

REPUBLIC OF SOUTH AFRICA

**NATIONAL ARTS COUNCIL
BILL**

(As amended by the Portfolio Committee on Arts, Culture and Language, Science and Technology (National Assembly))

(MINISTER OF ARTS, CULTURE, SCIENCE AND TECHNOLOGY)

[B 108B—96]

REPUBLIEK VAN SUID-AFRIKA

**WETSONTWERP OP DIE
NASIONALE KUNSTERAAD**

(Soos gewysig deur die Portefeuljekomitee oor Kuns, Kultuur en Taal, Wetenskap en Tegnologie (Nasionale Vergadering))

(MINISTER VAN KUNS, KULTUUR, WETENSKAP EN TEGNOLOGIE)

[W 108B—96]

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BILL

To establish a juristic person to be known as the National Arts Council; to determine its objects, functions and method of work; to prescribe the manner in which it is to be managed and governed; to regulate its staff matters and financial affairs; and to provide for matters connected therewith.

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

Definitions

1. In this Act, unless the context indicates otherwise—
- (i) “chief executive officer” means the chief executive officer appointed in terms of section 13(1); (v) 5
 - (ii) “Council” means the National Arts Council established by section 2; (vii)
 - (iii) “Director-General” means the Director-General: Arts, Culture, Science and Technology; (iii)
 - (iv) “executive committee” means the executive committee established in terms of section 9; (x) 10
 - (v) “financial year” means the period from 1 April in any year to 31 March in the following year; (i)
 - (vi) “Foundation” means the company known as the National Arts Council incorporated in terms of section 21 of the Companies Act, 1973 (Act No. 61 of 1973), and with the registration number of 89/01413/08; (ix) 15
 - (vii) “Minister” means the Minister responsible for arts and culture; (vi)
 - (viii) “prescribed” means prescribed by regulation; (xii)
 - (ix) “regulation” means a regulation made under this Act; (viii)
 - (x) “responsible member” means the member of the executive council of a province contemplated in section 22; (xi) 20
 - (xi) “the arts” includes all forms of music, dance, drama, theatre, music theatre, craft, visual art, literature and community art; (ii)
 - (xii) “this Act” includes the regulations. (iv)

Establishment of Council 25

2. There is hereby established a juristic person to be known as the National Arts Council.

Objects of Council

3. The objects of the Council are—
- (a) to provide, and encourage the provision of, opportunities for persons to practise the arts; 30
 - (b) to promote the appreciation, understanding and enjoyment of the arts;
 - (c) to promote the general application of the arts in the community;
 - (d) to foster the expression of a national identity and consciousness by means of the arts; 35
 - (e) to uphold and promote the right of any person to freedom in the practice of the arts;
 - (f) to give the historically disadvantaged such additional help and resources as are required to give them greater access to the arts;

- (g) to address historical imbalances in the provision of infrastructure for the promotion of the arts;
- (h) to promote and facilitate national and international liaison between individuals and institutions in respect of the arts;
- (i) to develop and promote the arts and to encourage excellence in regard to these. 5

