

GOVERNMENT NOTICES • GOEWERMENTSKENNISGEWINGS

DEPARTMENT OF TELECOMMUNICATIONS AND POSTAL SERVICES

NO. 1227

08 NOVEMBER 2017


INVITATION TO PROVIDE WRITTEN COMMENTS ON THE IKAMVA NATIONAL E-SKILLS INSTITUTE BILL

Various Government policies have indicated the shortage of e-skills, and in response thereto the Department of Telecommunications and Postal Services is in the process of establishing the iKamva National e-Skills Institute as a legal entity in order to address such shortage. The Minister of Telecommunications and Postal Services hereby publishes the iKamva National e-Skills Institute Bill for general information and comments from interested persons.

Interested persons are hereby invited to furnish written comments on the Bill in the Schedule, within 30 calendar days from the date of publication, addressed to:

The Director-General, Department of Telecommunications and Postal Services For attention: O Shelembe, The Deputy Director-General, ICT Enterprise Development and SOC Oversight
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Comments received after the closing date may be disregarded.



Dr Siyabonga Cyprian Cwele, MP
Minister of Telecommunications and Postal Services

REPUBLIC OF SOUTH AFRICA

IKAMVA NATIONAL E-SKILLS INSTITUTE BILL

*(As introduced in the National Assembly (proposed section.....);
explanatory summary of Bill published in Government Gazette No. 41233 of 8 November 2017
(The English text is the official text of the Bill)*

(MINISTER OF TELECOMMUNICATIONS AND POSTAL SERVICES)

040615se

18 April 2017

BILL

To provide for the promotion of the use of information, communication and technology; to provide for the establishment of iKamva National e-Skills Institute (iNeSI); to provide for the objects and functions of the iNeSI; to provide for the establishment of the ICT (e-Skills) knowledge production and Coordination CoLab; to provide for the establishment and appointment of Board; to provide for the term of office and dissolution of the Board of iNeSI; to provide for the membership and remuneration of members of the Board; to provide for the appointment of the chief executive officer and the chief financial officer; to provide for the disclosure of interest; to provide for the employees of iNeSI; to provide for the committees of the Board; to provide for the funding of iNeSI and to provide for matters connected therewith.

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

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Definitions

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

"Board" means the iNeSI Board established in section 6(1);

"chairperson" means the person appointed as the chairperson of the Board under section 6(3)(a);

"chief executive officer" means the person appointed as the chief executive officer of the iNeSI under section 13(1);

"chief financial officer" means the person appointed as the chief financial officer of the iNeSI under section 13(1);

"committee of the Board" means a committee established under section 21(1);

"ICT" means information and communications technology;

"ICT (e-Skills) knowledge production and coordination CoLabs" means an e-skills development project funded by iNeSI and is responsible for one or more of the identified e-skills priority areas;

"iNeSI" means the iKamva National e-Skills Institute;

"Minister" means the Cabinet member responsible for telecommunication and postal services;

"prescribe" means prescribe by regulation;

"Public Finance Management Act" means the Public Finance Management Act, 1999 (Act No. 1 of 1999);

"Post School Education and Training Institutions" means the institutions that provide education and training, which include public universities, national institutes of higher and private higher education institutions, public and private

Further Education and Training (FET) colleges, public and private adult education centres and skills providers;

"regulation" means regulations made under section 25.

Establishment of iKamva National e-Skills Institute

2. (1) The iNeSI is hereby established as a juristic person.

(2) The iNeSI is an integration of three ICT skills development related entities namely, the National Electronic Media Institute of South Africa (NEMISA), the e-Skills Institute (e-SI) and the Institute for Space and Software Applications (ISSA).

(3) The Public Finance Management Act is applicable to iNeSI.

(4) The iNeSI is a Schedule 3 public entity in terms of the Public Finance Management Act and is subject to the applicable provisions of the Act, and any other applicable legislation.

Purpose of Act

3. (1) The purpose of this Act is to establish an e-Skills institute to—

- (a) act as national catalytic collaborator, and change agent for developing e-Skills capacity in the country;
- (b) collaborate with relevant Post School Education and Training Institutions offering e-Skills programmes to maximise the use of existing infrastructure and resources and to ensure that education and training respond to the demands and needs for e-Skills in the country; and

- (c) establish an innovative research network focusing on e-Skills with links to public or private university network locally and internationally.

Functions of iNeSI

4. (1) The iNeSI must—

- (a) coordinate the development and use of e-Skills in the country;
- (b) identify the e-Skills demands and supply needs in the country in collaboration with Government, business, education and training and civil society;
- (c) work with the Department of Higher Education and Training, other departments, institutions, entities, organisations, business and civil society to ensure that education and training respond to the demands and needs for e-Skills in the country;
- (d) advocate, communicate and promote the increased use and knowledge of ICT;
- (e) support initiatives that promote the increased use and knowledge of ICT;
- (f) collaborate with relevant public and private higher education institutions, organisations and entities offering e-Skills training or programmes to avoid duplication by filling gaps and maximise the use of infrastructure and resources;
- (g) coordinate an innovative research network focusing on e-Skills with links to public and private university network locally and internationally; and
- (h) monitor and evaluate the development and the use of e-Skills in the country.

