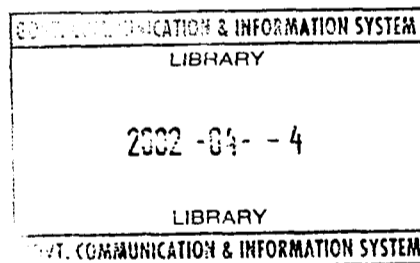


REPUBLIC OF SOUTH AFRICA

**COMMISSION FOR THE
PROMOTION AND PROTECTION
OF THE RIGHTS OF CULTURAL,
RELIGIOUS AND LINGUISTIC
COMMUNITIES BILL**

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

(MINISTER FOR PROVINCIAL AND LOCAL GOVERNMENT)



[B 62B—2001]

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BILL

In giving effect to the provisions of the Constitution—

- * to provide for the composition of the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities;
- * to provide for additional functions of the Commission;
- * to provide for the convening of a national consultative conference;
- * to provide for the establishment and recognition of community councils; and
- * to provide for matters connected therewith.

PREAMBLE

WHEREAS the South African nation consists of a diversity of cultural, religious and linguistic communities;

AND WHEREAS past policies have bequeathed a legacy of division and inequality between these communities;

AND WHEREAS the Constitution seeks to—

- * heal these divisions of the past;
- * establish a non-racial and non-sexist society based on democratic values, social justice and fundamental human rights;
- * promote equality;
- * promote respect for, and the protection of, the rights of cultural, religious and linguistic communities; and
- * promote unity in our diversity;

AND WHEREAS the Constitution has created a range of institutional mechanisms to ensure the stability of the democratic order, including a Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities;

AND WHEREAS the Commission in fulfilling its constitutional task should play a key role in assisting with the building of a truly united South African nation bound by a common loyalty to our country and all our people;

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

PART I: INTERPRETATION AND ADMINISTRATION OF ACT

Definitions

1. In this Act, unless the context indicates otherwise—

“Commission” means the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities referred to in section 3; “community council” means a voluntary association of persons or community organisations based on the principle of freedom of association and which

- represents a cultural, religious or linguistic community and includes a cultural council envisaged by section 185(1)(c) of the Constitution;
- “constitutional institution” means an institution listed in Schedule 1 to the Public Finance Management Act, 1999 (Act No. 1 of 1999);
- “Minister” means the member of Cabinet contemplated in section 2; 5
- “national consultative conference” means a national consultative conference convened under section 24;
- “organ of state” means an organ of state as defined in section 239 of the Constitution;
- “prescribe” means prescribe by a regulation made in terms of section 39; 10
- “this Act” includes any regulation made in terms of section 39.

Administration of Act

2. This Act is administered by a member of the Cabinet designated by the President.

PART 2: STATUS, OBJECTS, POWERS AND FUNCTIONS OF COMMISSION

Status of Commission 15

3. The Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities referred to in section 181(1)(c) of the Constitution—

- (a) is independent;
- (b) is a juristic person; and 20
- (c) must be impartial and must exercise its powers and perform its functions without fear, favour or prejudice.

Objects of Commission

4. The objects of the Commission are—
- (a) to promote respect for and further the protection of the rights of cultural, religious and linguistic communities; 25
 - (b) to promote and develop peace, friendship, humanity, tolerance and national unity among and within cultural, religious and linguistic communities, on the basis of equality, non-discrimination and free association;
 - (c) to foster mutual respect among cultural, religious and linguistic communities; 30
 - (d) to promote the right of communities to develop their historically diminished heritage; and
 - (e) to recommend the establishment or recognition of community councils in accordance with section 36 or 37.

Powers and functions of Commission 35

5. (1) The Commission may do all that is necessary or expedient to achieve its objects referred to in section 4, including to—

- (a) conduct information and education programmes to promote public understanding of the objects, role and activities of the Commission;
- (b) conduct programmes to promote respect for and further the protection of the rights of cultural, religious and linguistic communities; 40
- (c) assist in the development of strategies that facilitate the full and active participation of cultural, religious and linguistic communities in nation-building in South Africa;
- (d) promote awareness among the youth of South Africa of the diversity of cultural, religious and linguistic communities and their rights; 45
- (e) monitor, investigate and research any issue concerning the rights of cultural, religious and linguistic communities;
- (f) educate, lobby, advise and report on any issue concerning the rights of cultural, religious and linguistic communities; 50
- (g) facilitate the resolution of friction between and within cultural, religious and linguistic communities or between any such community and an organ of state where the cultural, religious or linguistic rights of a community are affected;