Composition of Council, tenure of office and filling of vacancies

4. (1) Subject to section 20(1)(a), the Council shall consist of nine provincial representatives and no fewer than nine and no more than 14 other persons.
- (2) Every province shall be represented by a representative who shall within the province in question be elected by a public and transparent process which shall be determined and overseen by the responsible member. 10
- (3) (a) The other persons referred to in subsection (1) shall be appointed by the Minister from a short list of no more than 22 names.
- (b) Nominations for inclusion in the short list shall be obtained from the public in the prescribed manner. 15
- (c) An independent panel, appointed by the Minister, shall compile a short list from the nominations referred to in paragraph (b) after interviewing each nominee in public.
- (d) Any member of the public may object in writing to the nomination of any person. 20
- (4) The members of the Council shall, as the occasion arises, elect—
- (a) a chairperson from among the members who are not provincial representatives; and
 - (b) a vice-chairperson from among all the members.
- (5) If the chairperson is absent from a meeting of the Council, the vice-chairperson shall preside at that meeting, and if both the chairperson and vice-chairperson are absent from a meeting of the Council, the members present shall elect one of their members to preside at that meeting. 25
- (6) (a) Subject to paragraph (b), a member of the Council shall hold office for a period not exceeding three years and shall be eligible for reappointment after a further three years have elapsed. 30
- (b) At the end of the members' term of office, three members who are not provincial representatives shall be re-elected by the council to serve for a further three years, after which they shall not be eligible for reappointment until a further three years have elapsed.
- (7) A member of the Council may at any time be removed from office by the Council if there is sufficient reason for doing so, subject to the approval of the Minister. 35
- (8) Any vacancy on the Council shall be filled by election or appointment, as the case may be, in the manner in which the member who vacates the office was required to be elected or appointed, and any member so elected or appointed shall hold office for the unexpired portion of the period for which the member who vacates the office was elected or appointed. 40
- (9) (a) No member shall serve on the Council on a full-time basis.
- (b) Members of the Council shall, in respect of their service, receive such allowances as the Minister with the concurrence of the Minister of Finance may determine, either in general or in a particular case. 45
- (10) Members of the Council shall not be eligible for grants from the Council during their term of office. 5

Qualifications of members of Council and circumstances under which they vacate office

5. (1) (a) The members of the Council shall be persons who have special knowledge or experience in the arts or, in the case of the other persons referred to in section 4(1), who have specialist skills which are not directly related to the arts but which would be beneficial to the Council. 50
- (b) A member of the Council shall not hold office in any political party or political organisation. 55

- (c) The composition of the Council shall be broadly representative of the gender, language and community composition of the Republic.
- (2) No person shall be appointed or elected as a member of the Council—
- (a) if that person is an unrehabilitated insolvent;
 - (b) if that person has been convicted of an offence and in respect thereof sentenced to imprisonment without the option of a fine; or 5
 - (c) unless that person is a South African citizen permanently resident in the Republic.
- (3) A member of the Council shall vacate office if he or she—
- (a) becomes disqualified in terms of subsection (2) from being appointed or elected as a member of the Council; 10
 - (b) is according to law detained as a mentally ill person;
 - (c) has, without the leave of the Council, been absent from three consecutive meetings of the Council;
 - (d) is removed from office as contemplated in section 4(7); or 15
 - (e) resigns by written notice addressed to the Minister.

Functions of Council

6. (1) Subject to subsection (3) and in order to achieve its objects, the Council may—
- (a) render support, including, but not limited to, financial support, advice and information, to any person, organisation or institution; 20
 - (b) determine which field of the arts should have preference for the purpose of support thereof;
 - (c) investigate and determine the need for support of any person, organisation or institution;
 - (d) conduct research into any field of the arts; 25
 - (e) establish, compile and maintain databases, including, but not limited to, databases of persons, organisations, institutions, equipment and facilities connected with the arts;
 - (f) make bursaries available to students for local and overseas studies;
 - (g) liaise with the responsible members in order to promote the arts more effectively throughout the Republic and to ensure co-ordination in the distribution of funds at national and provincial level; 30
 - (h) make funds available to the responsible members for such distribution as the Council may determine;
 - (i) nationally and internationally facilitate and promote liaison between individuals and institutions; 35
 - (j) make grants to any person, organisation or institution in order to provide facilities to support the development and promotion of the arts;
 - (k) co-operate with any person, organisation and institution;
 - (l) grant study bursaries and loans; 40
 - (m) enter into agreements with any person, organisation or institution, upon such conditions as may be agreed upon;
 - (n) purchase or otherwise acquire, or possess, hire, alienate, let, pledge or otherwise encumber movable and, with the approval of the Minister, granted with the concurrence of the Minister of Finance, immovable property; 45
 - (o) with the approval of the Minister, granted with the concurrence of the Minister of Finance, on such terms and against such security as may be agreed upon, raise money by way of loans from any source; and
 - (p) generally, do everything which is necessary to achieve its objects. 50
- (2) The Council shall—
- (a) advise the Minister on matters concerning the arts;
 - (b) publish information on its objects and functions;
 - (c) perform such duties in respect of its objects as the Minister may assign to it;
 - (d) undertake or procure the undertaking of such investigations and research concerning its objects as the Minister may assign to it; and 55
 - (e) perform such other functions as may be assigned to it in terms of any other Act.
- (3) The Council shall not itself establish, acquire or operate any organisation or institution connected with the arts, but may initiate projects which it considers necessary

