

REPUBLIC OF SOUTH AFRICA

NATIONAL RESEARCH FOUNDATION AMENDMENT BILL

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

(MINISTER OF SCIENCE AND TECHNOLOGY)

[B 23B—2017]

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GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from existing enactments.

 Words underlined with a solid line indicate insertions in existing enactments.

BILL

To amend the National Research Foundation Act, 1998, so as to delete and insert certain definitions; to provide for the Minister to determine national policies and issue policy guidelines for implementation; to extend the functions, powers and duties of the Foundation; to empower the Minister to make regulations relating to the determination of national research facilities; to provide for the withdrawal of the determination or transfer of a national research facility; to empower the Minister to declare a research institution and its eligibility to receive funding; to make certain textual alterations; to provide for the liquidation of the Foundation; to delete certain inappropriate or obsolete provisions; and to provide for matters connected therewith.

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

Amendment of section 1 of Act 23 of 1998, as amended by section 19 of Act 16 of 2011

- 1.** Section 1 of the National Research Foundation Act, 1998 (Act No. 23 of 1998) 5
(hereinafter referred to as the principal Act), is hereby amended—
- (a) by the insertion after the definition of “chief executive officer” of the following definition:
 “**‘Department’** means the Department responsible for science and 10
 technology;”;
 - (b) by the substitution for the definition of “division” of the following definition:
 “**‘division’** means a division of the Foundation [**established under**
 envisaged in section 12;”;
 - (c) by the deletion of the definition of “**FRD**”;
 - (d) by the deletion of the definition of “**HSRC**”; 15
 - (e) by the deletion of the definition of “**national facilities**”;
 - (f) by the insertion after the definition of “Minister” of the following definition:
 “**‘national research facility’** means an institution that provides unique
 and substantial infrastructure, capabilities and services for competitive
 research, innovation and human capacity development in science,
 engineering and technology, and has been determined as such under
 section 5;”;
- 20

- (g) by the substitution for the definition of “research institution” of the following definition:
 “**‘research institution’** means the institution conducting research as recognised by the Minister in terms of section 5A;”;
- (h) by the insertion after the definition of “science” of the following definition: 5
 “**‘science engagement’** means participation by the public in a programme aimed at generating public response to science, which includes but is not limited to awareness, accumulation of knowledge, enjoyment, opinion formulation and scientific literacy;”;
- (i) by the substitution for the definition of “technology” of the following 10
 definition:
 “**‘technology’** means the manner through which knowledge accumulated through research or observation finds practical application;”.

Substitution of section 2 of Act 23 of 1998

2. The following section is hereby substituted for section 2 of the principal Act: 15

“Establishment of Foundation

2. (1) There is established, as from a date fixed by the President of the Republic of South Africa by proclamation in the *Gazette*, a juristic person to be known as the National Research Foundation.

(2) The Public Finance Management Act, 1999 (Act No. 1 of 1999), applies to the Foundation.” 20

Substitution of section 3 of Act 23 of 1998

3. The following section is hereby substituted for section 3 of the principal Act:

“Object of Foundation

3. The object of the Foundation is to contribute to national development 25
 by—

- (a) supporting, promoting and advancing research and human capacity development, through funding and the provision of the necessary research infrastructure, in order to facilitate the creation of knowledge, innovation and development in all fields of science and technology, including humanities, social sciences and indigenous knowledge; 30
- (b) developing, supporting and maintaining national research facilities;
- (c) supporting and promoting public awareness of, and engagement with, science; and
- (d) promoting the development and maintenance of the national science system and support of Government priorities.” 35

Insertion of section 3A in Act 23 of 1998

4. The following section is hereby inserted in the principal Act after section 3:

“Powers of Minister to determine national policies and issue policy guidelines 40

3A. (1) In pursuit of the Government’s objectives and those of the Foundation, the Minister may, after consultation with the Foundation and any other relevant Minister, determine national policies for research and funding to be implemented by the Foundation.

