

REPUBLIC OF SOUTH AFRICA

CULTURAL LAWS AMENDMENT BILL

*(As introduced in the National Assembly as a section 75 Bill; explanatory summary of Bill
published in Government Gazette No 21452 of 4 August 2000) (The English text is the
official text of the Bill)*

(MINISTER OF ARTS, CULTURE, SCIENCE AND TECHNOLOGY)

[B 45—2000]

REPUBLIEK VAN SUID-AFRIKA

WYSIGINGSWETSONTWERP OP KULTUURWETTE

*(Soos ingedien in die Nasionale Vergadering as 'n artikel 75-wetsontwerp; verduidelikende
opsomming van Wetsontwerp in Staatskoerant No 21452 van 4 Augustus 2000 gepubliseer)
(Die Afrikaanse teks is die amptelike vertaling van die Wetsontwerp)*

(MINISTER VAN KUNS, KULTUUR, WETenskap EN TEGnologie)

[W 45—2000]

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GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from existing enactments.

_____ Words underlined with a solid line indicate insertions in existing enactments.

BILL

To amend the Heraldry Act, 1962, so as to amend certain definitions and to define an expression; and to replace an obsolete reference; to amend the Pan South African Language Board Act, 1995, so as to further regulate the composition of the Board; and to empower the Minister to determine criteria for the allowances payable to and reimbursement of expenses incurred by members of the Board; to amend the National Archives of South Africa Act, 1996, so as to further regulate the appointment of the National Archivist; to require the National Archives Commission to advise the Director-General on matters pertaining to the Act; and to empower the Minister to determine criteria for the allowances payable to and reimbursement of expenses incurred by members of the Commission; to amend the National Arts Council Act, 1997, so as to extend the membership of the National Arts Council and the period of tenure of the members; to empower the Minister to appoint the chairperson of the Council; to further regulate the circumstances under which a member of the Council vacates office; to further regulate the composition of the executive committee; and to extend the period of tenure of a member of an advisory panel; to amend the National Film and Video Foundation Act, 1997, so as to empower the National Film and Video Foundation to establish a separate legal entity for purposes of investing in film and video projects; to further regulate the composition of the executive committee; and to effect a textual amendment; to amend the South African Geographical Names Council Act, 1998, so as to empower the Minister to determine criteria for the allowances payable to and reimbursement for expenses incurred by members of the Council; and to provide for matters connected therewith.

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

Amendment of section 1 of Act 18 of 1962, as amended by section 1 of Act 63 of 1980 and section 1 of Act 49 of 1996

1. Section 1 of the Heraldry Act, 1962, is hereby amended by the—
 - (a) substitution for the definition of “differencing” of the following definition:

“ ‘differencing’ means the incorporation of a brisure in a heraldic representation in conformity with the principles and rules of heraldry in order to distinguish between the different owners of such **[representa-**
tion] representations;”;

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- (b) insertion after the definition of “differencing” of the following definition:
 “ ‘family coat of arms’ means any coat of arms borne by a natural person;”;
- (c) substitution for the definition of “Minister” of the following definition: 5
 “ ‘Minister’ means the Minister **[of National Education]** responsible for Heraldry;”; and
- (d) substitution for the definition of “municipal” of the following definition:
 “ ‘municipal’ means of or belonging to **[an institution or body referred to in section 84(1)(f)(i) or (ii) of the Republic of South Africa Constitution Act, 1961 (Act No. 32 of 1961)]** a municipality contemplated in Chapter 7 of the Constitution;” 10

Amendment of section 24 of Act 18 of 1962

2. Section 24 of the Heraldry Act, 1962, is hereby amended by the substitution for subsection (2) of the following subsection:

- “(2) The Minister shall **[lay]** table a copy of such report **[on the Table of the Senate and of the House of Assembly]** in Parliament within 14 days after receipt thereof if Parliament is then **[in ordinary session]** sitting or, if Parliament is not then **[in ordinary session]** sitting, within 14 days after the commencement of **[its]** the next ensuing [ordinary session] sitting of Parliament.” 15