in pursuit of its objects, provided that such projects are undertaken in partnership with existing organisations or institutions which have the capacity to undertake such projects.

Performance of functions outside Republic

7. (1) The Council may, in order to achieve its objects, render such support as may be prescribed to any person who is a South African citizen in any territory outside the Republic. 5

(2) This Act shall, as far as it can be applied with the necessary changes, apply in connection with the performance by the Council of its functions under subsection (1) as if the territory in which it so performs its functions were part of the Republic.

Meetings of Council 10

8. (1) The Council shall meet at least three times a year, and meetings shall be held at such times and places as the Council may determine.

(2) The chairperson may at any time convene a special meeting of the Council, which shall be held at such time and place as the chairperson may direct.

(3) A quorum for a meeting of the Council shall be a majority of its members. 15

(4) Any decision of the Council shall be taken by resolution of the majority of the members present at any meeting of the Council, and, in the event of an equality of votes on any matter, the person presiding at the meeting in question shall have a casting vote in addition to his or her deliberative vote as a member of the Council.

(5) A member of the Council shall not vote or in any manner participate in the proceedings at any meeting of the Council nor be present at the venue where such a meeting is held, if, in relation to any matter before the Council, he or she has any interest which precludes him or her from performing his or her functions as a member of the Council in a fair, unbiased and proper manner. 20

Executive committee 25

9. (1) The Council shall establish an executive committee—

(a) which shall consist of the chairperson, vice-chairperson and such other members of the Council as the Council may determine, but which shall not exceed 25 per cent of the Council's total membership at the time; and

(b) which shall, subject to the direction of the Council, exercise the powers and perform the duties conferred or imposed upon the Council by or under this Act. 30

(2) The chairperson of the Council shall be the chairperson of the executive committee.

(3) (a) The executive committee shall meet at such times and places as the chairperson of that committee may direct. 35

(b) A quorum for a meeting of the executive committee shall be the majority of its members.

Committees of Council

10. (1) The Council may nominate one or more committees, which may, subject to the instructions of the Council, perform such functions of the Council as the Council may determine. 40

(2) A committee referred to in subsection (1) shall consist of such number of members of the Council and employees of the Council, if any, as the Council may deem necessary, and the Council may at any time dissolve or reconstitute such committee. 45

(3) If a committee consists of more than one member, the Council shall designate a member of the committee to be the chairperson thereof.

(4) The Council shall pay a member of a committee who is not an employee of the Council such remuneration and allowances as the Minister may determine with the concurrence of the Minister of Finance. 50

(5) The Council shall not be absolved from the performance of any function entrusted to any committee of the Council in terms of this section.

Advisory panels

11. (1) The Council may establish an advisory panel for every field of the arts it deems necessary.
- (2) Every advisory panel shall consist of no more than five persons who have achieved distinction or have special knowledge or experience in the field of the arts in question, and who are not members of the Council. 5
- (3) An advisory panel shall advise the Council on the merits of applications for grants and on any matter relating to the field of the arts for which it was appointed.
- (4) Every meeting of an advisory panel shall be chaired by a Council member.
- (5) The Council shall appoint persons to an advisory panel on the basis of nominations obtained from the public as prescribed. 10
- (6) An advisory panel shall meet at least twice a year before Council meetings.
- (7) A member of an advisory panel shall hold office for a period not exceeding two years, and may be appointed on the same or a different panel after a further two years have elapsed. 15
- (8) A member of an advisory panel shall be appointed on such conditions, including conditions relating to remuneration for attending meetings and for services rendered, as the Minister may determine with the concurrence of the Minister of Finance.
- (9) The Council may at any time terminate the membership of a member of an advisory panel if sufficient reason exists therefor. 20
- (10) Members of advisory panels shall not be eligible for grants from the Council during their tenure.

