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GENERAL NOTICE

NOTICE 681 OF 2007**DEPARTMENT OF SCIENCE AND TECHNOLOGY
NOTICE OF INTRODUCTION OF BILL INTO PARLIAMENT**

The Minister of Science and Technology intends introducing the Bill set out below into Parliament during 2007:

Draft Science and Technology Laws Amendment Bill

Written comments must be received not later than 29 June 2007 and must be addressed to:

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THE PRESIDENCY

It is hereby notified that the President has assented to the following Act, which is hereby published for general information:-

No. _ of 20o_: Science And Technology General Laws Amendment Bill, 20o_.

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.

(English text signed by the President.)
(Assented to)

ACT

To amend the Natural Scientific Professions Act, 2003, (Act No. 27 of 2003), so as to redefine the responsible Minister; to make it clear that members of the Council to represent the State need not be registered persons; to amend the National Research Foundation Act, 1998, (Act No. 23 of 1998), so as to define the responsible Minister; to provide for the constitution of certain committees; to provide for the appointment of the chief executive officer of the Foundation; to provide for the transfer of persons to or from the employ of the Foundation; to provide for the transfer of certain assets to the Foundation; to amend the Africa Institute of South Africa Act, 2001, (Act No. 68 2001), so as to redefine the responsible Minister; to provide for the constitution of certain committees; to provide for the transfer of persons to or from employ of the Institute; to provide for the transfer of certain assets to the Institute; to amend Academy of Science of South Africa Act, 2001, (Act No. 67 of 2001) so as to redefine the responsible Minister; and to provide for matters connected therewith; and to amend the Scientific Research Council Act, 1988 (Act No. 46 of 1988) so as to redefine the responsible Minister; to provide for the constitution of certain committees; to provide for the transfer of persons to or from the employ of the CSIR; to provide for the transfer of certain assets to the CSIR; and for matters connected therewith.

BEIT ENACTED by the Parliament of the Republic of South Africa, as follows:-

Amendment of section 1 of Act 27 of 2003

1. Section 1 of the Natural Scientific Professions Act, 2003, is hereby amended by the substitution for the definition of Minister of the following definition:

"Minister" means the Minister of [Arts, Culture,] Science and Technology."

Amendment of Section 3 of Act 27 of 2003

2. Section 3 of the Natural Scientific professions Act, 2003, is hereby amended by addition of the following subparagraph to subsection 1:

"(iv) broadly represent the demographics of the Republic."

Amendment of Section 6 of Act 27 of 2003

3. Section 6 of the Natural Scientific Professions Act, 2003, is hereby amended by the substitution for paragraph (f) of subsection (1) of the following paragraph:

"(f) is not, in the case of a person referred to in section 3III (a) [or (b)], a registered person."

Amendment of section 27 of Act 27 of 2003

4. Section 27 of the Natural Scientific Professions Act, 2003 is hereby amended by the addition of the following paragraphs to subsection (5):

neil Pharmacy Act, 1974 (Act No. 53 of 1974):

O Health Professions Act, 1974 (Act No. 56 of 1974):

(k) Veterinary and Para-Veterinary Professions Act, 1982 (Act No. 19 of 1982): and

(l) Dental Technicians Act, 1979 (Act No. 19 of 1979)."

Amendment of section 1 of Act 23 of 1998 - Definitions

5. Section 1 of the National Research Foundation Act, 1998, is hereby amended-

- (a) by the addition to section (1) of the following subparagraphs:

"iA) 'Business unit' means executive entities of the Foundation:."

"iiA) 'Chief Executive Officer' means the person appointed as the chief executive officer of the Foundation under section 10:."

"iiB) 'Department' means the Department of Science and Technology:."

"ivA) 'financial year' means the period from 1 April in any year to 31 March in the following year:."

"v) 'Foundation' means the National Research Foundation, established by section 2:."

"viiA) 'innovation' refers to the application in practice of creative new ideas, which includes the processes by which new products and services enter the market (social or economic) and the creation of new businesses:."

"viiS) 'intellectual property' includes intellectual capital in the form of any and all technical or commercial information, including, but not limited to the following: chemical structures; biological or chemical information (including, but not limited to organisms, cells, DNA sequences, and other biological materials); manufacturing techniques and designs; specifications and formulae; software, computer programmes, data; products; systems and processes; production methods; trade secrets; undisclosed inventions; marketing and financial information; as well as registered and unregistered intellectual property rights in

the form of patents, trade marks, designs and plant breeder's rights (whether granted/registered or applied for); and copyright in any works, including but not limited to, artistic works, literary works and computer programmes:"

"viiC) 'knowledge' includes indigenous knowledge and the body of knowledge accumulated through observation and fundamental, strategic, applied, disciplinary and multi-disciplinary research;"

"ixA) 'net proceeds' means gross proceeds less any expenses associated with protection and maintenance of intellectual property such as patents and design registrations and also transaction costs in as far as they are related to the administration of royalty:"

"(xx) "Shareholder Compact" includes the annual performance agreement incorporating such key performance indicators as agreed upon between the Board and the Minister;"

"xvii) 'PFMA' means Public Finance Management Act 1 of 1999:"

- (b) by the substitution for the definition of Minister of the following paragraph:

"(viii) "Minister" means the Minister of [Arts, Culture,] Science and Technology;".

- (c) by the substitution for the definition of research of the following paragraph:

"xiii) 'research institution' means any organisation practising research, [as recognised by the Board,] with primary emphasis on institutions in the higher education sector and public research sector [tertiary education sector];

- (d) by the substitution for the definition of science of the following definition:

"xiv) 'science' [includes the natural sciences, engineering sciences, medical sciences, agricultural sciences, social sciences, law and humanities]; means any system of knowledge attained by verifiable means and the organised body of knowledge humans have gained by research;"

- (e) by the removal of the definition of 'FRD'.
- (f) by the removal of the definition of 'HSRC'.
- (g) by the removal of the definition of 'president'.
- (h) by the removal of the definition of 'division'.
- (i) by the substitution for the definition of this Act of the following paragraph:

"xvi) 'this Act' includes [a regulation] regulations promulgated pursuant to the provisions of Section 23 of this Act;"

Amendment of Section 3 of Act 23 of 1998

6. Section 3 of the National Research Foundation Act, 1998 is hereby replaced with the following section:

"3. The object of the Foundation is to [support and] promote and support research through funding, human resource development and the provision of the necessary research facilities in order to facilitate the creation of knowledge, innovation and development in all fields of science and technology, including indigenous knowledge and thereby to contribute to the improvement of the quality of life of all the people of the Republic."

Amendment of Section 4 of Act 23 of 1998

7. Section 4 of the National Research Foundation Act, 1998 is hereby amended -

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

"(a) promote and support the development of appropriate human resources and research capacity in the areas of science and technology;"

(b) by the addition of the following paragraph after paragraph (a) of subsection (1)

"(aA) undertake planning and associated reviews in order to enter into shareholder compact and associated business plans with the Minister to give effect to the strategy;"

(c) by the addition of the following paragraph after paragraph (b) of subsection (1)

"(bA) execute specific activities or programmes as agreed to with the Minister;"

(d) by the substitution of paragraph (c) of subsection (1) of the following paragraph:

"(c) obtain funds for research in South Africa [, both locally and abroad];"

(e) by the addition of the following paragraph after paragraph (c) of subsection (1):

"(cA) secure international research funding in collaboration with the Department."

(f) by the substitution of paragraph (d) of subsection (1) of the following paragraph:

- "(d) allocate funds for research and promote multi-disciplinary collaboration. **[through the divisions;]**"
- (g) by the substitution of paragraph (f) of subsection (1) of the following paragraph:
- "(f) **[evaluate]** assess the status and needs of research;"
- (h) by the substitution of paragraph (i) of subsection (1) of the following paragraph:
- "(i) promote and support **[the transfer of technology and]** the implementation of research results and findings;"
- (i) by the substitution of paragraph (k) of subsection (1) of the following paragraph:
- "(k) promote and support participation in international scientific activities through maintaining membership of appropriate international science organizations with the concurrence of the Minister;"
- (j) by the substitution of paragraph (n) of subsection (1) of the following paragraph:
- "(n) promote and support the provision of an information infrastructure linking research institutions **[to]** and facilitate co-operation and sharing of research information and knowledge;
- (k) by the substitution of paragraph (p) of subsection (1) of the following paragraph:
- "(p) promote and support **[initiate liaison with structures involved in]** the protection of intellectual property rights resulting from publicly financed research."
- (l) by the addition of the following paragraphs to subsection (1)
- "(g) promote and support the public engagement and communication of research results and findings."
- (r) promote and support public awareness and appreciation of science, engineering and technology and facilitate the interface between science and society .
- (s) contribute to the development and establishment of key national infrastructure in support of the objective of the Foundation;
- (t) foster and undertake fundamental and applied research, from data gathering through to information analysis and technology development by means of projects run by the National Facilities or researchers gaining access to the National Facilities."

