

REPUBLIC OF SOUTH AFRICA

STATISTICS BILL

(As introduced in the National Assembly as a section 75 Bill)

(MINISTER OF FINANCE)

[B 1—99]

REPUBLIEK VAN SUID-AFRIKA

WETSONTWERP OP STATISTIEKE

(Soos ingedien in die Nasionale Vergadering as 'n artikel 75-wetsontwerp)

(MINISTER VAN FINANSIES)

[W 1—99]

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BILL

To provide for a Statistician-General as head of Statistics South Africa, who is responsible for the collection, production and dissemination of official and other statistics, including the conducting of a census of the population, and for co-ordination among producers of statistics; to establish a Statistics Council and provide for its functions; to repeal certain legislation; and to provide for connected matters.

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

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Definitions

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

- (i) **“business”** means any individual, juristic person or partnership carrying on a commercial activity; (iv)
- (ii) **“Cabinet”** means the Cabinet in the national sphere of government, referred to in section 91 of the Constitution; (viii) 30
- (iii) **“Constitution”** means the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996); (vi)
- (iv) **“Council”** means the South African Statistics Council, established by section 8(1); (xi) 35
- (v) **“document”** includes—
 - (a) a form, questionnaire, schedule, notice or report whether in printed or photographic form;

- (b) a documentary recording or transcribed computer printout or record capable of being produced as a printout by a mechanical or electronic device;
- (c) a medium or device by means of which information is recorded or stored;
- (v) 5
- (vi) **“household”** means a group of people who live together at least four nights a week, eat together and share resources, or a single person who lives alone; (vii)
- (vii) **“Minister”** means the Minister of Finance or such other Minister as the President may assign to be the executing authority for the purposes of this Act; (ix) 10
- (viii) **“officer”**, in relation to Statistics South Africa, means—
 - (a) a member of the staff of Statistics South Africa referred to in section 7(3)(a); or
 - (b) any other person appointed by the Statistician-General to perform work on behalf of Statistics South Africa; (iii) 15
- (ix) **“official statistics”** means statistics designated as official statistics by the Statistician-General in terms of section 14(7); (i)
- (x) **“organ of state”** means—
 - (a) any department of state or administration in the national, provincial or local sphere of government; or 20
 - (b) any other functionary or institution—
 - (i) exercising a power or performing a duty in terms of the Constitution or a provincial constitution; or
 - (ii) exercising a public power or performing a public duty in terms of any legislation, 25
 but does not include a court or a judicial officer; (xiv)
- (xi) **“other organisation”** means any non-governmental or nonprofit organisation, voluntary association or other organisation other than a business, household or organ of state; (ii)
- (xii) **“Public Service Act”** means the Public Service Act, 1994 (Proclamation No. 103 of 1994); (xiii) 30
- (xiii) **“respondent”** means—
 - (a) any individual or household in respect of whom or which; or
 - (b) any organ of state, business or other organisation in respect of whose activities or affairs, 35
 any information is sought or provided for purposes of a statistical collection in terms of this Act; (xii)
- (xiv) **“return”** means a document completed by—
 - (a) a respondent; or
 - (b) an officer of Statistics South Africa or of another organ of state which produces statistics, 40
 for the purpose of producing official or other statistics; (x)
- (xv) **“statistical collection”** means the process of—
 - (a) conducting a population or other census or a sample survey; or
 - (b) collating administrative records or data for statistical purposes; (xvii) 45
- (xvi) **“Statistician-General”** means the person appointed as Statistician-General in terms of section 6(1); (xviii)
- (xvii) **“statistics”** means aggregated numerical information relating to demographic, economic, financial, environmental, social or similar matters, at national, provincial or local level, which is compiled and analysed according to relevant scientific and statistical methodology; (xv) 50
- (xviii) **“Statistics South Africa”** means the department contemplated in section 4(1). (xvi)

Purpose of Act

2. The purpose of this Act is to advance the planning, production, analysis, documentation, storage, dissemination and use of official and other statistics by providing for—

- (a) a Statistician-General as head of Statistics South Africa and for a Council;
- (b) the respective functions of the Statistician-General, the Council and the Minister and their interrelations; 60
- (c) co-ordination between Statistics South Africa and other organs of state that produce official or other statistics;

- (d) co-operation between the producers of official statistics and—
 - (i) the users of such and other statistics in the government, other sectors of society and the public at large;
 - (ii) the respondents supplying the information that results in official and other statistics; 5
- (e) liaison with international and regional organisations that—
 - (i) request official statistics;
 - (ii) make recommendations about the standardisation, classification, collection, processing, analysis and dissemination of statistics.

Purpose of official statistics, and statistical principles 10

3. (1) The purpose of official statistics is to assist organs of state, businesses, other organisations or the public in—
- (a) planning;
 - (b) decision-making or other actions;
 - (c) monitoring or assessment of policies, decision-making or other actions. 15
- (2) Official statistics must protect the confidentiality of the identity of, and the information provided by, respondents and be—
- (a) relevant, accurate, reliable and timeous;
 - (b) objective and comprehensive;
 - (c) compiled, reported and documented in a scientific and transparent manner; 20
 - (d) disseminated impartially;
 - (e) accessible; and
 - (f) in accordance with appropriate national and international standards and classifications.

