Gauteng workshops on legislative drafting

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DRAFT FOR A SUGGESTED CABINET MEMORANDUM ON DRAFTING PROCESSES

Note: This draft includes only the substance of the Memorandum, not the introductory or final sentences required for a Gauteng Cabinet Memorandum.

PART I
PRIORITIZATION

1 The Cabinet Committee on Strategic Planning shall also serve as Cabinet Committee on Legislation ('CCL'), and undertake the duties prescribed in this Cabinet Memorandum.

2 Annually, not later than (month) (day), the Director, Department of Legal Services, shall submit to CCL a list of the projects proposed by the Prime Minister and by the several Departments that in the forthcoming twelve months will require the use of drafting resources, placed in order of priority as the Director may propose.

3 CCL shall approve, or amend and approve the list, and submit it to Cabinet for their approval.

PART II
THE DRAFTING PROCESS

4 A Department proposing to go forward with a project for legislation or subsidiary legislation shall submit a Proposal in the form of a memorandum explaining and justifying the project to CCL.

5 The originating Department shall accompany the Proposal mentioned in Paragraph 4 with a Drafting Plan indicating the following:

(1) The composition of the drafting team by name, including -
    (a) an official or officials from the originating Department;
    (b) a drafter assigned by the Legal Services Department ('Legal Services') or outside, private counsel;
    (c) where necessary or desirable, officials from other

1 Should Cabinet forward the prioritization list to the legislature for its approval?
concerned departments;

(d) where necessary or desirable, a non-government consultant;

(e) where necessary or desirable, representatives of relevant stakeholders;

(2) a description of the processes, if any, by which the drafting group will obtain inputs concerning the drafting project from other governmental units and from elements in civil society;

(3) a timetable for the drafting project; and

(4) a budget for the drafting group.

6 If the proposed drafting group includes private counsel or a non-government consultant, in the Drafting Plan, the originating department shall justify their employment at the rates stated in the budget.

7 If the drafting group includes stakeholders, the originating Department shall justify both their inclusion and the exclusion of other possible stakeholder groups.

8 If the originating department requests that CCL permit the drafting group not to submit a research report for the proposed draft bill as mentioned in Part III, it shall justify that request.

9 The originating Department shall explain and justify its proposed processes for obtaining inputs from other governmental units and from elements in civil society concerning the drafting project.

10 CCL shall make an order either approving the Proposal for priority drafting, approve for priority drafting with amendments, approve for deferred drafting, approve for deferred drafting with amendments, or disapprove of the drafting project, and the originating department shall comply with that order.

11 Upon completion of the drafting project, the Drafting Group shall submit the draft bill and, where required, the accompanying research report, to the MEC of the originating department, who shall approve, amend and approve, or disapprove of the bill and research report.

12 If the MEC approves, or amends and approves, the draft bill and research report, the MEC shall forward it to CCL for consideration.

13 If the MEC disapproves the bill and research report, the MEC may either (a) return it to the Drafting Group for further research and drafting, or (b) quash the Proposal.

14 CCL may approve the draft bill and research report, amend and approve it, or, in terms of Paragraph 10, return the draft bill
15 If CCL approves the draft bill and research report, it shall forward them to Cabinet for further consideration and action.

PART III
THE RESEARCH REPORT

16 The research report mentioned above shall contain the following four parts:

(a) the social problem that the bill addresses, and whose and what behavior constitutes it;

(b) explanations as to the causes of those behaviors;

(c) a description of various alternative solutions for the difficulties posed; a description of the proposed solution, including a statement of who will implement it, and how, together with reasons based on their respective social costs and benefits for choosing the proposed solution; and

(d) a statement of how the bill will provide for its own monitoring and evaluation of the implementation of the law, once enacted, and its social impact.

17 Each part of a research report shall include a description of the evidence upon which its assertions rest.

18. A research report shall include:

(a) a statement of the probable impact of the proposed new Act on the poor, women, children and historically disadvantaged groups; and

(b) a statement identifying the points in the proposed bill which might afford opportunities for corrupt practices, and how the bill proposes to reduce those opportunities.