

REPUBLIC OF SOUTH AFRICA

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# CULTURAL INSTITUTIONS BILL

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

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(MINISTER OF ARTS, CULTURE, SCIENCE AND TECHNOLOGY)

**[B 126B—98]**

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REPUBLIEK VAN SUID-AFRIKA

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# WETSONTWERP OP KULTURELE INSTELLINGS

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

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(MINISTER VAN KUNS, KULTUUR, WETENSKAP EN TEGNOLOGIE)

**[W 126B—98]**

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# BILL

**To provide for the payment of subsidies to certain cultural institutions; to provide for the establishment of certain institutions as declared cultural institutions under the control of councils; to establish a National Museums Division; and to provide for matters connected therewith.**

**B**E IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

## Definitions

1. In this Act, unless the context otherwise indicates—
- (i) “council” means a council referred to in section 5(1) or (2); (iv) 5
  - (ii) “declared institution” means an institution declared under section 3 or 7(3) to be subject to this Act, or regarded in terms of section 17(1) to have been so declared; (v)
  - (iii) “Director-General” means the Director-General of the national Department responsible for culture; (i) 10
  - (iv) “institution” means any public library, museum, zoological garden or other public cultural institution regarded by the Minister to be of kindred character; (ii)
  - (v) “Minister” means the Minister of the national Department responsible for culture; and (iii) 15
  - (vi) “prescribed” means prescribed by regulation made and in force under this Act. (vi)

## Payment of subsidies to declared institutions

2. For such purposes and on such basis and subject to such conditions as the Minister in consultation with the Minister of Finance determines, the Minister must out of moneys appropriated by Parliament for that purpose pay a subsidy to a declared institution. 20

## Application of Act, establishment and amalgamation of declared institutions

3. (1) The Minister may by notice in the *Gazette* declare any institution as from a date specified in that notice to be subject to this Act. 25
- (2) The Minister may establish an institution and may declare that institution subject to the Act in terms of subsection (1).
- (3) The Minister may by notice in the *Gazette* declare that an institution must be amalgamated with a flagship institution established by section 6(1) or (2).

## Declared institution to be corporate body 30

4. (1) A declared institution is a corporate body and is known under the name under which it has been declared in terms of section 3.
- (2) The Minister may, on the recommendation of the council concerned, change the name of a declared institution by notice in the *Gazette*.

- (3) A declared institution may not, without the prior approval of the Minister, granted in consultation with the Minister of Finance—
- (a) purchase or otherwise acquire, hire, sell, let, exchange or otherwise alienate, hypothecate or encumber immovable property; or
  - (b) invest, lend or borrow moneys. 5
- (4) In the case of the investment of moneys contemplated in subsection (3)(b), such investment is made in accordance with the directions determined by the Minister in consultation with the Minister of Finance.
- (5) A declared institution may, unless the Minister otherwise determines and subject to the National Monuments Act, 1969 (Act No. 28 of 1969)— 10
- (a) let or exchange any specimen, collection or other movable property belonging to it; and
  - (b) purchase or otherwise acquire, possess or hire any specimen, collection or other movable property.
- (6) A declared institution may not, without the prior approval of the Minister, sell or otherwise alienate any specimen, collection or other movable property. 15
- (7) A declared institution may perform all such acts as are necessary for or incidental to the exercise of its powers and the performance of its duties.
- (8) When an institution is under section 3 declared to be subject to this Act, all assets and liabilities which are, at the time of such declaration, assets and liabilities of that institution or of its governing body devolve, on such declaration, on the institution declared as such. 20

