

REPUBLIC OF SOUTH AFRICA

**PORTFOLIO COMMITTEE AMENDMENTS
TO**

**JUDICIAL MATTERS SECOND
AMENDMENT BILL**

[B 41—2003]

*(As agreed to by the Portfolio Committee on Justice and Constitutional Development
(National Assembly))*

[B 41A—2003]

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AMENDMENTS AGREED TO
JUDICIAL MATTERS SECOND AMENDMENT BILL
[B 41 — 2003]

NEW CLAUSE

1. That the following be a new Clause:

Amendment of section 10 of Act 9 of 1929, as amended by section 5 of Act 42 of 1942, section 27 of Act 56 of 1949, section 26 of Act 54 of 1952, section 2 of Act 34 of 1986, section 1 of Act 51 of 1991, section 1 of Act 65 of 1997 and section 1 of Act 42 of 2001

1. Section 10 of the Administration Amendment Act, 1929, is hereby amended —

- (a) by the substitution in subsection (3) for paragraph (b) of the following paragraph:

“(b) A division of the court—

- (i) shall consist of one or more presiding officers, one of whom shall be the president of the division, who shall be fit and proper persons appointed by the Minister of Justice in a permanent capacity after consultation with the Magistrates Commission[,]; and

- (ii) such persons shall for the purposes of the Magistrates Act, 1993 (Act No. 90 of 1993), be deemed to be magistrates of a regional division as contemplated in the Magistrates’ Courts Act, 1944 (Act No. 32 of 1944).”; and

- (b) by the insertion after subsection (3) of the following subsection:

“(3A) Section 9 of the Magistrates’ Courts Act, 1944 (Act No. 32 of 1944), relating to the appointment of magistrates in an acting or temporary capacity is applicable with the changes required by the context in respect of the appointment of acting or temporary presiding officers of Courts established under this section.”.

CLAUSE 1

Clause rejected.

NEW CLAUSE

1. That the following be a new Clause:

Substitution of section 35B of Act 24 of 1936, as inserted by section 1 of Act 32 of 1995

2. The following section is hereby substituted for section 35B of the Insolvency Act, 1936:

“Agreements providing for termination and netting

35B. (1) Notwithstanding any rule of the common law to the contrary, all unperformed obligations arising out of one or more master agreements between the parties, or obligations arising

from such agreement or agreements in respect of assets in which ownership has been transferred as collateral security, shall, upon the sequestration of the estate of a party to such master agreement, terminate automatically at the date of sequestration, the values of those obligations shall be calculated at market value as at that date, the values so calculated shall be netted and the net amount shall be payable.

- (2) For purposes of this section “master agreement” means—
- (a) an agreement in accordance with standard terms published by the International Swaps and Derivatives Association, the International Securities Lenders Association, the Bond Market Association or the International Securities Market Association, or any similar agreement, which provides that, upon the sequestration of one of the parties—
 - (i) all unperformed obligations of the parties in terms of the agreement—
 - (aa) terminate or may be terminated; or
 - (bb) become or may become due immediately; and
 - (ii) the values of the unperformed obligations are determined or may be determined; and
 - (iii) the values are netted or may be netted, so that only a net amount (whether in the currency of the Republic or any other currency) is payable to or by a party, and which may further provide that the values of assets which have been transferred as collateral security for obligations under that agreement shall be included in the calculation of the net amount payable upon sequestration; or
 - (b) any agreement declared by the Minister, after consultation with the Minister of Finance, by notice in the *Gazette* to be a master agreement for the purposes of this section.

(3) The provisions of this section shall not apply to—

- (a) a transaction contemplated in section 35A; or
- (b) a netting arrangement contemplated in the National Payment System Act, 1998 (Act No. 78 of 1998).

(4) Section 341(2) of the Companies Act, 1973 (Act No. 61 of 1973), and sections 26, 29 and 30 of this Act shall not apply to dispositions in terms of a master agreement.”.

CLAUSE 3

Clause rejected.

NEW CLAUSE

1. That the following be a new Clause:

Amendment of section 60 of Act 51 of 1977, as substituted by section 3 of Act 75 of 1995 and amended by section 4 of Act 85 of 1997, section 5 of Act 34 of 1998 and section 9 of Act 62 of 2000

4. Section 60 of the Criminal Procedure Act, 1977, is hereby amended by the insertion after subsection (2) of the following subsection:

“(2A) The court must, before reaching a decision on the bail application, take into consideration any pre-trial services report regarding the desirability of releasing an accused on bail, if such a report is available.”.

