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## PROVINCIAL NOTICE

PREMIER'S OFFICE

PROVINCE OF THE EASTERN CAPE

**No. 36**

**10 November 1995**

### COMMISSION ON GENDER EQUALITY AND STATUS OF WOMEN BILL, 1995 (EASTERN CAPE)

The above-mentioned bill is hereby published in terms of Rule 127(2) of the rules of the Legislature of the Province of the Eastern Cape, for general information and comment.

Any person who wishes to comment or remark on the said bill must submit these in writing to the Permanent Secretary, Premier's Office, Province of the Eastern Cape, Private Bag X0047, Bisho, within 14 days of the date of publication hereof.

PROVINCE OF THE EASTERN CAPE

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**EASTERN CAPE COMMISSION ON  
GENDER EQUALITY AND STATUS OF  
WOMEN BILL, 1995**

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AS INTRODUCED

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# BILL

**To provide for the establishment and constitution of the Eastern Cape Commission on Gender Equality; to define the powers, functions and functioning of the Commission; and to provide for matters connected therewith.**

**BE IT ENACTED** by the Legislature of the Province of the Eastern Cape, as follows:-

## Definitions

1. In this Act, unless the context otherwise indicates -

"chairperson" and "deputy chairperson" means a person so designated in terms of section 2(2)(c);

"Commission" means the commission established by section 2;

"committee" means any committee established by the Commission in terms of section 9;

"Constitution" means the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993);

"Premier" means the Premier of the Province of the Eastern Cape;

"premises" includes land, any building or structure, or any vehicle, conveyance, ship, boat, vessel, aircraft or container;

"private dwelling" means any part of any building or structure which is occupied as a residence or any part of any building or structure or outdoor living area which is accessory to, and used wholly or principally for, the purposes of residence;

"Province" means the Province of the Eastern Cape;

"Provincial Gazette" means the Provincial Gazette of the Province of the Eastern Cape;

"Provincial Government" means the Provincial Government of the Province of the Eastern Cape;

"Provincial Legislature" means the Provincial Legislature of the Province of the Eastern Cape.

### Establishment and constitution of Commission

2. (1) There is hereby established a commission to be known as the Eastern Cape Commission on Gender Equality, which shall exercise such powers as may be conferred, or perform such functions and duties as may be imposed, upon it by or under this Act or any other law.

(2) (a) The Commission shall consist of 12 members one of whom shall be a person designated and appointed by the Provincial Legislature.

(b) The members of the Commission shall, subject to paragraph (a), be South African citizens appointed by the Premier from amongst persons who -

- (i) have demonstrated their commitment to the promotion of gender equality or the status of women;
- (ii) have relevant experience and knowledge in matters connected with the objects of the Commission;
- (iii) are not members of the National Assembly, the Senate or any Provincial Legislature; and
- (iv) are not employed as public servants under any law.

(c) When determining who shall serve on the Commission the Premier shall ensure that its composition reflects that it is widely representative of the diverse interests of all the people resident within the Province.

(d) The appointment of a member of the Commission shall not be effective until it has been confirmed by resolution of the Provincial Legislature.

(e) The Premier shall designate two of the members as chairperson and deputy chairperson of the Commission, respectively.

(3) The members of the Commission may be appointed as part-time or full-time members and shall hold office for a fixed term of 5 years: Provided that not less than 3 and not more than 6 members shall be appointed on a full-time basis.

(4) A member of the Commission whose term of office has expired shall be eligible for reappointment.

### Accountability

3. The Commission shall, in respect of the exercise and performance of its powers, functions and duties, be accountable to the Provincial Legislature.

### Termination of appointment

4. (1) The appointment of a member of the Commission may, subject to the approval of the Provincial Legislature, be terminated by the Premier at any time if, in the opinion of the Premier, there are good reasons for doing so.

(2) If a member of the Commission dies or vacates his or her office under subsection (1) or otherwise, the Premier shall, subject to the provisions of this Act, appoint any other person to hold office for the unexpired portion of the period for which such member was appointed.

