

REPUBLIC OF SOUTH AFRICA

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**DETERMINATION OF  
REMUNERATION OF MEMBERS  
OF CONSTITUTIONAL  
INSTITUTIONS LAWS  
AMENDMENT BILL**

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*(As introduced in the National Assembly (proposed section 75); explanatory summary of  
Bill published in Government Gazette No. 36835 of 6 September 2013)  
(The English text is the official text of the Bill)*

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(MINISTER OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT)

**[B 31—2013]**

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## GENERAL EXPLANATORY NOTE:

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

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

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# BILL

To amend—

- the **Public Protector Act, 1994**, so as to substitute a definition, to insert a definition and to further regulate the determination of the remuneration and other terms and conditions of employment of the Public Protector and Deputy Public Protector;
- the **Human Rights Commission Act, 1994**, so as to insert a definition and to further regulate the determination of the remuneration, allowances and other terms and conditions of office and service benefits of members of the South African Human Rights Commission;
- the **Commission on Gender Equality Act, 1996**, so as to insert a definition, to substitute a definition and to further regulate the determination of the remuneration, allowances and other terms and conditions of office and service benefits of members of the Commission for Gender Equality;
- the **Electoral Commission Act, 1996**, so as to insert a definition and to further regulate the determination of the conditions of service, remuneration, allowances and other benefits of members of the Electoral Commission;
- the **Independent Commission for the Remuneration of Public Office-bearers Act, 1997**, so as to substitute definitions, to insert a definition and to further regulate the functions of the Independent Commission for the Remuneration of Public Office-bearers;
- the **Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities Act, 2002**, so as to insert a definition and to further regulate the determination of the conditions of appointment of the members of the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities; and
- the **Public Audit Act, 2004**, so as to insert a definition and to further regulate the determination of the conditions of employment of the Auditor-General, and to provide for matters connected therewith.

## PREAMBLE

SINCE section 219(5) of the Constitution of the Republic of South Africa, 1996 (the Constitution), provides that national legislation must establish frameworks for determining the salaries, allowances and benefits of judges, the Public Protector, the Auditor-General and members of any commission provided for in the Constitution, including the broadcasting authority referred to in section 192 of the Constitution;

**AND SINCE** it is recognised that no uniformity exists in the procedures for determining the salaries, allowances and benefits of the Public Protector, the Auditor-General and members of Commissions established by the Constitution, including the broadcasting authority referred to in section 192 of the Constitution,

**P**ARLIAMENT of the Republic of South Africa therefore enacts, as follows:—

**Amendment of section 1 of Act 23 of 1994, as amended by section 35 of Act 47 of 1997, section 3 of Act 113 of 1998 and section 1 of Act 22 of 2003**

1. Section 1 of the Public Protector Act, 1994, is hereby amended— 5
- (a) by the substitution for the definition of “Constitution” of the following definition:
- “**‘Constitution’** means the Constitution of the Republic of South Africa, 1996 [(Act No. 108 of 1996)];” and
- (b) by the insertion of the following definition after the definition of “Deputy Public Protector”:
- “(iiA) **‘Independent Commission’** means the Independent Commission for the Remuneration of Public Office-bearers established by section 2 of the Independent Commission for the Remuneration of Public Office-bearers Act, 1997 (Act No. 92 of 1997);” 15

**Amendment of section 2 of Act 23 of 1994, as amended by section 5 of Act 113 of 1998 and section 3 of Act 22 of 2003**

2. Section 2 of the Public Protector Act, 1994, is hereby amended—
- (a) by the substitution for subsection (2) of the following subsection: 20
- “(2) The Public Protector shall be entitled to such remuneration and other terms and conditions of employment [of the Public Protector shall from time to time be determined by the National Assembly upon the advice of the committee]—
- (a) as determined by the President, from time to time, by notice in the *Gazette*, after taking into consideration the recommendations of the Independent Commission; and 25
- (b) approved by Parliament in terms of subsection (2C): Provided that such remuneration—
- [(a)] (i) shall not be less than that of a judge of a High Court; 30  
and
- [(b)] (ii) shall not be reduced, nor shall the terms and conditions of employment be adversely altered, during his or her term of office.”; and 35
- (b) by the insertion of the following subsections after subsection (2):
- “(2A) The Independent Commission shall, when investigating or considering the remuneration and other terms and conditions of employment of the Public Protector, consult with the Minister and the Cabinet member responsible for finance. 40
- (2B) A notice in terms of subsection (2)(a) or any provision thereof may commence with effect from a date specified in the notice, which date may not be more than one year before the date of publication of the notice.
- (2C) (a) A notice issued under subsection (2)(a) shall be submitted to Parliament for approval before publication thereof. 45
- (b) Parliament shall, by resolution—
- (i) approve the notice, whether in whole or in part; or
- (ii) disapprove the notice.”.