#### **Establishment and constitution of a council**

5. (1) The affairs of a declared institution, other than a flagship institution, are under the control, management and direction of a council consisting of— 25
- (a) at least seven members appointed by the Minister in the prescribed manner; and
  - (b) the director of the declared institution concerned.
- (2) The affairs of a flagship institution, are under the control, management and direction of a council consisting of— 30
- (a) at least seven members appointed by the Minister in the prescribed manner; and
  - (b) the chief executive officer of the flagship institution concerned.
- (3) The members of a council contemplated in subsections (1) and (2) must be appointed in accordance with the principles of transparency and representivity. 35
- (4) At least one of the members appointed to a council contemplated in subsections (1) and (2) must have experience in financial matters.
- (5) The members of a council contemplated in subsection (2) must be appointed with a view to geographic representivity.
- (6) If any institution is immediately before it is, under section 3, declared to be subject to this Act, controlled, managed and directed by a council or other body, that council or other body must, until the appointment of a council in terms of subsection (1) in respect of the institution, continue in office and have all the powers and duties of a council constituted in terms of subsection (1). 40
- (7) (a) A member of a council is appointed for a period of three years, unless a shorter period is prescribed. 45
- (b) A member of a council whose period of office has expired, may be reappointed.
- (8) If a member of a council dies or vacates the office before the expiration of the period for which the member has been appointed, another person may be appointed to fill the vacancy for the unexpired portion of the period for which the member was appointed. 50
- (9) A member of a council must vacate the office if the member—
- (a) resigns in writing;
  - (b) has been absent from three consecutive meetings of the council without its leave; 55
  - (c) is an unrehabilitated insolvent;
  - (d) is found to be of unsound mind by a competent court;
  - (e) is convicted of an offence involving dishonesty or bodily harm and is sentenced to imprisonment without the option of a fine; or
  - (f) materially breaches the code of ethics of the institution. 60

(10) A member of a council who is not in the full-time employment of the State, may receive out of the funds of that council in respect of his or her functions as member the allowances that the Minister in consultation with the Minister of Finance determines.

### **Establishment of Flagship institutions**

6. (1) The Northern Flagship institution is hereby established, comprising the— 5  
 (a) National Cultural History Museum;  
 (b) South African National Museum for Military History; and  
 (c) Transvaal Museum.
- (2) The Southern Flagship institution is hereby established, comprising the— 10  
 (a) Michaelis Collection;  
 (b) South African Cultural History Museum;  
 (c) South African Museum;  
 (d) South African National Gallery; and  
 (e) William Fehr Collection.
- (3) The Flagship institutions contemplated in subsections (1) and (2) are hereby 15  
 declared to be subject to the Act.
- (4) (a) The members of a council of a flagship institution must, in consultation with 20  
 the Minister, appoint a chief executive officer who must be responsible for the  
 management of the flagship institution and who must report to the council on  
 management affairs as the council may require.  
 (b) The chief executive officer is the accounting officer of a flagship institution.

### **Chairperson of council**

7. (1) The chairperson of a council is elected from the appointed members of the 25  
 council and holds office for the period or the unexpired portion of the period for which  
 he or she has been appointed as member of the council, unless the council otherwise  
 determines.
- (2) If the chairperson of a council vacates the office as chairperson before the 30  
 expiration of the period for which he or she was appointed, another member of the  
 council must, subject to subsection (1), be elected as chairperson of the council from the  
 appointed members of the council.
- (3) If the chairperson is absent from a meeting of the council concerned or not able to 35  
 preside at that meeting, the members present must elect one of their number to preside  
 at that meeting and that person may, during that meeting and until the chairperson  
 resumes his or her functions, perform all those functions.

### **Functions of council** 35

8. (1) The functions of a council are—
- (a) to formulate policy;
- (b) to hold, preserve and safeguard all movable and immovable property of 40  
 whatever kind placed in the care of or loaned or belonging to the declared  
 institution concerned;
- (c) to receive, hold, preserve and safeguard all specimens, collections or other 45  
 movable property placed under its care and management under section 11(1);
- (d) to raise funds for the institution;
- (e) to manage and control the moneys received by the declared institution and to 50  
 utilise those moneys for defraying expenses in connection with the perfor-  
 mance of its functions;
- (f) to keep a proper record of the property of the declared institution, to submit to 55  
 the Director-General any returns required by him or her in regard thereto and  
 to cause proper books of account to be kept;
- (g) to determine, subject to this Act and with the approval of the Minister, the 60  
 objects of the declared institution; and

(h) to, generally, carry out the objects of the declared institution.

(2) A council may determine the hours during which and the conditions and restrictions subject to which the public may visit the declared institution concerned, or portion thereof, and the admission charges to be paid.