- (h) receive and deal with requests related to the rights of cultural, religious and linguistic communities;
 - (i) make recommendations to the appropriate organ of state regarding legislation that impacts, or may impact, on the rights of cultural, religious and linguistic communities; 5
 - (j) establish and maintain databases of cultural, religious and linguistic community organisations and institutions and experts on these communities; and
 - (k) bring any relevant matter to the attention of the appropriate authority or organ of state, and, where appropriate, make recommendations to such authority or organ of state in dealing with such a matter. 10
- (2) The Commission may, in order to perform its functions properly—
- (a) determine its own staff establishment and the terms and conditions of employment for its staff within a policy framework determined by the Minister;
 - (b) appoint employees and seconded personnel to posts on its staff establishment; 15
 - (c) obtain the services of any person by agreement or appropriate arrangement, including the services of any national or provincial department or functionary or any institution, to perform any specific task or function;
 - (d) 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; 20
 - (e) open and operate its own bank accounts, subject to the Public Finance Management Act, 1999 (Act No. 1 of 1999);
 - (f) insure itself against any loss, damage, risk or liability;
 - (g) perform legal acts, or institute or defend any legal action in its own name;
 - (h) engage in any lawful activity, whether alone or together with any other organisation in the Republic or elsewhere, aimed at promoting the objects of the Commission; 25
 - (i) interact and co-operate with foreign institutions performing similar functions to those of the Commission; and
 - (j) do anything that is incidental to the performance of its functions. 30

Cooperation between Commission and other constitutional institutions and organs of state

6. (1) The Commission may—
- (a) make appropriate arrangements with another constitutional institution or an organ of state to assist the Commission in the performance of any of its functions in so far as such institution or organ has the power to assist the Commission; and 35
 - (b) delegate to a constitutional institution or organ of state with which it has made arrangements any of its powers that may be necessary for the rendering of the agreed assistance. 40
- (2) The Commission must co-operate with other constitutional institutions and organs of state where the functions of the Commission overlap with those of such other constitutional institutions or organs of state.
- (3) The Commission may in terms of section 185(3) of the Constitution report any matter that falls within its functions and powers to the South African Human Rights Commission for investigation. 45

Investigations by Commission or investigating committee

7. (1) The Commission may conduct an investigation in terms of section 5(1)(e) itself or may designate one or more Commission members or other persons as an investigating committee to conduct the investigation on its behalf. 50
- (2) For purposes of an investigation, the Commission or an investigating committee may—
- (a) by notice in writing summon a person to appear before the Commission or the committee, as the case may be—
 - (i) to give evidence; or 55
 - (ii) to produce a document available to that person and specified in the summons;
 - (b) call any person present at a meeting, whether summoned or not—

- (i) to give evidence before the Commission or committee, as the case may be; or
- (ii) to produce a document in that person's custody at the meeting;
- (c) administer an oath or solemn affirmation to a person contemplated in paragraph (b); 5
- (d) question any person contemplated in paragraph (c) or have such a person questioned by a person designated by the Commission or committee, as the case may be; and
- (e) retain for a reasonable period a document produced in terms of paragraph (b)(ii). 10

(3) If an investigating committee has been appointed to conduct an investigation on behalf of the Commission, the committee must report and make recommendations to the Commission in respect of the investigation at the completion of the investigation.

Reporting by Commission

8. (a) The Commission must report annually to the National Assembly on its activities and the performance of its functions. 15

(b) Copies of the report referred to in paragraph (a) must also be distributed to persons and institutions referred to in section 26(1).

PART 3: COMPOSITION AND MEMBERSHIP OF COMMISSION

Composition 20

9. (1) The Commission consists of—
- (a) a Chairperson appointed by the President in terms of section 12; and
 - (b) no fewer than 11 and no more than 17 other members appointed by the President in accordance with the procedure set out in section 11. 25
- (2) The President—
- (a) must determine the number of members to be appointed to the Commission in terms of subsection (1)(b), but may, when appointing members for a new term of the Commission, increase the number so determined after the names of the selected persons have been submitted in terms of section 11(3)(d); and
 - (b) may alter the number determined in terms of paragraph (a) from time to time, but may reduce the number only when appointing members for a new term of the Commission. 30
- (3) The Commission must be composed in such a way that it—
- (a) is at least broadly representative of the main cultural, religious and linguistic communities in South Africa; 35
 - (b) broadly reflects the gender composition of South Africa; and
 - (c) collectively possesses sufficient knowledge and experience concerning issues relevant to—
 - (i) the promotion and protection of the rights of cultural, religious and linguistic communities; and 40
 - (ii) nation-building.