**Amendment of section 2A of Act 23 of 1994, as inserted by section 4 of Act 22 of 2003**

3. Section 2A of the Public Protector Act, 1994, is hereby amended—

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

“(5) The Deputy Public Protector shall be entitled to such remuneration and other terms and conditions of employment [of the Deputy Public Protector shall from time to time be determined by the National Assembly upon the advice of the committee]— 5

(a) as determined by the President, from time to time, by notice in the *Gazette*, after taking into consideration the recommendations of the Independent Commission; and 10

(b) approved by Parliament in terms of subsection (5C): Provided that such remuneration shall not be reduced, nor shall the terms and conditions of employment be adversely altered, during his or her term of office.”; and 15

(b) by the insertion of the following subsections after subsection (5):

“(5A) The Independent Commission shall, when investigating or considering the remuneration and other terms and conditions of employment of the Deputy Public Protector, consult with the Minister and the Cabinet member responsible for finance. 20

(5B) A notice in terms of subsection (5)(a) or any provision thereof may commence with effect from a date specified in the notice, which date may not be more than one year before the date of publication of the notice. 25

(5C) (a) A notice issued under subsection (5)(a) shall be submitted to Parliament for approval before publication thereof. 25

(b) Parliament shall, by resolution—

(i) approve the notice, whether in whole or in part; or

(ii) disapprove the notice.”.

**Amendment of section 1 of Act 54 of 1994** 30

4. Section 1 of the Human Rights Commission Act, 1994, is hereby amended by the insertion of the following definition after the definition of “fundamental rights”:

“(ivA) **“Independent Commission”** means the Independent Commission for the Remuneration of Public Office-bearers established by section 2 of the Independent Commission for the Remuneration of Public Office-bearers Act, 1997 (Act No. 92 of 1997).” 35

**Substitution of section 13 of Act 54 of 1994**

5. The following section is hereby substituted for section 13 of the Human Rights Commission Act, 1994:

**“Remuneration and allowances of members of Commission** 40

**13. (1) The full-time and part-time members of the Commission shall be entitled to such remuneration, allowances and other terms and conditions of office and service benefits [of the full-time and part-time members of the Commission shall be determined by the President in consultation with the Cabinet and the Minister of Finance]—** 45

(a) as determined by the President, from time to time, by notice in the *Gazette*, after taking into consideration the recommendations of the Independent Commission; and

(b) approved by Parliament in terms of subsection (5).

(2) The remuneration of the members of the Commission shall not be reduced, nor shall the allowances and other terms and conditions of office and service benefits be adversely altered, during their continuation in office. 50

(3) The Independent Commission shall, when investigating or considering the remuneration, allowances and other terms and conditions of office and service benefits of the members of the Commission, consult with the 55

Cabinet members responsible for the administration of justice and for finance.

(4) A notice in terms of subsection (1)(a) or any provision thereof may commence with effect from a date specified in the notice, which date may not be more than one year before the date of publication of the notice.

(5) (a) A notice issued under subsection (1)(a) shall be submitted to Parliament for approval before publication thereof.

(b) Parliament shall, by resolution—

(i) approve the notice, whether in whole or in part; or

(ii) disapprove the notice.

~~[(3)]~~(6) A part-time member of the Commission may, for any period during which that member, with the approval of the Commission, performs additional duties and functions, be paid such additional remuneration as may be determined by the President **[in consultation with the Cabinet and the Minister of Finance]** after—

(a) taking into consideration the recommendations of the Independent Commission; and

(b) consulting the Cabinet members responsible for the administration of justice and for finance.”.

