

REPUBLIC OF SOUTH AFRICA

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**SCIENCE AND TECHNOLOGY  
LAWS AMENDMENT BILL**

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*(As amended by the Portfolio Committee on Science and Technology (National Assembly))  
(The English text is the official text of the Bill)*

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(MINISTER OF SCIENCE AND TECHNOLOGY)

**[B 42B—2018]**

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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.

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# BILL

To amend the Scientific Research Council Act, 1988, the Academy of Science of South Africa Act, 2001, the Human Sciences Research Council Act, 2008, the Technology Innovation Agency Act, 2008, and the South African National Space Agency Act, 2008, so as to harmonise the processes for the termination of the membership of Boards or Councils of the entities established by these Acts; to clarify the requirements for the disqualification of persons from membership of Boards or Councils; to provide for the appointment of external persons to committees of Boards or Councils; to provide for the determination of the remuneration and allowances of members of the Boards or Councils and committees of the Boards or Councils; to provide for consultation with the Minister in the appointment of the Chief Executive Officers of the entities; to provide for the determination by the Boards or Councils of the procedures at Boards or Councils meetings; to provide for the procedure for the convening of the Boards or Councils meetings at the request of members of the Boards or Councils; to provide for disclosure by members of the Boards or Councils of interests in the business of the entities and to harmonise the timeframes for making such disclosures to the Minister; to provide for the circumstances where members of Boards or Councils are prohibited from participating or voting in Boards or Councils meetings; to provide for the circumstances where the decisions or acts authorised by the decisions of Boards or Councils may not be invalidated; to provide for the appointment and secondment of employees of the entities by the Chief Executive Officers and the determination of the conditions of appointment and secondment of employees by the Boards or Councils; to provide for the repeal of sections dealing with matters that are contained in the Public Finance Management Act, 1999; to provide for the circumstances under which the entities may be liquidated; to provide for consultation by the Minister with the Boards or Councils of the entities before making regulations in terms of these Acts; to provide for the delegation of functions in writing by the Boards or Councils of the entities to individual members or committees of Boards or Councils; to provide for the requirements for the performance of functions by the entities outside the Republic; and to provide for matters connected therewith.

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

**Amendment of section 7 of Act 46 of 1988, as amended by section 4 of Act 71 of 1990, section 5 of Act 16 of 2011 and section 1 of Act 7 of 2014**

1. Section 7 of the Scientific Research Council Act, 1988, is hereby amended—
- (a) by the deletion of subsection (7); and
  - (b) by the substitution in subsection (8) for paragraphs (a) and (b) of the following paragraphs, respectively:
    - “(a) he or she resigns by written notice to the Minister;
    - (b) the Minister, after consultation with the Board, terminates his or her period of office due to misconduct, incapacity, incompetence or any other reasonable ground;”.

**Amendment of section 9 of Act 46 of 1988**

2. Section 9 of the Scientific Research Council Act, 1988, is hereby amended by the substitution for subsections (2), (3) and (4) of the following subsections, respectively:
- “(2) Such a committee shall consist of one or more members of the Board, including employees of the CSIR or any other person with suitable skills and experience, as the Board deems necessary, and the Board may at any time dissolve or reconstitute such a committee.
  - (3) **[If a committee referred to in subsection (1) consists of more than one member, the]** The Board shall designate a member of the committee as chairperson thereof.
  - (4) The Board shall pay the members of a committee referred to in subsection (1) who are not employees of the CSIR the remuneration and allowances determined by the **[Board]** National Treasury from time to time.”.

**Amendment of section 10 of Act 46 of 1988, as amended by section 3 of Act 7 of 2014**

3. Section 10 of the Scientific Research Council Act, 1988, is hereby amended—
- (a) by the substitution for subsection (1) of the following subsection:
    - “(1) The Board shall, in consultation with the Minister, appoint a suitably skilled and qualified person as the chief executive officer of the CSIR, after following a transparent and competitive selection process.”;
  - and
  - (b) by the substitution in subsection (4) for the words following paragraph (c) of the following words:
    - “the Board may, **[in]** after consultation with the Minister, appoint a senior employee of the CSIR who meets the requirements determined in terms of subsection (1) to act as chief executive officer during such absence or inability, or until a chief executive officer has been appointed in terms of subsection (1), and that other person shall, while so acting, have all the powers and perform all the duties of the chief executive officer.”.

**Amendment of section 11 of Act 46 of 1988, as amended by sections 6 and 12 of Act 16 of 2011**

4. Section 11 of the Scientific Research Council Act, 1988, is hereby amended—
- (a) by the insertion after subsection (1) of the following subsection:
    - “(1A) The Board shall determine the procedure for its meetings.”;
  - (b) by the substitution for subsection (2) of the following subsection:
    - “(2) The chairperson—
      - (a) may at any time call a special meeting of the Board [,] ; or
      - (b) must, within 14 days of a written request signed by at least one third of the members of the Board, convene such a meeting, which shall be held at such time and place as he or she may direct.”;
  - (c) by the insertion after subsection (3) of the following subsections:
    - “(3A) A member of the Board must, upon appointment and thereafter annually, disclose to the Minister, by way of a written statement, any interest which could reasonably compromise the Board in the performance of its functions.”

- (3B) A member of the Board may not vote or in any manner be present during or participate in the proceedings at any meeting of the Board if, in relation to any matter before the Board, he or she may have an interest which precludes him or her from performing his or her functions as a member of the Board in a fair, unbiased and proper manner.”; and
- (d) by the insertion after subsection (4) of the following subsection:
- “(4A) A decision taken by the Board or an act performed under the authority of the Board is not invalid if—
- (a) there is a vacancy on the Board; or
- (b) a person who is not a member of the Board was present at the meeting when the decision was taken or the act was authorised, if the decision was taken or the act was authorised by the requisite majority of members of the Board who were present at the time and entitled to sit as members.”.

