REPUBLIC OF SOUTH AFRICA

INDEPENDENT MUNICIPAL DEMARCATION AUTHORITY BILL

(As introduced in the National Assembly (proposed section 76)); (explanatory summary of Bill and prior notice of its introduction published in Government Gazette No. 46552 of 15 June 2022)
(The English text is the official text of the Bill)

(MINISTER OF COOPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS)

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BILL

To provide for the establishment, functions and powers of the Independent Municipal Demarcation Authority; to provide for the criteria and procedures for the determination and redetermination of municipal boundaries; to provide for the delimitation of wards; to provide for the establishment of the Demarcation Appeals Authority; to provide for municipal capacity assessments; and to provide for matters incidental thereto.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

ARRANGEMENT OF SECTIONS

CHAPTER 1

DEFINITIONS AND PURPOSE OF ACT

1. Definitions
2. Purpose of Act

CHAPTER 2

INDEPENDENT MUNICIPAL DEMARCATION AUTHORITY

Part 1

Establishment, status, functions and powers of Authority

3. Establishment of Authority
4. Status of Authority
5. Functions of Authority
6. Powers of Authority

Part 2

Board

7. Composition of Board
8. Responsibilities of Board
9. Qualifications of Board members
10. Appointment of Board members
11. Term of office, termination and resignation of Board member
12. Conditions of appointment of Board members
13. Chairperson and deputy chairperson
14. Meetings
15. Rules of procedure
16. Committees
17. Delegation of and instruction to exercise powers and perform functions by Board
18. Conduct of Board members

Part 3

Administration and staff

19. Chief Executive Officer
20. Conditions of employment of employees
21. Contracting for services

Part 4

Finances

22. Finances of Authority

CHAPTER 3

MUNICIPAL BOUNDARY DEMARCATION

Part 1

Criteria for determination or redetermination of municipal boundaries

23. Determination or redetermination of municipal boundary objectives
24. Factors to be taken into account
25. Determination of category of municipality

Part 2

Determination or redetermination of municipal boundary

26. Initiation of determination or redetermination of municipal boundary process
27. Notification of intention to consider request for determination or redetermination of municipal boundary
28. Conducting investigations on determination or redetermination of municipal boundary

Part 3

Public participation for determination or redetermination of municipal boundary

29. Public consultation for determination or redetermination of municipal boundary
30. Mechanisms, processes and procedures for public participation
31. Publication of and objection to determination or redetermination of municipal boundary
32. When determination or redetermination of municipal boundary takes effect

Part 4

Delimitation of wards

33. Delimitation of ward process
34. Number of wards
35. Criteria for delimitation of wards
36. Public participation in delimitation of wards
37. Publication of and objection to delimitation of wards

Part 5

Demarcation Appeals Authority

38. Establishment and constitution of Appeals Authority
39. Functions of Appeals Authority
40. Qualifications of members of Appeals Authority
41. Term of office of members of Appeals Authority
42. Chairperson and deputy chairperson of Appeals Authority
43. Appeals Authority proceedings
44. Conflicts and disclosure of interest by members of Appeals Authority
45. Service by member of Appeals Authority after expiry of term of office
46. Remuneration and benefits of members of Appeals Authority

CHAPTER 4

MUNICIPAL CAPACITY ASSESSMENTS

47. Municipal capacity assessments

CHAPTER 5

MISCELLANEOUS

48. Regulations and guidelines
49. Offences and penalties
50. Amendment of laws
51. Transitional arrangements
52. Short title and commencement

SCHEDULE

Laws amended

CHAPTER 1

DEFINITIONS AND PURPOSE OF ACT

Definitions

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

"Appeals Authority" means the Demarcation Appeals Authority established by section 38;

"Authority" means the Independent Municipal Demarcation Authority established by section 3;

"Board" means the Board of the Independent Municipal Demarcation Authority contemplated in section 7;

"capacity", in relation to a municipality, includes the administrative and financial management capacity and infrastructure that enables a municipality to collect revenue and to govern on its own initiative the local government affairs of its community;

''**Chief Executive Officer**'' means the person who is appointed in terms of section 19(1);

"committee" means a committee established in terms of section 16, and includes an investigating committee as contemplated in section 28;

"Constitution" means the Constitution of the Republic of South Africa, 1996;

"demarcation" means the determination or redetermination of municipal boundaries and the delimitation of wards;

"Electoral Commission" means the Electoral Commission established by section 3 of the Electoral Commission Act, 1996 (Act No. 51 of 1996);

"employee" is a person employed by the Authority and a person seconded thereto;

"financial year" means the financial year of the Authority, commencing on 1 April and ending on 31 March;

"local community" means a group of people living in an area directly or indirectly affected by a municipal boundary determination or ward delimitation;

"local house" means a local house of traditional and Khoi-San leaders provided for in section 50 of the Traditional and Khoi-San Leadership Act, 2019 (Act No. 3 of 2019);

"MEC for local government" means the Member of the Executive Council responsible for local government matters in a province;

"Minister" means the Minister responsible for local government;

"municipality" means a municipality contemplated in section 155(6) of the Constitution and section 2 of the Municipal Systems Act;

"municipal capacity assessment" means the assessment of the capacity of a municipality by the Authority to perform the functions and exercise the powers vested in the municipality, as contemplated in section 47;

"municipal financial year" means a financial year as defined in section 1 of the Local Government: Municipal Finance Management Act, 2003 (Act No. 56 of 2003);

"Municipal Structures Act" means the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998);
"Municipal Systems Act" means the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000);
"National House" means the National House of Traditional and Khoi-San Leaders established in terms of section 27 of the Traditional and Khoi-San Leadership Act, 2019 (Act No. 3 of 2019);
"organ of state" means an organ of state as defined in section 239 of the Constitution;
"political office", in relation to a political party or structure thereof, means—
(a) the position of chairperson, deputy chairperson, secretary, deputy secretary, treasurer or an elected or appointed decision-making position of a registered political party nationally or in any province, region or other area in which that party operates; or
(b) any position in a political party that is equivalent to a position mentioned in paragraph *(a)*, irrespective of the title designated to the position;
"Promotion of Administrative Justice Act" means the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000)**;**
"provincial house" means a provincial house of traditional and Khoi-San leaders as contemplated in section 49 of the Traditional and Khoi-San Leadership Act, 2019 (Act No. 3 of 2019);
"Public Finance Management Act" means the Public Finance Management Act, 1999 (Act No. 1 of 1999);
"this Act" includes the regulations; and
"traditional leadership" has the meaning ascribed to it in section 1 of the Traditional and Khoi-San Leadership Act, 2019 (Act No. 3 of 2019).

Purpose of Act

2. The purpose of this Act is to provide for the establishment of the Independent Municipal Demarcation Authority and set the criteria and procedures for the determination or redetermination of municipal boundaries and delimitation of wards by the Authority.

CHAPTER 2

INDEPENDENT MUNICIPAL DEMARCATION AUTHORITY

Part 1

Establishment, status, functions and powers of Authority

Establishment of Authority

3. (1) The Independent Municipal Demarcation Authority is hereby established.
(2) The Authority consists of the—
(a) Board appointed in terms of section 7; and
(b) the administration and staff as contemplated in section 19.

Status of Authority

4. The Authority—
(a) is a constitutional institution listed under Schedule 1 of the Public Finance Management Act and is subject to the Public Finance Management Act; and
(b) must be independent, impartial and perform its functions without fear, favour or prejudice.

Functions of Authority

5. The functions of the Authority are to—
(a) determine or redetermine municipal boundaries in accordance with the criteria provided for in this Act, legislation enacted in terms of Chapter 7 of the Constitution and any other applicable legislation;
(b) delimit wards for all municipalities that must have wards;

(c) render an advisory service in respect of matters provided for in this Act and other appropriate legislation; and
(d) conduct municipal capacity assessments.

Powers of Authority

6. The Authority may do all that is necessary or expedient to perform its functions effectively, which includes the powers to—
(a) determine its own staff establishment and appoint employees in posts on the staff establishment, having due regard to available funds;
(b) obtain, by agreement, the services of any person, including any organ of state, for the performance of any specific act or function;
(c) acquire or dispose of any right in or to property, but ownership in immovable property may be acquired or disposed of only with the consent of the Minister;
(d) open and operate its own bank account;
(e) perform legal acts, including acts in association with or on behalf of any other person or organ of state;
(f) institute or defend any legal action;
(g) collect and disseminate relevant information; and
(h) do anything that is necessary in terms of this Act in order to exercise any of its powers or perform any of its functions.

Part 2

Board

Composition of Board

7. (1) The Board consists of no fewer than seven and no more than 10 members appointed by the President in terms of section 10.
(2) The composition of the Board must—
(a) broadly reflect the composition of the South African society; and
(b) collectively represent a pool of knowledge concerning issues relevant to demarcation.

Responsibilities of Board

8. (1) The business and affairs of the Authority must be managed by the Board.
(2) The Board is responsible for the corporate governance of the Authority, including—
(a) steering the Authority and setting the strategic direction;
(b) approving policy and planning that give effect to the strategic direction;
(c) overseeing and monitoring the implementation and execution of policy and planning by the Authority; and
(d) ensuring accountability for the Authority's performance.
(3) The Board may exercise any other power and perform any other function that it is authorised to do in terms of this Act.

Qualifications of Board members

9. (1) A member of the Board must be a South African citizen and have the necessary relevant qualifications, experience and knowledge in relation to—
(a) local government; and
(b) any of the following:
(i) Development economics;
(ii) integrated development planning;
(iii) community development;
(iv) traditional leadership and traditional communities;
(v) local government and municipal administration;
(vi) municipal finance;
(vii) municipal services;
(viii) social or economic geography;
(ix) town and regional planning;
(x) legal and constitutional matters affecting local government;

(xi) land survey, cartography and geographic information systems;
(xii) public health care;
(xiii) transport planning; or
(xiv) information technology.