(2) In order to perform its functions contemplated in subsection (1) and in order to achieve its objects, the iNeSI may—

- (a) promote the e-Skills skills framework training and development model;
- (b) collaborate with local and international stakeholders; and
- (c) promote e-Skills teaching, learning, research, innovation, monitoring and evaluation, of ICT information, skills and knowledge.

(3) The iNeSI must—

- (a) comply with the National Qualification Framework Act, 2008 (Act No. 67 of 2008), supporting such education and training or steering the education and training to be provided or conducted; and
- (b) interact and foster collaboration with the Minister responsible for higher education and training, for post-school education and training institutions.

ICT knowledge production and coordination CoLabs

5. (1) iNeSI must in collaboration with Post Schools Education and Training Institutions establish ICT knowledge production and coordination CoLabs in various provinces.

(2) iNeSI must enter into agreements with Post Schools Education and Training Institutions in the establishment of the e-Skills knowledge production and coordination CoLabs and must agree on appropriate terms and conditions for collaboration with each one of these institutions.

(3) The ICT knowledge production and coordination CoLabs must—

- (a) ensure that accredited qualifications or part qualifications that are registered on the National Qualification Framework are offered by Post Schools Education and Training institutions;

- (b) be accessible to all stakeholders;
- (c) provide feedback to iNeSI to assist in developing the e-Skills policy;
- (d) promote and undertake innovative research;
- (e) provide research capacity to post graduate students;
- (f) initiate and implement projects; and
- (g) establish ICT networks across Post-School Education and Training Institutions, government institutions, civil society, business sector and other academic institutions.

Establishment and appointment of Board

6. (1) The Board of iNeSI is hereby established.
- (2) The Board is responsible for managing the affairs of iNeSI.
- (3) The Board is appointed by the Minister and is constituted as

follows—

- (a) a chairperson;
- (b) a deputy chairperson;
- (c) not less than six and not more than ten members;
- (d) the chief executive officer of the iNeSI, as an ex officio member;
- (e) the chief financial officer of the iNeSI, as an ex officio member; and
- (f) a chief officer responsible for training and academic affairs, as an ex officio member.

(4) The Board must be constituted in a manner that is broadly representative of the demographics of the Republic of South Africa.

(5) Before appointing the members of the Board referred to in

subsection (3)(a), (b) and (c), the Minister must—

- (a) publish a notice in the *Gazette* and three national newspapers, with due regard to the Use of Official Languages Act, 2012 (Act No. 12 of 2012), calling upon members of the public to nominate persons contemplated in subsection (3)(a), (b) and (c); and
- (b) appoint an independent panel which must compile a shortlist of not more than 20 persons from the nominees referred to in paragraph (a).

(6) If the Minister receives no nominations or an insufficient number of nominations within the period specified in the notice referred to in subsection (5)(a), the Minister may, after consultation with the panel referred to in subsection (5)(b), either re-advertise or in any other transparent manner, appoint the required number of qualified persons.

(7) The members of the Board contemplated in subsection (3)(a), (b) and (c) are appointed by the Minister on the grounds of their knowledge and experience in ICT academia, ICT innovation, ICT management, legal, intellectual property and commercialisation thereof and business skills which, when considered collectively, should enable them to achieve the objects of the iNeSI.

(8) Where, upon invoking the processes outlined in subsections (4) to (6), candidates possessing the required expertise and socio-economic profiles are not found, the Minister may direct that an alternative process of procuring these skills be initiated.

(9) The Board has fiduciary duties and must hold the executives accountable for the day-to-day management of the affairs of the iNeSI.

Fiduciary duties of Board members

7. (1) In addition to any other applicable legislation, the following must apply to members of the Board:

- (a) A member of the Board may not be present, or take part in, the discussion of or the taking of a decision on any matter before the Board in which that member or his or her family member, business partner or associate has a direct or indirect interest.
- (b) A member of the Board or his or her family member, business partner or associate, or an organisation or enterprise in which a member of the Board or his or her family member, business partner or associate has a direct or indirect interest, may not—
 - (i) offer goods or services to the iNeSI or conclude any business with the iNeSI; or
 - (ii) make improper use, in any manner whatsoever, of the position of a Board member or of any information acquired by a Board member by virtue of his or her position as a Board member.
- (c) A member of the Board must perform his or her functions at all times with the utmost good faith, honesty and integrity, care and diligence and, in furtherance of his or her functions, without limiting their scope, must—
 - (i) take reasonable steps to inform himself or herself about the iNeSI, its business and activities and the circumstances in which it operates;
 - (ii) take reasonable steps, through the processes of the Board, to obtain sufficient information and advice about all matters to be decided by the Board to enable him or her to make conscientious and informed

decisions;

- (iii) regularly attend Board meetings;
- (iv) exercise an active and independent discretion with respect to all matters to be decided by the Board;
- (v) exercise due diligence in the performance of his or her functions as a member;
- (vi) comply with any internal code of conduct that the iNeSI may establish for Board members;
- (vii) not engage in any activity that may undermine the integrity of the iNeSI;
- (viii) not make improper use of his or her position as a member or of information acquired by virtue of his or her position as a member;
- (ix) treat any confidential matters relating to the iNeSI, obtained in his or her capacity as a Board member, as strictly confidential and not divulge them to anyone without the authority of the iNeSI or as required as part of that person's official functions as a member of the Board.

