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No 17341

PRESIDENT'S OFFICE

No 1212 24 July 1996

It is hereby notified that the President has assented to the following Act which is hereby published for general information: -

No. 39, 1996: Commission on Gender Equality Act, 1996

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ACT

To provide for the composition, powers, functions and functioning of the Commission on Gender Equality; and to provide for matters connected therewith.

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PREAMBLE

WHEREAS section 119 of the Constitution provides for the establishment of a Commission on Gender Equality; the determination of the members of the Commission; the requirements for appointment as members of the Commission;

AND WHEREAS the Constitution provides that the object of the Commission on Gender Equality shall be to promote gender equality and to advise and to make recommendations to Parliament or any other legislature with regard to any laws or proposed legislation which affects gender equality and the status of women;

AND WHEREAS section 120 of the Constitution provides that an Act of Parliament shall provide for the composition, powers, functions and functioning of the Commission on Gender Equality and for all other matters in connection therewith,

BE it therefore enacted by the Parliament of the Republic of South Africa,  
as follows:-

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#### Definitions

1. In this Act, unless the context indicates otherwise-
  - i. "Chairperson" means the chairperson of the Commission; (ix)
  - ii. "Commission" means the Commission on Gender Equality established by section 119 of the Constitution; (iii)
  - iii. "committee" means a committee established under section 6; (ii)
  - iv. "investigation" means an investigation contemplated in section 11(1)(e); (v)
  - v. "joint committee" means a joint committee of the Houses of Parliament appointed in accordance with the Standing Orders of Parliament for the purpose of considering a matter contemplated in section 3(2) and (5); (i)
  - vi. "Minister" means the Minister of Justice; (iv)
  - vii. "premises" includes land, any road, building or structure, or any vehicle, conveyance, ship, boat, vessel, aircraft or container; (vi)
  - viii. "Public Service Commission" means the Commission established by section 209(1) of the Constitution. (vii)

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#### Seat of Commission

2.
  1. The President shall determine the seat of the Commission.
  2. The Commission may establish such offices as may be necessary to enable it to exercise its powers and to perform its duties and functions conferred on or assigned to it by this Act or any other law.

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#### Composition of Commission

3.
  1. Subject to section 119(2) of the Constitution, the Commission shall consist of a chairperson and no fewer than seven and no more than eleven members, who shall-
    - a. have a record of commitment to the promotion of gender equality; and
    - b. be persons with applicable knowledge or experience with regard to matters connected with the objects of the Commission.
  2. The President shall, whenever it becomes necessary, appoint as a member of the Commission a person-
    - a. proposed by interested parties as contemplated in subsection (3);
    - b. nominated by a joint committee; and
    - c. approved by the National Assembly and the Senate by a resolution adopted by a majority of the total number of members of both Houses at a joint meeting: Provided that if any nomination is not approved as required in paragraph (c), the joint committee shall nominate another person.
  3. Before the members of the Commission are appointed the Minister shall invite interested parties through the media and by notice in the Gazette to propose candidates within 30 days of the publication of the said notice, for consideration by the committee referred to in subsection (2)(b).
  4.
    - a. The members of the Commission may be appointed as full-time

or part-time members and shall hold office for such fixed term, not exceeding five years, as the President may determine at the time of each appointment: Provided that the term of office of the full-time members shall not expire simultaneously.

- b. No fewer than two and no more than seven members shall be appointed on a full-time basis.
  5. The President shall remove any member from office if-
    - a. such removal is requested by a joint committee contemplated in subsection (2)(b); and
    - b. such request is approved by the National Assembly and the Senate by a resolution adopted by a majority of the total number of members of both Houses at a joint meeting.
  6. The President may, in consultation with the Commission, appoint a part-time member as a full-time member for the unexpired portion of that part-time member's term of office.
  7. Any person whose term of office as a member of the Commission has expired, may be reappointed for one additional term.
  8. A member of the Commission may resign from office by submitting at least three months' written notice thereof to Parliament unless Parliament by resolution allows a shorter period in a specific case.
  9.
    - a. A Chairperson of the Commission shall as often as it becomes necessary be appointed by the President and a Deputy Chairperson of the Commission shall as often as it becomes necessary be elected by the members of the Commission from among their number.
    - b. When the Chairperson is not available, the Deputy Chairperson shall perform the functions of the Chairperson.
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#### Vacancies in Commission

