

**GENERAL NOTICES
ALGEMENE KENNISGEWINGS**

NOTICE 1514 OF 2003

The Department of Arts and Culture invites public comments on the draft SA Languages Bill, which is intended to become the SA Languages Act .

Written comments may be forwarded to the Office of the Chief Director,
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South African Languages Bill**(Revised final draft 24 April 2003)****Bill**

To provide for an enabling framework for promoting South Africa's linguistic diversity and encouraging respect for language rights within the framework of building and consolidating a united, democratic South African nation, taking into account the broad acceptance of linguistic diversity, social justice, the principle of equal access to public services and programmes, respect for language rights, the establishment of language services in all spheres of government, the powers and functions of such services, and matters connected therewith.

PREAMBLE

WHEREAS section 6 of the Constitution of the Republic of South Africa, 1996, recognises the principle of multilingualism by providing for 11 official languages of South Africa and for all official languages to enjoy parity of esteem and to be treated equitably;

AND WHEREAS the state is directed to take practical and positive measures to elevate the status and advance the use of the historically marginalised languages of South Africa;

AND WHEREAS everyone has the right in terms of section 30 of the Constitution to use the language of their choice;

AND WHEREAS all obligations imposed by the Constitution must be fulfilled,

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

Definitions

1. In this Act, unless the context otherwise indicates -

- (i) "Constitution" means the Constitution of the Republic of South Africa 1996 (Act No. 108 of 1996);
- (ii) "indigenous languages" mean the languages which, according to historical record, originated in South Africa;
- (iii) "language unit" means a language unit established in terms of section 6 of this Act;
- (iv) "legislative instrument" means any act or regulation that originates from a government organ with legislative powers;
- (v) "Minister" means the Minister responsible for language matters;
- (vi) "official languages" means the languages referred to in section 6(1) of the Constitution;
- (vii) "organ of state" means any department of state or administration in the national, provincial or local sphere of government;
- (viii) "other institution" means an institution referred to in section 4(1)(b) of this Act;
- (ix) "rotation" means the process by which documents intended for the general public that are published and disseminated by any national

government department and, *mutatis mutandis*, any provincial administration, will be available simultaneously in six of the languages as stipulated in section 5(2) of this Act, or as determined by provincial measures;

- (x) "South African languages" means all the indigenous languages as defined herein, as well as all other languages generally used in South Africa, including those referred to in section 6(5)(a) and (b) of the Constitution;
- (xi) "this Act" includes any regulation made in terms of this Act.

Objects

2 The objects of this Act are –

- (a) to give effect to the letter and spirit of section 6 of the Constitution;
- (b) to promote the equitable use of the official languages of South Africa;
- (c) to enable all South Africans to use the official languages of their choice as a matter of right within the range of contexts contemplated in this Act, with a view to ensuring equal access to government services and programmes, to education, and to knowledge and information;
- (d) to provide for a regulatory framework to facilitate the effective implementation of the constitutional obligations concerning multilingualism.

Guiding principles

3(1) The guiding principles of this Act are as follows:

- (a) The promotion and accommodation of linguistic diversity must be pursued in accordance with the Constitution and relevant international law.
- (b) The promotion of the use of all indigenous languages and South African Sign Language/s.
- (c) The entrenchment of language equity and language rights must be pursued in such a way that both national unity and democracy are promoted.
- (d) The learning of South African languages, especially the indigenous languages, must be encouraged.
- (e) Measures for the implementation of multilingualism must take into account the interests, needs and aspirations of all affected parties, and their participation in language matters must be promoted.
- (f) There must be intergovernmental coordination and harmonisation of policies, legislation and actions relating to the entrenchment and promotion of multilingualism.

(2) The principles set out in subsection (1) shall apply to all organs of state and to other institutions where and when applicable, and shall –

- (a) apply alongside all other appropriate and relevant considerations in respect of the promotion of multilingualism ;
- (b) serve as a general framework within which all measures for the implementation of this Act must be formulated ;
- (c) serve as guidelines by reference to which any organ of state must

exercise any function in terms of this Act ;

- (d) guide the interpretation, administration and implementation of this Act .

Application and interpretation

4(1) This Act binds -

- (a) the state, which shall include any department of state or administration in the national, provincial or local sphere of government; and
- (b) any institution exercising a public power or performing a public function in terms of any legislation, subject to the provisions of section 5(5)(c).

(2) When interpreting a provision of this Act, any person, court or tribunal shall prefer any reasonable interpretation that is consistent with the objects of the Constitution and this Act to any alternative interpretation that is inconsistent with the objects as contained in section 2.

