

REPUBLIC OF SOUTH AFRICA

THE NATIONAL LIBRARY OF SOUTH AFRICA BILL

(As introduced in the National Assembly)

(MINISTER OF ARTS, CULTURE, SCIENCE AND TECHNOLOGY)

[B 106—98]

REPUBLIEK VAN SUID-AFRIKA

WETSONTWERP OP DIE NASIONALE BIBLIOTEEK VAN SUID-AFRIKA

(Soos ingedien in die Nasionale Vergadering)

(MINISTER VAN KUNS, KULTUUR, WETENSKAP EN TEGNOLOGIE)

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To provide for the National Library of South Africa; for collecting, preserving, making available and promoting awareness of the national documentary heritage; and to provide for matters connected therewith.

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

INTRODUCTION

Definitions

1. In this Act, unless the context indicates otherwise—
 - (i) “bibliographic services” means—
 - (a) the creation of bibliographic records and the compilation of catalogues, bibliographies, indexes and other bibliographic databases; 5
 - (b) the compilation and dissemination of relevant statistics;
 - (c) the exchange, sale, dissemination or making available of the records and compilations referred to in paragraph (a); (i)
 - (ii) “Board” means the Board of the National Library, constituted in terms of section 6; (ix) 10
 - (iii) “document” means any object which is intended to store or convey information in textual, graphic, visual, auditory or other intelligible format through any medium, and any version or edition of a document which is significantly different from that document in respect of its information content, intelligibility or physical presentation, is considered to be a separate document: Provided that public records as defined in section 1 of the National Archives of South Africa Act, 1996 (Act No. 43 of 1996), or in provincial legislation pertaining to records and archives, are not considered to be documents for the purposes of this Act; (ii) 15 20
 - (iv) “documentary heritage” means the total of published information media emanating from South Africa or relating to South Africa; (iii)
 - (v) “medium” means any means of recording or transmitting information intended for subsequent reading, listening or viewing; (vi)
 - (vi) “Minister” means the Minister of Arts, Culture, Science and Technology; 25 (vii)
 - (vii) “National Library” means the National Library of South Africa, referred to in section 2; (viii)
 - (viii) “prescribe” means prescribe by regulation; (xi)
 - (ix) “published” means produced to be made available in multiple copies or at various locations to— 30
 - (a) any member of the public, whether through purchase, hire, loan, subscription, licence or free distribution; or
 - (b) the members of an association or a society, whose membership is open to any qualifying member of the public; (iv) 35
 - (x) “record” means recorded information regardless of form or medium; (x)
 - (xi) “this Act” includes any regulation made under section 15. (v)

CHAPTER 1

THE NATIONAL LIBRARY OF SOUTH AFRICA

National Library of South Africa 40

2. (a) The South African Library and the State Library referred to in section 2 of the National Libraries Act, 1985 (Act No. 56 of 1985), are hereby amalgamated to form the National Library of South Africa.
- (b) The National Library has branches in Pretoria and Cape Town and agencies and departments in such other places as the Minister may determine by notice in the *Gazette*. 45

Objects of National Library

3. The objects of the National Library are to contribute to socio-economic, cultural, educational, scientific and innovative development by collecting, recording, preserving and making available the national documentary heritage and promoting an awareness and appreciation thereof, by fostering information literacy, and by facilitating access to the world’s information resources. 50

