

REPUBLIC OF SOUTH AFRICA

**NATIONAL RESEARCH
FOUNDATION BILL**

(As introduced)

(MINISTER OF ARTS, CULTURE, SCIENCE AND TECHNOLOGY),

[B 100—97]

REPUBLIEK VAN SUID-AFRIKA

**WETSONTWERP OP DIE
NASIONALE
NAVORSINGSTIGTING**

(Soos ingedien)

(MINISTER VAN KUNSE, KULTUUR, WETENSKAP EN TEGNOLOGIE)

[w 100-97]

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BILL

To provide for the promotion of research, both basic and applied, and the extension and transfer of knowledge in the various fields of science and technology; and for this purpose to provide for the establishment of a National Research Foundation; and to provide for incidental matters.

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) “Board” means the Board referred to in section 6: (viii) 5
 - (ii) “chairperson” means the person appointed as chairperson of the Board under section 6(1)(a)(i): (xv)
 - (iii) “division” means a division of the Foundation established under section 12: (i)
 - (iv) “executive management committee” means the executive management committee referred to in section 9: (xiv) 10
 - (v) “Foundation” means the National Research Foundation, established by section 2: (xii)
 - (vi) “FRD” means the Foundation for Research Development, established by section 2 of the Research Development Act, 1990 (Act No. 75 of 1990): (xi) 15
 - (vii) “HSRC” means the Human Sciences Research Council, established by section 2 of the Human Sciences Research Act, 1968 (Act No. 23 of 1968): (x)
 - (viii) “Minister” means the Minister of Arts, Culture, Science and Technology: (iii)
 - (ix) “national facilities” means facilities contemplated in section 5: (iv)
 - (x) “president” means the person appointed as the chief executive officer of the Foundation under section 10: (vii) 20
 - (xi) “regulation” means a regulation made under this Act: (ix)
 - (xii) “research” means the generation, preservation, augmentation and improvement of knowledge by means of scientific investigations and methods in the field of science and technology: (v) 25
 - (xiii) “research institution” means any organisation practicing research, as recognised by the Board, with emphasis on institutions in the tertiary education sector: (vi) 25
 - (xiv) “science” includes the natural sciences, engineering sciences, medical sciences, agricultural sciences, social sciences and humanities: (xvi) 30
 - (xv) “technology” knowledge accumulated through research or observation, and the practical application thereof (xiii)
 - (xvi) “this Act” includes a regulation. (ii)

Establishment of Foundation

2. There is established, as from a date fixed by the President of the Republic of South Africa by proclamation in the *Gazette*, a juristic person to be known as the National Research Foundation,

Object of Foundation

3. The object of the Foundation is to support and promote research through funding, human resource development and the provision of the necessary research facilities in 40

order to facilitate the creation of knowledge, innovation and development in all fields of science and technology and thereby to contribute to the improvement of the quality of life of all the people of the Republic.

Functions, powers and duties of Foundation

4. (1) The functions of the Foundation are to— 5
 - (a) promote the development of appropriate human resources and research capacity in the areas of science and technology;
 - (b) obtain funds for research, both locally and abroad;
 - (c) promote collaboration in, and to allocate funds for research through, the divisions; 10
 - (d) promote and support research by the awarding of contracts, grants, scholarships or bursaries to persons or research institutions;
 - (e) evaluate the status and needs of research;
 - (f) provide financial support for the acquisition or establishment of research facilities by research institutions; 15
 - (g) review research proposals and results promoted by the Foundation;
 - (h) promote the transfer of technology and the implementation of research results and findings;
 - (i) facilitate and promote nationally and internationally liaison between researchers and research institutions; 20
 - (j) promote participation in international scientific activities through maintaining membership of appropriate international science organisations;
 - (k) make available scientific knowledge or technology through any medium;
 - (l) administer and operate national facilities;
 - (m) promote the provision of an information infrastructure linking research institutions to facilitate co-operation and sharing of research information and knowledge. 25
- (2) In order to achieve its object the Foundation may—
 - (a) make grants to persons or research institutions for research, research infrastructure and the development of human resources; 30
 - (b) co-operate or enter into agreements with any person, institution, government or administration;
 - (c) subject to section 5(2), 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, also 35 immovable property;
 - (d) with the approval of the Minister, granted with the concurrence of the Minister of Finance, raise money by way of loans from any source, on such terms and conditions and against such security as may be agreed upon;
 - (e) generally, do everything which is necessary to achieve its object. 40
- (3) In addition to its other functions in terms of this Act the Foundation must—
 - (u) undertake or procure the undertaking of such investigations and research relating to its object as the Minister may assign to it;
 - (b) advise the Minister and, if so required, the Minister of Education through the Minister, in regard to research relating to its object. 45