#### Amendment of section 12 of Act 46 of 1988

5. Section 12 of the Scientific Research Council Act, 1988, is hereby amended—

- (a) by the substitution in subsection (1) for paragraphs (a) and (b) of the following paragraphs, respectively:
- “(a) The **[Board]** chief executive officer may upon the conditions which **[it]** the Board may determine appoint the employees of the CSIR or receive on secondment such number of persons whom **[it]** he or she deems necessary to assist the CSIR in the performance of the CSIR’s functions.
- (b) The CSIR shall out of its funds pay to its employees such remuneration, allowances, subsidies and other benefits as the Board may determine in accordance with a system approved from time to time for that purpose by the Minister, **[with the concurrence of the Minister of Finance]** in accordance with National Treasury directives.”;
- (b) by the deletion in subsection (1) of paragraph (c);
- (c) by the substitution in subsection (1) for paragraph (d) of the following paragraph:
- “(d) The **[Board]** chief executive officer may, on such conditions as **[it]** the Board may **[deem fit]** determine, with the employee’s consent, second an employee of the CSIR, either for a particular service or for a period of time, to the service of a department of State, the government of any other country or territory, or **[a person]** an institution or organisation in or outside the Republic, provided such an employee’s rights, privileges and benefits by virtue of his **[/]** or her conditions of service as an employee of the CSIR are not adversely affected by such secondment: **Provided that an employee shall not be seconded to the service of the government of such other country or territory, or such person outside the Republic, unless the employee consents thereto]**.”; and
- (d) by the deletion of subsection (2).

#### Repeal of section 14 of Act 46 of 1988

6. Section 14 of the Scientific Research Council Act, 1988, is hereby repealed.

#### Amendment of section 15 of Act 46 of 1988, as amended by section 7 of Act 16 of 2011

7. Section 15 of the Scientific Research Council Act, 1988, is hereby amended—

- (a) by the substitution in subsection (1) for paragraph (c) of the following paragraph:
- “(c) revenue obtained by virtue of the provisions of **[subsections (4) and (5)]** subsection (4);”;
- (b) by the deletion in subsection (2) of paragraph (b); and
- (c) by the deletion of subsections (3) and (5).

**Insertion of section 15A in Act 46 of 1988**

8. The following section is hereby inserted in the Scientific Research Council Act, 1988, after section 15:

**“Liquidation of CSIR**

**15A.** The CSIR may not be wound up except by or under the authority of an Act of Parliament.” 5

**Amendment of section 18 of Act 46 of 1988, as amended by section 9 of Act 16 of 2011**

9. Section 18 of the Scientific Research Council Act, 1988, is hereby amended—
- (a) by the substitution for the words preceding paragraph (a) of the following words: 10
- “The Minister may, after consultation with the Board, make regulations as to—”; and
- (b) by the deletion of paragraphs (a), (b), (c), (d) and (e).

**Amendment of section 19 of Act 46 of 1988** 15

10. Section 19 of the Scientific Research Council Act, 1988, is hereby amended—
- (a) by the substitution in subsection (1) for paragraph (a) of the following paragraph: 20
- “(a) delegate to the chairperson, any member or committee of the Board or the chief executive officer [or any other employee of the CSIR] any [power conferred upon] function entrusted to the Board by or under this Act, on such conditions as the Board may determine [; or].”;
- (b) by the deletion in subsection (1) of paragraph (b);
- (c) by the substitution in subsection (2) for paragraph (a) of the following paragraph: 25
- “(a) delegate to an employee of the CSIR any [power conferred upon] function entrusted to the chief executive officer by or under this Act [; or].”;
- (d) by the deletion in subsection (2) of paragraph (b); and 30
- (e) by the substitution for subsection (3) of the following subsection: 30
- “(3) Any delegation under subsection (1) or (2) must be in writing and does not prohibit the [exercise] performance of the [power] function in question by the Board or the chief executive officer, as the case may be.”.

**Amendment of section 1 of Act 67 of 2001, as amended by section 25 of Act 16 of 2011** 35

11. Section 1 of the Academy of Science of South Africa Act, 2001, is hereby amended by the insertion after the definition of “Council” of the following definition: 40

“**‘Executive Officer’** means the person appointed as the Executive Officer of the Academy in terms of section 9B;”.

**Amendment of section 2 of Act 67 of 2001, as substituted by section 26 of Act 16 of 2011**

12. Section 2 of the Academy of Science of South Africa Act, 2001, is hereby amended by the deletion of subsection (2).

**Amendment of section 5 of Act 67 of 2001, as amended by section 27 of Act 16 of 2011** 45

13. Section 5 of the Academy of Science of South Africa Act, 2001, is hereby amended—

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

- “(8) Existing Members of the Academy will [**then**] be required, in a secret ballot, to cast votes that are either for or against every candidate passed by the Council [**or that indicate a neutral position**].”;
- (b) by the deletion of subsection (10);
- (c) by the insertion after subsection (10) of the following subsections: 5
- “(10A) A candidate in each discipline group is considered for membership if the majority of votes received are in his or her favour.
- (10B) The Council, subject to subsection (10A), must decide on candidates to be elected members of the Academy.”;
- (d) by the deletion of subsections (11) and (12); and 10
- (e) by the substitution for subsection (13) of the following subsection:
- “(13) An unsuccessful candidate or a Member who had his or her membership terminated may appeal to the [**Council**] Appeal Committee in the prescribed manner.”.

**Amendment of section 6 of Act 67 of 2001, as amended by sections 27 and 28 of Act 16 of 2011** 15

14. Section 6 of the Academy of Science of South Africa Act, 2001, is hereby amended—

- (a) by the insertion after subsection (4B) of the following subsection: 20
- “(4C) The Council must be broadly representative of the demographics of the Republic.”; and
- (b) by the addition of the following subsections:
- “(7) The Council must determine the procedure at its meetings.
- (8) The chairperson of the Council—
- (a) may convene a special meeting of the Council at any time; and 25
- (b) must convene a special meeting within 14 days of a written request to convene such a meeting, signed by at least one third of the members of the Council.
- (9) A member of the Council may not vote or in any manner be present during or participate in the proceedings at any meeting of the Council if, in relation to any matter before the Council, he or she may have an 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. 30
- (10) A decision taken by the Council or an act performed under the authority of the Council is not invalid if there is a vacancy on the Council or where a person who is not a member of the Council was present at the meeting when the decision was taken or the act was authorised, if the decision was taken or the act was authorised by the requisite majority of members of the Council who were present at the time and entitled to sit as members. 35
- (11) A member of the Council must, upon appointment and thereafter annually, disclose to the Minister, by way of written statement, any interest which could reasonably compromise the Council in the performance of its functions.”. 40

**Amendment of section 7 of Act 67 of 2001, as amended by section 29 of Act 16 of 2011 and section 8 of Act 7 of 2014** 45

15. Section 7 of the Academy of Science of South Africa Act, 2001, is hereby amended—

- (a) by the substitution for subsection (3) of the following subsection: 50
- “(3) Any member of the Council [**wishing to resign his or her membership**] must tender his or her resignation in writing to the [**chairperson of the Council**] Minister.”; and
- (b) by the insertion after subsection (4) of the following subsection: 55
- “(4A) The Minister may, on recommendation of the Council, remove a member of the Council from office on the grounds of misconduct, incapacity, incompetence or any other reasonable ground.”.