Functions of National Library

4. (1) The functions of the National Library are—
- (a) (i) to build up a complete collection of published documents emanating from or relating to South Africa;
 - (ii) to maintain and extend any other collections of published and unpublished documents with the emphasis on documents emanating from and relating to Southern Africa; 5
 - (iii) to promote the optimal management of collections of published documents held in South African libraries as a national resource; and
 - (iv) to supplement the national resource contemplated in subparagraph (iii) with selected documents; 10
 - (b) (i) to record the documents contemplated in paragraph (a); and
 - (ii) to render a national bibliographic service and to act as the national bibliographic agency;
 - (c) to promote optimal access to published documents, nationally and internationally; 15
 - (d) to provide reference and information services, nationally and internationally;
 - (e) to act as the national preservation library, to provide conservation services on a national basis, and to act as the centre for the co-ordination of the recording and processing of oral history; 20
 - (f) to promote awareness and appreciation of the national published documentary heritage; and
 - (g) to promote information awareness and information literacy.
- (2) In order to achieve its objects and promote the development of library and information services in South Africa, the National Library must, in relation to the functions referred to in subsection (1)— 25
- (a) provide appropriate information products and services;
 - (b) provide leadership, guidance and advice to South African libraries and information services;
 - (c) undertake planning and co-ordination in co-operation with other library and information services; 30
 - (d) present, in consultation and co-operation with appropriate educational institutions and professional bodies, courses of training and education relating to the functions referred to in subsection (1);
 - (e) undertake research and development; and 35
 - (f) liaise with libraries and other institutions in and outside South Africa.

CHAPTER 2**ADMINISTRATIVE PROVISIONS****Powers of National Library**

5. (1) The National Library is a juristic person, and may, subject to subsection (2), perform any act which, in the opinion of the Board, is necessary for or incidental to the performance of its functions. 40
- (2) The National Library shall not without the prior approval of the Minister granted with the concurrence of the Minister of Finance—
- (a) lease or sell, exchange or otherwise alienate its movable or immovable property: Provided that the Minister may prescribe categories of movable property which may be alienated by the National Library at the sole discretion of the Board: Provided further that any alienation of the collections contemplated in section 4(1)(a)(i) shall be dealt with in accordance with section 7(5) of the Legal Deposit Act, 1997 (Act No. 54 of 1997); 45 50
 - (b) as long as a guarantee furnished in terms of section 35 of the Exchequer Act, 1975 (Act No. 66 of 1975), is in force in respect of a loan granted to the National Library—
 - (i) mortgage or otherwise encumber its immovable property acquired through that loan; 55

- (ii) lease or sell, exchange or otherwise alienate, or hypothecate or otherwise encumber its movable property acquired through that loan;
- (c) borrow money.

Board of National Library

6. (1) The affairs of the National Library are controlled by a Board consisting of— 5
- (a) at least seven but not more than nine members appointed by the Minister in the prescribed manner: Provided that the regulations prescribing the manner of appointment shall apply the principles of transparency and representivity: Provided further that at least one of the members shall have financial expertise; 10
 - (b) the chief executive officer of the National Library, who shall be *ex officio* a member of the Board; and
 - (c) the heads of the Pretoria and Cape Town branches, who shall be *ex officio* non-voting members.
- (2) A member of the Board shall vacate the office if— 15
- (a) the member's estate is sequestrated or assigned for the benefit of, or if the member compounds with, the creditors of the member;
 - (b) a competent court finds that the member is of unsound mind;
 - (c) the member is convicted of an offence and sentenced to imprisonment without the option of a fine; 20
 - (d) the member is absent from three consecutive meetings of the Board without the leave of the Board; and
 - (e) the member is nominated in terms of the Electoral Act, 1993 (Act No. 202 of 1993), as a candidate for election as a Member of the National Assembly or a provincial legislature, or appointed as a permanent delegate to the National Council of Provinces by a provincial legislature in accordance with the Constitution and the National Council of Provinces (Permanent Delegates Vacancies) Act, 1997 (Act No. 17 of 1997). 25
- (3) The Minister may after consultation with the Board remove a member of the Board from office if in the opinion of the Minister there are sound reasons for doing so after hearing the member on those reasons. 30
- (4) If a member of the Board dies, or resigns by written notice to the Minister, or vacates that office or is removed from office, the Minister may appoint a person in the prescribed manner in that member's place for the remaining part of the term of office.
- (5) (a) A member of the Board holds office for a period not exceeding three years, subject to subsections (3) and (4), and may be reappointed. 35
- (b) No member may serve more than two consecutive terms.