4.
    1. A vacancy in the Commission shall occur-
      - a. when a member's term of office expires;
      - b. when a member dies;
      - c. when a member is removed from office in terms of section 3(5); or
      - d. when a member's resignation, submitted in accordance with section 3(8), takes effect.
    2. A vacancy in the Commission shall not affect the validity of the proceedings or decisions of the Commission.
    3.
      - a. A vacancy in the Commission shall be filled as soon as practicable in accordance with section 3(2).
      - b. Any vacancy so filled shall be for the unexpired period of the term of office in respect of which the vacancy occurred.
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#### Meetings of Commission

5.
  1. The meetings of the Commission shall be held at the times and places determined by the Chairperson: Provided that the first meeting shall be held at the time and place determined by the Minister.
  2. If both the Chairperson and Deputy Chairperson are absent from a meeting of the Commission, the members present shall elect one from among their number to preside at that meeting.
  3. The quorum for any meeting of the Commission shall be a majority of the total number of members appointed in terms of section 3(2).
  4. The decision of the majority of the members of the Commission present at a meeting shall be the decision of the Commission, and

in the event of an equality of votes concerning any matter, the member presiding shall have a casting vote in addition to his or her deliberative vote.

5. a. The Commission shall determine its own procedure: Provided that due regard shall be given to the principles of transparency, openness and public participation.  
b. The Commission shall cause minutes to be kept of its proceedings.
6. The Commission shall from time to time by notice in the Gazette make known the particulars of the procedure which it has determined in terms of subsection (5).

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#### Committees of Commission

6. 1. The Commission may establish one or more committees consisting of one or more members of the Commission designated by the Commission and one or more other persons, if any, whom the Commission may appoint for that purpose and for any period determined by it.
2. The Commission shall designate a chairperson for every committee and, if necessary, a deputy chairperson.
3. Subject to the directions of the Commission, a committee-
  - a. may exercise such powers of the Commission as the Commission may confer on it; and
  - b. shall perform such functions of the Commission as the Commission may assign to it.
4. On completion of the functions assigned to it in terms of subsection (3), a committee shall submit a written report thereon, including recommendations, if any, for consideration by the Commission.
5. The Commission may at any time dissolve any committee.
6. The provisions of section 5 shall, with the necessary changes, apply to a meeting of a committee.
7. The Commission shall not be absolved from responsibility for the performance of any functions entrusted to any committee in terms of this section.

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#### Staff of Commission

7. 1. The Commission shall at its first meeting or as soon as practicable thereafter-
  - a. in consultation with the Public Service Commission and the Minister of Finance, appoint a suitably qualified and experienced person or a person seconded in terms of subsection (4) as Chief Executive Officer of the Commission for the purpose of assisting the Commission in the performance of its financial, administrative and clerical functions; and
  - b. be assisted by such staff, seconded in terms of subsection (4) or appointed by the Commission in consultation with the Public Service Commission and the Minister of Finance, as may be necessary to enable the Commission to perform its functions.
2. The persons appointed by the Commission in terms of subsection (1) shall receive such remuneration, allowances and other employment benefits and shall be appointed on such terms and conditions and for such periods, as the Commission may, in consultation with the Public Service Commission and the Minister of Finance, determine.
3. a. A document setting out the remuneration, allowances and

