

REPUBLIC OF SOUTH AFRICA

MEASUREMENT UNITS AND MEASUREMENT STANDARDS BILL, 2006

(As introduced in the National Assembly as a section 75 Bill; Explanatory summary of Bill published in Government Gazette No.*** of 2006; The English text is the official text of the Bill)

(Minister of Trade and Industry)

[B** of 2006]

BILL

To provide for the use of measurement units of the International System of Units and certain other measurement units; for the designation of national measurement standards; for keeping and maintaining national measurement standards and units; for the establishment, powers and functions of the National Metrology Institute; and to provide for matters connected therewith.

RECOGNISING –

- The need for an internationally recognised national metrology system as the foundation for the South African measurement system;
- the need to strengthen the metrology system as a key component of the technical infrastructure that is aligned with international best practice;
- the importance to ensure that South Africa maintain national measurement standards and demonstrate their comparability to international standards and measurements;
- the supporting needs of our enterprises competing in a fast-paced global economy and public policy objectives in terms of health, safety and the environment compliance issues; and
- that government is committed to providing a supportive legal environment for a national metrology system.

IN ORDER TO—

- recognise the National Metrology Institute as the body in South Africa responsible to provide for the use of measurement units of the International System of Units and certain other measurement units;
- designate national measurement standards and for keeping and maintaining national measurement standards and units; and
- disseminate traceability to the South African industry.

Be it therefore enacted by the Parliament of the Republic of South Africa as follows:

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INTERPRETATION AND PURPOSE

1. Definitions

(1) In this Act, unless the context otherwise indicates -

- (a) “**Board**” means the Board appointed in terms of section 13;
- 5 (b) “**calibration laboratory**” means a body that performs a set of operations that establish, under specified conditions, the relationship between values of quantities indicated by a measuring instrument or measuring system, or values represented by a material measure or reference material, and corresponding values realized by standards
10 whatever their uncertainty;
- (c) “**CIPM**” means the International Committee of Weights and Measures (Comité International des Poids et Mesures) established under the Convention of the Metre;
- 15 (d) “**CIPM Mutual Recognition Arrangement**” means an arrangement signed by member states under the Metre Convention for the mutual recognition of national measurement standards and calibration and measurement certificates issued by National Metrology Institutes;
- (e) “**CSIR**” means the Council for Scientific and Industrial Research described in the Scientific Research Act No. 46 of 1988 ;
- 20 (f) “**Metre Convention**” (Convention du Mètre), a diplomatic treaty which gives authority to the General Conference on Weights and Measures (Conférence Générale des Poids et Mesures (CGPM)) the CIPM and the International Bureau of Weights and Measures (Bureau International des Poids et Mesures (BIPM)) to act in matters of world
25 metrology, particularly concerning the demand for measurement standards of ever increasing accuracy, range and diversity, and the need to demonstrate equivalence between national measurement standards.

- (g) “**Minister**” means the Minister responsible for Trade and Industry in South Africa;
- (h) “**national measurement standard**” means a measurement standard designated in terms of section 6 as a national measurement standard;
- 5 (i) “**national reference measurement**” means a reference measurement designated in terms of section 7 as a national reference measurement;
- (j) “**National Metrology Institute**” means the National Metrology Institute of South Africa established under section 9;
- 10 (k) “**Public Finance Management Act**” means the Public Finance Management Act, 1999 (Act No 1 of 1999);
- (l) “**quantity**” means the property of a phenomenon, body or substance to which a magnitude can be assigned;
- (m) “**SI**” means the recommended practical system of units of measurement as accepted under the Metre Convention and known as the International System of Units (Système International d’Unités);
- 15 (n) “**this Act**” includes the regulations and Schedules;
- (o) “traceable” means traceable in terms of section 6(3);
- (p) “uncertainty of measurement” means a parameter associated with the result of a measurement, that characterises the dispersion of the values that could reasonably be attributed to the measurement;
- 20 (q) “**unit**” means a measurement unit published by the Minister in terms of section 3;
- (r) “**use**” in relation to a unit, means the expression of the magnitude of any quantity by means of a unit;

2. Purpose of Act

- (1) The purpose of the Act is-
- (a) to provide a legal framework for the measurement units and measurement standards in the Republic; and
 - (b) to establish the National Metrology Institute.