(2) The Minister may, after consultation with the Foundation, issue national policy guidelines for the implementation of the policies referred to in subsection (1).” 45

Amendment of section 4 of Act 23 of 1998, as amended by section 20 of Act 16 of 2011

5. Section 4 of the principal Act is hereby amended—

- (a) by the substitution in subsection (1) for paragraph (a) of the following paragraph: 5
 “(a) promote the development of appropriate human **[resources]** and research capacity and research infrastructure in the areas of science and technology;”;
- (b) by the insertion in subsection (1) after paragraph (a) of the following paragraph: 10
 “(aA) implement the policies referred to in section 3A;”;
- (c) by the substitution in subsection (1) for paragraph (b) of the following paragraph:
 “(b) promote, support and advance research;”;
- (d) by the substitution in subsection (1) for paragraph (d) of the following paragraph: 15
 “(d) **[allocate funds for research and]** promote multi-disciplinary and trans-disciplinary collaboration **[through the Divisions];**”;
- (e) by the deletion in subsection (1) of paragraphs (e) and (f);
- (f) by the substitution in subsection (1) for paragraph (g) of the following paragraph: 20
 “(g) provide financial support for the acquisition or establishment of research **[facilities by]** infrastructure at research institutions and national research facilities;”;
- (g) by the substitution in subsection (1) for paragraph (j) of the following paragraph: 25
 “(j) facilitate and promote **[nationally and internationally liaison]** national and international scientific exchange and collaboration between researchers and research institutions;”;
- (h) by the deletion in subsection (1) of paragraph (k); 30
- (i) by the substitution in subsection (1) for paragraph (l) of the following paragraph:
 “(l) **[make available]** disseminate scientific knowledge or technology through any medium;”;
- (j) by the substitution in subsection (1) for paragraph (m) of the following paragraph: 35
 “(m) **[administer]** manage, support and monitor the operation of national research facilities;”;
- (k) by the insertion in subsection (1) after paragraph (m) of the following paragraphs: 40
 “(mA) investigate and assess the need for new or additional national research facilities or the withdrawal of an existing national research facility, and make recommendations to the Minister;
 (mB) incubate qualifying national research facilities prior to its declaration as a national research facility;”;
- (l) by the substitution in subsection (1) for paragraph (o) of the following paragraph: 45
 “(o) compile and maintain a national registry of research funded by the Foundation; and”;
- (m) by the substitution in subsection (2) for paragraph (a) of the following paragraph: 50
 “(a) allocate funds or award grants, contracts, scholarships or bursaries to individual or juristic persons, national research facilities or research institutions—
 (i) for research; 55
 (ii) for research infrastructure;
 (iii) for human capacity development or related activities; and
 (iv) to promote science engagement;”;
- (n) by the insertion in subsection (2) after paragraph (a) of the following paragraphs: 60
 “(aA) coordinate relevant research institutions and targeted science advancement and outreach activities;”;

- (o) by the substitution in subsection (2) for paragraph (b) of the following paragraph:
 “(b) co-operate or enter into agreements with any person, institution, government or administration; and”
- (p) by the deletion in subsection (2) of paragraphs (c) and (d); 5
- (q) by the substitution in subsection (3) for the words preceding paragraph (a) of the following words:
 “In addition to its other functions in terms of this Act, the foundation must—”;
- (r) by the substitution in subsection (3) for paragraph (a) of the following paragraph: 10
 “(a) undertake or procure the undertaking of such investigations and research relating to its object as the Minister may assign to it; and”;
 and
- (s) by the substitution for subsection (4) of the following subsection: 15
 “(4) [The] Apart from the research conducted by the national research facilities, the Foundation may not itself conduct research other than research [regarding] relating to the efficient and effective execution of its functions referred to in subsection (1), or unless approved by the Minister.” 20