- other conditions of employment determined by the Commission in terms of subsection (2), shall be tabled in Parliament within 14 days after such determination.
- b. If Parliament disapproves of any determination such determination shall cease to be of force to the extent to which it is disapproved.
  - c. If a determination ceases to be of force as contemplated in paragraph (b)-
    - i. anything done in terms of such determination up to the date on which such determination ceases to be of force shall be deemed to have been done validly; and
    - ii. any right, privilege, obligation or liability acquired, accrued or incurred up to the said date under and by virtue of such determination, shall lapse upon the said date.
4. The Commission may, in the performance of its functions contemplated in subsection (1)(a), at its request after consultation with the Public Service Commission, be assisted by officers of the public service seconded to the service of the Commission in terms of any law regulating such secondment.
  5. The Commission may, in consultation with the Public Service Commission, in the exercise of its powers or the performance of its functions by or under this Act or any other law, for specific projects, enter into contracts for the services of persons having technical or specialised knowledge of any matter relating to the work of the Commission, and with the concurrence of the Minister of Finance, determine the remuneration, including reimbursement for travelling, subsistence and other expenses, of such persons.

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#### Remuneration and allowances of members of Commission

8.
  1. The remuneration, allowances and other terms and conditions of office and service benefits of the full-time and part-time members of the Commission shall be determined by the President.
  2. The remuneration of the members of the Commission shall not be reduced during their term of office.
  3. A part-time member of the Commission may, for any period during which that member, with the approval of the Commission, perform additional duties and functions, be paid such additional remuneration as may be determined by the President.
  4. The provisions of section 7(3) shall apply, with the necessary changes, in respect of the tabling in Parliament of a document setting out the remuneration, allowances and other terms and conditions of office and service benefits of the full-time and part-time members of the Commission.

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#### Expenditure, finances and accountability

9.
  1. Expenditure incidental to the performance of the functions of the Commission in terms of this Act or any other law shall be defrayed from money appropriated by Parliament in the same manner, with the necessary changes, and subject to the same laws, as in the case of the expenditure of a department of the National Government.
  2. The Chief Executive Officer referred to in section 7(1)(a)-
    - a. shall be responsible for the management of and administrative control over staff appointed in terms of section 7(1)(b) and shall for those purposes be accountable to the Commission;
    - b. shall, subject to the Exchequer Act, 1975 (Act No. 66 of

1975)-

- i. be charged with the responsibility of accounting for money received or paid out for or on account of the Commission;
    - ii. cause the necessary accounting and other related records to be kept; and
  - c. shall perform the functions which the Commission may from time to time assign to him or her in order to achieve the objects of the Commission, and shall for those purposes be accountable to the Commission.
3. The records referred to in subsection (2) (b) (ii) shall be audited by the Auditor-General .

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#### Independence

10.
  1.
    - a. The Commission shall be independent.
    - b. A member of the Commission as well as a member of the staff of the Commission shall perform his or her functions in good faith and without fear, favour, bias or prejudice.
  2. No organ of state and no member or employee of an organ of state nor any other person shall interfere with, hinder or obstruct the Commission, any member thereof or a person appointed under section 6(1) or 7(1) or (5) in the performance of its, his or her functions.
  3. All organs of state, including any statutory body or functionary, shall afford the Commission such assistance as may reasonably be required for-
    - a. the protection of its independence and dignity;
    - b. the effective exercise of its powers and performance of its functions.
  4. No person shall conduct an investigation or render assistance with regard thereto in respect of a matter in which he or she has any pecuniary or any other interest which might preclude him or her from exercising or performing his or her powers and functions in a fair, unbiased and proper manner.
  5. If any person fails to disclose an interest contemplated in subsection (4) and conducts or renders assistance with regard to an investigation while having an interest so contemplated in the matter being investigated, the Commission may take such steps as it deems necessary to ensure a fair, unbiased and proper investigation.