(3) A member of the Commission may resign by giving 3 months notice to the Premier of his or her intention to do so.

### Objects of Commission

5. (a) The objects of the Commission shall be to promote gender equality and the status of women and shall, subject to the provisions of this Act or any other law, advise and make recommendations to the Provincial Legislature and the Provincial Government on any laws or proposed law or on any other matter having a bearing on, or which affects, gender equality, the status of women or any other matter connected therewith or incidental thereto.

(b) For the purposes of paragraph (a) "laws" or "law" shall include customary law, any other law having a bearing on customary law or any other practice or usage having the force of law.

### Powers and functions of Commission

6. (1) In order to achieve the objects mentioned in section 5, the Commission, with regard to any matter pertaining to those objects -

(a) shall monitor and review policies and practices of -

- (i) organs of State at any level;
- (ii) statutory bodies or functionaries;
- (iii) public bodies and authorities; and
- (iv) private businesses and institutions,

in order to promote gender equality or the status of women and may make any recommendations that the Commission deems necessary;



- (b) shall develop and conduct -
  - (i) information programmes; and
  - (ii) education programmes,  
to foster public understanding of matters pertaining to  
the promotion of gender equality or the status of women and the role and  
activities of the Commission;
- (c) shall evaluate and monitor the application of any laws (including  
customary law or any other practice or usage having the force of law)  
applicable in the Republic of South Africa and the Province which affect  
gender equality or the status of women and make any recommendations  
deemed necessary by the Commission to the relevant legislative body;
- (d) shall investigate of its own accord or on receipt of a complaint, any  
gender related issues or issues pertaining to the status of women and shall  
endeavour to -
  - (i) resolve any dispute on matters pertaining to its objects; or
  - (ii) rectify any act or omission,  
by negotiation: Provided that if such a matter cannot be so resolved, the  
Commission shall refer the matter to any appropriate body, authority or  
person for mediation,  
conciliation, arbitration or further negotiation, whatever may be  
appropriate;
- (e) shall maintain close liaison with international, South African or  
provincial commissions, institutions, bodies or authorities with similar  
objectives in order, to foster common policies and practices or promote  
co-operation in relation to the handling of complaints in cases of  
overlapping jurisdiction;
- (f) may recommend to the appropriate legislative body the adaptation of  
existing or proposed legislation which would promote gender equality or  
the status of women;
- (g) shall monitor and review compliance with international conventions,  
covenants and charters relating to the objects of the Commission by -
  - (i) any organ of State at any level;
  - (ii) statutory bodies or functionaries;
  - (iii) public bodies and authorities; and
  - (iv) private businesses and institutions;

- (h) shall prepare and publish reports for consideration by the Provincial Legislature pertaining to any convention, covenant or charter relating to the objects of the Commission;
- (i) shall liaise and interact with any organisation which actively promotes gender equality or the status of women, other sectors of civil society or with any other commission, body or institution in order to further the objects of the Commission;
- (j) may conduct or cause to be conducted any research to further the objects of the Commission;
- (k) may consider such recommendations, suggestions and requests concerning the promotion of gender equality or the status of women as it may receive from any person; and
- (l) may do anything and take any decision which is necessary in order to give effect to section 5 and this section.

(2) All organs of State, including any statutory body or functionary, shall afford the Commission such assistance as may be reasonably required for the effective exercise of its powers and performance of its functions.

(3) The Commission may, at any time, refer for consideration either to the Premier or the Provincial Legislature any matter relating to the exercise of its powers or the performance of its functions.

(4) The Commission may assign specific tasks and responsibilities to each one of the members, including tasks relating to the monitoring of certain bodies, departments or institutions.

#### Investigations by Commission

7. (1) The procedure to be followed in conducting an investigation contemplated in section 6 shall be determined by the Commission with due regard to the circumstances of each case.

(2) The Commission shall from time to time by notice in the Provincial Gazette make known the particulars of the procedure which it has determined in terms of subsection (1).

(3) The Commission may direct that any person or category of persons or all persons the presence of whom is not desirable, shall not be present at the proceedings during the investigation or any part thereof.