#### **Amendment of section 1 of Act 39 of 1996, as amended by section 35 of Act 47 of 1997**

6. Section 1 of the Commission on Gender Equality Act, 1996, is hereby amended—

(a) by the insertion of the following definition after the definition of “committee”:

“(iiiA) **“Independent Commission”** means the Independent Commission for the Remuneration of Public Office-bearers established by section 2 of the Independent Commission for the Remuneration of Public Office-bearers Act, 1997 (Act No. 92 of 1997);”;

(b) by the substitution for the definition of “Minister” of the following definition:

“(vi) **‘Minister’** means the **[Minister of Justice]** Cabinet member responsible for women, children and people with disabilities;”.

#### **Substitution of section 8 of Act 39 of 1996**

7. The following section is hereby substituted for section 8 of the Commission on Gender Equality Act, 1996:

##### **“Remuneration and allowances of members of Commission**

8. (1) The full-time and part-time members of the Commission shall be entitled to such remuneration, allowances and other terms and conditions of office and service benefits **[of the full-time and part-time members of the Commission shall be determined by the President]**—

(a) as determined by the President, from time to time, by notice in the *Gazette*, after taking into consideration the recommendations of the Independent Commission; and

(b) approved by Parliament in terms of subsection (5).

(2) The remuneration of the members of the Commission shall not be reduced, nor shall the allowances and other terms and conditions of office and service benefits be adversely altered, during their term of office.

(3) The Independent Commission shall, when investigating or considering the remuneration, allowances and other terms and conditions of office and service benefits of the members of the Commission, consult with the Minister and the Cabinet member responsible for finance.

(4) A notice in terms of subsection (1)(a) or any provision thereof may commence with effect from a date specified in the notice, which date may not be more than one year before the date of publication of the notice.

(5) (a) A notice issued under subsection (1)(a) shall be submitted to Parliament for approval before publication thereof.

- (b) Parliament shall, by resolution—
- (i) approve the notice, whether in whole or in part; or
  - (ii) disapprove the notice.

~~[(3)]~~(6) A part-time member of the Commission may, for any period during which that member, with the approval of the Commission, performs additional duties and functions, be paid such additional remuneration as may be determined by the President after—

- (a) taking into consideration the recommendations of the Independent Commission; and
- (b) consulting the Minister and the Cabinet member responsible for finance.

**[(4) The provisions of section 7(3) shall apply, with the necessary changes, in respect of the tabling in Parliament of a document setting out the remuneration, allowances and other terms and conditions of office and service benefits of the full-time and part-time members of the Commission.]”.**

#### **Amendment of section 1 of Act 51 of 1996**

8. Section 1 of the Electoral Commission Act, 1996, is hereby amended by the insertion of the following definition after the definition of “Electoral Court”:

- “(vA) **“Independent Commission”** means the Independent Commission for the Remuneration of Public Office-bearers established by section 2 of the Independent Commission for the Remuneration of Public Office-bearers Act, 1997 (Act No. 92 of 1997);”.

#### **Amendment of section 7 of Act 51 of 1996, as amended by section 1 of Act 14 of 2004**

9. Section 7 of the Electoral Commission Act, 1996, is hereby amended—

- (a) by the substitution for subsection (2) of the following subsection:
- “(2) The full-time and part-time members of the Commission shall be entitled to such conditions of service, remuneration, allowances and other benefits **[of commissioners shall from time to time be determined by the President after consultation with the Commission on Remuneration of Representatives established by section 2 of the Commission on the Remuneration of Representatives Act, 1994 (Act No. 37 of 1994), and a distinction may be made between commissioners appointed in a full-time and part-time capacity]**—
- (a) as determined by the President, from time to time, by notice in the *Gazette*, after taking into consideration the recommendations of the Independent Commission; and
  - (b) approved by Parliament in terms of subsection (2C): Provided that a distinction may be made between commissioners appointed in a full-time and part-time capacity: Provided further that such remuneration shall not be reduced, nor shall the conditions of service, allowances and other benefits be adversely altered, during their term of office.”; and
- (b) by the insertion of the following subsections after subsection (2):
- “(2A) The Independent Commission shall, when investigating or considering the conditions of service, remuneration, allowances and other benefits of the members of the Commission, consult with the Cabinet members responsible for home affairs and for finance.
- (2B) A notice in terms of subsection (2)(a) or any provision thereof may commence with effect from a date specified in the notice, which date may not be more than one year before the date of publication of the notice.
- (2C) (a) A notice issued under subsection (2)(a) shall be submitted to Parliament for approval before publication thereof.
- (b) Parliament shall, by resolution—
- (i) approve the notice, whether in whole or in part; or
  - (ii) disapprove the notice.”.