Right of appeal

12. (1) Any person who feels aggrieved at any action or decision that the Council has taken or made in terms of this Act, may within 30 days from the date on which the action or decision in question was made known by the Council, and after having given notice to the Council as prescribed, appeal to the Minister in the prescribed manner. 25
- (2) The Minister shall appoint one or more independent assessors with knowledge of the arts to assist him or her.
- (3) The Minister may, after consultation with the assessor or assessors, confirm, set aside or amend any action or decision contemplated in subsection (1). 30

Chief executive officer

13. (1) The Council shall appoint a full-time chief executive officer for the Council.
- (2) The chief executive officer shall be responsible for the management of the affairs of the Council, and shall report on those affairs to the Council as often as may be required by the Council. 35
- (3) The chief executive officer shall be appointed for such period and subject to such conditions, including conditions relating to the payment of remuneration and allowances, as the Council may, subject to section 15(1)(b), determine, and may be reappointed on the expiry of his or her period of office. 40
- (4) Whenever the chief executive officer is absent for any reason or unable to carry out his or her duties, or whenever there is a vacancy in the office of chief executive officer, the Council may, subject to such conditions and the payment of such remuneration and allowances as it may determine in the manner contemplated in subsection (3), appoint an employee of the Council to act as chief executive officer during such absence or inability, or until a chief executive officer has been appointed in terms of subsection (1), and that employee shall, whilst so acting, have all the powers and perform all the duties of the chief executive officer. 45

Accounting officer

14. (1) In addition to the other functions entrusted to the chief executive officer by or under this Act, he or she shall be the accounting officer charged with the responsibility 50

of accounting for all money received and the utilisation thereof and be responsible for the property of the Council.

(2) (a) The accounting officer may—

- (i) delegate to an employee of the Council a power conferred upon the accounting officer by or under this Act; or
- (ii) authorise such employee to perform a duty assigned by or under this Act to the accounting officer.

(b) A delegation under paragraph (a) shall not prohibit the exercise of the power in question or the performance of the duty in question by the accounting officer.

Staff and conditions of service

15. (1) (a) The Council may, subject to paragraph (b) and on such conditions as it may determine, appoint such number of employees as it deems necessary to enable the Council to perform its functions.

(b) The Council shall out of its own funds pay to its employees such remuneration, allowances, subsidies and other benefits as the Council may determine in accordance with a system approved for that purpose by the Minister with the concurrence of the Minister of Finance.

(c) The Council may, on such conditions as it may deem fit and if the employee consents thereto, second an employee, either for a particular task or for a period of time, to the service of a department of State, an organisation or institute in the Republic on condition that such employee's rights, privileges and benefits by virtue of his or her conditions of service as an employee of the Council are not adversely affected by such secondment.

(2) The Council may, on such conditions and against such security as may be prescribed by the Minister with the concurrence of the Minister of Finance—

- (a) lend money to an employee, or provide collateral security, including guarantees, to a registered financial institution in respect of a loan granted to an employee by that financial institution, to enable such employee to acquire, improve or enlarge immovable property for residential purposes;
- (b) lend money to an employee to enable him or her to become a member of a pension fund approved by the Council or to have a break in service on account of approved leave without full pay reckoned as pensionable service.

Financing

16. (1) The funds of the Council shall consist of—

- (a) money appropriated by Parliament to finance the functions of the Council;
- (b) money paid to the Council by users of its services;
- (c) donations or contributions received from any source;
- (d) interest on investments; and
- (e) income derived under this Act from any other source.

