

REPUBLIC OF SOUTH AFRICA

**MEASUREMENT UNITS
AND MEASUREMENT
STANDARDS BILL**

*(As introduced in the National Assembly (proposed section 75); explanatory summary of
Bill published in Government Gazette No. 29170 of 31 August 2006)
(The English text is the official text of the Bill)*

(MINISTER OF TRADE AND INDUSTRY)

[B 21—2006]

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BILL

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

PREAMBLE

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 of ensuring that South Africa maintains national measurement standards and demonstrates its comparability to international standards and measurements;
- the need for support of our enterprises competing in a fast-paced global economy and for public policy objectives with regard to compliance issues in terms of health, safety and the environment; and
- that government is committed to providing a supportive legal environment for a national metrology system; and

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 provide for keeping and maintaining national measurement standards and units; and
- disseminate traceability in the South African industry,

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

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SCHEDULE

CHAPTER 1
INTERPRETATION

Definitions

1. In this Act, unless the context indicates otherwise—
- “**Board**” means the Board appointed in terms of section 10; 5
- “**CIPM**” means the International Committee of Weights and Measures (Comité International des Poids et Mesures) established under the Metre Convention;
- “**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; 10
- “**CSIR**” means the Council for Scientific and Industrial Research described in section 1 of the Scientific Research Act, 1988 (Act No. 46 of 1988);
- “**Metre Convention**” (Convention du Mètre), means the 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 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; 20
- “**Minister**” means the Minister of Trade and Industry;
- “**national measurement standard**” means a measurement standard designated in terms of section 5 as a national measurement standard;
- “**national reference measurement**” means a reference measurement designated in terms of section 6 as a national reference measurement; 25
- “**National Metrology Institute**” means the National Metrology Institute of South Africa established by section 8;
- “**Public Finance Management Act**” means the Public Finance Management Act, 1999 (Act No. 1 of 1999);
- “**quantity**” means the property of a phenomenon, body or substance to which a magnitude can be assigned; 30
- “**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);
- “**this Act**” includes any regulations made in terms of section 27; 35
- “**traceable**” means traceable in terms of sections 5(3) and 6;
- “**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;
- “**unit**” means a measurement unit published by the Minister in terms of section 2; 40
- “**use**”, in relation to a unit, means the expression of the magnitude of any quantity by means of a unit.

CHAPTER 2

NATIONAL MEASUREMENT UNITS

Units 45

2. The units in the Republic and the symbols of those units and the rules relating to the use of units and their symbols must be—
- (a) the units, the appropriate symbols and the rules of the SI as published by the Minister in the *Gazette*; and
- (b) such other units, such other symbols of those units and such rules relating to the use of those units and their symbols as the Minister may publish in the *Gazette*. 50

Prohibition of expression of magnitude of quantities and designation of units

3. (1) The Minister may by notice in the *Gazette* prohibit—
- (a) the expression, in the circumstances or for the purposes of 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; 5
 - (b) the designation, in the circumstances or for the purposes of 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. 10
- (2) A notice contemplated in subsection (1) may be expressed to apply to a specified area only and may make provision for the granting of exemptions from any of its provisions.

Equivalent of certain units

4. 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 regarded to be the equivalent of the unit in question. 15

CHAPTER 3

NATIONAL MEASUREMENT STANDARDS

National measurement standards 20

5. (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 by the National Metrology Institute;
 - (b) be regarded as the most accurate value of that national measurement standard; 25
 - 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; 30
 - (b) be so traceable that the measurement standard is related to one or more national measurement standards as contemplated in paragraph (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. 35
- (4) For the purposes of this section “calibration laboratory” means a laboratory where a person 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 realised by standards, whatever their uncertainty. 40

National reference measurements 45

6. 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; or 50
 - (ii) certified reference materials traceable to national measurement standards recognised under the CIPM Mutual Recognition Arrangement; or
 - (iii) internationally agreed references recognised through the CIPM,

must be regarded as the true value.

Certificates

7. (1) The National Metrology Institute may issue a certificate stating the outcome of a measurement or analysis regarding any matter mentioned in section 5(2) or (3) and section 6. 5

(2) The certificate referred to in subsection (1) must be signed by a person in the employ of the National Metrology Institute determined by the Board.