- (m) by the substitution of paragraph (b) of subsection (2) of the following paragraph:
- "(b) co-operate or enter into agreements with any person, institution [, government] or administration;"
- (n) by the substitution of paragraph (b) of subsection (3) of the following paragraph:
- "(b) advise the Minister and, if so required, [the Minister of Education] government through the Minister, in regard to research relating to its object."

Amendment of Section 5 of Act 23 of 1998

8. Section 5 of the National Research Foundation Act, 1998 is hereby amended -

- (a) by the substitution of subsection (2) of the following subsection:
- "(2) Any researcher or research institution may[, subject to such conditions as the Foundation may determine,] apply to utilise a national facility for research or instruction, provided that the employees of the Foundation and its officers may not receive more favourable conditions for funding than other researchers."
- (b) by the addition of the following subsection after subsection (3)
- "(4) The Minister may by notice in the Gazette remove a national facility determined in terms of subsection (1) from the control of the Foundation .."

Amendment of Section 6 of Act 23 of 1998

9. Section 6 of the National Research Foundation Act, 1998, is hereby amended -

- (a) by the substitution of subparagraph (ii) of subsection (1) (a) of the following subparagraph:
- "(ii) not fewer than nine and not more than eleven other members, appointed by the Minister; [after consultation with the Minister of Education; and]"
- (b) by the substitution of paragraph (b) of subsection (1) of the following paragraph:
- "(b) the chief executive officer [president], by virtue of his or her office."
- (c) by the substitution of paragraph (c) of subsection (2) of the following paragraph:

- "(c) The members of the Board referred to in subsection (1)(a) must be appointed by the Minister, who may consult with the relevant Ministers [after consultation with the relevant committees of the National Assembly and the National Council of Provinces and after consideration of the shortlist of candidates',"
- (d) by the substitution of subsection (3) of the following subsection:
- "(3) (a) The [members] composition of the Board must [all] be persons who have achieved distinction in the field of research, development, [and] technology, finance, social sciences research, research and technology management, business, public affairs or civil society and be broadly representative of gender, language and community composition of the Republic."
- (e) by the substitution of paragraph (a) subsection (4) of the following paragraph:
- "(a) [Tertiary education] Research in higher education institutions."
- (f) by the substitution of paragraph (a) of subsection (5) of the following paragraph:
- "(a) The Board must be reconstituted every [three] four years, provided that members continue in office until the succeeding Board is properly constituted [in accordance with the process referred to in subsection (2)]."
- (g) by the addition of the following paragraph after paragraph (a) of subsection (5)
- "(b) No member may serve more than two consecutive terms."
- (h) by the addition to subsection (6) of the following paragraphs:
- "(e) the member's estate is sequestrated or assigned for the benefit of, or if the member compounds with, the creditors of the member;
- (f) the member is convicted of an offence, whether in the Republic or elsewhere, and sentenced to imprisonment without an option of a fine."
- (i) by the substitution of paragraph (a) of subsection (7) of the following paragraph:
- "(a) Subject to subsections (3) and (4) and section 88, the Minister may appoint any person to fill a vacancy which occurs with regard to a member appointed by him or her."
- (j) by the substitution of subsection (8) of the following subsection:

"(8) A member of the Board, other than the chief executive officer [president or a person who is in the full-time employment of the State], by virtue of his or her office, 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.."

(k) by the addition of the following subsections after subsection (8)

"(9) No person may be appointed as a member of the Board if that person-

- (a) is not ordinarily resident in the Republic;
- (b) is an unrehabilitated insolvent;
- (c) has been convicted of an offence in the Republic, other than an offence committed prior to 27 April 1994 associated with political objectives,
- (d) was sentenced to imprisonment without an option of a fine, or, in the case of fraud, to a fine or imprisonment; and
- (e) has, as a result of improper conduct, been removed from an office of trust.

(10) The Minister may dissolve the Board on reasonable grounds.."

(l) by the addition of the following section after section 6:

"6A Functions of Board

- (1) The functions of the Board are to -
 - Ca) formulate the strategic policies of the Foundation in consultation with the Minister;
 - (b) submit the budget of the Foundation for approval by the Minister;
 - (c) approve the financial statements of the Foundation with the concurrence of the Minister;
 - Cd) advise the Minister with regard to matters with which the Foundation is concerned;
 - (D) furnish the Minister with any information as the Minister may require;
 - (9) perform such other functions as may be necessary for the proper guidance of the Foundation;
 - (h) implement the Business Plan of the Foundation; and
 - (i) enter into an annual Shareholder Compact with the Minister."

Amendment of Section 7 of Act 23 of 1998

10. Section 7 of the National Research Foundation Act, 1998, is hereby amended by the addition of the following subsections:

"(7) The Board must meet at least four times a year.

- (8) The Chairperson of the Board must meet with the Minister at least two times per year for purposes of discussing the business of the Board."

Amendment of Section 8 of Act 23 of 1998

11. Section 8 of the National Research Foundation Act, 1998, is hereby amended -

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

"(1) In addition to the committees referred to in sections BA, 8B, and 9, the Board may nominate one or more committees which may, subject to the instructions of the Board, perform those functions of the Board which the Board may determine."

- (b) The following section is inserted in the National Research Foundation Act, 1998, after section 8:

8A Governance Committee

(1) The Board may establish a governance committee to assist it to perform its functions and to advise it in connection with any matter relating to the proper governance of the Foundation.

(2) The committee establishes policies and guidelines on Board practices.

(3) The committee monitors and evaluates Board performance using appropriate instruments and provides these results to the Department annually.

(4) The governance committee must be appointed by the Board and consists of-

Cal a chairperson, who is a member of the Board but who is not chairperson of the Board; and

(b2) at least two other members who may be members of the Board.

(5) No employee of the Foundation shall be appointed as a member of the governance committee."

Amendment of Section 9 of Act 23 of 1998

12. Section 9 of the National Research Foundation Act, 1998, is hereby amended -

- (a) by the substitution of paragraph (e) of subsection (1) of the following paragraph:

"(a) the chief executive officer [president], as chairperson;"

- (b) by the substitution of paragraph (b) of subsection (1) of the following paragraph:
- "(b) the heads of the business units [Divisions]; and, if necessary,"
- (c) by the substitution of paragraph (c) of subsection (1) of the following paragraph:
- "(c) any other member of the staff of the Foundation appointed by the chief executive officer [president]."

Amendment of Section 10 of Act 23 of 1998

13. Section 10 of the National Research Foundation Act, 1998, is hereby replaced with the following section-

"10 Chief Executive Officer [President] of Foundation

- (1) The Board must in consultation with the Minister appoint a suitably skilled and qualified person as the chief executive officer for the Foundation, who must be responsible for the management of the affairs of the Foundation [who will also be the president of the Foundation]. The appointment must be made after following a transparent and competitive [nomination] selection process".
- (2) The chief executive officer [president] must report to the Board on those affairs which the Board may require.
- (3) The chief executive officer [president] must be appointed [or reappointed for such period] for a term of five years, [but not exceeding five years, and subject to such conditions,] on conditions, including conditions relating to the payment of remuneration and allowances, as the Board may, subject to section 13 (2), determine.
- (4) (a) Whenever the chief executive officer [president] is absent for more than two months or unable to carry out his or her duties, or whenever there is a vacancy in the office of the chief executive officer [president], the Board may, with the concurrence of the Minister, appoint any person [in the service of the Foundation] to act as chief executive officer [president]: Provided that where the chief executive officer is absent for a period of less than two months the Board may, without the concurrence of the Minister, appoint an acting chief executive officer.
- (b) *The acting chief executive officer [president] has all the powers and performs all the duties of the chief executive officer [president].*
- (5) The chief executive officer must enter into a performance agreement with the Board within three months of taking up his or her post as chief executive officer.