Insertion of section 4A in Act 23 of 1998

6. The following section is hereby inserted in the principal Act after section 4:

“Exercise of powers of Foundation outside Republic

- 4A.** (1) The Foundation may, subject to legislation and other formal agreements regarding international cooperation and at the request or with the prior approval of the Minister, undertake research in any territory outside the Republic on behalf of any person, including any government department or administration. 25
- (2) Subject to the provisions of subsection (3), the provisions of this Act applies to the Foundation, in so far as possible, when it exercises its powers in terms of this section outside the territory of the Republic. 30
- (3) Notwithstanding anything to the contrary contained in this Act, the terms and conditions on which the Foundation may undertake research in terms of subsection (1), must be—
- (a) agreed upon by the Foundation and the person, including any government department or administration on whose behalf research is to be undertaken, and 35
- (b) approved of by the Minister.”

Amendment of section 5 of Act 23 of 1998

7. Section 5 of the principal Act is hereby amended— 40
- (a) by the substitution for subsections (1), (2) and (3) of the following subsections, respectively:
- “(1) The Minister may, after consultation with the Foundation, by notice in the *Gazette*, determine a research facility as a national research facility under the control of the Foundation. 45
- (2) Any researcher or research institution may, subject to such conditions as the Foundation may determine, apply to utilise a national research facility for research or instruction.
- (3) The Foundation may not acquire [,] or manage the operation of [,] any research facility, other than a national research facility placed under the control of the Foundation under subsection (1), without the written approval of the Minister.”; and 50
- (b) by the addition of the following subsections:
- “(4) The Minister may make regulations relating to the determination of national research facilities as determined in terms of subsection (1), including the requirements and process for their determination.” 55

- (5) The Minister may, after consultation with the Foundation, and subject to the provisions of the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000), by notice in the *Gazette* withdraw the determination of a national research facility or transfer a national research facility to another public entity or department. 5
- (6) The Foundation is responsible for—
- (a) determining the functions of a national research facility;
 - (b) determining the management and funding for national research facilities;
 - (c) determining the criteria for access to a national research facility; and 10
 - (d) any other ancillary or procedural matter relating to national research facilities.
- (7) The Foundation may, when it deems it necessary, use the national research facilities to conduct research.”. 15

Insertion of section 5A of Act 23 of 1998

8. The following section is hereby inserted in the principal Act after section 5:

“Research institutions

- 5A.** (1) The Minister may, after consultation with the Foundation, declare by notice in the *Gazette* an institution conducting research, as a research institution eligible to receive grant funding from the Foundation. 20
- (2) The Minister may, after consultation with the Foundation, and subject to the provisions of the Promotion of Administrative Justice Act, 2000, by notice in the *Gazette*, withdraw the declaration contemplated in subsection (1).” 25

Amendment of section 6 of Act 23 of 1998, as amended by section 21 of Act 16 of 2011 and section 4 of Act 7 of 2014

9. Section 6 of the principal Act is hereby amended—

- (a) by the substitution for subsection (4) of the following subsection: 30
 - “(4) The members referred to in subsection (1)(a) are appointed in their personal capacities, but the Minister must ensure that they are broadly representative of the demographics of the Republic, higher education, broad scientific disciplines, the business sector and civil society.”;
- (b) by the substitution in subsection (6) for paragraphs (a) and (b) of the following paragraphs, respectively: 35
 - “(a) he or she resigns by written notice to the Minister;
 - (b) the Minister, after consultation with the Board, terminates his or her period of office due to misconduct, incapacity, incompetence, or any other reasonable ground;” 40
- (c) by the substitution for subsection (8) of the following subsection:
 - “(8) A member of the Board or a member of a committee of the Board, other than the chief executive officer or a person who is in the full-time employment of the State, must be appointed on such conditions [**of service**] and must receive such remuneration or allowances, [**or remuneration and allowances,**] as the Minister may, with the concurrence of the Minister of Finance, determine.” 45
- (d) by the substitution in subsection (9) for paragraph (d) of the following paragraph:
 - “(d) has, as a result of improper conduct, been removed from a position of trust [**or**] by a court of law.”; 50
- (e) by the deletion in subsection (9) of paragraph (e); and
- (f) by the substitution for subsection (10) of the following subsection:
 - “(10) The Minister must, within 30 days of the appointment or reappointment of a member of the Board, submit a report to [**the National Assembly**] Parliament relating to such appointment or reappointment.”. 55