Functions, remuneration and allowances of members of Board

7. (1) The functions of the Board are—
- (a) to formulate the policies of the National Library; 40
 - (b) to approve the budget of the National Library;
 - (c) to approve the financial statements of the National Library;
 - (d) to advise the Minister with regard to matters with which the National Library is concerned; and
 - (e) to furnish the Minister with such information as the Minister may require. 45
- (2) The Board may pay to a member of the Board who is not in the full-time employ of the State or who is not in the employ of the National Library such remuneration and allowances as the Minister with the concurrence of the Minister of Finance may determine.

Meetings of Board 50

8. (1) The Board must meet at least twice a year at such times and places as the Board may determine.
- (2) (a) The Minister must appoint a chairperson for the Board from among the members of the Board.
- (b) The chairperson or, in the chairperson's absence, a member of the Board elected by the members present, shall preside at meetings of the Board. 55
- (3) The quorum for a meeting of the Board is a majority of its members.

(4) A decision of the Board is taken by resolution of the majority of the members present at any meeting of the Board, and, in the event of an equality of votes on any matter, the person presiding at the meeting has a casting vote in addition to a deliberative vote as a member of the Board.

Employees of National Library

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9. (1) (a) The Board may appoint such employees as are necessary to perform the functions of the National Library.

(b) (i) The Board must appoint a chief executive officer who must be responsible for the management of the affairs of the National Library and who must report on those affairs to the Board as the Board may require.

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(ii) The chief executive officer is also the accounting officer charged with the responsibility of accounting for all money received and the utilisation thereof and is responsible for the property of the National Library.

(c) The chief executive officer of the National Library is known as the National Librarian.

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(2) The Board determines the remuneration, allowances, conditions of service, subsidies and other benefits of the employees of the National Library in consultation with the Department of Public Service and Administration and with the approval of the Minister granted with the concurrence of the Minister of Finance.

(3) An employee may be discharged only in terms of a decision of the Board, and the employee concerned may in the prescribed manner and within the prescribed time appeal against the discharge to the Minister, who may confirm, vary or set aside that decision, or give such other decision as the Board in the opinion of the Minister should have given.

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(4) (a) An employee may, with the employee's consent and on such conditions as the Board may determine, be seconded, either for the performance of a particular service or for a period of time, to the service of the State, another state or some other person.

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(b) While seconded an employee remains subject to the laws and conditions of service that apply to the employee while in the employ of the National Library.

Transfer of certain persons to employ of National Library

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10. (1) (a) A person who is in the full-time employ of the State or of an institution receiving financial aid from the State may, subject to section 15 of the Public Service Act, 1994 (Proclamation No. 103 of 1994), and the approval of the Board, be transferred to the employ of the National Library, and if that happens, that employee is regarded as having been appointed by the Board as from a date (in this section called the fixed date) fixed by the Board after consultation with the head of the department of State or the institution in question, and the salary of that person shall, as from the fixed date, be adjusted to the salary range applicable to the post in which the person is appointed at a notch determined by the Board, but the salary or salary range at which or in accordance with which the person was remunerated immediately prior to the fixed date and any extra earnings to which the person was entitled immediately prior to that date and in respect of which the person was required to contribute to a pension or retirement or provident fund of which the person was in terms of any law a member immediately prior to the fixed date, and the monetary value of such extra earnings, may not for the purposes of that contribution be reduced without the person's consent.

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(b) Despite anything to the contrary in any law contained, any extra earnings contemplated in paragraph (a) are regarded to be part of the emoluments of the employee concerned for the purposes of the employee's contribution to the pension or retirement or provident fund of which the employee is a member.

