

REPUBLIC OF SOUTH AFRICA

SOUTH AFRICAN LANGUAGE PRACTITIONERS' COUNCIL BILL

*(As introduced in the National Assembly (proposed section 75); explanatory summary of
Bill published in Government Gazette No. 36557 of 14 June 2013)
(The English text is the official text of the Bill)*

(MINISTER OF ARTS AND CULTURE)

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BILL

To provide for the establishment of the South African Language Practitioners' Council; to provide for the objects, powers, duties and functions of the Council; to determine the manner in which the Council is to be managed, governed, staffed and financed; to regulate the training of language practitioners; to provide for control of the accreditation and registration of language practitioners; and to provide for matters connected therewith.

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

ARRANGEMENT OF SECTIONS

Sections

	CHAPTER 1	5
	DEFINITIONS	
1.	Definitions	
	CHAPTER 2	
	SOUTH AFRICAN LANGUAGE PRACTITIONERS' COUNCIL	
2.	Establishment of South African Language Practitioners' Council	10
3.	Objects of Council	
4.	Functions of Council	
	CHAPTER 3	
	BOARD OF COUNCIL	
5.	Composition of Board	15
6.	Disqualification from membership of Board	
7.	Declaration of financial or other interests of members	
8.	Term of office and re-appointment of member	
9.	Vacancies, suspension, removal and resignation from office of members	
10.	Meetings and procedures at meetings of Board	20
11.	Recusal of member from meetings and proceedings of Board	
12.	Remuneration of members	
13.	Establishment of committees to assist Board	
14.	Co-opting of persons to, or committees of, Board	

CHAPTER 4**CHIEF EXECUTIVE OFFICER AND STAFF OF COUNCIL**

- | | | |
|-----|--|---|
| 15. | Appointment of chief executive officer | |
| 16. | Functions of chief executive officer | |
| 17. | Resignation and removal from office of chief executive officer | 5 |
| 18. | Staff of Council | |

CHAPTER 5**CODE OF CONDUCT FOR LANGUAGE PRACTITIONERS AND POLICY DIRECTIVES**

- | | | |
|-----|--|----|
| 19. | Code of conduct for language practitioners | 10 |
|-----|--|----|

CHAPTER 6**ACCREDITATION BY COUNCIL**

- | | | |
|-----|-------------------------------|--|
| 20. | Application for accreditation | |
| 21. | Accreditation certificates | |

CHAPTER 7

15

FUNDING AND FINANCIAL MANAGEMENT OF COUNCIL

- | | | |
|-----|-------------------------|--|
| 22. | Funds of Council | |
| 23. | Financial management | |
| 24. | Audit and annual report | |

CHAPTER 8

20

KEEPING OF REGISTERS, REMOVAL AND RESTORATION TO REGISTER AND ANCILLARY MATTERS

- | | | |
|-----|---|----|
| 25. | Keeping of registers | |
| 26. | Removal of name from, and restoration to, register | |
| 27. | Effect of suspension or removal from register | 25 |
| 28. | Right to appeal | |
| 29. | Custody and publication of registers | |
| 30. | Register as proof | |
| 31. | Issue of duplicate registration certificate, certificate of status, extract from register or certificate by registrar | 30 |
| 32. | Qualifications and experience prescribed for registration | |
| 33. | Levying of annual fees on accredited and registered persons | |

CHAPTER 9**GENERAL PROVISIONS**

- | | | |
|-----|--|----|
| 34. | Security of confidential information held by Council | 35 |
| 35. | Dissolution of Council | |
| 36. | Use of name of Council | |
| 37. | Delegations | |
| 38. | Offences | |
| 39. | Penalties | 40 |
| 40. | Regulations | |
| 41. | Transitional provisions | |
| 42. | Short title and commencement | |

CHAPTER 1

DEFINITIONS

Definitions

1. In this Act, unless the context otherwise indicates—
- “**accreditation**” means the certification, usually for a particular period of time, in respect of individuals, as having the capacity to fulfill a language function as prescribed in the quality assurance system set up by the South African Language Practitioners’ Council in terms of this Act; 5
- “**Board**” means the Board of the Council appointed in terms of section 5;
- “**chief executive officer**” means the chief executive officer appointed in terms of section 15; 10
- “**Council**” means the South African Language Practitioners’ Council established in terms of section 2;
- “**council for higher education**” means the independent statutory body responsible for advising the Minister in all higher education policy issues, and for quality assurance; 15
- “**Department**” means the Department in the national government responsible for language matters;
- “**interpreter**” means a person who transposes an utterance from a source language to a target language in spoken form; 20
- “**interpreting**” means the act of transposing an utterance from a source language to a target language in spoken form;
- “**language editor**” means a person who effects corrections of language and style in written texts;
- “**language practitioner**” means a paid occupation which involves the work that is done by language practitioners including, but not limited to translators, interpreters, terminologists, lexicographers, language editors and any other person conducting language related work, registered as such under this Act; 25
- “**language profession**” means work related to such fields as language editing, translation, terminology, lexicography, or any other work related to language; 30
- “**lexicographer**” means a person who engages in the practice of compiling dictionaries;
- “**lexicography**” means the practice of compiling dictionaries;
- “**member**” means a member of the Board of the Council;
- “**Minister**” means the Minister responsible for language matters; 35
- “**Portfolio Committee**” means the Portfolio Committee responsible for language matters;
- “**prescribe**” means prescribe by regulation under this Act and;
- “**prescribed**” has a corresponding meaning;
- “**Public Finance Management Act**” means the Public Finance Management Act, 1999 (Act No. 1 of 1999); 40
- “**qualification**” means a duly accredited degree, diploma or certificate awarded after examination by a registered training institution to a person’s proficiency in a particular subject;
- “**register**”, when used as a noun, means a register kept in accordance with the provisions of this Act, and when used in relation to any class or a member of any class of persons in respect of which a register is kept, means the register kept for that class; 45
- “**registrar**” means the person responsible for registration of language practitioners and appointed by the chief executive officer in terms of section 18; 50
- “**registration**” means the act of registering, after compliance with the accreditation process prescribed by the Council;
- “**regulation**” means any regulation made under this Act;
- “**rule**” means any rule made under this Act;
- “**South African Qualifications Authority**” means the South African Qualifications Authority contemplated in Chapter 4 of the National Qualifications Framework Act, 2008 (Act No. 67 of 2008); 55
- “**terminologist**” means a person who collects terms and related terminological data from technical text, conducts research on the meaning of terms, and

manipulates the data by using and applying terminological methods and principles to comply with the needs of particular target users;