National facilities for research

5. (1) The Minister may by notice in the *Gazette* determine national facilities under the control of the Foundation which may be utilised by researchers and research institutions for research or instruction.

(2) The Foundation may not itself conduct research and may not establish, acquire or operate any research facilities other than national facilities, 50

(3) Any researcher or research institution may, subject to the conditions which the Foundation may determine, apply to utilise the national facilities for research or instruction,

Board of Foundation

6. (1) The Foundation acts through a board consisting of—
- (a) subject to subsection (2)—
 - (i) a chairperson, appointed by the Minister:
 - (ii) not fewer than nine but not more than eleven other members, appointed by the Minister, after consultation with the Minister of Education; and
 - (b) the president, by virtue of his or her office,
- (2) The members of the Board referred to in subsection (1)(a) must be appointed by the Minister after consideration of a shortlist of candidates presented to the Minister by a panel established by the Minister for that purpose,
- (3) The members of the Board must all be persons who have achieved distinction in the field of research and technology, research and technology management, business, public affairs or civil society.
- (4) Although the members referred to in subsection (1)(a) are appointed in their personal capacities, the Minister must ensure that the following groups are broadly represented:
- (a) The tertiary education sector;
 - (b) the business sector;
 - (c) the agricultural and environmental sciences;
 - (u') the health sciences;
 - (e) the natural sciences and engineering;
 - (f) the social sciences and humanities;
 - (g) civil society.
- (5) The Board must be reconstituted every three years in accordance with the process referred to in subsection (2).
- (6) A member of the Board must vacate his or her office if—
- (a) he or she resigns;
 - (b) the Minister terminates his or her period of office whenever sufficient reason exists therefor;
 - (c) he or she is absent from three consecutive meetings of the Board without the permission of the chairperson;
 - (d) he or she is in terms of the Electoral Act, 1993 (Act No. 202 of 1993), nominated as a candidate for election as a member of Parliament or a provincial legislature.
- (7) (a) Subject to subsections (3) and (4), the Minister may appoint any person to fill a vacancy which occurs with regard to a member appointed by him or her.
- (b) A person appointed under paragraph (a) must occupy his or her office for the unexpired portion of the term of office of his or her predecessor.
- (8) 4 member of the Board, other than the president or a person who is in the full-time employment of the State, must be appointed on such conditions of service and must receive such remuneration or allowances, or remuneration and allowances, as the Minister may, with the concurrence of the Minister of Finance, determine.

Meetings of Board

7. (1) The chairperson or, in his or her absence, a member of the Board elected by the members present, must preside at a meeting of the Board.
- (2) The Board meets at the times and places determined by itself. However, the first meeting of the Board must be held at a time and place determined by the chairperson.
- (3) The chairperson may at any time convene a special meeting of the Board, and he or she must determine the time and place of the meeting
- (4) The quorum for a meeting of the Board is the majority of its members.
- (5) A decision of the Board must be 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, the person presiding has a casting vote in addition to his or her deliberative vote.
- (6) Subject to the approval of the chairperson, any person may attend or take part, but may not vote, in a meeting of the Board.

Committees of Board

8. (1) The Board may nominate one or more committees which may, subject to the instructions of the Board, perform those functions of the Board which the Board may determine.

(1) A committee must consist of such number of members of the Board and of the staff of the Foundation (if any) as the Board may consider necessary, and the Board may at any time dissolve or reconstitute the committee.