(2) For the purposes of this section, **“family member”** means a person who is related to another person—

- (i) biologically; or
- (ii) by statutory, customary or religious law, including affinity by marriage, adoption or foster care;
- (iii) permanent life partner; or
- (iv) in the case of orphan, a care giver as defined in the Children's Act,

2005 (Act No. 38 of 2005).

Term of office of members of Board

8. (1) Members of the Board hold office for a period of three years and are eligible for re-appointment on expiry of their term.

(2) A member may not serve for more than two terms.

(3) Despite subsection (1), the Minister may, after consultation with the Board, extend the period of office of any or all of the members of the Board for a period of not more than six months or until a new Board has been appointed, whichever comes first.

Disqualification of Board member and removal from office

9. (1) A person may not be appointed or continue as a member of the Board if such person is—

- (a) declared by a competent court to be mentally ill, as defined in the Mental Health Care Act, 2002 (Act No. 17 of 2002);
- (b) convicted of an offence and sentenced to imprisonment without the option of a fine, or in the case of fraud, to a fine or imprisonment;
- (c) elected as a member of National Assembly, a provincial legislature or the council of a municipality, or is appointed as a delegate to the National Council of Provinces by a provincial legislature;
- (d) not a South African citizen or ceases to be a South African citizen;
- (e) removed from a position of trust by a competent court of law; or
- (f) an unrehabilitated insolvent.

(2) The Minister may, after consultation with the Board, remove a member of the Board from office on account of—

- (a) misconduct;
- (b) inability to perform the duties of his or her office efficiently;
- (c) absence from three consecutive meetings of the Board without the leave of the Board, except on good cause shown; or
- (d) any other reasonable ground.

(3) If a member of the Board ceases to hold office or is removed from office in terms of subsection (2), the Minister may, after consideration of the shortlist compiled by the panel referred to in section 6(5)(b) or in any other transparent manner, appoint a person who meets the criteria contemplated in section 6(7) in that member's place for the remaining part of the term of office.

(4) The member ceases to hold office if—

- (a) he or she is disqualified in terms of subsection (1); or
- (b) he or she tenders his or her resignation to the Minister and the Minister accepts the resignation.

Remuneration of members of Board

10. Members of the Board receive such remuneration and allowances as the Minister, with the concurrence of the Minister of Finance, may determine.

Meetings of Board

11. (1) The chairperson must preside at a meeting of the Board.

(2) If the chairperson and the deputy chairperson are not present at the meeting of the Board, the members of the Board present at that meeting must elect from amongst themselves a member to preside at such a meeting.

(3) The Board must meet at least four times a year at such time and place as the Board may determine.

(4) The Board may determine the procedure for its meetings.

(5) The chairperson—

(a) may convene a special meeting of the Board; and

(b) must, within 14 days of receipt of a written request signed by at least two thirds of the members of the Board to convene a special meeting, convene such a special meeting.

(6) A quorum for a meeting of the Board is two thirds of the members eligible to vote at that meeting.

(7) A decision of the Board must be taken by resolution of the majority of the members present at a meeting of the Board, and, in the event of an equality of votes the person presiding at the meeting has a casting vote in addition to his or her deliberative vote.

Dissolution of Board

12. (1) The Minister may dissolve the Board if—

(a) the Board is unable to perform its duties in terms of this Act or on the grounds of mismanagement;

(b) there is a total breakdown in the relationship between the Board and the Minister; or

(c) there is a breakdown in the relationship amongst the members of the Board, which renders the continued effective functioning of the Board impossible.

(2) In exercising his or her powers in terms of this section, the Minister must comply with the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000).

(3) Within 21 days of the dissolution of the Board, the Minister must appoint an interim Board, consisting of a minimum of three persons, to assume the responsibilities of the Board, until a new Board is constituted in accordance with the procedure contemplated in section 6.

(4) A new Board must be constituted within 180 days of the dissolution of the previous Board.

(5) Any person who was a member of the Board that was dissolved in terms of this section may be reappointed to a new Board.

(6) The Minister must, within 30 days of the dissolution of the Board, submit a report to the National Assembly, setting out the reasons for the dissolution of the Board.

Appointment of chief executive officer and chief financial officer

13. (1) The Board must, with the approval of the Minister, appoint a chief executive officer and chief financial officer to ensure that the iNeSI meets its objects.

(2) The Board must invite applications for the posts of chief executive officer and chief financial officer by publishing advertisements in the media.