Status of Statistics South Africa 25

4. (1) Statistics South Africa referred to as an organisational component in the first column of Schedule 2 to the Public Service Act and for the purposes of the application of that Act, in terms of section 7(4)(a) of that Act, regarded to be a department—
- (a) continues as such; and
 - (b) consists of the Statistician-General and the permanent and temporary staff 30 referred to in section 7(3)(a) of *this Act*.
- (2) Subject to the Minister's duties and powers referred to in section 5, no person or organ of state may interfere with the functioning of Statistics South Africa.
- (3) For the purpose of ensuring the effectiveness of Statistics South Africa, all other organs of state must assist it in accordance with the principles of co-operative 35 government and intergovernmental relations contemplated in Chapter 3 of the Constitution.

Duties and powers of Minister

5. (1) The Minister must—
- (a) on the recommendation of the Statistician-General, prioritise the work 40 programme of Statistics South Africa, in accordance with the purpose of official statistics and the statistical principles contemplated in section 3 and both having been advised in this regard by the Council;
 - (b) monitor the performance of the Statistician-General of his or her functions—
 - (i) as accounting officer of Statistics South Africa; and 45
 - (ii) generally with regard to the financial affairs and organisational functioning of Statistics South Africa;
 - (c) determine the specific performance criteria, referred to in section 12(3) of the Public Service Act, for evaluating the performance of the Statistician-General and monitor compliance with those criteria; 50
 - (d) approve or disapprove the inception, variation or discontinuance of statistical collection by a Minister or an organ of state other than Statistics South Africa, as provided in section 14(1) and (2);
 - (e) after consultation with the Cabinet, appoint the members of the Council as 55 provided in section 8(3).

- (2) The Minister may—
- (a) subject to subsection (3), direct the Statistician-General to undertake any statistical collection;
 - (b) subject to subsection (4) and on the recommendation of the Statistician-General, enter into an international agreement with the government of any other state or any international organisation relating to the purpose of this Act; 5
 - (c) after consultation with the Cabinet, terminate the membership of a member of the Council as provided in section 9(3).
- (3) The Minister may not interfere with the power of the Statistician-General to decide, in respect of the activities of Statistics South Africa, on— 10
- (a) the manner in which, and the time when, a statistical collection is to be undertaken;
 - (b) the form, extent and timing of the release of statistical information; or
 - (c) whether a statistical collection should be discontinued.
- (4) The Minister may only enter into an international agreement in terms of subsection (2)(b) if authorised in accordance with the applicable law by the national executive which, in terms of section 231(1) of the Constitution, is responsible for the negotiating and signing of international agreements. 15

Appointment and tenure of Statistician-General

6. (1) The President must appoint a person as the Statistician-General who is the head of Statistics South Africa. 20
- (2) The Statistician-General—
- (a) is professionally independent; and
 - (b) must be impartial and exercise his or her powers and perform his or her duties— 25
 - (i) without fear, favour and prejudice; and
 - (ii) in the interest of maintaining a high standard of professional service and the integrity of the statistics which Statistics South Africa produces.
- (3) The provisions of the Public Service Act regarding the appointment, terms and conditions of employment, powers and duties of a head of department apply to the Statistician-General, except where otherwise provided in this Act. 30
- (4) The person appointed as Statistician-General holds office for an agreed term not exceeding five years, which term may be renewed.
- (5) The Statistician-General may resign by written notice to the President.
- (6) The Statistician-General may be removed from office by the President only— 35
- (a) on the grounds of—
 - (i) incapacity;
 - (ii) misconduct;
 - (iii) incompetence;
 - (iv) declaration as an insolvent, or 40
 - (v) conviction of an offence and sentence to a term of imprisonment without the option of a fine; and
 - (b) if the Cabinet, after considering a report on the matter from the Council, recommends to the President such removal.

Duties and powers of Statistician-General 45

7. (1) The Statistician-General—
- (a) administers this Act;
 - (b) is the accounting officer for Statistics South Africa;
 - (c) after receiving advice from the Council, makes recommendations to the Minister on the policies and priorities of Statistics South Africa; 50
 - (d) directs Statistics South Africa in accordance with the duties and powers imposed or conferred on him or her by this Act, section 7(3)(b) of the Public Service Act and any other law;