(4) For the purposes of conducting an investigation contemplated in section 6, the Commission may -

- (a) through a member of the Commission, require from any person such particulars and information as may be reasonably necessary in connection with any investigation;
  - (b) require any person by notice in writing under the hand of a member of the Commission, addressed and delivered by an officer of the Commission, in relation to an investigation, to appear before it at a time and place specified in such notice and to produce to it all articles or documents in the possession or custody or under the control of any such person and which may be necessary in connection with that investigation: Provided that such notice shall contain the reasons why such person's presence is needed and why any such article or document should be produced;
  - (c) through a member of the Commission, administer an oath to or take an affirmation from any person referred to in paragraph (b), or any person present at the place referred to in paragraph (b), irrespective of whether or not such person has been required under the said paragraph (b) to appear before it, and question him or her under oath or affirmation in connection with any matter which may be necessary in connection with that investigation.
- (5) (a) Any person questioned under subsection (4) shall, subject to the provisions of paragraph (b) and subsections (6) and (7) -
- (i) be compelled to answer all questions put to him or her regarding any fact or matter connected with the investigation of the Commission notwithstanding that the answer may incriminate him or her;
  - (ii) be compelled to produce to the Commission any article or document in his or her possession or custody or under his or her control which may be necessary in connection with that investigation.
- (b) A person referred to in paragraph (a) shall only be competent and compelled to answer a question or be compelled to produce any article or document contemplated in that paragraph if -
- (i) the Commission, after consultation with the attorney-general who has jurisdiction, issues an order to that effect;
  - (ii) the Commission is satisfied that to require such information from such person is reasonable, necessary and justifiable in an open and democratic society based on freedom and equality; and
  - (iii) in the Commission's judgement, such person has refused or is likely to refuse to answer a question or to produce any article or document on the basis of his or her privilege against self-incrimination.



(6) (a) Any incriminating answer or information obtained or incriminating evidence directly or indirectly derived from questioning in terms of subsection (4) shall not be admissible as evidence against the person concerned in criminal proceedings in a court of law or before any body or institution established by or under any law: Provided that incriminating evidence arising from such questioning shall be admissible in criminal proceedings where the person stands trial on a charge of perjury.

(b) Subject to the provisions of subsection (5)(a)(i), the law regarding privilege as applicable to a witness summoned to give evidence in a criminal case in a court of law shall apply in relation to the questioning of a person in terms of subsection (4).

(7) Any person appearing before the Commission in terms of subsection (4) may be assisted at such examination by an advocate or an attorney, or both, and shall be entitled to peruse such of the documents or records referred to in subsection (4)(b) as are reasonably necessary to refresh his or her memory.

(8) If it appears to the Commission during the course of an investigation that any person is being implicated in the matter being investigated, the Commission shall afford such person an opportunity to be heard in connection therewith by way of the giving of evidence or the making of submissions and such person or his or her legal representative shall be entitled, through the Commission, to question other witnesses, determined by the Commission, who have appeared before the Commission in terms of this section.

#### **Entering and search of premises and attachment and removal of articles**

8. (1) Any member of the Commission or a police officer, authorised thereto by a member of the Commission, may, subject to the provisions of this section, for the purposes of an investigation, enter any premises on or in which anything connected with that investigation is or is suspected to be.

(2) The entry and search of any premises under this section shall be conducted with strict regard to decency and order, which shall include regard to -

- (a) a person's right to respect for and protection of his or her dignity;
- (b) the right to freedom and security of the person; and
- (c) the right to his or her personal privacy.

(3) A member or police officer contemplated in subsection (1) may, subject to the provisions of this section -

- (a) inspect and search the premises referred to in that subsection, and there make such enquiries as he or she may deem necessary;
- (b) examine any article or document found on or in the premises;

- (c) request from the owner or person in control of the premises or from any person in whose possession or control that article or document is, information regarding that article or document;
- (d) make copies of, or take extracts from, any book or document found on or in the premises;
- (e) request from any person whom he or she suspects of having the necessary information, an explanation regarding that article or document;
- (f) attach anything on or in the premises which in his or her opinion has a bearing on the investigation concerned;
- (g) if he or she wishes to retain anything on or in the premises contemplated in paragraph (f) for further examination or for safe custody, against the issue of a receipt, remove it from the premises: Provided that any article that has been so removed, shall be returned as soon as possible after the purpose for such removal has been accomplished.

