

**PROVINCE OF THE EASTERN CAPE**

**OFFICE OF THE PREMIER**

**EASTERN CAPE SOCIO ECONOMIC CONSULTATIVE COUNCIL BILL, 2022**

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**AS INTRODUCED**

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**(BY THE PREMIER OF THE PROVINCE OF THE EASTERN CAPE)**

## **BILL**

**To provide for the establishment of the Eastern Cape Socio Economic Consultative Council, to provide for its powers, functions and governance, to provide for establishment of sector councils and to provide for matters incidental thereto.**

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

### **ARRANGEMENT OF SECTIONS**

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3. Objects of Ecsecc
4. Functions of Ecsecc
5. Role of Board
6. Constitution of the Board
7. Nomination procedure
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## 1. Definitions

In this Act unless the context indicates otherwise –

**"Board"** means the Board of the Eastern Cape Socio Economic Council referred to in section 6;

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

**"Director- General"** means the administrative head of the Office of the Premier referred to in section 7 of the Public Service Act, 1994 (Proc. 103 of 1994);

**"Council"** means Eastern Cape Socio Economic Consultative Council (Non-Profit Organisation) established on the 31<sup>st</sup> of July 1995 and incorporated in terms of the Companies act, 2008 (Act No. 71 of 2008);

**"Ecsecc"** means the Eastern Cape Socio Economic Consultative Council referred to in section 2;

**"Gazette"** means the Provincial Gazette of the Province;

**"Member"** means a member of the Board appointed in terms of section 6;

**"Premier"** means the Premier of the Province;

**"prescribe"** means prescribed by Regulation by the Premier in terms of section 37;

**"Province"** means the Province of the Eastern Cape established by section 103 of the Constitution;

**"Public Finance Management Act"** means the Public Finance Management Act, 1999 (Act No. 1 of 1999) ;

**"regulation"** means a regulation made by the Premier in terms of section 37;  
and

**"this Act"** includes any regulations, proclamation or notice issued in terms of this Act;

## **ESTABLISHMENT AND FUNCTIONS OF ECSECC**

### **2. Establishment of Ecsecc**

- (1) The Eastern Cape Socio Economic Consultative Council established in terms of section 21 of the Companies Act, 1973 (Act No. 61 of 1973) read with item 2 of Schedule 5 of the Companies Act, 2008 ( Act No. 71 of 2008), is deemed to be established as a juristic person in terms of this Act.
- (2) Ecsecc acts through the Board appointed in terms of section 6.

### **3. Objects of Ecsecc**

The primary objects of Ecsecc are to –

- (1) advise, assist in and drive the development of a shared and sustainable socio-economic development agenda for the Province, aligned to its long term development perspective;
- (2) facilitate, monitor and support strategic partnerships that involve the public sector, the private sector, the knowledge sector, organised labour, and civil society in the implementation of the provincial development agenda;
- (3) serve as a provincial hub for socio-economic research, knowledge, innovation for decision-making, policymaking and planning, towards the sustainable development of the Province; and

- (4) empower stakeholder constituencies for meaningful participation in the development, implementation, and monitoring of the provincial development agenda.

#### **4. Functions of Ecsecc**

The functions of Ecsecc are to -

- (1) provide policy advice on development matters;
- (2) facilitate long term strategic and integrated planning for the Province.
- (3) facilitate monitoring and evaluation of implementation of the provincial long-term plan;
- (4) serve as a centre of knowledge and innovation through the collection, generation, and analysis of administrative, official, and other primary data;
- (5) package projects and manage catalytic projects;
- (6) hold an annual development convention among all stakeholders in the Province;
- (7) coordinate and facilitate partnerships with non-government research partners within and beyond the Province;
- (8) facilitate the establishment of stakeholder forums and councils, host and provide technical support thereto;
- (9) facilitate social compacts amongst stakeholders;
- (10) facilitate resource mobilisation from private and public partners.
- (11) provide technical support to stakeholders in the implementation of the provincial development agenda;
- (12) support stakeholder structures to effectively participate in the development of the provincial development agenda;
- (13) facilitate dialogue amongst stakeholders; and
- (14) provide stakeholder leadership development support.

## **GOVERNANCE OF ECSECC**

### **5. Role of Board**

- (1) Ecsecc must be managed by a Board that –
  - (a) gives strategic direction to Ecsecc;
  - (b) is responsible for the performance of Ecsecc;
  - (c) is accountable to the Premier for the performance of Ecsecc; and
  - (d) is supported by a Chief Executive Officer and other employees.
  
- (2) Ecsecc communicates with the Premier through the chairperson of the Board.