(2) The following persons are disqualified from becoming or remaining a member of the Board:

(a) An unrehabilitated insolvent;
(b) a person who is placed under curatorship;
(c) a person who is declared to be of unsound mind by a competent court having jurisdiction;
(d) a person who has been convicted of an offence and sentenced to imprisonment without the option of a fine for a period of not less than 12 months;
(e) a person holding a political office; or
(f) a full-time employee of an organ of state.

Appointment of Board members

10. (1) Before members of the Board are appointed, the Minister must—

(a) by notice in the *Gazette,* and in an advertisement circulating in a newspaper nationally, taking into account section 6(3)*(a)* of the Constitution—
(i) invite suitably qualified persons who are eligible to be members of the Board to apply for appointment as a member of the Board; and
(ii) request members of the public to nominate suitably qualified persons, who are eligible to be members of the Board for such appointment,
within the period and in the manner specified in the notice or advertisement; and

(b) after consultation with the President, establish a selection panel consisting of—
(i) a judge of the Constitutional Court designated by the Chief Justice, who must also be the convenor of the panel;
(ii) a person with specific knowledge of demarcation designated by the Minister after consultation with the MECs for local government;
(iii) a person with expert knowledge of demarcation designated by organised local government;
(iv) the Chairperson of the Commission for Gender Equality or a Commissioner of the Commission for Gender Equality designated by such Chairperson;
(v) the Chairperson of the Portfolio Committee in the National Assembly responsible for local government, or a member of the Portfolio Committee designated by such Chairperson;
(vi) the Chairperson of the Select Committee in the National Council of Provinces responsible for local government matters, or a member of the Select Committee designated by such Chairperson; and
(vii) the Chairperson of the National House, or a member of the National House designated by such Chairperson.

(2) For the purposes of any subsequent establishment of a selection panel during the term of the same Board, a person designated in terms of subsection (1)*(b)* remains designated until replaced by the designating functionary.

(3) The selection panel may determine its own procedure including its decision-making procedure which must be fair and transparent.

(4) The selection panel must compile a list of nominations and applications received, must consider such nominations and applications, and must from this list recommend suitably qualified persons to be appointed as members of the Board.

(5) The names of persons recommended to be appointed as Board members must be submitted to the Minister and must consist of three names in addition to the number of appointments that must be made.

(6) If the selection panel is unable to compile a list consisting of the required number of nominees, the procedure set out in subsections (1)*(a)*, (4) and (5) must be repeated, and applicants who applied in the first round—

(a) need not reapply; and
(b) must be considered when the list is compiled in the second round.

(7) The President must make the required number of appointments from the list and publish the names of appointed members of the Board in the *Gazette.*

(8) When there is a vacancy on the Board, the Minister must within 30 days of receiving the Board's written notification of the vacancy—

(a) recommend to the President to fill the vacancy from the additional names that were submitted to the President in terms of subsection (5); or

(b) initiate the process outlined in this section if none of the additional names referred to in subsection (5) is available to fill the vacancy.

Term of office, termination and resignation of Board member

11. (1)*(a)* A member of the Board is appointed for a term not exceeding five years, calculated from the date of appointment by the President, and such term may not exceed a period of six months after the commencement of the term of the next Municipal Council.

(b) When there is a vacancy on the Board, the President must appoint a new member, from the list of nominations received from the Minister, within a period of three months from the date on which that vacancy arose.

(2) When the term of a member of the Board expires, such member may, subject to subsection (3), be reappointed in accordance with the procedure provided for in section 10.

(3) A member of the Board may not hold office for a period of more than two consecutive terms.

(4) Members of the Board are appointed on a part-time basis, except for the Chairperson, whose appointment may either be full-time or part-time.

(5) A person ceases to be a member of the Board when that person—

(a) is no longer eligible under section 9 to be a member;

(b) resigns;

(c) is absent from three meetings of the Board without being granted leave of absence by the Chairperson;

(d) has completed his or her term of office; or

(e) is removed from office in terms of subsection (7).

(6) A member of the Board may resign by giving at least three months' written notice to the Minister, and the Minister may accept a shorter notice period.

(7) A member of the Board is regarded as having resigned if that member—

(a) accepts nomination for the National Assembly, the National Council of Provinces, a provincial legislature or a municipal council; or

(b) is a member of the National Assembly, a permanent delegate to the National Council of Provinces, a member of a provincial legislature or a member of a Municipal Council and fails to resign from such office within 30 days of having been appointed as a member of the Board.

(8) *(a)* Subject to the Promotion of Administrative Justice Act, the President may remove a member of the Board from office—

(i) for misconduct;

(ii) on account of continued ill-health;

(iii) on account of incompetence;

(iv) if he or she is no longer a fit and proper person; or

(v) on account of the Minister's loss of confidence in the member.

(b) A decision to remove a member of the Board on the ground of misconduct or incompetence must be based on a finding to that effect by an investigating tribunal appointed by the President.

(c) The President may suspend a member of the Board whilst the member is subject to an investigation contemplated in paragraph *(b)*.

Conditions of appointment of Board members

12. The Minister, with the concurrence of the Minister of Finance, must determine the conditions of appointment of the members of the Board, taking into account—

(a) the conditions of appointment of members of other institutions referred to in section 219(5) of the Constitution;

(b) the role, duties and responsibilities of a member of the Board;

(c) affordability in relation to the responsibilities of the Board; and

(d) the level of expertise and experience required for a member of the Board.

Chairperson and deputy chairperson

13. (1) The President appoints one member of the Board as Chairperson and another member as deputy chairperson of the Board.

(2) The Chairperson and the deputy chairperson of the Board hold office as Chairperson and deputy chairperson, respectively, for the duration of their term of office as members of the Board.

(3) The deputy chairperson of the Board acts as the Chairperson if the—

(a) Chairperson of the Board is absent or unable to perform the functions of Chairperson; or

(b) the office of Chairperson is vacant.

(4) The Chairperson is, for the purposes of the Public Finance Management Act, the executive authority of the Board.

Meetings

14. (1) The Chairperson of the Board decides when and where the meetings of the Board take place and must convene a meeting if a majority of the members of the Board requests the Chairperson in writing to convene such a meeting at a time and place set out in the request.

(2) The Chairperson of the Board presides at meetings of the Board but if the Chairperson is absent from the meeting the deputy chairperson presides: Provided that if both the Chairperson and the deputy chairperson are absent from a meeting, the members present must elect another member to preside at the meeting.

(3) The majority of the members of the Board in office constitutes a quorum for a meeting of the Board.

(4)*(a)* A question before the Board is decided by a supporting vote of at least the majority of the members of the Board.

(b) In the event where a majority vote cannot be reached because there is an equal amount of votes for and against a decision, the Chairperson of the meeting will have the casting vote.

Rules of procedure

15. (1) The Board must—

(a) determine the rules of procedure for conducting meetings; and

(b) keep minutes of its proceedings and decisions.

(2) The Board may, by notice in the *Gazette*, make rules regarding ancillary or incidental administrative or procedural matters that are necessary for the proper performance by the Board of its functions.

Committees

16. (1) The Board must establish the following committees:

(a) The Audit and Risk Governance Committee; and

(b) the Remuneration and Performance Committee.

(2) The Board may—

(a) establish one or more committees to assist the Board in the performance of its functions or the exercise of its powers; and

(b) dissolve a committee at any time.

(3) The Board—

(a) must determine the functions of a committee;

(b) must appoint the Chairperson and other members of a committee;

(c) may authorise a committee to co-opt advisory members within limits determined by the Board;

(d) may amend the composition of the committee from time to time; and

(e) may determine a committee's procedure.

(4) When appointing members to a committee, the Board is not restricted to members of the Board, but at least one member of the committee must be a member of the Board and the criteria as set out in section 9(2) apply equally to the appointment of members of a committee.

(5) The Board determines the remuneration, allowances and other conditions of service of members of a committee who are not—

(a) members of the Board;
(b) employees;
(c) in the service of an organ of state,
taking into account the limitations to the scales published by either the National Treasury or the Department of Public Service and Administration; and
(d) the names of the members of a committee must be published on the website of the Authority to ensure transparency.

Delegation of and instruction to exercise powers and perform functions by Board

17. (1) The Board may, for the proper exercise of its powers and performance of its functions—
(a) delegate any of its powers and functions, excluding the power to make the final decision on demarcation, to—
(i) a member of the Board;
(ii) a committee of the Board; or
(iii) an employee.
(b) instruct any member of the Board, committee of the Board or employee to exercise any of the powers or perform any of the functions of the Board.
(2) A delegation or instruction in terms of subsection (1)—
(a) is subject to any conditions and directions the Board may impose;
(b) does not divest the Board of the responsibility concerning the exercise of the powers or the performance of the functions; and
(c) must be in writing.
(3) The Board may confirm, vary or revoke any decision taken by a member of the Board, committee of the Board or employee, in consequence of a delegation or instruction.

Conduct of Board members

18. (1) A member of the Board—
(a) must perform the functions of office in good faith and without fear, favour or prejudice;
(b) must disclose any personal or any private business interest that such member or any spouse, partner, close relative or business associate of that member may have in any matter before the Board and must withdraw from the proceedings of the Board when that matter is considered by the Board;
(c) may not use the position or privileges of his or her office for private gain or improperly to benefit another person;
(d) may not act in any way that compromises the credibility, impartiality, independence or integrity of the Board; and
(e) may not be contracted for professional services by the Authority.
(2) A member of the Board who contravenes or fails to comply with subsection (1) is guilty of misconduct.

Part 3

Administration and staff

Chief Executive Officer

19. (1) The Board must appoint a suitably qualified and experienced person as Chief Executive Officer.
(2) The person appointed as Chief Executive Officer holds office—
(a) for an agreed term, not exceeding five years, which may be renewed only once for the same or a shorter period; and
(b) subject to the terms and conditions as determined by the Board.
(3) The Chief Executive Officer is the head of the administration of the Authority and is responsible for—
(a) the formation and development of an efficient administration;
(b) the organisation, control and management of all staff, including persons seconded to the Board from any other organ of state;
(c) the maintenance of discipline; and
(d) implementing decisions of the Board.