- (e) determines, and exercises final responsibility regarding the implementation of, the work programme of Statistics South Africa, including—
 - (i) the collection, compilation and analysis of official statistics in accordance with the purpose of official statistics and the statistical principles contemplated in section 3; 5
 - (ii) the times when and the manner in which statistical collections are undertaken and the form of any document pertaining thereto;
 - (iii) the manner in which data are processed, documented and stored;
 - (iv) the form, extent and timing of the release of statistical information; 10
 - (v) development work in statistics; and
 - (vi) the discontinuance of a statistical collection.
- (2) The Statistician-General must—
 - (a) cause a population census to be taken in the year 2001 and every five years thereafter, on a date determined by the Minister by notice in the *Gazette*, unless the Minister, on the advice of the Statistician-General and by notice in the *Gazette*, determines otherwise; 15
 - (b) develop and maintain registers or lists which may be of use in producing statistics;
 - (c) furnish the Minister and the Council each year with a report in respect of the activities of Statistics South Africa during that year, which report the Minister must as soon as possible table in Parliament; 20
 - (d) undertake any statistical collection if so directed by the Minister in terms of section 5(2)(a);
 - (e) formulate quality criteria and establish standards, classifications and procedures for statistics; 25
 - (f) provide statistical advice to other organs of state;
 - (g) in terms of section 14, promote co-ordination among producers of official statistics in order to—
 - (i) advance the quality, consistency, comparability and optimum use of official statistics; and 30
 - (ii) avoid unnecessary duplication;
 - (h) endeavour to fulfil the Republic's international statistical reporting obligations;
 - (i) liaise with other countries and their statistical agencies and represent Statistics South Africa internationally with regard to statistical matters; 35
 - (j) establish and maintain such offices in the provinces as he or she considers necessary, having regard to the needs for official and other statistics for provinces and other organs of state, on condition that—
 - (i) service-level agreements or memoranda of understanding are entered into between Statistics South Africa and the provinces in question; and 40
 - (ii) co-ordination of the statistical activities of the relevant provinces and other organs of state takes place in terms of section 14.
- (3) The Statistician-General may—
 - (a) as regards the staff of Statistics South Africa—
 - (i) retain or appoint permanent, temporary and contract staff or terminate their services; and 45
 - (ii) determine their terms and conditions of employment, in accordance with the Public Service Act and other applicable law;
 - (b) in terms of section 14(7), designate statistics produced by Statistics South Africa or other organs of state as official statistics; 50
 - (c) accept commissioned statistical work and determine the pricing of that work;
 - (d) determine the pricing of Statistics South Africa's services and products;
 - (e) delegate any power conferred or duty imposed on him or her by this Act, to any other officer of Statistics South Africa, but the Statistician-General—
 - (i) may impose conditions for such delegation; 55
 - (ii) is not by virtue of such delegation divested of that power or duty and may at any time himself or herself exercise that power or perform that duty; and
 - (iii) may vary or set aside any decision made in terms of such delegation;

- (f) on the conditions and for the period determined by him or her, establish an advisory committee or committees to advise him or her on any matters pertaining to this Act;
 - (g) make, by notice in the *Gazette*, rules relating to—
 - (i) the returns, information, data and statistics to be furnished and collected in the undertaking of a statistical collection; 5
 - (ii) the manner and form in which, the times when and the places where, and the persons to whom and from whom, such statistics must be furnished and collected; and
 - (iii) any other matter necessary for the effective collection of statistics and the effective functioning of Statistics South Africa. 10
- (4) Any member of an advisory committee appointed in terms of subsection (3)(f) who is not in the full-time employment of the State receives such remuneration and allowances as the Minister of Finance determines.
- (5)(a) If the Minister, in prioritising the work programme of Statistics South Africa in terms of section 5(1)(a), rejects the Statistician-General's recommendation, the Minister and the Statistician-General must endeavour to resolve their disagreement after receiving advice from the Council. 15
- (b) If the Minister and the Statistician-General fail to resolve their disagreement, the Minister makes the final decision and the Statistician-General must implement that decision. 20
- (c) The Statistician-General may make public the fact that the decision is contrary to his or her recommendation.

Establishment of Council

8. (1) A council to be known as the South African Statistics Council is hereby established. 25
- (2) The Council must consist of not fewer than 15 and not more than 25 members—
- (a) with relevant professional proficiency and interest; and
 - (b) broadly representative of groups or interests concerned with the production and use of official statistics, including— 30
 - (i) organs of state;
 - (ii) producers of statistics;
 - (iii) organised business and labour;
 - (iv) statisticians;
 - (v) specialists in information technology; 35
 - (vi) economic and financial interests;
 - (vii) demographic and social interests, including gender and disability interests; and
 - (viii) the public.
- (3) The Minister must, after consultation with the Cabinet, appoint the members of the Council from nominations obtained through— 40
- (a) public invitations for nominations; and
 - (b) a request to the executive council of each province to submit two or three nominations.
- (4) The Statistician-General is by virtue of his or her office a member of the Council and he or she or his or her representative may attend meetings of the Council, but may not— 45
- (a) vote at such meetings; and
 - (b) act as chairperson or deputy-chairperson.
- (5) The Minister must appoint a member of the Council as chairperson. 50
- (6) The Council must elect one of its members as deputy-chairperson.
- (7) If both the chairperson and deputy-chairperson of the Council are unable to act as chairperson, the other members must designate one of their number to act as chairperson during such inability.

Tenure of members of Council

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9. (1) The members of the Council hold office for such period, not exceeding three years, as the Minister determines in respect of each such member.
- (2) An appointed member of the Council vacates office if—
- (a) he or she resigns after giving 30 days notice in writing to the Minister;

- (b) the period of his or her appointment expires; or
- (c) his or her membership is terminated in terms of subsection (3).
- (3) The Minister may, after consultation with the Cabinet, terminate the membership of any or all of the appointed members of the Council for reasons which are just and fair.
- (4) A person whose membership of the Council has terminated, is eligible for reappointment. 5
- (5) A vacancy on the Council must be filled in accordance with section 8(2) and (3).
- (6) No deficiency in the number of members of the Council affects any decision taken at a meeting in terms of section 10(5) if at least five appointed members were present at that meeting. 10

Meetings of Council

- 10. (1) The Council must meet at least twice a year at such times and places as the chairperson or deputy chairperson determines by notice in writing to the other members.
- (2) The chairperson or deputy-chairperson—
 - (a) may convene a special meeting of the Council; 15
 - (b) must convene such a meeting within 14 days of the receipt of a written request signed by at least five members of the Council to convene such meeting.
- (3) The quorum for a meeting of the Council is five appointed members.
- (4) The Council determines the procedure at its meetings.
- (5) A decision of the Council must be taken by resolution of the majority of appointed members present at the meeting in question and, in the event of an equality of votes, the person presiding has a casting vote in addition to his or her deliberative vote. 20

Committees of Council

- 11. (1) The Council may appoint such standing or other committees as are necessary for the effective performance of the functions of the Council. 25
- (2) The members of a committee of the Council may include persons who are not members of the Council.