(4) Any person from whom information is required in terms of subsection (3)(a), (c) and (e) may be assisted at such enquiry by an advocate or an attorney, or both and shall at the commencement of such enquiry be so informed.

(5) (a) Subject to the provisions of subsection (6), the premises referred to in subsection (1) shall only be entered by virtue of an entry warrant issued by a magistrate, or judge of the Supreme Court, if it appears to such magistrate or judge from information on oath that there are reasonable grounds for believing that any article or document, which has a bearing on the investigation concerned, is in the possession or under the control of any person or on or in any premises within such magistrate's or judge's area of jurisdiction.

(b) Subject to the provisions of subsection (6), the functions referred to in subsection (3) shall only be performed by virtue of a search warrant issued by a magistrate, or judge of the Supreme Court, if it appears to such magistrate or judge from information on oath that there are reasonable grounds for believing that an article or document referred to in paragraph (a) is in the possession or under the control of any person or on or in any premises within such magistrate's or judge's area of jurisdiction.

(c) A warrant issued in terms of this subsection shall authorise any member of the Commission or a police officer to perform the functions referred to in subsection (3) and shall to that end authorise such person to enter and search any premises identified in the warrant.

(d) A warrant issued in terms of this subsection shall be executed by day, unless the person issuing the warrant in writing authorises the execution thereof by night at times which are reasonable in the circumstances.

(e) A warrant issued in terms of this subsection may be issued on any day and shall be of force until -

- (i) it is executed; or

- (ii) it is cancelled by the person who issued it or, if such person is not available, by any person with like authority; or
- (iii) the expiry of one month from the day of its issue; or
- (iv) the purpose for the issuing of the warrant has lapsed, whichever may occur first.

(f) A person executing a warrant under this section shall, at the commencement of such search, hand to the person referred to in the warrant or the owner or the person in control of the premises, if such a person is present, a copy of the warrant: Provided that, if such person is not present, he or she shall affix a copy of the warrant to the premises at a prominent and visible place.

(g) A person executing a warrant under this subsection for an entry or search under subsection (6) shall, at the commencement of such execution, identify himself or herself and if that person requires authorization to execute a warrant under this section, the particulars of such authorization shall also be furnished.

(6) Subject to the provisions of subsections (2), (3), (4), (5)(g), (7) and (8), any member of the Commission or a police officer may, upon request by a member of the Commission, without an entry and search warrant, enter and search any premises, other than a private dwelling, for the purpose of attaching and removing, if necessary, any article or document -

- (a) if the person or persons who may consent to the entering and search for and attachment and removal of an article or document consents or consent to such entering, search, attachment and removal of the article or document concerned; or
- (b) if he or she, on reasonable grounds, believes -
  - (i) that a warrant will be issued to him or her under subsection (5) if he or she applies for such warrant; and
  - (ii) that the delay in obtaining such a warrant would defeat the object of the entry and search.

(7) An entry and search in terms of subsection (6) shall be executed by day unless the execution thereof by night is justifiable and necessary.

(8) (a) A person who may lawfully under this section enter and search any premises may use such force as may be reasonably necessary to overcome any resistance against such entry and search of the premises, including the breaking of any door or window of such premises: Provided that such person shall first audibly demand admission to the premises and notify the purpose for which he or she seeks to enter and search such premises.

(b) The proviso to paragraph (a) shall not apply where the person concerned is on reasonable grounds of the opinion that any article or document which is the subject of the search may be destroyed or disposed of if the provisions of the said proviso are first complied with.