Qualifications for membership

10. (1) A member of the Commission must—
- (a) be a South African citizen;
 - (b) be a fit and proper person to hold office as a member of the Commission; and 45
 - (c) subscribe to the objects of the Commission set out in section 4.
- (2) The following persons are disqualified from becoming or remaining a member of the Commission:
- (a) A person who on any of the grounds set out in section 47(1)(c), (d) or (e) of the Constitution is not eligible to be a member of the National Assembly; 50
 - (b) a person who fails to resign as provided for in section 16(3)(c);
 - (c) a person who has been removed from office in terms of section 17; or
 - (d) a person who has been convicted of a crime or an offence in respect of which a court has determined that hatred based on race, ethnicity, gender or religion played a role. 55

Procedure for appointment of members

11. (1) Whenever it is necessary to appoint the members of the Commission contemplated in section 9(1)(b), the Minister must—
- (a) through advertisements in the media, nationally and in each of the provinces, and, where necessary, by other means, invite organisations or individuals within the cultural, religious and linguistic communities of South Africa to nominate persons complying with section 10 for appointment to the Commission; 5
 - (b) take further steps to invite organisations and individuals within the cultural, religious and linguistic communities of South Africa to nominate persons complying with section 10 for appointment to the Commission if the initial nominations as a result of advertisements or invitations referred to in paragraph (a) would not meet the requirements of section 9(3); 10
 - (c) compile a list of the names of persons nominated in respect of each of the various cultural, religious and linguistic communities, setting out the prescribed particulars of each individual nominee; and 15
 - (d) appoint a selection panel consisting of persons who command public respect for their fair-mindedness, wisdom and understanding of issues concerning South African cultural, religious and linguistic communities.
- (2) Any nomination made pursuant to an advertisement in terms of subsection (1)(a) or an invitation in terms of subsection (1)(b) must be supported by— 20
- (a) the personal details of the nominee;
 - (b) particulars of the nominee's involvement in cultural, religious and linguistic affairs, including a list of the cultural, religious and linguistic organisations of which that nominee is a member, an office-bearer or in which that nominee is an active participant; 25
 - (c) particulars of the nominee's knowledge and experience concerning issues relevant to—
 - (i) the promotion and protection of the rights of cultural, religious and linguistic communities; and 30
 - (ii) nation-building; and
 - (d) any other information that may be prescribed.
- (3) The selection panel must—
- (a) select persons who qualify to be members of the Commission and who would be most suited to serve on the Commission; 35
 - (b) select persons whose appointment would meet the requirements of section 9(3);
 - (c) select from the list compiled in terms of subsection (1)(c) at least one and a half times the number of members to be appointed as a result of—
 - (i) a new term of the Commission; 40
 - (ii) an increase in the number of members contemplated in section 9(1)(b); or
 - (iii) a vacancy; and
 - (d) submit the names of the selected persons to the President together with reasons why they were selected.
- (4) The President must— 45
- (a) appoint the members of the Commission from the names of the selected persons submitted in terms of subsection (3)(d); and
 - (b) comply with section 9(3) when making the appointments.

Chairperson

12. (1) The President must appoint a member of the Commission or another person satisfying the qualifications set out in section 10 as the Chairperson of the Commission. 50
- (2) The person appointed as the Chairperson of the Commission must be a fit and proper person to hold office as Chairperson.
- (3) The President may appoint a Deputy Chairperson from the ranks of the Commission. 55

Term of Commission

13. (1) The term of the Commission is five years.

(2) The Chairperson and the other members of the Commission are appointed for one term of the Commission, but may be reappointed at the end of that term for one further term only.

(3) If the number of members contemplated in section 9(1)(b) is increased during a term, the additional member or members are appointed for the remaining part of the current term. 5

Conditions of appointment

14. (1) The Minister, with the concurrence of the Minister of Finance, determines the conditions of appointment of the Chairperson, the Deputy Chairperson and the other members of the Commission, taking into account the conditions of appointment of members of other constitutional institutions. 10

(2) The members of the Commission are appointed in a part-time capacity, but the Chairperson, Deputy Chairperson and not more than three other members may be appointed in a full-time capacity.