CLAUSE 4

Clause rejected.

NEW CLAUSE

1. That the following be a new Clause:

Amendment of section 276 of Act 51 of 1977, as amended by section 3 of Act 107 of 1990, section 41 of Act 122 of 1991, section 18 of Act 139 of 1992, section 20 of Act 116 of 1993, section 2 of Act 33 of 1997 and section 34 of Act 105 of 1997

5. Section 276 of the Criminal Procedure Act, 1977, is hereby amended by the substitution for subsection (3) of the following subsection:

“(3) Notwithstanding anything to the contrary in any law contained, other than the Criminal Law Amendment Act, 1997 (Act No. 105 of 1997), the provisions of subsection (1) shall not be construed as prohibiting the court—

- (a) from imposing imprisonment together with correctional supervision; or
- (b) from imposing the punishment referred to in subsection (1)(h) or (i) in respect of any offence, whether under the common law or a statutory provision, irrespective of whether the law in question provides for such or any other punishment: Provided that any punishment contemplated in this paragraph may not be imposed in any case where the court intends imposing a sentence contemplated in section 51(1) or (2), read with section 52, of the Criminal Law Amendment Act, 1997.”

NEW CLAUSES

1. That the following be new Clauses:

Insertion of section 299A in Act 51 of 1977

6. The following section is hereby inserted in the Criminal Procedure Act, 1977, after section 299:

“Right of complainant to make representations in certain matters with regard to placement on parole, on day parole, or under correctional supervision

299A. (1) When a court sentences a person to imprisonment for—

- (a) murder or any other offence which involves the intentional killing of a person;
 - (b) rape;
 - (c) robbery where the wielding of a fire-arm or any other dangerous weapon or the infliction of grievous bodily harm or the robbery of a motor vehicle is involved;
 - (d) assault of a sexual nature;
 - (e) kidnapping; or
 - (f) any conspiracy, incitement or attempt to commit any offence contemplated in paragraphs (a) to (e),
- it shall inform—
- (i) the complainant; or

(ii) in the case of murder or any other offence contemplated in paragraph (a), any immediate relative of the deceased, if he or she is present that he or she has a right, subject to the directives issued by the Commissioner of Correctional Services under subsection (4), to make representations when placement of the prisoner on parole, on day parole or under correctional supervision is considered or to attend any relevant meeting of the parole board.

(2) If the complainant or a relative intends to exercise the right contemplated in subsection (1) by making representations to or attending a meeting of the parole board, he or she has a duty—

- (i) to inform the Commissioner of Correctional Services thereof in writing;
- (ii) to provide the said Commissioner with his or her postal and physical address in writing; and
- (iii) to inform the said Commissioner in writing of any change of address.

(3) The Commissioner of Correctional Services shall inform the parole board in question accordingly and that parole board shall inform the complainant or relative in writing when and to whom he or she may make representations or when and where a meeting will take place.

(4) (a) The Commissioner of Correctional Services must issue directives regarding the manner and circumstances in which a complainant or relative contemplated in subsection (1) may exercise the right contemplated in that subsection.

(b) Directives issued under paragraph (a) must be published in the *Gazette*.

(c) Before the directives issued under paragraph (a) are published in the *Gazette*, the Commissioner of Correctional Services must submit them to Parliament, and the first directives so issued, must be submitted to Parliament within three months of the commencement of this section.

(d) Any directive issued under paragraph (a) may be amended or withdrawn in like manner.”

Amendment of section 342A of Act 51 of 1977, as inserted by section 13 of Act 86 of 1996

7. Section 342A of the Criminal Procedure Act, 1977, is hereby amended by the addition of the following subsection:

“(7) (a) The National Director of Public Prosecutions must, within 14 days after the end of January and of July of each year, submit a report to the Cabinet member responsible for the administration of justice, containing the particulars indicated in the Table of Awaiting Trial Accused in respect of each accused whose trial has not yet commenced in respect of the leading of evidence, as contemplated in section 150 and who, by the end of the month in question, has been in custody for a continuous period exceeding—

- (i) 18 months from date of arrest, where the trial is to be conducted in a High Court;
- (ii) 12 months from date of arrest, where the trial is to be conducted in a regional court; and
- (iii) six months from date of arrest, where the trial is to be conducted in a magistrate’s court.

(b) The Cabinet member responsible for the administration of justice must, within 14 days of receipt of a report contemplated in paragraph (a), table such report in Parliament.