(3) A council may appoint such persons as it considers necessary to perform the functions of the declared institution concerned. 5

(4) The determination of the remuneration and other conditions of service of persons appointed under subsection (3) must be in accordance with a scheme approved by the Minister in consultation with the Minister of Finance.

(5) The Minister must publish the objects of a declared institution determined under subsection (1)(e), in the *Gazette*. 10

### **Placing of immovable property at disposal of councils**

9. (1) The Minister may in consultation with the Minister of Finance and the council of the declared institution concerned on such basis and conditions as he or she determines, make available to a council any land or building for use by that council in order to enable the council to carry out its functions in relation to the declared institution concerned. 15

(2) The Minister may, subject to the State Land Disposal Act, 1961 (Act No. 48 of 1961), on such terms and conditions as he or she determines, transfer to a declared institution any immovable property of the State in order to enable that institution to perform its functions. 20

(3) The Minister may take steps for the maintenance and development of any immovable property which—

- (a) is made available to a council under subsection (1);
- (b) is transferred to a declared institution under subsection (2); 25
- (c) a declared institution purchases or otherwise acquires or hires under section 4 (3); or
- (d) a declared institution has already so purchased or otherwise acquired or hired before it was, under section 3, declared to be subject to this Act.

### **Making available of movable property to declared institutions** 30

10. (1) The Minister may in consultation with the council of the declared institution concerned—

- (a) place—
  - (i) any specimen, collection piece, collection or other movable property which— 35
    - (aa) belongs, has been given or has been bequeathed to the Government or to the Republic or its inhabitants; or
    - (bb) was given or bequeathed on condition that it be for the use or benefit of the Republic and its inhabitants or any section of its inhabitants; 40
  - (ii) any portion of that movable property, under the care and management of any declared institution; or

(b) transfer that movable property, or portion thereof, to a declared institution, unless the donor or testator has made other provision for the care thereof.

(2) Any movable property transferred under subsection (1) to a declared institution may be alienated only with the approval of the Minister. 45

### **Auditing of accounts**

11. The Auditor-General must audit the accounts and balance sheet of a council.

### **National Museums Division**

12. (1) A National Museums Division consisting of the— 50

- (a) chief executive officers of the flagship institutions;
- (b) heads of every institution contemplated in section 7(1) and (2); and

(c) directors of the declared institutions other than flagship institutions, is hereby established.

(2) If the office of any person contemplated in subsection (1) is vacant, or he or she is unable to attend any meeting of the National Museums Division the declared institution concerned may nominate another person to represent that institution at that meeting. 5

### **Functions of the National Museums Division**

- 13.** The National Museums Division must—
- (a) determine the time and place of, the quorum for and the procedure at its meetings; 10
  - (b) perform such duties as the Minister may assign to it; and
  - (c) consider and make recommendations to the Minister or the Director-General regarding matters which—
    - (i) the Minister or the Director-General refers to it; or
    - (ii) it considers to be of common interest to the declared institutions.
  - (d) draft and adopt a code of ethics, based on international standards, according to which councils must conduct the affairs of the declared institution. 15

### **Abolition of declared institutions**

**14.** (1) The Minister may, after consultation with the council of the declared institution concerned, by notice in the *Gazette*, withdraw, with effect from a date specified in that notice, the notice issued under section 3 in respect of that declared institution. 20

(2) The declared institution ceases to exist from the date referred to in subsection (1).

(3) Subject to subsection (6), all the assets, rights, liabilities and obligations of that declared institution, as they existed immediately before the date referred to in subsection (1), vests from that date in a declared institution or other person determined before that date, by the Minister after consultation with the council of the first-mentioned declared institution and published in the notice issued in terms of subsection (1). 25

(4) A reference in any law or document to a declared institution referred to in subsection (1) is, with effect from the date referred to in that subsection, regarded to be a reference to the declared institution or person determined in terms of subsection (3). 30

(5) The registrar of deeds concerned must cause all such notes and endorsements to be made in his or her registers and on the title deeds relating to land owned by a declared institution referred to in subsection (1) immediately before the date referred to in that subsection, as are necessary to give effect to this section.