Conduct of members 15

15. (1) A member of the Commission—

- (a) must perform the functions of office—
 - (i) in the spirit of furthering peace, friendship, humanity, tolerance and national unity among and within cultural, religious and linguistic communities, on the basis of equality, non-discrimination and free association; 20
 - (ii) in good faith; and
 - (iii) without fear, favour or prejudice;
- (b) must disclose to the Commission any personal or private business interest which that member or that member's spouse, partner or close family member may have in any matter before the Commission, and must withdraw from the proceedings of the Commission when that matter is considered, unless the Commission decides that the member's interest in the matter is trivial or irrelevant; 25
- (c) may not use the position or privileges of a member for private gain or to benefit another person improperly; and 30
- (d) may not act in any other way that compromises the credibility, impartiality, independence or integrity of the Commission.

(2) Any member of the Commission who contravenes or fails to comply with subsection (1) is guilty of misconduct. 35

Termination of membership

16. (1) A person ceases to be a member of the Commission when that person—

- (a) is no longer eligible in terms of section 10 to be a member;
- (b) resigns; or
- (c) is removed from office in terms of section 17. 40

(2) A member may resign after giving at least three months notice in writing to the President, but the President may accept a shorter period in a specific case.

(3) A member is regarded as having resigned if that member—

- (a) accepts nomination for the National Assembly, the National Council of Provinces, a provincial legislature or a municipal council; 45
- (b) is appointed as an office bearer of a political party; or
- (c) is an office bearer of a political party, a member of the National Assembly, a permanent delegate to the National Council of Provinces, a member of a provincial legislature or a member of a municipal council and fails to resign from such office within 30 days of having been appointed as a member of the Commission. 50

Removal from office

17. (1) A member of the Commission may be removed from office, but only if a committee of the National Assembly finds the member guilty of misconduct or rules that the member is incompetent or incapable of performing a member's functions, and the 55

National Assembly, in accordance with section 194(2)(b) of the Constitution, adopts a resolution calling for that member's removal from office.

- (2) The President—
- (a) may suspend a member of the Commission from office at any time after the start of the proceedings of a committee of the National Assembly for the removal of that member; and 5
 - (b) must remove the member from office upon adoption by the National Assembly of the resolution calling for that member's removal. 15

Filling of vacancies

18. (1) In the event of a vacancy occurring in the office of— 10
- (a) Chairperson, the vacancy is filled by the President in terms of section 12; and
 - (b) a member contemplated in section 9(1)(b), the vacancy is filled by following the procedure contemplated in section 11.
- (2) Any person appointed to fill a vacancy holds office for the unexpired portion of the vacating member's term. 15

PART 4: OPERATION OF COMMISSION

Meetings

19. (1) The Chairperson of the Commission decides when and where the Commission meets, but must convene a meeting within 30 days after the receipt of a request supported by a majority of the members to convene a meeting of the Commission. 20
- (2) The Commission must meet at least quarterly.
- (3) The Chairperson or, in the absence of the Chairperson, the Deputy Chairperson presides at meetings of the Commission, but if both are absent from a meeting, the members present must elect another member to preside at the meeting.

Procedures 25

20. The Commission may determine its own procedure, with due regard to the principles of transparency.

Decisions

21. (a) The Commission must take decisions in a consensus-seeking manner that gives effect to the principle of unity in diversity as reflected in the Constitution. 30
- (b) If the Commission fails to reach consensus on a question before the Commission, a decision on the question can only validly be taken by a supporting vote of at least the majority of the total number of the members of the Commission.

Committees

22. (1) The Commission may— 35
- (a) establish one or more committees consisting of members only or members and staff or other persons, to assist the Commission in the performance of its functions; and
 - (b) dissolve a committee at any time.
- (2) The Commission— 40
- (a) must determine the functions of a committee;
 - (b) must appoint a member of a committee as the chairperson of the committee;
 - (c) may remove a member of a committee at any time; and
 - (d) may determine a committee's procedure.