Table of Awaiting Trial Accused							
Court and case number	Name and age of accused	Particulars of charge(s)	Period in detention	Number of court appearances	Date of next court appearance	Reasons why trial has not commenced	Whether bail has been granted and if so, the conditions of bail".

CLAUSE 5

1. On page 6, in line 38, to omit "practices" and to substitute "practises".

CLAUSE 8

1. On page 8, in line 6, to omit "cause" and to substitute "notify the fund concerned that".
2. On page 8, in line 6, to omit "to".
3. On page 8, in line 8, after "party" to insert:

and that the administrator of the pension fund furnish proof of such endorsement to the registrar, in writing, within one month of receipt of such notification

NEW CLAUSE

1. That the following be a new Clause:

Amendment of section 5 of Act 24 of 1987, as amended by section 2 of Act 121 of 1991 and section 9 of Act 86 of 1997

15. Section 5 of the Mediation in Certain Divorce Matters Act, 1987, is hereby amended by the insertion in subsection (1) after paragraph (d) of the following paragraph:

"(dA) the circumstances in which a court may cause an investigation to be carried out by a Family Advocate as contemplated in section 10(1A) of the Maintenance Act, 1998 (Act No. 99 of 1998), and section 5(1A) of the Domestic Violence Act, 1998 (Act No. 116 of 1998);"

CLAUSE 12

1. On page 8, in line 29, after "permit" to insert:
and where a Family Advocate is available,
2. On page 8, in line 29, after "may" to insert:
, in the circumstances as may be prescribed in the Mediation in Certain Divorce Matters Act, 1987 (Act No. 24 of 1987),
3. On page 8, from line 31, to omit "(Act No. 24 of 1987)".

CLAUSE 15

1. On page 10, in line 34, after “permit” to insert:
and where a Family Advocate is available,
2. On page 10, in line 34, after “may” to insert:
, in the circumstances as may be prescribed in the Mediation in Certain Divorce Matters Act, 1987 (Act No. 24 of 1987),
3. On page 10, in line 37, to omit “(Act No. 24 of 1987)”.

CLAUSE 16

1. On page 10, in line 45, to omit “[18] 30 months” and to substitute “[18 months] three years”.

NEW CLAUSES

1. That the following be new Clauses:

Substitution of section 12 of Act 2 of 2000, as substituted by section 25 of Act 42 of 2001

21. The following section is hereby substituted for section 12 of the Promotion of Access to Information Act, 2000:

“Act not applying to certain public bodies or officials thereof

- 12.** This Act does not apply to a record—
- (a) of the Cabinet and its committees;
 - (b) relating to the judicial functions of—
 - (i) a court referred to in section 166 of the Constitution;
 - (ii) a Special Tribunal established in terms of section 2 of the Special Investigating Units and Special Tribunals Act, 1996 (Act 74 of 1996); or
 - (iii) a judicial officer of such court or Special Tribunal;
 - [or]
 - (c) of an individual member of Parliament or of a provincial legislature in that capacity[.] ; or
 - (d) relating to a decision referred to in paragraph (gg) of the definition of “administrative action” in section 1 of the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000), regarding the nomination, selection or appointment of a judicial officer or any other person by the Judicial Service Commission in terms of any law.”.

Amendment of section 44 of Act 2 of 2000, as amended by section 36 of Act 42 of 2001

22. Section 44 of the Promotion of Access to Information Act, 2000, is hereby amended by the substitution for subsection (4) of the following subsection:

- “(4) A record may not be refused in terms of subsection (1) or (2) insofar as it consists of an account or a statement of reasons required to be given in accordance with section 5 of the Promotion of Administrative Justice Act, 2000 (Act No. 3 of

2000), except if the record relates to a decision referred to in paragraph (gg) of the definition of “administrative action” in section 1 of the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000), regarding the nomination, selection or appointment of a judicial officer or any other person by the Judicial Service Commission in terms of any law.”.

Amendment of section 79 of Act 2 of 2000

23. Section 79 of the Promotion of Access to Information Act, 2000, is hereby amended—

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

“(1) The Rules Board for Courts of Law, established by section 2 of the Rules Board for Courts of Law Act, 1985 (Act 107 of 1985), must within **[12 months]** four years after the commencement of this section, make **[and implement]** rules of procedure for—”; and

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

“(2) **[Before the implementation of]** Until the rules of procedure in terms of subsection (1)(a) come into operation, an application in terms of section 78 **[may only]** must be lodged with a High Court or another court **[of similar status]** having jurisdiction.”.

