

REPUBLIC OF SOUTH AFRICA

LEGAL DEPOSIT BILL

(As amended by the Portfolio Committee on Arts, Culture and Language, Science and Technology (National Assembly))

(MINISTER OF ARTS, CULTURE, SCIENCE AND TECHNOLOGY)

[B 19B—97]

REPUBLIEK VAN SUID-AFRIKA

WETSONTWERP OP PLIGLEWERING

(Soos gewysig deur die Portefeuljekomitee oor Kuns, Kultuur en Taal, Wetenskap en Tegnologie (Nasionale Vergadering))

(MINISTER VAN KUNS, KULTUUR, WETENSKAP EN TEGNOLOGIE)

[W 19B—97]

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BILL

To provide for the preservation of the national documentary heritage through legal deposit of published documents; to ensure the preservation and cataloguing of, and access to, published documents emanating from, or adapted for, South Africa; to provide for access to government information; to provide for a Legal Deposit Committee; and to provide for matters connected therewith.

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

Definitions

1. In this Act, unless the context indicates otherwise—
- (i) “Committee” means the Legal Deposit Committee referred to in section 8; 5
(vii)
 - (ii) “Department” means the Department of Arts, Culture, Science and Technology; (iii)
 - (iii) “document” means any object which is intended to store or convey information in textual, graphic, visual, auditory or other intelligible format 10 through any medium, and any version or edition of a document which is significantly different from that document in respect of its information content, intelligibility or physical presentation, is considered to be a separate document; (iv)
 - (iv) “medium” means any means of recording or transmitting information 15 intended for subsequent reading, listening or viewing; (viii)
 - (v) “Minister” means the Minister of Arts, Culture, Science and Technology; (ix)
 - (vi) “official publication” means a document published by an organ of national, provincial or local government, a parastatal organisation or any other institution listed as a public entity in terms of section 3 of the Reporting by 20 Public Entities Act, 1992 (Act No. 93 of 1992); (i)
 - (vii) “official publications depository” means a place of legal deposit designated in accordance with section 6; (ii)
 - (viii) “place of legal deposit” means a library or institution referred to in section 6; 25
(x)
 - (ix) “prescribed” means prescribed by regulation made under section 12; (xii)
 - (x) “published” means produced to be generally available in multiple copies or locations to—
 - (a) any member of the public, whether through purchase, hire, loan, subscription, licence or free distribution; or 30
 - (b) the members of an association or a society, the membership of which is open to any qualifying member of the public; (v) 30
 - (xi) “publisher” means the person who or body, whether public or private, which—
 - (a) publishes and distributes a document; 35
 - (b) authorises and accepts the financial risk of the production, whether by that person or body or by another, of a document which is intended to be generally available;
 - (c) imports a document produced abroad for a South African publisher or a document specially adapted for the South African market to make it 40 generally available; (xi)

- (xii) “this Act” includes the regulations made under section 12. (vi)

Deposit of documents and information

2. (1) A publisher shall for each published document supply to the prescribed places of legal deposit the prescribed number of copies in the format and of the quality prescribed for each version and type of medium: Provided that the prescribed number of copies of documents other than official publications shall not exceed five. 5

(2) A publisher shall for each published document furnish the State Library with the prescribed information pertaining to that document.

Cost

3. The cost of documents supplied in terms of section 2(1) and of the information furnished in terms of section 2(2) and of the supply and furnishing of such documents and information shall be borne by the publisher. 10

Time of deposit

4. Unless otherwise prescribed, the publisher shall dispatch a document contemplated in section 2(1) and furnish the information contemplated in section 2(2) within 14 days of the day on which the document is published. 15

Exemptions

5. (1) (a) If, owing to the high unit cost of publishing any particular document, or its unique or labour-intensive production method, the publisher of such document is likely to suffer serious financial or other hardship should he or she supply a copy of the document free of charge to every place of legal deposit in terms of section 2(1), the Minister may, upon application from the publisher and after consultation with the Committee, exempt such publisher from the obligation to supply a copy of such document to such place or places of legal deposit as may be specified by the Minister. 20