Remuneration of members of Council and its committees

- 12. A member of—
 - (a) the Council; or 30
 - (b) a committee of the Council,
 who is not in the full-time employment of the State is paid such remuneration and allowances as the Minister of Finance determines.

Duties and powers of Council

- 13. (1) The Council must advise the Minister, the Statistician-General or an organ of state which produces statistics with regard to— 35
 - (a) matters referred to the Council by the Minister, the Statistician-General or that organ of state;
 - (b) any matter regarding the collection, processing, analysis, documentation, storage and dissemination of statistics, including the taking of a population census, which should, in the opinion of the Council, be studied or undertaken; 40
 - (c) the elimination of unnecessary overlapping or duplication with regard to the collection or publication of statistics by organs of state;
 - (d) any matter the Council considers necessary or expedient for achieving the purpose of this Act. 45
- (2) The Council must promote and safeguard—
 - (a) official statistics;
 - (b) the co-ordination of statistical activities; and

- (c) an environment which is supportive of the collection, production, dissemination and use of official statistics.

(3) The Council must furnish the Minister and Statistician-General with an annual report in respect of its activities during the year in question, and the Minister must as soon as possible table that report in Parliament.

(4) The Council may issue public statements on any matter relating to its functions in terms of this Act, but only after consultation with the organ of state, business or other organisation involved, if any, in the matter in question.

(5) The Statistician-General must provide the Council with such secretarial and clerical assistance as is necessary for the effective performance of the functions of the Council.

Statistical co-ordination among organs of state

14. (1) Despite any other law, no—

- (a) Minister may authorise an organ of state to undertake a new statistical collection or substantially vary or discontinue any statistical collection; and
- (b) organ of state may undertake a new statistical collection or substantially vary or discontinue any statistical collection—

except with the approval of the Minister given in accordance with subsection (2).

(2) The Minister may only grant the approval referred to in subsection (1)—

- (a) on the advice of the Statistician-General; and
- (b) after consultation with the head of the organ of state concerned.

(3) If so advised by the Statistician-General, the Minister may, subject to such conditions as the Minister determines, stipulate that the provisions of subsection (1) do not apply to any specific organ of state in any specific instance or class of instances.

(4) Subsection (1) does not apply to the collection of statistics undertaken in accordance with the work programme of Statistics South Africa contemplated in section 7(1)(e).

(5) As soon as possible after—

- (a) the inception, variation or discontinuance of any statistical collection requiring approval in terms of subsection (1) is proposed; or
- (b) any document used in such collection is prepared,

the head of the organ of state concerned must inform the Statistician-General accordingly.

(6) The Statistician-General may advise any organ of state regarding the application of appropriate quality criteria and standards, classifications and procedures for statistics—

- (a) to improve the quality of statistics;
- (b) to enhance the comparability of statistics;
- (c) to minimise unnecessary overlapping or duplication with the collection or publication of statistics in that organ of state or by other organs of state.

(7) (a) The Statistician-General may designate as official statistics any statistics or class of statistics produced from statistical collections by—

- (i) Statistics South Africa; or
- (ii) other organs of state, after consultation with the head of the organ of state concerned.

(b) Such designation must be in accordance with—

- (i) the purpose of official statistics and the statistical principles contemplated in section 3; and
- (ii) such other statistical criteria as the Statistician-General may determine by notice in the *Gazette*.

(8) The Statistician-General may—

- (a) at his or her own instance or at the request of the Council, the Minister or any other Minister, review and comment on the production, analysis, documentation, storage, dissemination, interpretation and use of official or other statistics of any other organ of state; and

- (b) after consultation with the head of that organ of state, publish any such statistics and comments thereon as he or she considers necessary or appropriate.
- (9) For the purposes of assisting the Statistician-General in the performance of his or her duties imposed by this Act, the head of any other organ of state must, subject to subsection (10)— 5
- (a) within a reasonable period, supply the Statistician-General with information he or she may request regarding any official or other statistics for which that organ of state is responsible;
 - (b) advise the Statistician-General from time to time of any substantial changes in the information that has been so supplied; 10
 - (c) grant the Statistician-General or any officer of Statistics South Africa authorised by him or her unhindered access, without charge, to such information or data of that organ of state as the Statistician-General requests; and 15
 - (d) allow the Statistician-General or any officer of Statistics South Africa authorised by him or her to copy, without charge, any information or data which may be used in producing official statistics.
- (10) The Statistician-General may, subject to such conditions as he or she determines, stipulate that any provision of subsection (9)(a) or (b) does not apply to any specific organ of state in any specific instance or class of instances. 20
- (11) Subject to subsection (12), the Statistician-General may enter into an agreement with—
- (a) the head of another organ of state in respect of information or data which the latter has the authority to collect; 25
 - (b) any body other than an organ of state engaged in collecting such information or data.
- (12) The agreement referred to in subsection (11) is subject to the following conditions:
- (a) The collection of such information or data must be undertaken either by Statistics South Africa or jointly by Statistics South Africa and that organ of state or body; 30
 - (b) the resulting statistics or information must subject to paragraph (c) and section 17(3) be exchanged between the parties or shared with the other party;
 - (c) if information has been supplied by any respondent who gives notice in writing to the Statistician-General that he or she objects to the exchange or sharing of that information by the parties, that information may not be so exchanged or shared; 35
 - (d) every employee within the organ of state or body who is engaged in any such joint collection or to whom such statistics or information is made available, must take an oath of confidentiality similar to that provided for in section 17(7)(a), whether or not he or she has taken an oath of confidentiality in terms of any other law. 40