“**terminology**” means the technical vocabulary of a particular subject field or domain, characterised by the restricted and standardised meaning of the terms as the linguistic designations of the specialised concepts of the particular subject field or domain; 5

“**this Act**” includes the regulations and rules made under this Act;

“**translation**” means the act of transposing a text from one language (source language) to another language (target language) in written form; and

“**translator**” means a person who transposes a text from one language (source language) to another language (target language) in written form. 10

CHAPTER 2

SOUTH AFRICAN LANGUAGE PRACTITIONERS’ COUNCIL

Establishment of South African Language Practitioners’ Council

2. (1) There is hereby established a juristic person for the protection and promotion of language practice in the Republic to be known as the South African Language Practitioners’ Council. 15

(2) The Council is a national public entity subject to the Public Finance Management Act.

Objects of Council 20

3. The objects of the Council are to—
- (a) promote and protect the language practice in the Republic;
 - (b) register people deemed registrable by the Council;
 - (c) accredit people deemed accreditable by the Council;
 - (d) scrutinise particulars of people intending to register; 25
 - (e) develop, implement, revise and amend a code of ethics relating to the conduct of registered language practitioners;
 - (f) protect language practitioners’ professional interests;
 - (g) protect the members of the public who make use of services provided by language practitioners; 30
 - (h) provide efficient and effective language service to members of the public who seek the services of the Council;
 - (i) provide and encourage the provision of opportunities for persons, especially from disadvantaged communities, to enter and participate in the language industry in the Republic; 35
 - (j) contribute to an enabling environment for job creation in the language industry in the Republic; and
 - (k) advise the Minister on matters affecting the language profession.

Functions of Council

4. (1) The Council must— 40
- (a) administer funds appropriated by Parliament;
 - (b) initiate and administer funding from sources other than that appropriated from Parliament;
 - (c) consult and liaise with—
 - (i) the South African Qualifications Authority (SAQA) in respect of the establishment of an Education and Training Quality Assurance (ETQA) in terms of the National Qualifications Framework Act, 2008 (Act No. 67 of 2008); 45
 - (ii) the Department in respect of language matters;
 - (iii) the council for higher education, in terms of the National Qualifications Framework Act, 2008 (Act No. 67 of 2008), in respect of specific training courses or programmes; and 50
 - (iv) the National Skills Authority established in terms of the Skills Development Act, 1998 (Act No. 97 of 1998), in respect of skills development; 55

- (d) promote and regulate professional liaison among registered professionals;
 - (e) promote liaison and coordination in the field of training and accreditation pertaining to language professionalisation, both in the Republic and elsewhere, and to promote the standards of such training in the Republic;
 - (f) analyse and prioritise education and training needs in the language profession and make recommendations on the provision of such education and training; 5
 - (g) recognise accreditation of voluntary associations that are in language profession;
 - (h) levy and recover fees from registered persons;
 - (i) grant, refuse, ratify and withdraw accreditation; 10
 - (j) determine strategic policy, and make decisions in terms thereof, with regard to the Council and the registered professions, for matters such as finance, education, registration, accreditation, ethics and standards of professional conduct, disciplinary procedure, scope of the professions, professional matters and maintenance and development of professional competence; 15
 - (k) coordinate the activities of the Council established in terms of this Act;
 - (l) propose levels of competency testing and qualifications;
 - (m) monitor and audit achievements in terms of those prescribed standards and qualifications without itself being the provider of education and training;
 - (n) keep a record of registered language practitioners; 20
 - (o) devise a manner of application for registration and consider applications for registration;
 - (p) develop and implement the national system of registration for professional language practitioners;
 - (q) develop and implement a framework for the accreditation of language practitioners at all levels; 25
 - (r) develop, implement, enforce and revise the professional code of ethics governing the conduct of all registered language practitioners;
 - (s) perform any other developmental function relating to the provision of language services that may be required by the Minister; 30
 - (t) perform any other function aimed at the development of language professionals; and
 - (u) perform any other function necessary to attain the objectives of this Act.
- (2) The Council may advise the Minister on—
- (a) accreditation and competency levels in the language profession to improve the provision and the quality of services rendered by language practitioners, through adequate education and training; 35
 - (b) standards, competency testing and accreditation in the language profession;
 - (c) relevant international standards; and
 - (d) any matter falling within the scope of this Act. 40
- (3) In order to promote uniformity and cooperation by all organs of state on matters relating to the language industry, the Council must—
- (a) at least twice a year, convene meetings between organs of state that have an interest in any matter related to the language industry;
 - (b) act as a link between organs of state and stakeholders in the language industry in the Republic; and 45
 - (c) liaise and interact with any organisation, structure or body that has an interest in any matter related to the language industry.
- (4) The Council may enter into agreements with any person with expert knowledge in a particular field so as to assist or advise the Council in connection with any matter relating to its objects, powers, duties and functions in terms of this Act. 50

CHAPTER 3

BOARD OF COUNCIL

Composition of Board

5. (1) The Board consists of— 55
- (a) at least eight, but not more than 12, members appointed by the Minister; and
 - (b) the chief executive officer as contemplated in section 15(5).