(4) The Chief Executive Officer—

(a) is the accounting officer, in accordance with the Public Finance Management Act, and must keep the necessary accounting and other related records; and

(b) must exercise his or her powers and perform his or her functions as he or she is instructed to do or as delegated to him or her by the Board or conferred upon him or her by this Act or any other legislation.

(5) Whenever the Chief Executive Officer is for any reason absent or unable to perform his or her functions, or whenever a vacancy in the office of chief executive officer occurs, the Board must designate a suitably qualified senior member of the administration to act as Chief Executive Officer until the Chief Executive Officer resumes his or her functions or a Chief Executive Officer is appointed in terms of subsection (1).

(6) A member of the administration designated by the Board to act in the position of Chief Executive Officer as contemplated in subsection (5) must, while so acting, exercise the powers and perform the functions of the Chief Executive Officer as may be delegated to him or her by the Board or as he or she may be instructed by the Board to exercise or perform.

(7) The Chief Executive Officer must appoint such employees of the Authority, in accordance with the organisational structure and delegations of authority approved by the Board, to enable the Authority to exercise its powers and to perform its functions effectively.

Conditions of employment of employees

20. (1) An employee of the Authority is employed subject to the terms and conditions of employment determined by the Board.

(2) The terms and conditions must comply with the principles of public administration as contained in the Public Administration Management Act, 2014 (Act No. 11 of 2014).

(3) Officials seconded from organs of state to the administration of the Authority, perform their functions under the control and direction of the Chief Executive Officer.

(4) Notwithstanding the provisions of the Government Employees Pension Law, 1996 (Proclamation No. 21 of 1996), any person—

(a) appointed in terms of section 19 and this section, who immediately before the date of such appointment was a member of the Government Employees Pension Fund referred to in section 2 of that law, may remain such member notwithstanding such appointment; and

(b) appointed and who is not a member of the said Fund may become a member of that Fund as from the date of such appointment and, if applicable, must contribute thereto.

Contracting for services

21. If the Authority contracts for the services of any person, other than an employee or member of the Board, to perform any specific activity or function, the Authority may, subject to section 20(2), remunerate that person in terms of its supply chain management policy or a written agreement between the Authority and that person, and may reimburse that person for expenses he or she has incurred in the performance of those services.

Part 4

Finances

Finances of Authority

22. (1) The Authority is funded by money appropriated annually by Parliament to enable it to exercise its powers and perform its functions effectively.

(2) The Authority may receive money from any other source through the National Revenue Fund.

(3) The Authority must refund to the National Revenue Fund any money paid to the Authority in terms of an appropriation under subsection (1) that is not utilised at the end of a financial year, unless otherwise agreed to by the Minister, acting with the concurrence of the Minister of Finance.

CHAPTER 3

MUNICIPAL BOUNDARY DEMARCATION

Part 1

Criteria for determination or redetermination of municipal boundaries

Determination or redetermination of municipal boundary objectives

23. (1) When the Authority determines or redetermines a municipal boundary its objectives must be to establish an area that—

(a) enables the municipality for that area to fulfil its constitutional obligations, including—
  (i) the provision of democratic and accountable government for the local communities;
  (ii) the provision of services to the communities in an equitable and sustainable manner;
  (iii) the promotion of social and economic development; and
  (iv) the promotion of a safe and healthy environment;
(b) enables effective local governance;
(c) has a tax base as inclusive as possible of users of municipal services in the municipality; and
(d) has the capacity to execute any other function in line with the Minister's and the MEC of local government's allocated powers and functions in accordance with the Municipal Structures Act.

(2) The Authority must, in addition to the objectives listed in subsection (1), endeavour to attain the principles of spatial justice, spatial sustainability, efficiency, spatial resilience and good administration, as set out in the Spatial Planning and Land Use Management Act, 2013 (Act No.4 of 2013).

Factors to be taken into account

24. In order to attain the objectives set out in section 23, the Authority must, when determining or redetermining a municipal boundary, take into account—

(a) the interdependence of people, communities and economics as indicated by—
  (i) existing and expected patterns of human settlement and migration;
  (ii) employment;
  (iii) commuting and dominant transport movements;
  (iv) spending;
  (v) use of amenities, recreational facilities and infrastructure; and
  (vi) commercial and individual linkages;
(b) the need for cohesive, integrated and unfragmented areas, including metropolitan areas;
(c) the financial viability and administrative capacity of the municipality to perform municipal functions efficiently and effectively;
(d) the need to share and redistribute financial and administrative resources;
(e) provincial and municipal boundaries;
(f) areas of traditional rural communities;
(g) existing and proposed functional boundaries, including magisterial districts, voting districts, health, transport, police and census enumerator boundaries;
(h) existing and expected land use, social, economic and transport planning;
(i) the need for co-ordinated municipal, provincial and national programmes and services, including the needs for the administration of justice and health care;
(j) topographical, environmental and physical characteristics of the area;
(k) the administrative consequence of a determination or redetermination of a municipal boundary on—
  (i) municipal creditworthiness;
  (ii) existing municipalities, their council members and staff; and
  (iii) any other relevant matter;
(l) the need to rationalise the total number of municipalities within different categories and of different types to achieve the objectives of effective and sustainable service delivery, financial viability and macro-economic stability;

(m) common geo-statistical building blocks, which facilitate and support a standard geographical hierarchy;
(n) relevant national development policies and plans which might impact on the nature of local government and its boundaries;
(o) relevant national and provincial policies and legislation relating to the institutional or functional reorganisation of local government;
(p) natural endowments, resources, assets, business investments and other drivers of economic growth; and
(q) the views of the people and communities living in the area.

Determination of category of municipality

25. (1) The Board must—
(a) apply the criteria set out in subsection (3) and determine whether an area in terms of the criteria must have a single category A municipality or whether it must have municipalities of both category C and category B as defined in the Municipal Structures Act; and
(b) determine or redetermine the municipal boundaries of the area.

(2) The Board may determine that an area must have a category A municipality only after consultation with the Minister, the MEC for local government in the province concerned and organised local government.

(3) An area must have a single category A municipality if that area can reasonably be regarded as—
(a) a conurbation featuring—
(i) areas of high population density;
(ii) an intense movement of people, goods and services;
(iii) extensive development; and
(iv) multiple business districts and industrial areas;
(b) a centre of economic activity with a complex and diverse economy;
(c) a single area for which integrated development planning is desirable; and
(d) having strong interdependent social and economic linkages between constituent units.

Part 2

Determination or redetermination of municipal boundary

Initiation of determination or redetermination of municipal boundary process

26. (1) The Board may only determine or redetermine a municipal boundary regarding the categorisation, amalgamation or any boundary change which affect the movement of more than one whole ward in a municipality, every 10 years.

(2) The Board may determine or redetermine a municipal boundary mentioned in subsection (1) on—
(a) its own initiative;
(b) request from an individual or local community;
(c) request by the Minister, MEC for local government or other statutory bodies; or
(d) request by a municipality with the concurrence of any other municipality affected by the proposed determination or redetermination of a municipal boundary:

Provided that the application in terms of paragraphs *(b)*, *(c)* and *(d)* is accompanied by a motivation in terms of the criteria as set down in sections 23 and 24.

(3) The Minister may, after consultation with the MECs for local government and the Authority, determine priorities and reasonable timeframes for a determination or redetermination of municipal boundaries, but such priorities and timeframes must be concluded and communicated to the Authority at least three years before the earliest possible date for the next local government elections.

(4) The Board may make no determination or redetermination of municipal boundaries after the Minister has published the formula for councillors in terms of section 20 of the Municipal Structures Act.

Notification of intention to consider request for determination or redetermination of municipal boundary

27. (1) Before the Authority considers any proposed determination or redetermination of a municipal boundary, it must publish a notice in the area concerned—

(a) stating the Authority's intention to consider the matter; and

(b) inviting written representations and views from the public within a specified period, which may not be less than 30 days.

(2) The Authority must publish a notice in a newspaper circulating in the affected area.

(3) When the Authority publishes a notice, it must convey by any appropriate means of communication the message contained in the notice.

(4) The Authority must send by registered post, electronic mail or by hand a copy of the notice to—

(a) the Minister;

(b) the MEC for local government in the province concerned;

(c) each municipality that will be affected by the Board's consideration of the matter;

(d) organised local government in the province concerned;

(e) the magistrate concerned if any magisterial district is affected;

(f) the traditional and Khoi-San leadership structures concerned if the area of jurisdiction of such structures is affected;

(g) the local houses of traditional and Khoi-San leaders concerned if the area of jurisdiction of local houses of traditional and Khoi-San leaders is affected;

(h) the provincial house concerned if the area of jurisdiction of traditional leadership structures is affected; and

(i) the National House if the area of jurisdiction of traditional leadership structures is affected,

inviting written representations and views on the matter to be submitted to the Authority in the form and manner specified in the notice.

(5) When the period for written representations and views has expired, the Board—

(a) must consider all representations and views submitted to it; and

(b) may, after complying with sections 28, 29 and 30, take a decision on the determination or redetermination of municipal boundaries.

Conducting investigations on determination or redetermination of municipal boundary

28. (1) After receiving representations and views as contemplated in sections 27(1)*(b)* and 27(4), the Board must institute an investigation on any proposed determination or redetermination of a municipal boundary, unless—

(a) in the opinion of the Board, proposing a determination or redetermination of a municipal boundary that does not affect the representation of voters in the municipality or an application that can be dealt with in terms of a research, study or investigation already conducted by the Board in a period not longer than 18 months before the current application was lodged, or

(b) a proposed determination or redetermination of a municipal boundary that is in compliance with a provincial boundary change following a constitutional amendment.

