

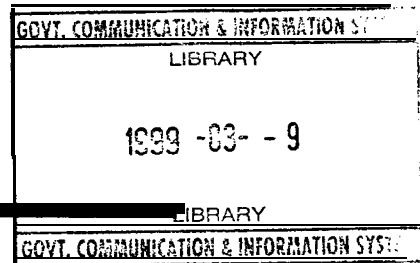
REPUBLIC OF SOUTH AFRICA

NATIONAL HERITAGE COUNCIL BILL

(As submitted by the Portfolio Committee on Arts, Culture and Language, Science and Technology (National Assembly) after consideration of the National Heritage Bill [B 139—98] and after consideration of submissions from interested parties thereon)

(MINISTER OF ARTS, CULTURE, SCIENCE AND TECHNOLOGY)

[B 23—99]



REPUBLIEK VAN SUID-AFRIKA

WETSONTWERP OP DIE NASIONALE ERFENISRAAD

(Soos voorgelê deur die Portefeuljekomitee oor Kuns, Kultuur en Taal, Wetenskap en Tegnologie (Nasionale Vergadering) na oorweging van die Wetsontwerp op Nasionale Erfenis [W 139—98] en na oorweging van voorleggings van belanghebbende partye daaroor)

(MINISTER VAN KUNS, KULTUUR, WETENSKAP EN TEGNOLOGIE)

[W 23—99]

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BILL

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

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

Application and interpretation

1. This Act binds the State.

Definitions

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2. In this Act, unless the context requires otherwise—

- (i) “Council” means the National Heritage Council established by section 3: (vi)
- (ii) “*Gazette*” means the *Government Gazette*: (viii)
- (iii) “living heritage” means the intangible aspects of inherited culture, and may include—
 - (a) cultural tradition; 10
 - (b) oral history;
 - (c) performance;
 - (d) ritual;
 - (e) popular memory: 15
 - (f) skills and techniques;
 - (g) indigenous knowledge systems: and
 - (h) the holistic approach to nature, society and social relationships: (ii)
- (iv) “MEC” means the member of the executive council of a province {responsible for cultural matters: (iii) 20
- (v) “Minister” means the Minister of the national department responsible for arts and culture: (iv)
- (vi) “orature” means oral tradition: (v)
- (vii) “prescribe”. means prescribed by regulation made under this Act: (ix)
- (viii) “regulation”. means any regulation made under this Act: (vii) 25
- (ix) “this Act” includes the regulations. (i)

Establishment of Council

3. There is hereby established a juristic person to be known as the National Heritage Council.

Objects of Council

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4. The objects of the Council are—

- (a) to develop, promote and protect the national heritage for present and future generations;
- (b) to co-ordinate heritage management:
- (c) to protect, preserve and promote the content and heritage which reside in orature in order to make it accessible and dynamic: 5
- (d) to integrate living heritage with the functions and activities of the Council and all other heritage authorities and institutions at national, provincial and local level;
- (e) to promote and protect indigenous knowledge systems, including but not limited to enterprise and industry, social upliftment, institutional framework 10 and liberator processes; and
- (f) to intensify support for the promotion of the history and culture of all our peoples and particularly to support research and publication on enslavement in South Africa.

Composition of Council 15

5. (1) The Council consists of—

- (a) at least five members, appointed by the Minister:
- (b) a representative of each province to be nominated by the MEC concerned: and
- (c) the chairpersons of each of—
 - (i) the Council of the South African Heritage Resources Agency; 20
 - (ii) the National Archives Commission;
 - (iii) the Heraldry Council;
 - (iv) the Board of the National Library;
 - (v) the Council of the Northern Flagship Institution;
 - (vi) the Council of the Southern Flagship Institution, 25
 and/or any other body or institution the Minister considers relevant.

(2) Members of the Council referred to in subsection (1)(a) must be appointed by the Minister in the prescribed manner, and the regulations prescribing the manner of appointment must apply the principles of transparency and representivity and must take into account special competence, experience and interest in the field of heritage. 30

(3) Members of the Council referred to in subsection (1)(b) must be nominated by the MEC concerned in the prescribed manner, and the regulations prescribing the manner of nomination must apply the principles of transparency and must take into account special competence, experience and interest in the field of heritage.

Term of Office 35

6. (1) Members of the Council other than those referred to in section 5(1)(c) are appointed for a period of three years, and may be re-appointed for a further period of three years.

(2) If a member dies, or otherwise vacates his or her office, the Minister must appoint another person in the manner in which that person was appointed to fill that vacancy for 40 the remaining portion of the term of office of that member.