**Amendment of section 8 of Act 67 of 2001, as amended by section 30 of Act 16 of 2011**

**16.** Section 8 of the Academy of Science of South Africa Act, 2001, is hereby amended—

- (a) by the substitution for the heading of the following heading: 5  
**“Committees of [the Academy] Council”;**
- (b) by the substitution for subsection (2) of the following subsection:  
 “(2) A committee referred to in subsection (1) consists of such number of members of the [Academy] Council, and employees of the Academy, if any, and any other persons with suitable skills or experience as the Council may deem necessary, and the Council may at any time dissolve or reconstitute a committee.”; and 10
- (c) by the addition of the following subsections:  
 “(5) The Council must establish an Appeal Committee.  
 (6) The Appeal Committee must consist of— 15  
 (a) a person qualified in law who has appropriate experience and who must be appointed as chairperson;  
 (b) a professional who has appropriate experience; and  
 (c) a person who specialises in the professional field concerning the appeal. 20  
 (7) A member of the Appeal Committee may not be a member of the Academy.  
 (8) The Appeal Committee must conduct the appeal in accordance with the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000). 25  
 (9) The Appeal Committee must decide an appeal within 60 days from the date on which the appeal was lodged and must inform the appellant and the Council concerned accordingly.”.

**Insertion of sections 9A and 9B in Act 67 of 2001**

**17.** The following sections are hereby inserted in the Academy of Science of South Africa Act, 2001, after section 9: 30

**“Remuneration of members of committees**

**9A.** A member of a committee contemplated in section 8, who is not a member of the Academy or in the full-time employ of the Academy or State, must be paid such allowances as the Council may determine in consultation with the Minister as determined by the National Treasury. 35

**Executive Officer of Academy**

**9B.** (1) The Council must, in consultation with the Minister, appoint a suitably qualified and skilled person as Executive Officer of the Academy. 40  
 (2) The appointment must be made after following a transparent and competitive selection process.  
 (3) The Executive Officer is responsible for the administration, general management and control of the day-to-day functioning of the Academy, subject to the directions and instructions of the Council.  
 (4) The Executive Officer is accountable to the Council on the matters referred to in subsection (3). 45  
 (5) The Executive Officer holds office for a period not exceeding five years and is eligible for reappointment on expiry of his or her term by the Council in consultation with the Minister.  
 (6) The Executive Officer holds office on such terms and conditions, including those relating to remuneration and allowances, as the Council, in consultation with the Minister, may determine. 50  
 (7) The Executive Officer must enter into a performance agreement with the Council within three months of taking up his or her post as Executive Officer. 55

- (8) Whenever for any reason the Executive Officer—  
 (a) is absent from office for a period of more than two months;  
 (b) is unable to carry out his or her duties; or  
 (c) ceases to hold office,

the Council may, after consultation with the Minister, appoint any senior person in the service of the Academy who meets the requirements contemplated in subsection (1) to act as Executive Officer, until the Executive Officer is able to resume those functions or until the vacant position of Executive Officer is filled.

(10) If the Executive Officer is absent from office for a period of less than two months he or she may, after consultation with the Council, appoint any senior person in the service of the Academy to act as Executive Officer for that period.

(11) The acting Executive Officer has all the powers and performs all the duties of the Executive Officer.

**Amendment of section 10 of Act 67 of 2001, as amended by section 32 of Act 16 of 2011**

**18.** Section 10 of the Academy of Science of South Africa Act, 2001, is hereby amended—

- (a) by the substitution for paragraph (a) of the following paragraph:

“(a) The **[Council]** Executive Officer may, subject to paragraph (b) and on such conditions as **[it]** the Council may determine, appoint such employees or receive on secondment such number of persons as **[it]** he or she deems necessary to enable the Academy to perform its functions.”; and

- (b) by the substitution for paragraph (c) of the following paragraph:

“(c) The **[Council]** Executive Officer may, on such conditions as **[it]** the Council may **[deem fit]** determine, and if the employee consents thereto, second an employee, either for a particular task or for a period of time, to the service of a department of State, an organisation or institute in the Republic on condition that such employee’s rights, privileges and benefits by virtue of his or her conditions of service as an employee of the Academy are not adversely affected by such secondment.”.

**Insertion of sections 15A and 15B in Act 67 of 2001**

**19.** The following sections are hereby inserted in the Academy of Science of South Africa Act, 2001, after section 15:

**“Delegations**

**15A.** (1) The Council may, on such conditions as the Council may determine, delegate to the chairperson, any member or committee of the Council or the Executive Officer any function entrusted to the Council by or under this Act.

(2) The Executive Officer may, subject to such conditions as he or she may determine, delegate to an employee of the Academy any function entrusted to the Executive Officer by or under this Act.

(3) A delegation in terms of subsection (1) or (2) must be in writing and does not preclude the performance of the function in question by the Council or the Executive Officer, as the case may be.

**Liquidation of Academy**

**15B.** The Academy may not be wound up except by or under the authority of an Act of Parliament.



### Insertion of section 4A in Act 17 of 2008

20. The following section is hereby inserted in the Human Sciences Research Council Act, 2008, after section 4:

#### “Performance of functions outside Republic

4A. (1) The Council may, subject to legislation and other formal agreements regarding international cooperation and in order to achieve its objectives, perform any function in any territory outside the Republic. 5

(2) This Act must, as far as it can be applied with the necessary changes, apply in connection with the performance by the Council of its functions under subsection (1) as if the territory in which it so performs its functions were part of the Republic.” 10

### Amendment of section 5 of Act 17 of 2008, as amended by section 15 of Act 7 of 2014

21. Section 5 of the Human Sciences Research Council Act, 2008, is hereby amended—

(a) by the substitution in subsection (6) for paragraph (b) of the following paragraph: 15

“(b) the [member’s estate is sequestrated or assigned for the benefit of, or if the member compounds with, the creditors of the member is an unrehabilitated insolvent;”;

(b) by the substitution in subsection (6)(d) for subparagraph (ii) of the following subparagraph: 20

“(ii) fraud, corruption or any other crime involving dishonesty, within a period of 10 years preceding the date of nomination in terms of subsection (3)(a);”;

(c) by the substitution in subsection (6) for paragraph (h) of the following paragraph: 25

“(h) the member as a result of improper conduct is removed from a position of trust [by a competent court of law].”.