- (2) The members must be fit and proper persons to serve the best interests of the Republic, collectively possessing—
- (a) appropriate knowledge, experience and skills in the language industry, and
 - (b) the following skills and expertise:
 - (i) Legal skills, experience and qualifications; 5
 - (ii) public finance management skills, experience and qualifications;
 - (iii) audit and risk management skills, experience and qualifications; and
 - (iv) communication skills, experience and qualifications.
- (3) In appointing the members contemplated in subsection (1), the Minister must ensure— 10
- (a) that historic imbalances are addressed; and
 - (b) that a balance of interests is maintained between persons representing—
 - (i) the Department;
 - (ii) the Department of Basic Education;
 - (iii) the Department of Communications; 15
 - (v) the council for higher education;
 - (iv) the Department of Justice and Constitutional Development;
 - (v) the Pan South African Language Board;
 - (vi) the South African Qualifications Authority;
 - (vii) tertiary institutions; and 20
 - (viii) stakeholders in the language industry.
- (4) The Minister must designate—
- (a) one of the members as the chairperson of the Board; and
 - (b) one of the members as the deputy chairperson of the Board. 25
- (5) The member referred to in subsection 3(b)(i)—
- (a) must facilitate liaison between the Minister and the Board;
 - (b) must report to the Minister from time to time regarding matters which are considered relevant; and
 - (c) may attend meetings of the Board and participate in discussions, but does not have the right to vote when a decision of the Board is being taken. 30
- (6) The Minister must, by notice in the *Gazette*, invite any interested party within the Republic to nominate candidates for appointment to the Board.
- (7) The invitation for nominations must specify—
- (a) the nomination procedure; 35
 - (b) the requirements for nominations; and
 - (c) the closing date for the nominations.
- (8) The Minister must consider all nominations submitted in response to the notice, and may appoint a selection panel consisting of senior departmental officials to review all the nominations and make recommendations to the Minister on the nominees. 40
- (9) The Minister must cause the names of the persons appointed to the Board to be published in the *Gazette* and in at least two newspapers circulating in the Republic, immediately after such persons have been notified, in writing, of their appointment to the Board.
- (10) The Minister must, within two months after the appointment of members in terms of subsection (1), inform the Cabinet and the Portfolio Committee of the names of the appointed members including the term of their appointment. 45
- (11) This section applies, with the necessary changes, to the filling of a vacancy on the Board.

Disqualification from membership of Board 50

- 6.** A person is disqualified from being appointed to the Board or from remaining a member if he or she—
- (a) is or becomes an unrehabilitated insolvent;
 - (b) is or has been declared by a competent court to be of unsound mind;
 - (c) is directly or indirectly interested in any contract with the Council and fails to declare his or her interest and the nature thereof in the manner required by this Act; 55
 - (d) is a person under curatorship;
 - (e) has at any time been removed from an office of trust on account of misconduct involving theft or fraud; 60

- (f) has been convicted and sentenced to a term of imprisonment without the option of a fine, except that the Minister may, upon receipt of an affidavit disclosing full details of an offence by a person nominated for appointment, condone a conviction in a manner that is consistent with section 106(1)(e) of the Constitution: Provided that a disqualification in terms of this subsection ends five years after the sentence has been completed; or 5
- (g) fails to disclose an interest in accordance with section 7 or attended or participated in the proceedings of the Board while having an interest contemplated in the said section.

Declaration of financial or other interests of members 10

7. (1) A person who has been nominated to serve on the Board in terms of section 5(6) must, within 10 days of being nominated, submit a written declaration to the Minister of all direct or indirect interests in any company and of any other business interests.

(2) Any failure by the nominee to disclose financial and other interests in terms of subsection (1) disqualifies such nominee in terms of section 6 from being appointed to the Board. 15

(3) A member must, upon assuming office and at the beginning of every financial year of the Council, submit a written declaration of his or her direct or indirect interest in any company or other business interest.

(4) Where a member acquires an interest in any company, or any other business interest, at any time during his or her tenure as a member of the Board, he or she must, within 10 days of the date of the acquisition of such an interest, submit a written declaration to the Minister of such an interest. 20

(5) Failure on the part of a member to disclose his or her interest as contemplated in subsections (3) and (4), constitutes justifiable reason for the termination of appointment of such member in terms of section 9(2). 25

(6) The Minister must keep an updated register of the interests of members disclosed in terms of this section.

Term of office and re-appointment of member

8. The persons appointed to the Board— 30

(a) must hold office for a period of five years or such lesser period as the Minister may determine; and

(b) are, subject to section 5, eligible for re-appointment at the expiry of such period: Provided that no person may be re-appointed after having served on the Board for a continuous period of 10 years. 35

Vacancies, suspension, removal and resignation from office of members

9. (1) A member must vacate office if he or she becomes subject to a disqualification contemplated in section 6.

(2) The Minister may, after having afforded a member the opportunity to state his or her case, at any time suspend, or terminate the term of office of such member if, in his or her opinion, there are justifiable and cogent reasons for doing so. 40

(3) A member must vacate office if he or she is absent, without a leave of absence having first been granted by the Board, from two consecutive meetings of the Board for which reasonable notice was given to that member personally or by post.

(4) A member may resign from office by giving not less than 30 day's written notice to the Minister: Provided that the Minister may waive the resignation notice period. 45

(5) Whenever a vacancy occurs in the Board, the Minister must, subject to section 5, appoint a person to fill such vacancy for the unexpired portion of the period of office of the member in whose place such person is appointed.

(6) In the event that the Minister exercises his or her powers in terms of subsection (2), he or she may, notwithstanding the procedure for the appointment of the members of the Board set out in section 5, subject to sections 5(2) and 5(3), appoint persons to serve as members of the Board on an interim basis: Provided that— 50

(a) the persons appointed in terms of this subsection may not remain on the Board for a period of more than 90 days from the date of their appointment; and 55

(b) the Minister must, subject to section 5, appoint the permanent members of the Board within 90 days of the appointment contemplated in this subsection.

Meetings and procedures at meetings of Board

- 10.** (1) The first meeting of the Board must be held on a date and at a time and venue determined by the Minister, whereafter all future meetings must be as determined by the chairperson.
- (2) The quorum for a meeting of the Board is a majority of the members. 5
- (3) The proceedings at a meeting of the Board must, subject to the provisions of this section, be determined by the chairperson including the right to decide that any matter under discussion may be withdrawn before it is put to the vote.
- (4) The chairperson must preside at all meetings of the Board: Provided that in his or her absence the deputy chairperson must preside and in the event that neither the chairperson nor the deputy chairperson are present at a meeting of the Board, the members then present may elect, from their own number, a person to act as chairperson for the duration of that particular meeting. 10
- (5) A decision of the Board must be taken by a majority of the votes of the members present at a meeting. 15
- (6) In the event of an equality of votes on any matter, the chairperson has a casting vote in addition to his or her deliberative vote.
- (7) The Board must keep minutes of its proceedings and decisions.
- (8) No decision of the Board is invalid merely by reason of a vacancy in the Board: Provided that the decision is taken by the required majority of the members then present and entitled to sit as members. 20
- (9) The Board may, by resolution, make rules to further regulate its proceedings.
- (10) The Board may, in its discretion, allow members of the public to attend any meeting of the Board.