(3) A person appointed as chief executive officer or chief financial officer must—

- (a) have the qualifications or experience relevant to the functions of the iNeSI;
- and
- (b) not be disqualified as contemplated in section 9.

Conditions of appointment of chief executive officer and chief financial officer

14. (1) The appointment of the chief executive officer and chief financial officer is subject to the conclusion of an annual performance agreement with the chairperson of the Board.

(2) The chief executive officer and chief financial officer are appointed for a term not exceeding five years and may, subject to the approval of the Minister, be reappointed for one additional term not exceeding five years.

(3) The chief executive officer and chief financial officer hold office on terms and conditions determined by the Board, with the concurrence of the Minister.

(4) The chief executive officer and chief financial officer are entitled to a remuneration package determined by the Board with the concurrence of the Minister, the Minister acting after consultation with the Minister of Finance.

(5) The chief executive officer and chief financial officer are accountable to the Board.

Duties of chief executive officer and chief financial officer

15. (1) The chief executive officer is responsible for the administration, general management and control of the daily functioning of the iNeSI, subject to the directions and instructions issued by the Board.

(2) The chief executive officer must—

- (a) implement the decisions of the Board;
- (b) execute the day to day management operations of the iNeSI;
- (c) supervise and direct the other employees of the iNeSI; and
- (d) perform such other functions as determined by the Board

(3) The chief financial officer must—

- (a) ensure strict and responsible control of the finances of the iNeSI, in compliance with the financial management requirements of the Public Finance Management Act;
- (b) be responsible for the payments of any expenditure reasonably incurred and relating to the application of this Act; and
- (c) perform such other functions as determined by the Board.

Termination of employment of chief executive officer and chief financial officer

16. (1) The Board must, with the approval of the Minister and subject to compliance with the Labour Relations Act, 1995 (Act No. 66 of 1995), terminate the employment of the chief executive officer and chief financial officer —

- (a) for misconduct, which includes any act or failure to act in terms of section 15; or
- (b) for failing to perform the duties connected with that office diligently.

(2) The Board may suspend the services of the chief executive

officer or chief financial officer pending the finding of any misconduct proceedings against him or her, during which period the chief executive officer or chief financial officer is also suspended as an executive member of the Board.

(3) The chief executive officer or chief financial officer must vacate the office if he or she becomes disqualified from membership of the Board in terms of section 9.

(4) The chief executive officer and chief financial officer may resign by written notice of at least 30 days to the chairperson of the Board.

Acting chief executive officer and chief financial officer

17. (1) The Board may in writing appoint any senior employee of the iNeSI to act as chief executive officer or chief financial officer when the holder of that office—

- (a) is temporarily unable to perform the duties connected with that office;
- (b) has been suspended from office; or
- (c) has vacated or has been removed from that office and a new chief executive officer or chief financial officer, as the case may be has not yet been appointed.

(2) An acting chief executive officer or acting chief financial officer may exercise all the powers and must perform all the duties of the chief executive officer or chief financial officer, as the case may be.

Delegation by chief executive officer and chief financial officer

18. (1) The chief executive officer and chief financial officer may delegate to an employee of the iNeSI any of his or her powers and assign any of his or her duties.

- (2) Any delegation or assignment contemplated in subsection (1)—
- (a) may be made subject to such conditions as the Board may determine;
 - (b) must be communicated to the delegatee or assignee in writing;
 - (c) may be amended or withdrawn in writing by the chief executive officer or chief financial officer, as the case may be; and
 - (d) does not prohibit the holder of the office that made the delegation or assignment from exercising that power or performing that duty.

(3) Notwithstanding a delegation or assignment contemplated in subsection (1), the chief executive officer or chief financial officer, as the case may be, is not divested of any power or duty so delegated or assigned.

Disclosure of interest

19. (1) A member of the Board must upon appointment disclose to the Minister by way of a written statement any interest, including all financial interest which could reasonably compromise the Board in the performance of its functions.

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

Employees of iNeSI

20. (1) The chief executive officer must, on such terms and conditions as the Board may determine, appoint employees of the iNeSI or receive on secondment such persons as are necessary to enable the iNeSI to perform its functions.

(2) The iNeSI must pay the employees of the iNeSI such remuneration, allowances, subsidies and other benefits as the Minister, in consultation with the Minister of Finance, may determine.

(3) The chief executive officer is responsible for the administrative control, organisation and discipline of the employees of the iNeSI and for ensuring compliance with applicable labour legislation.

Committees of Board

21. (1) The Board may establish one or more committees, in the prescribed manner, to perform such functions as the Board may determine.

(2) The Board may appoint the following persons, with suitable knowledge, skills or experience, to a committee of the Board—

- (a) a member of the Board;
- (b) employees of the iNeSI; and
- (c) any other person, who must be paid such remuneration and allowances as the Minister, with the concurrence of the Minister of Finance, may determine.

(3) The Board may at any time dissolve or reconstitute a committee.

(4) The Board is not absolved from the performance of any function assigned to any committee under this section.