(6) The chief executive officer is eligible for appointment for no more than a second term."

Amendment of Section 11 of Act 23 of 1998

14. Section 11 of the National Research Foundation Act, 1998, is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) The chief executive officer [president] is the accounting officer responsible for the accounting of all money received by the Foundation, the utilisation thereof and the property of the Foundation".

Amendment of Section 12 of Act 23 of 1998

15. Section 12 of the National Research Foundation Act, 1998, is hereby amended by the substitution for subsection (1) of the following subsection:

"12 The Board may, after consultation with the Minister, establish or disestablish organisational [divisions] Business Units for [different] research and the operation of national facilities [fields]. [However, as soon as possible after the commencement of this Act there must at least be established separate divisions for-

- (a) the natural sciences and engineering;
- (b) the social sciences and humanities;
- (c) the health sciences;
- (d) the agricultural and environmental sciences; and
- (e) national facilities.]"

Amendment of Section 13 of Act 23 of 1998

16. Section 13 of the National Research Foundation Act, 1998, is hereby amended

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

"(a) the chief executive officer [president] may on such conditions as the Board may determine appoint such employees, or receive on secondment such persons, as are necessary to enable the Foundation to perform its functions, but".

- (b) by the substitution for paragraph (b) of subsection (1) of the following paragraph:

"(b) the Board must on such conditions as it may determine appoint, or receive on secondment, a head for each [division] Business Unit".

Amendment of Section 14 of Act 23 of 1998

17. Section 14 of the National Research Foundation Act, 1998 is hereby amended by the repeal of paragraph (a) of subsection (1):

Amendment of Section 15 of Act 23 of 1998

18. Section 15 of the National Research Foundation Act, 1998 is hereby amended by the substitution of subsection (3) of the following subsection:

"(3) For the purposes of this section [and of item 1 and, unless the context otherwise indicates, item 2 of the Schedule to this Act] 'pension fund' means any pension or provident fund or scheme established in terms of any pension law."

Amendment of Section 16 of Act 23 of 1998

19. Section 16 of the National Research Foundation Act, 1998, is hereby repealed-

Amendment of Section 17 of Act 23 of 1998

20. Section 17 of the National Research Foundation Act, 1998, is hereby amended-

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

"(a) money voted [appropriated] by Parliament or allocated by a government department."

(b) by the substitution for paragraph (c) of subsection (1) of the following paragraph:

"(c) donations, transfers or contributions made to the Foundation;"

(c) by the substitution for paragraph (c) of subsection (2) of the following paragraph:

"(c) The Foundation must utilise any donations, transfers or contributions contemplated in subsection (1) (c) in accordance with the conditions imposed by the donor or contributor in question."

(d) by the repeal of subsection (4).

Amendment of Section 19 of Act 23 of 1998

21. Section 19 of the National Research Foundation Act, 1998, is hereby replaced with the following section-

"19 Intellectual Property Rights

(1) The rights in respect of any [invention, discovery or improvement by a person in the course of studies or research in respect of which he or she received any financial support from the Foundation, must be determined **by** agreement between the Foundation **and**

that person or his or her employer, or both that person and the employer.] intellectual property made by or originating from an employee of the Foundation in the course of his or her employment as an employee of the Foundation shall vest in the Foundation. An employee shall be obliged to make such intellectual property available to the Foundation. The Foundation may elect not to use such intellectual property. In such a case the rights must be offered wholly and exclusively to the originators of the intellectual property.

- (2) **[The Foundation must, with regard to studies or research supported by the Foundation-] If the rights in respect of any invention or design properly registered in South Africa are in terms of subsection (1) vested in the Foundation or assigned by the Foundation, the Foundation must award to the person responsible for the invention, financial participation by him or her in the proceeds derived from such invention or design at a percentage as determined from time to time by the Minister in the Regulations promulgated in terms of section 23 of this Act.**

[(a) acknowledge any invention, discovery or improvement in respect of indigenous knowledge and technology held by any person or community; and]

[(b) protect any rights of that person or community arising from the invention, discovery or improvement.]

- (3) The Foundation may apply for the registration of any intellectual property rights, including patents or design registrations in respect of an intellectual property contemplated in subsection (1), and shall, for the purposes of the Patents Act, 1978 (Act No. 58 of 1978), be regarded as the assignee of the inventor in question.

- (4) The Foundation may elect to transfer the assignment of any intellectual property rights in terms of this section, to a third party under the following conditions:

Cal the right to benefit sharing by the authors, inventors or designers shall survive the assignment of such rights and explicit agreement in this respect shall be secured by the Foundation;

(b2) priority shall be given to South African institutions in respect of the transfer of rights:

ee/ priority shall, when rights are transferred to business entities, be given to small and medium enterprises as defined in the National Small Business Act (Act No. 102 of 1996); and to black economic empowerment firms as defined in the Broad-Based Black Economic Empowerment Act (Act No. 53 of 2003).

- (dJ) priority shall, when rights are transferred to business entities, be given to black economic empowerment firms as defined in the Broad-Based Black Economic Empowerment Act (Act No. 53 of 2003).
- (5) The Board must, with regard to investigations and research conducted by employees of the Foundation-
- (a) ensure, in work conducted in respect of indigenous knowledge, that written information transfer and material transfer agreements, subject to properly informed consent, are established prior to the undertaking of research:
- (b) secure with the consent of the parties any intellectual property, derived from indigenous knowledge, originally held by any person or community in such a manner that the person or community can participate in the benefits arising from such protection;
- (e) protect all rights of the person or community arising from the original indigenous knowledge and any intellectual property.
- (6) The foundation shall ensure that in agreements entered into with third parties in respect of any funding provided by it, it shall oblige such third parties to comply with any national policies, and legislation in respect of publicly funded research, including limitation on the rights of such third parties to alienate the intellectual property rights to non- South African natural and juristic persons."

Amendment of Section 19 of Act 23 of 1998

22. Section 19 of the National Research Foundation Act, 1998, is hereby amended:-

(a) By the insertion of the following sections after section 19:

"19A Intellectual Property Rights in respect of grants to public institutions

Grants for research and development, including equipment, made by the Foundation to public institutions are not subject to the provisions of section 19 above. Intellectual property rights arising from such grants must be administered by the public institution receiving the grant.

19B Transfer of certain assets to the Foundation

- (1) Any immovable property belonging to the State may, on such conditions as the Minister may with the concurrence of the Minister of Finance determine, be transferred to the Foundation in order to enable the Foundation to perform its functions.
- (2) Any immovable property belonging to the Foundation in terms subsection (1) may, on such conditions as the Minister may with the concurrence of the Minister of Finance determine, be transferred back to the State.

Amendment of Section 20 of Act 23 of 1998

23. Section 20 of the National Research Foundation Act, 1998, is hereby repealed.

Amendment of Section 21 of Act 23 of 1998

24. Section 21 of the National Research Foundation Act, 1998, is hereby replaced with the following section:

- (a) Section 21 of the National Research foundation Act, 1988, is hereby amended by the substitution of subsections (1) to (3) of the following subsections:

"(1) The Board may-

- (e) delegate to the chairperson, the chief executive officer [president] or any other member of the staff of the Foundation any power conferred upon the Board by or under this Act, on such conditions as the Board may determine; or
- (b) authorise the chairperson, the chief executive officer [president] or such other member of the staff to perform any duty assigned to the Board by or under this Act.

(2) The chief executive officer [president] may-

- (a) delegate to a member of the staff of the Foundation any power conferred upon the chief executive officer [president] by or under this Act; or
- (b) authorise such member of the staff to perform any duty assigned to the chief executive officer [president] by or under this Act.

- (3) Any delegation or authorisation under subsection (1) or (2) does not prohibit the exercise of the power or performance of the duty in question by the Board or the chief executive officer [president], as the case may be."

Amendment of Section 22 of Act 23 of 1998

25. Section 22 of the National Research Foundation Act, 1998, is hereby repealed.

Amendment of Section 23 of Act 23 of 1998

26. Section 23 of the National Research foundation Act, 1988, is hereby amended by the substitution of paragraph (d) of subsection (1) of the following paragraph:

"(d) in general, any matter in respect of which the Minister deems it necessary or expedient [to make regulations in order to achieve the objects of this Act]."