(3) The members of the Council shall, as the occasion arises, elect—

- (a) a chairperson from among the members who are appointed in terms of section 5(1)(a); and
- (b) a vice-chairperson from among all the members. 45

(4) If the chairperson is absent from a meeting of the Council, the vice-chairperson shall preside at that meeting, and” if both the chairperson and the vice-chairperson are absent from a meeting of the Council, the members present shall elect one of their members to preside at that meeting.

(5) The Minister may terminate a person’s membership of the Council— 50

- (a) if that member has been absent from three consecutive meetings of the Council without sufficient reasons; or
- (b) on the recommendation of the Council, for reasons of incompetence, misconduct or incapacity.

(6) A member of the Council shall not hold office in any political party or political 55 organisation.

Meetings of Council

7. (1) The Council may meet as often as necessary. but at least twice a year.
- (2) The chairperson may at any time convene a special meeting of the Council, which shall be held at such time and place as the chairperson may direct.
- (3) A quorum for a meeting of the Council shall be a majority of its members. 5
- (4) Any decision of the Council shall be taken by resolution of the majority of the members present at any meeting of the Council, and. in the event of an equality of votes on any matter, the person presiding at the meeting in question shall have a casting vote in addition to his or her deliberative vote as a member of the Council.
- (5) A member of the Council shall not vote or in any manner participate in the 10 proceedings at any meeting of the Council nor be present at the venue where such a meeting is held, if, in relation to any matter before the Council, he or she has any interest which precludes him or her from performing his or her functions as a member of the Council in a fair, unbiased and proper manner.

Committees of Council

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8. The Council may establish committees to assist it in the performance of its functions and. in addition to any members. it may appoint to such committees persons whom the Council considers competent or who possess specific skills and expertise. ,

Reimbursement of expenses in respect of members of Council and committees

9. The Minister may. with the concurrence of the Minister of Finance. determine 20 criteria for reimbursement of expenses incurred by members of the Council. and members of any committee of the Council who are not in the full-time employ of the State.

Functions, powers and duties of Council

10. (1) The Council must— 25
 - (a) advise the Minister on—
 - (i) national policies on heritage matters, including indigenous knowledge systems, living treasures, restitution and other relevant matters; and
 - (ii) any other matter concerning heritage which the Minister may from time to time determine: 30
 - (b) advise the Minister on the allocation of core funding to declared cultural institutions;
 - (c) investigate ways and means of effecting the repatriation of South African heritage objects presently being held by foreign governments, public and private institutions and individuals; 35
 - (d) make grants to any person, organisation or institution in order to promote and develop national heritage activities and resources;
 - (e) co-ordinate the activities of public institutions involved in heritage management in an integrated manner to ensure optimum use of State resources;
 - (f) monitor and co-ordinate the transformation of the heritage sector. with special 40 emphasis on the development of living heritage projects;
 - (g) consult and liaise with relevant stakeholders on heritage matters;
 - (h) generally support, nurture and develop access to institutions and programmed that promote and bring equity to heritage management;
 - (i) promote an awareness of the history of all our peoples. including the history 45 of enslavement in South Africa;
 - (j) lobby in order to secure funding for heritage management and to create a greater public awareness of the importance of our nation's heritage; and
 - (k) perform such duties in respect of its objects as the Minister may assign to it.
- (2) The Council may on its own initiative advise the Minister on any matter 50 concerning heritage.

(3) In respect of subsections (1) and (2), the Minister must—

- (a) consider the advice of the Council; and**
- (b) provide reasons in writing to the Council if the Minister does not accept the advice.**

Employees of Council

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11. (1) (a) The Council may appoint such employees as are necessary to perform the functions of the Council.

(b) (i) The Council must appoint a chief executive officer who must be responsible for the management of the affairs of the Council, and who must report on those affairs to the Council as often as may be required by the Council.

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(ii) The chief executive officer is also the accounting officer charged with the responsibility of accounting for all money received and the utilisation thereof and is responsible for the property of the Council.

(2) The Council shall out of its own funds pay to its employees such remuneration, allowances, subsidies and other benefits as the Council may determine in consultation 15 with the Department of Public Service and Administration and with the approval of the Minister granted with the concurrence of the Minister of Finance.

(3) The determination of the remuneration and other conditions of service of persons appointed under subsection (1) must be in accordance with a scheme approved by the Minister in consultation with the Minister of Finance.

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Financing

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

- (a)** money appropriated by Parliament to enable it to perform its functions and exercise its powers;
- (b)** donations or contributions received from any source;
- (c)** trust funds vested in it;
- (d)** interest derived from investments; and
- (e)** money received from any other source.

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(2) (a) The Council shall utilise its funds to defray expenses in connection with the performance of its functions.