NATIONAL MEASUREMENT UNITS

3. Units

- (1) The units in the Republic, the symbols of the units and the rules relating to the use of units and their symbols must be:
- (a) the units and the appropriate symbols and the rules of the SI as published from time to time by the Minister in the Gazette; and
 - (b) such other units, such other symbols of the units and such rules relating to the use of units and their symbols as the Minister may publish in the Gazette.

4. Prohibition of expression of magnitude of quantities and designation of units

- (1) The Minister may by notice in the Gazette prohibit-
- (a) the expression, in the circumstances or for the purposes or in connection with the matters and in respect of the goods or things specified in the notice, of the magnitude of quantities by means of any unit other than a unit so specified;
 - (b) the designation, in the circumstances or for the purposes or in connection with the matters and in respect of the goods or things

specified in the notice, of any unit so specified by means of any symbol other than a symbol so specified.

- (2) A notice under subsection (1) may be expressed to apply to specified area only and may make provision for the granting of exemptions from its provisions.

5. Equivalent of certain units

The Minister may by notice in the Gazette determine the equivalent of any unit, expressed in any other unit of the same quantity, and any equivalent so determined must for all purposes be deemed to be the equivalent of the unit in question.

NATIONAL MEASUREMENT STANDARDS

6. National measurement standards

- (1) The Minister may by notice in the Gazette designate any measurement standard described in the notice, as a national measurement standard;
- (2) The value of a national measurement standard in relation to the SI units must -
- (a) be the value as determined from time to time by the National Metrology Institute;
 - (b) be deemed to be the most accurate value of that national measurement standard; and
 - (c) have stated uncertainties of measurement.

(3) A measurement standard which is not a national measurement standard must-

(a) for the purposes of measurement for any legal purpose, be traceable to one or more national measurement standards;

(b) be so traceable that the measurement standard is related to one or more national measurement standards as defined in section (3)(a) through an unbroken chain of comparisons-

(i) stating appropriate uncertainties of measurement ; and

(ii) carried out by a calibration laboratory accredited by the South African National Accreditation System (SANAS) or an accreditation body enabled in terms of the Accreditation for Conformity Assessment, Calibration and Good Laboratory Practice Act, in that specific area of metrology.

NATIONAL REFERENCE MEASUREMENTS

7. National reference measurements

(1) A reference measurement or analysis performed for any legal purpose by the National Metrology Institute;

(a) stating uncertainties of measurement; and

(b) traceable to;

(i) one or more national measurement standards; and or

(ii) certified reference materials traceable to national measurement standards recognised under the CIPM MRA; and or

(iii) internationally agreed references recognised through the CIPM;

must be deemed to be the true value.

8. Certificates

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- (1) The National Metrology Institute may issue a certificate stating the outcome of a measurement or analysis regarding any matter mentioned in section 6 (2) or (3) and section 7.
- (2) The certificate referred to in subsection (1) must be signed by a person in the employ of the National Metrology Institute as determined by the Board.
- 10
- (3) The Board may authorise a person employed by the National Metrology Institute to certify a copy of such certificate to be true in the manner determined by the Board.
- (4) In any criminal proceedings a document which purports to be a certificate issued and signed in accordance with subsection (1) and (2) or a copy of such certificate certified in accordance with subsection (1) and (2) must upon its production, be evidence of the facts contained therein.

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ESTABLISHMENT OF NATIONAL METROLOGY INSTITUTE AS PUBLIC ENTITY

9. Establishment of National Metrology Institute as public entity

- (1) The National Metrology Institute of South Africa is hereby established as a public entity.
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- (2) The establishment of the National Metrology Institute does not affect the validity of any action taken by the CSIR National Metrology Laboratory prior to the commencement of this Act.

10. Status of National Metrology Institute

- (1) The National Metrology Institute-

- (a) is a juristic person; and
- (b) must exercise its functions in accordance with this Act.