Amendment of Section 24 of Act 23 of 1998

27. Section 24 of the National Research Foundation Act, 1998, is hereby repealed.

Amendment of Schedule 1 of Act 23 of 1998

28. Schedule 1 of the National Research Foundation Act, 1998, is hereby repealed.

Amendment of the Preamble

29. The Preamble of the Africa Institute of South Africa Act, 2001 is hereby amended by the substitution of paragraph 2 with the following paragraph:

"NOTING-

the commitment of the Government of the Republic of South Africa with regard to the establishment of the Africa Union and the implementation of the [New Africa Initiative] New Partnership for Africa's Development;"

Amendment of section 1 of Act 68 of 2001 - Definitions

30. Section 1 of the Africa Institute of South Africa Act, 2001, is hereby amended -

- (a) by the substitution for the definition of Department of the following paragraph:

"Department" means the Department of [Arts, Culture,] Science and Technology;"

- (b) by the substitution for the definition of Minister of the following paragraph:

"Minister" means the Minister of [Arts, Culture,] Science and Technology;"

- (c) by the addition to subsection (1) of the following subparagraphs:

"Shareholder Compact" includes the annual performance agreement incorporating such Key Performance Indicators as agreed upon between the Board and the Minister:

Amendment of Section 3 of Act 68 of 2001

31. Section 3 of the Africa Institute of South Africa Act, 2001, is hereby amended-

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

neb) **[collect, process, and disseminate]** research with a view to collecting, processing and dissemination of information on African affairs, give effective advice and facilitate appropriate action in relation to the collective needs, opportunities and challenges of all South Africans; and"

(b) by the substitution for paragraph (c) of subsection (1) of the following paragraph:

"(c) **[to]** promote awareness and consciousness of Africa at grassroots level."

Amendment of Section 4 of Act 68 of 2001

32. Section 4 of the Africa Institute of South Africa Act, 2001, is hereby amended -

(a) by the substitution for subsection (8) of the following subsection:

"(8) A member of the Council who is not in the full-time employ of the State may receive out of the funds of the Institute [Council], in respect of his or her functions as member, the allowances **[which the Minister, in consultation with the Minister of Finance, determines]** as prescribed by the National Treasury."

(b) by the addition of the following subsection after subsection (8)

"(8A)(a) For the purpose of appointment of members of the Council, referred to in subsection 4, the Minister must appoint a panel which must compile a shortlist of candidates.

(b) The panel must compile a shortlist after following a transparent and competitive nomination process."

(c) by the substitution for subsection (9) of the following subsection:

"(9) The Minister **[shall after the consultation with members of the Council appoint]** appoints a chairperson from among the members of the Council."

Amendment of Section 5 of Act 68 of 2001

33. Section 5 of the Africa Institute of South Africa Act, 2001, is hereby amended

- (a) by the substitution for paragraph (b) of subsection (3) of the following paragraph:
- "(b) if that person has been convicted of an offence in the Republic, other than an offence committed prior to 27 April 1994 associated with political objectives, and has been sentenced to imprisonment without the option of a fine, or in the case of fraud, to a fine or imprisonment or both; [or]"
- (b) by the substitution for paragraph (c) of subsection (3) of the following paragraph:
- "(c) unless that person is a South African citizen or permanently resident in the Republic; or"
- (c) by the addition of the following paragraph after paragraph (c) of subsection (3):
- "(d) if that person was removed from occupying positions of trust by a Court of law."

Amendment of Section 6 of Act 68 of 2001

34. Section 6 of the Africa Institute of South Africa Act, 2001, is hereby amended by the addition of the following subsections:
- (4) The Council must enter into a Shareholder compact with the Minister annually.
- (5) The Council must with the concurrence of the Minister appoint a chief executive officer who must be responsible for the management of the affairs of the Institute. The appointment must be made after following a transparent and competitive selection process."

Amendment of Section 8 of Act 68 of 2001

35. Section 8 of the Africa Institute of South Africa Act, 2001, is hereby amended by the substitution for subsection (1) of the following subsection:
- "(1) The Council must meet at least [three] four times a year and meetings shall be held at such times and places as the chairperson may determine by notice in writing to the other members."

Amendment of Section 10 of Act 68 of 2001

36. The following section is inserted in the Africa Institute of South Africa Act, 2001, after section 10:

IOA. Governance Committee

- (1) The Council may establish a governance committee to assist it to perform its functions and to advise it in connection with any matter relating to the proper governance of the Institute.
- (2) The committee establishes policies and guidelines on Council practices.
- (3) The committee monitors and evaluates Council performance using appropriate instruments and provides these results to the DST annually.
- (4) The governance committee shall be appointed by the Council and consists of-
 - (a) a chairperson, who is a member of the Council but not its chairperson; and
 - (b) at least two other members who may be members of the Council.
- (5) No employee of the Institute shall be appointed as a member of the governance committee.

Amendment of Section 11 of Act 68 of 2001

37. Section 11 of the Africa Institute of South Africa Act, 2001, is hereby amended-
- (a) by the substitution for subsection (6) of the following subsection:

"(6) Members of advisory panels are not eligible for grants from the Institute [Council] during their tenure."

Amendment of Section 12 of Act 68 of 2001

38. Section 12 of the Africa Institute of South Africa Act, 2001, is hereby amended-
- (a) by the substitution for subsection (1) of the following subsection:

"(1) The Council must, in consultation with the Minister, appoint a full-time CEO for the Institute [Council]."
 - (b) by the substitution for subsection (2) of the following subsection:

"(2) The Council must, in consultation with the Minister, appoint a full-time CEO for the Institute [Council]."
 - (c) by the substitution for subsection (3) of the following subsection:

"(3) The CEO must be appointed for a maximum [period] term of five years and subject to such conditions, including conditions relating to the payment of remuneration and allowances, as the Council may, subject to section 14 (1) (b) determine [, and may be reappointed for a similar period on the expiry of his or her period of office]."

(d) by the substitution for subsection (4) of the following subsection:

"(4) Whenever the CEO is absent for any reason for a period of over two months, or unable to carry out his or her duties, or whenever there is a vacancy in the office of the CEO, the Council may, subject to such conditions and the payment of such remuneration and allowances as it may determine in the manner contemplated in subsection (3) and with the concurrence of the Minister, appoint an acting [employee of the Council to act as] CEO during such absence or inability, or until a CEO has been appointed in terms of subsection (1), and that employee shall, whilst so acting, have all the powers and perform all the duties of the CEO: Provided that where the chief executive officer is absent for a period of less than two months the Board may, without the concurrence of the Minister, appoint an acting chief executive officer."

(e) by the addition of the following subsections:

"(5) The CEO must enter into a performance agreement with the Council within three months of taking up his or her post as CEO.

(6) The CEO is eligible for appointment for no more than a second term."

Repeal of Section 13 of Act 68 of 2001

39. Section 13 of the Africa Institute of South Africa Act, 2001, is repealed.

Amendment of Section 14 of Act 68 of 2001

40. Section 14 of the Africa Institute of South Africa Act, 2001, is hereby amended

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

"(c) may, on such conditions as it may deem fit and if the employee consents thereto, second an employee, either for a particular task or for a period of time, to the service of a department of state, an organisation or institute in the Republic on condition that the rights, privileges and benefits of such an employee, by virtue of his or her conditions of service as an employee of the Institute [Council], are not adversely *affected* by such secondment."

(b) by the addition of the following subsections after subsection (1):

- "(2) A person who is in the full-time employ of the State or of an institution receiving financial aid from the State may, with his or her consent, and subject to the laws governing the public service and the approval of the Institute, be seconded or transferred to the employ of the Council.
- (3) A person who is in the employ of the Institute may, with his or her consent, and subject to the laws governing the public service and the approval of the Council, be transferred to the employ of the State or an institution receiving financial aid from the State."