Recusal of member from meetings and proceedings of Board 25

- 11.** (1) A member of the Board must recuse himself or herself from a matter being investigated, considered or voted upon by the Board if one or more of the following occur:
- (a) If he or she has a direct or indirect interest in the matter; or
- (b) if there is a possibility that a direct or indirect interest in the matter might arise. 30
- (2) If at any stage during the course of any proceedings before the Board it appears that a member who is present at that meeting has or may have an interest contemplated in subsection (1), such member must forthwith disclose the nature of his or her interest and leave the meeting. 35
- (3) Any disclosure made in terms of subsection (1) must be recorded in the minutes of the meeting in question.
- (4) If it subsequently emerges that the Board took a decision on a matter in respect of which a member has failed to disclose an interest contemplated in subsection (1), such decision by the Board is invalid. 40
- (5) For the purposes of this section “indirect interest” includes, but is not limited to, an interest held by any member’s—
- (a) business partner, associate or employer, other than the State;
- (b) spouse, partner in a customary marriage or other marriage, or a person with whom such member cohabits or lives as though they are married; or 45
- (c) child, parent or sibling.

Remuneration of members

- 12.** (1) (a) Subject to subsection (2)(a), a member may be paid from the funds of the Council such remuneration and allowances as may be determined by the Minister in consultation with the Minister of Finance. 50
- (b) A member who receives remuneration, allowances or other benefits by virtue of his or her post or employment in—
- (i) the national government;
- (ii) a provincial government;
- (iii) a municipality; or 55
- (iv) a corporation, body or institution in which the national or a provincial government has a controlling interest,

and who continues to receive such remuneration, allowances or other benefits while serving as a member, may only receive remuneration and allowances referred to in paragraph (a) to the extent required to place such member in the financial position he or she would have been were it not for such post or employment.

(2) (a) A member and a person who has been coopted to the Board may, in respect of his or her functions as a member or coopted member, receive reimbursement from the funds of the Council for reasonable actual subsistence and travelling expenses necessitated by the actual attendance of a meeting of the Board. 5

(b) The Minister of Finance must determine procedures, including control measures, for the management, handling and processing of claims for subsistence and travelling expenses contemplated in paragraph (a). 10

Establishment of committees to assist Board

13. (1) The Board may establish committees consisting of one or more of its members to—

(a) assist the Board in the performance of any of the functions of the Council contemplated in section 4; or 15

(b) enquire or conduct research into any matter falling within the mandate of the Board in terms of this Act.

(2) When establishing a committee contemplated in subsection (1), the Board must—

(a) determine the terms of reference of such committee including, but not limited to, whether or not such committee ceases to exist once it has completed the task or tasks assigned to it by the Board; 20

(b) appoint a chairperson of such committee who must be a member; and

(c) determine whether or not such committee may co-opt persons who are not members and, if so, on what terms and conditions. 25

(3) The Board may, at any time, terminate the existence of a committee or any mandate given to a committee, irrespective of whether or not such committee has completed the task or tasks assigned to it by the Board.

(4) (a) The chief executive officer may attend and take part in, but may not vote at, a meeting of the committee. 30

(b) A member of staff of the Board may, on invitation by the relevant committee, attend a meeting of that committee.

Co-opting of persons to, or committees of, Board

14. (1) The Board may, if it is of the opinion that a particular person is able to assist it in regard to any of its functions and powers, co-opt such person for that purpose. 35

(2) A person co-opted in terms of subsection (1) is not entitled to vote at any meeting of the Board or a committee of the Board.

(3) A person co-opted in terms of subsection (1) may be paid such remuneration and allowances out of the funds of the Council as may be determined by the Board in consultation with the Minister of Finance. 40

CHAPTER 4

CHIEF EXECUTIVE OFFICER AND STAFF OF COUNCIL

Appointment of chief executive officer

15. (1) The Board must, in consultation with the Minister, appoint a suitably qualified, skilled and experienced person as the chief executive officer. 45

(2) (a) The chief executive officer is appointed for a period not exceeding five years.

(b) The chief executive officer may be re-appointed for one additional term of office not exceeding five years.

(3) (a) The appointment of the chief executive officer is subject to the conclusion of a written performance agreement entered into between that person and the Board. 50

(b) The Board and the chief executive officer may, in writing and by agreement, amend the performance agreement.

(4) For purposes of the declaration of financial or other interests, the provisions of section 7 apply with the necessary changes to the chief executive officer, except that the chief executive officer must declare his or her interests to the Board.

(5) The chief executive officer is an *ex officio* member but does not have the right to vote at its meetings. 5

Functions of chief executive officer

16. (1) The chief executive officer is responsible for—

- (a) the administrative, strategic and financial management of the Council in accordance with the Public Finance Management Act and the direction of the Board; 10
- (b) in consultation with the Board, the appointment of members of staff of the Council contemplated in section 18(1);
- (c) in consultation with the Board, the determination of a code of conduct, applicable to the chief executive officer, all staff of the Council and justiciable for purposes of disciplinary proceedings, to ensure— 15
 - (i) compliance with applicable legislation, including this Act;
 - (ii) the effective, efficient and economical use of the Council's funds and resources;
 - (iii) the promotion and maintenance of a high standard of professional ethics;
 - (iv) the prevention of conflicts of interest; 20
 - (v) the protection of confidential information held by the Council; and
 - (vi) professional, honest, impartial, fair, ethical and equitable service;
- (d) the maintenance of discipline over the staff appointed in terms of paragraph (b) and is, for those purposes, accountable to the Board;
- (e) the keeping and maintenance of the register of interests declared by members of staff of the Council; and 25
- (f) ensuring compliance by the Board with the provisions of the Public Finance Management Act and any other applicable legislation.