### **6. Constitution of the Board**

- (1) The Board consists of not less than seven and not more than eleven members, appointed by the Premier.
- (2) The Board must be constituted as follows:
  - (a) Six members nominated by the constituency sectors of Ecsecc;
  - (b) Two members of the public appointed by the Premier in terms of section 7;
  - (c) A member representing the Office of the Premier; and
  - (d) The Chief Executive Officer and Chief Financial Officer of Ecsecc as ex officio members who do not vote.
  
- (3) The members of the Board must collectively have the following mix of qualifications, expertise and experience :
  - (a) Law;
  - (b) Accounting;
  - (c) Development planning;
  - (d) Research and innovation; and

(e) Socio-Economic Development.

(4) The Board must be broadly representative of the demographics of the Province.

## **7. Nomination procedure**

(1) The Premier must, at least 90 days before the expiry of every term of office of the members of the Board, invite applications or nominations for persons to be appointed to the ensuing term of office of the Board by notice in the *Gazette* and an advertisement in a leading newspaper in the Province.

(2) The invitation for applications or nominations referred to in subsection (1) must provide for the applications or nominations to be submitted within 30 days from the date of the invitation or the date of publication of the notice.

(3) Any application or nomination made pursuant to a notice or an advertisement in terms of subsection (1) must be made in the form determined by the Premier and be accompanied by—

- (a) the personal details of the applicant or nominee;
- (b) particulars of the applicant's or nominee's qualifications or experience in the matters listed in section 6;
- (c) in the case of a nomination, a letter of acceptance of nomination by the nominee;
- (d) a sworn declaration by the applicant or nominee that he or she is not disqualified in terms of section 8; and
- (e) permission by the applicant or nominee to verify the information provided by him or her.

(4) The constituency sectors of Ecsecc must nominate persons who meet the requirements set out in section 6.



- (5) The Premier must, within 30 days from the expiry of the date specified in the notice and the advertisement, evaluate the applications and nominations received by him or her, and appoint the members of the Board for the ensuing term of office.
- (6) When evaluating the nominations, the Premier must take into consideration—
- (a) the applicant's or nominee's qualifications, knowledge and experience of the matters referred to in section 6(2) ;
  - (b) the geographic spread in the Province;
  - (c) the need to ensure that the Board is composed of persons covering a broad range of appropriate experience and expertise; and
  - (d) Ecsecc's objectives.
- (7) Where a nominee from a constituency of Ecsecc does not have the qualifications, experience or expertise set out in section 6 (2), the Premier must request the relevant constituency to nominate another person who meets the qualification criteria.
- (8) If insufficient, unsuitable or no applications and nominations are received within the period specified in the invitation or the notice, the Premier may appoint to the Board, the required number of persons who, but for the fact that they did not apply or were not nominated in terms of the procedure contemplated in this section, qualify to be appointed in terms of this Act.
- (9) The Premier must, as soon as practicable after the appointment of the members of the Board, publish by notice in the *Gazette*—
- (a) the name of every person appointed;
  - (b) the date from which the appointment takes effect; and
  - (c) the term of office referred to in section 14.

## **8. Disqualification from appointment or remaining as member of the Board**

A person is disqualified from being appointed or remaining a member of the Board if that person–

- (1) is or becomes a Member of the National Assembly or National Council of Provinces, any provincial legislature or municipality, or is in the full-time employ of an organ of state with the exception of the representative of the Office of the Premier contemplated in section 6 (2) (c);
- (2) is not a South African citizen or a permanent resident who is ordinarily resident in the Republic;
- (3) is or becomes subject to a final order of court whereby his or her estate is sequestrated in terms of the Insolvency Act, 1936 (Act No. 24 of 1936), or if his or her estate is sequestrated in terms of the laws of any other country or territory by a competent court of such country or territory, or if he or she has assigned his or her estate for the benefit of his or her creditors;
- (4) is declared by the High Court to be of unsound mind or suffers from a mental illness, or has a severe or profound intellectual disability as contemplated in the Mental Health Care Act, 2002 (Act No. 17 of 2002) ;
- (5) has been convicted, whether in the Republic or elsewhere, of theft, fraud, forgery or uttering a forged document, perjury, or any offence involving dishonesty and sentenced to imprisonment irrespective of whether such imprisonment was wholly or partly suspended;
- (6) has been convicted of an offence, other than an offence contemplated in subsection (5), and sentenced to imprisonment

without the option of a fine for a period of not less than three months, irrespective of whether such imprisonment was wholly or partly suspended;

(7) without authorisation discloses or improperly acts on information gained as a result of his or her membership of the Board; or

(8) fails to disclose an interest as contemplated in section 12.

### **9. Resignation of member and vacation of office**

(1) A Member of the Board may at any time resign from the Board by giving one month's written notice tendered to the chairperson who must immediately inform the Premier, the Board and the Chief Executive Officer accordingly.