Amendment of section 6A of Act 23 of 1998, as amended by section 5 of Act 7 of 2014

10. Section 6A of the principal Act is hereby amended by the substitution for subsection (6) of the following subsection:

“(6) The Minister must, within 30 days of the dissolution of the Board, submit a report to **[the National Assembly]** Parliament, setting out the reasons for the dissolution of the Board.”. 5

Amendment of section 7 of Act 23 of 1998

11. Section 7 of the principal Act is hereby amended—

(a) by the substitution for subsection (2) of the following subsection: 10

“(2) The Board **[meets]** must meet at least four times a year at the times and places determined by itself **[. However,]** and the first meeting of the Board must be held at a time and place determined by the chairperson.”;

(b) by the substitution for subsection (3) of the following subsection: 15

“(3) The chairperson—

(a) may, at any time, convene a special meeting of the Board;

(b) must, within 14 days of a request to convene a special meeting of the Board signed by at least one third of the members of the Board convene such a meeting; and 20

(c) must determine the time and place of the meeting convened in terms of paragraphs (a) or (b).”.

(c) by the addition of the following subsections:

“(7) The Board must make rules regarding the procedure at its meetings. 25

(8) A member of the Board—

(a) must, upon appointment and thereafter annually, disclose to the Minister by way of a written statement, any interest which could reasonably compromise the Board in the performance of its functions; 30

(b) may not vote or in any manner be present during or participate in the proceedings of any meeting of the Board if, in relation to any matter before the Board, he or she has an interest which precludes him or her from performing his or her functions as a member of the Board in a fair, unbiased and proper manner. 35

(9) A decision taken by the Board or an act performed under the authority of the Board is not invalid by reason—

(a) of a vacancy on the Board; or

(b) that a person who is not entitled to sit as a member of the Board sat as a member at the time when the decision was taken or the act was authorised, if the decision was taken or the act was authorised by the requisite majority of members of the Board who were present at the time and entitled to sit as members.”. 40

Amendment of section 8 of Act 23 of 1998

12. Section 8 of the principal Act is hereby amended— 45

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

“(2) (a) A committee **[must]** may consist of such number of members of the Board and of the staff of the Foundation **[(if any)]** and any other person with suitable skills and experience as the Board may consider necessary **[, and the]**. 50

(b) The Board may at any time dissolve or reconstitute the committee.”; and

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

“(3) **[If a committee consists of more than one member, the]** The Board must designate a member of that committee as chairperson thereof.”. 55

Amendment of section 10 of Act 23 of 1998, as amended by section 22 of Act 16 of 2011 and section 6 of Act 7 of 2014

13. Section 10 of the principal Act is hereby amended—

- (a) by the substitution for subsection (1) of the following subsection: 5
 “(1) The Board must, after consultation with the Minister, appoint a suitably skilled and qualified person as the chief executive officer of the Foundation, after following a transparent and competitive selection process.”;
- (b) by the substitution for subsection (2) of the following subsection: 10
 “(2) The chief executive officer must report to the Board [**on those affairs which the Board may require**].”;
- (c) by the substitution for subsection (3) of the following subsection: 15
 “(3) The chief executive officer must be appointed [**or reappointed for such period, but**] for a term not exceeding five years, and may be reappointed for a term not exceeding five years, subject to such conditions, including conditions relating to the payment of remuneration and allowances, as the Board may, in consultation with the Minister, determine.”;
- (d) by the substitution in subsection (4)(a) for the words following subparagraph (iii) of the following words: 20
 “the Board may appoint any senior person in the service of the Foundation [**in consultation with the Minister,**] who meets the requirements determined in terms of subsection (1)₂ to act as chief executive officer until the chief executive officer is able to resume those functions or until the vacant position of chief executive officer is filled.”; 25
 and
- (e) by the addition of the following subsection:
 “(6) The chief executive officer may not serve for more than two terms.”.