### Substitution of section 6 of Act 17 of 2008

22. The following section is hereby substituted for section 6 of the Human Sciences Research Council Act, 2008: 30

#### “Remuneration

6. Any member of the Board and of any committee of the Board who is not in the full-time employ of the State or who is not in the employ of the Council must be paid such allowances as the [Minister of Finance] National Treasury may determine.”. 35

### Amendment of section 7 of Act 17 of 2008

23. Section 7 of the Human Sciences Research Council Act, 2008, is hereby amended by the addition of the following subsection: 40

“(8) A decision taken by the Board or an act performed under the authority of the Board is not invalid if—

(a) there is a vacancy on the Board; or

(b) a person who is not a member of the Board was present at the meeting when the decision was taken or the act was authorised,

if the decision was taken or the act was authorised by the requisite majority of members of the Board who were present at the time and entitled to sit as members.”. 45

### Amendment of section 8 of Act 17 of 2008

24. Section 8 of the Human Sciences Research Council Act, 2008, is hereby amended by the insertion after subsection (2) of the following subsections: 50

“(2A) The Board must designate a member of the committee as the chairperson thereof.

“(2B) A member of the Board may not serve on more than two committees at a time.”.

**Amendment of section 10 of Act 17 of 2008, as amended by section 17 of Act 7 of 2014** 5

25. Section 10 of the Human Sciences Research Council Act, 2008, is hereby amended—

- (a) by the substitution for subsection (1) of the following subsection:
  - “(1) The Board must, in consultation with the Minister, appoint a suitable skilled and qualified person as the chief executive officer.”; 10
- (b) by the substitution in subsection (6) for the words following paragraph (c) of the following words:
  - “the Board may, [in] after consultation with the Minister, appoint any senior person in the service of the Council who meets the requirements contemplated in subsection (1)(a) to act as chief executive officer.”; 15
- (c) by the substitution for subsection (7) of the following subsection:
  - “(7) If the chief executive officer is absent for a period of less than two months [the Board may] he or she may, after consultation with the Board, appoint a senior person in the service of the Council to act as chief executive officer during that period.”; and 20
- (d) by the deletion of subsection (9).”.

**Amendment of section 11 of Act 17 of 2008**

26. Section 11 of the Human Sciences Research Council Act, 2008, is hereby amended— 25

- (a) by the substitution in subsection (1) for paragraph (a) of the following paragraph:
  - “(a) must, on such conditions as [he or she] the Board may determine, appoint such number of employees or receive on secondment such number of persons as are necessary to enable the Council to perform its functions.”; and 30
- (b) by the substitution in subsection (2) for paragraph (b) of the following paragraph:
  - “(b) structures for remuneration, allowances, subsidies and other benefits for employees contemplated in subsection (1) in accordance with a system as may be [approved by the Minister with the concurrence of the Minister of Finance] determined by the National Treasury.”. 35

**Amendment of section 12 of Act 17 of 2008**

27. Section 12 of the Human Sciences Research Council Act, 2008, is hereby amended by the substitution for subsection (4) of the following subsection: 40

- “(4) A person who is in the employ of the Council may, with his or her consent and with the approval of the chief executive officer, be transferred or seconded to the employ of another institution within or outside the Republic.”.

**Amendment of section 15 of Act 17 of 2008** 45

28. Section 15 of the Human Sciences Research Council Act, 2008, is hereby amended by the deletion of subsection (4).

**Amendment of section 16 of Act 17 of 2008**

29. Section 16 of the Human Sciences Research Council Act, 2008, is hereby amended by the substitution for subsection (3) of the following subsection: 50

- “(3) A delegation in terms of subsection (1) or (2) must be in writing and does not preclude the performance of the function in question by the Board or the chief executive officer, as the case may be.”.

**Insertion of section 16A in Act 17 of 2008**

30. The following section is hereby inserted in the Human Sciences Research Council Act, 2008, after section 16:

**“Liquidation of Council**

16A. The council may not be wound up except by or under the authority of an Act of Parliament.” 5

**Amendment of section 17 of Act 17 of 2008**

31. Section 17 of the Human Sciences Research Council Act, 2008, is hereby amended—

- (a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words: 10  
 “The Minister may, after consultation with the Board, make regulations regarding—”; and  
 (b) by the deletion of subsection (2).

**Amendment of section 2 of Act 26 of 2008** 15

32. Section 2 of the Technology Innovation Agency Act, 2008, is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) There is hereby established a juristic person known as the Technology Innovation Agency [**which is capable of suing and being sued in its own name and of performing, subject to this Act, such acts as are necessary for or incidental to the carrying out of its objects**].” 20

**Insertion of section 4A in Act 26 of 2008**

33. The following section is hereby inserted in the Technology Innovation Agency Act, 2008, after section 4:

**“Performance of functions outside Republic** 25

4A. (1) The Agency may, subject to legislation and other formal agreements regarding international cooperation and in order to achieve its objectives, perform any function in any territory outside the Republic.

(2) This Act must, as far as it can be applied with the necessary changes, apply in connection with the performance by the Agency of its functions under subsection (1) as if the territory in which it so performs its functions were part of the Republic.” 30

**Amendment of section 6 of Act 26 of 2008**

34. Section 6 of the Technology Innovation Agency Act, 2008, is hereby amended—

- (a) by the substitution for paragraph (b) of the following paragraph: 35  
 “(b) convicted of an offence and sentenced to imprisonment without the option of a fine, or in the case of fraud, to a fine or imprisonment within a period of 10 years preceding the date of nomination”;  
 (b) by the substitution for paragraph (d) of the following paragraph:  
 “(d) not a South African citizen or permanent resident or ceases to be a South African citizen or permanent resident”; and 40  
 (c) by the substitution for paragraph (e) of the following paragraph:  
 “(e) removed as a result of improper conduct from a position of trust [**by a competent court of law**]; or”.

**Amendment of section 7 of Act 26 of 2008, as amended by section 20 of Act 7 of 2014** 45

35. Section 7 of the Technology Innovation Agency Act, 2008, is hereby amended by the substitution in subsection (3) for paragraph (b) of the following paragraph:

“(b) he or she tenders his or her resignation by written notice to the Minister [**and the Minister accepts the resignation**].”.

#### **Amendment of section 9 of Act 26 of 2008**

36. Section 9 of the Technology Innovation Agency Act, 2008, is hereby amended by the substitution for section 9 of the following section: 5

“9 [**Members**] A member of the Board or a member of a committee of the Board who is not in the full-time employment of the State, must receive such remuneration and allowances as the [Minister, with the concurrence of the Minister of Finance,] National Treasury may determine.”.