Amendment of section 5 of Act 59 of 1995, as amended by section 4 of Act 10 of 1999 20

3. Section 5 of the Pan South African Language Board Act, 1995, is hereby amended—

- (a) by the substitution in subsection (1) for paragraph (a) of the following paragraph:
 “(a) The Minister, after having followed the procedure provided for in subsection (3), shall appoint **[as members of the Board—**
 (i) **not]** no fewer than 11 **[but not]** and no more than 15 persons as members of the Board [who, when viewed collectively, are as representative as possible of the official languages as well as language skills, including but not limited to, interpreting, 25
 translation, terminology and lexicography, language and literacy teaching and language planning;
 (ii) **three persons who shall be language planners;**
 (iii) **five persons who shall have special knowledge of language matters in South Africa; and** 30
 (iv) **one person who shall be a legal expert with special knowledge of language legislation].**”; and 35
- (b) by the substitution for subsection (2) of the following subsection:
 “(2) The members of the Board shall—
 (a) be fit and proper persons for the offices held by them; 40
 (b) be South African citizens;
 (c) when viewed collectively, be broadly representative of the diversity of the **[South African community; and]** users of the official languages;
 (d) be supportive of the principle of multilingualism; and 45
 (e) have language skills, which may include skills in interpreting, translation, terminology and lexicography, literacy teaching and language planning, or have financial and legal expertise with special knowledge of language legislation.”.

Substitution of section 13 of Act 59 of 1995, as substituted by section 12 of Act 10 of 1999 50

4. The following section is hereby substituted for section 13 of the Pan South African Language Board Act, 1995:

“Remuneration and allowances of members of the Board

13. (1) A member of the Board or of any committee thereof may, from moneys appropriated by Parliament for that purpose, be paid such **[remuneration and]** allowances and be reimbursed for such expenses incurred for services performed by him or her as such a member, as **[may be determined by the Minister in consultation with the Minister of Finance]** the Board may determine, subject to subsection (2). 5

(2) The Minister, with the concurrence of the Minister of Finance, must determine criteria for payment of the allowances and reimbursement of the expenses contemplated in subsection (1).”. 10

Amendment of section 4 of Act 43 of 1996

5. Section 4 of the National Archives of South Africa Act, 1996, is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) (a) The Minister shall, after consultation with the Public Service Commission contemplated in section 196 of the Constitution, appoint an experienced and qualified person as National Archivist in terms of the Public Service Act, 1994 (Proclamation No. 103 of 1994), on such grade as the Minister may determine. 15

(b) The National Archivist shall manage the National Archives under the direction of the Director-General: Arts, Culture, Science and Technology.”. 20

Amendment of section 6 of Act 43 of 1996

6. Section 6 of the National Archives of South Africa Act, 1996, is hereby amended—

(a) by the substitution in subsection (4) for paragraph (a) of the following paragraph:

“(a) advise the Minister and the Director-General: Arts, Culture, Science and Technology on any matter related to the operation of this Act;”;
and 25

(b) by the substitution for subsection (8) of the following subsection:

“(8) (a) A member of the Commission or of any committee thereof who is not in the full-time employ of the State may be paid such allowances and be reimbursed for such expenses incurred for services performed by him or her as such a member as the Commission may determine, subject to paragraph (b). 30

(b) The Minister, with the concurrence of the Minister of Finance, must determine criteria for payment of the allowances and reimbursement of the expenses contemplated in paragraph (a).” 35

Amendment of section 4 of Act 56 of 1997

7. Section 4 of the National Arts Council Act, 1997, is hereby amended—

(a) by the substitution for subsection (1) of the following subsection:

“(1) Subject to section 20(1)(a), the Council shall consist of nine provincial representatives and no fewer than nine and no more than **[14]** 18 other persons.”. 40