Entry on and inspection of premises

15. (1) For the purpose of making enquiries or observations necessary for achieving the purpose of this Act, the Statistician-General or any officer of Statistics South Africa authorised by him or her may enter on any land or premises, other than a private dwelling, of any organ of state, business or other organisation and inspect anything thereon or therein— 45
- (a) on the authority of a warrant issued in terms of subsection (2); or 50
 - (b) with the consent of the person who is competent to consent to such entry and inspection.
- (2) A warrant referred to in subsection (1)(a) may be issued in chambers by a magistrate or a judge of a High Court only if he or she is satisfied, on the basis of information on oath or affirmation, that there are reasonable grounds for believing that entry on and inspection of the land or premises concerned are reasonably necessary for the purpose contemplated in subsection (1). 55
- (3) A warrant issued in terms of subsection (2) remains in force until—
- (a) it is executed;
 - (b) it is cancelled by the person who issued it or, if such person is not available, by any person with similar authority; 60

- (c) the expiry of three months from the date of its issue; or
 - (d) the purpose for which the warrant was issued no longer exists,
- whichever may occur first.
- (4) An entry and inspection in terms of subsection (1) must be carried out—
 - (a) at any reasonable time during the day unless the carrying out thereof by night is justifiable and necessary; and
 - (b) with strict regard to decency and order, including the protection of a person's rights to dignity, to freedom and security and to privacy.
 - (5) The Statistician-General or the authorised officer must, immediately before carrying out an entry and inspection in terms of subsection (1)—
 - (a) identify himself or herself to the owner or person in control of the land or premises, if such person is present;
 - (b) if applicable, hand to that person a copy of the warrant or, if that person is not present, affix that copy to a prominent place on the premises; and
 - (c) supply that person with particulars regarding his or her authority to carry out the entry and inspection.

Duty to answer questions

- 16.** (1) The Statistician-General, or an officer of Statistics South Africa authorised by him or her, may, in performing his or her functions in terms of this Act, put, to any person any questions which the Statistician-General or that authorised officer considers reasonably necessary for the collection of statistics.
- (2) Every person, including every employee of any organ of state, must—
 - (a) to the best of his or her or its knowledge and belief and subject to the right to dignity and privacy, answer, when so required, all questions put orally or in writing in terms of subsection (1); and
 - (b) in accordance with the instructions pertaining to any document referred to in section 7(1)(e)(ii) and not later than the date specified in that document—
 - (i) furnish all such information; or
 - (ii) sign such declaration,
 as is required by that document.
 - (3) A document referred to in section 7(1)(e)(ii) is sufficiently authenticated if the name and designation of the competent person by whom it is given or issued, as the case may be, has been printed or stamped thereon.

Confidentiality and disclosure

- 17.** (1) Despite any other law, no return or other information collected by Statistics South Africa for the purpose of official or other statistics that relates to—
 - (a) an individual;
 - (b) a household;
 - (c) an organ of state;
 - (d) a business; or
 - (e) any other organisation,
 may, subject to subsections (2) and (3), be disclosed to any person.
- (2) The return or other information contemplated in subsection (1) may, subject to the directions of the Statistician-General, be disclosed—
 - (a) to the Statistician-General and officers concerned of Statistics South Africa who have taken the oath of confidentiality referred to in subsection (7)(a);
 - (b) to the person from whom such return or other information was collected or his or her representative;
 - (c) with the prior written consent of the person from whom such return or other information was collected or his or her representative;
 - (d) where the information is already available to the public from the organ of state, business or other organisation concerned;

- (e) in the form of lists of the names and addresses of individual organs of state and other organisations and their classifications by function, type of legal entity and range of numbers of members and employees, or other indicator of size;
 - (f) in the form of lists of the names and addresses of individual businesses and their classifications by industry or activity, type of legal entity, and range of numbers of employees or other indicator of size; 5
 - (g) in the form of lists of the kinds of products produced, manufactured, stored, bought or sold, or services rendered, by businesses, organs of state or other organisations or classes thereof.
- (3) The Statistician-General may, for statistical purposes, disclose to another organ of state information or data gathered in the course of a joint collection undertaken with that organ in terms of section 14(11), on condition that— 10
- (a) the name, address or any other means by which the respondents may be identified is deleted;
 - (b) any person who is involved in the collection of, or who may use, that information or data, must first take an oath of confidentiality similar to the one provided for in subsection (7)(a) irrespective of whether he or she has taken an oath of confidentiality in terms of any other law; and 15
 - (c) the Statistician-General is satisfied that the confidentiality of that information or data will not be impaired. 20
- (4) Despite any other law—
- (a) an entry made by the competent person concerned in terms of this Act in any document; or
 - (b) a return or its contents,
- is not admissible as evidence in legal proceedings, except for purposes of criminal proceedings in terms of this Act. 25
- (5) Information collected by any person, organ of state, business or other organisation for his, her or its own purposes and communicated to Statistics South Africa is subject to the same confidentiality requirements as information collected directly by Statistics South Africa, irrespective of any other confidentiality requirements to which it may have been subject when it was collected. 30
- (6) The results of the compilation and analysis of the statistical information collected in terms of this Act may not be published or disseminated in a manner which is likely to enable the identification of a specific individual, business or other organisation, unless that person, business or organisation has consented to the publication or dissemination in that manner. 35
- (7) The Statistician-General and every officer of Statistics South Africa must—
- (a) before assuming duty, take an oath of confidentiality prohibiting disclosure of any information coming to his or her knowledge by reason of such duty before its release is authorised by the Statistician-General; 40
 - (b) preserve, and promote the preservation of, confidentiality in respect of all information that may come to his or her knowledge by reason of such employment.