(2) A member of the Board who resigns as contemplated in subsection (1) must vacate his or her office at the end of the notice period contemplated therein.

(3) A member of the Board ceases to be a member and must vacate his or her office with immediate effect if he or she—

(a) is no longer eligible to be a member in terms of section 8 ; or

(b) is removed from office by the Premier in terms of 10.

### **10. Removal of member of Board, dissolution of Board and appointment of interim Board**

(1) The Premier may, after due inquiry, or on recommendation of the Board after due inquiry, remove, with immediate effect, a member of the Board from office on account of any or all of the following—

(a) misconduct;

(b) inability to perform the duties of his or her office efficiently;

(c) absence from three consecutive meetings of the Board without the permission of the Board, except on good cause shown; or

- (d) failure to disclose an interest in terms of section 12, or voting or attendance at, or participation in, proceedings of the Board while having an interest contemplated in section 12.
- (2) Despite the provisions of subsection (1) the Premier may remove a member nominated by a constituency sector where -
- (a) the body by whom the member was nominated withdraws the nomination; or
  - (b) the member terminates his or her membership to the constituency he or she serves; or
  - © the constituency he or she serves ceases to be a constituency or withdraws from being a constituency of Ecsecc.
- (3) The Premier may, after due inquiry, dissolve the Board with immediate effect, if it fails in any or all of the following:
- (a) discharging its fiduciary duties; or
  - (b) carrying out its duties.
- (4) Upon the dissolution of the Board contemplated in subsection (3), the Premier must appoint an interim Board consisting of not less than seven and not more than eleven members, and he or she does not have to follow the nomination and appointment procedure contemplated in section 7.
- (5) The Premier must appoint the interim Board within 30 days after the dissolution of the Board, and the term of office of the interim Board is a period not exceeding six months.
- (6) The provisions of this Act regarding the Board apply to the interim Board.

## **11.Appointment of member to vacant seat**

- (1) When a seat on the Board becomes vacant as a result of any action referred to in section 9 and 10, or if a Board member dies before the

expiry of his or her term of office, the Board must, as soon as is practicable after the seat becomes vacant, notify the Premier that the seat has become vacant.

- (2) The Premier must, as soon as is practicable after the receipt of the notification from the Board, appoint to the Board, the required number of persons who qualify to be appointed to fill the vacant seat or seats.
- (3) The Premier must, as soon as is practicable after the appointment of a member to the vacant seat on the Board, publish by notice in the *Gazette* the –
  - (a) name of the person appointed;
  - (b) date from which the appointment takes effect; and
  - (c) period for which the appointment is made as contemplated in subsection (4).
- (4) The person who is appointed to the vacant seat on the Board fills the vacancy for the unexpired portion of the period of office of the vacating member.

## **12. Disclosure of interest**

- (1.) Members must, in the prescribed manner and not later than the 30<sup>th</sup> April of each financial year disclose their financial interests for that financial year.
- (2) If at any stage during the course of any proceedings before the Board, it appears that any Board member has or may have an interest which may cause a conflict of interest–
  - (a) that Board member must forthwith fully disclose the nature of his or her interest and leave the meeting so as to enable the remaining Board members to discuss the matter, and determine whether that Board member is precluded from participating in that meeting by reason of a conflict of interest; and

(b) the disclosure of interest by that member and the decision taken by the remaining Board members regarding the matter must be recorded in the minutes of the meeting in question.

(3) If any Board member fails to disclose any interest as required by subsection (2) or, he or she is present at the venue where a meeting of the Board is held, or in any manner whatsoever participates in the proceedings of the Board, the relevant decisions of the Board will be null and void.

### **13. Chairperson**

(1) The Premier must appoint a chairperson and deputy chairperson for every newly constituted Board.

(2) If the chairperson or the deputy chairperson are for any reason unable to preside at a Board meeting, the members present must elect one of the members to preside at that meeting, and the person elected may perform all the functions and exercise all the powers of the chairperson.

(3) If the chairperson has vacated office, the Premier must appoint a chairperson from the Board members for the remaining term of office of the Board.

### **14. Term of office**

(1) A Board member holds office for a period of three years calculated from the date that his or her appointment takes effect and may be eligible for re-appointment for one additional term not exceeding three years.

(2) Despite subsection (1), the Premier may, by notice in the *Gazette*, after

consultation with the Board, extend the term of office of all the Board members for a period of six months, but he or she may only extend the term of office of the Board twice.

- (3) Despite the duration of office referred to in subsection (1), Board members continue in office until the succeeding Board is duly constituted by the Premier.