(3) The Board may authorise a person in the employ of the National Metrology Institute to certify a copy of a certificate contemplated in subsection (1) to be a true copy in the manner determined by the Board. 10

(4) In any criminal proceedings a document which purports to be a certificate issued and signed in accordance with subsections (1) and (2) or a copy of such certificate certified in accordance with subsection (3) must upon its production be regarded as evidence of the facts contained therein.

CHAPTER 4 15

ESTABLISHMENT OF NATIONAL METROLOGY INSTITUTE

Establishment of National Metrology Institute

8. (1) The National Metrology Institute of South Africa is hereby established.

(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. 20

(3) The National Metrology Institute—

(a) is a juristic person; and

(b) must exercise its functions in accordance with this Act.

(4) The Public Finance Management Act applies to the National Metrology Institute. 25

Functions of National Metrology Institute

9. (1) The National Metrology Institute must—

(a) maintain the units described in section (2)(a) for South Africa in accordance with units defined by the CIPM and advise the Minister on other units described in section (2)(b); 30

(b) keep and maintain all national measurement standards;

(c) arrange for an appropriate periodic comparison of the national measurement standards with the corresponding national measurement standards or references recognised as such and ensure their correction, if necessary;

(d) certify reference materials and arrange for a comparison of the related procedures and primary methods with the corresponding other national procedures and primary methods and ensure their correction, if necessary; 35

(e) ensure compliance with and validation in terms of the stipulations of the CIPM Mutual Recognition Arrangement and must effect the inclusion of the Republic's calibration and measurement capabilities in this arrangement; and 40

(f) co-ordinate and manage international, regional and bilateral interaction with other national metrology institutes and bodies affiliated to the CIPM and interact with such institutes and bodies.

(2) The National Metrology Institute may—

(a) acquire or dispose of any right in or to property, but ownership in immovable property may be acquired or disposed of only with the consent of the Minister; 45

(b) open and operate banking accounts in the name of the National Metrology Institute;

(c) insure the National Metrology Institute against— 50

(i) any loss, damage or risk;

(ii) any liability it may incur in the application of this Act;

(d) perform legal acts, including acts in association with or on behalf of any other person or organ of state;

(e) subject to subsection (3), conclude agreements with organs of state and other persons; and 55

- (f) institute or defend any legal action.
- (3) An agreement concluded in terms of subsection (2)(e) may not conflict with any international requirement binding on the National Metrology Institute.
- (4) The National Metrology Institute may—
- (a) keep and maintain the equipment necessary for bringing national measurement standards into being, certify reference materials and see to the procedures connected thereto; 5
 - (b) establish and maintain the necessary expertise and competence according to internationally acceptable standards;
 - (c) establish confidence in the accuracy of the national measurement standards by suitable and documented verification processes and by keeping the applicable records of the results; 10
 - (d) upgrade the existing measurement standards or develop such new measurement standards and reference material certification procedures in line with the requirements of commerce and industry; 15
 - (e) disseminate traceability, measurement expertise or services to South African commerce and industry by means of calibration, measurement or analysis, certified reference materials or appropriate technology and skills transfer;
 - (f) maintain close links with the CIPM and associated activities of the Metre Convention; 20
 - (g) participate and represent South Africa regionally and internationally with reference to traceability and measurement issues;
 - (h) 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; 25
 - (i) subcontract a part of its calibration, measurement or certified reference material certification activities to another laboratory with which it collaborates; and
 - (j) establish technical advisory forums to facilitate dissemination of international best practice and gather input from commerce and industry. 30

CHAPTER 5

BOARD OF NATIONAL METROLOGY INSTITUTE

Board of National Metrology Institute and its composition

- 10.** (1) The Board of the National Metrology Institute consists of—
- (a) not less than seven and not more than 12 members appointed by the Minister; 35
 - (b) the Chief Executive Officer appointed in terms of section 18 by virtue of his or her office;
 - (c) not more than two senior managers of the National Metrology Institute appointed by the Minister as executive members of the Board.
- (2) When appointing the members of the Board contemplated in subsection (1)(a), the Minister must ensure that those members— 40
- (a) are broadly representative of the demographics of the country including with regard to gender and disability; and
 - (b) have sufficient knowledge, experience or qualifications relating to the functions of the National Metrology Institute. 45
- (3) The chairperson of the Board must be selected by the members contemplated in subsection (1)(a) from amongst their number at the first meeting of the newly appointed Board and the selection must be approved by the Minister.

