

REPUBLIC
OF
SOUTH AFRICA



REPUBLIEK
VAN
SUID-AFRIKA

Government Gazette Staatskoerant

vol. 413

CAPE TOWN,
KAAPSTAD, 25 NOVEMBER 1999

No. 20676

GENERAL NOTICE

NOTICE 2616 OF 1999
DEPARTMENT OF JUSTICE

ALGEMENE KENNISGEWING

KEN NISGEWING 2616 VAN 1999
DEPARTMENT VAN JUSTISIE

PUBLICATION OF LIMITATION OF LEGAL PROCEEDINGS AGAINST GOVERNMENT INSTITUTIONS BILL [B 65—99]

The abovementioned Bill, which the Minister for Justice and Constitutional Development intends introducing in the National Assembly, is hereby published in terms of Rule 241 of the National Assembly.

Interested persons and institutions are invited to submit written representations on the Bill by not later than 29 January 2000 to:

The Secretary to Parliament
For attention: Mr B Kali
Committee Section
Parliament
P.O. Box 15
Cape Town
8000
Fax: (021) 4622141
Tel: (021) 4033843

PUBLIKASIE VAN WETSONTWERP OP DIE BEPERKING VAN REGSGEDINGE TEEN OWERHEIDSINSTELLINGS [W 65—99]

Bogenoemde Wetsontwerp, wat die Minister vir Justisie en Staatkundige Ontwikkeling voornemens is om in die Nasionale Vergadering in te alien, word hierby ingevolge in Reel 241 van die Nasionale Vergadering gepubliseer.

Belanghebbendes word versoek om, voor 29 Januarie 2000, skriftelike kommentaar op die Wetsontwerp terig aan:

Die Sekretaris van die Parlement
Vir aandag: Mnr B Kali
Komitee-afdeling
Parlement
Posbus 15
Kaapstad
8000
Faks: (021) 4622141
Tel: (021) 4033843

Notice of intended legal proceedings to be given to government institution

2. (1) Subject to this Act, no legal proceedings for the recovery of a debt arising from delict may be instituted against a government institution unless the creditor has given the government institution notice in writing of his or her intention to institute the legal proceedings in question or the government institution has consented in writing to the institution of legal proceedings without such notice. 5

(2) The notice contemplated in subsection (1) must—

- (a) briefly set out the facts relied on for the intended legal proceedings;
- (b) be delivered by hand or sent by certified mail to the person who is to be cited as defendant or respondent, as the case may be, within six months from the date upon which the debt became due. 10

(3) For the purposes of subsection (2)(b)—

- (a) a debt may not be regarded as being due until the creditor has knowledge of the identity of the debtor and of the facts from which the debt has arisen, but a creditor must be regarded as having acquired such knowledge as soon as he or she could have acquired it by exercising reasonable care, unless the debtor wilfully prevents him or her from acquiring such knowledge; and 15
- (b) if a creditor institutes legal proceedings after the commencement of this Act in respect of a debt which became due before such commencement, such debt must be regarded as having become due on the date of commencement of this Act. 20

(4) If a government institution relies on a creditor's failure to give notice in terms of subsection (2), a court having jurisdiction may condone the failure on application by the creditor if the court is satisfied that—

- (a) good cause exists for the failure by the creditor; or 25
- (b) the government institution was not unreasonably prejudiced by the failure.

(5) The court may, subject to any law relating to the extinction of debts by prescription, grant leave to institute the legal proceedings subject to any conditions regarding notice to the government institution which the court may lay down.

(6) The court may not have regard to non-compliance with subsection (2) unless such non-compliance is raised by a government institution. 30

Prescription of debts

3. Section 2 does not derogate from the provisions of section 344 of the Merchant Shipping Act, 1951 (Act No. 57 of 1951), section 2(6)(b) of the Apportionment of Damages Act, 1956 (Act No. 34 of 1956), or the Prescription Act, 1969 (Act No. 68 of 1969). 35

Repeal and amendment of laws

4. (1) Subject to subsection (2), the laws referred to in the Schedule are hereby amended or repealed to the extent set out in the third column of the Schedule.

(2) With regard to any legal proceedings instituted before the commencement of this Act and which were not before such commencement finally determined by a judgment or by a settlement duly concluded, the amendment or repeal of a law in terms of subsection (1) must be regarded as having taken effect immediately before the cause of action arose. 40

Conflict with other laws

45

5. In the event of a conflict between section 2 of this Act and any other law in force immediately before the commencement of this Act, other than the Constitution, section 2 of this Act prevails.

Short title and commencement

6. This is the Limitation of Legal Proceedings against Government Institutions Act, 2000, which comes into operation on a date fixed by the President by proclamation in the *Gazette*.