## **15. Meetings of Board**

- (1) The Premier must, as soon as is practicable after the appointment of the Board for the first term of office, determine the time and place of its first meeting.
- (2) The Board must determine the time and place of any future meetings for the first and subsequent terms of office of the Board.
- (3) The Board meets at least four times in every financial year.
- (4) A majority of Board members constitutes a quorum at a meeting.
- (5) Every Board member, including the chairperson, has one vote and, in the event of an equality of votes, the chairperson of the meeting has a casting vote in addition to his or her deliberative vote.
- (6) Subject to the approval of the Board, any person who is not a Board member may attend or take part, but may not vote, in a meeting of the Board.
- (7) The Board must adopt governance rules, which provide for the conduct of proceedings at meetings and recording of the proceedings, including the governance rules for special meetings.

## **16. Decisions of the Board**

- (1) A decision of the majority of Board members present at any duly constituted meeting constitutes a decision of the Board.
- (2) Subject to section 12 (3), no decision taken by or act performed under the authority of the Board is invalid only by reason of—
  - (a) a vacancy on the Board at the time the decision was taken, or the act was authorised; or
  - (b) the fact that any person who was not entitled to sit as a Board member, participated in the meeting at the time the decision was taken or the act was authorised, if the members who were present at the time followed the required procedure for decisions.

## **17. Duties of Board**

- (1) In addition to the duties and responsibilities as accounting authority of Ecsecc provided for in the Public Finance Management Act, the Board must—
  - (a) provide effective, transparent and accountable corporate governance and conduct effective oversight of the affairs of Ecsecc by adopting governance rules in accordance with subsection (2);
  - (b) comply with all applicable legislation and agreements; and
  - (c) at all times act in accordance with the code of conduct for members of the Board as may be prescribed by the Premier.
- (2) The Board must adopt governance rules that substantially comply with the principles of good governance for a public entity and which provide for at least the following:
  - (a) the role and meetings of the Board;



- (b) the role of the chairperson of the Board;
- (c) performance assessment of Board members;
- (d) the role of the chief executive officer;
- (e) performance assessment of the chief executive officer;
- (f) the composition and procedures for and conduct of meetings of committees of the Board;
- (g) the financial management of the Ecsecc as contemplated in the Public Finance Management Act;
- (h) a procurement policy; and
- (i) a remuneration policy for employees of Ecsecc, developed in consultation with the Premier and the Member of the Executive Council responsible for Finance in the Province.

#### **18. Remuneration of members of Board.**

- (1) A member of the Board who is not in the full-time employment of the State must be paid such remuneration and allowances as may be determined by the Premier in consultation with the member of the Executive Council responsible for Finance and in line with the guidelines issued by National Treasury.
  
- (2) A member of the Board who is in the full-time employment of an organ of State must not, in respect of the duties performed by him or her as member in terms of this Act, be paid any remuneration in addition to his or her remuneration as an employee of an organ of State, nor must he or she be paid any allowance in respect of subsistence and transport at a rate exceeding the rate applicable to him or her as such an employee.

## SECTOR COUNCILS AND ANNUAL DEVELOPMENT CONVENTION

### 19. Sector councils

- (1) Ecsecc may facilitate the establishment of sector councils and advisory fora to drive provincial priorities.
- (2) Sector councils must consist -
  - (a) of members of Ecsecc's constituencies; or
  - (b) individuals outside Ecsecc, appointed by Ecsecc based on priorities and the nature of challenges to be addressed.
- (3) Members of the sector councils or advisory fora must not be paid any remuneration or allowances by Ecsecc except where they are also Board members and are entitled to be paid as such.
- (4) Sector councils must report to -
  - (a) Ecsecc every six months; and
  - (b) the relevant government Cluster and Cabinet Committee, andseek the support of these structures for the execution of their programme.
- (5) The Premier may prescribe terms of reference and Council Charters for each sector council or advisory forum upon establishment, based upon the following generic terms of reference:
  - a) advising the Provincial government on the assigned subject matter(s);
  - b) advocating for the effective involvement of sectors and organizations in implementing interventions;
  - c) provision of a platform for strategic partnerships;
  - d) overseeing the packaging of identified priority interventions;
  - e) facilitating resourcing of identified priority interventions;

- f) mobilising and leveraging technical and financial resources in support of the government as well as business to implement prioritised interventions;
- g) Identification of bottlenecks (institutional, organizational, financial, etc.) to ensure effective implementation of priority interventions;
- h) provision of coordination and implementation mechanisms for relevant Council resolutions;
- i) provision of platforms for dialogue; and
- j) overseeing the development and implementation of suitable monitoring and evaluation tools to ensure the sustainability of implemented priority interventions.