Funding of iNeSI

22. (1) The funds of the iNeSI consist of—

- (a) money appropriated by Parliament;
- (b) revenue, including interest derived from its investments;
- (c) money raised or borrowed by the iNeSI; and
- (d) donations and contributions.

(2) Subject to this section, all income and property and all the proceeds of the iNeSI must be applied exclusively to the promotion of the objects of the iNeSI.

(3) The iNeSI may, in the prescribed manner, establish and maintain reserve funds, the aggregate of which may not exceed an amount approved by the Minister in consultation with the Minister of Finance.

(4) The iNeSI may, subject to the approval of the Minister and in terms of the Public Finance Management Act, invest any of its funds not immediately required.

Annual Report

23. (1) The chief financial officer must annually submit, within 90 days after the end of the financial year a report on its activities, advice and

recommendation to the Board.

(2) The Board must report to the Minister on the activities of the iNeSI when required to do so by the Minister.

(3) The financial management of the iNeSI and the submission of financial statements and annual reports must comply with the provisions of the Public Finance Management Act.

(4) The Minister must table the report contemplated in subsection (2), in Parliament.

Application of Public Finance Management Act

24. (1) INeSI is required to comply with the provisions of the Public Finance Management Act applicable to national public entities.

- (2) For the purpose of the Public Finance Management Act—
- (a) the Board is the accounting authority as contemplated by section 49(2)(a) of the Public Finance Management Act;
 - (b) the Minister is the executive authority as contemplated by section 52 of the Public Finance Management Act; and
 - (c) any delegation of the Board's responsibilities in terms of the Public Finance Management Act must be in accordance with section 56 of that Act.

Regulations

25. The Minister may make regulations with regard to—

- (a) the establishment of a committee of the Board;

- (b) any matter that may or must be prescribed in terms of this Act; and
- (c) any ancillary or incidental administrative or procedural matter that is necessary to prescribe for the proper implementation or administration of this Act.

Transitional arrangements

26. (1) A person who is employed by the NEMISA, e-SI and ISSA immediately before the commencement of this Act must be transferred to the iNeSI in accordance with the Labour Relations Act, 1995 (Act No. 66 of 1995), and any applicable collective bargaining agreement with organised labour.

(2) The remuneration and other terms and conditions of service of a person transferred in terms of subsection (1) may not be less favourable than the remuneration, terms and conditions applicable to that person immediately before his or her transfer and he or she remains entitled to all rights, benefits, including pension benefits, and privileges to which he or she was entitled immediately before such transfer.

(3) A person transferred to the iNeSI in terms of subsection (1) remains subject to any decisions, proceedings, rulings and directions applicable to that person immediately before his or her transfer to the extent that they remain applicable.

(4) Any proceedings against such person which were pending immediately before his or her transfer must be disposed of as if that person had not been transferred.

(5) For the purposes of the Income Tax Act, 1962 (Act No. 58 of

1962), no change of employer must be regarded as having taken place when a person contemplated in subsection (1) takes up employment at the iNeSI.

(6) A person who was appointed as the chief executive officer or the chief financial officer of NEMISA, e-SI or ISSA immediately before this Act comes into operation is, a chief executive officer or the chief financial officer, for a term expires on the date that such appointment would have expired had this Act not come into operation.

(7) Any board members of the NEMISA Board who immediately prior to the commencement of this Act were members of that Board, must be deemed to have been appointed members of the iNeSI Board for the remainder of the period for which each member was appointed as a board member under the NEMISA.

(8) All policies, procedures and processes governing NEMISA, e-SI or ISSA prior to the commencement of this Act, are deemed to have been prescribed in terms of this Act and are binding on iNeSI until amended or substituted in terms of this Act.

Short title and commencement

27. This Act is called the iKamva National e-Skills Institute Act, 2017, and comes into operation on a date determined by the President by proclamation in the *Gazette*.

ce061015

MEMORANDUM ON THE OBJECTS OF THE IKAMVA NATIONAL ESILLS INSTITUTE BILL, 2017

1. BACKGROUND

1.1 The South African government recognises that e-skilling the nation is fundamental to addressing all the major issues it faces and in better positioning itself to be part of the Information Society and Creative Knowledge Economies, commonly named the Knowledge Society. There is widespread acceptance that e-skills (the capacity to use modern ICT devices and applications for work, education, community and personal needs), affect the capacity of a country to address every substantive issue of inequity communities face. This includes a widespread high-level of e-social astuteness capacity which will enable all levels of civil society to appropriate modern ICT applications into sustainable local benefit.

1.2 The 2013 World Economic Forum (WEF), Global IT Report 2014 on e-Readiness, indicates that South Africa dropped in ranking from 47th place in 2007 to 70th position in 2014. Out of 10 components of e-Readiness, the WEF IT Report identified that South Africa lacks in affordability, skills, individual usage, government usage and social impacts when compared to its global counterparts in the medium income group.

1.3 The lack of coordination and collaboration within and across government departments and state-owned companies in developing and delivering a programme of

capacity building has an impact on increased e-skills shortage that hinders investment, socio-economic development and capacity development in the country. This affects the country's capacity in accelerating e-skills capacity development in underserved areas in order to make South Africa e-literate by 2030 in line with the National Development Plan.