(2) The Board may—

(a) conduct the investigation itself; or

(b) designate one or more members of the Board who are experts in the subject under investigation to conduct such investigation; or

(c) appoint an investigating committee that—

(i) consists of not more than three persons who are subject matter experts with suitable qualifications and experience; and

(ii) must, for the purposes of determining or redetermining a municipal boundary, investigate the feasibility of the proposed determination or redetermination of a municipal boundary guided by the criteria.

(3) For the purposes of the investigation, the Board, designated members of the Board or an investigating committee, may—

(a) by written notice, summon a person who in its opinion has information which is material to the investigation to appear in person and—

(i) give evidence; or
(ii) produce a document available to that person as specified in the summons;
(b) call a person present at the proceedings, whether summoned or not, to—
(i) give evidence; or
(ii) produce a document in that person's custody;
(c) administer an oath or solemn affirmation;
(d) question that person; and
(e) retain for a reasonable period a document produced in terms of paragraph (*a*)(ii) or (*b*)(ii).

(4) A person summoned to the proceedings in terms of subsection (3)*(a)* may be represented by a legal practitioner if he or she so prefers.

(5) The chairperson of the investigating committee must determine the procedure to be followed during an investigation by that committee.

(6) On conclusion of the investigation by either designated members of the Board or an investigating committee, as the case may be, a report must be submitted to the Board for consideration.

(7) The Board must consider the report and decide either to refer the matter for further investigation or to endorse it.

(8) In an instance where the report is endorsed, it must be—
(a) published on the official website of the Authority;
(b) published in a newspaper circulating in the affected area or through another media platform accessible to people living in the affected area; and
(c) broadcast on a radio station operating in the affected area,
to allow members of the public to read the report and prepare for the public consultative meetings.

Part 3

Public participation for determination or redetermination of municipal boundary

Public consultation for determination or redetermination of municipal boundary

29. (1) Public consultation with members of the public affected by the proposal for determination or redetermination of a municipal boundary must take place before a request is submitted in terms of section 26(2)*(b)*, *(c)* or *(d)*.

(2) A public consultative meeting for determination or redetermination of a municipal boundary must be conducted by the Authority.

(3) The Authority must publish a notice in a newspaper circulating in the area concerned or through another media platform accessible to people living in the area concerned, inviting members of the public to attend a public consultative meeting, specifying the purpose, date, time and venue for such meeting.

(4) When the Authority publishes a notice as provided for in subsection (3) it must convey the message through any appropriate means of communication.

(5) The date of the public consultative meeting may not take place within two weeks following the release of the report to allow members of the public time to access the report.

(6) The contents of the report provided for in section 28(7) must be conveyed to the local community by—
(a) displaying the documents at the affected municipality's head and satellite offices and libraries;
(b) displaying the documents on the Authority's official website; and
(c) notifying the local community of the place, including the website address, where detailed particulars concerning the documents can be obtained.

(7) When the Authority invites the local community to submit written representations and views on the proposed determination or redetermination of a municipal boundary, it must be stated in the notice that any person who—
(a) cannot write may come during office hours to a place where a staff member of the municipality or Authority, named in the invitation, will assist that person to transcribe that person's representations and views; or
(b) is deaf may come to the venue of the public meeting where a sign language interpreter will assist that person to participate in the proceedings.

(8) At the public consultative meeting a representative of the Authority must—
(a) explain the purpose and procedure for the public consultative meeting, and the determination or redetermination of a municipal boundary process;

(b) provide a summary of the investigation report and any options open to the Authority;

(c) allow any person present at the public consultative meeting to make oral representations on his or her proposal for the determination or redetermination of a municipal boundary;

(d) allow members of the public to deliberate on the issues raised under paragraphs *(b)* and *(c)* or provide more information on the issue under consideration; and

(e) respond to relevant questions.

(9) Affected municipalities may identify and provide suitable and secure venues or locations that are accessible to the majority of the affected communities, if they are able and can afford to do so.

(10) The Board or a committee established by the Board in terms of sections 16(2) or 27 may, after public consultations are held, conduct public hearings, and may for this purpose—

(a) issue a written summons to a person who in its opinion has information which is material to the investigation to appear before the Board or a committee established by the Board to—

(i) give evidence; or

(ii) produce a document available to that person and specified in the summons;

(b) administer an oath or solemn affirmation to that person;

(c) question that person, or have such a person questioned by a person designated by the Board or a committee established by the Board; and

(e) retain for a reasonable period a document produced in terms of paragraph *(a)*(ii).

(11) The Board or a committee established by the Board may consult any other interested parties during the consultation process.

Mechanisms, processes and procedures for public participation

30. (1) Participation by the members of the public in the demarcation processes of the Authority may take place through—

(a) government, political, civil and other organised community-based structures that represent communities who may be affected by the demarcation processes;

(b) mechanisms, processes and procedures through which citizens participate in the affairs of a municipality;

(c) other appropriate mechanisms, processes and procedures established by the Authority; and

(d) generally applying the provisions for participation guided by other legislation that promote transparency and administrative justice.

(2) The Authority may establish appropriate mechanisms, processes and procedures as stipulated in section 17 of the Municipal Systems Act to enable members of the public to participate in the demarcation processes of the Authority.

(3) When establishing mechanisms, processes and procedures, the Authority may take into account the needs of any persons affected by the demarcation processes.

(4) When conducting public consultation, the Authority may make use of virtual platforms to enable members of the local community and other stakeholders to participate in the demarcation processes.

Publication of and objection to determination or redetermination of municipal boundary

31. (1) The Authority must publish its decision for determination or redetermination of a municipal boundary in the *Gazette* of the relevant province after complying with sections 27, 28 and 29.

(2) Any person aggrieved by the decision may within 30 days of publication submit objections in writing to the Authority, and the Board must—

(a) consider the objections;

(b) confirm, vary or withdraw its decision; and

(c) publish its decision in terms of paragraph *(b)* in the *Gazette* of the relevant province.

(3) The Board must provide reasons for the decisions referred to in subsection (2)(*b*) to those persons who submitted objections or to any member of the public who may request such reasons by way of publication on the Authority's website or through any other appropriate means.

When determination or redetermination of municipal boundary takes effect

32. (1) After the Board has considered any objections in terms of section 31(2), the Authority must without delay send particulars of the final decision on the determination or redetermination of a municipal boundary to the Electoral Commission.

(2) If the Electoral Commission is of the view that the final decision referred to in subsection (1) will—

(a) affect the representation of voters in the council of any of the municipalities affected, the determination or redetermination of a municipal boundary takes effect from the date of the next election in the area concerned; or

(b) not affect the representation of voters in such council, the determination or redetermination of a municipal boundary takes effect from a date determined by notice in the *Gazette* of the relevant province, by the MEC for local government.

(3) *(a)* The Electoral Commission, within 60 days after having received the particulars referred to in subsection (1), must make known its view as envisaged in subsection (2) by notice in the *Gazette* of the relevant province.

(b) The MEC for local government concerned must publish the notice referred to in subsection (2)*(b)* within three months of the date of the notice published by the Electoral Commission in terms of paragraph *(a)*, and send a copy of the notice to the Authority.

(4) *(a)* A determination or redetermination of a municipal boundary referred to in subsection (2)*(b)* will take effect on the date of commencement of the municipal financial year following the date of publication of the notice affecting such determination or redetermination.

(b) The Authority must, at least nine months prior to the commencement of the municipal financial year in which a determination or redetermination of a municipal boundary is to take effect, inform the Minister and the Minister of Finance of such determination or redetermination.

(c) The Minister of Finance may, in exceptional cases, including those referred to in section 87 of the Municipal Structures Act, decide on a different or shorter period than the period referred to in paragraphs *(a)* and *(b)*.

Part 4

Delimitation of wards

Delimitation of ward process

33. (1) After the Minister has published the formula for councillors in terms of section 20 of the Municipal Structures Act, the Authority must for purposes of an election, after consultation with the Electoral Commission, delimit metropolitan municipalities and local municipalities into wards.

(2) When the Minister has published the formula for councillors as set out in subsection (1), the Authority must—

(a) compile a delimitation of wards timetable; and

(b) publish the delimitation of wards timetable in the *Gazette*.

(3) The Authority may, by notice as required in subsection (2)*(b)*, amend the delimitation of wards timetable on good cause shown.

(4) A person to whom the delimitation of wards timetable applies, must comply with all its requirements, including timeframes.

Number of wards

34. The number of wards in a metropolitan or local municipality must be equal to the number of ward councillors determined for the municipality in terms of section 22(2) of the Municipal Structures Act.

Criteria for delimitation of wards

35. (1) The Board must delimit a municipality into wards, taking into account the following criteria:

(a) The number of registered voters in each ward may not vary by more than 15 per cent from the norm, where the norm is determined by dividing the total number of registered voters on the municipality's segment of the national common voters roll by the number of wards in the municipality;

(b) the need to take into consideration—

(i) communication and accessibility;

(ii) density of population; and

(iii) topography and physical characteristics; and

(c) identifiable ward boundaries.

(2) The Board may not deviate by more than 30 per cent from the norm, in instances where—

(a) there is a need to avoid as far as possible the fragmentation of a continuous built-up settlement area, provided that such a settlement can be included wholly in one ward;

(b) the voting station at which the voters residing in that portion of land was to be outside of the ward; or

(c) there is a need to align the ward boundary to an identifiable topographic and physical feature such as a road, river, mountain range or proclaimed traditional council area: Provided that, if there is a continuous built-up settlement area, such an area will be included wholly in one ward.

(3) If the Board intends to deviate as contemplated in subsection (2), the Authority must first publish such intention in the *Gazette,* for comment from members of the public and interested parties.

Public participation in delimitation of wards

36. (1) Public consultation in delimitation of wards must be conducted by the Authority.

(2) The Authority must publish a notice in a newspaper circulating in the area concerned or through another media platform accessible to people living in the area concerned, inviting members of the public to attend a public consultative meeting, specifying the purpose, date, time and venue for such meeting.

(3) The date of the public consultative meeting may not take place within two weeks from the date of the publication of the notice referred to in subsection (2).