(2) (a) The Council shall utilise its funds to defray expenses in connection with the performance of its functions: Provided that at least 75 per cent of the funds contemplated in subsection (1)(a) shall be distributed as grants in support of the arts, unless otherwise approved by the Minister.

(b) The Council shall utilise any money contemplated in subsection (1)(a) in accordance with the statement of its estimated income and expenditure referred to in subsection (3), as approved by the Minister: Provided that, subject to paragraph (a), the Council may utilise any amount or portion of any amount required to be so utilised for a particular purpose in connection with a specified matter, for any other purpose in connection with such matter: Provided further that the Council may with the approval of the Minister utilise any balance of such money remaining at the end of the financial year of the Council for any expenses in connection with the performance of its functions.

(c) The Council shall utilise any donations or contributions contemplated in subsection (1)(c) in accordance with the conditions, if any, imposed by the donor or contributor concerned.

(3) (a) The Council shall in each financial year, at such time as the Minister may direct, submit a statement of the Council's estimated income and expenditure during the

following financial year, and the Council may also during the course of a financial year submit supplementary statements of the Council's estimated expenditure for that financial year, to the Minister for approval, granted with the concurrence of the Minister of Finance.

(b) The Council shall not incur any expenditure in excess of the total amount approved under paragraph (a). 5

(4) The Council may, in respect of any work completed or service rendered by it under this Act, charge such fees or make such other financial arrangements as it may deem fit.

(5) The Council may invest any unexpended portion of its funds with the Corporation for Public Deposits. 10

(6) The Council may establish such reserve funds and deposit therein such amounts as the Minister may approve, with the concurrence of the Minister of Finance.

Audit, annual and financial report

17. (1) The Auditor-General shall audit the accounts and balance sheet of the Council.

(2) The Council shall— 15

(a) furnish to the Minister such information as he or she may call for in connection with the activities and financial position of the Council;

(b) submit to the Minister an annual report containing a balance sheet, a statement of income and expenditure certified by the Auditor-General and such other particulars as the Minister may require. 20

(3) The Minister shall table the report referred to in subsection (2)(b) in Parliament within 14 days after receipt thereof if Parliament is then in ordinary session or, if Parliament is not then in ordinary session, within 14 days after the commencement of its next ordinary session.

Losses and damage 25

18. (1) If a person who is or was in the employment of the Council caused the Council loss or damage because he or she—

(a) failed to collect money due to the Council for the collection of which he or she is or was responsible;

(b) is or was responsible for an irregular payment of money of the Council or for payment of such money not supported by a proper voucher; 30

(c) is or was responsible for fruitless expenditure of money of the Council owing to failure to carry out his or her duties;

(d) is or was responsible for a deficiency in, the destruction of, or any damage to the Council's money, stamps, face value documents and forms having a potential value, securities, equipment, stores or any other property of the Council; 35

(e) is or was responsible for a claim against the Council owing to failure to carry out his or her duties,

the accounting officer shall determine the amount of such loss or damage, and may order that person, by notice in writing, to pay to the Council, within 30 days from the date of such notice, the whole or any part of the amount so determined: Provided that the accounting officer may not make such an order before the person concerned has been afforded an opportunity of making representations in writing to the accounting officer regarding the loss or damage which the person is alleged to have caused. 40 45

(2) If the person contemplated in subsection (1) fails to pay the amount within the period stipulated in the notice in question—

(a) the amount may, subject to subsections (3) and (4), be deducted from his or her monthly salary: Provided that such deduction shall not in any month exceed one fourth of such monthly salary; 50

(b) the accounting officer may, subject to subsections (3) and (4), recover the amount from such person by legal process.

(3) If, within the period stipulated in the notice in question, the person makes an offer to pay the amount in instalments, the accounting officer may allow payment in such instalments as may be reasonable. 55

(4) A person who has been ordered to pay an amount in terms of subsection (1) may, within a period of 30 days from the date of the order, appeal in writing against such order to the Council, stating the grounds of appeal, and the Council may, after such

investigation as may be necessary, dismiss the appeal or order that the appellant be exempted, either wholly or partly, from the payment of such amount.