Delegation of powers and assignment of duties 45

23. (1) The Commission may—
- (a) delegate any of the Commission's powers to— 50
 - (i) a member of the Commission;
 - (ii) a member of the Commission's staff; or
 - (iii) a committee of the Commission; and

- (b) assign the performance of any of the Commission's duties to any such member, staff member or committee.
- (2) A delegation or assignment in terms of subsection (1)—
 - (a) is subject to such conditions and directions as the Commission may impose; and 5
 - (b) does not divest the Commission of responsibility for the exercise of the power or the performance of the duty.
- (3) The Commission may confirm, vary or revoke any decision taken in consequence of a delegation or assignment, but no variation or revocation of a decision may detract from any rights that may have accrued as a result of the decision. 10

PART 5: NATIONAL CONSULTATIVE CONFERENCE

Convening

- 24. (1) (a) The Commission must convene two national consultative conferences during every term of the Commission, the first of which must take place within the first 12 months of a new term of the Commission. 15
- (b) The Minister must be consulted if the Commission needs to convene more than two national consultative conferences during a particular term of the Commission.
- (2) The Commission may generate funding for a national consultative conference in addition to money appropriated for that purpose by Parliament. 20

Purpose

- 25. The purpose of a national consultative conference is to provide a forum for—
 - (a) the consideration of—
 - (i) a report by the Commission on its activities, accomplishments and challenges; and
 - (ii) any recommendations of the Commission; 25
 - (b) the evaluation of progress in South Africa with regard to—
 - (i) the promotion of respect for and the furthering of the protection of the rights of cultural, religious and linguistic communities; and
 - (ii) the furthering of peace, friendship, humanity, tolerance and national unity among and within cultural, religious and linguistic communities, on the basis of equality, non-discrimination and free association; 30
 - (c) the formulation of requests and recommendations to the Commission concerning matters mentioned in paragraph (b)(i) or (ii);
 - (d) the discussion of resolutions before the conference concerning requests to, and priorities for, the Commission; and 35
 - (e) promoting appreciation for cultural, religious and linguistic diversity.

Composition

- 26. (1) A national consultative conference may comprise such persons as the Commission may invite, but must include—
 - (a) members of the Commission; 40
 - (b) delegates from cultural, religious and linguistic communities;
 - (c) delegates from every community council recognised in terms of section 37;
 - (d) delegates from the National House of Traditional Leaders, the South African Human Rights Commission, the Pan South African Language Board, the Commission on Gender Equality and the National Youth Commission; 45
 - (e) delegates from the national government designated by the Minister;
 - (f) delegates from each provincial government designated by the Premier of the province concerned; and
 - (g) delegates designated by organised local government.
- (2) The Commission must— 50
 - (a) through advertisements in the media, nationally and in each of the provinces, invite cultural, religious and linguistic communities to nominate delegates representing those communities to a national conference;
 - (b) take further steps to invite organisations and individuals in order to ensure broad representation in respect of delegates referred to in subsection (1)(b). 55
- (3) The Commission, after consultation with the Minister, may—

- (a) determine the maximum number of delegates to a national consultative conference; and
 - (b) determine the maximum number of delegates that may be designated or invited in terms of subsection (1)(d), (e), (f) and (g).
- (4) The number of delegates designated or invited in terms of subsection (1)(d), (e), (f) and (g) may not exceed one-third of the maximum number of delegates to a national consultative conference. 5
- (5) Any institution or body sending delegates to a conference must give due consideration to gender balance in the selection of delegates.

Procedures 10

27. The Commission determines—
- (a) the agenda of a national consultative conference; and
 - (b) the procedures to be followed at a national consultative conference, but the person presiding at a session of a conference may give a ruling on any matter that may arise during that session. 15

Chairperson

28. The Chairperson of the Commission or, in the absence of the Chairperson, the Deputy Chairperson or another member of the Commission elected by the Commission, presides at any session of a national consultative conference.

Resolutions 20

29. The person presiding at a session of a national consultative conference must submit any resolution adopted by the conference to the Commission for consideration.

PART 6: ADMINISTRATIVE AND FINANCIAL MATTERS

Appointment of chief executive officer

30. (1) The Commission must appoint a person as the chief executive officer of the Commission. 25
- (2) The chief executive officer holds office—
- (a) for an agreed term not exceeding five years, but which may be renewed;
 - (b) subject to the terms and conditions applicable generally to employees of the Commission; and 30
 - (c) on the terms and conditions set out in a written employment contract which must include terms and conditions setting performance standards.