Offences and penalties

- 18.** (1) Any officer of Statistics South Africa who, in the course of his or her employment in terms of this Act— 45
- (a) wilfully makes any false declaration, statement or return;
 - (b) obtains or seeks to obtain information that he or she is not duly authorised to obtain;
 - (c) puts to any person a question which he or she is not duly authorised to ask; 50
 - (d) asks of, or receives or takes from, any person, organ of state, business or other organisation, any payment or reward in connection with such employment, other than remuneration due to him or her in terms of this Act or the Public Service Act;
 - (e) wilfully discloses any data or information obtained in the course of such employment to a person not authorised to receive that information; 55

- (f) uses information obtained in the course of such employment for the purpose of speculating in—
 (i) any stock, bond or other security; or
 (ii) any goods or services,
 before its release is authorised by the Statistician-General; or 5
- (g) contravenes any provision of section 17,
 is guilty of an offence and liable on conviction to a fine not exceeding R10 000, or such higher amount as is determined from time to time by the Minister of Justice as contemplated in section 1(1)(a) of the Adjustment of Fines Act, 1991 (Act No. 101 of 1991), or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment. 10
- (2) Any person who—
 (a) impersonates an officer of Statistics South Africa for the purpose of obtaining information from any person or body; or
 (b) represents himself or herself to be making an entry and inspection in terms of section 15 or putting a question in terms of section 16(1) when he or she is not an officer of Statistics South Africa authorised in terms of section 15 or 16, as the case may be, 15
- is guilty of an offence and liable on conviction to a fine not exceeding R10 000, or such higher amount as is determined from time to time by the Minister of Justice as contemplated in section 1(1)(a) of the Adjustment of Fines Act, 1991, or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment. 20
- (3) Any individual other than an employee of an organ of state, business or other organisation that— 25
 (a) fails to answer a question put in terms of section 16(2)(a) or furnishes an answer to such a question which is false or misleading in any material respect, knowing the answer to be false or misleading;
 (b) fails to furnish information or sign a declaration in terms of section 16(2)(b) or furnishes such information which is false or misleading in any material respect, knowing the information to be false or misleading; 30
 (c) incites any other person to act as contemplated in paragraph (a) or (b);
 (d) refuses—
 (i) the Statistician-General or any authorised officer of Statistics South Africa, acting in terms of section 15, entry on any land or premises; or 35
 (ii) to permit the Statistician-General or that authorised officer to inspect anything on or in that land or premises;
 (e) wilfully obstructs the Statistician-General or any officer of Statistics South Africa in the exercise of a power, or the performance of a duty, in terms of this Act, 40
- is guilty of an offence and liable on conviction—
 (i) in the case of an individual, to a fine not exceeding R10 000, or such higher amount as is determined from time to time by the Minister of Justice as contemplated in section 1(1)(a) of the Adjustment of Fines Act, 1991, or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment; and 45
 (ii) in the case of a business or other organisation, to a fine not exceeding R20 000 or an amount determined by the Minister from time to time by notice in the *Gazette*.
- (4) (a) A conviction of an offence referred to in subsection (3)(a) or (b) does not relieve any individual, business or other organisation of the obligation to supply the correct information. 50
 (b) If after 14 days from the date of sentencing for that offence, the information has still not been furnished, that individual, business or other organisation is guilty of a further offence and liable on conviction for each day after the expiry of that 14 day period— 55
 (i) in the case of an individual, to a fine not exceeding R500 or an amount determined by the Minister from time to time by notice in the *Gazette*; or
 (ii) in the case of a business or other organisation, to a fine not exceeding R2 000 or an amount determined by the Minister by notice in the *Gazette*. 60

References in other legislation or documents

19. (1) Any reference in any legislation or document to the Head of the Central Statistical Services must be construed as a reference to the Statistician-General.

(2) Any reference in any legislation or document to the Statistics Council established by section 2(1) of the Statistics Act, 1976 (Act No. 66 of 1976), must be construed as a reference to the Statistics Council established by section 8(1) of this Act. 5

Repeal of legislation, and savings

20. (1) Subject to subsections (2), (3) and (4)—

- (a) the legislation specified in the Schedule is hereby repealed; and
- (b) any other legislation in force in that part of the Republic which constituted the territory of any former entity known as Transkei, Bophuthatswana, Venda, Ciskei, Gazankulu, KaNgwane, KwaNdebele, KwaZulu, Lebowa or Qwaqwa, in so far as it deals with any matter provided for in this Act, is hereby repealed. 10

(2) Anything done in terms of a provision of legislation repealed by subsection (1) and which could be done in terms of a provision of this Act, is regarded to have been done in terms of that provision of this Act. 15

(3) The person who is the Head of Statistics South Africa in terms of section 12 of, and mentioned in Schedule 2 to, the Public Service Act, immediately before the commencement of this Act, must act as the Statistician-General until the first Statistician-General is appointed in terms of section 6(1) of this Act. 20

(4) (a) The Statistics Council constituted in terms of section 2 of the Statistics Act, 1976 (Act No. 66 of 1976), (in this subsection referred to as the “previous Council”), must act as the South African Statistics Council referred to in section 8(1) of this Act (in this subsection referred to as the “new Council”), until the first Council is constituted in terms of section 8 of this Act. 25

(b) While the previous Council acts as the new Council, section 2 of the Statistics Act, 1976, continues to apply to that Council.