(9) If during the execution of a warrant in terms of section 8(5)(b) or a search in terms of section 8(6), a person claims that an article or document found on or in the premises concerned contains privileged information and refuses the inspection or removal of such article or document, the person executing the warrant or search shall, if he or she is of the opinion that the article or document contains information that has a bearing on the investigation and that such information is necessary for the investigation, request the registrar of the Supreme Court which has jurisdiction or his or her delegate, to attach and remove that article or document for safe custody until a court of law has made a ruling on the question whether the information concerned is privileged or not.

### Meetings of Commission

9. (1) The meetings of the Commission shall be held at the times and places determined by the Commission: Provided that the first meeting shall be held at the time and place determined by the Premier.

(2) If the chairperson is absent from a meeting of the Commission, the deputy chairperson shall act as chairperson, and if both the chairperson and deputy chairperson are absent, the members present shall elect one person from their number to preside at that meeting.

(3) The quorum for any meeting of the Commission shall be a majority of the total number of members of the Commission.

(4) The decision of the majority of the members of the Commission present at a meeting thereof shall be the decision of the Commission, and in the event of an equality of votes concerning any matter, the member presiding shall have a casting vote in addition to his or her deliberative vote.

(5) The Commission shall determine its own procedure and shall cause minutes of its proceedings to be kept.

(6) Any meeting of the Commission shall be open to the public.

### Committees of Commission

10. (1) The Commission may establish one or more committees consisting of one or more members of the Commission designated by the Commission and one or more other persons, if any, whom the Commission may appoint for that purpose and for any period determined by it.

(2) The Commission shall designate a chairperson for every committee and, if necessary, a deputy chairperson.

(3) Subject to the directions of the Commission, a committee -

(a) may exercise those powers of the Commission that the Commission confers on it; and

(b) shall perform those functions of the Commission that the Commission assigns to it.

(4) On completion of any task assigned to it in terms of subsection (3), a committee shall submit a written report thereon to the Commission.

(5) The Commission may at any time dissolve any committee.

(6) The provisions of section 9 shall *mutatis mutandis* apply to a meeting of a committee.

(7) The Commission shall not be absolved from the responsibility of performing any of the functions entrusted to any committee in terms of this section.

#### **Expenditure and finances**

11. (1) (a) Expenditure incidental to the exercise and performance of the powers and functions of the Commission in terms of this Act or any other law shall be defrayed from moneys appropriated by the Provincial Legislature.

(b) The defrayal of expenditure in connection with matters provided for in this Act, shall be subject to -

(i) requests being received *mutatis mutandis* in the form as prescribed for the budgetary processes of departments of State; and

(ii) the provisions of the Provincial Exchequer Act, 1994, and the regulations and instructions issued in terms thereof, as well as the Auditor-General Act, 1989 (Act No. 52 of 1989).

(2) The person contemplated in section 18(2) -

(a) shall be responsible for the management of, and administrative control over, staff appointed in terms of section 18(1) and shall for those purposes be accountable to the Commission;

(b) shall, subject to the Provincial Exchequer Act, 1994 (Act No. 1 of 1994)



- (i) be charged with the responsibility of accounting for money received or paid out for, or on account of, the Commission;
  - (ii) cause the necessary accounting and other related records to be kept;
- and
- (c) may exercise the powers and shall perform the functions which the Commission may from time to time confer upon or assign to him or her in order to achieve the objects of the Commission, and shall for that purpose be accountable to the Commission.
- (3) The records referred to in subsection (1)(b)(ii) shall be audited by the Auditor-General.

#### **Compensation for certain expenses and damage**

12. (1) Subject to the provisions of subsection (2) and section 19, the Commission may, with the specific or general concurrence of the member of the Executive Council responsible for financial matters, order that the expenses or a portion of the expenses incurred by any person in the course of or in connection with an investigation by the Commission, be paid from State funds.

(2) Any person appearing before the Commission in terms of this Act who is not in the public service, shall be entitled to receive from moneys appropriated by law for such purpose, as witness fees, an amount equal to the amount which he or she would have received as witness fees had he or she been summoned to attend criminal proceedings in the Supreme Court held at the place mentioned in the written notice in question.