11. Functions and objects of National Metrology Institute

(1) The objects of the National Metrology Institute are to-

- (a) Maintain the units as described in section (3)(1)(a) for South Africa in accordance with units as defined by the CIPM and advise the Minister on other units as described in section (3)(1)(b);
- (b) keep and maintain all national measurement standards;
- (c) arrange for the appropriate periodic comparison of the national measurement standards with the corresponding other national measurement standards or references recognised as such and ensure its correction, if necessary;
- (d) certify reference materials and arrange for the comparison of the related procedures and primary methods with the corresponding other national procedures and primary methods and ensure its correction, if necessary;
- (e) ensure compliance and validation with the stipulations of the CIPM Mutual Recognition Arrangement and effect the inclusion of the Republic's calibration and measurement capabilities in this arrangement; and
- (f) co-ordinate, interact and manage the international, regional and bilateral interaction with other national metrology institutes, and bodies affiliated to the CIPM.

(2) In order to achieve its objects, the National Metrology Institute may-

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- (a) keep and maintain the equipment necessary for bringing national measurement standards into being, certify reference materials and see to the procedures connected thereto;
 - (b) establish and maintain the necessary expertise and competence on an internationally acceptable level;
 - (c) establish confidence in the accuracy of the national measurement standards by suitable and documented verification process and keeping the applicable records of the results;
 - (d) upgrade the existing measurement standards an/or development of such new measurement standards and reference material certification procedures in line with the requirements of commerce and industry;
 - (e) disseminate traceability, measurement expertise and/or services to South African commerce and industry by the way of calibration, measurement and/ or analysis, certified reference materials and/ or appropriate technology and skills transfer;
 - (f) establish and maintain the necessary expertise and competence on an internationally acceptable level;
 - (g) maintain close links with the CIPM and associated activities of the Metre Convention;
 - (h) participate and represent South Africa at international and regional level with reference to traceability and measurement issues;
 - (i) nominate an institute with specific competence to represent the National Metrology Institute in a specific field of metrology where the National Metrology Institute does not have sufficient competence to do so;
 - (j) sub-contract a part of its calibration, measurement or certified reference material certification activities to another laboratory with which it collaborates; and

- (k) establish technical advisory forums to facilitate dissemination of international best practise and gather input from commerce and industry.

5 **12. Application of the Public Finance Management Act**

- (1) The National Metrology Institute is a national public entity and is required to comply with the provisions of the Public Finance Management Act applicable to national public entities.

BOARD OF NATIONAL METROLOGY INSTITUTE

10 **13. Appointment of members of Board of National Metrology Institute**

- (1) The Minister must appoint a Board of not less than ten, and not more than fifteen, members including-
 - (a) the chief executive officer of the National Metrology Institute;
 - (b) not more than two senior managers as executive board members of the National Metrology Institute.

- (2) When appointing the members of the Board, the Minister must ensure that the members of the Board-
 - (a) represent a broad cross sections of the population of the Republic;
 - (b) have sufficient knowledge, experience or qualifications relating to the functions of the National Metrology Institute and the responsibilities of the Board.

- (3) The chairperson of the Board must be selected by the members of the Board from amongst their number at the first meeting of a newly appointed board and be approved by the Minister.

14. Term of office

- 5 (1) Non-executive members of the Board hold office for a period not exceeding five years and are eligible for reappointment.
- (2) A person appointed to fill a vacancy holds office for the remaining portion of the term of the vacating member.
- (3) A member may resign by giving at least one month's written notice.

10 15. Disqualification

- (1) A person may not be appointed or continue to serve as a member of the Board if he or she -
- (a) is an unrehabilitated insolvent;
- (b) has at any time been convicted of an offence involving dishonesty;
- 15 (c) has, as a result of improper conduct, been removed from an office of trust; or
- (d) has been declared by a court to be mentally ill or disordered.
- (2) A member of the Board must vacate his or her office if he or she is absent from three consecutive meetings of the Board without the prior leave of the chairperson.
- 20 (3) The Minister may, at any time, after consulting the Board, terminate the term of office of any member of the Board if, in the Minister's opinion, there are good reasons for doing so.

