation of the Funds will streamline administrative processes, and enable more efficient services to poor communities and reduce costs.

2. SUMMARY OF PROVISIONS OF BILL

- 2.1 Clause 1 of the Bill seeks to amend the definition of "Minister" to remove an obsolete reference in section 1 of the principal Act.
- 2.2 Clause 2 of the Bill seeks to amend section 17 of the principal Act. The proposed amendment mainly intends to reduce the maximum number of members of a board established under the principal Act to administer a fund from 15 to nine.
- 2.3 Clause 3 of the Bill seeks to amend section 18 of the principal Act to make provision for the objects of the Disaster Relief and National Social Development Fund which consolidates the funds that it replaces in the principal Act.
- 2.4 Clause 4 of the Bill seeks to amend section 20 of the principal Act in order to empower the Minister to give directions to a board in respect of disbursement of funds and to ensure that a board acts in accordance with ethical principles.

- 2.5. Clause 5 of the Bill seeks to amend section 22 of the principal Act mainly to provide for the financial management and control of the funds established in the principal Act in accordance with the Public Finance Management Act, 1999 (Act No. 1 of 1999).
- 2.6. Clause 6 of the Bill seeks to substitute section 25 of the principal Act. The proposed substitution seeks to further provide for the administrative work of the boards and for disbursement of funds managed by the boards established in the principal Act.
- 2.7. Clause 7 of the Bill seeks to insert section 25A in the principal Act in order to provide for the discontinuation and transfer of certain funds. The inserted section 25A provides that, as from the effective date, which is the date of commencement of section 7 of the Fund-raising Amendment Act, 2020—
- (a) the following funds established under section 16 of the principal Act cease to exist:
 - (i) The Refugee Relief Fund;
 - (ii) the State President's Fund; and
 - (iii) the Social Relief Fund;
 - (b) the Disaster Relief Fund established under section 16(a) of the principal Act continues to exist under the name of the Disaster Relief and National Social Development Fund;
 - (c) all amounts credited to any fund referred to in paragraph (a), immediately before the effective date, vest in the Disaster Relief and National Social Development Fund;
 - (d) any board established by the Minister in terms of section 17 and responsible for managing a fund referred to in paragraph (a) is dissolved; and
 - (e) subject to paragraph (c), all liabilities, assets and rights existing as well as accruing of the funds referred to in paragraph (a) must devolve upon the Department of Social Development.

- 2.8. Clause 8 of the Bill seeks to amend section 36 of the principal Act in order to further provide for the making of regulations.
- 2.9. Clause 9 of the Bill provides for the short-title and commencement of the Act. It will be noted that the clause commencement provides for different commencement dates in respect of the sections of the Act to be proclaimed so as to cater for the bringing into operation of, for instance, the aforesaid section 7 of the Fund-raising Amendment Act, 2020, at a later date to enable the Department to prepare for the implementation thereof.

3. DEPARTMENT/ BODIES/ PERSONS CONSULTED

- 3.1 The Presidency, National Treasury, Department of International Relations and Cooperation, Department of Cooperative Governance and Traditional Affairs, Department of Defence and Military Veterans, Department of Home Affairs, Black Sash, all nine provincial Departments of Social Development and the South African Social Security Agency were consulted and supported the Bill.
- 3.2 The Bill was published in *Gazette* No. 40861, under Notice No. 469 of 26 May 2017 for public comments for a period of 30 days.

4. FINANCIAL IMPLICATIONS FOR STATE

- 4.1 The existing funds under the Fund Raising Act will be consolidated into one Disaster Relief and National Social Development Fund. The current values of the various relief funds are as follows:

Disaster Relief Fund	R28 000 000 (Active)
State President's Fund	R40 741 682 (Dormant)
Refugee Relief Fund	R 640 408.03 (Dormant)
Social Relief Fund	R39 008 852 (Dormant)
Total	R108 391 03.06

- 4.2 The Board members will be remunerated from the Disaster Relief and Social Development Fund. In line with section 17(11) of the principal Act, the Board will be paid per sitting in accordance with the remuneration scale the Minister in concurrence with the Minister of Finance may determine.

5. PARLIAMENTARY PROCEDURE

- 5.1 The State Law Advisers and the Department of Social Development are of the opinion that the Bill should be dealt with in terms of the procedure prescribed by the provisions of section 76 of the Constitution since it falls within a functional area listed in Schedule 4 to the Constitution, namely “welfare services”.
- 5.2 The principles in the case of *Tongoane and Others v National Minister for Agriculture and Land Affairs and Others* 2010 (8) BCLR 741 (CC) are important when determining if a Bill ought to be tagged as either a section 75 or 76 Bill. The test laid down in that case for determining the procedure to be followed in enacting a Bill is whether the provisions of the Bill fall within a functional area listed in Schedule 4 or, in substantial measure, affect the interests of the provinces.
- 5.3 The tagging of the Bill requires firstly, considering all the provisions of the Bill and determining whether they substantially impact the interests of the provinces. Thereafter a consideration of whether or not the impact of these provisions is not so small as to be regarded as trivial must be carried out. The tagging of Bills before Parliament must be informed by the need to ensure that provinces fully and effectively exercise their appropriate role in the process of considering national legislation that substantially affects them.
- 5.4 The State Law Advisers are of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.