



MEMORANDUM

Use of Official Languages Bill, 2011

1 Purpose of this Memorandum

This Memorandum has been prepared to provide a brief background to the Use of Official Languages Bill, 2011 (“the Bill”), to record the implications of the Bill and provide a section by section explanation of the Bill.

2 Brief background to Bill

2.1 In 2003 the Department of Arts and Culture (“the Department”) drafted the National Language Policy Framework, 2003; the Implementation Plan: National Language Policy Framework, 2003 and a South African Languages Bill, 2003 after extensive consultation that began in 1995 with the appointment of the Language Task Group (LTG).

2.1.1 The implementation plan provides for the strategies that will be used in implementing language policy, structures that will be key in implementing language policy and a strategy that will be employed to accelerate the development and promotion of African Languages.

2.1.2 The Department adopted a National Language Policy having regard to the challenges faced by the national departments, national public entities and national public enterprises in respect of the management of linguistic diversity.

2.2 The South African Languages Bill, 2003 was presented to Cabinet. Cabinet did not approve the South African Languages Bill, 2003 and requested the then Minister of Arts and Culture in consultation with the Minister of Justice and Constitutional Development to investigate other non-legislative ways to regulate language use.

2.3 In 2010 Mr CJA Lourens brought an application to the North Gauteng High Court¹ to determine whether, amongst other things, national government complied with its

¹ *Cornelius Johannes Alexander Lourens and the President of the Republic of South Africa, the Minister of Arts, Culture, Science and Technology, the Minister of Justice and Constitutional Development and the Pan*

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obligations in terms of section 6 of the Constitution and specifically whether it has complied with section 6(4).

2.4 In terms of the judgment in *Lourens* the Court found that national government is failing to regulate and monitor through legislative and other measures the national government's use of official languages in terms of section 6(4) of the Constitution.

2.5 The Court found that while it could not prescribe to government how to comply with its constitutional obligation, a combination of legislative and other measures is required to meet its obligations in section 6(4) of the Constitution.

2.6 Important for this matter is the Court's interpretation of section 6(4) of the Constitution:

“The obligation which section 6(4) imposes on the national government is “[to] regulate and [to] monitor [its] use of official languages.” Although legislative measures are therefore one of the methods which the government must use to regulate and monitor its use of official languages, the adoption of a national language act is not a constitutional obligation. Therefore the court is not in a position to order the national government, represented by the respondents concerned, to adopt a national language act.”²

2.7 The Bill has been prepared in order to meet the obligation in section 6(4) of the Constitution to regulate and monitor national government's use of official languages.

2.8 The Bill recognises the diminished historic use of the indigenous languages and seeks:

2.8.1 to provide for the regulation and monitoring of use of official languages by national government for government purposes;

2.8.2 to require the adoption of a language policy by national departments, national public entities and national public enterprises;

2.8.3 to provide for the establishment and functions of a national language unit and language units established by national departments, national public entities and national public enterprises;

South African Language Board, High Court of South Africa (North Gauteng, Pretoria) Case number 49807/09, date of judgment 16 March 2010 [unreported and translated from Afrikaans to English]

² *Lourens* at page 5

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2.8.4 to provide for the monitoring of and reporting on the use of official languages by national government and to provide for intergovernmental co-ordination of language units.

3 Implications of the Bill

3.1 Constitutional implications

In terms of section 6(4) of the Constitution, national government is required to promulgate legislation to regulate and monitor the use of official languages by national government and to implement other measures to regulate and monitor the use of official languages by national government.

The Bill is drafted in response to the obligation on national government in section 6(4) of the Constitution to, by legislative measures, regulate and monitor the use of official languages by national government for purposes of government.

3.2 Legal implications

The Bill applies to national departments, national public entities and national public enterprises and will take precedence over any inconsistent provision of any other law on use of official languages by national government.

3.3 Financial implications

The Bill provides for the establishment of a national language unit and language units within the national departments, national public entities and national public enterprises. The Minister and each national department, national public entity and national public enterprise respectively must ensure that the national language unit and each language unit is provided with the human resources, administrative and other resources necessary for their effective functioning.

Each national department, national public entity and national public enterprise must make provision for the establishment, human resources and administrative and other resources of its language unit in its budget vote.