(4) When the Authority publishes the notice, it must be stated in the notice that any person who—

(a) cannot write may come during office hours to a place where a staff member of the municipality or Authority, named in the invitation, will assist that person to transcribe that person's representations and views; or

(b) is deaf may come to the venue of the public meeting where a sign language interpreter will assist that person to participate in the proceedings.

(5) At the public consultation meeting a representative of the Authority must—

(a) explain the purpose and procedure for the public consultative meeting, and the delimitation of wards process;

(b) allow any person present at the public consultative meeting to make oral representations;

(c) allow members of the public to deliberate on the issues raised under paragraph *(b)* or provide more information on the issue under consideration; and

(d) respond to relevant questions.

(6) The Board or a committee established by the Board in terms of section 16(2) may, after public consultations are held, conduct public hearings and may for this purpose—

(a) issue a written summons to a person who in its opinion has information which is material to the delimitation of such wards to appear before the Board or a committee established by the Board to—

(i) give evidence; or

(ii) produce a document available to that person and specified in the summons;

(b) administer an oath or solemn affirmation to that person;

(c) question that person or have such a person questioned by a person designated by the Board or a committee established by the Board; and

(d) retain for a reasonable period a document produced in terms of paragraph *(a)*(ii).

(7) The Board or a committee established by the Board may consult any other interested parties during the public consultation process.

Publication of and objection to delimitation of wards

37. (1) The Authority must publish the decision for the delimitation of wards for a municipality in the *Gazette* of the relevant province.

(2) Any person aggrieved by a decision referred to in subsection (1) may within 30 days of publication submit objections in writing to the Authority, and the Board must—

(a) consider the objections;

(b) confirm, vary or withdraw the decision; and

(c) publish the final delimitation decision in the *Gazette* of the relevant province.

(3) The Board must provide reasons for the decisions referred to in subsection (2)*(c)* to any person who submitted objections or to any member of the public who may request such reasons by way of publication on the Authority's website or through any other appropriate means.

Part 5

Appeals Authority

Establishment and constitution of Appeals Authority

38. (1) There is hereby established a body to be known as the Demarcation Appeals Authority which—

(a) has jurisdiction throughout the Republic;

(b) is a juristic person;

(c) is an Appeals Authority of record; and

(d) must exercise its functions in accordance with this Act.

(2) The Appeals Authority consists of a Chairperson and not less than three, but not more than 10, other members appointed by the President, on a part-time basis and on the recommendation of the Minister, from among persons nominated in response to a public call for nominations.

(3) The President must—

(a) appoint the Chairperson and other members of the Appeals Authority; and

(b) appoint a person to fill any vacancy on the Appeals Authority.

Functions of Appeals Authority

39. (1) The Appeals Authority may in respect of any decision of the Board referred to it by a person aggrieved by that decision—

(a) adjudicate on any dispute arising from the final demarcation decision of the Board, to determine the merits of the dispute, and, if necessary, to impose any remedy provided for in this Act, including referring the decision to the Board for reconsideration as contemplated in section 43(5);

(b) make any ruling or order necessary or incidental to the performance of its functions in terms of this Act, including setting aside the decision of the Board.

(2) The Minister, after consultation with the Authority and by notice in the *Gazette*, must prescribe regulations for matters relating to the functions of the Appeals Authority referred to in subsection (1), including—

(a) forms;

(b) time periods;

(c) information required;

(d) additional definitions;

(e) filing fees;

(f) access to confidential information;

(g) manner and form of participation in appeals procedures; and

(h) any other applicable procedures.

Qualifications of members of Appeals Authority

40. (1) The Chairperson and other members of the Appeals Authority, collectively, must—

(a) represent a broad cross-section of the population of the Republic;

(b) have proven experience in demarcation issues; and

comprise sufficient persons with legal training and experience.

(2) Each member of the Appeals Authority must—

(a) be a South African citizen, residing in South Africa; and

(b) have suitable qualifications and experience in economics, law, commerce, local government, demarcation or public affairs.

(3) A person shall not be a member of the Appeals Authority if that person is—

(a) the holder of a political office, whether in a permanent, temporary or acting capacity;

(b) a full-time employee of an organ of state;

(c) an elected political representative in any sphere of government;

(d) an unrehabilitated insolvent;

(e) subject to an order of a competent court holding that person to be mentally unfit or disordered; or

(f) a person convicted of an offence and sentenced to imprisonment without the option of a fine for a period of not less than 12 months.

Term of office of members of Appeals Authority

41. (1)*(a)* Subject to subsection (2), the Chairperson and each member of the Appeals Authority may serve for a term not exceeding five years.

(b) The term of office of a member of the Appeals Authority starts from the date of appointment of the member as determined by the President.

(2) The President may reappoint a member of the Appeals Authority at the expiry of the member's term of office: Provided that a member may not serve more than two consecutive terms.

(3) The Chairperson, may after a period of three months give written notice to the Minister, to resign—

(a) from the Appeals Authority; or

(b) as Chairperson, and may remain a member of the Appeals Authority.

(4) A member of the Appeals Authority other than the Chairperson may resign by giving at least three months' written notice to the Minister, but the Minister may accept a shorter period in a specific case.

(5) The President, on the recommendation of the Minister—

(a) must remove the Chairperson or any other member of the Appeals Authority from office if that person becomes subject to any of the disqualifications referred to in section 40(3); or

(b) subject to the Promotion of Administrative Justice Act, may remove the Chairperson or a member of the Appeals Authority from office—

(i) for misconduct;

(ii) on account of incapacity;

(iii) on account of continued ill-heath;

(iv) if he or she is no longer a fit and proper person to hold the office;

(v) on account of a loss of confidence in the Chairperson; or

(vi) for engaging in any activity that may undermine the integrity of the Appeals Authority.

Chairperson and deputy chairperson of Appeals Authority

42. (1) The President must, on the recommendation of the Minister, designate two members of the Appeals Authority as the Chairperson and deputy chairperson, respectively.

(2) The Chairperson is the convenor of the Appeals Authority.

(3) The deputy chairperson shall perform the functions of Chairperson whenever the—

(a) office of Chairperson is vacant; or

(b) Chairperson is for any other reason temporarily unable to perform the functions of Chairperson.

Appeals Authority proceedings

43. (1) Any person aggrieved by a decision of the Board that was published in terms of section 31(2)*(c)* may lodge an appeal against that decision with the Appeals Authority no later than 30 days from the date of the publication of that decision.

(2) The Chairperson is responsible for managing the caseload of the Appeals Authority and must assign each matter referred to the Appeals Authority to a panel comprised of any three members of the Appeals Authority.

(3) When assigning a matter in terms of subsection (1), the Chairperson must—

(a) ensure that at least one member of the panel is a person who has legal training and experience; and

(b) designate a member of the panel to preside over the panel's proceedings.

(4) Where a member of the panel is unable to complete proceedings on a matter because of their disqualification in terms of section 40(3), resignation, illness or death, the Chairperson must—

(a) direct that the hearing of that matter proceed before any remaining members of the panel subject to the requirements of subsection (3)*(a)*; or

(b) terminate the proceedings before that panel and constitute another panel, which may include any member of the original panel, and direct that panel to conduct a new hearing.

(5) The panel must consider the appeal and confirm or refer the determination to the Board for reconsideration within 30 days from the date on which the appeal was lodged.

(6) The decision of the panel referred to in subsection (5) and the reasons therefor must be in writing.

(7) A decision of the Chairperson, the Board or a panel as contemplated in this section is the decision of the Appeals Authority.

Conflict and disclosure of interest by members of Appeals Authority

44. (1) A member of the Appeals Authority may not represent any person before a panel of the Appeals Authority.

(2) If, during a hearing, it appears to a member of the Appeals Authority that a matter concerns a financial or other interest of that member, that member must—

(a) immediately make a full disclosure of the fact and nature of that interest to the Chairperson and to the presiding members at that hearing; and

(b) withdraw from any further involvement in that hearing.

Service by member of Appeals Authority after expiry of term of office

45. A member is deemed to be a member of the Appeals Authority after the expiry of his or her term of office only for the purpose and duration of finalising any pending matters to which the Chairperson is of the view that such member must continue to be a part of such panel.

Remuneration and benefits of members of Appeals Authority

46. (1) The conditions of service, remuneration, allowances and other benefits of members of the Appeals Authority must from time to time be determined by the Minister, by notice in the *Gazette*, after consultation with the Minister of Finance.

(2) The Minister may determine any other conditions of appointment not provided for in this section.

CHAPTER 4

MUNICIPAL CAPACITY ASSESSMENTS

Municipal capacity assessments

47. (1) The Authority must conduct municipal capacity assessments to—

(a) support its decisions on the determination and redetermination of municipal boundaries;

(b) provide assistance and guidance to the Minister and the MEC for local government regarding the functions and powers assigned by the Minister or

MEC for local government to a municipality through authorisation, revocation or adjustment as contemplated in the Municipal Structures Act; and

(c) render an advisory service in respect of matters provided for in this Act and other relevant legislation.

(2)*(a)* The Authority must conduct at least one municipal capacity assessment in respect of each municipality during the term of the Municipal Council for the respective municipality.

(b) The municipal capacity assessment must be completed at least six months before the end of the term of the Municipal Council.

(c) The Authority may, subject to available resources, conduct a mid-term municipal capacity assessment, which should be initiated after 24 months of the commencement of the term of a Municipal Council and must be completed no later than 30 months after the commencement of the term of the Municipal Council.

(3) When the Authority conducts a municipal capacity assessment, it must also take into account the provisions of sections 9 and 10 of the Municipal Systems Act, Chapter 5 of the Municipal Structures Act and the following factors:

(a) Operational, administrative and financial management capacity;

(b) infrastructure that enables a municipality to collect revenue and to govern on its own initiative the local government affairs of its community;

(c) natural resources;

(d) any other drivers of economic growth;

(e) any other factors considered by the Minister and the MEC for local government in the assignment of powers and functions in accordance with the Structures Act; and

(f) social cohesion.