(3) If a committee consists of more than one member, the Board must designate a member of that committee as chairperson thereof.

(4) The Board is not absolved from the performance of any function entrusted to any committee in terms of this section.

Executive management committee

9. (1) The executive management committee of the Foundation must consist of—

(a) the president, as chairperson;

(b) the heads of the divisions; and, if necessary,

(c) any other member of the staff of the Foundation appointed by the president.

(2) The executive management committee is responsible for the management of the affairs of the Foundation in accordance with the object, policy and instructions of the Board.

President of Foundation

10. (1) The Board must appoint a chief executive officer for the Foundation, who will also be the president of the Foundation.

(2) The president must report to the Board on those affairs which the Board may require.

(3) The president must be appointed or reappointed for such period, but not exceeding five years, and subject to such conditions, including conditions relating to the payment of remuneration and allowances, as the Board may, subject to section 13(2), determine.

(4) (a) Whenever the president is absent or unable to carry out his or her duties, or whenever there is a vacancy in the office of the president, the Board may appoint any person in the service of the Foundation to act as president.

(b) The acting president has all the powers and performs all the duties of the president.

Accounting officer

11. (1) The president is the accounting officer responsible for the accounting of all money received by the Foundation, the utilisation thereof and the property of the Foundation.

(2) (a) The accounting officer may—

(i) delegate to an employee of the Foundation 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) Any delegation or authorisation under subsection (2)(a) does not prohibit the exercise of the power in question or the performance of the duty in question by the accounting officer himself or herself.

Divisions of Foundation

12. The Board may, after consultation with the Minister, establish or disestablish organisational divisions for different research fields. However, as soon as possible after the commencement of this Act there must at least be established separate divisions for—

(a) the natural sciences and engineering;

(b) the social sciences and humanities;

(c) the health sciences;

(d) the agricultural and environmental sciences; and

(e) national facilities.

Staff of Foundation

13. (1) Subject to subsection (2)—

(a) the president may on such conditions as the Board may determine appoint such employees, or receive on secondment such persons, as are necessary to enable the Foundation to perform its functions, but

(b) the Board must on such conditions as it may determine appoint, or receive on secondment, a head for each division.

(2) The Foundation must pay to its staff out of its funds such remuneration, allowances, subsidies and other benefits as the Board may determine in accordance with a system approved for that purpose by the Minister with the concurrence of the Minister of Finance.

(3) (a) The Board may with the consent of an employee on such conditions as the Board may determine second the employee either for a particular service or for a period of time to the service of a department of State, the government of any province, territory or country, or a person in or outside the Republic,

(b) That employee's rights, privileges and benefits by virtue of his or her conditions of service as an employee of the Foundation may not be adversely affected by the secondment.

Particular powers of Foundation regarding employee benefits

14. The Foundation may on such conditions and against such security as it may consider fit—

- (a) 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 that employee to acquire or improve immovable property for residential purpose;
- (b) establish or institute bursary schemes for purposes of study or other similar undertakings or schemes which in its opinion may be beneficial to its employees;
- (c) provide money to an employee to enable him or her to become a member of a pension fund approved by the Board or to have a break in service on account of approved leave without full pay reckoned as pensionable service.

Pensions

15. (1) The Foundation—

- (a) must for purposes of the Associated Institutions Pension Fund Act, 1996 (Act No. 41 of 1963), be regarded as being an associated institution, but
- (b) may, under the Pension Funds Act, 1956 (Act No. 24 of 1956), establish any other pension fund for its employees.

(2) The amount a person in the service of the Foundation is entitled to receive from a pension fund contemplated in subsection (1)(b) on the date on which he or she becomes a member thereof, may not be less than the amount which he or she was entitled to receive as a member of any pension fund of the Foundation immediately before joining the new pension fund.

(3) For the purposes of this section and of item 1 and, unless the context otherwise indicates, item 2 of the Schedule to this Act "pension fund" means any pension or provident fund or scheme established in terms of any pension law,

Staff of FRD and of Centre for Science Development

16. The Schedule to this Act applies to all employees of the FRD and of the Centre for Science Development of the HSRC transferred to the Foundation as contemplated in that Schedule.