16. Conditions of appointment

- (1) The conditions of appointment of members of the Board, who are not employed by an organ of state, are determined by the Minister.
- (2) The conditions of appointment may include remuneration and allowance payable by the Board.
- (3) Members who are employed by an organ of state are not entitled to remuneration and allowance but must be reimbursed for out of pocket expenses by the Board.
- (4) Non-executive members of the Board are appointed part-time.

17. Powers of Board

- (1) The Board is responsible for managing the business and affairs of the National Metrology Institute.
- (2) The Board may do all that is necessary or expedient to perform its functions including-
 - (a) acquiring or disposing of any right in or property, but ownership in significant immovable property may be acquired or disposed of only with the consent of the Minister;
 - (b) opening and operating banking accounts in the name of the National Metrology Institute;
 - (c) investing any of the money of the National Metrology Institute;
 - (d) insuring the National Metrology Institute-against
 - (i) any loss, damage or risk;
 - (ii) any liability it may incur in the application of this Act;

- (e) performing legal acts, including acts in association with or on behalf of any other person or organ of state;
- (f) subject to sub-section (3), concluding agreements with organs of state and other persons;
- (g) instituting or defending any legal action.

(3) An agreement concluded in terms of sub-section (2)(f) may not-

- (a) conflict with any international requirement binding on the National Metrology Institute; and
- (b) provide for any person external to the National Metrology Institute, to perform any function in respect of this Act.

18. Operating procedures of Board

- (1) The Board must meet at least four times a year.
- (2) The chairperson of the Board decides when and where the Board will meet, but a majority of Board members may request the chairperson in writing to convene a meeting at a time set out in the request.
- (3) If the chairperson and the vice-chairperson are absent from a meeting, the Board may elect another member to preside at that meeting.
- (4) The majority of the members of the Board constitute a quorum for a meeting of the Board.
- (5) Decisions of the Board require a supporting vote of a majority of members present at the meeting.
- (6) The Board must keep minutes of its proceedings and decisions.
- (7) The Board may, by resolution, make rules to further regulate its proceedings.

19. Committees

- (1) The Board may form committees to enable it to perform its functions.
- 5 (2) The Board must determine the composition, rules and procedures of committees established in terms of this section.
- (3) The Board may from time to time dissolve or reconstitute a committee.

20. Advisory Forum

- 10 (1) The Board must establish an advisory forum with a balance of interest consisting of representatives of organisations who have an interest in the matters contemplated in section 3, 5 and 6.
- (2) The Forum must advise the Board on-
 - 15 (a) matters in respect of which the National Metrology Institute could play a role;
 - (b) any other matter on which the Board requests advice.
- (3) The Board must establish a constitution and, if necessary, rules for the Forum.

EXECUTIVE MANAGEMENT

21. Appointment of Chief Executive Officer

- 20 (1) The Board, after consulting the Minister, must appoint a suitably qualified person as the Chief Executive Officer.
- (2) The Chief Executive Officer is an employee of the National Metrology Institute and is accountable to the Board.

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- (3) The Chief Executive Officer is responsible for the efficient management of the National Metrology Institute and must perform any duty assigned or delegated to him or her by the Board.
 - (4) The Chief Executive Officer holds office for an agreed term not exceeding five years and may be reappointed upon the expiry of that term of office.
 - (5) If the Chief Executive Officer is unable to fulfil his or her functions, the Board may appoint an acting Chief Executive Officer to exercise the powers and perform the functions of the Chief Executive Officer.

22. Employment contract and performance agreement

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- (1) The employment contract of the Chief Executive Officer must be in writing and must incorporate in an appropriate form the provisions of section 57 of the Public Finance Management Act.
 - (2) The Board and the Chief Executive Officer must conclude a performance agreement for the Chief Executive Officer.

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23. Appointment of staff

- (1) The Chief Executive Officer, after consulting the Board, may appoint staff to assist the National Metrology Institute in carrying out its functions.

24. Services of non employees

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- (1) The National Metrology Institute may contract for the services of any person, other than an employee, to perform any specific act or function.

25. Delegation and assignment

- (1) The Board may delegate any of its functions to the Chief Executive Officer in accordance with this section.