(6) All property referred to in section 8(1)(b) or (c) which is held by the council of the declared institution referred to in subsection (1) immediately before the date referred to in that subsection, must from that date be dealt with as the Minister determines. 35

### **Delegation of powers**

**15.** (1) The Minister may, subject to the conditions he or she determines, in writing delegate any power conferred, except the power, in terms of section 16, to make regulations or any duty imposed on the Minister by this Act to an official employed by the national Department responsible for culture. 40

(2) A delegation under subsection (1) does not prevent the Minister from exercising such power or performing such duty, as the case may be, himself or herself.

### **Regulations** 45

- 16.** (1) The Minister may make regulations as to—
- (a) the appointment of members of a council and the filling of a casual vacancy in a council;

- (b) the convening of, the procedure at and the quorum for meetings of a council, and the manner in which that council must make decisions;
  - (c) the safety, custody and preservation of the property of a declared institution;
  - (d) the management, control, utilisation and disposal of all moneys received by a council; 5
  - (e) the keeping of records and the times when, form in which and the persons to whom financial accounts and reports must be rendered in respect of declared institutions;
  - (f) any matter which must or may be prescribed by regulation under this Act; and
  - (g) in general, any matter necessary to prescribe in order to achieve the objects of this Act. 10
- (2) The Minister must make any regulation relating to—
- (a) any moneys or allowances payable to or by any person; or
  - (b) the control of money,
- in consultation with the Minister of Finance and subject to any other applicable law. 15
- (3) Different regulations may be made under subsection (1) in respect of different declared institutions. 15

### Transitional provisions

17. (1) The institutions listed in Schedule 1 which have under the Cultural Institutions Act, 1969 (Act No. 29 of 1969) or the Cultural Institutions Act (House of Assembly), 1989 (Act No. 66 of 1989), been declared to be subject to either of the Acts or which have been deemed to be so declared, as the case may be, must, if that declaration is in force immediately before the commencement of this Act, be regarded to have been declared under section 3 to be institutions which are subject to this Act. 20

(2) A council, as constituted in terms of section 6 of the Cultural Institutions Act, 1969, or section 7 of the Cultural Institutions Act (House of Assembly), 1989, of an institution contemplated in section 7(3) or (5) of this Act, and existing immediately before the commencement of this Act, ceases to exist when section 6 of this Act takes effect. 25

(3) A regulation made or a notice issued under the Cultural Institutions Act, 1969, or the Cultural Institutions Act (House of Assembly), 1989, in so far as that regulation or notice is applicable to an institution contemplated in subsection (1) immediately before the commencement of this Act, remains in force after the commencement of this Act, except in so far as it is inconsistent with a provision of this Act, until that regulation or notice is repealed or withdrawn by the Minister by notice in the *Gazette*. 30 35

(4) Subject to subsections (1), (2) and (3), anything done or regarded to have been done in terms of a provision of the Cultural Institutions Act, 1969, or the Cultural Institutions Act (House of Assembly), 1989, and which may be done under a corresponding provision of this Act, is regarded to have been done under that corresponding provision. 40

(5) The Committees of Heads of Declared Institutions established by section 13 of the Cultural Institutions Act, 1969, and section 14 of the Cultural Institutions Act (House of Assembly), 1989, are hereby dissolved and all their assets, rights, liabilities and obligations will vest in the National Museums Division established in terms of section 12(1) of this Act. 45

(6) Any person who was in the employment of an institution immediately before the institution is, under section 3, declared to be subject to this Act, is regarded to have been appointed under section 9(3) on that declaration as an employee of that institution.

(7) The remuneration and other conditions of service of an employee contemplated in subsection (6) may not be less favourable than the remuneration and other conditions of service to which that employee was entitled to immediately before the declaration contemplated in that subsection. 50

### Repeal of laws

18. Each of the laws referred to in the first two columns of Schedule 2 is

hereby repealed to the extent specified opposite that law in the third column of that Schedule.

**Short title and commencement**

**19.** This Act is called the Cultural Institutions Act, 1998, and takes effect on a date fixed by the President by proclamation in the *Gazette*.