Funds of Foundation

17. (1) The funds of the Foundation consist of—

- (a) money appropriated by Parliament;
- (b) money paid to the Foundation by users of the national facilities and of products of national facilities;
- (c) donations or contributions made to the Foundation;
- (d) fees paid to the Foundation in terms of subsection (4);
- (e) interest on investments of the Foundation; and
- (f) income derived from any other source.

(2)(a) The Foundation must utilise its funds to cover costs in connection with the performance of its functions in terms of this Act.

(b) The Foundation must utilise any money contemplated in subsection (1)(a) in accordance with the statement referred to in subsection (3)(a).

(c) The Foundation must utilise any donations or contributions contemplated in subsection (1)(c) in accordance with the conditions imposed by the donor or contributor in question.

(3) (a) The Foundation must in each financial year, at a time determined by the Minister, submit a statement of the Foundation's estimated income and expenditure projected over the following three financial years to the Minister for his or her approval, granted with the concurrence of the Minister of Finance. 5

(b) The Foundation may in any financial year submit supplementary statements of the Foundation's estimated expenditure for that financial year, to the Minister for approval, granted with the concurrence of the Minister of Finance. 10

(c) The Foundation may not enter into any financial commitment beyond its approved budget and its accumulated reserves.

(4) The Foundation may, in respect of any work completed or service rendered by it under this Act, or for the use of rights consequent upon any discoveries, inventions or improvements, charge such fees or make such other financial arrangements as it may deem fit. However, the Foundation must recover the full cost of the use of its facilities in respect of such work or service. 15

(5) The Foundation may invest any unexpended portion of its funds with the Corporation for Public Deposits or, with the approval of the Minister, granted with the concurrence of the Minister of Finance, dispose thereof in any other manner. 20

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

Audit, annual report and financial report

18. (1) The Auditor-General must audit the financial statements of the Foundation.

(2) The Foundation must— 25

(a) furnish to the Minister the information which he or she may require in connection with the activities and financial position of the Foundation; and

(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. 30

(3) The Minister must table the annual report in Parliament within 14 days after the 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 following ordinary session.

intellectual property rights 35

19. The rights in respect of an invention by a person in the course of studies or research in respect of which he or she received any financial support from the Foundation, must be determined by agreement between the Foundation and that person or his or her employer, or both that person and the employer.

Losses and damage 40

20. (1) The accounting officer must determine the amount of loss or damage if a person who is or was in the service of the Foundation caused the Foundation any loss or damage because that person—

(a) failed to collect money due to the Foundation for the collection of which he or she is or was responsible: 45

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

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

(d) is or was responsible for a deficiency in, or the destruction of, or any damage to, the Foundation's money, stamps, face value documents and forms having a potential value, securities, equipment, stores or any other property of the Foundation; 50

(e) is or was responsible for a claim against the Foundation owing to failure to carry out his or her duties, 55

(2) The accounting officer may—

- (a) enter into an agreement with the person who caused the loss or damage for the repayment to the Foundation of the whole or any part of the amount determined in terms of subsection (1); or
 - (b) by notice in writing order the person who caused the loss or damage to pay to the Foundation, within 30 days from the date of the notice, the whole or any part of the amount determined in terms of subsection (1). 5
- (3) If a person fails to pay in accordance with the agreement contemplated in subsection (2)(a) or to comply with a notice contemplated in subsection (2)(b), the Foundation may recover the amount by legal process.

Delegations

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21. (1) The Board may—
- (a) delegate to the chairperson, the president or any other member of the staff of the Foundation any power conferred upon the Board by or under this Act. on such conditions as the Board may determine: or
 - (b) authorise the chairperson, the president or such other member of the staff to 15 perform any duty assigned to the Board by or under this Act.
- (2) The president may—
- (a) delegate to a member of the staff of the Foundation any power conferred upon the president by or under this Act; or
 - (b) authorise such member of the staff to perform any duty assigned to the 20 president by or under this Act.
- (3) Any delegation or authorisation under subsection (1) or (2) does not prohibit the exercise of the power or performance of the duty in question by the Board or the president, as the case may be.