(2) If the chief executive officer is for any reason unable to perform any of his or her functions, the Board must, in writing, and in consultation with the Minister, appoint an acting chief executive officer until the chief executive officer is able to resume those functions or until a new appointment is made in terms of this Act. 30

Resignation and removal from office of chief executive officer

17. (1) The chief executive officer vacates office—

- (a) when, in the case of resignation, the resignation takes effect; 35
- (b) when, in terms of the company laws of the Republic, the person holding that office has become disqualified to serve as director of a company; and
- (c) upon having been removed from office in terms of subsection (2).

(2) The Board may, in consultation with the Minister, terminate the employment of the chief executive officer in accordance with applicable employment and labour laws of the Republic. 40

Staff of Council

18. (1) The chief executive officer must, subject to subsection (2), appoint the registrar and staff of the Council as may be reasonably necessary—

- (a) to assist him or her in fulfilling his or her functions in terms of this Act; and 45
- (b) to assist the Council with the work incidental to the performance by the Board of its functions.

(2) The Board must, subject to section 22(4), determine a human resources policy for staff of the Council, including the chief executive officer.

(3) For purposes of the declaration of financial or other interests, and subject to section 16(1)(e), section 7(3), (4) and (5), apply with the necessary changes to staff of the Council. 50

(4) The chief executive officer must keep an updated register of the interests of staff of the Council disclosed in terms of subsection (3).

(5) The Council may utilise the services of persons seconded or transferred from the public service in accordance with the provisions of the Public Service Act, 1994 (Proclamation No. 103 of 1994). 55

CHAPTER 5

CODE OF CONDUCT FOR LANGUAGE PRACTITIONERS AND POLICY DIRECTIVES

Code of conduct for language practitioners

- 19.** (1) The Minister must, by notice in the *Gazette*, and after consultation with the Board, determine a code of conduct for language practitioners. 5
- (2) The code of conduct determined in terms of paragraph (a) takes effect upon the publication of the notice referred to in subsection (1).
- (3) The Minister may, by notice in the *Gazette* and after consultation with the Board, amend, substitute or withdraw such a code of conduct. 10
- (4) (a) The Minister may set strategic guidelines for the pursuit of the Council's objectives and may issue policy directives to the Board.
- (b) The Minister may withdraw or amend any strategic guideline or policy directive issued in terms of paragraph (a).

CHAPTER 6

15

ACCREDITATION BY COUNCIL

Application for accreditation

- 20.** (1) Any person seeking accreditation must apply in accordance with the procedures prescribed by the Board.
- (2) The Council must— 20
- (a) evaluate every application for accreditation in accordance with procedures and criteria determined by the Board; and
- (b) issue a certificate of accreditation to applicants that meet required criteria, specifying any conditions applicable to the accreditation.
- (3) The Board may formulate and make publicly available rules consistent with the provisions of this Act on any matter necessary or expedient for the administration of this Act including— 25
- (a) the form and procedure for applications for accreditation;
- (b) the fees applicable to different categories of accreditation;
- (c) the fees for training or other projects undertaken; and 30
- (d) the proper use within the Republic of the name, accreditation logo or accreditation symbol of the Council.
- (4) The Minister may prescribe standards, procedures and related matters for the Council to follow in assessing whether an applicant for accreditation meets the requirements of this section. 35
- (5) The Council is the only institution which may accredit language practitioners.

Accreditation certificates

- 21.** (1) An accreditation certificate issued in terms of section 20(2)(b) must be signed by the chief executive officer or a person with delegated authority to do so in terms of section 37(3). 40
- (2) The Council may accept a certified copy of an accreditation certificate issued in terms of subsection (1) as being a true copy of the certificate.
- (3) In any legal proceedings, a document that purports to be a certificate issued in terms of subsection (1) or a copy of such certificate certified in terms of subsection (2) is upon its production evidence of the facts contained therein. 45

CHAPTER 7

FUNDING AND FINANCIAL MANAGEMENT OF COUNCIL

Funds of Council

- 22.** (1) The funds of the Council consist of—
- (a) money appropriated by Parliament; 50

- (b) interest on investments of the Council;
 - (c) registration and examination fees;
 - (d) annual fees on accredited and registered language practitioners; and
 - (c) income lawfully derived from any other source.
- (2) The Council must utilise its funds— 5
- (a) for the payment of remuneration, allowances and subsistence and travelling expenses of the members, the chief executive officer and the members of staff of the Council; and
 - (b) to cover costs in connection with— 10
 - (i) the day to day operation and administration of the Council; and
 - (ii) the performance of the duties and functions of the Council and the exercise of its powers in terms of this Act.
- (3) The chief executive officer must with the concurrence of the Board—
- (a) open an account in the name of the Council with an institution registered as a bank in terms of the Banks Act, 1990 (Act No. 94 of 1990); and 15
 - (b) deposit therein all money received in terms of subsection (1).
- (4) The Board must, in consultation with the Minister, determine the remuneration, conditions of service and the pension or retirement benefits of the chief executive officer and staff of the Council.
- (5) The Council may invest monies deposited into its account which are not required for immediate use: Provided that the Board must take reasonable steps to ensure that the investment is not of a speculative nature. 20
- (6) The Council may not borrow money or issue guarantees, indemnities or securities or enter into any other transactions that bind it, unless such borrowing, guarantee, indemnity, security or other transaction is authorised in terms of this Act and not in conflict with the Public Finance Management Act. 25

Financial management

- 23.** (1) The chief executive officer must cause full and proper books of account and all the necessary records in relation thereto to be kept.
- (2) The chief executive officer must ensure that the Council's annual budgets, 30 corporate plans, annual reports and audited financial statements are prepared and submitted in accordance with the Public Finance Management Act.
- (3) The chief executive officer must, within three months before the end of each financial year, submit to the Board for approval—
- (a) a business plan for the Council, containing measurable objectives and the 35 other information contemplated in section 24(3)(b) and (c); and
 - (b) a statement of the estimated income and expenditure of the Council, in respect of the following three financial years.
- (4) In any financial year, the chief executive officer may submit to the Board for approval adjusted or supplementary statements of the estimated income and expenditure 40 of the Council for that financial year.
- (5) The Council may not enter into any financial commitment beyond its approved budget and its accumulated reserves.
- (6) The chief executive officer may with the approval of the Board, invest any unexpended portion of its funds with the Corporation for Public Deposits established in 45 terms of section 2 of the Corporation for Public Deposits Act, 1984 (Act No. 46 of 1984), or any other institution categorised or listed from time to time by the National Treasury as a Category "A1" financial institution or establish reserve funds and deposit therein such amounts as the Board approves.