**Amendment of section 1 of Act 92 of 1997, as amended by section 7 of Act 28 of 2003**

**10.** Section 1 of the Independent Commission for the Remuneration of Public Office-bearers Act, 1997, is hereby amended—

- (a) by the substitution for the definition of “Constitution” of the following definition: 5
- “(ii) **‘Constitution’** means the Constitution of the Republic of South Africa, 1996 [(Act No. 108 of 1996)];”;
- (b) by the insertion of the following definition after the definition of “Constitution”:
- “(iiA) **‘constitutional institution’** means the Public Protector, the Deputy Public Protector, the Auditor-General and any commission established by Chapter 9 of the Constitution;”; and 10
- (c) by the substitution for paragraphs (d) and (e) of the definition of “office-bearer” of the following paragraphs:
- “(d) any person holding the office of— 15
- (i) Constitutional Court judge or a judge as defined in section 1 of the Judges’ Remuneration and Conditions of Employment Act, 2001 (Act No. 47 of 2001); and
- (ii) magistrate who is appointed under section 9 of the Magistrates’ Courts Act, 1944 (Act No. 32 of 1944), read with section 10 of the Magistrates Act, 1993 (Act No. 90 of 1993); [and] 20
- (e) any member of the National House of Traditional Leaders, any member of any provincial house of traditional leaders or any traditional leader; and 25
- (f) any member of a constitutional institution.”.

**Amendment of section 8 of Act 92 of 1997, as amended by section 11 of Act 28 of 2003**

**11.** Section 8 of the Independent Commission for the Remuneration of Public Office-bearers Act, 1997, is hereby amended— 30

- (a) by the substitution for subsection (3) of the following subsection:
- “(3) The Commission may conduct or cause to be conducted such research or obtain such information from the Secretary to Parliament, the secretary to any provincial legislature, the secretary to the National House of Traditional Leaders, the secretary to any provincial house of traditional leaders, the chief executive officer of any constitutional institution, the chief executive officer of any municipality, the Chief Justice or any person designated for that purpose by the Chief Justice, or any functionary or body as may be necessary for the performance of the functions of the Commission under this Act, section 219 of the Constitution or any other law.”; 35
- (b) by the substitution for subsection (3A) of the following subsection:
- “(3A) Whenever the Commission performs any function in terms of this Act relating to the remuneration of any office-bearer as defined—
- (a) in paragraph (d)(i) of the definition of ‘office-bearer’ in section 1, it must have regard to the provisions of the Judges’ Remuneration and Conditions of Employment Act, 2001 (Act No. 47 of 2001), and in particular to section 2 of that Act; [or] 45
- (b) in paragraph (d)(ii) of the definition of ‘office-bearer’ in section 1, it must have regard to the provisions of the Magistrates Act, 1993 (Act No. 90 of 1993), and in particular to section 12 of that Act[.]; 50
- or
- (c) in paragraph (f) of the definition of ‘office-bearer’ in section 1, it must have regard to the provisions of the law in terms of which such an ‘office-bearer’ has been appointed.”]; 55
- (c) by the substitution for subsection (4) of the following subsection:
- “(4) The Commission shall, after taking into consideration the factors referred to in subsection (6), publish in the *Gazette* recommendations concerning—