Term of office of members of Board

- 11.** (1) Non-executive members of the Board hold office for a period not exceeding five years and are eligible for re-appointment for one further term only.
- (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.

Disqualification of members of Board

- 12.** (1) A person may not be appointed or continue to serve as a member of the Board if that person—
- (a) is an unrehabilitated insolvent;
 - (b) has at any time been convicted of an offence involving dishonesty; 5
 - (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 unfit.
- (2) A member of the Board must vacate his or her office if the member is absent from three consecutive meetings of the Board without the prior leave of the chairperson.
- (3) The Minister may, at any time, after consulting the Board, terminate the term of office of any member of the Board if there are good reasons for doing so. 10

Conditions of appointment of members of Board

- 13.** (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 allowances payable to the members of the Board as determined by the Minister after consultation with the Minister of Finance. 15
- (3) Members who are employed by an organ of state are not entitled to remuneration and allowances but must be reimbursed by the Board for out of pocket expenses.
- (4) Non-executive members of the Board are appointed part time. 20

Meetings of Board

- 14.** (1) The Board must meet at least four times a year.
- (2) The first meeting of the Board is held at the time and place determined by the Minister.
- (3) 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. 25
- (4) If the chairperson is absent from a meeting, the Board may elect another member to preside at that meeting.

Quorum and decisions of Board 30

- 15.** (1) The majority of the members of the Board constitute a quorum for a meeting of the Board.
- (2) Decisions of the Board require the supporting vote of a majority of the members present at the meeting.
- (3) The Board must keep minutes of its proceedings and decisions. 35
- (4) The Board may, by resolution, make rules to further regulate its proceedings.

Committees of Board

- 16.** (1) The Board may form committees to enable it to perform its functions.
- (2) The Board must determine the composition, rules and procedures of committees established in terms of this section. 40
- (3) The Board may from time to time dissolve or reconstitute a committee.

Consultative forum

- 17.** (1) The Board must establish a consultative forum with representatives of organisations who have an interest in the matters contemplated in sections 2, 5 and 6.
- (2) The forum must advise the Board on— 45
- (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 adopt a constitution and, if necessary, rules for the forum.

CHAPTER 6

EXECUTIVE MANAGEMENT

Appointment of Chief Executive Officer

- 18.** (1) The Board, after consulting the Minister, must appoint a suitably qualified person as Chief Executive Officer. 5
- (2) The Chief Executive Officer is an employee of the National Metrology Institute and is accountable to the Board.
- (3) The Chief Executive Officer is responsible for the efficient management of the National Metrology Institute and must perform any function delegated to him or her by the Board. 10
- (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. 15

Employment contract and performance agreement

- 19.** (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. 20

Appointment of staff

- 20.** The Chief Executive Officer, after consulting the Board, may—
- (a) appoint staff to assist the National Metrology Institute in carrying out its functions; and 25
- (b) determine the remuneration, allowances, benefits and other terms and conditions of appointment of members of staff taking into account the Public Service Act, 1994 (Proclamation No. 103 of 1994).

Services of non-employees

- 21.** The National Metrology Institute may enter into a contract with any person other than an employee to perform any of its functions for and on behalf of the National Metrology Institute. 30

Delegation

- 22.** (1) The Board may delegate any of its functions to the Chief Executive Officer in accordance with this section. 35
- (2) The Chief Executive Officer may delegate functions entrusted to the Chief Executive Officer 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. 40
- (3) A delegation under subsection (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 any power by the Board or the Chief Executive Officer; and 45
- (c) may be withdrawn or amended by the Board or the Chief Executive Officer.

CHAPTER 7

FINANCIAL MANAGEMENT

Funds and investments

- 23.** (1) The funds of the National Metrology Institute consist of—
- (a) money that is appropriated by Parliament for that purpose; 5
 - (b) income derived by the National Metrology Institute from its services or products;
 - (c) income derived by the National Metrology Institute from its investments; and
 - (d) money received from any other source.
- (2) The National Metrology Institute may invest any of its funds not immediately required— 10
- (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.

Financial year and accounting 15

24. 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.

CHAPTER 8 20

GENERAL PROVISIONS

Offences

- 25.** (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 information that he or she obtained in the performance of any function contemplated in this Act unless— 25
- (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 30
 - (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, 35
- is guilty of an offence.
- (3) A person convicted of an offence under this section is liable to a fine or to imprisonment for a period not exceeding 24 months or to both a fine and such imprisonment.