(3) If a person has suffered damage in the course of the execution of an entry or search warrant or an entry or search contemplated in this Act, under circumstances where no person responsible for the premises was present at the time of the causing of the damage and the damage was caused by force used to gain such entry, the Commission may order that such damage be made good from State funds.

#### **Independence and impartiality**

13. (1) A member of the Commission or a member of the staff of the Commission shall serve impartially and independently and exercise or perform his or her powers and functions in good faith and without fear, favour, bias or prejudice and subject only to the Constitution, the provisions of this Act and any other law.

(2) No organ of State and no member or employee of an organ of State nor any person shall interfere with, hinder or obstruct, the Commission, any member thereof or a person appointed under this Act in the exercise or performance of its, his or her powers and functions.

(3) All organs of State, including any statutory body or functionary, shall afford the Commission such assistance as may be reasonably required for the protection of the independence, impartiality and dignity of the Commission.

(4) No person shall conduct an investigation or render assistance with regard thereto in respect of a matter in which he or she has any pecuniary or any other interest which might preclude him or her from exercising or performing his or her powers and functions in a fair, unbiased and proper manner.

(5) If any person fails to disclose an interest contemplated in subsection (4) and conducts or renders assistance with regard to an investigation, while having an interest so contemplated in the matter being investigated, the Commission may take such steps as it deems necessary to ensure a fair, unbiased and proper investigation.

#### Reports by Commission

14. (1) The Commission may, subject to the provisions of subsection (3), in the manner it deems fit, make known to any person any finding, point of view or recommendation in respect of a matter investigated by it.

(2) The Commission shall report in writing to the Premier at least once every year on its activities, and the Premier shall cause such report to be tabled promptly in the Provincial Legislature: Provided that the Commission may at any time it deems it necessary submit a report to the Premier and the Provincial Legislature.

(3) The findings of an investigation by the Commission shall, when it deems it fit, but as soon as possible, be made available to the complainant and any person implicated thereby.

#### Legal proceedings against Commission

15. (1) The Commission shall be a juristic person.

(2) The State Liability Act, 1957 (Act No. 20 of 1957), shall apply *mutatis mutandis* in respect of the Commission, and in such application a reference in that Act to "the Minister of the department concerned" shall be construed as a reference to the chairperson.

(3) No -

(a) member of the Commission;

(b) member of the staff of the Commission;

(c) person contemplated in section 19(5); or

(d) member of any committee, not being a member of the Commission,

shall be liable in respect of anything reflected in any report, finding, point of view or recommendation made or expressed in good faith and submitted to the Provincial Legislature or made known in terms of this Act.

### Offences and penalties

16. A person who -

- (a) without just cause refuses or fails to comply with a notice under section 7(4)(b) or refuses to take the oath or to make an affirmation at the request of the Commission in terms of section 7(4)(c) or refuses to answer any question put to him or her under section 7(4)(c) or refuses or fails to furnish particulars or information required from him or her under that section;
- (b) after having been sworn or having made an affirmation contemplated in section 7(4)(c), gives false evidence before the Commission on any matter, knowing such evidence to be false or not knowing or believing it to be true;
- (c) wilfully interrupts the proceedings at an investigation or misbehaves himself or herself in any manner in the place where such investigation is being held;
- (d) defames the Commission or a member of the Commission in his or her official capacity;
- (e) in connection with any investigation does anything which, if such investigation were proceedings in a court of law, would have constituted contempt of court;
- (f) anticipates any findings of the Commission regarding an investigation in a manner calculated to influence its proceedings or such findings;
- (g) does anything calculated to improperly influence the Commission in respect of any matter being, or to be, considered by the Commission in connection with an investigation;
- (h) contravenes any provision of section 13(2);
- (i) fails to afford the Commission the necessary assistance referred to in section 6(2) or 13(3);
- (j) acts contrary to the authority of an entry warrant issued under section 8(5)(a) or a search warrant issued under section 8(5)(b) or, without being authorised thereto under section 8, enters or searches any premises or attaches any article or document or performs any act contemplated in section 8(3),

shall be guilty of an offence and liable on conviction to a fine not exceeding R2 000 or to imprisonment for a period not exceeding 6 months.