#### **Amendment of section 10 of Act 26 of 2008** 10

37. Section 10 of the Technology Innovation Agency Act, 2008, is hereby amended—

(a) by the substitution in subsection (5) for paragraph (b) of the following paragraph:

“(b) must, within 14 days of receipt of a written request signed by at least [**two thirds**] one third of the members of the Board to convene a special meeting, convene such a special meeting.”; 15

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

“(6) A quorum for a meeting of the Board is [**two thirds**] a majority of the members eligible to vote at that meeting.”;

(c) by the insertion after subsection (7) of the following subsection: 20

“(7A) A decision taken by the Board or an act performed under the authority of the Board is not invalid if—

(a) there is a vacancy on the Board; or

(b) a person who is not a member of the Board was present at the meeting when the decision was taken or the act was authorised, if the decision was taken or the act was authorised by the requisite majority of members of the Board who were present at the time and entitled to sit as members.”; and 25

(d) by the addition of the following subsection:

“(9) A member of the Board must, upon appointment and thereafter annually, disclose to the Minister by way of written statement any interest which could reasonably compromise the Board in the performance of its functions.”. 30

#### **Amendment of section 11 of Act 26 of 2008, as amended by section 23 of Act 7 of 2014** 35

38. Section 11 of the Technology Innovation Agency Act, 2008, is hereby amended—

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

“(1) The Board must, in consultation with the Minister, appoint a suitably skilled and qualified person as the Chief Executive Officer of the Agency.”; 40

(b) by the substitution for subsection (5) of the following subsection:

“(5) The Chief Executive Officer holds office for a period not exceeding five years and is eligible for reappointment on expiry of his or her term by the Board in consultation with the Minister.” ; and

(c) by the substitution in subsection (9) for the words following paragraph (c) of the following words: 45

“the Board may, [**with concurrence of**] after consultation with the Minister, appoint any senior person in the service of the Agency who meets the requirements determined in terms of subsection (1) to act as Chief Executive Officer, until the Chief Executive Officer is able to resume those functions or until the vacant position of the Chief Executive Officer is filled.”. 50

#### **Amendment of section 12 of Act 26 of 2008**

39. Section 12 of the Technology Innovation Agency Act, 2008, is hereby amended—

(a) by the substitution in subsection (2) of the following subsection: 55

“(2) The Agency must pay the employees of the Agency such remuneration, allowances, subsidies and other benefits as the **[Minister, in consultation with the Minister of Finance,]** National Treasury may determine.”; and

(b) by the insertion after subsection (2) of the following subsection: 5

“(2A) (a) The Chief Executive Officer may, on such terms and conditions as the Board may determine, with the consent of an employee, second an employee either for a particular service or for a period of time to the service of a department of State, the government of any province, territory or country or an organisation or institution in or outside the Republic.

(b) The rights, privileges and benefits of the employee referred to in paragraph (a), by virtue of his or her conditions of service as an employee of the Agency, may not be adversely affected by such secondment.” 10  
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#### **Amendment of section 13 of Act 26 of 2008**

40. Section 13 of the Technology Innovation Agency Act, 2008, is hereby amended—

(a) by the substitution in subsection (2) for paragraph (c) of the following paragraph:

“(c) any other person with suitable skills or experience, who must be paid such remuneration and allowances as the **[Minister, with the concurrence of the Minister of Finance,]** National Treasury may determine.”; 20

(b) by the insertion after subsection (2) of the following subsection:

“(2A) The Board must designate a member of the committee as the chairperson thereof.”; and 25

(c) by the addition of the following subsection:

“(5) A member of the Board may not serve on more than two committees at a time.”

#### **Insertion of section 14A in Act 26 of 2008** 30

41. The following section is hereby inserted in the Technology Innovation Agency Act, 2008, after section 14:

##### **“Delegation**

**14A.** (1) The Board may, subject to such conditions as it may determine, delegate to the chairperson, any member or committee of the Board or the Chief Executive Officer any function entrusted to the Board by or under this Act. 35

(2) The Chief Executive Officer may, subject to such conditions as he or she may determine, delegate to an employee of the Agency any function entrusted to the Chief Executive Officer by or under this Act. 40

(3) A delegation in terms of subsection (1) or (2) must be in writing and does not preclude the performance of the function entrusted to the Board or the Chief Executive Officer, as the case may be.”

#### **Amendment of section 16 of Act 26 of 2008**

42. Section 16 of the Technology Innovation Agency Act, 2008, is hereby amended— 45

(a) by the substitution for the words preceding paragraph (a) of the following words:

“The Minister may, after consultation with the Board, make regulations with regard to—”; and

(b) by the deletion of paragraphs (a), (b) and (c). 50

#### **Insertion of section 5A in Act 36 of 2008**

43. The following section is hereby inserted in the South African National Space Agency Act, 2008, after section 5:

**“Performance of functions outside Republic**

**5A.** (1) The Agency may, subject to legislation and other formal agreements regarding international cooperation and in order to achieve its objectives, perform any function in any territory outside the Republic.

(2) This Act must, as far as it can be applied with the necessary changes, apply in connection with the performance by the Agency of its functions under subsection (1) as if the territory in which it so performs its functions were part of the Republic.”

**Amendment of section 7 of Act 36 of 2008, as amended by section 24 of Act 7 of 2014**

**44.** Section 7 of the South African National Space Agency Act, 2008, is hereby amended by the deletion of subsection (5).

**Amendment of section 8 of Act 36 of 2008, as amended by section 25 of Act 7 of 2014**

**45.** Section 8 of the South African National Space Agency Act, 2008, is hereby amended—

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

“(f) has, as a result of improper conduct, been removed from a position of trust **[by a competent court of law];** or”;

(b) by the substitution in subsection (2) for the words preceding paragraph (a) of the following words:

“The Minister may, after consultation with the Board, remove a member contemplated in section 6(2)(a) or (b) from office—”;

(c) by the deletion of the word “or” at the end of subsection (2)(a) and the insertion of the word “or” at the end of subsection (2)(c); and

(d) by the insertion after subsection (2) of the following subsection:

“(2A) A member contemplated in section 6(2)(a) or (b) ceases to hold office if the member resigns by written notice to the Minister.”.