Amendment of Section 15 of Act 68 of 2001

- 41.** Section 15 of the Africa Institute of South Africa Act, 2001, is hereby amended-
- (a) by the substitution for subsection (1) of the following subsection:
- "(1) The funds of the Institute **[Council]** consist of-".
- (b) by the substitution for paragraph (b) of subsection (1) of the following paragraph:
- "(b) money paid to the Institute **[Council]** by users of its services;"
- (c) by the substitution for subsection (2) of the following subsection:
- "(2) The Institute **[Council]** must utilise-
- (a) any money contemplated in subsection (1) (a) in accordance with the statement of its estimated income and expenditure referred to in subsection (3), as approved by the Minister: Provided that, subject to subsection (1) (a), the Institute **[Council]** may utilise any amount or portion of any amount required to be so utilised for a particular or any other purpose in connection with a specified matter: Provided further that the Institute **[Council]**, with the approval of the Minister, may utilise any balance of such money of the Institute **[Council]** remaining at the end of the financial year for any expenses in connection with the performance of its functions; and"
- (d) by the substitution for subsection (3) of the following subsection:
- "(3) The Institute **[Council]**¹ must-
- (a) in each financial year, at such time as the Minister may direct, submit a statement of the Institutes **[Council's]** estimated income and expenditure during the following financial year, and the Institute **[Council]** may also

during the course of a financial year submit supplementary statements of the Institute [Council's] estimated expenditure for that financial year to the Minister for approval, to be granted with the concurrence of the Minister of Finance; and".

- (e) by the substitution for subsection (4) of the following subsection:

"(4) The Institute [Council] may-".

Amendment of Section 16 of Act 68 of 2001

42. Section 16 of the Africa Institute of South Africa Act, 2001, is hereby amended.

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

"(1) The Auditor-General must audit the accounts and balance sheet of the Institute [Council].".

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

"(a) furnish the Minister with such information as he or she may call for in connection with the activities and financial position of the Institute [Council]; and".

- (c) by the repeal of subsection (3)

Amendment of Section 17 of Act 68 of 2001

43. Section 17 of the Africa Institute of South Africa Act, 2001 is hereby repealed.

44. The following sections are inserted in the Africa Institute of South Africa Act, 2001, after section 17:

"17A Intellectual Property Rights

- (1) The rights in respect of any invention or design made by an employee of the Institute in the course of his or her employment as an employee of the Institute shall vest in the Institute. An employee shall be obliged to make such invention or design available to the Institute. The Institute may elect not to use such an invention or design. In such a case the rights must be offered wholly and exclusively to the inventors or originators of the work.
- (2) If the rights in respect of an invention or design properly registered in South Africa are in terms of subsection (1) vested in the Institute or assigned by the Institute, the Institute must award to the person responsible for the invention, financial participation by him or her in the proceeds derived from such invention or design at a percentage as determined from time to time by the Minister in the Regulations promulgated in terms of

section 20 of this Act. The Institute shall ensure that such payments are on terms and conditions that the Institute shall not take preference over the employee in the timing of such payments.

- (3) The Institute may apply for a patent or register a design in respect of an invention or design contemplated in subsection (1), and shall, for the purposes of the Patents Act, 1978 (Act No. 58 of 1978), be regarded as the assignee of the inventor in question.
- (4) The rights in respect of any invention or design made as a result of an investigation conducted shall vest in the Institute.
- (5) The Institute may elect to transfer the assignment of such rights to a third party under the following conditions:
- (a)* the right to benefit sharing by the inventor or designer shall survive the assignment of such rights and explicit agreement in this respect shall be secured by the Institute;
- (b)* priority shall be given to South African institutions in respect of the transfer of rights;
- (c)* priority shall, when rights are transferred to business entities, be given to small and medium enterprises as defined in the National Small Business Act (Act No. 102 of 1996); and
- (d)* priority shall, when rights are transferred to business entities, be given to black economic empowerment firms as defined in the Broad-Based Black Economic Empowerment Act (Act No. 53 of 2003).
- (6) The Institute must, with regard to investigations and research conducted by employees of the Institute -
- (a)* ensure, in work conducted in respect of indigenous knowledge, that written information transfer and material : transfer agreements, subject to properly informed consent, are established prior to the undertaking of research;
- (b)* secure with the consent of the parties any invention, discovery or improvement derived from indigenous knowledge, originally held by any person or community in such a manner that the person or community can participate in the benefits arising from such protection;
- (c)* protect all rights of the person or community arising from the original indigenous knowledge and any invention, discovery or improvements.

178 Transfer of certain assets to Institute

Any immovable property belonging to the State may, on such conditions as the Minister may with the concurrence of the Minister of Finance determine, be transferred to the Institute in order to enable the Institute to perform its functions."

Amendment of Section 18 of Act 68 of 2001

45. Section 18 of the Africa Institute of South Africa Act, 2001, is hereby amended-

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

"(b) authorise the chairperson, CEO or any other employee of the Institute [Council] to perform any duty assigned to the Council by or under this Act."

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

"(2) The CEO may-

(a) delegate any power conferred upon him or her by or under this Act to an employee of the Institute [Council]; or

(b) authorise an employee of the Institute [Council] to perform any duty assigned to him or her by or under this Act."

Repeal of Section 19 of Act 68 of 2001

46. Section 19 of the Africa Institute of South Africa Act, 2001, is repealed.

Amendment of Section 20 of Act 68 of 2001

47. Section 20 of the Africa Institute of South Africa Act, 2001, is hereby amended-

(a) by the repeal of subsection (1).

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

"(2) The Minister may make regulations regarding any-

(a) [any] matter which may be prescribed in terms of this Act; and

(b) [any] other matter which he or she may deem necessary or expedient to prescribe in order to achieve the objectives of this Act."

(c) by the repeal of subsection (3).

Amendment of section 1 Of Act 67 of 2001

48. Section 1 of Academy of Science of South Africa Act, 2001, is hereby amended-

- (a) by the addition to subsection (1) of the following subparagraph:
"Member' means an elected Member of the Academy of Science of South Africa;".
- (b) by the substitution in section (1) for the definition of "Minister" of the following definition:
"Minister' means the Minister of [cabinet member responsible for Arts, Culture,] Science and Technology;".

Amendment of section 5 Of Act 67 of 2001

49. Section 5 of Academy of Science of South Africa Act, 2001, is hereby amended-

- (a) by the substitution for subsection (1) of the following subsection:
"(1) There is only one category of **[members]** Members of the Academy, but a **(member)** Member may become an emeritus **[member]** Member from the beginning of the year in which the member turns 70 years of age."
- (b) by the substitution for subsection (2) of the following subsection:
"(2) **A [member]** Member of the Academy is a person who can be expected by the Academy to significantly assist the Academy in achieving its objectives."
- (c) by the substitution for subsection (3) of the following subsection:
"(3) The criterion for election to **[membership]** Membership of the Academy is significant achievement in the pursuit, advancement or application of science."
- (d) by the substitution for subsection (4) of the following subsection:
"(4) New candidates for **[membership]** Membership of the Academy are proposed and recommended at least once a year by means of a prescribed certificate signed by not less than four **[members]** Members, at least two of whom have personal knowledge and understanding of the scientific work and significant contribution to science of the candidate."
- (e) by the substitution for subsection (5) of the following subsection:
"(5) The certificate must contain a draft citation explaining why the election of the candidate to **[membership]** Membership of the Academy would further the objectives of the Academy."
- (f) by the substitution for subsection (6) of the following subsection:
"(6) The certificate must be accompanied by a prescribed statement from the candidate indicating the candidate's willingness to be

considered for election to **[membership]** Membership of the Academy, together with a curriculum vitae."

(g) by the substitution for subsection (7) of the following subsection:

"(7) The Council of the Academy must annually evaluate, in terms of the prescribed criteria for **[membership]** Membership, all new candidates and candidates brought forward from a previous year."

(h) by the substitution for subsection (8) of the following subsection:

"(8) **[All existing members]** Existing Members of the Academy will then be required, in a secret ballot, to cast votes that are either for or against every candidate passed by the Council or that indicate a neutral position."

(i) by the substitution for subsection (10) of the following subsection:

"(10) A candidate having at least three times as many votes for him or her as against him or her is considered elected to **[membership]** Membership of the Academy, as long as at least half of the votes cast are in his or her favour."

(j) by the addition of the following subsection after subsection (10):

"(IOA) Membership shall be subject to the requirement that any annual subscription fee set by Council has been paid as prescribed."