Structural reorganisation of Foundation

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22. (1) The Board must within 180 days after its first meeting reorganise, and finalise the reorganisation of, the Foundation in accordance with the operational requirements of the Foundation,
- (2) The reorganisation and any subsequent reorganisations (if any) must be carried out in accordance with section 189 and any other applicable provisions of the Labour 30 Relations Act, 1995 (Act No. 66 of 1995).

Regulations

23. The Minister may, after consultation with the Board, make regulations regarding—
- (a) the filling of casual vacancies on the Board and the appointment of persons to 35 act for absent members;
 - (b) the procedure at meetings of the Board;
 - (c) the method and frequency of reports on Board meetings to be submitted to the Minister; and
 - (d) in general, any matter in respect of which the Minister deems it necessary or 40 expedient to make regulations in order to achieve the objects of this Act,

Repeal of law, and saving

24. (1) The Research Development Act, 1990 (Act No. 75 of 1990). is hereby repealed.
- (2) Anything done under the Act referred to in subsection (1) must be regarded as 45 having been done under the corresponding provision of this Act.

Short title and commencement

25. This Act is the National Research Foundation Act, 1997, and takes effect on a date fixed by the President of the Republic by proclamation in the *Gazette*.

Schedule

TRANSITIONAL PROVISIONS

Staff of FRD and of Centre for Science Development

1. (1) (a) Every person who was in the service of the FRD immediately before the commencement of this Act and who was then engaged in functions now vested in the Foundation must, as from the commencement, be transferred to the service of the Foundation.

(b) Every person who was in the service of the Centre for Science Development of the HSRC immediately before the commencement of this Act and who was then engaged in functions now vested in the Foundation must, as from the commencement and with his or her consent, be transferred to the service of the Foundation.

(c) Every person so transferred must be regarded as being appointed in terms of section 13(1).

(d) Every person who chooses not to be transferred as contemplated in paragraph (b) must be dealt with in terms of the provisions governing his or her conditions of service, remuneration and pension rights.

(2) If, for the purposes of this item, the question arises whether any person was engaged in functions now vested in the Foundation, that question must be decided by the Minister or, if that person feels aggrieved by the decision, in terms of the Arbitration Act, 1965 (Act No. 42 of 1965).

(3) The remuneration and other terms and conditions of service of any person transferred as contemplated in subitem (1)(a) and (b) may not be less favorable than the remuneration, terms and conditions applicable to that person immediately before the commencement of this Act and he or she remains entitled to all rights, benefits and privileges to which he or she was entitled immediately before that date, including—

- (a) membership of a pension fund;
- (b) membership of a medical aid scheme;
- (c) employer contributions in connection with such membership;
- (d) accrued pensionable service;
- (e) accrued leave benefits; and
- (f) retirement at a specific age.

(4) (a) Every person transferred as contemplated in subitem (1) remains subject to any decisions, proceedings, rulings and directions applicable to that person immediately before the commencement of this Act.

(b) Any proceedings against such a person which were instituted immediately before the commencement of this Act, must be disposed of as if this Act had not been enacted,

Pension matters

2. (1) Any person transferred to the service of the Foundation in terms of item 1(1)(b) who is a member of the Human Sciences Research Council Pension Fund, must before a date determined by the Board after consultation with the HSRC, in writing exercise an option to—

- (a) remain a member of that fund, and from the date of exercising the option that person must, notwithstanding any other law, be regarded as being a dormant member of that pension fund and become a member of any existing pension fund of the Foundation; or
- (b) become a member of any pension fund established under section 15.