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#### Powers and functions of Commission

11.
  1. In order to achieve its object referred to in section 119(3) of the Constitution, the Commission-
    - a. shall monitor and evaluate policies and practices of-
      - i. organs of state at any level;
      - ii. statutory bodies or functionaries;
      - iii. public bodies and authorities; and
      - iv. private businesses, enterprises and institutions, in order to promote gender equality and may make any recommendations that the Commission deems necessary;
    - b. shall develop, conduct or manage-
      - i. information programmes; and
      - ii. education programmes, to foster public understanding of matters pertaining to the promotion of gender equality and the role and activities of the Commission;
    - c. shall evaluate-

- i. any Act of Parliament;
  - ii. any system of personal and family law or custom;
  - iii. any system of indigenous law, customs or practices; or
  - iv. any other law,
- in force at the commencement of this Act or any law proposed by Parliament or any other legislature after the commencement of this Act, affecting or likely to affect gender equality or the status of women and make recommendations to Parliament or such other legislature with regard thereto;
- d. may recommend to Parliament or any other legislature the adoption of new legislation which would promote gender equality and the status of women;
- e. shall investigate any gender-related issues of its own accord or on receipt of a complaint, and shall endeavour to
  - i. resolve any dispute; or
  - ii. rectify any act or omission,
    - by mediation, conciliation or negotiation: Provided that the Commission may at any stage refer any matter to-
      - A. the Human Rights Commission to deal with it in accordance with the provisions of the Constitution and the law;
      - B. the Public Protector to deal with it in accordance with the provisions of the Constitution and the law; or
      - C. any other authority, whichever is appropriate:
- f. shall as far as is practicable maintain close liaison with institutions, bodies or authorities with similar objectives to the Commission, in order to foster common policies and practices and to promote co-operation in relation to the handling of complaints in cases of overlapping jurisdiction or other appropriate instances;
- g. shall liaise and interact with any organisation which actively promotes gender equality and other sectors of civil society to further the object of the Commission;
- h. shall monitor the compliance with international conventions, international covenants and international charters, acceded to or ratified by the Republic, relating to the object of the Commission;
- i. shall prepare and submit reports to Parliament pertaining to any such convention, covenant or charter relating to the object of the Commission;
- j. may conduct research or cause research to be conducted to further the object of the Commission;
- k. may consider such recommendations, suggestions and requests concerning the promotion of gender equality as it may receive from any source.

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Investigations by Commission

12.
  1. The procedure to be followed in conducting an investigation referred to in section 11(1)(e) shall be determined by the Commission with due regard to the circumstances of each case.
  2. The Commission shall from time to time by notice in the Gazette make known the particulars of the procedure which it has determined in terms of subsection (1).
  3.
    - a. If it is in the interest of justice or if harm to any person might otherwise ensue,
    - b. the Commission or a member thereof may direct that any person or category of persons shall not be present at the proceedings during the investigation or any part thereof.

- c. No person shall disclose to any other person the contents of any document in the possession of a member or a member of the staff of the Commission or the record of evidence given before the Commission during an investigation, unless the Commission determines otherwise.
4. For the purposes of conducting an investigation referred to in section 11 (1) (e), the Commission may-
    - a. through a member require from any person such particulars and information as may be reasonably necessary;
    - b. require any person by notice in writing under the hand of a member of the Commission, addressed and delivered by a sheriff, to appear before it at a time and place specified in such notice and to produce to it specified articles or documents in the possession or custody or under the control of any such person: Provided that such notice shall contain the reasons why such person's presence is needed and why any such article or document should be produced.
    - c. through a member of the Commission, administer an oath to or take an affirmation from any person referred to in paragraph (b), or any person present at the place referred to in paragraph (b), irrespective of whether or not such person has been required under the said paragraph (b) to appear before it, and question him or her under oath or affirmation.
  5. Any person questioned under subsection (4) shall, subject to any law governing privilege -
    - i. be competent and compelled to answer all questions put to him or her regarding any fact or matter connected with the investigation;
    - ii. be compelled to produce to the Commission any article or document in his or her possession or custody or under his or her control which may be necessary in connection with that investigation.
  6. Any person appearing before the Commission by virtue of the provisions of subsection (4) (b) and © may be assisted at such examination by an advocate or an attorney, or both, and shall be entitled to peruse such of the documents or records referred to in subsection (4) (b) as are necessary to refresh his or her memory.
  7. If it appears to the Commission during the course of an investigation that any person is being implicated in the matter being investigated, the Commission shall afford such person an opportunity to be heard in connection therewith by way of the giving of evidence or the making of submissions and such person or his or her legal representative shall be entitled, through the Commission, to question other witnesses, determined by the Commission, who have appeared before the Commission in terms of this section.