(b) by the substitution for subsection (4) of the following subsection:

“(4) (a) **[The members of the Council shall, as the occasion arises, elect—]** The Minister shall appoint a chairperson from among the members who are not provincial representatives. **[; and]** 45

(b) The members of the Council shall elect a vice-chairperson from among all the members.”;

(c) by the substitution for subsection (6) of the following subsection:

“(6) (a) Subject to paragraph (b), a member of the Council shall hold office for a period not exceeding **[three]** four years, and shall be eligible for reappointment after a further **[three]** four years have elapsed. 50

(b) At the end of the members’ term of office, three members who are not provincial representatives, one of whom shall be an Executive Committee member, shall be re-elected by the **[council]** Council to serve for a further **[three]** four years, after which they shall not be eligible for appointment until a further **[three]** four years have elapsed.”; and 55

(d) by the addition to subsection (6) of the following paragraph:

“(c) A provincial representative may at any time before the expiry of his or her term of office be replaced by another representative elected as contemplated in subsection (2) but no individual representative shall hold office for a term exceeding four years.”.

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Amendment of section 5 of Act 56 of 1997

8. Section 5 of the National Arts Council Act, 1997, is hereby amended—

(a) by the substitution in subsection (3) for paragraph (e) of the following paragraph:

“(e) resigns by written notice addressed to the **[Minister]** chairperson of the Council.”; and

(b) by the addition of the following subsection:

“(4) On receipt of a notice contemplated in subsection (3)(e) the Chairperson shall inform the Minister accordingly.”.

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Amendment of section 9 of Act 56 of 1997

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9. Section 9 of the National Arts Council Act, 1997, is hereby amended by the substitution in subsection (1) for paragraph (a) of the following paragraph:

“(a) which shall consist of the chairperson, vice-chairperson and such other members of the Council as the Council may determine, but which shall not exceed **[25 per cent]** five members of the Council’s total membership at the time; and”.

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Amendment of section 11 of Act 73 of 1997

10. Section 11 of the National Arts Council Act, 1997, is hereby amended by the substitution for subsection (7) of the following subsection:

“(7) A member of an advisory panel shall hold office for a period not exceeding **[two]** three years, and may be appointed on the same or a different panel after a further **[two]** three years have elapsed.”.

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Amendment of section 4 of Act 73 of 1997

11. Section 4 of the National Film and Video Foundation Act, 1997, is hereby amended by the substitution for subsection (3) of the following subsection:

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“(3) (a) The Foundation shall not itself establish, acquire or operate any organisation or institution connected with the film and video industry, but the Council may, subject to the approval of the Minister and the Minister of Trade and Industry, establish a separate legal entity for purposes of investing in film and video projects in accordance with the objects of this Act.

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(b) The Foundation may initiate such projects which it considers necessary in pursuit of its objects, provided that such projects are undertaken in partnership with existing organisations, or institutions which have the capacity to undertake the projects.”.

Amendment of section 9 of Act 73 of 1997

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12. Section 9 of the National Film and Video Foundation Act, 1997, is hereby amended by the substitution in subsection (1) for paragraph (a) of the following paragraph:

“(a) which shall consist of the chairperson, vice-chairperson and **[such]** no more than four other members of the Council, **[as the Council may determine, but which shall not exceed 25 per cent of the Council’s total membership at the time]** determined by the Council; and”.

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Amendment of section 16 of Act 73 of 1997

13. Section 16 of the National Film and Video Foundation Act, 1997, is hereby amended by the substitution in subsection (2)(b) for the words preceding the first proviso of the following words:

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“The foundation shall utilise any money contemplated in subsection (1)(a), in accordance with the statement of its estimated income and expenditure referred to in subsection [(3)] (6), as approved by the Minister:”.