**Substitution of section 10 of Act 36 of 2008**

**46.** The following section is hereby substituted for section 10 of the South African National Space Agency Act, 2008:

**“Remuneration of Board members**

**10.** A member of the Board or a member of any committee of the Board who is not in the full-time employment of the State must be paid such remuneration and allowances out of the funds of the Agency as may be determined by the **[Minister, in consultation with the Minister of Finance]** National Treasury.”.

**Amendment of section 11 of Act 36 of 2008**

**47.** Section 11 of the South African National Space Agency Act, 2008, is hereby amended—

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

“(b) must convene such a meeting within 14 days of receipt of a written request signed by at least **[two thirds]** one third of the members of the Board to convene such a meeting.”; and

(b) by the addition of the following subsection:

“(7) A decision taken by the Board or an act performed under the authority of the Board is not invalid if—

(a) there is a vacancy on the Board; or

(b) a person who is not a member of the Board was present at the meeting when the decision was taken or the act was authorised,

if the decision was taken or the act was authorised by the requisite majority of members of the Board who were present at the time and entitled to sit as members.”.

#### **Amendment of section 12 of Act 36 of 2008**

48. Section 12 of the South African National Space Agency Act, 2008, is hereby amended by the substitution for subsection (1) of the following subsection: 5

“(1) A member of the Board must, upon appointment and thereafter annually, disclose to the Minister by way of written statement any interest which could reasonably compromise the Board in the performance of its functions.”.

#### **Amendment of section 13 of Act 36 of 2008**

49. Section 13 of the South African National Space Agency Act, 2008, is hereby amended—

(a) by the substitution in subsection (2) for paragraph (c) of the following paragraph:

“(c) other [person] persons with suitable skills or experience [who must be paid such allowances as the Minister may determine].”; and 15

(b) by the insertion after subsection (2) of the following subsection:

“(2A) The Board must designate a member of the committee as the chairperson thereof.” 20

#### **Amendment of section 14 of Act 36 of 2008, as amended by section 27 of Act 7 of 2014**

50. Section 14 of the South African National Space Agency Act, 2008, is hereby amended—

(a) by the substitution for subsection (1) of the following subsection: 25

“(1) The Board must, in consultation with the Minister, appoint a suitably skilled and qualified person as the Chief Executive Officer.”; and

(b) by the substitution in subsection (8) for the words following paragraph (c) of the following words: 30

“the Board may, [with concurrence of] after consultation with the Minister, appoint any senior person in the service of the Agency who meets the requirements determined in subsection (1) to act as Chief Executive Officer, until the Chief Executive Officer is able to resume those functions or until the vacant position of Chief Executive Officer is filled.”. 35

#### **Amendment of section 15 of Act 36 of 2008**

51. Section 15 of the South African National Space Agency Act, 2008, is hereby amended—

(a) by the substitution in subsection (1) for paragraph (a) of the following paragraph: 40

“(a) must, on such conditions as [she or he] the Board may determine, appoint such number of employees or receive on secondment such number of persons as are necessary to enable the Agency to perform its functions.”; 45

(b) by the deletion in subsection (2) of paragraphs (a) and (b);

(c) by the substitution in subsection (2) for paragraph (c) of the following paragraph:

“(c) structures for remuneration, allowances, subsidies and other benefits for employees contemplated in subsection (1) in accordance with a system [approved by the Minister with the concurrence of the Minister of Finance] determined by the National Treasury.”; and 50

(d) by the insertion after subsection (2) of the following subsection:

“(2A) (a) The Chief Executive Officer may, on such terms and 55

conditions as the Board may determine, with the consent of an employee, second that employee either for a particular service or for a period of time to the service of a department of State, the government of any province, territory or country or an organisation or institution in or outside the Republic.

(b) The rights, privileges and benefits of the employee referred to in paragraph (a), by virtue of his or her conditions of service as an employee of the Agency, may not be adversely affected by such secondment.”

#### **Substitution of section 18 of Act 36 of 2008**

52. The following section is hereby substituted for section 18 of the South African National Space Agency Act, 2008:

##### **“Delegation**

18. (1) The Board may, subject to such conditions as it may determine, delegate to the chairperson, any member or committee of the Board or the Chief Executive Officer any function entrusted to the Board by or under this Act.

(2) The Chief Executive Officer may, subject to such conditions as he or she may determine, delegate to an employee of the Agency any function entrusted to the Chief Executive Officer by or under this Act.

(3) A delegation in terms of subsection (1) or (2) does not prohibit the performance of the function in question by the Board or the Chief Executive Officer, as the case may be.

(4) The delegation in terms of subsections (1) and (2) must be in writing.”

#### **Insertion of section 18A in Act 36 of 2008**

53. The following section is hereby inserted in the South African National Space Agency Act, 2008, after section 18:

##### **“Liquidation of Agency**

18A. The Agency may not be wound up except by or under the authority of an Act of Parliament.”

#### **Short title and commencement**

54. This Act is called the Science and Technology Laws Amendment Act, 2018, and takes effect on a date determined by the President by proclamation in the *Gazette*.



## MEMORANDUM ON OBJECTS OF SCIENCE AND TECHNOLOGY LAWS AMENDMENT BILL, 2018

### 1. BACKGROUND

The Department of Science and Technology has recognised a need to harmonise the provisions which regulate the operations and governance of the public entities that report to the Minister established in terms of the following statutes: the Scientific Research Council Act, 1988 (Act No. 46 of 1988) (“Scientific Research Council Act”), Academy of Science of South Africa Act, 2001 (Act No. 67 of 2001) (“Academy of Science of South Africa Act”), the Human Sciences Research Council Act, 2008 (Act No. 17 of 2008) (“Human Sciences Research Council Act”), the Technology Innovation Agency Act, 2008 (Act No. 26 of 2008) (“Technology Innovation Agency Act”), and the South African National Space Agency Act, 2008 (Act No. 36 of 2008) (“South African National Space Agency Act”), in order to ensure consistency in all the requirements to be met and processes to be followed.

### 2. OBJECTS OF BILL

- 2.1 The Science and Technology Laws Amendment Bill, 2018 (“Bill”), seeks to, among others, harmonise the following:
- (a) The processes for the determination of the remuneration and allowances of the members of the Boards or Councils and members of the committees of the Boards or Councils, and the termination of membership of Boards or Councils of the entities, as well as the disqualification of members or potential members from the membership of Boards or Councils;
  - (b) the processes for the appointment of Chief Executive Officers of the entities as well as the secondment of employees of the entities and the determination of the conditions of appointment or secondment of such employees; and
  - (c) the provisions relating to the written delegation of powers by the Boards or Councils of the entities to individual members or committees of the Boards or Councils.
- 2.2 The Bill also seeks to provide for the disclosure of interest by members of the Boards or Councils and the timeframes for making those disclosures to the Minister.
- 2.3 It further outlines instances upon which the members of Boards or Councils are prohibited from participating or voting in Board or Council meetings, as well as the requirements to ensure the validity of Board or Council decisions adopted under certain circumstances.