Act binds State

- 26.** This Act binds the State. 40

Regulations

27. The Minister may make regulations regarding any ancillary or incidental administrative or procedural matter that it is necessary or expedient to prescribe for the proper implementation or administration of this Act.

Repeal of laws 45

28. Subject to section 29, the laws referred to in the second column of the Schedule are hereby repealed to the extent indicated in the third column of the Schedule.

Transitional provisions

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

(2) As from the effective date—

- (a) all rights, obligations, assets and liabilities acquired or incurred by the CSIR National Metrology Laboratory vest in the National Metrology Institute; 5
- (b) all employees of the CSIR 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), must be regarded as having been issued in terms of this Act; and 10
- (d) all regulations made in terms of the Measuring Units and National Measuring Standards Act, 1973 (Act No. 76 of 1973), must be regarded as having been made in terms of this Act. 15

Short title and commencement

30. This Act is called the Measurement Units and Measurement Standards Act, 2006, and comes into operation on a date to be fixed by the President by proclamation in the *Gazette*.

SCHEDULE*(Section 28)*

| No. and Year of Law | Short Title | Extent of Repeal | |
|----------------------------|--|-------------------------|----|
| Act No. 76 of 1973 | Measuring Units and National Measuring Standards Act, 1973 | The whole | 5 |
| Act No. 46 of 1988 | Scientific Research Council Act, 1988 | Section 4(3) | |
| Act No. 24 of 1998 | Measuring Units and National Measuring Standards Amendment Act, 1998 | The whole | 10 |

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

1. BACKGROUND

1.1 The Bill emanates from the Department of Trade and Industry project to restructure the South African Technical Regulatory Infrastructure and to optimise the South African Standards, Quality Assurance, Accreditation and Metrology System (SQAM).

1.2 The aim of restructuring the South African Technical Regulatory 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).

1.4 In keeping with international trends of metrology the current National Metrology Laboratory at the Council for Scientific and Industrial Research (CSIR) is to be elevated to a position that reflects its importance as the foundation for the entire South African measurement system and a key component of the technical infrastructure.

1.5 The CSIR National Metrology Laboratory will be re-established and re-branded as the National Metrology Institute, a juristic person that is independent from the CSIR.

1.6 The National Metrology Institute will be responsible for the establishment of national measurement standards and demonstration of their comparability to international standards and measurements.

1.7 An independent National Metrology Institute will enhance the technical infrastructure of the Republic. It will continue to be a direct link to the Metre Convention for the Southern African Development Community (SADC) through the SADC Cooperation in Metrology and will 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 provides for raising the profile of metrology in South Africa in order to reflect its importance as the foundation for the entire South African measurement system.

1.9 The Bill provides for the maintenance of the National Metrology Institute as an internationally recognised metrology body.

1.10 In terms of the Bill the Department of Trade and Industry must ensure that the National Metrology Institute operates optimally in pursuit of the national interest and that it has strategic direction and is coordinated.

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

2. OBJECTS OF BILL

2.1 The Bill seeks to re-establish the CSIR National Metrology Laboratory as the National Metrology Institute, a juristic person that is independent from the CSIR.

2.2 The National Metrology Institute will be responsible for the establishment of national measurement standards and demonstration of their comparability to international standards and measurements.

2.3 The Bill provides for transitional arrangements, which include the transfer of all staff as well as the transfer of assets and liabilities from the CSIR.

2.4 The Bill also provides for the appointment of a Chief Executive Officer and a Board for the National Metrology Institute.

3. FINANCIAL IMPLICATIONS FOR STATE

The Department of Trade and Industry has made budget allocations for the National Metrology Institute. The current baseline of R36,922 million will need to be increased to R43 million as from the 2007/2008 budget cycle in order to provide for additional financial implications associated with the establishment and restructuring of the National Metrology Institute as a juristic person.

4. CONSULTATION

National Treasury has been formally consulted in line with the Public Finance Management Act, 1999 (Act No. 1 of 1999), on the establishment of the National Metrology Institute as a juristic person.

The following stakeholders were 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 Provincial and Local Government;
- the Presidency;
- South African Bureau of Standards;
- CSIR;
- SANAS;
- Industry and other interested parties; and
- Nedlac.

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

5. PARLIAMENTARY PROCEDURE

5.1 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 procedures set out in section 74 or 76 of the Constitution applies.

5.2 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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