Substitution of section 8 of Act 118 of 1998

14. The following section is hereby substituted for section 8 of the South African Geographical Names Council Act, 1998: 5

“Allowances of members of Council and subcommittees

8. (1) A member of the Council or of any committee thereof who is not in the full-time employ of the State, may be paid such allowances and be reimbursed for such expenses incurred for services performed by him or her as such a member as the Council may determine, subject to subsection (2). 10

(2) The Minister with the concurrence of the Minister of Finance must determine criteria for payment of the allowances and reimbursement of the expenses contemplated in subsection (1).”.

Short title and commencement 15

15. This Act is called the Cultural Laws Amendment Act, 2000, and comes into operation on a date determined by the President by proclamation in the *Gazette*.

MEMORANDUM ON THE OBJECTS OF THE CULTURAL LAWS AMENDMENT BILL, 2000

1. The Bill is the result of a process of evaluation by the Department of Arts, Culture, Science and Technology of legislation administered by it. The Bill proposes amendments to the Heraldry Act, 1962 (Act No. 18 of 1962), the Pan South African Language Board Act, 1995 (Act No. 59 of 1995), the National Archives of South Africa Act, 1996 (Act No. 43 of 1996), the National Arts Council Act, 1997 (Act No. 56 of 1997), the National Film and Video Foundation Act, 1997 (Act No. 73 of 1997), and the South African Geographical Names Council Act, 1998 (Act No. 118 of 1998).

2. The Bill seeks to give the Minister of Arts, Culture, Science and Technology similar powers in respect of the members of any Board, Commission, Council or committee established by the Pan South African Language Board Act, 1995, the National Archives of South Africa Act, 1996, and the South African Geographical Names Council Act, 1998, to determine criteria for the allowances payable to, and reimbursement of expenses incurred by, such members. See also the Cultural Laws Second Amendment Bill, 2000, in respect of similar amendments proposed to the Cultural Institutions Act, 1998 (Act No. 119 of 1998), and the National Heritage Council Act, 1999 (Act No. 111 of 1999).

3. The amendments proposed to the Heraldry Act, 1962, are of a technical nature. The Bill seeks to insert a definition of “family coat of arms”, amend the definition of “differencing” and replace certain obsolete provisions referring to the Minister of National Education, the 1961 Constitution and the Senate and House of Assembly.

4. The other amendment proposed to the Pan South African Language Board Act, 1995, is a consequential amendment resulting from the amendment of the Act by the Pan South African Language Board Amendment Act, 1999 (Act No. 10 of 1999).

5. The other amendments proposed to the National Archives of South Africa Act, 1996, are in respect of the appointment of the National Archivist. It is proposed that the National Archivist should always be a civil servant who performs his or her functions under the direction of the Director-General, making the incumbent accountable to the Director-General.

6. The main amendments proposed to the National Arts Council Act, 1997, are the extension of the number of members of the National Arts Council from 14 to 18 persons, and the extension of their period of tenure from three to four years. The extension of the membership is necessary to accommodate all the disciplines and the extension of the period of tenure, to make the Council more effective in realising their long-term strategies. It is also proposed that the terms of office of the provincial representatives be limited to four years, that members of the Council may, in writing, resign by notice to the chairperson and that the Executive Committee be limited to no more than five members.

7. In respect of the National Film and Video Foundation Act, 1997, it is proposed that the Foundation be empowered to establish a separate legal entity to invest in film and video projects, and that the Executive Committee be limited to four members.

8. BODIES CONSULTED:

All national and provincial departments.

All declared cultural institutions.

9. FINANCIAL IMPLICATIONS FOR STATE

There will be no new financial implications for the State. Any additional expenditure will be covered within existing budgetary constraints.

10. PARLIAMENTARY PROCESS

The State Law Advisers and the Department of Arts, Culture, Science and Technology are of the opinion that this Bill must be dealt with in accordance with the procedure

established by section 75 of the Constitution, since it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.