### 3. KEY PROVISIONS OF BILL

#### 3.1 Scientific Research Council Act

- 3.1.1 **Clause 1** seeks to amend section 7 by repealing the provisions that require the endorsement of the Board’s decisions on certain matters by the Minister or the Minister of Finance, as they undermine the institutional autonomy of the Council for Scientific and Industrial Research (“Council”). It also seeks to provide for consultation by the Minister with the Board before terminating a member’s term of office for specific valid reasons.
- 3.1.2 **Clause 2** seeks to amend section 9 by providing for the appointment by the Board of any suitable person to be a member of a committee of the Board. It also seeks to provide for the determination of the remuneration and allowances of the members of the committees of the Board, who are not employees of the Council, by the National Treasury.

- 3.1.3 **Clause 3** seeks to amend section 10 by requiring the Board to consult with the Minister before appointing the Chief Executive Officer.
- 3.1.4 **Clause 4** seeks to amend section 11 by providing for the determination by the Board of the procedure for its meetings. It also harmonises the process and requirements for holding special meetings of the Board to ensure consistency with other entities reporting to the Minister. It also seeks to provide for the disclosure of interests by members of the Board and timeframes for making such disclosures to the Minister as well as the circumstances in which the members of the Board are prohibited from participating or voting in Board meetings.
- 3.1.5 **Clause 5** seeks to amend section 12 by providing for the determination of the conditions by the Board of the appointment or secondment of employees of the Council.
- 3.1.6 **Clause 6** seeks to amend section 14 by providing for the repeal of the provisions relating to the auditing of the accounts of the Council and submission by the Minister of the annual reports to Parliament, as such matters are provided for in the Public Finance Management Act, 1999 (Act No. 1 of 1999) (“Public Finance Management Act”).
- 3.1.7 **Clause 7** seeks to amend section 15 by providing for the repeal of the provisions relating to the investment of the funds of the Council as such matters are provided for in the Public Finance Management Act.
- 3.1.8 **Clause 8** seeks to prohibit the liquidation of the Council other than in accordance with an Act of Parliament.
- 3.1.9 **Clause 9** seeks to amend section 18 by requiring the Minister to consult with the Board before making any regulations relating to all substantive matters provided for in the Act. It also seeks to repeal certain other provisions which empower the Minister to make regulations on matters that have become redundant.
- 3.1.10 **Clause 10** seeks to amend section 19 by providing for the delegation by Board of its powers to any member or committee of the Board as well as for the delegation of powers to be made in writing.

### 3.2 Academy of Science of South Africa Act

- 3.2.1 **Clause 11** seeks to insert the definition of Executive Officer of the Academy of Science (“Academy”).
- 3.2.2 **Clause 12** seeks to amend section 2 by repealing the provision requiring the Academy to comply with the Public Finance Management Act as the Academy is not listed under the Public Finance Management Act.
- 3.2.3 **Clause 13** amends section 5 to provide for a candidate’s eligibility for membership of the Academy. It further provides for the Council to elect a candidate to serve as a member of the Academy.
- 3.2.4 **Clause 14** seeks to amend section 6 by providing for the Council of the Academy to be broadly representative of the demographics of the Republic. It also provides for the determination by the Council of the procedure for its meetings, and harmonises the process and requirements for the holding of special meetings of the Council to ensure consistency with other entities reporting to the Minister. It also seeks to provide for the disclosure of interest by members of the Council and timeframes for making such disclosures to the Minister, as well as the circumstances in which the members of Council are prohibited from participating or voting in Council meetings.

- 3.2.5 **Clause 15** seeks to amend section 7 by providing for the resignation of Council members to be made in writing to the Minister and for the termination of the term of office of a member of the Council for any valid reason by the Minister which must be made on the recommendation of the Council.
- 3.2.6 **Clause 16** seeks to amend section 8 by providing for the appointment by the Council of any suitable person to be a member of a committee of the Council. It also provides for the establishment of an Appeal Committee and for the manner in which the Appeal Committee shall be constituted and the timeframes for the determination of appeals.
- 3.2.7 **Clause 17** seeks to provide for the determination of the remuneration and allowances of members of the committees of the Council who are not employees of the Academy or the state as determined by the council in consultation with the Minister. It also provides for the appointment by the Council of the Executive Officer of the Academy who will be responsible for the general administration and management of the Academy as well as all matters relating to his or her accountability, term of office, remuneration and performance of duties.
- 3.2.8 **Clause 18** seeks to amend section 10 by providing for the appointment or secondment of employees of the Academy by the Executive Officer as well as the determination of the conditions of appointment or secondment of employees of the Academy by the Council.
- 3.2.9 **Clause 19** provides for the delegation by the Council of its powers as well as the delegation by the Executive Officer of his or her powers, and for the delegation of powers to be made in writing. It also seeks to prohibit the liquidation of the Academy other than in accordance with an Act of Parliament.

### 3.3 Human Sciences Research Council Act

- 3.3.1 **Clause 20** seeks to insert section 4A in the Human Science Research Council Act to provide for the performance by the Human Science Research Council (“Research Council”), of any of its functions outside the Republic, subject to the Minister’s consent.
- 3.3.2 **Clause 21** seeks to amend section 5 by providing for a period within which a person will be disqualified from being a member of the Board after being convicted by a court of law for fraud, corruption or any other crime involving dishonesty.
- 3.3.3 **Clause 22** seeks to amend section 6 by providing for the determination of the allowances of the members of the Board and Board committees by the National Treasury.
- 3.3.4 **Clause 23** seeks to amend section 7 by clarifying the issue of the status of the decisions of the Board that were adopted under certain circumstances.
- 3.3.5 **Clause 24** seeks to amend section 8 of the Human Sciences Research Council Act by providing for the Board to designate a chairperson for any committee of the Board. It also seeks to limit the number of committees that a member of the Board may serve on, to ensure efficiency in the functioning of the Board.
- 3.3.6 **Clause 25** seeks to amend section 10 by providing for the Board to consult with the Minister in the appointment of the Chief Executive Officer of the Research Council.