- (a) the salary, allowances and benefits of any office-bearer as defined in paragraphs (a), (d) **[and]**, (e) and (f) of the definition of ‘office-bearer’ in section 1;
- (b) the upper limits of the salary, allowances or benefits of any office-bearer as defined in paragraphs (b) and (c) of the definition of ‘office-bearer’ in section 1; and
- (c) the resources which are necessary to enable an office-bearer as defined in paragraphs (a), (b), (c) **[and]**, (e) and (f) of the definition of ‘office-bearer’ in section 1 to perform the office-bearer’s functions effectively.”; and
- (d) by the substitution for subsection (6) of the following subsection:  
 “(6) (a) When making recommendations referred to in subsection (4) the Commission must take the following factors into account:  
 (i) The role, status, duties, functions and responsibilities of the office-bearers concerned;  
 (ii) the affordability of different levels of remuneration of public office-bearers;  
 (iii) current principles and levels of remuneration, particularly in respect of organs of state, and in society generally;  
 (iv) inflationary increases;  
 (v) the available resources of the state; and  
 (vi) any other factor which, in the opinion of the said Commission, is relevant.  
 (b) When making recommendations referred to in subsection (4) in respect of any office-bearer as defined in paragraph (f) of the definition of ‘office-bearer’ in section 1, the Commission must, where applicable, also take the following factors into account:  
 (i) The remuneration, allowances and other benefits of members of other constitutional institutions;  
 (ii) affordability in relation to the responsibilities of the constitutional institution concerned; and  
 (iii) the level of expertise and experience required of a member of the constitutional institution concerned.”.

#### Amendment of section 1 of Act 19 of 2002

12. Section 1 of the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities Act, 2002, is hereby amended by the insertion of the following definition after the definition of “constitutional institution”:  
 “**“Independent Commission”** means the Independent Commission for the Remuneration of Public Office-bearers established by section 2 of the Independent Commission for the Remuneration of Public Office-bearers Act, 1997 (Act No. 92 of 1997);”.

#### Amendment of section 14 of Act 19 of 2002

13. Section 14 of the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities Act, 2002, is hereby amended—
- (a) by the substitution for subsection (1) of the following subsection:  
 “(1) The **[Minister, with the concurrence of the Minister of Finance, determines the]** Chairperson, Deputy Chairperson and other members of the Commission are entitled to such conditions of appointment [of the Chairperson, the Deputy Chairperson and the other members of the Commission, taking into account the conditions of appointment of members of other constitutional institutions]—  
 (a) as determined by the President, from time to time, by notice in the *Gazette*, after taking into consideration the recommendations of the Independent Commission; and  
 (b) approved by Parliament in terms of subsection (1C): Provided that such conditions of appointment may not be adversely altered during their term of office.”; and



- (b) by the insertion of the following subsections after subsection (1):
  - “(1A) The Independent Commission must, when investigating or considering the conditions of employment of the members of the Commission, consult with the Minister and the Cabinet member responsible for finance. 5
  - (1B) A notice in terms of subsection (1)(a) or any provision thereof may commence with effect from a date specified in the notice, which date may not be more than one year before the date of publication of the notice.
  - (1C) (a) A notice issued under subsection (1)(a) must be submitted to Parliament for approval before publication thereof. 10
  - (b) Parliament must, by resolution—
    - (i) approve the notice, whether in whole or in part; or
    - (ii) disapprove the notice.” 10

**Amendment of section 1 of Act 25 of 2004** 15

14. Section 1 of the Public Audit Act, 2004, is hereby amended by the insertion of the following definition after the definition of “fruitless and wasteful expenditure”:  
 “**“Independent Commission”** means the Independent Commission for the Remuneration of Public Office-bearers established by section 2 of the Independent Commission for the Remuneration of Public Office-bearers Act, 1997 (Act No. 92 of 1997);” 20

**Amendment of section 7 of Act 25 of 2004**

- 15. Section 7 of the Public Audit Act, 2004, is hereby amended—
  - (a) by the substitution for subsection (1) of the following subsection:
    - “(1) The **[oversight mechanism must consult the person recommended in terms of section 193 of the Constitution for appointment as Auditor-General and make recommendations to the President for the determination of the]** Auditor-General is entitled to such conditions of employment **[of that person]**, including an appropriate salary, allowances and other benefits— 25
    - (a) as determined by the President, from time to time, by notice in the *Gazette*, after taking into consideration the recommendations of the Independent Commission; and 30
    - (b) approved by Parliament in terms of subsection (1C).”; and
  - (b) by the insertion of the following subsections after subsection (1): 35
    - “(1A) The Independent Commission must, when investigating or considering the conditions of employment of the Auditor-General, consult with the Cabinet member responsible for finance.
    - (1B) A notice in terms of subsection (1)(a) or any provision thereof may commence with effect from a date specified in the notice, which date may not be more than one year before the date of publication of the notice. 40
    - (1C) (a) A notice issued under subsection (1)(a) must be submitted to Parliament for approval before publication thereof.
    - (b) Parliament must, by resolution— 45
      - (i) approve the notice, whether in whole or in part; or
      - (ii) disapprove the notice.”