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Entering and search of premises and attachment and removal of articles

13.
  1. Any member of the Commission or a police officer authorised thereto by a member of the Commission may, for the purposes of exercising the powers and performing the functions mentioned in section 11, on the authority of a warrant issued in terms of subsection (5), search any person or enter and search any premises on which anything connected with an investigation is or is suspected to be.
  2. The entry and search of any person or premises under this section shall be conducted with strict regard to decency and order, including the protection of a person's right to-
    - a. respect for his or her dignity;

- b. freedom and security; and
  - c. his or her personal privacy.
3. A member or police officer contemplated in subsection (1) may, subject to the. Provisions of this section -
- a. inspect and search the person or premises in question, and there make such enquiries as he or she may deem necessary;
  - b. examine any article or document found on the person or premises;
  - c. request information regarding such article or document from the owner or person in control of the premises or from any person in whose possession or control that article or document is, or who may reasonably be expected to have the necessary information;
  - d. make copies of or take extracts from any book or document found on the person or premises;
  - e. attach anything on the person or premises which has a bearing on the investigation;
  - f. if he or she wishes to retain anything contemplated in paragraph (e) for further examination or for safe custody, remove it from the person or premises against the issue of a receipt: Provided that any article that has been so removed, shall be returned as soon as possible after the purpose for which it was removed has been achieved: Provided further that if there is no person present to receive the receipt when it is issued, it shall be affixed to a prominent place on the premises.
4. Any person from whom information is required in terms of subsection (3) (a) and (c) may be assisted in supplying the information by a legal representative and shall be so informed before being required to give such information.
5. a. A warrant referred to in subsection (1) shall only be issued by a magistrate, or a judge of the Supreme Court, if it appears to such magistrate or judge from information on oath that there are reasonable grounds for believing that any article or document, which has a bearing on the investigation is in the possession or under the control of any person or on any premises within the area of jurisdiction of such magistrate or judge and cannot reasonably be obtained in any other manner.
- b. A warrant referred to in subsection (1) shall be executed by day.
- c. A warrant referred to in subsection (1) may be issued on any day and shall be of force until-
- i. it is executed; or
  - ii. it is cancelled by the person who issued it or, if such person is not available, by any person with like authority; or
  - iii. the expire of one month from the day of its issue, whichever may occur first.
- d. A person executing a warrant under this section shall, at the commencement of such search, hand the person referred to in the warrant or the owner or the person in control of the premises, if such a person is present, a copy of the warrant: Provided that if no such person is present, he or she shall affix a copy of the warrant to the premises at a prominent and visible place.
- e. A person executing a warrant under this section shall, at the commencement of such execution, identify himself or herself and if that person requires authorisation to execute a warrant under this section, the particulars of such authorisation shall also be furnished.
6. a. A person who may lawfully under this section enter and search any premises may use such force as may be necessary to overcome any resistance against such entry and search of

the premises, including the breaking of any door or window of such premises: Provided that such person shall first audibly demand admission to the premises and notify the purpose for which he or she seeks to enter and search such premises.

- b. The proviso to paragraph (a) shall not apply where the person concerned is on reasonable grounds of the opinion that any article or document which is the subject of the search may be destroyed, disposed of or tampered with if the provisions of the said proviso are complied with.
7. If during the execution of a warrant in terms of subsection (5), a person claims that an article or document found on the person or premises contains privileged information and refuses the inspection or removal of such article or document, the person executing the warrant may request the registrar of the Supreme Court which has jurisdiction or his or her delegate, to attach and remove that article or document for safe custody until a court of law has made a ruling on the question whether or not the information in question is privileged.