### Seat of Commission

17. (1) Bisho shall be the seat of the Commission.

(2) The Commission may establish such offices at it may consider necessary in any other area of the Province to enable it to exercise its powers and to perform its duties and functions conferred on or assigned to it by this Act or any other law.

### Secretariat and accounting responsibilities

18. (1) The administrative functions of the Commission shall be performed by officers in the service of the Province designated thereto by the Director-General: Eastern Cape Provincial Administration and seconded in accordance with the laws governing the public service or by officers appointed by the Commission on such conditions as it may determine subject to the approval of the Premier.

(2) The Commission shall designate one of its officers as an accounting officer.

### Remuneration payable to members and financial matters

19. (1) (a) There shall be paid to any member of the Commission who is not in the full-time service of the State, while he or she is engaged with work connected to the business of the Commission, such remuneration or fees and travelling and subsistence allowances as may be determined by the Premier, in consultation with the Member of the Executive Council responsible for financial matters.

(b) The remuneration of any member shall not be reduced whilst he or she is in office.

(2) There is hereby established a Gender Commission Fund which shall be administered by the Commission and into which donations received from any source shall be deposited.

(3) The Premier, in consultation with the Member of the Executive Council responsible for financial matters and the Standing Committee on Gender Equality, shall prescribe the rules which will govern the control of the Fund and the utilisation, and accounting in respect, of moneys in the Fund and other assets.

(4) The Commission may, in the exercise of its powers or the performance of its functions under this Act or any other law, for specific projects enter into contracts for the services of persons having technical or specialised knowledge of any matter relating to the work of the Commission and determine the remuneration, including reimbursement for travelling, subsistence and other expenses, of such persons.

### **Regulations**

20. (1) The Premier may make regulations which he or she may regard as necessary for the better achievement of the objects of this Act.

(2) Regulations made under subsection (1) may, for a contravention thereof, prescribe penalties not exceeding a fine of R2 000 or to imprisonment for a period not exceeding 6 months.

(3) The Premier shall, not later than 14 days prior to the promulgation of the regulations contemplated in subsection (1), publish or advertise such regulations for comment in the public media having a wide circulation, or listenership, in the Province and in languages widely used in the Province.

### **Administration of Act**

21. This Act shall be administered by the Premier.

### **Standing Committee on Gender Equality**

22. The Provincial Legislature shall, in terms of its rules, establish a standing committee on gender equality.

### **Short title and commencement**

23. This Act shall be called the Eastern Cape Commission on Gender Equality and Status of Women Act, 1995.



**PROVINCIAL LEGISLATURE OF THE PROVINCE OF THE EASTERN CAPE**  
**EXPLANATORY MEMORANDUM OF THE PROVISIONS OF THE EASTERN CAPE**  
**COMMISSION ON GENDER EQUALITY AND STATUS OF WOMEN BILL, 1995**

**PART I**

**(Principles)**

Section 119 Constitution of the Republic of South Africa Act, 1993 (Act No. 200 of 1993), (hereinafter referred to as the Constitution) provides for the establishment of a Commission on Gender Equality which will promote, advise and make recommendations to Parliament or any other Legislature with regard to any laws or proposed legislation which affect gender equality and the states of women. The Constitution breaks new ground in that for the very first time discrimination of whatever kind has been prohibited. In this regard reference is made to section 8 of the Constitution which reads as follows:

"8. (1) Every person shall have the right to equality before the law and to equal protection of the law.

(2) No person shall be unfairly discriminated against, directly or indirectly, and, without derogating from the generality of this provision, on one or more of the following grounds in particular: race, gender, sex, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture or language.

(3) (a) This section shall not preclude measures designed to achieve the adequate protection and advancement of persons or groups or categories of persons disadvantaged by unfair discrimination, in order to enable their full and equal enjoyment of all rights and freedoms.

(b) Every person or community dispossessed of rights in land before the commencement of this Constitution under any law which would have been inconsistent with subsection (2) had that subsection been in operation at the time of the dispossession, shall be entitled to claim restitution of such rights subject to and in accordance with sections 121, 122 and 123.