(2) Despite anything to the contrary in any law contained—

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(a) any continuous full-time employment with the State or the institution in question immediately prior to the fixed date of a person transferred in terms of subsection (1) is regarded for the purposes of leave as being employment with the National Library, and any sick or vacation leave which has on that date accrued in the person's favour is regarded, subject to such conditions as the

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Board may determine, as being leave which has accrued in the person's favour in terms of the person's conditions of service in the employ of the National Library;

- (b) an employee transferred in terms of subsection (1) retains all the rights and privileges and remains subject to all the obligations acquired or incurred by the employee for pension and retirement purposes in terms of any law administered by the State which applied to the employee immediately prior to the fixed date; and 5
- (c) any contribution which in terms of any law contemplated in paragraph (b) would have been payable by the State or by the institution in question in respect of such a person to the pension or retirement or provident fund in question if the person had not become an employee of the National Library, shall be paid by the National Library to the pension or retirement or provident fund in question. 10

(3) A person transferred in terms of subsection (1) may, on such conditions as the Director-General: Finance may determine, elect to be released from and to renounce all obligations, rights and privileges in respect of the pension or retirement or provident fund contemplated in that subsection and to become a member of the pension fund established in terms of the Associated Institutions Pension Fund Act, 1963 (Act No. 41 of 1963), or any other pension or retirement or provident fund, and from a date fixed by such Director-General the provisions of that Act shall apply to the person. 15 20

(4) If a guarantee given under section 25 of the Finance and Financial Adjustments Acts Consolidation Act, 1977 (Act No. 11 of 1977), relates to a person who in terms of subsection (1) of this Act becomes an employee of the National Library and the employee— 25

- (a) continues to be a contributor to the pension fund contemplated in section 2 of the Government Employees Pension Law, 1996 (Proclamation No. 21 of 1996); or
- (b) becomes a contributor to the pension fund contemplated in section 2(1)(b) of the Associated Institutions Pension Fund Act, 1963, or any other pension or retirement or provident fund, 30

that guarantee is regarded as having been given by the National Library and, despite anything to the contrary in that guarantee, continues *mutatis mutandis* to be in force.

(5) Any power or duty conferred or imposed upon the Minister of Finance by section 25 of the Finance and Financial Adjustments Acts Consolidation Act, 1977 (Act No. 11 of 1977), must, in so far as it relates to a guarantee regarded as having been given by the National Library, be exercised or performed by the National Library, and any loss which may be incurred by the National Library in consequence of the exercise or performance of that power or duty shall be defrayed from the funds of the National Library. 35

(6) Despite anything to the contrary in any law contained, any amount which is payable to the National Library by any person transferred in terms of subsection (1) on the date of the person's retirement or discharge or which the National Library is then liable to pay in respect of the person, may be deducted from any benefit which is payable to the person out of the pension or retirement or provident fund in question in a lump sum or in such instalments as the Director-General: Finance may determine, for payment to the National Library. 40 45

Transfer of certain assets to National Library

11. Subject to section 2 of the State Land Disposal Act, 1961 (Act No. 48 of 1961), the Minister may, with the concurrence of the Minister of Public Works, the Minister for Agriculture and Land Affairs and the Minister of Finance, and on such conditions as the Minister may determine, transfer to the National Library any immovable property belonging to the State in order to enable the National Library to perform its functions. 50

Minister may entrust certain property to care of National Library

12. The Minister may in such manner and on such conditions as the Minister thinks fit entrust any movable property or part thereof which has been donated or bequeathed to the Republic or its inhabitants or which has been donated or bequeathed for the use or benefit of the Republic or its inhabitants, to the care of the National Library, unless the donor or testator has made other provisions for the care thereof. 55

Financing of National Library

- 13.** (1) The funds of the National Library consist of—
- (a) money appropriated by Parliament;
 - (b) money borrowed by the National Library;
 - (c) revenue obtained by virtue of subsection (3);
 - (d) fees or royalties paid to the National Library;
 - (e) donations or contributions received by the National Library;
 - (f) money accruing to the National Library from any other source, including remuneration for services rendered in terms of this Act.
- (2) Subject to this section, the National Library must use its funds to defray expenditure in connection with the performance of its functions.
- (3) The Board may invest any money not required for immediate use or as a reasonable operating balance with the Public Investment Commissioners or in such other manner as the Minister with the concurrence of the Minister of Finance may determine.
- (4) The Board may establish and operate a reserve fund and may deposit therein such amounts as become available from time to time.
- (5) (a) The National Library—
- (i) must in each financial year, at a time determined by the Minister, submit a statement of its estimated income and expenditure projected over the following three financial years for the approval of the Minister; and
 - (ii) may in any financial year at any time submit supplementary statements of its estimated expenditure for that financial year to the Minister for the Minister's approval.
- (b) The National Library may not enter into any financial commitment beyond its approved budgets and its accumulated reserves.