1.4 National Electronic Media Institute of South Africa (Nemisa) came into being as an institution of education and learning specialising in teaching the production and technical skills applicable on television, and broadcasting industries. This was formed as part of a government initiative in 1998 to train previously disadvantaged individuals, particularly women, to equip them with skills relevant to the significant roles in the broadcasting environment.

1.5 The e-Skills Institute is a branch within the Department which was established to intervene on e-Skills shortage and harness the potential of ICT across the whole country in order to address the major economic challenges by providing strategic direction for advancement of e-Skills to the graduates and society in order to function effectively within the emerging information society, amongst other things.

1.6 In October 2012, the Department of Communications ("Department") adopted the establishment of iNeSI as a flagship project in an effort to address the e-skill human capacity challenge and e-readiness of the country in collaboration with government, business, education and civil society.

1.7 The iNeSI is an integration of three ICT skills development related entities, namely, the National Electronic Media Institute of South Africa (NEMISA); the e-Skills Institute (e-SI) and the Institute for Space and Software Applications (ISSA) which was officially launched by the Department on 21 February 2014.

2. WHAT THE BILL SEEKS TO ACHIEVE

The main purpose of the Bill is to provide for the establishment of the iNeSI, to provide for the promotion of the use of information, communication and technology, to provide for the objects and functions of the iNeSI and to provide for the establishment of the ICT knowledge production hub.

3. CLAUSE-BY-CLAUSE ANALYSIS

3.1 Clause 1

Clause 1 provides for the definitions of words used in the Bill.

3.2 Clause 2

Clause 2 provides for the establishment of the iNeSI as a juristic person. It provides that iNeSI is accountable to Parliament and that the Public Finance Management Act, 1999 (Act No.1 of 1999), applies to iNeSI.

3.3 Clause 3

Clause 3 provides for the purpose of iNeSI. The main purpose of iNeSI, amongst others, include the promotion and improvement of ICT skills within the Republic, through education and training programmes, ensuring that telecommunication opportunities are available to benefit all communities, particularly disadvantaged and rural communities and to collaborate with relevant stakeholders by using existing infrastructure and resources.

3.4 Clause 4

Clause 4 provides for the functions of iNeSI. Some of the key functions of iNeSI, amongst others, include the implementation of a national ICT strategy, the enhancement of ICT skills of the Republic, and the design of an ICT skills framework model. Clause 4(2) provides further, amongst others, that in order to perform its functions and realise its objectives, iNeSI may provide an e-skill intervention, promote the ICT skills framework model and develop training materials for the promotion of ICT education and skills.

3.5 Clause 5

Clause 5 provides for the establishment of ICT knowledge production hubs in all nine provinces which must operate collectively. Clause 5(2) provides further that iNeSI may enter into agreements with Higher Education Institutions in the establishment of ICT production hubs. Clause 5(3) provides that ICT production hubs must, amongst others,

assist iNeSI to develop and design relevant programmes and training material, promote and undertake innovative research and provide research capacity to post graduate students.

3.6 Clause 6

Clause 6 provides for the establishment of the iNeSI Board, consisting of a chairperson, deputy chairperson and no less than six and not more than ten members. The Board is responsible for the management and control of the iNeSI. Before appointing members of the Board, the Minister must publish a notice in the *Gazette* and three national newspapers calling on members of the public to nominate persons to fill the positions on the Board. The Minister must also appoint an independent panel to compile a shortlist of not more than 20 persons from the nominees referred to above. The Minister appoints members of the Board on the grounds of their knowledge, experience in ICT innovation and management, legal, intellectual property and business skills. The Board must be constituted in a manner that is broadly representative of the demographics of South Africa.

3.7 Clause 7

Clause 7 provides for fiduciary duties of Board members. Clause 7(a) provides that a member of the Board may not be present or take part in the discussion on a matter before the Board in which the member of Board or his or her family or business partner has a direct or indirect interest. Clause 7(b) further provides, amongst others, that a member of Board or his or her family, business partner has a direct or indirect interest

may not offer goods or services to the iNeSI or conclude any business with iNeSI and make improper use of any information acquired by a Board member by virtue of his or her position as a Board member.

3.8 Clause 8

Clause 8 provides that members of the Board hold office for three years and are eligible for reappointment on expiry of their term. A member may not serve for more than two terms. The Minister may, under the conditions stipulated in clause 8(3) extend the term of office of any or all of the members of the Board.

3.9 Clause 9

Clause 9 provides for the disqualification of Board members and removal from office. All members must be a South African citizen with integrity as contemplated in clause 9(1). The Minister may, after consultation with the Board, remove a member on account of misconduct, inability to perform the duties of his or her office efficiently, absence from the Board without leave of the Board or any other reasonable ground.

3.10 Clause 10

Clause 10 provides for the remuneration and allowances of Board members as determined by the Minister, with the concurrence of the Minister of Finance.