## **20. Annual Development Convention**

- (1) Escecc must cause a Development Convention to be held at least once a year to determine, review and drive the provincial collective development agenda.
- (2) Stakeholder constituencies must nominate members to attend the Development Convention.
- (3) The Premier is the chairperson of the Development Convention, and a report of the convention must be presented to the Executive Council of the Province.

## **ADMINISTRATION**

### **21. Executive management and employees**

- (1) The Board must–
  - (a) appoint a chief executive officer;
  - (b) determine the period of office of the chief executive officer, provided that the period may not exceed 5 years and may only be renewed for one further term; and
  - (c) determine the conditions of appointment of the chief executive

officer.

- (2) The chief executive officer must enter into a performance agreement with the Board on acceptance of his or her appointment, and he or she is accountable to the Board.
- (3) The chief executive officer is the head of Ecsecc's administration.
- (4) Subject to directives from the Board, the functions of the chief executive officer are, amongst others, to—
  - (a) manage the affairs of Ecsecc;
  - (b) implement the policies and decisions of the Board;
  - (c) manage and recruit employees to perform the work necessary to achieve the objects of Ecsecc; and
  - (d) develop efficient, transparent and cost-effective administrative systems.
- (5) Ecsecc must determine the conditions of service for its employees, including remuneration which must be determined in accordance with the remuneration policy.
- (6) The chief executive officer may delegate any original or delegated duty or power to any employee appointed in terms of subsection (4)(c).

## **22. Committees**

- (1) The Board may, subject to subsection (2), establish any committee to assist it in the performance of its functions and appoint members to that committee, and it may at any time dissolve or reconstitute any such committee.
- (2) The Board may co-opt any person outside the Board to assist on any of its committees if the person concerned has specific expertise, provided that he or she does not have voting rights.

- (3) The Board may at least, establish the following committees:
- (a) an executive committee;
  - (b) a finance and remuneration committee;
  - (c) an audit and risk committee; and
  - (d) a governance and strategy committee.
- (4) The Board must determine, subject to any applicable legislation, the number of members and the terms of reference of each committee.
- (5) The Board may appoint to any of its committees people who are not members of the Board, provided that they will serve in an advisory capacity and have no voting rights.
- (6) The Board may summarily terminate the membership of a member to a committee if–
- (a) the performance of that member is unsatisfactory;
  - (b) the member, either through illness or any other reason, is unable to perform the functions of the committee effectively; or
  - (c) the member has failed to comply with or breached any legislation regulating the conduct of members.
- (7) If this Act or the Board does not designate a chairperson for a committee, the committee may elect a chairperson from among its members.

### **23. Executive committee**

- (1) The executive committee established in terms of section 22(3)(a) consists of the chairperson of the Board who must act as chairperson of the executive committee, one other member of the Board elected by the Board, the chief executive officer, and any other appropriate executive manager of the Ecsecc.
- (2) The purpose of the executive committee is to oversee the activities of Ecsecc in order to ensure that the strategic decisions of the Board

are implemented effectively and timeously, and that Ecsecc complies with the provisions of this Act, the Public Finance Management Act and any other applicable law.

## **24. General powers of the Board**

The Board may–

- (1) in consultation with the Premier, determine the staff establishment of the Ecsecc, and appoint the Chief Executive Officer;
- (2) obtain, by agreement, the services of any person, including any organ of state, for the performance of any specific act, task or assignment;
- (3) open and operate a bank account;
- (4) subject to the Public Finance Management Act, invest any funds of Ecsecc;
- (5) charge fees for any work performed or services rendered by it, or collect royalties resulting from any discoveries, inventions or computer programmes;
- (6) insure against–
  - (a) any loss, damage or risk; or
  - (b) any liability it may incur in the application of this Act; and
- (7) perform legal acts, including acts in association with or on behalf of any other person or organ of state.

## **25. Delegations by Board**

- (1) The Board must develop a system of delegation to maximise administrative and operational efficiency and provide for adequate checks and balances, and, in accordance with that system, may–
  - (a) in writing delegate appropriate powers, excluding the power to–
    - (i) establish a committee;
    - (ii) prescribe governance rules for a committee; and

(iii) appropriating funds to a committee, to the chief executive officer, a member of the Board or any employee of the Ecsecc;

(b) delegate the performance of any of its functions to a committee, the chief executive officer, a member of the Board, executive manager or an employee of the Ecsecc; and

(c) approve the delegation of any of the powers or functions delegated to the chief executive officer by the Board, or granted to him or her under this Act, to any employee of the Ecsecc.

(2) A delegation in terms of subsection (1) –

(a) is subject to such limitations and conditions as the Board may impose;

(b) may authorise sub-delegation; or

(c) does not divest the Board or the chief executive officer in the event of a delegation in terms of subsection (1)(c) of the delegated power or function.