Auditing and annual report

- 14.** (1) The financial year of the National Library ends on 31 March.
- (2) The National Library must keep a proper record of its assets and financial transactions.
- (3) The accounts of the National Library must be audited annually by the Auditor-General.
- (4) (a) The National Library must furnish to the Minister such information in connection with the functions and financial position of the National Library as the Minister may require, and must as soon as practicable after the end of every calendar year submit to the Minister an annual report, including a balance sheet and a statement of revenue and expenditure in respect of the financial year ending in the calendar year in question, certified by the Auditor-General, as well as such other particulars as the Minister may require.
- (b) The Minister must table the report in Parliament within 14 days after receipt thereof if Parliament is in ordinary session or, if Parliament is not in ordinary session, within 14 days after the commencement of its next ordinary session.

CHAPTER 3**GENERAL PROVISIONS****Regulations**

- 15.** (1) The Minister may make regulations regarding—
- (a) matters which are required or permitted to be prescribed in terms of this Act;
 - (b) (i) the investigation of a charge of misconduct or inefficiency against a person in the employ of the National Library, or of any alleged irregularity in connection with the affairs of the National Library, conduct constituting misconduct, the procedure to be followed at such an investigation, the summoning and attendance of witnesses, and the sanction that may be imposed upon or other steps that may be taken against such a person;
 - (ii) the procedure for the investigation of an alleged grievance of an employee;

- (c) the keeping of records and the times when, the form in which and the persons to whom financial statements and reports in respect of the National Library must be submitted;
 - (d) research at the National Library;
 - (e) the establishment of professional advisory committees; and 5
 - (f) generally, any matter in respect of which regulations are regarded necessary or expedient in order to achieve the objects of this Act.
- (2) Regulations made under this section may prescribe a fine or a period of imprisonment not exceeding one year for a contravention thereof or a failure to comply therewith. 10
- (3) The Minister must publish any regulations made under this section in the *Gazette*.

Transitional provisions

- 16.** (1) The boards of the State Library and the South African Library must dissolve at the constitution of the Board for the National Library in terms of section 6.
- (2) (a) A person who immediately before the commencement of this Act was in the employ of a library which becomes the National Library in terms of this Act is transferred to the employ of the National Library with the retention of the salary, allowances and other benefits which then applied in respect of the person. 15
- (b) Such a person is regarded as having been appointed under section 9.
- (c) The salary, allowances, conditions of service and other benefits of such person is regarded as having been determined under that section, and any leave, pension or other benefits which have accrued in the person's favour by virtue of the person's service with the said library is regarded as having been accrued in the person's favour by virtue of service with the National Library. 20
- (3) Any movable property which was in the possession or under the control of the State Library or the South African Library immediately before the commencement of this Act vests in the National Library, including— 25
- (a) money standing to their credit in the accounts of those libraries or held by the State for the purposes of those libraries;
 - (b) claims of the State in connection with those libraries; 30
 - (c) rights and privileges of the State in connection with those libraries in terms of an agreement entered into by or on behalf of the State or those libraries.
- (4) The liabilities and obligations of the State in connection with the State Library and the South African Library are transferred to the National Library.
- (5) Any reference in any law or document to the State Library and the South African Library must be construed as a reference to the Pretoria branch and the Cape Town branch of the National Library, respectively. 35

Amendment and repeal of laws

- 17.** The laws mentioned in the Schedule are hereby amended or repealed to the extent set out in the third column thereof. 40

Short title and commencement

- 18.** This Act is called the National Library of South Africa Act, 1998, and comes into operation on a date fixed by the President by proclamation in the *Gazette*.