3.4 Communication implications

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

3.5 Organisational and personnel implications

It is envisaged that language units will be housed within the national departments, national public entities and national public enterprises within which they are established and each national department, national public entity and national public enterprise will be responsible to ensure that its language unit is properly staffed and resourced.

3.6 Environmental implications

None

3.7 Social implications

Implementation of the Bill will promote the Republic's official languages, promote parity of esteem and equitable treatment of the official languages of the Republic and facilitate equitable access to the services and information of national government for all South Africans.

4 Consultation

4.1 The Department has consulted the following stakeholders—

- Officials and staff involved with the language sector (institutions of higher learning: universities and technikons)
- Pan South African Languages Board and all its provincial structures (Provincial Language Committees, National Language Bodies for all official languages and all National Lexicography Units)
- National Treasury
- Department of Public Services and Administration
- Department of Justice and Constitutional Development
- Department of Basic Education
- Department of Higher Education and Training

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- All public enterprises and public entities listed in terms of Schedules to Public Finance Management Act, 1999 (Act No.1 of 1999)
 - The National Language Forum (all government language units)
 - South African Local Government Association (SALGA)

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5 Section by section explanation of the Bill

SECTION	EXPLANATION OF SECTION
Preamble	<ul style="list-style-type: none"> • The Preamble introduces the Bill and provides the general reasons and context within which the Bill has been drafted. • It is confirmed <i>inter alia</i> that the use of the Republic's official languages must be promoted and pursued in accordance with the Constitution of the Republic of South Africa, 1996. • It is reiterated that section 6(4) of the Constitution provides that national government must regulate and monitor its use of official languages by legislative and other measures.
Section 1	<p>Definitions</p> <p>Terms used repeatedly in the Bill are defined</p>
Section 2	<p>Objects of Act</p> <p>The objects are as provided in the Bill:-</p> <ul style="list-style-type: none"> (a) to regulate and monitor the use of official languages for government purposes by national government; (b) to promote parity of esteem and equitable treatment of the official languages of the Republic; (c) to facilitate equitable access to services and information of national government; and (d) to promote good language management by national government for efficient public service administration and to meet the needs of the public.
Section 3	<p>Application of the Act</p> <p>The Bill applies to national departments, national public entities and national public enterprises and will take precedence over any inconsistent provision of any other law on the use of official languages by national government.</p>
Section 4	<p>Language Policy</p> <p>Section 4(1) obliges national departments, national public entities and national public enterprises to, within 18 months, adopt a language policy on its use of official languages for government purposes. The Minister may prescribe a further period provided that it may not exceed 6 months.</p> <p>Section 4(2) details the matters that must be addressed in the language policy which includes:</p> <ul style="list-style-type: none"> • identifying at least 3 official languages for use, provided that at least 2 official languages identified must be indigenous languages of historically diminished use and status; • stipulating how official language will be used in government

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SECTION	EXPLANATION OF SECTION
Section 4	<p>communications, notices, publications etc.</p> <ul style="list-style-type: none"> • describing how the public will access the language policy; • providing a complaints mechanism to deal with complaints on the use of official languages; • describing how national government will communicate with members of the public whose language of choice is not one of the identified official languages or is South African sign language. <p>Section 4(3) obliges national departments, national public entities and national public enterprises to ensure that the language policy is available to the public on request and a summary is displayed at all offices.</p>
Section 5	<p>Establishment of national language unit</p> <p>The Minister is obliged to establish a national language unit within the Department and to ensure that the unit is provided with human resources, administrative resources and other resources necessary for its effective functioning.</p>
Section 6	<p>Functions of national language unit</p> <p>This section details the functions of the national language unit which are:</p> <ul style="list-style-type: none"> • to advise the Minister on the functions of language units and on policy and strategy: <ul style="list-style-type: none"> - to regulate and monitor the use of official languages by national government for government purposes; - to promote parity of esteem and equitable treatment of the official languages of the Republic and facilitate equitable access to the services and information of national government; and - to promote good language management by national government. • to liaise with and promote the general co-ordination of language units. • The national language unit performs the functions of a language unit for the Department (see section 8).
Section 7	<p>Establishment of language units in national departments, national public entities and national public enterprises</p> <p>Every national department, national public entity and national public enterprise is obliged to establish a language unit and to ensure that the unit is provided with human resources, administrative resources and other resources necessary for its effective functioning.</p>
Section 8	<p>Functions of language units in national departments, national public entities and national enterprises</p> <p>This section details the functions that each language unit will perform for its national department, public entity or national enterprise, which includes:</p> <ul style="list-style-type: none"> • advising the responsible accounting officer or authority on the