Functions of chief executive officer

31. (1) The chief executive officer is the accounting officer of the Commission.
- (2) The chief executive officer is responsible for— 35
- (a) the formation and development of an efficient administration;
 - (b) the organisation, control and management of all staff, including persons seconded to the Commission from any organ of state;
 - (c) the maintenance of discipline in respect of the staff; and
 - (d) the carrying out of the decisions of the Commission. 40
- (3) As accounting officer the chief executive officer is responsible for—
- (a) all income and expenditure of the Commission;
 - (b) all the Commission's assets and the discharge of all the liabilities of the Commission; and
 - (c) proper and diligent compliance with the Public Finance Management Act, 45 1999 (Act No. 1 of 1999).

Conditions of employment of employees

32. (1) An employee of the Commission is employed subject to the terms and conditions of employment determined by the Commission.

(2) The terms and conditions must comply with the basic values and principles set out in section 195 of the Constitution.

(3) Persons in the public service or other state institutions seconded to the Commission must perform their functions under the control and directions of the chief executive officer of the Commission. 5

Pension rights

33. (1) Any person appointed as an employee of the Commission may become a member of the Government Employees' Pension Fund contemplated in section 2 of the Government Employees' Pension Law, 1996 (Proclamation No. 21 of 1996).

(2) An employee of the Commission who becomes a member of that pension fund is entitled to pension and retirement benefits as if that person were an official in the public service. 10

Funding

34. (1) The Commission is entitled to money appropriated annually by Parliament to enable it to perform its functions effectively. 15

(2) For purposes of subsection (1), the Commission—

(a) must submit to the Minister during each financial year, but before a date set by the Minister, estimates of the Commission's income and expenditure for the next financial year; and

(b) may submit to the Minister at any time during a financial year estimates of the Commission's income and expenditure supplementary to those mentioned in paragraph (a). 20

(3) The Commission may seek to acquire gifts, donations or sponsorships to assist the Commission with the achievement of its objects, but such gifts, donations or sponsorships must be dealt with in accordance with the Public Finance Management Act, 1999 (Act No. 1 of 1999), and any regulations and instructions made and issued under that Act. 25

(4) When submitting the estimates the Commission must disclose, in accordance with the Public Finance Management Act, 1999, full particulars of any income that has accrued, or is expected to accrue, to the Commission from a source other than an appropriation by Parliament. 30

(5) The Commission must refund to the National Revenue Fund any money paid to the Commission in terms of subsection (1) that has not been used at the end of a financial year, unless otherwise agreed to by the Minister of Finance.

Audit 35

35. The Auditor-General must audit the accounts and financial records of the Commission.

PART 7: COMMUNITY COUNCILS

Recommendation of establishment of community councils

36. (1) Persons belonging to a cultural, religious or linguistic community may form, join and maintain cultural, religious and linguistic associations and other organs of civil society as envisaged in section 31 of the Constitution. 40

(2) The Commission may recommend to a community, which is not organised, to initiate and establish a community council at a provincial or national level if the establishment of such a council would be conducive to— 45

(a) the promotion and protection of the rights of such a community; and

(b) the promotion and development of peace, friendship, humanity, tolerance and national unity among and within the different communities in South Africa.

Recognition of community councils

37. (1) A community council envisaged in section 36(1) or (2) may, in the prescribed manner, apply to the Commission for recognition. 50

(2) The Commission may in writing recognise a community council for purposes of participation in a national consultative conference and section 38.

(3) A community council recognised in terms of subsection (2) may apply to the Commission or any other organ of state for financial assistance.

Aims of community councils 5

38. (1) The aims of a community council recognised in terms of section 37 should be to—

- (a) preserve, promote and develop the culture, religion or language of the community for which it is recognised; or
- (b) advise the Commission on, and assist the Commission in, matters concerning the achievement of the objects of the Commission. 10

PART 8: MISCELLANEOUS MATTERS

Legal proceedings against Commission

39. (1) The State Liability Act, 1957 (Act No. 20 of 1957), applies with the necessary changes in respect of the Commission, and in any such application a reference in that Act to the Minister of the department concerned must be construed as a reference to the Chairperson of the Commission. 15

(2) No person, including the Commission, is liable for anything done or omitted in good faith when exercising a power or performing a duty in terms of this Act.