Audit and annual report 50

- 24.** (1) The Auditor-General must audit the financial statements of the Council.
- (2) (a) The Board must table a report on the activities of the Council during a financial year in Parliament within five months after the end of that financial year.
- (b) The Board must, within five months after the report has been tabled, brief the Portfolio Committee on the annual report. 55
- (3) The report must—
- (a) include a balance sheet and a statement of income and expenditure certified by the Auditor-General;

- (b) state the extent to which the Council has achieved or advanced its objects referred to in section 3 and the measurable objectives as set out in its business plan as contemplated in section 23(3)(a) during the financial year concerned; and
- (c) contain relevant performance information regarding the economic, efficient and effective application of resources and specifically a comparison between planned and actual performance indicators as set out in that business plan. 5

CHAPTER 8

KEEPING OF REGISTERS, REMOVAL AND RESTORATION TO REGISTER AND ANCILLARY MATTERS 10

Keeping of registers

25. (1) The registrar must keep registers—

- (a) in which he or she enters the names of accredited language practitioners;
- (b) in which he or she, on instruction of the Council, enters the name, physical address, qualifications, date of initial registration and any other particulars, determined by the Council, of the person so registered; 15
- (c) from which he or she must remove the names of deceased registered persons or other persons whose names must be removed in the prescribed manner; and
- (d) in which he or she must update, from time to time, the relevant particulars of the person so registered. 20

(2) The registrar must keep the registers correctly and in accordance with the provisions of this Act.

(3) Every registered person who changes his or her address must notify the registrar in writing within 30 days after such change.

(4) (a) No qualification or accreditation must be entered in the register unless the registrar is satisfied that the person claiming to possess such qualification or experience is entitled thereto and has duly so demonstrated in the accreditation process conducted by the Council. 25

(b) Any entry which is proved to the satisfaction of the Council to have been made in error or through misrepresentation or in circumstances not authorised by this Act may be removed from the register. 30

(c) A record of the reason for such removal must be made in the register.

(d) The person in respect of whose entry such removal has been made must be notified thereof.

Removal of name from, and restoration to, register 35

26. (1) The Council may direct the registrar to remove from the register the name of any person—

- (a) who has died;
- (b) who has been absent from the Republic for a continuous period of more than three years immediately preceding such removal; 40
- (c) who has failed to notify the registrar of his present address within a period of three months as from the date of an enquiry sent by the registrar by certified mail to the address appearing in the register in respect of such person;
- (d) who has requested that his or her name be removed from the register, in which case such person may be required to lodge with the registrar an affidavit to the effect that no disciplinary or criminal proceedings are being or are likely to be taken against him or her; 45
- (e) who has failed to pay to the Council, within three months as from the date on which it became due for payment, any annual fee prescribed;
- (f) whose name has been removed from the register, record or roll of any university, college, society or other body from which that person received the qualification by virtue of the holding whereof he or she was registered; or 50
- (g) who has been registered in error or through fraud.

(2) The registrar must give notice of removal of a person's name by registered mail addressed to such person at the address of such person as it appears in the register. 55

- (3) From the date on which the notice contemplated in subsection (2) was given—
- (a) any registration certificate issued in terms of this Act to the person concerned is considered to have been cancelled; and
 - (b) a person whose name has been removed from the register must cease to practise the profession and is precluded from performing any act which he or she in his or her capacity as a registered person, was entitled to perform, until such time as his or her name is restored to the register. 5
- (4) If, from the documents submitted to him or her, it appears to a judge, or it is brought to his notice in any other manner that the person to whom the documents relate is a person registered under this Act or if the said person is declared a mentally ill person in terms of the Mental Health Care Act, 2002 (Act 17 of 2002), the judge concerned may direct that a copy of the order declaring such person a mentally ill person be transmitted to the registrar and the registrar must, on receipt of the said copy, remove the name of the person concerned from the register. 10
- (5) The registrar must restore the name of a person which in terms of this section has been removed from the register if the person concerned— 15
- (a) applies on the prescribed form for such restoration to the registrar;
 - (b) pays the prescribed fee in respect of such restoration;
 - (c) in the case where a person's name has been removed from the register in terms of subsection (4), submit proof to the satisfaction of the Council of his or her discharge in terms of the provisions of the Mental Health Care Act, 2002, from the institution at which he or she has been detained; 20
 - (d) pays any annual fee which was not paid and an additional fee as may be decided upon; and
 - (e) complies with such other requirements as the Council may determine. 25

Effect of suspension or removal from register

27. A person who has been suspended or whose name has been removed from the register is disqualified from carrying on his or her profession as a registered language practitioner and his or her registration certificate is considered to have been cancelled until the period of suspension has expired or until his or her name has been restored to the register by the Council. 30

Right to appeal

28. (1) A person who is aggrieved by a decision of the Council may within one month of the decision, appeal to the Minister in the prescribed manner prior to approaching any competent court to review such a decision. 35
- (2) A notice of the appeal must be given within one month from the date on which such decision was given.

Custody and publication of registers

29. (1) The registers must be kept at the offices of the Council.
- (2) The registrar must, at intervals determined by the Council and according to the instructions of the Council, cause to be printed copies of the registers or supplementary lists showing all alterations, removals, additions, revisions and deletions effected since the last publication of the complete registers. 40

Register as proof

30. (1) (a) A copy of the last published issue of a register or any supplementary list purporting to be printed and published on the authority of the Council is prima facie proof in all legal proceedings of the facts therein recorded. 45
- (b) The absence of the name of a person from such copy is proof, unless there is credible evidence to the contrary is proved, that such person is not registered according to the provisions of this Act. 50
- (2) For the purposes of subsection (1) a certified extract or a certificate contemplated in section 31(3) bearing a date subsequent to the date of publication of the register or supplementary list contemplated in subsection (1) is "credible evidence to the contrary".