## **FINANCIAL MATTERS AND REPORTING**

### **26. Financial year**

The financial year of Ecsecc is from 1 April to 31 March.

### **27. Revenue of Ecsecc**

The revenue of Ecsecc consists of–

(1) income derived by it from the performance of its functions;

- (2) fees and other moneys received or raised by it under the provisions of this Act or any other law;
- (3) money appropriated by the Legislature;
- (4) grants received from organs of state;
- (5) voluntary contributions, donations and bequests received by it;
- (6) money borrowed by it in terms of this Act and in compliance with the PFMA;
- (7) income derived by it from investments; and
- (8) money accrued to Ecsecc from any other source.

## **28. Annual budget of Ecsecc**

- (1) Ecsecc must, no later than 30 September in each financial year or any other period agreed to between the Premier and the Ecsecc, submit, through the Director-General, to the Premier a budget of its estimated revenue and expenditure for the ensuing financial year for approval by him or her as contemplated in the Public Finance Management Act.
- (2) Ecsecc may not budget for a deficit and may not accumulate surpluses unless the prior written approval of the Provincial Treasury has been obtained.
- (3) The Board is responsible for ensuring that the expenditure of Ecsecc is in accordance with the approved budget.

## **29. Contents of strategic plan**

- (1) Ecsecc must, no later than 30 September in each financial year or any other period agreed to between the Premier and Ecsecc, submit, through the Director - General, to the Premier a strategic plan for approval by him or her or her as contemplated in the Public Finance Management Act.



- (2) The strategic plan must–
- (a) cover a period of at least three years;
  - (b) be updated annually on a rolling basis; and
  - (c) form the basis for the annual reports of Ecsecc.
- (3) In addition to the requirements of the Public Finance Management Act and any objectives and outcomes that the Premier may determine, the strategic plan of Ecsecc must provide for the manner in which it intends to give effect to its objects as stated in section 3, inclusive of strategies, including an own revenue generation strategy and preliminary action plans.
- (4) The Premier and Ecsecc must develop and agree on a framework of acceptable levels of materiality and significance of matters that must be contained in its annual report and financial statements as contemplated in section 55 (2) of the Public Finance Management Act.

### **30. Preparation and submission of annual report and financial statements of Ecsecc**

- (1) The Board is the accounting authority for the Ecsecc and must prepare the annual report and the financial statements in terms of section 55 of the Public Finance Management Act and, together with the report of the auditor on the financial statements, submit it to the Provincial Treasury, the Premier and the Auditor-General, if the Auditor-General did not audit the financial statements.
- (2) For purposes of section 55 (3) of the Public Finance Management Act, the Board must submit the annual report and the financial statements through the Director General, to the Premier, for tabling in the Legislature.
- (3) The Premier must on receipt of the annual report and financial statements of Ecsecc, table them in the Provincial Legislature in terms of the applicable regulatory framework.

### **31. Quarterly reporting**

- (1) The Board must submit to the Premier quarterly reports in compliance with the applicable provisions of the Public Finance Management Act and the Treasury Regulations issued in terms thereof.
- (2) Each quarterly report of Ecsecc must deal with the state of affairs, the activities, the operations, and the financial position of Ecsecc, including the –
  - (a) extent to which Ecsecc has achieved or advanced its objects during the quarter concerned;
  - (b) relevant performance information regarding the economic, efficient and effective utilisation of resources;
  - (c) amount of money, if any, received from the state or any other source and any other financial commitment furnished to the Ecsecc; and
  - (d) the detailed staff establishment and composition of the Ecsecc.
- (3) Notwithstanding the provisions of subsection (1), the Premier may, at any time, request the Board to submit to him or her, within a period determined by the Premier, an interim report pertaining to the state of affairs, the activities, the operations, and the financial position of Ecsecc or pertaining to any specific matter identified by the Premier.
- (4) The Board must establish procedures for quarterly reporting to the Premier in terms of the Public Finance Management Act and this chapter in order to facilitate effective performance monitoring, evaluation and corrective action.

## **TRANSITIONAL PROVISIONS**

### **32. Legal successor**

- (1) From the date of commencement of this Act, Ecsecc is, for all purposes in law, the legal successor to the Council established in terms of section 21 of the Companies Act, 2008 ( Act No . 71 of 2008) and–
- (a) retains all its movable and immovable property;
  - (b) continues as a contracting party for Council in all contracts as if Ecsecc had been the contracting party at the time of contracting, and
  - (c) is deemed to have issued all financial instruments of the Council.
- (2) Any money standing to the credit of the Council in its bank account immediately before the commencement of this Act vests in Ecsecc.
- (3) Any reference in any law or document to the Council must be construed as a reference to Ecsecc, unless such construction is clearly inappropriate.