Regulations 20

40. The Minister, after consultation with the Commission, may make regulations regarding any matter—

- (a) that may or must be prescribed in terms of this Act; and
- (b) that the Minister considers necessary or expedient to prescribe in order that the objects of the Commission may be achieved. 25

Offences and penalties

41. (1) A person commits an offence if that person—

- (a) wilfully disrupts the proceedings of the Commission, or a committee of the Commission, or a session of a national consultative conference;
- (b) wilfully hinders, obstructs or threatens members of the Commission or of a committee of the Commission, or delegates to a national consultative conference, in the exercise of their powers or the performance of their duties in terms of this Act; 30
- (c) does anything calculated to influence the Commission or a committee of the Commission improperly in its consideration of a matter; 35
- (d) after having been summoned in terms of section 7(2)(a) fails—
 - (i) to be present at a meeting of the Commission or an investigating committee at the time and place specified in the summons; or
 - (ii) to remain present until excused by the Commission or committee; or
- (e) after having been called in terms of section 7(2)(b) refuses— 40
 - (i) to appear before the Commission or the committee;
 - (ii) to answer any question; or
 - (iii) to produce a document specified in the summons, or in that person's custody at the meeting.

(2) Any person convicted of an offence in terms of subsection (1) is liable to a fine or to imprisonment for a period not exceeding one year, or to both a fine and such imprisonment. 45

Short title and commencement

42. This Act is called the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities Act, 2002, and takes effect on a date determined by the President by proclamation in the *Gazette*. 50

**MEMORANDUM ON THE OBJECTS OF THE COMMISSION
FOR THE PROMOTION AND PROTECTION OF THE
RIGHTS OF CULTURAL, RELIGIOUS AND LINGUISTIC
COMMUNITIES BILL**

1. The Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities Bill, 2001, gives effect to the provisions of sections 181, 185 and 186 of the Constitution which established, as one of the institutions strengthening constitutional democracy, a Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities ("the Commission").

2. The Bill seeks to regulate the composition and functioning of the Commission. It is proposed that the Commission be composed of a chairperson and no fewer than 11 and no more than 17 other members appointed by the President in accordance with a procedure set out in the Bill, and in such a way that the Commission is broadly representative of the main cultural, religious and linguistic communities in South Africa and broadly reflects the gender composition of South Africa. In terms of the Bill, the Commission must—

- (a) promote respect for and further the protection of the rights of cultural, religious and linguistic communities;
- (b) promote and develop peace, friendship, humanity, tolerance and national unity among and within cultural, religious and linguistic communities, on the basis of equality, non-discrimination and free association;
- (c) foster mutual respect among cultural, religious and linguistic communities;
- (d) promote the right of communities to develop their historically diminished heritage; and
- (e) recommend the establishment or recognition of community councils.

To achieve the above the Commission is empowered—

- (a) to monitor, investigate, research, educate, lobby, advise and report on any issue concerning the rights of cultural, religious and linguistic communities; and
- (b) to bring any relevant matter to the attention of the appropriate authority.

3. It is also proposed that the Commission must convene two national consultative conferences during every term of the Commission consisting of delegates from the various cultural, religious and linguistic communities in South Africa and governmental and non-governmental role players. The purpose of the national consultative conference will mainly be to provide a forum for the discussion of matters concerning the Commission, and the evaluation of progress in South Africa in the furtherance of peace, friendship, humanity, tolerance and national unity among and within cultural, religious and linguistic communities.

4. To avoid overlap with the functions of other Constitutional institutions, the Bill proposes ways for integrated co-operation between these institutions.

5. CONSULTATION

The Bill has been drafted after a comprehensive consultation process entailing the following:

- * Political debates in Parliament and in the provincial legislatures;
- * Public hearings in the provinces;
- * Submissions to Government; and
- * Two national consultative conferences.

A Technical Committee consisting of 15 persons was appointed by the Minister for Provincial and Local Government, in consultation with the President, to assist in finalising the Bill. The Committee considered submissions and held regional consultations in co-operation with the provincial legislatures in all nine provinces.

6. FINANCIAL IMPLICATIONS FOR STATE

The National Treasury has appropriated the following funds in respect of the Commission:

- Year 2002-2003: R8,9 million.
- Year 2003-2004: R9,1 million.
- Year 2004-2005: R9,7 million.

7. PARLIAMENTARY PROCEDURE

The State Law Advisers and the Department of Provincial and Local Government are of the opinion that this Bill must be dealt with in accordance with the procedure prescribed by section 75 of the Constitution since it deals with the composition and functions of a Constitutional institution which in terms of sections 185 and 186 of the Constitution must be regulated by national legislation.