



**Commission for Gender Equality**  
A society free from gender oppression and inequality

**SUBMISSION: BUSINESS LICENSING BILL, 2025**

*Commission for Gender Equality Comments*  
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**Commission for Gender Equality**  
A society free from gender oppression and inequality

## Table of Contents

<b>1.</b>	<b>Introduction .....</b>	<b>3</b>
<b>2.</b>	<b>Background .....</b>	<b>3</b>
<b>3.</b>	<b>The CGE's submissions on the draft Bill.....</b>	<b>5</b>
<b>4.</b>	<b>Conclusion .....</b>	<b>11</b>



**Commission for Gender Equality**  
A society free from gender oppression and inequality

## 1. Introduction

The Commission for Gender Equality (CGE) welcomes the opportunity to make written submissions on the draft Business Licensing Bill, 2025. The CGE, as an independent statutory body created in terms of Chapter 9 of the Constitution of the Republic of South Africa, 1996 (the Constitution), is mandated to protect gender equality and the protection, development, and attainment of gender equality.

The Commission for Gender Equality Act 39 of 1996 ('the CGE Act'), gives the Commission the power to:

- Monitor and evaluate policies and practices of organs of State at any level.
- Monitor and evaluate statutory bodies and functionaries.
- Monitor public bodies and authorities and private businesses, enterprises, and institutions to promote gender equality.
- Make any recommendations that the CGE deems necessary.

## 2. Background

During the 2024/2025 financial year, the CGE's Gauteng provincial office conducted an investigation into women empowerment in the informal sector within the City of Tshwane. The investigation resulted in several findings being made as well as recommendations issued to the City, which covered various aspects that touched on the issue under investigation. These findings and recommendations are encapsulated in the CGE's investigative report



**Commission for Gender Equality**  
A society free from gender oppression and inequality

entitled *Women's empowerment in the informal economy sector within the City of Tshwane Metropolitan Municipality 24/25*.<sup>1</sup>

The investigation made several findings relating to street traders' economic vulnerability, safety concerns, as well as equitable economic participation and empowerment. It is the latter of these which the CGE believes is relevant to this submission, and that the Business Licensing Bill is an appropriate legislative instrument to deal with these.

Whilst the investigation focused only on the informal sector within the City of Tshwane, some of the lessons learned there have direct application to the issue of licensing of business falling with the informal sector generally. This submission therefore focuses on issues applicable specifically to licensing for street traders and vendors, the subject matter of our investigation.

Of particular relevance are the following findings the CGE made and published in its report:

1. Street-trading appears to be a gendered space. This finding is premised on the fact that statistics revealed that most of the informal traders within the local authority in which the investigation was conducted were women.<sup>2</sup>

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<sup>1</sup> Commission for Gender Equality (2025) *Women empowerment in the informal economy sector within the City of Tshwane Metropolitan Municipality 24/25*.

<sup>2</sup> Note 1 above at 21.



**Commission for Gender Equality**  
A society free from gender oppression and inequality

2. The local authority within which the investigation was conducted had insufficient integration of gender equality policies into its by-laws regulating street vendors.<sup>3</sup>
3. The majority of informal traders did not have access to resources and permits due to lack of knowledge about the permit application process or the financial resources for same.<sup>4</sup>

With these findings in mind, the CGE makes the submissions on the draft Business Licensing Bill, 2025 set out below.

### **3. The CGE's Submission on the draft Bill**

#### *3.1 Preamble*

The Bill's preamble correctly identifies that the issue of business licensing impacts on section 22 of the Constitution, namely the right to choose one's trade freely. However, the CGE is of the view that there are other constitutional provisions that are also impacted and which the Bill should take cognisance of and expressly identify.

These include the right to equality encapsulated in section 9, and the state's ability in terms of section 9(2) to take legislative measures to protect and advance persons disadvantaged by unfair discrimination, including gender discrimination. The substantive provisions of the Bill already do this to some

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<sup>3</sup> Note 1 above at 21.