(k) by the substitution for subsection (11) of the following subsection:

"(11) Every person who is elected as a Member **[member]** of the Academy must within three years of the election **[attend an annual general meeting of the Academy to]** sign the register of Members **[members]** and **[to]** subscribe to the following obligation:

(a) I (full names) hereby promise to promote the well-being of South Africa through scientific thought and generally to further the objectives of the Academy of Science of South Africa as far as this lies within my power; and

(b) I shall also observe the prescribed constitution and prescribed standing orders of the Academy for as long as I remain a Member **[member]** thereof."

(l) by the substitution for subsection (12) of the following subsection:

"(12) A Member **[member]** of the Academy is, subject to subsection (9), eligible **[obliged]** to take part in the elections of new Members **[members]** of the Academy and the members of the Council."

- (m) by the substitution for subsection (13) of the following subsection:
- "(13) An unsuccessful candidate or a Member who has been deprived of his Membership may appeal to the Council in the prescribed manner."
- (n) by the addition of the following subsection after subsection (13):
- "(14) A Member whose conduct has in the opinion of the Council brought the Academy into disrepute may be required to appear before the Council to be dealt with in the manner prescribed."

Amendment of section 6 Of Act 67 of 2001

50. Section 6 of Academy of Science of South Africa Act, 2001, is hereby amended by the substitution of the following subsection:
- (a) by the substitution for paragraph (f) of subsection (3) of the following paragraph
- "(f) one member of the National Advisory Council on Innovation appointed by the Minister after consultation with the National Advisory Council on Innovation."
- (b) by the substitution for subsection (4) of the following subsection
- "(4) The members of the Council, except the member contemplated in subsection (3) (f), are elected by [members] Members of the Academy from their number and appointed by the Minister."

Amendment of section 7 Of Act 67 of 2001

51. Section 7 of Academy of Science of South Africa Act, 2001, is hereby amended
- (a) by the repeal of paragraph (b) of subsection (2);
- (b) by the substitution for paragraph (f) of subsection (2) of the following paragraph:
- "(f) has been found guilty of misconduct after a formal hearing for conduct which may bring the Academy into disrepute [, but a member may not vacate office until the next annual general meeting at which the vacation of office must appear on the agenda.];"
- (c) by the repeal of paragraph (g) of subsection (2);
- (d) by the substitution for subsection (3) of the following subsection:
- "(3) Any member of the Council wishing to resign his or her membership must tender his or her resignation in writing to the president: all outstanding subscription shall remain due."
- (e) by then substitution for subsection (4) of the following subsection:

"(4) Membership lapses if subscription fees, as prescribed, have not been paid [within three months after they become due] as prescribed."

Amendment of section 8 Of Act 67 of 2001

52. Section 8 of Academy of Science of South Africa Act, 2001, is hereby amended by the substitution for subsection (2) of the following subsection:

"(2) A committee referred to in subsection (1) consists of such number of [members] Members of the Academy and employees of the Academy, if any, as the Council may deem necessary, as well as other persons, and the Council may at any time dissolve or reconstitute a committee."

Amendment of section 12 Of Act 67 of 2001

53. Section 12 of Academy of Science of South Africa Act, 2001, is hereby amended

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

"(2) The financial statements must be submitted to [members] Members within six months of the end of the financial year."

Amendment of section 14 Of Act 67 of 2001

54. Section 14 of Academy of Science of South Africa Act, 2001, is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) The Academy may, subject to legislation and formal agreements regarding international cooperation and in order to achieve its objectives, render support relevant thereto to any South African citizen in any territory outside the Republic."

Amendment of section 15 Of Act 67 of 2001

55. Section 15 of Academy of Science of South Africa Act, 2001, is hereby amended

(a) by the substitution for subsection (4) of the following subsection:

"(4) All [members] Members of the Academy must be notified in writing of every meeting of the Academy at least 21 days before such meeting.

(b) by the substitution for subsection (5) of the following subsection:

"(5) A quorum for a meeting of the Academy is one quarter of [its members] the Members."

(c) by the substitution for subsection (6) of the following subsection:

"(6) Any decision of the Academy is taken by resolution of a simple majority of the [members] Members of the Academy present at any meeting of the Academy, and, in the event of an equality of votes on any matter, the person presiding at the meeting in question has a casting vote in addition to his or her deliberative vote as a [member] Member of the Academy."

(d) by the substitution for subsection (7) of the following subsection:

"(7) A [member] Member of the Academy may not vote or in any manner participate in the proceedings at any meeting of the Academy nor be present at the venue where such a meeting is held, if, in relation to any matter before the Academy, he or she has any interest which precludes him or her from performing his or her functions as a [member] Member of the Academy in a fair, unbiased and proper manner."

Amendment of section 16 of Act 67 of 2001

56. Section 16 of Academy of Science of South Africa Act, 2001, is hereby amended by the substitution for paragraph (b) of subsection (1) of the following paragraph:

"(b) the code of conduct for [members] Members of the Academy; and"

Repeal of section 17 of Act 67 of 2001

57. Section 17 of Academy of Science of South Africa Act, 2001 is hereby repealed.

Repeal of section 18 of Act 67 of 2001

58. Section 18 of Academy of Science of South Africa Act, 2001 is hereby repealed.

Amendment of section 19 of Act 67 of 2001

59. Section 19 of Academy of Science of South Africa Act, 2001 is hereby repealed.

Amendment of Section 1 of Act 46 of 1988

60. Section 1 of the Scientific Research Council Act, 1988 (Act No 46 of 1988) ("the Act 46 of 1988") is hereby amended -

(a) by the substitution for the definition of chairman of the following definition:

"chairperson" [chairman] means chairperson [chairman] of the Board appointed in terms of section 7(2)(a);"

(b) by the substitution for the definition of Executive Management Board of the following definition:

- ""Executive Management [Board] Committee' means Executive Management [Board] Committee referred to in section 8;"
- (c) by the substitution for the definition of Minister of the following definition:
- ""Minister' means the Minister of Science and Technology [to whom the administration of this Act has been assigned in terms of section 20]."
- (d) by the substitution for the definition of President of the following definition:
- ""[president] chief executive officer' means the person appointed in terms of section 10 as the chief executive officer of the CSIR;"
- (e) by the substitution for the definition of regulation of the following definition:
- ""Regulation" means [a regulation in force] regulations issued in terms of this Act".
- (f) by the substitution for the definition of research of the following definition:
- ""research' means the augmentation and improvement of knowledge through scientific investigations and methods directed towards the scientific and technological requirements of the private and public sectors, including the solution of relevant problems in the national interest, and includes the development, acquisition, diffusion, innovation and transfer of expertise and technology;"
- (g) by the substitution for the definition of this Act of the following definition:
- ""this Act' includes [a regulation] regulations issued in terms of section 18 of this Act."
- (h) by the addition of the following definitions:
- ""Department' means the Department of Science and Technology;
- 'PFMA' means the Public Finance Management Act, 1999 (Act No.1 of 1999)
- 'Shareholder compact' includes the annual performance agreement incorporating such key performance indicators as agreed upon between the Board and the Minister."

Amendment of Section 3 of Act 46 of 1988

61. Section 3 of the Scientific Research Council Act, 1988 is hereby amended by the substitution for subsection (1) of the following subsection:

"The objects of the CSIR are, through directed and particularly multi-disciplinary research and technological innovation, to foster, in the national interests and which is in line with the mandate received from government and in fields which in [its] CSIR's opinion should receive preference, industrial and scientific development, either by itself or in co-operation with principals from the private or public sectors, and thereby to contribute to the improvement of the quality of life of the people of the Republic and to perform any other functions that may be assigned to the CSIR by or under this Act."

Amendment of Section 4 of Act 46 of 1988

62. Section 4 of the Scientific Research Council Act, 1988 is hereby amended -

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

"(a) undertake research in connection with -

- (i) the better utilisation of the resources of the Republic and the improvement of the productive capacity of its population;
- (ii) the improvement of technical processes and methods to [improve] enhance industrial production, and the promotion and the expansion of existing, and the establishment of new industries;
- (iii) [standardisation in industry and commerce]".

(b) by the substitution for paragraph (b) of subsection (1) of the following paragraph:

"(b) utilize the technological expertise in its possession [or make it available to any person]."