3.11 Clause 11

Clause 11 provides for meetings of the Board. The Board must meet at least four times a year and the chairperson may convene a special meeting if required.

3.12 Clause 12

Clause 12 provides for the dissolution of the Board. The Minister may dissolve the Board due to mismanagement, if there is a breakdown in the relationship between the Board and Minister or if there is a breakdown in the relationship amongst members of the Board which renders the continued functioning of the Board impossible. Within 21 days of the dissolution of the Board, the Minister must appoint an interim Board to assume the responsibilities of the Board until a new Board is constituted. The Minister must, within 30 days of the dissolution of the Board, submit a report to the National Assembly setting out the reasons for the dissolution of the Board.

3.13 Clause 13

Clause 13 provides for the appointment of the chief executive officer and the chief financial officer. Clause 13(2) provides that the Board must invite applications for the posts of the chief executive officer and chief financial officer by publishing advertisements in the media. Clause 13(3) provides that the chief executive officer or the chief financial officer must have the qualifications or experience relevant to the functions of iNeSI.

3.14 Clause 14

Clause 14 provides for the conditions of appointment of the chief executive officer and the chief financial officer and the appointment is subject to the conclusion of an annual performance agreement with iNeSI. The chief executive officer and chief financial officer hold office for a period not exceeding five years and are eligible for reappointment on the expiry of their term for one additional term not exceeding five years. The chief executive officer and chief financial officer are members of the Board by virtue of their office. The chief executive officer and the chief financial officer are accountable to the Board.

3.15 Clause 15

Clause 15(1) provides that the chief executive officer is responsible for the administration, general management and control of the daily functioning of the iNeSI, subject to the directions and instructions issued by the Board. Clause 15(2) provides further that the chief executive officer must implement the decisions of the Board and execute the day to day management operations of the iNeSI. Clause 15(3) provides that the chief financial officer must ensure strict responsible control of the finances of the iNeSI, in compliance with the financial management requirements of the Public Finance Management Act, 1999, and perform such other functions as determined by the Board.

3.16 Clause 16

Clause 16 provides that the Board, with the approval of the Minister and in compliance with the Labour Relations Act, 1995 (Act No.66 of 1995), must terminate the employment of the chief executive officer or the chief financial officer, for misconduct or failure to act in terms of section 15 or for failing to perform the duties connected with that office diligently.

3.17 Clause 17

Clause 17 provides that the Board may in writing appoint any senior employee of iNeSI to act as the chief executive officer or chief financial officer when the chief executive officer or the chief financial officer is temporarily unable to perform the duties connected with that office or has been suspended. Clause 17(2) further provides that an acting chief executive officer or the chief financial officer may exercise all the powers and must perform all the duties of the chief executive officer or the chief financial officer.

3.18 Clause 18

Clause 18 provides for the delegation or assignment of powers by the chief executive officer or the chief financial officer. Clause 18(2) further provides that such delegation or assignment may be made subject to such conditions as the Board may determine and such delegation must be communicated to the delegate or assignee in writing.

3.19 Clause 19

Clause 19 provides that a member of the Board must upon appointment disclose all financial interest to the Minister which could reasonably compromise the Board in the performance of its functions. A member of the Board may not vote or be present at any meeting of the Board if in any matter before the Board, he or she may have an interest which may impede his or her ability to perform his or her functions in a fair and unbiased manner.

3.20 Clause 20

Clause 20 provides that the chief executive officer must on such terms and conditions as the Board may determine, appoint employees of the iNeSI or receive on secondment such persons as are necessary to enable the iNeSI to perform its functions.

3.21 Clause 21

Clause 21 provides that the Board may establish one or more committees to perform such functions as the Board may determine. The Board may appoint a person with suitable knowledge, skills or experience to a committee of the Board in clause 21(2).

3.22 Clause 22

Clause 22 provides that the funds of iNeSI may be derived from money appropriated by Parliament, revenue derived from investments, money raised or borrowed by the iNeSI, money obtained from other sources as determined by the Board from time to time and donations and contributions. The iNeSI may establish and maintain reserve funds.

3.23 Clause 23

Clause 23 provides that the chief financial officer must submit annually, within 90 days after the end of financial year a report on its activities, advice and recommendations to the Board. Clause 23(3) provides further that the financial management of the iNeSI and the submission of financial statements and annual reports must comply with the provisions of the Public Finance Management Act. Clause 23(4) also provides that the Minister must table the report in Parliament.

3.24 Clause 24

Clause 24 provides that iNeSI must comply with the provisions of the Public Finance Management Act applicable to national public entities. The Board is the accounting authority as contemplated by section 49(2)(a) of the Public Finance Management Act. The Minister is the executive authority as contemplated by section 52 of the Public Finance Management Act. The delegation of the Board's responsibilities in terms of the Public Finance Management Act must be in accordance with section 56 of that Act.

3.25 Clause 25

Clause 25 provides for regulations that the Minister may make regulations with regard to the iNeSI policy, the establishment of the committee of the Board and any matter that must be prescribed in terms of this Act or any ancillary or incidental administrative or procedural matter that is necessary to be prescribed for the proper implementation of this Act.