Delegations

19. (1) The Council may—
- (a) delegate to the chairperson, the chief executive officer or any other employee of the Council any power conferred upon the Council by or under this Act, on such conditions as the Council may determine; or 5
 - (b) authorise the chairperson, chief executive officer or other employee of the Council to perform any duty assigned to the Council by or under this Act. 10
- (2) The chief executive officer may—
- (a) delegate any power conferred upon the chief executive officer by or under this Act to an employee of the Council; or
 - (b) authorise such employee to perform any duty assigned to the chief executive officer by or under this Act. 10
- (3) A delegation under subsection (1) or (2) shall not preclude the exercise of the power in question by the Council or the chief executive officer, as the case may be. 15

Deregistration of Foundation

20. (1) At the commencement of this section—
- (a) the board of directors of the Foundation shall be deemed to be the first Council, and such board of directors shall for all purposes be deemed to have been elected and appointed in terms of section 4; 20
 - (b) all the rights and liabilities of the Foundation shall pass to the Council;
 - (c) the Registrar of Companies shall deregister the Foundation in terms of the Companies Act, 1973 (Act No. 61 of 1973).
- (2) If the Foundation was the owner of any immovable property which passed to the Council in terms of this section, the Registrar of Deeds concerned shall at the request of the Council make such entries or endorsements as he or she may deem necessary for the transfer of the property in terms of this section. 25
- (3) No transfer duty, stamp duty or other tax or fees of office shall be payable by the Council in order to give effect to the provisions of this section. 30

Regulations

21. (1) The Council may, subject to the approval of the Minister and by notice in the *Gazette*, make regulations regarding—
- (a) the procedure at meetings of the Council;
 - (b) a Code of Conduct for members of the Council and advisory panels in order to prevent conflicts of interest and bringing the Council into disrepute, 35
- and, in general, regarding any matter in respect of which the Council deems it necessary or expedient to make regulations in order to achieve the objects of this Act.
- (2) The Minister may, by notice in the *Gazette*, make regulations regarding—
- (a) any matter which may or shall be prescribed in terms of this Act;
 - (b) any other matter which may be necessary or expedient in order to achieve the objects of this Act. 40
- (3) No regulation relating to State revenue or expenditure shall be made by the Council or the Minister except with the concurrence of the Minister of Finance.
- (4) Any regulation made under subsection (2) may provide that any person contravening such regulation or failing to comply therewith, shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding six months. 45

Premier to designate member of executive council

22. The Premier of every province shall designate a member of the executive council to perform any function entrusted to such member by or under this Act.

Short title and commencement

23. This Act shall be called the National Arts Council Act, 1997, and shall come into operation on a date fixed by the President by proclamation in the *Gazette*. 5

MEMORANDUM ON THE OBJECTS OF THE NATIONAL ARTS COUNCIL BILL

In the past the arts of a minority were promoted and developed to the exclusion of the arts of others. Funding of the arts did not embrace the principles of accountability and transparency. A few large institutions were funded but the majority of artists had no access to State support. New legislation is therefore necessary to establish a mechanism for the fair, democratic and transparent funding of the arts.

The Bill stems from the White Paper on Arts, Culture and Heritage, which represents South Africa's first democratically formulated policy on arts, culture and heritage. Rooted in the framework of equity laid out in the Reconstruction and Development Programme (RDP), and based on the rights enshrined in South Africa's Constitution, the White Paper presents a new vision for arts, culture and heritage. The Bill is the first step in the process of transforming arts and culture in South Africa.

The Bill provides for the establishment of a National Arts Council ("the Council"), responsible for developing and promoting the arts. The objects of the Council are set out in Clause 3.

The Bill also provides for mechanisms for securing accountability and transparency in the composition and functioning of the Council and through the inclusion of the "arms-length" and "peer-assessment" principles which are to be used in all funding assessments. In line with international trends, the Bill recognises the need to protect the arts from heavy-handed political interference.