<sup>4</sup> Note 1 above at 11.



**Commission for Gender Equality**  
A society free from gender oppression and inequality

degree, most notably clause 9(a) of the Bill which includes redress of developmental imbalances and inclusion of previously excluded persons as part of the Bill's principles of business licensing.

Furthermore, section 152(1) of the Constitution provides that one of the objects of a local government is to promote social and economic development. Section 152(2) furthermore obliges local government to strive to achieve this within its available resources. These provisions therefore have application to the manner in which a local authority issues business licenses and should also be expressly referenced by the Bill.

### 3.2 *Clause 9: Principles of business licensing*

As stated above, clause 9 of the Bill sets out various general 'principles of licensing' which would apply to business licensing by a licensing authority such as a local government.

The first of these is the principle of redress. The Bill sets out what the principle of redress encompasses, such as the redress of unjust business licensing and permit policies, the inclusion of persons and areas that were previously excluded, as well as inclusion of provisions in a business licensing management system that are flexible and appropriate for the management of disadvantaged areas.

The CGE fully supports this approach. One of the gaps identified by the CGE during its aforementioned investigation was that whilst the local government in question technically adhered to the current legislative framework by enforcing the framework through its own by-law, the by-laws in question



**Commission for Gender Equality**  
A society free from gender oppression and inequality

lacked a gender-sensitive perspective or approach.<sup>5</sup> The by-laws did not address any of the systemic challenges faced by women street traders which in turn undermined, and ran counter to, the local government's obligation to promote equitable economic participation.

The inclusion of these 'principles of business licensing' in clause 9 of the Bill, and more specifically the inclusion of redress in clause 9(a), creates a statutory obligation on licensing authorities such as local governments to take these issues into account when drafting its relevant by-laws. This not only enhances street traders' right to substantive equality but also gives effect to local authorities' constitutional obligations in terms of section 152. In turn, this renders it easier to hold licensing authorities to account for failing to include these in the drafting of their by-laws, and compliance with these requirements becomes easier to enforce.

### 3.2 *Clause 18: Appointment and designation of authorized officers*

Clause 18(4) of the Bill creates a framework intended to regulate the conduct of authorized officers. It requires a licensing authority to ensure that a code of conduct for authorized officers is established and maintained, and that comprehensive training for these officers is provided. It also obligates a licensing authority to put in place mechanisms for oversight and evaluation of authorized officers.

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<sup>5</sup> Note 1 above at 16.



**Commission for Gender Equality**  
A society free from gender oppression and inequality

The CGE supports this provision. Cases such as *South African Informal Traders Forum and Others v City of Johannesburg and Others*<sup>6</sup> and *Makwickana v Ethekwini Municipality and Others*<sup>7</sup> illustrate the kinds of abuse and flagrant disregard of their rights by authorized officers that street traders are vulnerable to, including harassment, intimidation, and unlawful impounding of their goods. The clause thus addresses the need to ensure that street traders' inherent vulnerability is not taken advantage of or abused by authorized officers. However, the CGE is of the view that the clause could be further strengthened by creating an obligation on a licensing authority to create a complaints process regarding the execution of authorized officers of their powers.

### 3.5 Clause 29: Power to enact business licensing by-laws

As stated above, the CGE's own Investigation found that the relevant local authority's by-laws regulating street traders lacked a gender-sensitive perspective, specifically regarding addressing economic vulnerability, safety concerns, and equitable economic participation and empowerment.

The Bill in its current form does somewhat address this issue, through clause 9(a) and the incorporation of the principle of redress as one of the principles of business licensing which the Bill creates. Local authorities are further obligated to give effect to this through clause 29(1), which provides that the local authority 'must enact business licensing by-laws consistent with this Act'.

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<sup>6</sup> *South African Informal Traders Forum and Others v City of Johannesburg and Others* 2014 (4) SA 371 (CC).