3.26 Clause 26

Clause 26 provides that any person who was employed by the NEMISA, e-Skills or ISSA before the commencement of this Act be immediately transferred to the iNeSI in accordance with Labour Relations Act, 1995 (Act No. 66 of 1995), and applicable collective bargaining agreement with organised labour. The remuneration and other terms of service of a person transferred are not less favorable than the remuneration, terms and conditions to that person immediately before his or her transfer and she or he remains entitled to all rights, benefits, pension and privileges to which the person was entitled with before such transfer. Any directions, proceedings, rulings and directions applicable to that person immediately before his or her transfer remain applicable. Any proceedings against a person which were pending immediately before his or her transfer are disposed of as if that person had not been transferred. A person who was employed as the chief executive officer or the chief financial officer by the NEMISA, or e-SI, or ISSA before this Act comes into operation such person is the chief executive officer or chief financial officer until his or her term expires had this Act not come into operation. Any Board member of NEMISA, e-SI or ISSA immediately before the commencement of this Act are deemed to have been appointed members of iNeSI for the remainder of the period for which each member was appointed under NEMISA or e-SI or ISSA. The policies, procedures and processes governing NEMISA, e-SI or ISSA prior to the commencement of this Act are deemed to have been prescribed in terms of this Act and are binding on iNeSI until amended or substituted by this Act.

3.27 Clause 27

Clause 27 provides that iNeSI comes into operation on a date determined by the President by proclamation in the *Gazette*.

4. DEPARTMENTS/BODIES/PERSONS CONSULTED

Cooperative Governance and Traditional Affairs;

Department of Health;

Department of Higher Education and Training;

Department of Public Service and Administration;

Department of Trade and Industry;

Department of Arts and Culture;

DBE;

National Treasury;

Private education institutions;

South African Local Government Association;

Technical and Vocational Education and Training Colleges;

Universal Service and Access Agency of South Africa; and

Universities.

5. FINANCIAL IMPLICATIONS FOR STATE

The RIA (Regulatory Impact Analysis) has to be undertaken for a comprehensive implementation plan.

6. CONSTITUTIONAL IMPLICATIONS

The Department is of the opinion that the provisions of the Bill are not unconstitutional.

7. PARLIAMENTARY PROCEDURE

7.1 The Constitution of the Republic of South Africa, 1996, regulates the manner in which legislation may be enacted by Parliament. It prescribes different procedures for different kinds of Bills.

7.2 Section 75 of the Constitution sets out a procedure to be followed when National Assembly passes a Bill other than a Bill to which the procedure sets out in section 74 or 76 of the Constitution applies.¹

7.3. Section 76 of the Constitution on the other hand provides for a procedure that must be followed for all the Bills referred to in this section under subsections (3), (4) and (5).²

7.4. In **Tongoane v Minister of Agriculture and others CCT 100/09 [2010] ZACC 10**, the Constitutional Court confirmed and upheld the test for tagging that was formulated in **Ex Parte President of the Republic of South Africa: In re Constitutionality of the Liquor Bill [1999] ZACC 15;2000 (1) SA 732 (CC); 2000 (1) BCLR 1 (CC)**, where the Constitutional Court held that –

¹ See section 75 (1) of the Constitution.

² See section 76 (1) of the Constitution.

“the heading of section 76, namely, ‘Ordinary Bills affecting provinces’ provides a strong textual indication that section 76(3) must be understood as requiring that any Bill whose provisions in substantial measure fall within a functional area listed in Schedule 4, be dealt with under section 76.”

7.5. At paragraph 58 the Constitutional Court held that “What matters for the purposes of tagging is not the substance or the true purpose and effect of the Bill, rather, what matters is whether the provisions of the Bill “in substantial measure fall within a functional area listed in schedule 4”.

7.6. At paragraph 72 the Constitutional Court stated that any Bill whose provisions substantially affect the interest of the provinces must be enacted in accordance with the procedure stipulated in section 76. This also includes Bills providing for legislation envisaged in the further provisions set out in section 76(3) (a) to (f), as well as Bills the main substance of which falls within the exclusive national competence, but the provisions of which nevertheless substantially affect the provinces. What must be stressed, however, is that the procedure envisaged in section 75 of the Constitution remains relevant to all Bills that do not in substantial measure affect the provinces.

7.7. We have carefully considered the Bill and the State Law Advisers are of the view that the Bill can be distinguished from the Tongoane judgment, as the Bill does not deal with any of the matters listed in Schedule 4 (functional areas of concurrent national and provincial legislative competence) or Schedule 5 to the Constitution.

7.8. Since the Bill does not fall within a functional area listed in Schedule 4 or

Schedule 5 to the Constitution, we are of the view that a procedure set out in section 76 of the Constitution cannot be applied and the Bill cannot be tagged as a section 76 Bill.

7.9 In the light of the above, we are of the opinion that the Bill is correctly tagged as a section 75 Bill.

7.10 The State Law Advisers are of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.