### **33. Board of Council**

The members of the Board of the Council elected or appointed in terms of the Board Charter continue in office for their unexpired term of office, and the Premier must call for nominations in terms of section 14 of this Act at least 90 days before the expiry of their term of office in terms of the Board Charter.

### **34. Legal proceedings and internal proceedings and investigations**

- (1) No provision of this Act affects any civil matter pending at the commencement of this Act, and such matter must be continued and concluded in every respect as if this Act had not been passed.

- (2) A civil matter is, for the purposes of this section, deemed to be pending if, at the commencement of this Act, summons had been issued but judgment has not been given, and to be concluded when judgment is given.
- (3) Any internal hearing, investigation or disciplinary proceedings or process instituted by the Council which is pending at the date of commencement of this Act, may be continued or instituted as if this Act had not been passed.

### **35. Financial, administrative and other records of the Council**

All financial, administrative and other records of the Council are deemed to be records of Ecsecc.

### **36. Existing Sector councils**

The Eastern Cape AIDS Council and the Eastern Cape Human Resource Development Council must continue to operate as if they have been established in terms of this Act.

### **37. Employees of the Council**

- (1) A person who, immediately before the commencement of this Act, was in the employ of the Council, continues to be in the employ of Ecsecc with the retention of the salary, allowances and other conditions of service which applied in respect of that person before the commencement of this Act, and is deemed to be appointed under this Act.

(2) The salary, allowances and other conditions of service of such a person are regarded as having been determined under this Act, and any leave, pension or other benefits which have accrued in the person's favour by virtue of the person's service with the Council are regarded as having been accrued in the person's favour by virtue of service with Ecsecc.

(3) Subject to the provisions of this Act, any–

- (a) law regarding any condition of service;
- (b) measure regarding the duties, functions and powers; or
- (c) arrangement regarding any administrative function,

which applied to a person in the employ of the Council immediately before the date of commencement of this Act, remain in force until amended by Ecsecc and the employee concerned.

## **CHAPTER 11**

### **GENERAL PROVISIONS**

#### **38. Regulations**

The Premier may make regulations on any matter which he deems expedient in terms of this Act.

#### **39. Short title and commencement**

This Act is called the Eastern Cape Socio Economic Consultative Council Act, 2022 and will come into operation on a date determined by the Premier by proclamation in the *Gazette*.

## **EXPLANATORY MEMORANDUM**

### **PART I**

#### ***(OBJECTS AND PRINCIPLES OF THE BILL)***

ECSECC was established through the Executive Council resolution in 1995 without a legislative mandate. In order to regularise the establishment of ECSECC, a legislative framework need to be developed. ECSECC was mandated to establish a partnership with relevant stakeholders that would drive the development agenda in the Eastern Cape Province, including the fundamental role of NEDLAC.

Pursuant with an all-inclusive provincial development agenda, which is not hamstrung by the government bureaucracy, the entity is expected to provide for alignment of government programmes with long term planning and implementation of the national and provincial long-term plans. To achieve the objectives of the national and provincial long-term plans in the Eastern Cape there is a need for the state to act in partnership with business, labour and civil society as well as an active citizenry and social activism. There is also a need to mobilise resources and implementation capacities beyond the confines of government. Further, there is a need for the province to establish one dedicated, central capability with a focus on long term and strategic planning. Three core capabilities will be required *viz* Research, information management and strategic thinking capabilities; Strategy development and strategic planning capabilities; programme management capabilities; Stakeholder dialogue, engagement and management capabilities. Therefore, the major challenge that this document seeks to address is to formalise the functioning of ECSECC through the formulation of the legislative framework as well as to deliver on additional functions, in line with the developmental needs of the province.

The National Development Plan, adopted by the government in 2012, aims to eliminate poverty and reduce inequality by 2030. The plan states that South Africa can realise these goals by drawing on the energies of its people, growing an inclusive economy, building capabilities, enhancing the capacity of the state, and promoting leadership and partnerships throughout society. The plan states that successful

implementation of the NDP requires strong and active citizenry and collective leadership from government, business, labour and civil society, thus recognizing the importance of partnerships. However, the National Planning Commission (NPC) in its research on social compacts (2015) and the 2020 review of the NDPs implementation argues that although the NDP had broad stakeholder and societal support after its adoption, this did not translate into robust implementation, and the envisaged broad social compact behind the Plan did not emerge.