Repeal of section 11 of Act 23 of 1998 30

14. Section 11 of the principal Act is hereby repealed.

Substitution of section 12 of Act 23 of 1998

15. The following section is hereby substituted for section 12 of the principal Act:

“Divisions of Foundation

12. The Foundation may, after consultation with the Minister, establish or disestablish organisational divisions consistent with the objects of the Act.” 35

Amendment of section 13 of Act 23 of 1998

16. Section 13 of the principal Act is hereby amended by the substitution in subsection (3) for paragraph (a) of the following paragraph: 40

- “(a) The [**Board**] chief executive officer may—
 (i) with the consent of an employee; and
 (ii) on such conditions as the Board may determine,
 second the employee either for a particular service or for a period of time to the service of a department of State, the government of any province, territory or 45
 country, [**or a person in**] organisation or institution within or outside the Republic.”.

Repeal of sections 14, 15 and 16 of Act 23 of 1998

17. Sections 14, 15 and 16 of the principal Act are hereby repealed.

Amendment of section 17 of Act 23 of 1998

18. Section 17 of the principal Act is hereby amended by the deletion of subsections (1)(b), (2)(b), (3) and (5).

Repeal of section 18 of Act 23 of 1998

19. Section 18 of the principal Act is hereby repealed. 5

Amendment of section 19 of Act 23 of 1998

20. Section 19 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) The intellectual property rights emanating from any study or research that is funded or undertaken by the Foundation are regulated in terms of the Intellectual Property Rights from Publicly Financed Research and Development Act, 2008 (Act No. 51 of 2008), as well as other relevant Acts governing the management of intellectual property or indigenous knowledge.” 10

Repeal of section 20 of Act 23 of 1998

21. Section 20 of the principal Act is hereby repealed. 15

Amendment of section 21 of Act 23 of 1998

22. Section 21 of the principal Act is hereby amended—

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

“(1) The Board may delegate to the chairperson, any member or committee of the Board or the chief executive officer any power conferred upon the Board by or under this Act, on such conditions as the Board may determine.” 20

(b) by the substitution for subsection (2) of the following subsection:

“(2) The chief executive officer may delegate to a member of the staff of the Foundation any power conferred upon the chief executive officer by or under this Act.” 25

(c) by the substitution for subsection (3) of the following subsection:

“(3) Any delegation [or authorisation] under subsection (1) or (2) must be in writing, and does not prohibit the exercise of the power or performance of the duty [in question by] conferred upon the Board or the chief executive officer, as the case may be.” 30

Insertion of section 22A in Act 23 of 1998

23. The following section is hereby inserted in the principal Act after section 21:

“Liquidation of Foundation

22A. The Foundation may not be wound up except by or under the authority of an Act of Parliament.” 35

Amendment of section 23 of Act 23 of 1998, as amended by section 7 of Act 7 of 2014

24. Section 23 of the principal Act is hereby amended—

(a) by the deletion of paragraph (b) and (c) of subsection (1); and

(b) by the substitution for subsection (2) of the following subsection: 40

“(2) Regulations made in terms of subsection (1)(d) must be submitted to Parliament [at least 30 days] before promulgation.”

Repeal of Schedule to Act 23 of 1998

25. The Schedule to the principal Act is hereby repealed.

Substitution of long title of Act 23 of 1998

26. The following long title is hereby substituted for the long title of the principal Act:
 “To provide for the support, promotion and advancement of research, both basic and applied, and [**the extension and transfer of knowledge**] human capacity development in the various fields of science and technology, [**and indigenous technology**] including humanities, social science and indigenous knowledge; and for this purpose to provide for the establishment of a National Research Foundation; to support and promote science engagement; to develop, support, advance and maintain national research facilities; to promote the development and maintenance of the national science system and support of Government priorities; and to provide for incidental matters.”.