- (2) The Chief Executive Officer may delegate any power or assign the performance of any duty conferred or imposed upon the Chief Executive Officer by or under this Act to-
- (a) any other person with appropriate knowledge and experience who is under the control of the Chief Executive Officer; or
- (b) any other person, after consulting the Board.
- (3) A delegation or assignment under sub-sections (1) or (2) must be in writing and-
- (a) may be subject to any conditions or restrictions determined by the Board or the Chief Executive Officer;
- (b) does not prevent the exercise of that power by the Board or the Chief Executive Officer; and
- (c) may be withdrawn or amended by the Board or the Chief Executive Officer.

FINANCIAL MANAGEMENT

26. Funding and investments

- (1) The funds of the National Metrology Institute consist of-
- (a) money that is appropriated by the Parliament for that purpose;
- (b) income derived by the National Metrology Institute from its services or products;
- (c) income derived by the National Metrology Institute from its investment; and
- (d) money received from any other source.

(2) The National Metrology Institute may invest any of its funds not immediately required-

(a) subject to any investment policy that may be prescribed in terms of section 7(4) of the Public Finance Management Act; and

(b) in such manner as may be approved by the Minister.

27. Financial year and accounting

The financial year of the National Metrology Institute is from 1 April in any year to 31 March in the following year, except that the first financial year of the National Metrology Institute begins on the date that this Act comes into operation, and ends on 31 March next following that date.

GENERAL PROVISIONS

28. Offences

(1) Subject to the provisions of the Promotion of Access to Information Act, 2000

(Act No. 2 of 2000), a person commits an offence by disclosing the information that he or she obtained in the performance of any function contemplated in this Act unless—

(a) the disclosure is necessary for the administration of this Act;

(b) the disclosure is necessary for the purposes of the administration of justice; or

(c) any other person is entitled to the information.

(2) Any person who knowingly—

(a) makes or assist in making a report, return, notice or any other document to be sent to any other person, as required by this Act, that contains an untrue statement of a material fact; or

(b) omits to state a material fact on any of the documents referred to in paragraph (a), that will be sent to any other person, as required by this Act, is guilty of an offence and is liable on conviction to a fine or to imprisonment for a period not exceeding 24 months or to both a fine and such imprisonment.

(3) Any person who contravenes or who fails to comply with the requirements of this Act is guilty of an offence and is liable on conviction to a fine or to imprisonment for a period not exceeding 24 months or to both a fine and such imprisonment.

29. Act binds State

This Act binds the State

30. Repeal of laws

The laws specified in Schedule 1 and all regulations or notices promulgated or published in terms of those laws are repealed.

31. Transitional provisions

(1) For purposes of this section “effective date” means the date on which the National Metrology Institute is established as a public entity.

(2) As from the effective date:

(a) all assets, liabilities, rights and obligations of the National Metrology Laboratory are deemed to be assets, liabilities, rights and obligations of the National Metrology Institute;

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- (b) all employees of the National Metrology Laboratory are transferred to the National Metrology Institute as if section 197 of the Labour Relations Act, 1995 (Act No. 66 of 1995), applies;
 - (c) all notices, designations and certificates issued in terms of the Measuring Units and National Measuring Standards Act, 1973 (Act No. 76 of 1973) as amended by Act No 24 of 1998 are deemed to have been issued in terms of this Act; and
 - 10 (d) all regulations promulgated in terms of the Measuring Units and National Measuring Standards Act, 1973 (Act No. 76 of 1973) as amended by Act No 24 of 1998 are deemed to have been issued in terms of this Act.

32. Regulations

15 The Minister, after consultation with the National Metrology Laboratory, may make regulations regarding any matter in respect of which he or she considers it necessary or expedient to make regulations to achieve the objects of this Act.

33. Short title and commencement

This Act

is called the Measurement Units and Measurement Standards Act, 2006.