(3) If the registrar issues a certificate dated later than the date of publication of the register or supplementary list contemplated in subsection (1) to the effect that a language practitioner's name has been removed from the register since the date of publication of the register or supplementary list and has not been restored thereto, that certificate is proof, in the absence of credible evidence to the contrary, that such person is not registered in terms of the provision of this Act. 5

(4) A certificate of registration is proof of registration for a period of one year only and thereafter an annual practising certificate, issued upon payment of the prescribed annual fee and upon submission of such information as may be required by the Council to enable it to keep accurate statistics on human resources in the language field, is proof of registration in the absence of credible evidence to the contrary. 10

Issue of duplicate registration certificate, certificate of status, extract from register or certificate by registrar

31. (1) If the registrar is satisfied—

- (a) on proof submitted by the registered person concerned that a registration certificate has been destroyed; or 15
- (b) by virtue of an affidavit submitted by the registered person concerned, that a registration certificate has been lost,

the registrar may issue a duplicate registration certificate to that person upon payment of the prescribed fee. 20

(2) The registrar may, upon payment of the prescribed fee, issue to any registered person a certificate of status containing particulars relating to such person's registration as well as a statement to the effect that the said person is not disqualified from practising his or her profession and that no disciplinary steps are pending against him or her in terms of this Act. 25

(3) The registrar may issue a certified extract from the register or a certificate under his or her hand to any person upon payment of the prescribed fee.

(4) A certificate may be issued subject to certain conditions imposed by the Council and such conditions must be indicated on the certificate.

Qualifications and experience prescribed for registration 30

32. (1) The Minister may, on the recommendation of the Board, prescribe the minimum qualifications to be obtained by virtue of examinations conducted by any tertiary institution or other examining authority in the Republic.

(2) Any qualification contemplated in subsection (1), obtained separately or conjointly with any other qualification, entitles a holder thereof to registration in terms of this Act if he or she has before or in connection with or after the acquisition of the qualification in question, complied with the prescribed conditions or requirements. 35

Levying of annual fees on accredited and registered persons

33. (1) The Minister may, on the recommendation of the Council and by notice in the *Gazette*, authorise the Council to prescribe a fee to be paid annually to the Council by the registered persons concerned: Provided that in prescribing such fee the Council may differentiate between persons according to whether they have been registered before or after a date specified in the notice and may vary such fee according to whether it is paid before or after a specific date. 40

(2) If a person liable to pay an annual fee prescribed in terms of subsection (1) fails or refuses to pay such fee within the period specified in the notice in question, the Council may recover such fee by action in a competent court. 45

(3) If a person's name has been removed from the register, it shall be a condition precedent for the restoration of his or her name to the register that he or she pays the outstanding annual fee. 50

(4) The Council may, by resolution, exempt for an indefinite or definite period any registered person specified in the resolution from payment of any annual fee prescribed in terms of subsection (1).

CHAPTER 9

GENERAL PROVISIONS

Security of confidential information held by Council

34. (1) Subject to the Constitution of the Republic of South Africa, 1996, and the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000), no person may disclose any information submitted to the Council in connection with any application or instruction, unless— 5

- (a) he or she is ordered to do so by a court of law; or
- (b) the person who made such application or give such instruction consents thereto in writing. 10

(2) No person may disclose any information kept in the register contemplated in sections 7, 15(4) and 18(4), unless such disclosure is—

- (a) in terms of any law that compels or authorises such disclosure;
- (b) materially necessary for the proper functioning of the Council; or
- (c) made for purposes of monitoring, evaluating, investigating or considering any activity relating to the Council, or any member of staff of the Council. 15

(3) Where a disclosure contemplated in subsection (2) is to be made, the person concerned must be informed thereof timeously.

(4) Any person who contravenes subsection (1), (2) or (3) is guilty of an offence.

Dissolution of Council 20

35. The Council may only be dissolved in terms of an Act of Parliament.

Use of name of Council

36. (1) No person may, without the prior written authorisation of the Council, represent or make use of the name, acronym, logos, designs or material used or owned by the Council. 25

(2) No person may falsely claim to be acting on behalf of the Council.

(3) Any person who contravenes subsection (1) or (2) is guilty of an offence.

Delegations

37. (1) The Minister may delegate to the Board—

- (a) any power conferred on the Minister by this Act, except the power to make regulations referred to in section 40; or 30
- (b) any duty imposed on the Minister by this Act, except any duty regarding the appointment, and termination of office, of the members of the Board contemplated in sections 5(1)(a), 6 and 9(2).

(2) The Board may, by a special resolution, delegate to the chief executive officer or staff member of the Council, any power or duty conferred or imposed on the Board by this Act. 35

(3) The chief executive officer may delegate to any member of staff of the Council any power or duty conferred or imposed on the chief executive officer by this Act, except the power or duty as accounting officer of the Council. 40

(4) Any power or duty delegated in terms of subsection (1), (2) or (3) must be exercised or performed subject to such conditions as the person or body that made the delegation considers necessary.

(5) A delegation referred to in subsection (1), (2) or (3)—

- (a) must be in writing; 45
- (b) does not prohibit the person or body that made the delegation from exercising that power or performing that duty; and
- (c) may at any time be withdrawn or amended in writing by that person or body.

Offences

38. (1) A member, a member of staff, an adviser, agent or any other person employed or acting on behalf of the Council is guilty of an offence if he or she directly or indirectly accepts any bribe or receives any unauthorised fee or reward from any person in connection with anything done or offered by the Council. 5

(2) A person is guilty of an offence if he or she, in respect of or in connection with anything done or offered by the Council, bribes or attempts to bribe or in a corrupt manner influences or attempts to influence a member, a member of staff, an adviser, agent or any other person employed by, or acting on behalf of, the Council.

(3) A person is guilty of an offence if he or she falsely claims that he or she is authorised to charge or collect fees, donations or contributions on behalf of, or by direction of the Council. 10

Penalties

39. Any person convicted of an offence in terms of this Act is liable to a fine or to imprisonment for a period not exceeding five years or to both such fine and imprisonment. 15

Regulations

40. The Minister may, in consultation with the Board and by notice in the *Gazette*, make regulations regarding—

- (a) the training of language practitioners; 20
- (b) control over the accreditation and registration of language practitioners; or
- (c) in general, any ancillary or incidental matter that is necessary to prescribe for the proper implementation or administration of this Act.