(4) *Prima facie* proof of discrimination on any of the grounds specified in subsection (2) shall be presumed to be sufficient proof of unfair discrimination as contemplated in that subsection, until the contrary is established."

It should also be noted that the Constitution provides for the protection and respect for his dignity.

This section not only promotes equality but also provides for measures to be taken to address discriminatory practices of the past.

The Constitution does not make specific provision for the establishment of provincial commissions on gender equality. It is however implicit from section 126 of the Constitution as read with Schedule 6 thereto that Provinces do have the authority designed to promote gender equality. The proposed Eastern Cape Commission on Gender Equality will have the power to interact not only with other Provincial Commissions but also with the national Commission. Appropriate communication mechanisms will be worked out by the Commissions themselves. The proposed establishment of Provincial Commissions has been discussed by South Africans within a number of National forums over the past few months and there is consensus on the need for their establishment.

For many decades, patriarchy Colonialism, racism and apartheid have subordinated and oppressed women within political, economic and social life. The patriarchal order confines women to the domestic arena and reserves for men the area where political power and authority reside. Society has been organised and its institutions structured for the primary benefit of men. Recognising their shared oppression, women want to control their lives and are committed to seizing this historic moment under the new Constitution to ensure effective equality in the new South Africa.

Discrimination is based on laws which were introduced, some time ago dating back to the 19th Century. Other forms of discrimination are based on practices which have developed over time. The Provincial Legislature has the competency to deal with a number of issues which have a bearing on discrimination and inequality such as in the field of customary law. All the measures which will be introduced flow not only from the Constitution but also from international law which prohibits discrimination on the grounds of sex.

The objectives of the Commission are:

- to bring about gender equality;
- to ensure that concerns of women and their needs are addressed;
- to promote their development and empowerment in their social, political and economic life and status;
- to strive for the effective representation of women in all structures of society, such representations should reflect the proportion of women in the populace and their needs through affirmative action;
- to make recommendations and give advice on any laws which affect gender equality and the states of women;
- educate women about their legal status;
- ensure that the discriminatory effect of customary law is addressed.

The Commission has been given very wide powers in order to ensure that it succeeds in giving effect to its objectives. The Bill emphasizes that the primary responsibility of the Commission is to promote gender equality and the states of women.

## PART II

### (Clause by clause analysis)

- Clause 1.—definitions.
- Clause 2.—provides for the establishment and constitution of the Eastern Cape Commission on Gender Equality.
- Clause 3.—deals with accountability of the Commission in the exercise and performance of its powers, functions and duties.
- Clause 4.—deals with termination of appointment of members of the Commission.
- Clause 5.—deals with the objects of the Commission.
- Clause 6.—deals with the powers and functions of the Commission.
- Clause 7.—deals with the procedure to be followed in conducting investigations by the Commission.
- Clause 8.—deals with entering and search of premises and attachment and removal of articles by any member of the Commission or a police officer.
- Clause 9.—deals with the times and places of meetings of the Commission.
- Clause 10.—deals with the establishment of committees.
- Clause 11.—deals with expenditure and finances of the Commission.
- Clause 12.—deals with compensation for certain expenses incurred by members of the Commission in the course of or in connection with an investigation. It also provides for compensation from State funds for any damage caused by force used to gain entry in any premises.
- Clause 13.—deals with independence and impartiality of the Commission.
- Clause 14.—deals with the reports by the Commission.
- Clause 15.—deals with legal proceedings against Commission.
- Clause 16.—deals with offences and penalties.
- Clause 17.—identifies the seat of the Commission.
- Clause 18.—identifies persons who will perform administrative as well as accounting responsibilities of the Commission.
- Clause 19.—deals with remuneration or fees and allowances payable to members of the Commission.
- Clause 20.—empowers the Premier to make regulations.
- Clause 21.—deals with administration of Act.
- Clause 22.—deals with the establishment of a standing committee on Gender Equality by the Legislature.
- Clause 23.—short title and date of commencement.



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