Schedule 1

No and Year of Law	Short Title	Extent of Repeal
Act 76 of 1973	Measuring Units and National Measuring Standards Act, 1973	The whole
Act 24 of 1998	Measuring Units and National Measuring Standards Amendment Act, 1998	The whole
Act 46 of 1988	Scientific Research Council Act	Section 4(3)

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MEMORANDUM ON THE OBJECTS OF THE MEASUREMENT UNITS AND MEASUREMENT STANDARDS BILL, 2006

1. BACKGROUND

- 5 1.1 Cabinet noted the dti project to restructure the South African Technical Regulatory Infrastructure and to optimise the South African Standards, Quality Assurance, Accreditation and Metrology System (SQAM) in item 4.3.2 of the minutes of the Cabinet dated 22 May 2002.
- 10 1.2 The aim of the restructuring of the South African Technical Infrastructure is to align the infrastructure with international best practice.
- 1.3 Part of this restructuring is the proposed legislative reform of the Measuring Units and National Measuring Standards Act, 1973 (Act No. 76 of 1973).
- 15 1.4 In keeping with international trends of metrology the current national metrology laboratory at the CSIR is to be elevated to a position that reflect its importance as the foundation for the entire South African measurement system and a key component of the technical infrastructure.
- 20 1.5 The National Metrology Laboratory (NML) will be re-established as a National Metrology Institute (NMI), a public entity that is independent from the CSIR.
- 1.6 The NMI will be responsible for the establishment of the national measurement standards and demonstration of their comparability to international standards and measurements. An independent NMI will enhance the technical infrastructure of the country and the region.
- 25 1.7 It would continue to be a direct link to the Metre Convention for SADC, through SADC MET, and would also provide appropriate measurement traceability not only to South Africa but also to the region.

1.8 The new landscape that is proposed for the National Metrology Institute (NMI) provides for the raising of the profile of metrology in South Africa in order to reflect its importance as the foundation for the entire South African measurement system.

5 1.9 The bill provides for the maintenance of the NMI as an internationally recognised metrology body.

1.10 The Bill makes provision for **dti's** responsibility to ensure that the NMI operates optimally in pursuit of national interest activities, that it has strategic direction and that it is coordinated.

10 1.11 The Bill has been revised following comments received from a wide range of organisations, interest groups and individuals.

2. OBJECTS OF BILL

15 The Bill is drafted in line with the modernisation of the Technical Infrastructure Policy and seeks to re-establish the National Metrology Laboratory (NML) as the National Metrology Institute (NMI), a public entity that is independent from the CSIR. The NMI will be responsible for the establishment of the national measurement standards and demonstration of their comparability to international standards and measurements.

3. ORGANISATIONAL AND PERSONNEL IMPLICATIONS

20 25 3.1 The Bill provides for transitional arrangements, including the transfer of all staff, as well as the transfer of assets and liabilities from the CSIR. The Bill also provides for the appointment of a Chief Executive Officer and a Management Board.

3.2 In the interim, the current Centre Manager, Dr Wynand Louw, will act as Chief Executive Officer.

3.3 The recruitment process for a permanent Chief Executive Officer will commence once Cabinet has approved the legislative process for the establishment of the NMI and a Management Board has been established.

5 4. FINANCIAL IMPLICATIONS FOR STATE

The dti has made budget allocations for the NMI. There will however be additional financial implications, i.e. the once-off costs associated with the separation from the CSIR, other possible costs in particular in terms of increased rental and supports services, and cost for Board members. This is estimated to be about R2 000 000. The NML currently have access to STEP funding and **the dti** will endeavour to secure continuous access to this.

5. COMMUNICATION IMPLICATIONS

The dti will implement a communication strategy to ensure that all affected parties are aware of the establishment of and services offered by the agency.

15 6. CONSTITUTIONAL IMPLICATIONS

None.

7. OTHER DEPARTMENTS/COMMITTEES/BODIES CONSULTED

National Treasury has been formally consulted in line with the PFMA on the establishment of the NMI as a public entity.

20 Other stakeholders consulted:

Department of Labour; Department of Transport; Department of Agriculture; Department of Housing; Department of Health; Department of Environmental Affairs and Tourism; Department of Minerals and Energy; Department of Science and Technology; Department of Local and Provincial Government and the
25 Presidency.

SABS, CSIR and SANAS

Industry and other interested parties

Nedlac

The Bill was also published in the *Gazette* for general public comment.

8. PARLIAMENTARY PROCEDURE

8.1 The State Law Advisers and the Department of Trade and Industry 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.

8.2 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, 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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