**Short title and commencement**

16. This Act is called the Determination of Remuneration of Members of Constitutional Institutions Laws Amendment Act, 2013, and comes into operation on a date set by the President by proclamation in the *Gazette*. 50

**MEMORANDUM ON THE OBJECTS OF THE DETERMINATION  
OF REMUNERATION OF MEMBERS OF CONSTITUTIONAL  
INSTITUTIONS LAWS AMENDMENT BILL, 2013**

**1. BACKGROUND**

- 1.1 The various statutes that regulate matters relating to state institutions that strengthen constitutional democracy in the Republic (the Chapter 9 Institutions) provide for different procedures to be followed, and different functionaries to play a role, in the determination of the remuneration, allowances and other terms and conditions of employment of members of those institutions. The need has therefore arisen to eliminate those disparities and to create uniformity in this regard.
- 1.2 Section 219 of the Constitution of the Republic of South Africa, 1996 (the Constitution), deals with the remuneration of persons holding public office. Section 219(5) provides that “National legislation must establish frameworks for determining the salaries, allowances and benefits of judges, the Public Protector, the Auditor-General and members of any commission provided for in the Constitution, including the broadcasting authority referred to in section 192.”.

**2. OBJECTS OF BILL**

In order to eliminate the disparities referred to in paragraph 1.1, the Bill seeks to amend the relevant legislation to provide for the following uniform procedure to be followed in respect of the determination of the remuneration, allowances and other terms and conditions of employment and service benefits of the Public Protector, the Deputy Public Protector, the Auditor-General and members of the other Chapter 9 Institutions:

- (a) The Public Protector, the Deputy Public Protector, the Auditor-General and members of the other Chapter 9 Institutions will be entitled to such remuneration, allowances and other terms and conditions of employment and service benefits, as the case may be—
- (i) as determined by the President, from time to time, by notice in the *Gazette*, after taking into consideration the recommendations of the Independent Commission for the Remuneration of Public Office-bearers (the Independent Commission); and
  - (ii) approved by Parliament.
- (b) The Independent Commission must, when investigating or considering the remuneration, allowances and other terms and conditions of employment and service benefits of the Public Protector, the Deputy Public Protector, the Auditor-General and members of the other Chapter 9 Institutions, consult with the responsible Cabinet member and the Cabinet member responsible for finance.
- (c) A notice referred to in paragraph (a)(i) or any provision thereof may commence with effect from a date specified in the notice, which date may not be more than one year before the date of publication of the notice.
- (d) Such a notice must be submitted to Parliament for approval before publication thereof.
- (e) Parliament must, by resolution—
- (i) approve the notice, whether in whole or in part; or
  - (ii) disapprove the notice.

**3. CLAUSE BY CLAUSE ANALYSIS**

**3.1 Ad clause 1**

Clause 1 amends section 1 of the Public Protector Act, 1994 (Act No. 23 of 1994) (administered by the Minister of Justice and Constitutional Development), by substituting the definition of “Constitution” and inserting a definition of “Independent Commission” (meaning the Independent Commission established by section 2 of the Independent Commission for the

Remuneration of Public Office-bearers Act, 1997 (Act No. 92 of 1997) (the ICR Act).

### 3.2 Ad clauses 2 and 3

3.2.1 In terms of sections 2(2) and 2A(5) of the Public Protector Act, 1994, respectively, the remuneration and other terms and conditions of employment of the Public Protector and Deputy Public Protector “shall from time to time be determined by the National Assembly” upon the advice of a committee of the National Assembly. Clauses 2 and 3 amend sections 2 and 2A, respectively, to bring them in line with the uniform procedure.