(b) The Minister shall not exempt a publisher under paragraph (a) from his or her obligation to supply a copy of a document to the South African Library or the National Film, Video and Sound Archives, as the case may be, and to furnish the State Library with the information contemplated in section 2(2). 25

(c) The Minister may, after consultation with the Committee, grant financial relief to publishers who suffer serious financial hardship as a result of their obligation to supply certain documents to the South African Library or the National Film, Video and Sound Archives, as the case may be: Provided that such relief shall not exceed the cost of producing an additional copy of such documents. 30

(2) If a place of legal deposit does not require a particular document, or a particular category of documents, to which the provisions of section 2(1) apply, the head of such place of deposit may exempt the publisher in writing from the obligation to supply a copy of such document or category of documents to that place of legal deposit. 35

(3) If a publisher is exempted under this section from the obligation to supply a copy of a document to the State Library, such publisher must nevertheless furnish the State Library with the information contemplated in section 2(2) relating to that document. 40

(4) An exemption granted under subsection (1)(a) or (2) in respect of a particular document or any particular category of documents may be withdrawn in writing by the Minister or the head of the place of legal deposit in question, as the case may be.

Places of legal deposit

6. (1) The places of legal deposit shall be— 45
(a) the City Library Services, Bloemfontein;

- (b) the Library of Parliament, Cape Town;
- (c) the Natal Society Library, Pietermaritzburg;
- (d) the South African Library, Cape Town;
- (e) the State Library, Pretoria;
- (f) the National Film, Video and Sound Archives, Pretoria, for purposes of certain categories of documents as prescribed; and 5
- (g) any other library or institution prescribed by the Minister for purposes of certain prescribed categories of documents.

(2) (a) The Minister shall, on the recommendation of the Member of the Executive Council responsible for libraries in each province, designate at least one place of legal deposit in each province to serve as an official publications depository, which shall be entitled to receive a copy of every official publication but not of other categories of documents. 10

(b) Except in the case of subsection (1)(b), an official publications depository may be designated in an existing place of legal deposit if the Minister deems this advisable: 15
 Provided that such a place of legal deposit shall retain its right under section 2(1) also to receive documents other than official publications.

(3) The Minister or the relevant Member of the Executive Council for each province shall, from funds voted for that purpose by Parliament or the relevant Provincial Legislature, as the case may be, disburse such sums as are necessary to places of legal deposit to enable them to fulfil their obligations. 20

Duties of places of legal deposit

7. (1) A place of legal deposit shall, subject to such limitations as may be prescribed—
 (a) receive, accession, retain and preserve;
 (b) catalogue or inventorise; and 25
 (c) ensure freedom of access to,
 the documents supplied in terms of section 2(1).

(2) The State Library shall, with the assistance of other places of legal deposit and other appropriate libraries or institutions, compile—
 (a) a national bibliography; and 30
 (b) statistics of the South African production of published documents on the basis of the documents supplied in terms of section 2(1) and the information furnished in terms of section 2(2).

(3) The South African Library and the National Film, Video and Sound Archives shall, with the assistance of other places of legal deposit, preserve at least one copy of each document supplied in terms of section 2(1) for current and future use. 35

(4) An official publications depository shall—
 (a) serve as a centre for promoting public awareness of, and access to, official publications and information held by the government and the institutions listed in terms of section 3 of the Reporting by Public Entities Act, 1992 (Act No. 93 of 1992); and 40
 (b) provide public access to databases and other information sources to which the public may gain access under any law.