SCHEDULE**Laws amended or repealed**

Number and year of law	Short title	Extent of amendment or repeal
Act No. 11 of 1997 (Transkei)	National Library Service Act, 1977	Repeal of section 11
Act No. 8 of 1978 (Bophuthatswana)	Bophuthatswana National Library Service Act, 1978	Repeal of section 19(2)
Act No. 18 of 1980 (KwaZulu)	KwaZulu Library Act, 1980	Repeal of section 6
Act No. 19 of 1980 (Ciskei)	Ciskeian Library Services Act, 1980	Repeal of section 11
Act No. 12 of 1981 (Venda)	Venda National Library Services Act, 1981	Repeal of section 14(2)
Act No. 4 of 1982 (Gazankulu)	National Library Service Act, 1982	Repeal of section 14(2)
Act No. 10 of 1983 (Qwaqwa)	National Library Service Act, 1983	Repeal of section 14(1)
Act No. 56 of 1985	National Libraries Act, 1985	Repeal of the whole
Act No. 7 of 1991 (Lebowa)	Central Library Service Act, 1991	Repeal of section 17

MEMORANDUM ON THE OBJECTS OF THE NATIONAL LIBRARY OF SOUTH AFRICA BILL, 1998

1. There are at present two National Libraries, the State Library, Pretoria, and the South African Library, Cape Town. It has become necessary to review the role and functions of these libraries and to address certain problems relating to their role, functions and financial constraints.
2. In executing their functions in terms of the existing Act, they provide information services and information products which enable other library and information services, such as provincial and metropolitan library services, and public, university and school libraries, to render more efficient and cost-effective information services to their users.
3. Although the functions of the two libraries have been clearly delineated to avoid duplication, the existence of two National Libraries causes some confusion among their clients nationally and internationally regarding the functions of each and as to which library fulfils the leadership role in the South African library and information services community.
4. The need has been identified to establish a single National Library of South Africa which can develop into a modern and dynamic institution that plays a leading role in the establishment of the information society in South Africa. The Bill therefore offers the scope to create a transformed institution which can be repositioned within the library and information services sector of South Africa. The new institution will focus its programmes on providing access to information in order to support the priorities of the national Growth and Development Strategy.
5. The objects of the National Library of South Africa will be to contribute to social, economic and cultural development, as well as education and innovation. That will be done by collecting, recording, preserving, making available and promoting an awareness and appreciation of the national documentary heritage and by facilitating access to the world's information resources. The new National Library of South Africa will consist of two branches, incorporating the State Library and the South African Library. The functions of the new institution have also been revised to bring the institution in line with information needs in South Africa and the current international practice of national libraries.
The functions as proposed in the Bill include—
 - * the collection of the national published documentary heritage through the legal deposit of publications;
 - * the compilation of national bibliographies and catalogues to provide access to information;
 - * the rendering of reference and information services nationally;
 - * the rendering of preservation services;
 - * the promotion of an awareness of the national published documentary heritage;
 - * the promotion of information literacy;
 - * research and liaison; and
 - * the provision of leadership, guidance and advice to South African libraries and information services.
6. The clauses of the Bill regarding the objects, functions and board of the proposed National Library of South Africa, as well as those relating to staff matters, funding and the regulations, have all been revised.

Persons and institutions consulted

The Boards of the State Library, South African Library and the South African Library for the Blind
Nine provincial library services
Sixteen representatives from provincial education departments
Ten metropolitan substructures
Three research councils

The National Archives of South Africa
Five publishers
The National Book Development Council
Three library and information networks and consortia
The Committee of University Librarians and the Committee of Technikon Libraries
The National Information Technology Forum
Seven representatives from professional organisations of library and information workers
The South African National Civics Organisation
Five representatives from other library and information services.

Parliamentary procedure

The Department of Arts, Culture, Science and Technology and the State Law Advisers are of the opinion that the Bill should be dealt with in accordance with section 75 of the Constitution since it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.