<sup>7</sup> *Makwickana v Ethekwini Municipality and Others* 2015 (3) SA 165 (KZD).



**Commission for Gender Equality**  
A society free from gender oppression and inequality

However, given the CGE's finding regarding the City of Tshwane's by-laws lacking any gender-sensitive perspective, particularly in regard to women street traders' equitable economic participation and empowerment, the CGE is of the view that clause 29 should also include an express provisions obliging a local authority to include provisions supporting this in its by-laws that regulate the licensing of street traders.

### 3.6 *Section 30: Restriction or prohibition of street trading*

Upon reviewing the data collected by the CGE during its aforementioned investigation, as well as analysing the relevant by-law's application to street traders, the CGE noted that the by-laws in question tended to be restrictive rather than enabling, focusing primarily on what street traders were prohibited from doing rather than facilitating the growth of their businesses.<sup>8</sup>

Furthermore, the street traders' ability to trade depended on whether they were operating with a license, which in turn was dependent on having knowledge of the bylaws and related processes. However, many of the street traders lacked such knowledge, rendering them particularly vulnerable to enforcement as well as severely impacting their ability to access needed resources.<sup>9</sup>

The CGE would therefore recommend that the Bill includes a clause that obliges a licensing authority such as a local government to promote awareness and education of its licensing by-laws to the extent applicable to

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<sup>8</sup> Note 1 above at 12.

<sup>9</sup> Note 1 above at 11.



**Commission for Gender Equality**  
A society free from gender oppression and inequality

street trading. This can be done through, for example, workshops or training programmes, and should include information on application processes, conditions of the license, applicable fees, and other regulatory information. These should also not be a once-off event but occur whenever a by-law is amended or a new by-law is enacted.

### 3.7 Section 36: Repeal of the Business Act

Currently, the powers of a local authority to pass by-laws regulating street trading, including licensing, are regulated at the national level by the Businesses Act 71 of 1991. The CGE is of the view that this Act is woefully inadequate for two reasons. Firstly, the terminology within the Act referring to local authorities is outdated and does not align with the current constitutional framework of three tiers of government, namely national, provincial, and local. Instead, section 1 of the Act defines 'local authority' with reference to the Provincial Government Act 32 of 1961, the Black Administration Act 38 of 1927, the Black Local Authorities Act 102 of 1982, the Development Act (House of Representatives), Act 3 of 1987, and various other outdated pieces of legislation.

Secondly, the Act pre-dates the Constitution, and therefore when drafted it would not have been cognisant of the specific constitutional rights currently in place that are affected by the issue. These include specific rights such as the right to equality<sup>10</sup> and the right of every citizen to choose their trade

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<sup>10</sup> Section 9 of the Constitution.



**Commission for Gender Equality**  
A society free from gender oppression and inequality

freely,<sup>11</sup> as well as the general constitutional values set out in section 1 of the Constitution on which South African society is founded more generally.

For these reasons the CGE is of the view that repeal of the Businesses Act is long overdue and thus supports the Bill's repeal of same.

#### **4. Conclusion**

In light of the above, the CGE supports the Business Licensing Bill, 2025 but is of the view that certain provisions within the Bill can be supplemented or added to provide further support to traders within the informal sector. The current legislation, namely the Businesses Act, is both out of date and constitutionally insufficient, and the CGE is therefore of the view that the Bill's purported repeal of that Act is long overdue. Furthermore, the inclusion of 'principles of business licensing' and more specifically the principle of redress is welcomed.

However, the CGE is of the view that the Bill should take more cognisance of the impact of the issuing of licensing on the right to equality, as well as the implication of local governments' constitutional obligations in terms of s152 of the Constitution when issuing same. Furthermore, the creation of complaints process regarding the conduct of authorized officers would further enhance protection of street traders' constitutional rights from infringement.

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<sup>11</sup> Section 22 of the Constitution.