(5) Notwithstanding subsections (1) and (2), the head of a place of legal deposit may, on the recommendation of the Committee— 45
 (a) dispose of;
 (b) omit from catalogues or inventories;
 (c) omit from a national bibliography; or
 (d) impose restrictions on access to,
 certain categories of documents, supplied in terms of section 2(1) to one or more places of legal deposit. 50

(6) If a place of legal deposit persistently fails to comply with subsection (1), (2), (3) or (4), the Minister may, upon the recommendation of the Committee, by notice in the *Gazette* exempt all publishers from the obligation to supply to that place of legal deposit the documents contemplated in section 2(1). 55

Legal Deposit Committee

8. (1) There is hereby established a committee called the Legal Deposit Committee, consisting of—

- (a) the heads of the places of legal deposit referred to in section 6(1);
- (b) the head of the Government Printing Works;
- (c) one representative for all provincial official publications depositories, designated by the Minister in the prescribed manner; and
- (d) two representatives of the publishing industry, designated by the Minister in the prescribed manner: 5

Provided that the regulations prescribing the manner of designation shall apply the principles of transparency and representivity.

(2) The Minister may appoint no more than four additional members to the Committee in the prescribed manner to represent other interested parties, including representatives of library and information services. 10

(3) The Minister shall, in consultation with the various interest groups, such as the publishers and the library and information services sector, appoint one of the members in the prescribed manner as chairperson of the Committee to serve for a renewable term of three years. 15

(4) The object of the Committee is to coordinate and promote the implementation of this Act.

(5) The Committee shall—

- (a) advise the Minister on any matter dealt with in this Act;
- (b) make recommendations to the Minister concerning any regulations which the Minister may make under this Act; 20
- (c) co-ordinate the tasks carried out by the various places of legal deposit in respect of legal deposit;
- (d) advise any place of legal deposit regarding any matter dealt with in this Act;
- (e) establish subcommittees or working groups when necessary to investigate any matter dealt with in this Act and to execute any tasks relating to the implementation of this Act and to co-opt persons to such subcommittees or working groups for the duration of the investigation or task; and 25
- (f) report to Parliament on the activities and financial affairs of the places of legal deposit in accordance with the provisions of the Reporting by Public Entities Act, 1992 (Act No. 93 of 1992). 30

(6) No remuneration shall be payable to the members of the Committee or the members of its subcommittees or working groups other than such reasonable travel and subsistence costs as the Minister with the concurrence of the Minister of Finance may determine within the limits of the approved budget of the Committee, its subcommittees and working groups. 35

Offences

9. Any publisher who fails to comply with section 2, 3, 4 or 5(3) shall be guilty of an offence and liable on conviction to a fine not exceeding R20 000.

Action to remedy non-compliance 40

10. (1) (a) If a publisher fails to supply the documents contemplated in section 2(1) to one or more places of legal deposit, an officer authorised thereto by the Minister may in the prescribed manner demand that such documents be supplied to such place or places of legal deposit within 30 days.

(b) If, on the expiration of that period, such documents have not been received by the place or places of legal deposit in question, such officer may forthwith by purchase acquire the documents or, if copies are no longer available, cause a reproduction of acceptable quality to be made thereof and recover the cost of that purchase or reproduction from the publisher. 45

(2) If the officer is unable to acquire or reproduce the documents or recover the cost thereof under subsection (1), the Department may, in consultation with the Committee, institute civil proceedings against such publisher. 50

Delegation of powers

11. (1) The Minister may delegate any power conferred upon him or her by this Act to an officer in the Department. 55

(2) A delegation under subsection (1) shall not prevent the exercise of the power in question by the Minister himself or herself.

Regulations

- 12.** The Minister may make regulations regarding—
- (a) any matter which is required or permitted to be prescribed under this Act; and 5
 - (b) generally, any matter which is necessary or expedient to be prescribed in order to achieve the objects of this Act.

Act binds State

- 13.** This Act, except section 9, shall bind the State.