(3) This Act shall take precedence over inconsistent provisions of any other Act on language use, except the Constitution .

(4) No provision of this Act shall be construed in such a manner that the powers and functions of -

- (i) any state institution supporting constitutional democracy established in terms of section 181 of the Constitution or any other legislation;
- (ii) the Pan South African Language Board established in terms of the Pan South African Language Board Act, 1995 (Act No. 59 of 1995) ,

are limited or undermined.

Language policy

- 5(1) The application of this section and all measures taken in pursuance thereof shall ensure the equitable treatment and parity of esteem of the languages concerned.
- (2) In addition to the purposes in section 7(b), and subject to the provisions of subsection (5), government documents shall be made available in all 11 official languages, and in cases where this is not feasible, national government departments shall publish documents simultaneously in at least six official languages. The selection of languages shall apply as is stated in subsection (3)(a) and on a rotational basis from the two categories of official languages in subsection (3)(a)(v) and (vi), except when the relevant organ of state or other institution can show that it is reasonably necessary to follow an alternative policy in the interest of effective governance or communication.
- (3)(a) The languages referred to in subsection (2) are –
- (i) Tshivenda
 - (ii) Xitsonga
 - (iii) Afrikaans
 - (iv) English
 - (v) At least one from the Nguni group (isiNdebele, isiXhosa, isiZulu and siSwati)
 - (vi) At least one from the Sotho group (Sepedi, Sesotho, Setswana)
- (4) Any alternative policy referred to in subsection (2) –
- (a) shall be adopted and implemented in consultation with the Pan South African Language Board; and
 - (b) comply with the provisions of sections 6(3)(a) and 30 of the Constitution.
- (5) The selection of any applicable number of languages in terms of subsection (2) shall apply to –

- (a) legislative, executive and judicial functions of government in the national sphere taking into account all relevant factors, including usage, practicality and the balance of the needs and preferences of the population as a whole, provided that no less than six languages shall be used in the national sphere for the purpose of written communication as determined in terms of subsection (6);
 - (b) legislative, executive and judicial functions of government in the provincial and local spheres, provided that regional and local circumstances shall receive due recognition in addition to the factors referred to in paragraph (a) .
 - (c) institutions referred to in section 4(1)(b) where applicable, and provided that the nature, aim and activities of such an institution receive due recognition in determining an appropriate language policy.
- (6) The Minister may make use of his or her powers under section 12 to -
- (a) classify, after consultation with other Ministries, the communication , reports, records, documentation and legislative instruments to which this section, read with section 7(b) where applicable, shall apply ;
 - (b) provide for time frames within which this Act or any part thereof must be implemented; and
 - (c) consider, within a reasonable time, mechanisms, including proposals for the amendment of this Act that will ensure the application of this Act to private institutions providing essential services to the public.

Language units

- 6(1) Within five years after the commencement of this Act, a language unit shall be established -
- (a) for each department of the national government; and

- (b) for each province in terms of provincial legislation providing for the implementation of this Act.
- (2) Provincial governments shall take the necessary measures to support and strengthen the capacity of local governments to comply with the provisions of this Act and the constitutional provisions on language.
- (3) Where an existing unit in any sphere of government is already involved in language matters, the relevant national department or province may assign such powers and functions to the unit as are necessary for the fulfilment of its obligations in terms of this Act and the Constitution.

Powers and functions of language units

(to be read in conjunction with section 6)

- 7 A language unit shall have the powers and functions to -
- (a) facilitate and monitor the implementation of regulations made in fulfilment of the obligations imposed by this Act;
 - (b) take effective and positive measures for the implementation of the national language policy in section 5 in regard to the following:
 - (i) intra and interdepartmental oral communication in all spheres of government;
 - (ii) intra and interdepartmental written communication in all spheres of government;
 - (iii) oral communication with the public;
 - (iv) written communication with the public; and
 - (v) international communication where applicable.

- (c) conduct language surveys and audits relevant to its sphere of activity with a view to assessing the appropriateness of existing language policy and practice, and to make recommendations for the improvement of such policy and practice;
- (d) inform the public, through the effective dissemination of information, of the content and implementation of the language policy of the relevant organ of state;
- (e) do all things incidental to or necessary for the proper fulfilment of the obligations referred to in paragraphs (a) to (d).