In terms of the Provincial Development Plan (2014/2020), the provincial vision and long-term plan are intended to mobilise all citizens and sectors of the Eastern Cape around a common vision. The aim is to provide an opportunity for revisiting social partnerships and the development of common goals among citizens, civil society, the state and the private sector. The plan also seeks to promote mutual accountability between stakeholders and to enable the coherence of the three spheres of the state. However, due to various constraints in the province, the scope of Ecsecc has broadened over the period since its establishment and eventually included a broad range of aspects. This included supporting the local government sphere in planning as a critical tool towards enabling effective and efficient service delivery. Ecsecc has been expected to play a significant role in supporting municipalities to develop credible Integrated Development Plans (IDPs), while also participating in the strategic planning processes for provincial government departments and entities. Ecsecc was also tasked with the responsibility of coordinating multi-sectoral stakeholders including establishing, hosting and supporting the Eastern Cape Aids Council (ECAC) as well as the Human Resources Development Council. In addition to these, Ecsecc also responded to various forms of requests for assistance from other institutions and stakeholders. It is thus necessary to clearly define the purpose and mandate of Ecsecc.

## **PART II**

### ***(CLAUSE BY CLAUSE ANALYSIS )***

- CLAUSE 1:** Provides for the definitions used in the Bill.
- CLAUSE 2:** Provides for the establishment of the Eastern Cape Socio – Economic Consultative Council (ECSECC)
- CLAUSE 3:** Provides for the objects of ECSECC
- CLAUSE 4:** Provides for the functions of ECSECC
- CLAUSE 5:** Provides for the role of the Board
- CLAUSE 6:** Provides for how the Board should be constituted
- CLAUSE 7:** Provides for the procedure to nominate persons for appointment to the Board
- CLAUSE 8:** Provides for disqualification from appointment to or remaining as a member of the Board
- CLAUSE 9:** Provides for the resignation of members and vacation of office of Board members
- CLAUSE 10:** Provides for the removal of members of the Board, dissolution of the Board and the appointment of an interim Board
- CLAUSE 11:** Provides for the appointment of persons to vacancies in the Board
- CLAUSE 12:** Provides for disclosure of interest by Board members
- CLAUSE 13:** Provides for matters concerning the chairpersonship of the Board



- CLAUSE 14:** Provides for the determination of the term of office of the Board
- CLAUSE 15:** Provides for the regulation of meetings of the Board
- CLAUSE 16:** Provides for decisions of the Board
- CLAUSE 17:** Provides for duties of the Board
- CLAUSE 18:** Determines the remuneration of Board members
- CLAUSE 19:** Provides for matters concerning sector councils
- CLAUSE 20:** Provides for an Annual Development Convention
- CLAUSE 21:** Deals with the appointment of the executive management and staff
- CLAUSE 22:** Provides for the establishment of Board committees
- CLAUSE 23:** Deals with the functioning of the Executive Committee
- CLAUSE 24:** Provides for the general powers of the Board
- CLAUSE 25:** Provides for the delegation of powers by the Board
- CLAUSE 26:** Determines the financial year of the financial year
- CLAUSE 27:** Determines how the revenue of ECSECC should be derived
- CLAUSE 28:** Determines the annual budget of ECSECC
- CLAUSE 29:** Provides for a strategic plan, its contents and matters relevant thereto
- CLAUSE 30:** Preparation and submission of annual report and financial statements of ECSECC
- CLAUSE 31:** Deals with quarterly reporting by ECSECC

- CLAUSE 32:** Provides that ECSECC that is hereby established is the legal successor of the Council which is currently in existence
- CLAUSE 33:** Provides for continuation for the unexpired term of the existing Board
- CLAUSE 34:** Provides for the transitional procedure relating to legal proceedings, internal proceedings etc
- CLAUSE 35:** Provides for transitional matters relating to financial, administrative and other matters
- CLAUSE 36:** Provides for transitional matters relating sector council
- CLAUSE 37:** Provides for transitional matters relating to employees of the Council
- CLAUSE 38:** Provides for the Premier's power to make regulations
- CLAUSE 39:** Provides for the short title and commencement

## **SOCIO ECONOMIC IMPACT OF THE BILL**

The Bill will not have any socio-economic impact as its purpose is to provide a legislative framework that will formalise the functioning and operations of ECSECC. The Bill sets out functions that are to be performed by ECSECC in line with the provincial development agenda. Lastly the Bill also seeks to respond to the continued need for a shared engagement platform, to rebuild public trust and creating new approaches to social compacting.

It has been established that the Bill seeks to support the delivery of core national and provincial priorities as the ECSECC mandate, objectives and functions have a strong alignment to the NDP and PDP.

## **CONSTITUTIONAL IMPACT**

The Bill falls within Schedule 4 of the Constitution of the Republic of South Africa, 1996.

## **CONSULTATIONS**

A multi-sectoral team was established to contribute to the development of the White Paper on ECSECC. The Board of ECSECC and other stakeholders were consulted on the draft White Paper and the Bill. The Bill was further published in the Government Gazette for comments.