(2) In the case where a person elects under item 2(1)(b) to become a member of a pension fund established under section 15, and his or her pension benefits are transferred to any pension fund of the Foundation—

- (a) that person's membership of the pension fund from which his or her benefits are transferred terminates and he or she has no further claim against that pension fund;
- (b) the pension fund from which the person's benefits are transferred must pay to the pension fund of which he or she becomes a member, an amount equal to the full actuarial liability of that fund in respect of that person as on the date of the transfer, plus interest calculated at the bank rate from the date of the transfer to the date of payment thereof;

- (c) the pension fund from which the person's benefits are transferred must cede any claim which it may have against the person to the pension fund of which he or she becomes a member; and

(3) *For the purposes of this item—*

- (a) the actuarial liability of a pension fund in respect of a specific member or group of members of the fund, means the actuarial liability, as determined by an actuary instructed by the HSRC, with regard to the said member or group of members of the fund; and

- (b) bank rate means the rate determined under section 10 (2) of the South African Reserve Bank Act, 1989 (Act No. 90 of 1989).

(4) For the purposes of the Income Tax Act, 1962 (Act No. 58 of 1962), no change of employer must be regarded as having taken place when employment is taken up at the Foundation by persons in terms of item 1(1), and the position of those persons in respect of the phasing-in of tax levied on benefits or advantages derived by reason of employment or the holding of any office as contemplated in Schedule 7 to the Income Tax Act, 1962, must be regarded as remaining unchanged.

Passing of certain assets and liabilities to Foundation

3. (1) All assets, rights, liabilities and obligations which, immediately prior to the commencement of this Act vest in the FRD, and all assets, rights, liabilities and obligations which, in the opinion of the Minister after consultation with the HSRC, immediately prior to the commencement of this Act vest in the Centre for Science Development of the HSRC, or to which the FRD or the said Centre are then subject in connection with functions which after the said commencement are entrusted to the Foundation, pass to the Foundation.

(2) Upon the coming into force of this Act, the HSRC must pay to the Foundation the net current value of all accumulated leave standing to the credit of each employee transferred to the Foundation in terms of item 1(1)(b).

(3) The registrar of deeds must make the necessary entries or endorsements for the transfer of any property in terms of subitem (1), and no office fee or other charge is payable in respect of that entry or endorsement.

(4) Any reference to the FRD in any other Act must be interpreted as a reference to the Foundation established by this Act.

MEMORANDUM ON THE OBJECTS OF THE NATIONAL RESEARCH FOUNDATION BILL, 1997

It is generally accepted that the capacity of a country in science and technology is directly related to its potential for development and progress and for promoting the quality of life of its people.

The present fragmented situation, where various agencies are responsible for human resource development for science and technology, in particular at institutions in the tertiary education sector, does not ensure an efficient national co-ordinated system in this regard. This situation was pointed out in the White Paper on Science and Technology, and the establishment of a National Research Foundation was proposed to rectify the situation.

The main considerations underlying the establishment of the Foundation are the following:

- (a) The establishment of a consolidated and co-ordinated system for supporting research, human resource development and infrastructure provision in all fields of science and technology.
- (b) The promotion of the quality and relevance of human resource development for science, technology and innovation, acknowledging the needs of different scientific and technological disciplines, and the importance of multi-disciplinary research.
- (c) The co-ordinated redressing of imbalances regarding the development of human and institutional resources.
- (d) The promotion of economies of scale through co-ordination and sharing of facilities.

The Foundation will provide for separate but co-ordinated divisions for natural sciences and engineering, social sciences and humanities, health sciences, and agricultural and environmental sciences. The involvement of all relevant Ministries in the activities of the Foundation is effected through the Ministers' Committee on Science and Technology with the Deputy President as chairperson.

The Bill is the product of an extensive process of consultation with the science and technology community. Institutions consulted include all state departments, the Committee of University Principals, the Committee of Technikon Principals, the Committee of Heads of Science Councils and the National Science and Technology Forum with 103 member institutions representing all sectors of the national system of innovation.

The two institutions directly influenced by the establishment of the National Research Foundation, namely the Foundation for Research Development and the Human Sciences Research Council, were afforded the opportunity to discuss concerns regarding the Draft Bill with the Department. Their concerns were then addressed through appropriate adjustments to the Bill.

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.