SCHEDULE

(Acts amended or repealed by section 4)

No and year of law	Short title	Extent of amendments or repeal
Act No. 38011927	Black Administration Act, 1927	The repeal of section 32A.
Act No. 57 of 1951	Merchant Shipping Act, 1951	1. The repeal of section 343. 2. The amendment of section 344 by the deletion of subsection 4).
Act No. 44 of 1957	Defence Act, 1957	The repeal of section 113.
Act No. 91 Of 1964	Customs and Excise Act, 1964	The substitution for section 96 of the following section: <p style="text-align: center;">“Notice of action and period for bringing action</p> <p style="text-align: center;">96. (1) [No] Subject to the provisions of subsection (3), no legal proceedings shall be instituted against the State, the Minister, the Commissioner or an officer for anything done in pursuance of this Act until one month after delivery of a notice in writing setting forth clearly and explicitly the cause of action, the name and place of abode of the person who is to institute proceedings and the name and address of his or her attorney or agent, if any.</p> <p style="text-align: center;">(2) Subject to the provisions of subsection (3) and section 89, the period of extinctive prescription in respect of legal proceedings against the State, the Minister, the Commissioner or an officer on a cause of action arising out of the provisions of this Act shall be one year and shall begin to run on the date when the right of action first arose.</p> <p style="text-align: center;">(3) This section does not apply to the recovery of a debt contemplated in section 2(1) of the Limitation of Legal Proceedings against Government Institutions Act, 2000.”</p>
Act No. 94 of 1970	Limitation of Legal Proceedings (Provincial and Local Authorities) Act, 1970	The repeal of the whole.
Act No. 54 of 1971	National Roads Act, 1971	The amendment of section 25 by the deletion of subsection (1).
Act No. 18 of 1973	Mental Health Act, 1973	The amendment of section 68 by the deletion of subsection (4).
Act No. 90 of 1979	Education and Training Act, 1979	The repeal of section 42A.
Act No. 70 of 1988	Education Affairs Act (House of Assembly), 1988	The repeal of section 108.
Act No. 122 of 1992	Audit Arrangements Act, 1992	The repeal of section 52.

No and year of law	Short title	Extent of amendments or repeal
Act No. 130 of 1993	Compensation for Occupational Injuries and Diseases Act, 1993	The repeal of section 44.
Act No. 38 of 1994	Intelligence Services Act, 1994	The repeal of section 26.
Proclamation No.103 of 1994	Public Service Act, 1994	The repeal of section 39.
Act No. 68 of 1995	South African Police Service Act, 1995	The repeal of section 57.

MEMORANDUM ON THE OBJECTS OF THE LIMITATION OF LEGAL PROCEEDINGS AGAINST GOVERNMENT INSTITUTIONS BILL, 1999

1. The Bill emanates from the South African Law Commission's supplementary report on the investigation into time limits for the institution of legal proceedings against the State (Project 42).

2. The Bill seeks to provide for uniform provisions regulating the institution of legal proceedings against all government institutions. The Bill provides that no legal proceedings for the recovery of a debt arising from a delict shall be instituted against State departments and organisational components, certain government bodies, municipalities and functionaries or against a person for whose actions the State or a government body is liable, unless the defendant has been given written notice of the intention to institute such proceedings. In terms of the definition of "delict", the provisions of the Bill also apply to liability without fault in terms of statutory provisions. The notice to the defendant must be sent within six months from the date upon which the debt became due to the person to be cited as defendant or respondent in the proposed legal proceedings. A debt is not regarded as being due until the creditor (or his or her tutor, if he or she is a minor or, if he or she is under curatorship, his or her curator) has knowledge of the identity of the debtor and the circumstances from which the debt has arisen or could have acquired such knowledge by exercising reasonable care. However, the court may condone failure to give notice if good cause exists for the failure by the creditor, tutor or curator or if the defendant was not unreasonably prejudiced by the failure.

3. Provision is made in the Bill for the repeal or amendment of various provisions which limit proceedings against the State or government institutions.

4. The amendment or repeal of laws effected in terms of the Bill are to apply to all legal proceedings instituted before the commencement of the Bill which have not been concluded as at the date of commencement of the Bill. This is so as to avoid, as far as possible, the application of any law which might have been unconstitutional.

CONSULTATION

5. During 1984 the South African Law Commission sent the draft Bill and memorandum to 91 stakeholders. The Bill is an adaptation of the draft legislation recommended in the previous report to take into account changes in legislation since the previous report and the decision of the Constitutional Court on the constitutionality of one of the provisions dealt with in the previous report. In order to expedite the submission of its report, consultation by the Law Commission was limited to the three bodies affected by the removal of exceptions in the previous legislation, namely, the Department of Transport, the Compensation Commissioner (both of whom did not respond to requests to comment) and Spoornet.

FINANCIAL IMPLICATIONS FOR THE STATE

6. There are no financial implications envisaged for the State as a result of this Bill.

IMPLICATIONS FOR PROVINCES

7. Any person wishing to institute legal proceedings against a provincial administration will have to comply with the provisions of this Bill if it becomes law.

PARLIAMENTARY PROCEDURE

8. The Bill should, in the opinion of the State Law Advisers and the Department of Justice, be dealt with in accordance with section 75 of the Constitution since it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.

CONTENTS**INHOUD**

No.	<i>Page No.</i>	<i>Gazette No.</i>	No.	<i>Bladsy No.</i>	<i>Koerant No.</i>
GENERAL NOTICE			ALGEMENE KENNISGEWING		
Justice, Department of			Justisie, Department van		
<i>General Notice</i>			<i>Algemene Kennisgewing</i>		
2616	Publication of Limitation of Legal Proceedings Against Government Institutions Bill.....	1	2616	Publikasie van wetsont- werp op die Beperking van Regsgedinge teen Ower- heidsinstellings.....	1 20676
		20676			