(4) A municipality that is requested by the Authority to submit any information required for purposes of municipal capacity assessments must submit such information in the form and manner specified in the request.

CHAPTER 5

MISCELLANEOUS

Regulations and guidelines

48. The Minister may by notice in the *Gazette,* and after consultation with the Authority, make regulations or issue guidelines consistent with this Act concerning any matter that—

(a) must be prescribed in terms of this Act; or

(b) is referred to in this Act which in the opinion of the Minister is necessary or expedient for the effective carrying out or furtherance of the provisions and objects of this Act.

(c) The Minister must submit regulations to be made to Parliament for parliamentary scrutiny at least 30 days before their promulgation.

Offences and penalties

49. A person who—

(a) does not attend any public hearing when summoned to do so;

(b) does not produce the documents as requested in the summons;

(c) does anything intended to improperly influence the Authority, the Board or a committee established by the Board in its consideration of a matter,

is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding one year or to both a fine and such imprisonment.

Amendment of laws

50. The laws mentioned in the Schedule are amended to the extent indicated in the third column of the Schedule.

Transitional arrangements

51. (1) Any matter contemplated in section 5 which has commenced and is currently being dealt with by the Demarcation Board shall continue to be dealt with in terms of the Local Government: Municipal Demarcation Act, 1998 (Act No. 27 of 1998).

(2) The Demarcation Board, at the date of commencement of this Act, remains competent to function as the Board until the newly appointed Board contemplated under section 10 is appointed.

(3) The members of the Demarcation Board who were appointed before this Act took effect, must be regarded as having been appointed in terms of the Local Government: Municipal Demarcation Act, 1998 (Act No. 27 of 1998).

Short title and commencement

52. This Act is called the Independent Municipal Demarcation Authority Act, 2022, and takes effect on a date determined by the President by proclamation in the *Gazette.*

SCHEDULE

LAWS AMENDED

(Section 50)

No. and year of law	Short title	Extent of application
Act No. 117 of 1998	Local Government: Municipal Structures Act, 1998	1. The deletion of sections 2, 3 and 4. 2. The deletion in Schedule 1 of Items (2), (3), (4) and (5).
Act No. 27 of 1998	Local Government: Municipal Demarcation Act, 1998	3. Repeal of the whole.

MEMORANDUM ON THE OBJECTS OF THE INDEPENDENT MUNICIPAL DEMARCATION AUTHORITY BILL, 2022

1. BACKGROUND

1.1 The Independent Municipal Demarcation Authority Bill, 2022 (the ''Bill''), seeks to repeal and replace the Local Government: Municipal Demarcation Act, 1998 (Act No. 27 of 1998) (hereinafter referred to as the ''Act''), so as to align and update the legislation with current Demarcation Board practices.

1.2 In summation, the Bill seeks to—

(a) rename the Municipal Demarcation Board so that the organisation is referred to as the Independent Municipal Demarcation Authority (the ''Authority'');

(b) provide that the Chief Executive Officer is the accounting officer and that the Chairperson is the executive authority for the purposes of the Public Finance Management Act, 1999 (Act No. 1 of 1999) (''Public Finance Management Act'');

(c) provide that the Board members, in addition to the current criteria, have to possess appropriate knowledge of or experience in information technology;

(d) provide that the selection panel, for the appointment of members to the Board, includes a representative from the National Assembly and from the National House of Traditional and Khoi-San Leaders in addition to the current composition of the selection panel members;

(e) provide that vacancies which arise on the Board may be filled by persons that were on the initial ''list'' that was submitted to the President, at the time of the establishment of the Board;

(f) clarify that the term of office of members of the Board is five years, calculated from the date of appointment by the President, but may not exceed a period ending six months into the commencement of the term of the Municipal Councils, after which the Board members are appointed;

(g) ensure that all Board members serve on a part-time basis, except for the Chairperson, who may serve in either a full-time or part-time basis;

(h) ensure that major demarcation, which affects the movement of more than one whole ward in a municipality, may be done only after every 10 years;

(i) deviate from the present norm of 15% to 30%, when delimiting wards, but within strict conditions to avoid the splitting of communities;

(j) provide for the establishment of the Demarcation Appeals Authority to deal with appeals;

(k) provide for more extensive public participation and stakeholder consultation for any demarcation or delimitation;

(l) set timeframes for boundary redeterminations and ward delimitation after considering the programme of the Independent Electoral Commission (''IEC'');

(m) require the Authority to undertake municipal capacity assessments; and

(n) migrate the functions of the current Municipal Demarcation Board as contained in the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998) (''Municipal Structures Act''), to ensure that such functions are provided for in this Bill.

1.3 Repealing the current Act and drafting a new Bill afresh was required after a consideration of the extensive inputs from the Demarcation Board and other stakeholders, the substantive nature of the proposed amendments and the possible restructuring of the current Act.

2. OBJECTS OF BILL

2.1 The Bill is divided into five Chapters and a schedule, with other chapters subdivided into several Parts.

2.2 **Chapter 1**

2.2.1 **Clause 1** provides for the definitions to facilitate the interpretation of the new Act.

2.2.2 **Clause 2** provides for the purpose of the Bill which is to provide for the establishment of the Independent Municipal Demarcation Authority and set the criteria and procedures for determination or redetermination of municipal boundaries and delimitation of wards by the Authority.

Chapter 2

2.3 **Part 1**

2.3.1 Chapter 2 deals with the establishment, status, functions and powers of the Authority. The salient features under Part 1 of Chapter 2 are:

(a) **Clause 3** provides for the establishment of the Authority in accordance with section 155(3)(*b*) of the Constitution of the Republic of South Africa i.e. National legislation must establish criteria and procedures for the determination of municipal boundaries by an independent authority. The Municipal Demarcation Board will now be known as the Independent Municipal Demarcation Authority consisting of a Board and the administration. The aim of this provision is to differentiate between the Board and the administration (including employees) since, currently, this is not clearly defined in the Act.

(b) **Clause 4** provides that the Authority is a constitutional institution that is listed under Schedule 1 of the Public Finance Management Act.

(c) **Clause 5** that provides for the functions of the Authority, which include the function of conducting municipal capacity assessments. The four major functions of the Authority are:

(i) Determination or redetermination of municipal boundaries in accordance with the criteria provided for in the Act, legislation enacted in terms of Chapter 7 of the Constitution, and any other applicable legislation;

(ii) delimitation for all municipalities that must have wards;

(iii) render an advisory service in respect of matters provided for in this Act and other appropriate legislation; and

(iv) conduct municipal capacity assessments.

2.3.2 **Clause 6** provides for the powers of the Authority. Various powers are conferred on the Authority, to do all that is necessary or expedient to perform effectively its functions, including that the Authority may determine its own staff establishment and appoint employees, as well as deal with other operational matters relating to the functioning of the Authority.

Chapter 2

2.4 **Part 2**

2.4.1 **Clause 7** specifies that the Board will consist of no fewer than seven and no more than 10 members appointed by the President. The composition of the Board must also reflect the broad composition of South African society and must collectively represent a pool of knowledge concerning issues relevant to demarcation.

2.4.2 **Clause 8** provides for the responsibilities of the Board. The business and affairs of the Authority must be managed by the Board. The Board is responsible for the corporate governance of the Authority and may exercise any other power and perform any other functions that the Board is authorised to do in terms of the Act or other legislation.

2.4.3 **Clause 9** provides for the requisite qualifications that a person must possess to be appointed to the Board. The requisite qualifications, experience or knowledge in relation to information technology is now required among the Board members. This is necessary given that the work of the Authority is generally technical in nature, and it utilises information and communication technologies extensively for determination and delimitation. The prevalence of such skills within the Board will enhance decision-making. In addition, the holder of a political office in relation to a political party or structure thereof is not eligible to become a member of the Board. However, employees in the service of an organ of state may be a member of a committee and may also be seconded to the Authority.

2.4.4 **Clause 10** provides for the appointment of Board members**.** The Minister must invite suitable persons to apply for appointment to the Board, by notice, in the *Gazette* and in an advertisement in a national newspaper. After consultation with the President, the Minister must establish a selection panel to appoint members of the Board. The selection panel has been expanded to include the Chairperson of the Portfolio Committee responsible for local government (or a designee), and the Chairperson of the National House of Traditional and Khoi-San Leaders. When a vacancy arises in the Board, the Minister must, within 30 days of receiving the Board's written notification of the vacancy, recommend to the President to fill the vacancy from the additional names that were submitted by the Minister when the Board was being established, or initiate the process of establishing a panel if none of the additional names are available to fill the vacancy.

2.4.5 **Clause 11** provides for the term of office, termination and resignation of Board members. The term of office for a member of the Board is five years, calculated from the date of appointment by the President. However, the term of the Board must end before a period of six months expires after the commencement of a new term of the Municipal Councils. This is to ensure that an appointed Board is responsible for the entire process for demarcation, as well as delimitation within municipalities in preparation for a general election of all municipal councils. A member of the Board may not hold office for more than two consecutive terms and ceases to be a member if he or she is absent from three Board meetings without being granted leave of absence by the Chairperson. Members of the Board will be appointed on a part-time basis, except for the Chairperson who may be appointed on either a full-time or part-time basis.

2.4.6 **Clause 12** provides for the conditions of appointment of the Board members. The conditions of appointment must be finalised by the Minister with the concurrence of the Minister of Finance.

2.4.7 **Clause 13** provides for the appointment of the Chairperson and deputy chairperson, with specific reference to the Chairperson being the executive authority for the purposes of the Public Finance Management Act. This promotes the principle that the Authority, as a constitutional institution, is independent and impartial.

2.4.8 **Clause 14** provides for meetings. The Chairperson convenes a Board meeting and must also do so at the request of the majority of the Board members. This clause also provides that the Chairperson has a casting vote when there is an equal number of votes cast for and against a decision.