Transitional provisions

41. (1) For a period, not exceeding two years from date of coming into operation of this Act, the Council may recognise— 25

- (a) any person admitted and enrolled by any division of the High Court as a sworn translator in accordance with Rule 59 of the High Court Rules as a language practitioner for the purposes of this Act; and
- (b) accreditation granted by voluntary or other associations prior to the establishment of the Council provided that the Council may conduct a competency test whenever it deems this necessary. 30

(2) No person or business other than the Council may regulate, register or accredit any language practitioner after the period contemplated in subsection (1) has expired.

Short title and commencement

35

42. This Act is called the South African Language Practitioners' Council Act, 2013, and comes into operation on a date fixed by the President by proclamation in the *Gazette*.

MEMORANDUM ON THE OBJECTS OF THE SOUTH AFRICAN LANGUAGE PRACTITIONERS' COUNCIL BILL, 2013

1. BACKGROUND

- 1.1 A juristic person to be known as the South African Language Practitioners' Council ("the Council") must be established by in terms of the National Language Policy Framework, 2003.
- 1.2 Enabling legislation will facilitate the effective implementation of the constitutional obligations concerning multilingualism. All South Africans must be able to use the official languages of their choice as a matter of right within the range of contexts contemplated in the forthcoming Use of Official Languages Act, 2012 (Act No. 12 of 2012), with a view to ensuring equal access to information, knowledge, education, government services and programmes.

2. OBJECTS OF BILL

- 2.1 The South African Language Practitioners' Council Bill ("the Bill") seeks to establish the Council as a juristic person to regulate language practice, providing control over the accreditation and registration of language practitioners; and to provide for matters incidental thereto. The Bill further seeks to provide for the rules governing the conduct of language practitioners and procedures for monitoring and compliance.
- 2.2 The Bill also seeks to provide for the objects of the Council to—
 - (a) promote and protect the language practice in the Republic;
 - (b) register people deemed registrable by the Council;
 - (c) accredit people deemed accreditable by the Council;
 - (d) scrutinise particulars of people intending to register;
 - (e) develop, implement, revise and amend a code of ethics to cover the conduct of registered language practitioners;
 - (f) protect language practitioners professional interests;
 - (g) protect the members of the public who make use of services provided by language practitioners;
 - (h) provide efficient and effective service to members of the public who seek the services of the Council;
 - (i) provide and encourage the provision of opportunities for persons, especially from disadvantaged communities, to enter and participate in the language industry in the Republic;
 - (j) to contribute to an enabling environment for job creation in the language industry in the Republic; and
 - (k) advise the Minister on matters affecting the language profession.
- 2.3 Statutory regulations relating to eligibility for and conditions pertaining to the award of accreditation to all language practitioners will be identified by the Council. The Bill also empowers the Council to issue guidelines for language practitioners for monitoring and compliance purposes.

3. SUMMARY OF BILL

3.1 Chapter 1

Clause 1 provides for definitions in the Bill.

3.2 Chapter 2

Clauses 2 to 4 provide for the establishment of a juristic person for the protection and promotion of language practice in the Republic to be known as the South African Language Practitioners' Council. The functions of the Council are, amongst others, to develop and implement a framework for the accreditation of language practitioners at all levels.

3.3 Chapter 3

Clauses 5 to 14 deal with the composition and membership of the Board. The Board consists of at least eight but not more than 12 members appointed by the Minister. Furthermore this chapter seeks to provide for disqualification from membership of Board, declaration of financial and other interests of members, term of office of Board members, vacation of office, remuneration of members, meetings of the Board, establishment of committees of the Board and co-opting of members.

3.4 Chapter 4

Clauses 15 to 18 seek to provide for the appointment of the chief executive officer, functions of the chief executive officer, resignation and removal of the chief executive officer. This chapter also deals with the appointment of staff of the Council.

3.5 Chapter 5

Clause 19 seeks to empower the Minister to determine a code of conduct for language practitioners and to issue policy directives to the Board. The Minister must, by notice in the *Gazette*, and after consultation with the Board, determine a code of conduct for language practitioners.

3.6 Chapter 6

Clauses 20 and 21 provide for the procedure for application for accreditation of language practitioners and the issuing of accreditation certificates by the Council. In terms of clause 20, any person seeking accreditation must apply in accordance with procedure determined by the Board as prescribed.

3.7 Chapter 7

Clauses 22 to 24 deal with funding and financial management of the Council. This chapter also seeks to provide for the audit of the financial statements of the Council by the Auditor-General. In terms of clause 24 the Board must table a report on the activities of the Council in Parliament.

3.8 Chapter 8

Clauses 25 to 33 deal with keeping of registers, removal and restoration to the register and ancillary matters. Clause 28 provides for a right to appeal to the Minister by a person who is aggrieved by a decision of the Council.

3.9 Chapter 9

Clauses 34 to 42 deal with general provisions on security of confidential information held by the Council, dissolution of the Council, use of the name of the council, delegations, regulations, transitional provisions, offences, penalties and commencement and short title.

4. FINANCIAL IMPLICATIONS

The implementation of the Bill will be accommodated within the current funds of the Department in terms of the Medium Term Expenditure Framework.

The Council however, anticipates receiving funds from appropriations by Parliament, interest on its investments, registration and examinations fees upon implementation of the Act.

5. COMMUNICATION IMPLICATIONS

A structured communication strategy will be developed for the Minister to announce and inform all stakeholders of the legislation and its impact.

6. DEPARTMENTS/BODIES/PERSONS CONSULTED

The following stakeholders were consulted, namely—

- The Pan South African Language Board;
- Directors-General Clusters;
- MINMEC and the Technical Committee for Arts and Culture;
- South African Qualifications Authority;
- South African Translators' Institute;
- Department of Justice and Constitutional Development;
- Departments of Basic Education and Higher Education and Training;
- Academic stakeholders;
- National Language Forum (all tiers of government);
- Legislatures;
- South African Local Government Association (SALGA);
- National Treasury;
- The Department of Public Service and Administration (DPSA); and
- Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities.

7. PARLIAMENTARY PROCEDURE

7.1 The State Law Advisers and the Department of Arts and Culture 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.

7.2 The State Law Advisers are of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act (Act No. 41 of 2003) since language rights are cross cutting and do impact on customary law or customs of traditional communities of traditional communities.

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