(c) The secretarial and clerical assistance provided to the previous Council in terms of section 2B of the Statistics Act, 1976, must continue until the first Council is constituted in terms of section 8 of this Act. 30

Short title

21. This Act is called the Statistics Act, 1999.

SCHEDULE
LEGISLATION REPEALED

(Section 20(1)(a))

No. and year of Act	Short title
Act No. 66 of 1976	Statistics Act, 1976
Act No. 28 of 1978	Statistics Act, 1978, of the former entity known as Bophuthatswana
Act No. 15 of 1980	Statistics Act, 1980, of the former entity known as Transkei
Act No. 25 of 1986	Statistics Amendment Act, 1986

MEMORANDUM ON THE OBJECTS OF THE STATISTICS BILL, 1999

1. Purpose of Bill

The Statistics Bill is intended to replace the current Statistics Act, 1976 (Act No. 66 of 1976), as amended in 1986. Its aim is to advance the planning, production, analysis, co-ordination, dissemination and use of official and other statistics. It identifies and provides for the relevant powers and duties of—

- the responsible Minister (defined as the Minister of Finance or such other Minister as may be designated by the President);
- the head of the department of statistics, to be known as the Statistician-General;
- a Statistics Council to advise the Minister and the Statistician-General.

2. Main features of Bill

The Bill focuses on four main areas. The first concerns the professional independence of the Statistician-General and official statistics. The Bill provides that the Minister has the power to shape the priorities of the work programme of the department of statistics, to be known as Statistics South Africa. But it reserves to the Statistician-General, who is to be appointed by the President, the task of implementing the work programme, notably to determine the manner in which, and the time when, a specific statistical collection is to be undertaken, the form, extent and timing of the release of statistics, and the discontinuance of a specific survey.

Secondly, the Bill extends the sectoral representivity, status, and responsibilities of the Statistics Council. To safeguard official statistics it may commission appropriate investigations, publicise the outcomes, and advise both the Minister and the Statistician-General.

The third main concern of the Bill is to further quality and efficiency by means of co-ordination and collaboration among the various stakeholders: Statistics South Africa and other producers of statistics, including departments that keep administrative records, as well as users and respondents. This also includes liaison with international organisations which develop and recommend specific systems, surveys and classifications for harmonised international statistics.

Finally, both for ethical reasons and to achieve good returns, there needs to be strict protection of the data submitted to Statistics South Africa and other producers of official statistics. The Bill therefore provides that such data cannot be used for purposes other than statistics, e.g. they cannot be disclosed to other departments or organisations, they are not admissible as evidence in legal proceedings, and the statistics may not be published in such a way that a specific person or organisation can be identified. Further, all persons employed at Statistics South Africa have to take an oath of confidentiality.

3. Summary of Bill

Clauses 1 to 3 deal with definitions and objectives of the Bill, define the coverage and producers of official statistics and list six internationally recognised principles for “good” statistics.

Clause 4 recognises a national department of statistics, Statistics South Africa, with a departmental head to be known as the Statistician-General.

Clause 5 defines the duties and powers of the Minister. The Minister is to prioritise the work programme of Statistics South Africa, set up and monitor the performance contract of the Statistician-General, give or withhold approval regarding

changes in the statistics collections conducted by other organs of state, appoint the members of the Statistics Council after consultation with the Cabinet, and enter into agreements with the governments of other states in accordance with the Constitution of the Republic of South Africa, 1996.

Clauses 6 to 7 deal with the appointment and functions of the Statistician-General. It establishes the professional independence of the Statistician-General, in that he or she must be impartial and perform his or her functions without fear, favour or prejudice and in the interest of maintaining a high standard of professional service. The Statistician-General is to be appointed by the President, make recommendations to the Minister on the priorities of the work programme of Statistics South Africa and be responsible for the implementation of the work programme, including a population census every five years. The Statistician-General is to develop, promote, produce and disseminate official statistics, carry out commissioned work, provide advice on statistical issues to other organs of state, formulate quality criteria, designate certain statistics as official statistics and generally promote co-ordination among producers of official statistics. Other tasks are to maintain provincial offices, endeavour to fulfil South Africa's international statistical reporting obligations, and liaise with other countries on statistical matters.

Clauses 8 to 13 establish the Statistics Council and outline its functions. It is to consist of 15 to 25 members, appointed by the Minister after consultation with the Cabinet, and be representative of national and provincial organs of state, organised business and labour, as well as of statistics, information technology and economic and social interests (including gender and disability interests). The Council is to advise the Minister, the Statistician-General and other organs of state which produce statistics in regard to any statistical matter, and promote, co-ordinate and safeguard statistics.