2.4.9 **Clause 15** provides that the Board must determine rules of procedure for conducting meetings and must keep minutes of the proceedings and decisions. The Board may make rules regarding ancillary or

incidental administrative or procedural matters that are necessary for the proper performance of the functions of the Board.

2.4.10 **Clause 16** provides for the establishment of committees. The Board must establish the Audit and Risk Governance Committee, and the Remuneration and Performance Committee. Provision is also made for the establishment and composition of other committees to assist the Board in performing its functions.

2.4.11 **Clause 17** provides for the delegation of and instruction to exercise powers and perform functions of the Board. The Board may delegate any of its powers or functions to a member, employee or committee of the Board, excluding the power to make a final decision on demarcation or delimitation. The Board may also confirm, vary or revoke any decision taken by a member of the Board, committee or employee, in consequence of a delegation or instruction.

2.4.12 **Clause 18** provides for the conduct of Board members. This clause requires Board members to perform their functions in good faith and without fear, favour or prejudice, and must disclose all personal or private business interests. A Board member may not use his or her position or privileges for private gain, and may not compromise the credibility, impartiality, independence and integrity of the Board. A Board member who contravenes or fails to comply with the above will be guilty of misconduct and may be removed from office.

Chapter 2

2.5 **Part 3**

2.5.1 Part 3 provides for the administration and staffing matters relating to the appointment of the Chief Executive Officer, conditions of employment for employees and contracting for services.

2.5.2 **Clause 19** provides for matters relating to the Chief Executive Officer. The Chief Executive Officer is the head of the administration of the Authority, for a period not exceeding five years. The term may be renewed only once for the same or a shorter period, subject to the terms and conditions determined by the Board. The Chief Executive Officer is also the accounting officer and must perform the functions, as may be assigned to her or him, by the Board.

2.5.3 **Clause 20** provides for conditions of employment. The Board determines the conditions of employment of employees, which must comply with the principles of public administration as contained in the Public Administration Management Act. Officials from other organs of state that are seconded to the administration of the Authority must perform their functions under the control and direction of the Chief Executive Officer.

2.5.4 **Clause 21** provides for contracting for services and stipulates that a person contracted to provide a service may be remunerated and reimbursed for expenditure incurred in terms of the Authority's policy and the written agreement between the Authority and that person.

Chapter 2

2.6 **Part 4**

2.6.1 Part 4 provides for the finances of the Authority.

2.6.2 **Clause 22** provides that the Authority will receive funding from Parliament, or from any other source, through the National Revenue

Fund, and must refund any monies that have not been utilised by the end of a financial year, unless there is an agreement by Minister acting with the concurrence of the Minister of Finance to act otherwise.

Chapter 3

2.7 **Part 1**

2.7.1 Chapter 3 provides for matters relating to demarcation, and Part 1 provides for the determination or redetermination criteria.

2.7.2 **Clause 23** provides for the determination or redetermination objectives. The Authority must demarcate municipal boundaries in accordance with the objects of local government as set out in section 152 of the Constitution, but must also—

(a) ensure that the areas established enable effective local governance and integrated development; and

(b) have a tax base as inclusive as possible of users of municipal services.

The Authority must also consider the municipality's capacity to execute any other function in line with a Minister's or an MEC's allocated powers and functions when demarcating a municipal boundary. The Authority must also endeavour to attain the principles contained in the Spatial Planning and Land Use Management Act, 2013 (Act No. 16 of 2013).

2.7.3 **Clause 24** provides for the factors that must be taken into account. The Authority must consider approximately 17 different factors when determining or redetermining a municipal boundary, including the following:

(a) Common geo-statistical building blocks, which facilitate and support a standard geographical hierarchy;

(b) relevant national development policies and plans, which might impact on the nature of local government and its boundaries;

(c) relevant policies and legislation relating to the institutional or functional reorganisation of local government;

(d) natural endowments, resources, assets, business investments and other drivers of economic growth; and

(e) the views of the people and the communities living in the area.

2.7.4 **Clause 25** provides for the determination of a category of municipality and in essence migrates sections 2, 3 and 4 of the Municipal Structures Act into the Bill. These sections in the Municipal Structures Act deal with the following matters:

(a) Areas which must have category A municipalities;

(b) areas which must have municipalities of both category C and B; and

(c) application of criteria when determining category A, B or C municipalities.

Chapter 3

2.8 **Part 2**

2.8.1 Part 2 provides for the determination or redetermination of a municipal boundary.

Clause 26 provides for the initiation of determination or redetermination of a municipal boundary process. The Board will determine or redetermine a municipal boundary that affect more than one ward only after a period of 10 years. This will be done by the Authority or on request by stakeholders subject to clauses 23 and 24. The Minister

may determine priorities and timeframes for determination or redetermination of a municipal boundary after consultation with the Members of the Executive Council responsible for local government, but not later than three years before the earliest possible date for the next local government elections. The Board may not make any determination or redetermination of municipal boundaries after the Minister has published the formula for the determination of the number of councillors, in terms of section 20 of the Municipal Structures Act.

2.8.2 **Clause 27** provides for the notification of intention to consider a request for determination or redetermination of a municipal boundary. The Authority must publish a notice in a newspaper circulating in the area concerned stating its intention to consider a request for the determination or redetermination of a municipal boundary and will invite written representations and views from the public within a period not less than 30 days, before it considers any determination of a municipal boundary. A copy of the notice must also be sent to various stakeholders inviting written representations or views on the matter.

2.8.3 **Clause 28** provides for the conducting of investigations on determination and redetermination of a municipal boundary. After receiving inputs from stakeholders, the Board must institute an investigation (unless if it is a minor technical adjustment). This investigation may be undertaken by the Board, one or more members of the Board itself or an investigating committee. The investigation forum will have the power to summon persons and question such persons. A report must be submitted to the Board for consideration after the investigation is finalised. At this stage, the Board may either endorse the report or refer the matter for further investigation.

Chapter 3

2.9 **Part 3**

2.9.1 Part 3 provides for public participation for the determination or redetermination of a municipal boundary.

Clause 29 provides for public consultation for the determination or redetermination of a municipal boundary. A public participation process must be undertaken after an investigation is concluded, as follows:

(a) The Authority must publish a notice informing the local community of a public meeting and communicate the same message through other means;
(b) the report that was concluded by the investigating forum must be conveyed to the local community and written submissions must be invited;
(c) the Authority must then present the report at the public meeting and respond to questions from attendees;
(d) the affected municipalities may provide suitable facilities for the engagement with the communities; and
(e) the Authority may conduct further public hearings after the initial public consultative engagements undertaken by the Authority.

2.9.2 **Clause 30** provides for mechanisms, processes and procedures for public participation. This clause requires that public participation may take place through appropriate structures that represent communities, and through means that maximise public participation, including the use of virtual platforms.

2.9.3 **Clause 31** provides for publication of and objection to determination or redetermination of a municipal boundary demarcation. The

Authority is required to publish its decision for determination or redetermination of a municipal boundary in the relevant *Gazette* for comments to be submitted within 30 days, and after considering any objections, the Board must confirm, vary or withdraw its decision by publishing the final decision in the *Gazette*. The Board must also provide reasons, under certain circumstances, for such demarcation by publishing reasons on the website or by any other platform.

2.9.4 **Clause 32** provides for when a determination or redetermination will take effect. The Authority must send particulars of the final decision on the determination or redetermination of a municipal boundary to the IEC and to the relevant Member of the Executive Council, for their views. The IEC and the relevant Member of the Executive Council must thereafter publish a notice in the relevant *Gazette*.

Chapter 3

2.10 **Part 4**

2.10.1 Part 4 provides for the delimitation of wards.

Clause 33 provides for a delimitation of wards process. The Authority must delimit metropolitan and local municipalities, after the Minister publishes the formulae for determining the number of councillors, into wards. The Authority must compile and publish a delimitation of wards timetable in the *Gazette* after the publication of the formula.

2.10.2 **Clause 34** provides for the number of wards. The number of wards must be equal to the number of ward councillors determined for the municipality in terms of section 22(2) of the Municipal Structures Act.

2.10.3 **Clause 35** provide for criteria for the delimitation of wards. The number of registered voters in each ward may not vary by more than 15% of the norm, i.e. where the norm is determined by dividing the total number of registered voters in a municipality by the number of wards in a municipality. The Board may deviate by not more than 30% of the norm in exceptional cases. In these instances, the Authority must first publish such intention in the *Gazette* for comment.

2.10.4 **Clause 36** provides for public participation in delimitation of wards.

2.10.5 **Clause 37** provides for the publication of and objection to delimitation of wards. The Authority must provide reasons for the final ward delimitation decision to those persons who may request such reasons. The Authority must confirm, vary or withdraw the decision and publish the final delimitation decision in the *Gazette*, after considering any objections that may have been received, and must simultaneously also provide reasons to those persons who submitted objections or to persons who request such reasons.

Chapter 3

2.11 **Part 5**

2.11.1 Part 5 relates to the Demarcation Appeals Authority.

Clauses 38 to 46 deal with the establishment of the Appeals Authority. The present legislation does not provide for an appeal mechanism or dispute resolution process in relation to decisions taken by the current Demarcation Board, except for aggrieved persons to approach the courts to review the decisions of the current Demarcation Board. The litigation process is expensive and time-consuming. Also, in most instances, communities resort to violent protests as they attempt to

register their dissatisfaction. The establishment of the Appeals Authority will allow stakeholders to be heard by a competent and independent authority.

2.11.2 **Clause 38** provides for the establishment and constitution of the Appeals Authority. This provision requires the President to appoint, on recommendation by the Minister, an Appeals Authority of not less than three but not more than 10 members, who will serve on a part-time basis.

2.11.3 **Clause 39** provides for the functions of the Appeals Authority. The Appeals Authority may adjudicate on disputes arising from the final demarcation decisions made by the Board, and if necessary, may impose any remedy. This clause also empowers the Minister to prescribe regulations for the functioning of the Appeals Authority.