(c) by the substitution for paragraph (c) of subsection (1) of the following paragraph:

"(c) [foster the training of its manpower] foster the development of human resources through all activities including research and technology transfer activities."

(d) by the substitution for paragraph (e) of subsection (1) of the following paragraph:

"(e)" establish and control facilities in those fields of research and innovation which the Board may from time to time approve." .

(e) by the substitution for paragraph (f) of subsection (1) of the following paragraph:

"(f) [co-operate with State departments, societies, institutions and other persons that are nationally or internationally involved in research] The CSIR shall foster enhanced collaboration with State departments and nationally

or internationally between various science, engineering and technology institutions and other persons involved in research."

- (f) by the repeal of subsection (2).
- (g) by the substitution for subsection (3) of the following subsection:
 "(3) The CSIR shall undertake research in connection with [maintain] primary scientific standards [of physical quantities for the Republic and compare those standards with international standards from time to time.]."
- (h) by the substitution for subsection (4) of the following subsection:
 "(4) For the achievement of its objects contemplated in section 3, the CSIR, may in the field of research co-operate with departments of State, Universities, [technikons], colleges, scientific institutions and other persons.
- (i) by the substitution of paragraph (a) of subsection (5) of the following paragraph:
 "(a) enter into agreements with any person [or], subject to the provisions of section 5, [any government or administration on the terms and conditions upon which the Board and that person, government or administration agree;]"
- (j) by the addition of the following subsection after subsection (6):
"(7) In the event that the CSIR seek to decommission any research area the approval of the Minister must be sought."

Amendment of Section 5 of Act 46 of 1988

63. Section 5 of the Scientific Research Council Act, 1988 is hereby amended:-

- (a) by the substitution for subsection (1) of the following subsection:
 "(1) The CSIR may at the request of or with the prior approval of the Minister undertake research in any territory outside the Republic as approved in the Shareholder Compact or the Business Plan [on behalf of any person (including any government or administration) in any such territory.]."
- (b) by the repeal of subsection (2).
- (c) by the repeal of subsection (3).
- (d) by the repeal of subsection (4).

Amendment of Section 6 of Act 46 of 1988

64. Section 6 of the Scientific Research Council Act, 1988 is hereby amended -

- (a) by the substitution of subsection (3) of the following subsection:
- "(3) The Minister may after consultation with the [concurrency of the] Board determine that any property (excluding land and buildings) of the CSIR used by the CSIR in connection with the performance or exercise of the function or power transferred in terms of subsection (1), shall be transferred to the body of persons or department of State concerned."
- (b) by the substitution of subsection (4) of the following subsection:
- "(4) the Minister may [with the concurrence of the Minister of Finance and] after consulting with the Board, determine that such part of the funds of the CSIR as would, during the financial year in which the transfer contemplated in subsection (1) takes place, have been utilised by the CSIR in connection with the function or power in question, shall be paid over to the body of persons or department of State concerned, in order to be utilised by that body or department of State in connection with the performance or exercise of that function or power."

Amendment of Section 7 of Act 46 of 1988

65. Section 7 of the Scientific Research Council Act, 1988 is hereby amended -

- (a) by the substitution of subsection (1) of the following subsection:
- "(1) The affairs of the CSIR shall be managed by a board, which shall determine the policy and objectives of the CSIR and shall exercise control generally over the performance of its functions, the exercise of its powers and the execution of its duties by the CSIR."
- (b) by the substitution of paragraph (a) of subsection (2) of the following paragraph:
- "(a) a [chairman] chairperson appointed by the Minister [after consultation with the Board];".
- (c) by the substitution of paragraph (c) of subsection (2) of the following paragraph:
- "(c) the [President] chief executive officer, who shall serve on the Board by virtue of his office."
- (d) by the substitution of subsection (3) of the following subsection:
- "(3) (a) [A member of the Board, excluding the president, shall hold office for a period not exceeding three years, but shall be eligible for reappointment] The Board must be reconstituted every four years, but members continue in office until the succeeding Board is properly constituted.
- (b) Save as provided for in subsection (3)(a) above, no member may serve more than two consecutive terms."

- (e) by the substitution of subsection (4) of the following subsection:
- "(4) The [chairman] chairperson and the members of the Board, excluding a member who is in the full-time employment of the State, shall be appointed on such conditions, including conditions relating to the payment of remuneration and allowances as the Minister may determine with the concurrence of the Minister of Finance] prescribed by the National Treasury.".
- (f) by the substitution of subsection (5) of the following subsection:
- "(5) The [members] composition of the Board, including the [chairman] chairperson must [shall all] be persons who have achieved distinction in science or industry or finance or who have special knowledge or experience in relation to some aspect of the CSIR's functions and be broadly representative of gender, language and community composition of South Africa.".
- (g) by the substitution of subsection (6) of the following subsection:
- "(6) The [chairman] chairperson, or in his or her absence a member of the Board elected by the members present, shall preside at any meeting of the Board."
- (h) by the substitution of paragraph (b) of subsection (7) of the following paragraph:
- "(b) The Minister [and the Minister of Finance] may [jointly] from time to time reserve any financial matter provided for in this Act as a matter in respect of which a decision of the Board shall be subject to the consent of the Minister [with the concurrence of the Minister of Finance]."
- (i) by the addition of the following subsections after subsection (7)
- "(8) (a) For the purposes of appointing members of the Board, referred to in subsection 7, the Minister must appoint a panel which must compile a shortlist of candidates.
- (b) The panel must compile a shortlist after following a transparent and competitive nomination process.
- (9) The Board must enter into a shareholder compact with the Minister annually.".

Amendment of Section 8 of Act 46 of 1988

66. Section 8 of the Scientific Research Council Act, 1988 is hereby substituted with the following section:

"8 Executive Management [Board] Committee

The Board shall appoint an Executive Management [Board] Committee which shall consist of the [president] chief executive officer and so many other members, who shall be employees of the CSIR, as the Board may deem necessary, and which shall be responsible for the management of the affairs of the CSIR in accordance with the policy and objectives set by, and subject to the directives and control of, the Board."

Amendment of Section 9 of Act 46 of 1988

67. Section 9 of the Scientific Research Council Act, 1988 is hereby amended -

(a) by the substitution of subsection (3) of the following subsection:

"(3) If a committee referred to in subsection (1) consists of more than one member, the Board shall designate a member of the committee as [chairman] chairperson thereof."

(b) The following section is inserted in the Scientific Research Council Act, 1988 after Section 9:

9A Governance Committee

(1) The Board may establish a governance committee to assist it to perform its functions and to advise it in connection with any matter relating to the proper governance of the Council.

(2) The committee establishes policies and guidelines on Board practices.

(3) The committee will monitor and evaluate board performance using appropriate instruments and provide these results to the Department annually.

(4) The governance committee shall be appointed by the Board and must consist of

(a) a chairperson, who is a member of the Board but who is not its chairperson; and

(b) at least two other members who may be members of the Board.

(5) No employee of the CSIR shall be appointed as a member of the governance committee."

Amendment of Section 10 of Act 46 of 1988

68. Section 10 of the Scientific Research Council Act, 1988 is hereby amended -

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

"(1) The Board [shall] must appoint a suitably skilled and qualified person as the chief executive officer of the CSIR in consultation with the Minister, who must be responsible for the management

of the affairs of the CSIR [who shall occupy the post of president of the CSIR].".

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

"(2) The [president] chief executive officer shall be the [chairman] chairperson of the Executive Management [Board] Committee and, in collaboration with the Executive Management [Board] Committee, shall be responsible for the management of the affairs of the CSIR and shall report on those affairs to the Board as may be required of him by the Board."

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

"(3) The [president] chief executive officer shall be appointed for a term [period of not more than] of five years on the conditions, including conditions relating to the payment of remuneration and allowances, that the Board may determine."

(d) by the substitution of subsection (4) of the following subsection:

"(4) Whenever for any reason the [president] chief executive officer is absent for a period of over two months or unable to carry out his or her duties, or whenever there is a vacancy in the office of the [president] chief executive officer, the Board may, with the concurrence of the Minister, subject to such conditions and the payment of such remuneration and allowances as it may determine, appoint an acting [employee of the CSIR to act as president] chief executive officer during such absence or inability, or until a [president] chief executive officer has been appointed in terms of subsection (1), and that other person shall, while so acting, have all the powers and perform all the duties of the [president] chief executive officer: Provided that where the chief executive officer is absent for a period of less than two months the Board may, without the concurrence of the Minister, appoint an acting chief executive officer."