Short title and commencement

27. This Act is called the National Research Foundation Amendment Act, 2017, and comes into operation on a date determined by the President by proclamation in the *Gazette*.

MEMORANDUM ON THE OBJECTS OF THE NATIONAL RESEARCH FOUNDATION AMENDMENT BILL, 2017

1. BACKGROUND

The National Research Foundation Amendment Bill, 2017 (“the Bill”), seeks to amend the National Research Foundation Act, 1998 (Act No. 23 of 1998) (“the Act”).

2. OBJECTS OF BILL

The Bill seeks to delete, amend and insert certain new definitions. The Bill further provides for the Minister to determine national policies and issue policy guidelines for the implementation of same. The Bill also extends the functions, powers and duties of the National Research Foundation (“NRF”). The Bill furthermore empowers the Minister to make regulations relating to the determination of national research facilities, including the requirements and process for their determination. The Minister is also empowered to declare institutions conducting research as research institutions. Lastly, the Bill makes certain textual alterations and deletes certain inappropriate or obsolete provisions.

3. KEY PROVISIONS OF BILL

The substantive amendments to the Act are as follows:

- 3.1 Insertion of new section 3A that makes provision for the Minister to determine relevant policies for research and funding at national level and issue policy guidelines in respect of the Foundation’s activities.
- 3.2 Amendment of the object of the Foundation which is now to contribute to national development by supporting and promoting research and human capital development; supporting, developing and maintaining the national research facilities; supporting and promoting science engagement; and promoting the development and the maintenance of the national science system.
- 3.3 Amendment of the functions, powers and duties of the Foundation to provide amongst others for investigation and assessment of the need for new or additional national research facilities, or withdrawal of an existing national research facility. The Foundation is furthermore empowered to make recommendations to the Minister in this regard.
- 3.4 The Minister is empowered to make regulations relating to the determination of national research facilities, including the requirements and process for their determination. Furthermore, the Minister is empowered, after consultation with the Foundation, to withdraw the determination of a national research facility or transfer a national research facility to another public entity or Department.
- 3.5 With regards to research institutions the Minister is empowered to declare an institution conducting research, as a research institution and eligible to receive funding from the Foundation.
- 3.6 The alignment of the Act with other Acts which are meant to protect knowledge emanating from public funded research and promote knowledge transfer. The function of promoting knowledge transfer has been removed from the long title of the Act since this function now resides with the Technology Innovation Agency. In addition, the intellectual property rights emanating from any study or research that is funded or undertaken by the NRF will be regulated in terms of the Intellectual Property Rights from Publicly Financed Research and Development Act, 2008 (Act No. 51 of 2008), as well as other relevant Acts governing the management of intellectual property or indigenous knowledge.

4. CONSULTATION

The Bill was prepared in consultation with the following parties:

- National Research Foundation;
- Mintek;
- University of the Witwatersrand;
- Universities of South Africa;
- Human Sciences Research Council;
- Central University of Technology (Free State); and
- Agricultural Research Council.

5. FINANCIAL IMPLICATIONS FOR STATE

The formalisation of the South African Agency for Science and Technology Advancement's (SAASTA) to manage or coordinate science engagement functions both within the NRF and across all Department of Science and Technology entities may lead to some new activities. In the first instance, the Department of Science and Technology will seek to fund these through reprioritisation and better coordination of science engagement budget of its entities, and may also submit new bids to the National Treasury.

6. PARLIAMENTARY PROCEDURE

- 6.1 The State Law Advisers and the Department are of the opinion that this Bill should be dealt with in terms of the procedure established by section 75 of the Constitution of the Republic of South Africa, 1996, since it does not contain provisions to which the procedure set out in section 76 of the Constitution applies.
- 6.2 The State Law Advisers are also of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.