2.11.4 **Clause 40** provides for the requisite qualifications for the appointment of members to the Appeals Authority. The Chairperson and other members must—

(a) be South African citizens and represent a broad cross-section of the population of the Republic;
(b) have proven experience in demarcation issues; and
(c) comprise of sufficient persons with legal training and experience.

2.11.5 **Clause 41** provides for the term of office of members. Members of the Appeals Authority may serve a term not exceeding five years commencing from the date that they were appointed by the President.

2.11.6 **Clause 42** provides for the Chairperson and deputy chairperson of the Appeals Authority. The President must, on the recommendation of the Minister, designate one member as Chairperson and another member as deputy chairperson.

2.11.7 **Clause 43** provides for the Appeals Authority proceedings. Any person aggrieved by a demarcation decision of the Board has up to 30 days from the date of decision to lodge an appeal. The Chairperson must allocate such appeal to a panel of three members. The panel must consider the appeal and either confirm the determination or refer it back to the Board for consideration. This must be done within 30 days from the date that the appeal was lodged.

2.11.8 **Clause 44** provides for conflict and disclosure of interest by members of the Appeals Authority. A member of the Appeals Authority may not represent any person before a panel, and a member must immediately and fully disclose any interests in a specific matter.

2.11.9 **Clause 45** provides for service by members of the Appeals Authority after their term of office has expired. If a member's term expires while that member has not concluded a matter before him or her, then that member, must continue to consider such matter until it has been concluded.

2.11.10 **Clause 46** provides for the conditions of service, remuneration, allowances and other benefits of members of the Appeals Authority, which must from time to time be determined by the Minister, by notice in the *Gazette,* after consultation with the Minister of Finance.

2.12 **Chapter 4**

Clause 47 provides for municipal capacity assessments. This clause requires the Authority to conduct municipal capacity assessments to support its decisions for demarcation and must also provide assistance and guidance, to the Minister and the respective Members of the Executive Council for local

government, regarding the assignment of functions and powers. The Authority must also conduct at least one municipal capacity assessment for all municipalities during the term of municipal councils. Subject to the availability of resources, the Authority may conduct a mid-term municipal capacity assessment. The Authority is also required to consider, amongst other things, the provisions in sections 9 and 10 of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000) and Chapter 5 of the Municipal Structures Act. Municipalities will be required to submit any information that is required by the Authority to fulfil this obligation.

2.13 **Chapter 5**

2.13.1 Chapter 5 provides for miscellaneous matters.

Clause 48 provides for regulations and guidelines. This clause provides for the Minister, after consultation with the Authority, to make regulations or issue guidelines on any matter that must be prescribed in terms of the Act.

2.13.2 **Clause 49** provides for offences and penalties. A person who does not comply with a summons or does not provide documents that are requested by the Authority, is guilty of an offence and may be fined or imprisoned.

2.13.3 **Clause 50** provides for the amendment of laws. The Act will be repealed in totality. Sections that migrated from the Municipal Structures Act will be deleted from that Act.

2.13.4 **Clause 51** provides for transitional arrangements. Any matter which is currently being dealt with by the Demarcation Board continues to be dealt with in terms of the Act. The Demarcation Board, at the date of commencement of this Act, remains competent to function as the Board until the newly appointed Board contemplated under section 7 is appointed. The members of the Demarcation Board who were appointed before this Act takes effect, must be regarded as having been appointed in terms of the Act.

2.13.5 **Clause 52** provides for the short title and commencement of this Act. It will be called the *Independent Municipal Demarcation Authority Act,* 2022, and will take effect on a date determined by the President by proclamation in the *Government Gazette*.

2.14 **Schedule**

The Schedule provides for the list of laws that will be amended or repealed.

3. PARTIES CONSULTED

The following stakeholders were consulted during the development of the Bill:

3.1 **Sector Departments and Provinces**

(a) Department of Traditional Affairs;
(b) Department of Agriculture, Rural Development and Land Reform;
(c) Department of Human Settlements, Water and Sanitation;
(d) Department of Tourism;
(e) Department of Performance Monitoring and Evaluation;
(f) Department of Transport;
(g) Department of Justice and Constitutional Development;
(h) Department of Home Affairs;
(i) National House of Traditional and Khoi-San Leaders;
(j) National Treasury;
(k) The Presidency;
(l) Provincial Departments responsible for local government;

(m) South African Police Service; and
(n) Statistics South Africa.

3.2 **Organisations and Institutions**
(a) Independent Electoral Commission;
(b) Municipal Demarcation Board;
(c) South African Local Government Association; and
(d) South African Cities Network.

4. FINANCIAL IMPLICATIONS FOR THE STATE

The Authority will be liable for the financial expenditure associated with its obligations in the Bill.

5. PARLIAMENTARY PROCEDURE

5.1 The Constitution distinguishes between four categories of Bills as follows: Bills amending the Constitution (section 74); Ordinary Bills not affecting provinces (section 75); Ordinary Bills affecting provinces (section 76); and Money Bills (section 77). A Bill must be correctly classified or tagged; otherwise it would be constitutionally invalid.

5.2 The Bill has been considered against the provisions of the Constitution relating to the tagging of Bills, and against the functional areas listed in Schedule 4[1] to the Constitution.

5.3 The Constitutional Court stated in the case of *Tongoane and Others v Minister of Agriculture and Land Affairs and Others* 2010 (8) BCLR 741 (CC), that the test for the tagging of Bills essentially entails that ''any Bill whose provisions in substantial measure'' affects the provinces must be classified to follow the section 76 procedure.

5.4 The Constitutional Court thus held that 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 a Bill must be considered by the provinces and in the NCOP. The question of 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. Ngcobo CJ, at paragraphs 69 and 70, concisely dealt with the tagging question as follows:

> ''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. Paying less attention to the provisions of a Bill once its substance, or purpose and effect, has been identified undermines the role that provinces should play in the enactment of national legislation affecting them.
>
> To apply the ''pith and substance'' test to the tagging question, therefore undermines the constitutional role of the provinces in legislation in which they should have a meaningful say, and disregards the breadth of the legislative provisions that section 76(3) requires to be enacted in accordance with the section 76 procedure.''. (Our emphasis.)

5.5 As indicated in the Tongoane judgment ''any Bill whose provisions in substantial measure'' falls within a function listed in Schedule 4 to the

1. Functional areas of concurrent national and provincial legislative competence

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 areas listed in schedule 4 to the Constitution, or whether the Bill provides for legislation envisaged in section 76(3)*(a)-(f)* of the Constitution. In order to determine this, focus should be on all the provisions of the Bill in order 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 as a whole to determine the extent to which they substantially affect any of the matters listed in Schedule 4.

5.6 In the light of the above, we are of the view that the purpose of the Bill is related to the establishment of the Authority and Appeals Authority specifically demarcation of municipal boundaries delimitation of municipal wards. Section 155(3)(*b*) of the Constitution provides that national legislation must establish criteria and procedures for the determination of municipal boundaries by an independent authority.

5.7 The purpose and effect of the Bill is to provide for the criteria and procedures for the determination and redetermination of municipal boundaries and to provide for the delimiting of wards. The functions of municipal boundary determinations involve the alteration of municipal boundaries which will lucidly have an impact on municipal planning. This is further reinforced by the policy directive to include municipal capacity assessments in the Bill. This process may have an impact on the Provinces because the municipalities that make up a specific province will be affected.

5.8 Part A of Schedule 4 of the Constitution lists the functional areas of concurrent national and provincial legislative competence, with Part B of that Schedule indicating local government matters which may be legislated upon within the framework provided for in section 155(6)(*a*) and (7) of the Constitution. We are of the view that the purpose and effect of the Bill will in a substantial measure impact on regional planning and development which is listed in Part A of Schedule 4 to the Constitution and municipal planning which is listed in Part B of Schedule 4 to the Constitution. Schedule 4 to the Constitution provides for matters which are functional areas of concurrent national and provincial competence.

5.9 Therefore, The State Law Advisers are of the opinion that the Bill should be dealt with in accordance with the procedure set out in section 76 of the Constitution, as the provisions of the Bill in a substantial measure impact on municipal planning and regional planning and development which are listed in Schedule 4 A to the Constitution.

6. REFERRAL TO NATIONAL HOUSE OF TRADITIONAL AND KHOI-SAN LEADERS.

6.1 With regard to the referral of the Bill to the National House of Traditional and Khoi-San Leaders by Parliament, section 39 of the Traditional and Khoi-San Leadership Act, 2019 (Act No. 3 of 2019) which commenced on 1 April 2021 provides 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.

(b) The National House must, within 60 days from the date of such referral, make any comments it wishes to make and submit such comments to the Secretary to Parliament: Provided that the National House may refer any such Bill to any provincial house for comment: Provided further that if the National House has no comments on any Bill referred to it, the National House must inform the Secretary to Parliament accordingly.

(2) A provincial legislature or a municipal council may adopt the same procedure referred to in subsection (1) in respect of the referral of a provincial Bill or a draft by-law to a provincial house or a local house, as the case may be.".

6.2 Section 39(1) of the Traditional and Khoi-San Leadership Act requires Bills pertaining to customary law or customs of traditional communities to be referred to the National House. Section 154(2) of the Constitution provides that ''Draft national or provincial legislation that affects the status, institutions, powers or functions of local government must be published for public comment before it is introduced in Parliament or a provincial legislature, in a manner that allows organised local government, municipalities and other interested persons and opportunity to make representations with regard to the draft legislation''. Furthermore, the National House will have 60 days to provide the Secretary to Parliament with its comments on Bills referred to it.

6.3 This Bill is considered to be national legislation that affects the status, institutions, powers and functions of local government and it specifically provides for Traditional and Khoi-San leaders to play a role in the selection of members of the Authority as provided for under clause 10 of the Bill and for the Traditional and Khoi-San leaders to be involved in the boundary determination process as provided for under clause 30. Furthermore, determinations and delimitations will impact on the Khoi-San communities if their villages or homesteads are affected by the boundary determinations. Therefore, our view is that the Bill must be referred to the National House.

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