(e) by the addition of the following subsections:

"(5) The chief executive officer must enter into a performance agreement with the Board within three months of taking up his or her post as chief executive officer.

"(6) The chief executive officer is eligible for appointment for no more than a second term."

Amendment of Section 11 of Act 46 of 1988

69. Section 11 of the Scientific Research Council Act, 1988 is hereby amended -

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

"(2) The [chairman] chairperson may at any time call a special meeting of the Board, which shall be held at such time and place as he or she may direct."

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

"(3) The quorum for a meeting of the Board shall be a majority of its members at the time."

- (c) by the substitution of subsection (4) of the following subsection:

"(4) A decision of the Board shall be taken by resolution of the majority of the members present at any meeting of the Board and, in the event of an equality of votes on any matter, the person presiding at the meeting in question shall have a casting vote in addition to his or her deliberative vote as a member of the Board."

- (d) by the addition of the following subsection after subsection (4):

"(5) The Board must meet at least four times a year."

Amendment of Section 12 of Act 46 of 1988

70. Section 12 of the Scientific Research Council Act, 1988 is hereby amended -

- (a) by the substitution of paragraph (b) of subsection (1) of the following paragraph:

"(b) The CSIR shall out of its funds pay to its employees such remuneration as the Board may determine in accordance with a system approved from time to time for that purpose by the Minister [with the concurrence of the Minister of Finance]."

- (b) the following sections are inserted in the Scientific Research Council Act, 1988 after Section 12:

"12A. Transfer of certain persons to or from employ of Council

(1) A person who is in the full-time employ of the State or of an institution receiving financial aid from the State may, with his or her consent, and subject to the laws governing the public service and the approval of the Board, be transferred or seconded to the employ of the CSIR.

(2) A person who is in the employ of the CSIR may, with his or her consent, and subject to the laws governing the public service and the approval of the Board, be transferred or seconded to the employ of the State or an institution receiving financial aid from the State.

128. Transfer of certain assets to the Council

Any immovable property belonging to the State may, on such conditions as the Minister may with the concurrence of the

Minister of Finance determine, be transferred to the CSIR in order to enable the CSIR to perform its functions."

Amendment of Section 13 of Act 46 of 1988

71. Section 13 of the Scientific Research Council Act, 1988 is replaced with the following section:

"13 Intellectual Property Rights

- (1) The rights in respect of any intellectual property made by an employee of the CSIR in the course of his or her employment as an employee of the CSIR shall vest in the CSIR. An employee shall be obliged to make such intellectual property available to the CSIR. The CSIR may elect not to use an intellectual property. In such a case the rights must be offered wholly or exclusively to the inventors or originators of the work.
- (2) If the rights in respect of an intellectual property properly registered in South Africa are in terms of subsection (1) vested in the CSIR or assigned by the CSIR, the CSIR must award to the person responsible for the invention, financial participation by him or her in the proceeds derived from such intellectual property at a percentage as determined from time to time by the Minister in the Regulations promulgated in terms of section 18 of this Act.
- (3) The CSIR may apply for a patent or register a design in respect of an intellectual property contemplated in subsection (1), and shall, for the purposes of the Patents Act, 1978 (Act No. 58 of 1978), be regarded as the assignee of the intellectual property in question.
- (4) The rights in respect of any intellectual property resulting from an investigation conducted for or on behalf of another person shall vest in the CSIR unless it is agreed otherwise.
- (5) The CSIR may elect to transfer intellectual property rights to a third party under the following conditions:
 - (a) the right to benefit sharing by the inventor or designer shall survive the assignment of such rights and explicit agreement in this respect shall be secured by the CSIR;
 - (b) preference shall be given to South African institutions in respect of the transfer of rights;
 - (c) preference shall, when rights are transferred to business entities, be given to small and medium enterprises as defined in the National Small Business Act, 1996 (Act No.102 of 1996); and
 - (d) preference shall, when rights are transferred to business entities, be given to black economic empowerment firms

as defined in the Broad Based Black Economic Empowerment Act, 2003 (Act No. 53 of 2003).

- (6) The Board must, with regard to investigations and research conducted by employees of the CSIR -
- (a) ensure in work conducted in respect of indigenous knowledge that written information transfer and material transfer agreements, subject to properly informed consent are established prior to the undertaking of research:
 - (b) secure with the consent of the parties any invention, discovery, or improvement derived from indigenous knowledge, originally held by any person or community in such a manner that the person or community can participate in the benefits arising from such protection:
 - (c) protect all rights of the person or community arising from the original indigenous knowledge and any invention, discovery or improvements."

Amendment of Section 14 of Act 46 of 1988

72. Section 14 of the Scientific Research Council Act, 1988 is hereby amended by the substitution of paragraph (a) of subsection (2) of the following paragraph:

"(a) The Board shall furnish to the Minister such information as he or she may call for from time to time in connection with the activities and financial position of the CSIR, and shall in addition submit to the Minister an annual report, including a balance sheet and a statement of income and expenditure certified by the Auditor-General, an estimate of expenditure in respect of the following financial year, and such other particulars as the Minister may require."

Amendment of Section 15 of Act 46 of 1988

73. Section 15 of the Scientific Research Council Act, 1988 is hereby amended

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

"(a) money voted [appropriated] by Parliament and allocated in the Medium Term Expenditure Framework to enable the CSIR to perform its function,"

(b) by the repeal of paragraph (b) of subsection (1)

(c) by the repeal of subsection (2)

(d) by the repeal of subsection (3)

Repeal of Section 16 of Act 46 of 1988

74. Section 16 of the Scientific Research Council Act, 1988 is hereby repealed
 Repeal of Section 17 of Act 46 of 1988

75. Section 17 of the Scientific Research Council Act, 1988 is hereby repealed
 Amendment of Section 18 of Act 46 of 1988

76. Section 18 of the Scientific Research Council Act, 1988 is hereby amended

(a) by the substitution of subsection (5) of the following subsection:

"(5) the procedure at meetings of the Board[, and generally, as to any matter in respect of which the Minister considers it necessary or expedient to make regulations in order to achieve the objects of this Act.]".

(b) by the addition of the following subsection after subsection (5):

"(6) any matter in respect of which the Minister considers it necessary or expedient.".'

Amendment of Section 19 of Act 46 of 1988

77. Section 19 of the Scientific Research Council Act, 1988 is hereby amended with the following section:

(a) by the substitution of the following subsections:

"19

(1) The Board may-

(a) delegate to the chairman, [President] chief executive officer or any other employee of the CSIR any power conferred upon the Board by or under this Act, on such conditions as the Board may determine; or

(b) authorise the chairman, [President] chief executive officer or that other employee to perform any duty assigned to the Board by or under this Act.

(2) The [President] chief executive officer may-

(a) delegate to an employee of the CSIR any power conferred upon the [President] chief executive officer by or under this Act; or

(b) authorize that employee to perform any duty assigned to the [President] chief executive officer by or under this Act.

- (3) Any delegation, under subsection (1) or (2) does not prohibit the exercise of the power in question by the Board or the [President] chief executive officer; as the case may be."

Repeal of Section 20 of Act 46 of 1988

78. Section 20 of the Scientific Research Council Act, 1988 is repealed.

Repeal of Section 21 of Act 46 of 1988

79. Section 21 of the Scientific Research Council Act, 1988 is repealed.

Repeal of Section 22 of Act 46 of 1988

80. Section 22 of the Scientific Research Council Act, 1988 is repealed.

Repeal of Section 23 of Act 46 of 1988

81. Section 23 of the Scientific Research Council Act, 1988 is repealed.

Amendment of Section 24 of Act 46 of 1988

82. Section 24 of the Scientific Research Council Act, 1988 is hereby amended with the following section:

- (a) by the substitution of the following section:

"24

This Act shall be called the Scientific Research Council Act, 1988, and shall come into operation on a date to be fixed by the [State] President by proclamation in the *Gazette*."

Short title

83. This Act is called the Science and Technology Laws Amendment Act, 200_