Repeal of laws 10

14. The laws mentioned in the Schedule are hereby repealed to the extent set out in the third column thereof.

Short title and commencement

15. This Act shall be called the Legal Deposit Act, 1997, and shall come into operation on a date fixed by the President by proclamation in the *Gazette*. 15

Schedule**Laws repealed**

Number and year of law	Title	Extent of repeal
Act No. 11 of 1977 (Transkei)	National Library Service Act, 1977	Section 12
Act No. 8 of 1978 (Bophuthatswana)	Bophuthatswana National Library Service Act, 1978	Section 19(5)
Act No. 18 of 1980 (KwaZulu)	KwaZulu Library Act, 1980	Section 7
Act No. 19 of 1980 (Ciskei)	Ciskeian Library Services Act, 1980	Section 12
Act No. 12 of 1981 (Venda)	Venda National Library Services Act, 1981	Section 14(4)
Act No. 4 of 1982 (Gazankulu)	National Library Service Act, 1982	Section 14(4)
Act No. 17 of 1982	Legal Deposit of Publications Act, 1982	The whole
Act No. 10 of 1983 (Qwaqwa)	National Library Service Act, 1983	Section 14(4)
Act No. 7 of 1991 (Lebowa)	Central Library Service Act, 1991	Section 18

MEMORANDUM ON THE OBJECTS OF THE LEGAL DEPOSIT BILL, 1997

1. Legal deposit ensures access to indigenous information sources in a country. Access to information is essential to enable people, *inter alia*, to participate in the democratic process, to take informed decisions and to improve their daily lives. The relevant existing legislation, the Legal Deposit of Publications Act, 1982 (Act No. 17 of 1982), only makes provision for the legal deposit of printed material. The impact of the information society on publishing has resulted in a huge increase of electronic publications and audio-visual material, which are gaining increasing importance as information carriers. The emphasis in the Legal Deposit Bill, 1997, has shifted therefore to all information-bearing materials. The information needs of illiterate and disadvantaged people will thus also be addressed. International and technological developments have also necessitated a review of legislation pertaining to the legal deposit of publications.

2. Potentially the Bill covers a great variety of media. Some of these are not yet commonly encountered in South Africa. Many are still evolving rapidly. Since South Africa is a developing country with an unevenly developed book industry, certain sectors furthermore need to be promoted. The provisions should therefore be applied with some flexibility and discretion. Hence it has been considered unwise to set out the provisions in great detail for each circumstance and type of medium. Instead, the Minister is given powers to deal with exceptions, to designate certain places of legal deposit and to deal with various matters in detail by means of the making of regulations. The Bill also provides for wider access to government information by establishing official publications depositories in all provinces to supplement existing legal deposit libraries, which cover a wider spectrum of information sources.

3. The Bill is intended to put legal deposit in South Africa on a sound basis for some time to come. It makes provision for the deposit of books and information-bearing records published or produced in South Africa, as well as those produced abroad and intended for distribution in South Africa. It provides a broad legislative framework for the number of copies to be deposited, their format and quality, information required from publishers and producers, when copies must be deposited, and action that can be taken against defaulting publishers and producers. Certain libraries are places of legal deposit and provision is made for additional places of legal deposit to be designated by the Minister. The generic term "places of legal deposit" is used to make provision for the National Film, Video and Sound Archives (a section of the State Archives and Heraldic Services), as a depository of audio-visual publications, the designation of at least one library in each province as an official publications depository (OPD) and for the designation of appropriate institutions in the case of electronic publications.

4. In the view of the Department and the State Law Advisers the procedure set out in section 76 of the Constitution should be followed with regard to this Bill.

Persons and institutions consulted:

- Five existing legal deposit libraries
- Eight representatives from publishers in the private sector
- Five representatives from Government publishers
- 34 Representatives from library and information services
- 11 Provincial representatives
- 12 Audiovisual representatives
- Three representatives from writer's associations
- The executive member of the National Information and Technology Forum (NITF)
- The Public Service Commission
- The Portfolio Committee on Arts, Culture and Language, Science and Technology, National Assembly.