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(b) The Council shall utilise any money contemplated in subsection (1)(u) in accordance with the statement of its estimated income and expenditure referred to in subsection (3), as approved by the Minister: Provided that, subject to paragraph (a), the Council may utilise any amount or portion of any amount required to be so utilised for a particular purpose in connection with a specified matter, for any other purpose in 35 connection with such matter: Provided further that the Council may with the approval of the Minister utilise any balance of such money remaining at the end of the financial year of the Council for any expenses in connection with the performance of its functions.

(c) The Council shall utilise any donations or contributions contemplated in subsection (1)(b) in accordance with the conditions, if any, imposed by the donor or 40 contributor concerned.

(3) (a) The Council shall in each financial year, at such time as the Minister may direct, submit a statement of the Council's estimated income and expenditure during the following financial year, and the Council may also during the course of a financial year submit supplementary statements of the Council's estimated expenditure for that 45 financial year, to the Minister for approval, granted with the concurrence of the Minister of Finance.

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

(4) The Council may invest any unexpended portion of its funds in accordance with 50 the directions determined by the Minister in consultation with the Minister of Finance.

(5) The Council may only lend or borrow moneys with the prior approval of the Minister in concurrence with the Minister of Finance.

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

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Audit, annual and financial report

- 13. (1)** The Auditor-General shall audit the accounts and balance sheet of the Council.
- (2) The Council shall—
- (u) furnish to the Minister such information as he or she may call for in connection with the activities and financial position of the Council: 5
 - (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.
- (3) The Minister shall table the report referred to in subsection (2)(b) in Parliament within 14 days after receipt thereof if Parliament is then in ordinary session or, if 10 Parliament is not then in ordinary session, within 14 days after commencement of the next ordinary session.

Exercise of powers outside Republic

- 14.** The Council may, on such terms and conditions as may be agreed upon, and subject to legislation regarding international co-operation, support heritage activity by 15 any South African citizen in any territory outside the Republic.

Regulations

- 15. (1)** The Council may, subject to the approval of the Minister and by notice in the *Gazette*, make regulations regarding—
- (a) the procedure at meetings of the Council; 20
 - (b) a code of conduct for members of the Council and of its committees in order to prevent conflicts of interest and bringing the Council into disrepute; and
 - (c) in general, any matter in respect of which the Council deems it necessary or expedient to make regulations in order to achieve the objects of this Act.
- (2) The Minister may, by notice in the *Gazette*, make regulations regarding— 25
- (a) any matter which may or shall be prescribed in terms of this Act;
 - (b) any other matter which may be necessary or expedient in order to achieve the objects of this Act.
- (3) No regulation relating to State revenue or expenditure shall be made by the Council or the Minister except with the concurrence of the Minister of Finance. 30
- (4) Any regulation made under this section may provide that any person contravening such regulation or failing to comply therewith, shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding six months.

Premier to designate member of executive council

- 16.** The Premier of every province shall designate a member of the executive council 35 to perform any function entrusted to such member by or under this Act.

Short title and commencement

- 17.** This Act shall be called the National Heritage Council Act, 1999, and shall come into operation on a date fixed by the President by proclamation in the *Gazette*.

**MEMORANDUM ON THE OBJECTS OF THE NATIONAL
HERITAGE COUNCIL BILL. 1999**

The Bill establishes the National Heritage Council with the object of developing, promoting, protecting and co-ordinating the national heritage, protecting, preserving and promoting the content and heritage which reside in orature in order to make it accessible and dynamic, integrating living heritage with the functions and activities of the Council and all other heritage authorities and institutions at national, provincial and local level, promoting the protection of indigenous knowledge systems, including but not limited to enterprise and industry, social upliftment, institutional framework and liberator processes, and intensifying support for the promotion of the history and culture of all our peoples and particularly to support research and publication on enslavement in South Africa.

Since 1994, the Department has conducted regional forums which have enabled several hundred stakeholders to participate in, and contribute to, building the new vision for heritage conservation and promotion, as outlined in the Bill.

Following consultative forums in March 1996, the Minister of Arts, Culture, Science and Technology appointed six nominees to a writing committee.

Three public meetings, each attended by about 100 people, were held in Cape Town and Johannesburg to discuss the terms of reference and successive drafts of the National Heritage Bill of 1998.

All national and provincial departments have been consulted and workshops for local governments have been held on an ongoing basis during the drafting process.

The Portfolio Committee on Arts, Culture and Language, Science and Technology requested submissions from the public. Submissions were received and accommodated as far as possible in the amended Bill.

In the opinion of the Department and the State Law Advisers, the Bill should be dealt with in terms of section 76 of the Constitution of the Republic of South Africa, 1996.