Development of indigenous languages and South African Sign Language/s

8 Subject to the provisions of section 9(a), the Minister shall take practical and positive measures for the development of the indigenous languages and South African Sign Language/s, in particular to –

- (a) identify priority areas for the development of these languages;
- (b) support existing structures involved in the development of these languages;
- (c) establish new structures and programmes for the development of these languages, and
- (d) support cross-border projects for the development of these languages in the Southern African region.

Cooperation

9 Without derogating from the provisions of the Pan South African Language Board Act, 1995 (Act No. 59 of 1995), in fulfilling any of the obligations

imposed by this Act, especially those in sections 7 and 8, language units or any other organ of state involved in the implementation of this Act -

- (a) shall, where applicable and when necessary for the effective implementation of this Act and to avoid duplication of activities and services, liaise and cooperate with any other public or private body, institution or service that has the necessary resources and capacity to facilitate the effective implementation of this Act; and
- (b) may enter into an agreement with any such person or institution for delivering a service or product, conducting research that will facilitate the implementation of this Act, the development of South African languages, or the adaptation or development of appropriate technology to facilitate the development and use of South African languages.

Reports

10(1) A language unit shall report annually to –

- (a)(i) in the case of a departmental language unit, Parliament through the relevant national department; or
 - (ii) in the case of a provincial language unit, the provincial legislature concerned and the National Council of Provinces; and
 - (b) the Pan South African Language Board, which may take any action provided for in section 8(1)(b) to (d) of the Pan South African Language Board Act, (Act No. 59 of 1995).
- (2) Any report submitted in terms of subsection (1) shall –
- (a) indicate the extent to which the obligations imposed by this Act have been complied with;

- (b) explain the nature of language-related complaints received from the public and what action was taken to address the complaints:
 - (c) elaborate on the problems encountered with the implementation of this Act and what steps have been or are being taken to overcome such problems ;
 - (d) where necessary, make recommendations for the development, improvement, modernisation, reform or amendment of this Act ;
 - (e) where necessary, deal with any other matter that could contribute towards the promotion of multilingualism.
- (3) Any report submitted in terms of this section shall be duly taken into consideration by the relevant organ of state when subsequent measures for the implementation of this Act are taken.
- (4) The provisions of sections 5 and 7 shall, where applicable, apply to the choice of languages in which reports must be submitted in terms of this section.

Remedies

- 11(1) Any person acting on his or her own behalf, or any person, body of persons or institution acting on behalf of its members or members of a language group or any organ of state may apply to a Court for an appropriate remedy in terms of this section .
- (2). An application may be made under subsection (1) concerning any alleged violation or threatened violation of a language right, language policy or language practice resulting from –
- (a) the non-compliance or compliance with the obligations contained in this Act and in the National Language Policy Framework;

- (b) the non-compliance with a recommendation, finding or decision of the Pan South African Language Board in relation to this Act .
- (3) A Court, in proceedings under this section, may grant such remedy as it considers appropriate and just in the circumstances, including –
- (a) an interim order ;
 - (b) a declaratory order ;
 - (c) an interlocutory order or interdict ;
 - (d) an order for the payment of any damages ;
 - (e) an order for the implementation of special measures to address the situation complained of ;
 - (f) an order requiring the respondent to undergo an audit of language policies and practices ;
 - (g) an order to comply with any provision of this Act, or a finding, recommendation or decision of the Pan South African Language Board ;
 - (h) an appropriate order of costs against any party to the proceedings.
- (4) Nothing in this section derogates from any right of action a person might have other than the right of action set out in this section.
- (5) In proceedings under this section relating to a complaint against an organ or institution to which this Act applies, the Court may admit as evidence information relating to any similar complaint under this Act or the Pan South African Language Board Act, 1995 (Act No. 59 of 1995), in respect of the same organ or institution .
- (6) Where the Court is of the opinion that an application in terms of this section has raised an important new principle in relation to this Act, the Court may order that costs be awarded to the applicant even if the applicant has not been successful in the result.

Regulations

- 12(1) The Minister, after consultation with the relevant parliamentary or other committees, may by notice in the Gazette, make regulations regarding –
- (a) any matter which is required or permitted by this Act ;
 - (b) any matter which may be necessary or expedient to achieve the objectives of this Act ;
 - (c) a language code of conduct for public officials, after consultation with the Department of Public Service and Administration; and
 - (d) any other mechanisms that will ensure the effective enforcement of this Act.
- (2) Any regulation that relates to fees or may result in financial expenditure for the state must be made by the Minister acting in consultation with the Minister of Finance.

Short title and commencement

- 13 This Act shall be called the South African Languages Act, 2003, and shall come into operation on a date to be fixed by the President by proclamation in the *Gazette*.