- 3.3.7 **Clause 26** seeks to amend section 11 by providing for the determination by the Board of the conditions of employment of the employees of the Research Council, which must be in accordance with a system determined by the National Treasury.
- 3.3.8 **Clause 27** amends section 12 by providing for the secondment or transfer of an employee of the Research Council, with his or her consent and the approval of the Chief Executive Officer, to the employ of another institution within or outside the Republic.
- 3.3.9 **Clause 28** seeks to amend section 15 by providing for the repeal of the provisions relating to the investment of the funds of the Research Council as those matters are provided for in the Public Finance Management Act.
- 3.3.10 **Clause 29** seeks to amend section 16 by providing for the delegation by Board and the Chief Executive Officer of its or his or her powers to be in writing.
- 3.3.11 **Clause 30** seeks to prohibit the liquidation of the Council other than in accordance with an Act of Parliament.
- 3.3.12 **Clause 31** seeks to amend section 17 by requiring the Minister to consult with the Board before making any substantive regulations.

#### **3.4 Technology Innovation Agency Act**

- 3.4.1 **Clause 32** seeks to amend section 2 by deleting certain words which are superfluous.
- 3.4.2 **Clause 33** seeks to provide for the performance by the Technology Innovation Agency (“Agency”), of any of its functions outside the Republic, subject to the Minister’s consent.
- 3.4.3 **Clause 34** seeks to amend section 6 by providing for a period within which a person will be disqualified from being a member of the Board after being convicted for fraud, corruption or any other crime involving dishonesty. It also extends the qualification for membership of the Board to permanent residents.
- 3.4.4 **Clause 35** seeks to amend section 7 by providing that resignation of a member from the Board must be on written notice to the Minister.
- 3.4.5 **Clause 36** seeks to amend section 9 by providing for the determination of the remuneration and allowances of the members of the Board committees who are not in the employ of the State by the National Treasury.
- 3.4.6 **Clause 37** seeks to amend section 10 by providing for the quorum of a Board meeting to be a majority of members eligible to vote at that meeting to ensure consistency with other entities. It also provides for the circumstances in which members of the Board are prohibited from participating or voting in the Board’s meetings as well as the disclosure of interest by Board members and the timeframes for such disclosures.
- 3.4.7 **Clause 38** seeks to amend section 11 by providing that the Board must consult with the Minister on the appointment of the Chief Executive Officer of the Agency.
- 3.4.8 **Clause 39** seeks to amend section 12 by providing for the secondment of the employees of the Agency by the Chief Executive Officer and the

determination of the conditions for the secondment of employees of the Agency to other institutions by the Board.

- 3.4.9 **Clause 40** seeks to amend section 13 by providing for the Board to designate the chairperson of the committee. It also seeks to limit the number of committees that a member of the Board may serve on to ensure efficiency in the functioning of the Board.
- 3.4.10 **Clause 41** seeks to provide for the delegation of powers by the Board and the Chief Executive Officer. It also provides for the delegation of powers to be in writing.
- 3.4.11 **Clause 42** seeks to amend sections 16 by requiring the Minister to consult with the Board before the making of any regulations.

### **3.5 South African National Space Agency Act**

- 3.5.1 **Clause 43** seeks to insert section 5A in the South African Space Agency Act to provide for the performance by the South African Space Agency (“Space Agency”) of any of its functions outside the Republic, subject to the Minister’s consent.
- 3.5.2 **Clause 44** seeks to amend section 7 of the South African National Space Agency Act by deleting subsection (5).
- 3.5.3 **Clause 45** seeks to amend section 8 by providing for the Minister to consult with the Board before terminating the term of office of a member of the Board for any valid reason. It also provides for the resignation of the Board members to be made in writing to the Minister.
- 3.5.4 **Clause 46** seeks to amend section 10 by providing that a member of the Board or a member of a committee of the Board who is not in the full-time employ of the State must be paid remuneration and allowances as determined by the National Treasury.
- 3.5.5 **Clause 47** seeks to amend section 11 by clarifying the issue of the status of decisions of the Board that were adopted under certain circumstances.
- 3.5.6 **Clause 48** seeks to amend section 12 by providing that the members of the Board must disclose annually any interest that may compromise the performance of the functions of the Board.
- 3.5.7 **Clause 49** seeks to amend section 13 by providing for the Board to designate a chairperson for any of its committees.
- 3.5.8 **Clause 50** seeks to amend section 14 by providing for the Board to consult with the Minister before appointing the Chief Executive Officer of the Space Agency. It also provides for a limitation of the term of office of the Chief Executive Officer.
- 3.5.9 **Clause 51** seeks to amend section 15 by providing for the determination of the conditions of employment of the employees of the Space Agency by the Board. It also provides for the Chief Executive Officer of the Space Agency to second employees of the Space Agency and for the Board to determine the conditions of secondment of those employees.
- 3.5.10 **Clause 52** seeks to amend section 18 of the South African National Space Agency Act by providing for the delegation by the Board of its powers.

3.5.11 **Clause 53** seeks to prohibit the liquidation of the Space Agency than in accordance with an Act of Parliament.

3.5.12 **Clause 54** provides for the short title and the commencement.

#### **4. PARTIES CONSULTED**

All affected stakeholders (relevant science councils), were consulted individually.

#### **5. FINANCIAL IMPLICATIONS FOR STATE**

There will be no cost implications for the State in relation to the implementation of the Act. The proposed amendments are purely of an administrative or technical nature.

#### **6. PARLIAMENTARY PROCEDURE**

- 6.1 The Department of Science and Technology and the State Law Advisers are of the opinion that this Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution of the Republic of South Africa, 1996 (“Constitution”), since it contains no provisions to which the procedure set out in section 74 or 76 of the Constitution applies. In other words, the Bill does not deal with any matters listed in Schedule 4 to the Constitution (functional areas of concurrent national and provincial legislative competence) wherein the procedure set out in section 76 of the Constitution would apply.
- 6.2 The Constitutional Court, in *Tongoane and Others v Minister for Agriculture and Land Affairs and Others* CCT 100/09 [2010] ZACC 10 (11 May 2010), paragraph 72, stated that the procedure envisaged in section 75 of the Constitution remains relevant to all Bills that do not, in substantial measure, affect the provinces. It stated that whether a Bill is a section 76 Bill is determined in two ways. Firstly by the explicit list of legislative matters in section 76(3)(a) to (f) of the Constitution, and secondly by whether the provisions of a Bill in substantial measure fall within a concurrent provincial legislative competence.
- 6.3 The State Law Advisers are also 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, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.



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