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SECTION	EXPLANATION OF SECTION
	<p>development, adoption and implementation of its language policy;</p> <ul style="list-style-type: none"> • monitoring and assessing its use of official languages; • monitoring and assessing compliance with its language policy; • compiling reports to be submitted to the Minister and the Pan South African Language Board (see section 9); • promoting parity of esteem and equitable treatment of the official languages of the Republic and facilitating equitable access to the services and information of national department, national public entity or national public enterprise concerned; and • promoting good language management.
Section 9	<p>Monitoring and reporting on use of official languages</p> <p>Section 9(1) obliges the Minister to monitor the use of official languages for government purposes by national departments, national public entities and national public enterprises.</p> <p>To enable the Minister to perform this function, section 9(2) obliges every national department, national public entity and national public enterprise to submit reports in the prescribed form to the Minister and the Pan South African Language Board annually on-</p> <ul style="list-style-type: none"> • the activities of its language unit; • the implementation of its language policy; • any complaints received regarding its use of official languages and how these complaints were dealt with; and • any other matter that the Minister may prescribe <p>Section 9(4) empowers the Minister to require any national department, national public entity or national public enterprise to submit a report to the Minister on its use of official languages at any time.</p> <p>Section 9(5) empowers the Minister to instruct a national department, national public entity or national public enterprise to comply with the Act, within determined timeframes.</p>
Section 10	<p>Annual report to National Assembly</p> <p>The Minister is obliged to table in the National Assembly, on an annual basis, a report on the status and use of official languages for government purposes by national government, and on any exemptions granted to a national public entity or national public enterprise (see section 12).</p>
Section 11	<p>Intergovernmental forums on use of official languages</p> <p>In Section 11(a) the Minister is empowered to establish intergovernmental forums to:</p> <ul style="list-style-type: none"> • promote general co-ordination, co-operation and consultation between national departments, national public entities and national enterprises on

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SECTION	EXPLANATION OF SECTION
	<p>the use of official languages for government purposes;</p> <ul style="list-style-type: none"> • co-ordinate, align and monitor the implementation of language policies; and • perform any other functions that the Minister may prescribe by regulation. <p>Section 11(b) empowers the Minister to determine the composition, terms of reference of such forums, convene its meeting and determine any other necessary matter.</p>
Section 12	<p>Exemption from application of section 7</p> <p>Section 12(1) provides that a national public entity or national public enterprise listed in Schedule 3 Parts A or B of the Public Finance Management Act, 1999 may apply to the Minister to be exempt from establishing a language unit.</p> <p>Section 12(2) empowers the Minister, on his own accord, to exempt a national public entity or national public enterprise listed in schedule 3 Part A or B of the PFMA from establishing a language unit.</p> <p>The application must be in the prescribed form and manner and if exempted, the public entity or enterprise must assign a senior employee to perform the functions of a language unit.</p>
Section 13	<p>Regulations</p> <p>The Minister, in consultation with the Pan South African Language Board, is empowered to make regulations on matters requiring regulations in terms of the Act.</p>
Section 14	<p>Short title and commencement</p> <p>This Act is called the Use of Official Languages Act, 2011 and comes into operation on a date fixed by the President by proclamation in the <i>Gazette</i>.</p>

6 Parliamentary procedure

The State Law Advisors and the Department of Arts and Culture are of the opinion that this Bill must be dealt with in accordance with parliamentary procedure established by section 75(1) of the Constitution since its provisions deal with national government's use of official languages for government purposes as stated in section 6(4) of the Constitution.

The State Law Advisors are of the opinion that it is necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18 (1)(a) of the Traditional Leadership and Governance Framework Act (Act No. 41 of 2003) since language rights are cross cutting and do impact on customary law or customs of traditional communities of traditional communities.

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7 Recommendation

The Department recommends that the Bill be adopted.