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#### Compensation for certain expenses and damage

14.
  1. Subject to the provisions of subsection (2), the Commission may, with the specific or general concurrence of the Minister of Finance, order that the expenses or a portion of the expenses incurred by any person in the course of or in connection with an investigation by the Commission, be paid from State funds.
  2. Any person appearing before the Commission in terms of section 12(4) (b) who is not in the public service, shall be entitled to receive from moneys appropriated by law for such purpose, as witness fees, an amount equal to the amount which he or she would have received as witness fees had he or she been summoned to attend criminal proceedings in the Supreme Court held at the place mentioned in the written notice in question.
  3. If, in the execution of a warrant in terms of section 13(5), it is necessary to use force to gain entry to premises as contemplated in section 13(6) (a) and the force of such entry causes damage to any lock, door, window, wall or other part of the premises or to anything inside the premises, the Commission may order that such damage be made good from State funds: Provided that no such order shall be made if the person responsible for the premises was present at the time of entry and failed, without just cause, to facilitate the entry.

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#### Reports by Commission

15.
  1. The Commission may, subject to the provisions of subsection (3), in the manner it deems fit, make known to any person any finding, point of view or recommendation in respect of a matter investigated by it.
  2. The Commission shall report to the President at least once every year on its activities and the achievement of its objectives, and the President shall cause such report to be tabled promptly in Parliament: Provided that the Commission may at any time submit any other report to the President and Parliament.
  3. The findings of an investigation by the Commission shall, when it deems it fit, be made available to the complainant and any person implicated thereby.

## Approach to President or Parliament

16. The Commission may, at any time, approach the President or Parliament with regard to any matter relating to the exercise of its powers or the performance of its functions.

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## Legal proceedings against Commission

17.
  1. The Commission shall be a juristic person.
  2. The State Liability Act, 1957 (Act No. 20 of 1957), shall apply with the necessary changes in respect of the Commission, and in such application a reference in that Act to "the Minister of the department concerned" shall be construed as a reference to the Chairperson.
  3. No-
    - a. member of the Commission;
    - b. member of the staff of the Commission;
    - c. person contemplated in section 7(4); or
    - d. member of any committee who is not a member of the Commission,shall be liable in respect of anything reflected in any report, finding, point of view or recommendation made or expressed in good faith and submitted to Parliament or made known in terms of this Act.

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## Offences and penalties

18. A person who without just cause-
  - a. refuses or fails to comply with a notice under section 12(4) (b) or refuses to take the oath or to make an affirmation at the request of the Commission in terms of section 12(4) (c) or refuses to answer any question put to him or her under section 12(4) (c) or refuses or fails to furnish particulars or information required from him or her under that section;
  - b. after having been sworn or having made an affirmation contemplated in section 12(4) (c), gives false evidence before the Commission on any matter, knowing such evidence to be false or not knowing or believing it to be true;
  - c. wilfully interrupts the proceedings at an investigation or misbehaves in any manner in the place where such investigation is being held;
  - d. defames the Commission or a member of the Commission in his or her capacity as a member;
  - e. in connection with any investigation does anything which, if such investigation were proceedings in a court of law, would have constituted contempt of court;
  - f. anticipates any findings of the Commission regarding an investigation in a manner calculated to influence its proceedings or such findings;
  - g. does anything calculated to influence the Commission improperly in respect of any matter being or to be considered by the Commission;
  - h. contravenes section 10(2);
  - i. acts contrary to the authority of a warrant issued under section 13(5) or, without being authorised thereto under section 13, enters or searches any premises or attaches any article or document or performs any act contemplated in section 13(3),shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding six months.

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Short title and commencement

19. This Act shall be called the Commission on Gender Equality Act, 1996, and shall come into operation on a date fixed by the President by proclamation in the Gazette.