3.2.2 Clause 3 further amends section 2A(5) of the Public Protector Act, 1994, to provide that the remuneration of the Deputy Public Protector may not be reduced and his or her terms and conditions of employment may not be adversely altered, during his or her term of office, thereby bringing the position of the Deputy Public Protector, as far as possible, in line with that of the Public Protector.

### 3.3 Ad clause 4

Clause 4 amends section 1 of the Human Rights Commission Act, 1994 (Act No. 54 of 1994) (administered by the Minister of Justice and Constitutional Development), by inserting a definition of “Independent Commission”.

### 3.4 Ad clause 5

3.4.1 In terms of section 13(1) of the Human Rights Commission Act, 1994, the remuneration, allowances and other terms and conditions of office and service benefits of the full-time and part-time members of the South African Human Rights Commission (the SAHRC) “shall be determined by the President in consultation with the Cabinet and the Minister of Finance”. Clause 5 substitutes section 13 to bring it in line with the uniform procedure.

3.4.2 Clause 5 further amends section 13(2) of the Human Rights Commission Act, 1994, to provide that, apart from the fact that the remuneration of the members of the SAHRC may not be reduced during their continuation in office, their “allowances and other terms and conditions of office and service benefits” may also not be adversely altered during their continuation in office.

3.4.3 In terms of the existing section 13(3) of the Human Rights Commission Act, 1994, a part-time member of the SAHRC may, for any period during which that member, with the approval of the SAHRC, performs additional duties and functions, “be paid such additional remuneration as may be determined by the President in consultation with the Cabinet and the Minister of Finance”. Clause 5 also amends the existing section 13(3) (see proposed new section 13(6)) to provide that such additional remuneration must be determined by the President after—

- “(a) taking into consideration the recommendations of the Independent Commission; and
- (b) consulting the Cabinet members responsible for the administration of justice and for finance”.

### 3.5 Ad clause 6

Clause 6 amends section 1 of the Commission on Gender Equality Act, 1996 (Act No. 39 of 1996) (administered by the Minister of Women, Children and People with Disabilities), by inserting a definition of “Independent Commission” and substituting the definition of “Minister”, which is required

as the administration of that Act has been assigned to the Ministry of Women, Children and People with Disabilities.

### 3.6 Ad clause 7

3.6.1 In terms of section 8(1) of the Commission on Gender Equality Act, 1996, the remuneration, allowances and other terms and conditions of office and service benefits of the full-time and part-time members of the Commission for Gender Equality (the CGE) “shall be determined by the President”. Clause 7 substitutes section 8 to bring it in line with the uniform procedure.

3.6.2 Clause 7 further amends section 8(2) of the Commission on Gender Equality Act, 1996, to provide that, apart from the fact that the remuneration of the members of the CGE may not be reduced during their term of office, their “allowances and other terms and conditions of office and service benefits” may also not be adversely altered during their term of office.

3.6.3 In terms of the existing section 8(3) of the Commission on Gender Equality Act, 1996, a part-time member of the CGE may, for any period during which that member, with the approval of the CGE, performs additional duties and functions, “be paid such additional remuneration as may be determined by the President”. Clause 7 amends the existing section 8(3) (see proposed new section 8(6)) to provide that such additional remuneration must be determined by the President after—

- “(a) taking into consideration the recommendations of the Independent Commission; and
- (b) consulting the Minister (the Minister of Women, Children and People with Disabilities) and the Cabinet member responsible for finance.”.

The existing section 8(4) is also deleted as a result of the proposed amendments to section 8.

### 3.7 Ad clause 8

Clause 8 amends section 1 of the Electoral Commission Act, 1996 (Act No. 51 of 1996) (administered by the Minister of Home Affairs), by inserting a definition of “Independent Commission”.

### 3.8 Ad clause 9

3.8.1 In terms of section 7(2) of the Electoral Commission Act, 1996, the conditions of service, remuneration, allowances and other benefits of the commissioners of the Electoral Commission “shall from time to time be determined by the President after consultation with the Commission on Remuneration of Representatives established by section 2 of the Commission on the Remuneration of Representatives Act, 1994 (Act No. 37 of 1994) . . .”. Clause 9 amends section 7 to bring it in line with the uniform procedure. The Commission on the Remuneration of Representatives Act, 1994, was repealed by the ICR Act.