Clause 14 deals with statistical co-ordination. As previously, when other Ministers seek to authorise, and other organs of state to undertake, a new or revised statistical collection, they have to receive approval of the Minister, who is to be advised by the Statistician-General. In addition, the Statistician-General is to have access without charge to information or data related to statistics, and may review state statistics and advise organs of state about procedures to improve quality, enhance compatibility and minimise overlap. The Statistician-General may designate certain statistics as "official statistics".

Clause 15 permits any officer or agent of Statistics South Africa to enter the land or premises of any organ of state, organisation or business to make enquiries or observations for statistical purposes. But the Bill differs from the previous Act by requiring a warrant and reasonable grounds for such access and by excluding private dwellings. Any entry must be made with strict regard to the right of a person to his or her dignity, freedom and security, and privacy.

Clause 16 enjoins every person, including employees of organs of state, to the best of his or her knowledge and belief, to answer all questions put to him or her in terms of the Bill.

Clause 17 deals with confidentiality and disclosure. No information collected by Statistics South Africa for statistical purposes that relates to any person, household, organ of state, business or other organisation for statistical purposes is to be disclosed to any outside person or organisation, save with the prior consent of the person concerned, or in other specified instances. All persons employed by Statistics South Africa must take an oath of confidentiality, prohibiting disclosure of any matter coming to their knowledge by reason of their employment.

Clause 18 deals with offences and penalties. Any employee of Statistics South Africa who makes a false statement, seeks to obtain information to which he or she is not authorised, takes bribes or discloses or misuses confidential information, is guilty of

an offence. Any person, business or other organisation that fails to supply, or supplies misleading, information requested by Statistics South Africa, is similarly guilty of an offence.

Clauses 19 to 21 deal with references in other legislation, the repeal of legislation, savings, and the short title, respectively.

4. Parliamentary procedure

The State Law Advisers are of the opinion that the Bill should be dealt with by Parliament in accordance with the procedure established by section 75 of the Constitution of the Republic of South Africa, 1996, since it contains no provision to which the procedures set out in section 74 or 76 of the Constitution apply.

5. Consultation

The Bill is based on several rounds of consultations undertaken by the interim Statistics Council, in collaboration with Statistics South Africa. Originally the reform of the legislation was mandated as a Presidential Lead Project.

The interim Statistics Council (the “Council”) has a broad-based membership that covers universities and non-governmental organisations, national departments and parastatals, representatives nominated by provincial governments, and labour, civic and business organisations.

Drawing on its members’ collective experience as users and producers of statistics, the Council drafted a sequence of discussion papers, which it discussed both within itself and in two consultative phases. In both phases, a draft discussion paper was sent out to all national departments, to all provincial governments and to organisations and individuals with an established interest in statistics. The Council also convened for each phase a workshop, which resulted in informed and lively discussions with the stakeholders. Valuable comments were received from, *inter alia*, the South African Reserve Bank, the South African Revenue Service, the Departments of Welfare, Housing, Land Affairs, Minerals and Energy, and Safety and Security, as well as departments in the provincial governments.

In addition to the workshops and submitted written comments, the drafters also had informal discussions with, *inter alia*, researchers, officials in Statistics South Africa, other national statistical services and the provincial governments. The process was concluded by detailed discussions between the responsible Minister, the Council and Statistics South Africa, leading to consequent changes in the draft legislation. Altogether, the consultation process has taken about one year.

List of participants in two workshops and subsequent meetings:

(a) National Government:

- Department of Agriculture
- Department of Home Affairs
- Department of Housing
- Department of Labour
- Department of Land Affairs
- Department of Minerals and Energy
- Department of Water Affairs and Forestry
- Department of Welfare
- National Population Unit
- Secretariat for Safety and Security
- South African Reserve Bank
- South African Revenue Service

(b) Provincial governments:

Free State
 Gauteng
 KwaZulu-Natal
 Mpumalanga
 Northern Cape
 Northern Province
 Western Cape

(c) International participants:

Australian Bureau of Statistics
 Statistics Canada
 Statistics Sweden
 United Nations Fund for Population Activities

(d) Other sectors represented by the Statistics Council members:

Business sector
 Labour organisations
 Non-governmental organisations (including public health, research and development)
 Statistics profession
 Statutory organisations
 Universities
 Women's organisations

List of major inputs and concerns from those consulted which led to changes to the draft Bill:

SECTOR	INPUT/CONCERN
National	Statistics South Africa (Stats SA) to facilitate development planning and monitoring
National	Stats SA, Head to be statutorily protected from political influence
Other	Prompt and user friendly meta-data
National	Importance of integrity of statistical system
Other	Adherence to international standards
National	Accessible dissemination of products
Provincial	Responsiveness to user needs
Provincial	Include provincial and local levels in concerns
Provincial	Avoid unnecessary duplication of government statistics
National	Clear definition of statistical principles
National	Ensure privacy and confidentiality provisions
National	Ensure definition of "organs of state" includes public agencies
National	Statistics Council to be broad-based to enhance impartiality
Provincial	Support for checks and balances among the Minister, Head, Council
National	Stats SA to evaluate quality of statistics

SECTOR	INPUT/CONCERN
National	Independence and status of Stats SA
Other	Access to households and businesses must be constrained in accordance with the Constitution
Provincial	Service-level agreements with provincial governments
National	Other departments to be allowed to undertake collections
Provincial	Stats SA to promote co-ordination
National	Provide possibility of joint collections
Other	Define guidelines for user-pays activities
Other	Responsibility of Stats SA to store and disseminate data
National	Enable appropriate release of micro-data
National	Support for firm checks regarding supply of data by businesses