**SCHEDULE 1**

**(Section 18)**

Afrikaans Language Museum and Language Monument.  
Engelenburghuis Art Collection.  
Foundation for Education, Science and Technology.  
JLB Smith Institute for Ichthyology.  
Natal Museum.  
National English Literary Museum.  
National Museum.  
National Zoological Gardens of South Africa.  
Robben Island Museum.  
Voortrekker Museum.  
War Museum of the Boer Republics.  
William Humphreys Art Gallery.

**SCHEDULE 2****(Section 19)**

<b>Number and year of Act</b>	<b>Short title</b>	<b>Extent of repeal</b>
Act No. 29 of 1969	Cultural Institutions Act, 1969	The whole
Act No. 93 of 1974	Cultural Institutions Amendment Act, 1974	The whole
Act No. 11 of 1981	Culture and Education Laws Amendment Act, 1981	Sections 6, 7, 8 and 9
Act No. 28 of 1983	Education and Culture Laws Amendment Act, 1983	Section 4
Act No. 66 of 1989	Cultural Institutions Act (House of Assembly), 1989	The whole
Act No. 33 of 1992	Cultural Institutions Amendment Act (House of Assembly), 1992	The whole

## **MEMORANDUM ON THE OBJECTS OF THE CULTURAL INSTITUTIONS BILL, 1998**

### **1. PURPOSE OF THE BILL**

The purpose of the Bill is to repeal the existing legislation regarding cultural institutions, and to provide for the restructuring of the current declared institutions. The existing resources and capacity of the declared institutions are redistributed to redress aspects of South African history, culture, science and technology that have been historically neglected.

### **2. MAIN ELEMENTS OF BILL**

2.1 The Minister is authorised to pay a subsidy to any institution which falls within the ambit of the Bill from moneys appropriated by Parliament for that purpose. The Minister may declare by notice in the *Gazette* that any institution to which a subsidy is paid, are subject to the Bill and is a declared institution.

2.2 A declared institution will be a corporate body and will be able to, exercise all the rights and privileges that such a legal person possess. The council of a declared institution may appoint the necessary personnel for the institution. The personnel appointed by a declared institution will be remunerated according to a scheme approved by the Minister in consultation with the Minister of Finance.

2.3 The council of a declared institution shall be constituted of at least seven members who will be appointed for a period of three years. Each declared institution shall have a council except the declared institutions contemplated in clause 7 of the Bill which is organised under regional councils which will be called flagship councils. The Minister appoints a chairperson from the members of the council. The main function of a council is to oversee the management of a declared institution and to control the financial affairs of the institution.

2.4 The Minister may, in consultation with the Minister of Finance, make immovable property available to the council of a declared institution to enable the council to carry out its functions as regards the declared institution.

2.5 The Minister may establish committees to advise him or her in respect of matters relating to one or more declared institutions.

2.6 The existing Committees of Heads of Declared Institutions are dissolved and replaced by a division, known as the National Museums Division, consisting of the Director of each declared institution. The National Museums Division shall perform such duties as the Minister assign to it.

2.7 The Minister may, by notice in the *Gazette*, withdraw a notice, issued under clause 3 of the Bill, which declared an institution as being subject to the Bill. On the withdrawal of the notice the institution concerned ceases to exist and all its assets, rights, liabilities and obligations vests in a declared institution or person identified in the withdrawal notice.

### **3. PERSONS AND BODIES CONSULTED**

The following persons and bodies were consulted:

- (a) The Association of Directors of the National Collections;
- (b) The Councils and Directors of the Declared Cultural Institutions;
- (c) The staff of the national museums identified for amalgamation;
- (d) The respective Provincial Directorates of Arts and Culture;
- (e) The affected local authorities; and
- (f) The Council of Culture Ministers.

### **4. PARLIAMENTARY PROCEDURE**

The State Law Advisers are of the opinion that the Bill must be dealt with by Parliament in accordance with the procedure established by section 76(1) or (2) of the Constitution of the Republic of South Africa, 1996, since it falls within the functional area of "Cultural matters" listed in Schedule 4 to the Constitution.