3.8.2 Clause 9 further amends section 7(2) of the Electoral Commission Act, 1996, to provide that the remuneration of the commissioners of the Electoral Commission may not be reduced and that their conditions of service, allowances and other benefits may not be adversely altered during their term of office.

### 3.9 Ad clause 10

Clause 10 amends section 1 of the ICR Act (administered by the Deputy President) by substituting the definition of “Constitution”, inserting a definition of “constitutional institution” and effecting a consequential amendment to the definition of “office-bearer”. This amendment is required as a result of the role that the Independent Commission is envisaged to play in the determination of the remuneration, allowances and other terms and conditions of employment and service benefits, as the case may be, of the Public Protector, the Deputy Public Protector, the Auditor-General and members of the other Chapter 9 Institutions, as provided for in the Bill.

### 3.10 Ad clause 11

Clause 11 effects consequential amendments to section 8 of the ICR Act which are required for the same reason as explained in paragraph 3.9 above. Provision is further made for additional factors that the Independent Commission must take into account when making recommendations in respect of the remuneration, allowances and other terms and conditions of employment and service benefits of the Public Protector, the Deputy Public Protector, the Auditor-General and members of the other Chapter 9 Institutions (see proposed new section 8(6)(b)). These factors include, among others, the remuneration, allowances and other benefits of members of other constitutional institutions and affordability in relation to the responsibilities of the constitutional institution concerned.

### 3.11 Ad clause 12

Clause 12 amends section 1 of the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities Act, 2002 (Act No. 19 of 2002) (administered by the Minister for Cooperative Governance and Traditional Affairs), by inserting a definition of “Independent Commission”.

### 3.12 Ad clause 13

3.12.1 In terms of section 14(1) of the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities Act, 2002, “the Minister, with the concurrence of the Minister of Finance, determines the conditions of appointment of the Chairperson, the Deputy Chairperson and the other members of the Commission, taking into account the conditions of appointment of members of other constitutional institutions”. “Minister” means the Cabinet member designated by the President. Clause 13 amends section 14 to bring it in line with the uniform procedure.

3.12.2 Clause 13 further amends section 14(1) of the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities Act, 2002, to provide that the conditions of appointment of the Chairperson, the Deputy Chairperson and the other members of the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities may not be adversely altered during their term of office.

### 3.13 Ad clause 14

Clause 14 amends section 1 of the Public Audit Act, 2004 (Act No. 25 of 2004) (administered by the Minister of Finance), by inserting a definition of “Independent Commission”.

### 3.14 Ad clause 15

In terms of section 7(1) of the Public Audit Act, 2004, the oversight mechanism (i.e. a mechanism provided for by the National Assembly to maintain oversight over the Auditor-General) must consult the person recommended in terms of section 193 of the Constitution for appointment as Auditor-General and “make recommendations to the President for the determination of the conditions of employment of that person, including an appropriate salary, allowances and other benefits”. Clause 15 amends section 7 to bring it in line with the uniform procedure.

### 3.15 Ad clause 16

Clause 16 contains the short title of the Bill and provides for the commencement of the Act.

## 4. DEPARTMENTS/BODIES/PERSONS CONSULTED

The Bill, as approved by Cabinet, was published for public comments in *Gazette* No. 35900 of 23 November 2012. The Chairpersons of all the affected Chapter 9 Institutions and the other institutions referred to in the Constitution, were also approached for their comments on the Bill.

## 5. FINANCIAL IMPLICATIONS FOR THE STATE

The Bill could result in financial implications for the Independent Commission. It is, however, not possible to predict at this stage what the financial implications would be as it will depend on the extent to which its Secretariat will be extended to deal with the increased workload. Furthermore, the possibility exists that the Independent Commission, in view of its increased workload, might have to meet on a more regular basis. Once again, it is not possible to predict the additional expenditure, if any, that the Independent Commission will incur in this regard as it will depend on the number of additional meetings that it will have to hold to deal with its increased workload.

## 6. PARLIAMENTARY PROCEDURE

- 6.1 The State Law Advisers and the Department of Justice and Constitutional Development are of the opinion that the Bill must be dealt with in accordance with the procedure established by 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.
- 6.2 The State Law Advisers are of the opinion that it is not necessary to refer the 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.