Substitution of section 90 of Act 2 of 2000

24. The following section is hereby substituted for section 90 of the Promotion of Access to Information Act, 2000:

“Offences

90. (1) A person who with intent to deny a right of access in terms of this Act—

(a) destroys, damages or alters a record;

(b) conceals a record; or

(c) falsifies a record or makes a false record,

commits an offence and is liable on conviction to a fine or to imprisonment for a period not exceeding two years.

(2) An information officer who wilfully or in a grossly negligent manner fails to comply with the provisions of section 14 commits an offence and is liable on conviction to a fine, or to imprisonment for a period not exceeding two years.

(3) A head of a private body who wilfully or in a grossly negligent manner fails to comply with the provisions of section 51 commits an offence and is liable on conviction to a fine, or to imprisonment for a period not exceeding two years.”.

Amendment of section 92 of Act 2 of 2000

25. Section 92 of the Promotion of Access to Information Act, 2000, is hereby amended by the addition of the following subsection:

“(4) Any regulation in terms of subsection (1) may provide that any person who contravenes a provision thereof or fails to comply therewith is guilty of an offence and on conviction liable to a fine or to imprisonment for a period not exceeding two years.”.

Amendment of section 1 of Act 3 of 2000, as amended by section 1 of Act 53 of 2002

26. Section 1 of the Promotion of Administrative Justice Act, 2000, is hereby amended by the substitution for paragraph (gg) of the definition of “administrative action” of the following paragraph:
“(gg) a decision relating to any aspect regarding the nomination, selection or appointment of a judicial officer or any other person, by the Judicial Service Commission in terms of any law;”.

Amendment of section 7 of Act 3 of 2000

27. Section 7 of the Promotion of Administrative Justice Act, 2000, is hereby amended—

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

“(3) The Rules Board for Courts of Law established by section 2 of the Rules Board for Courts of Law Act, 1985 (Act 107 of 1985), must within **[one year]** three years after the date of commencement of section 10 of this Act, make **[and implement]** rules of procedure for judicial review.”; and

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

“(4) **[Before the implementation of]** Until the rules of procedure referred to in subsection (3) come into operation, all proceedings for judicial review under this Act must be instituted in a High Court or **[the Constitutional Court]** another court having jurisdiction.”.

CLAUSE 17

Clause rejected.

NEW CLAUSE

1. That the following be a new Clause:

Amendment of section 16 of Act 4 of 2000, as substituted by section 1 of Act 52 of 2002

28. Section 16 of the Promotion of Equality and Prevention of Unfair Discrimination Act, 2000, is hereby amended by the substitution in subsection (1) for paragraph (c) of the following paragraph:

“(c) the Minister must, after consultation with the head of an administrative region defined in section 1 of the Magistrates’ Courts Act, 1944 (Act No. 32 of 1944), by notice in the *Gazette*—

- (i) designate one or more magistrate’s courts as equality courts for the administrative region concerned;
- (ii) define the area of jurisdiction of each equality court, which may consist of any number of districts, sub-districts or other areas of jurisdiction created in terms of section 2 of the Magistrates’ Courts Act, 1944;
- (iii) increase or reduce the area of jurisdiction of each equality court;
- (iv) appoint one or more places within the area of jurisdic-

tion of each equality court for the holding of equality court sittings;

- (v) withdraw or vary any notice under this paragraph; **and**];

Provided that any proceedings pending before an equality court which are not finalised at the time of the publication of a notice in the *Gazette* as contemplated in this paragraph, must be finalised by that court, as if such notice had not been published; and”.

NEW CLAUSES

1. That the following be new Clauses:

Amendment of section 17 of Act 4 of 2000, as amended by section 2 of Act 52 of 2002

29. Section 17 of the Promotion of Equality and Prevention of Unfair Discrimination Act, 2000, is hereby amended by the addition of the following subsection:

“(4) The Director-General may, subject to such conditions as he or she may determine, in writing delegate any power conferred on him or her by this section to an officer employed by the Department, but shall not be divested of any power so delegated and may amend or set aside any decision of the delegatee made in the exercise of such power.”.

Amendment of section 11 of Act 47 of 2001

31. Section 11 of the Judges’ Remuneration and Conditions of Employment Act, 2001, is hereby amended by the substitution for subsection (7) of the following subsection:

“(7) The surviving spouse or partner of a Constitutional Court judge or judge referred to in subsection (2) or (4) must, with effect from the first day of the month immediately succeeding the month in which he or she dies, be paid an amount equal to two thirds of the salary which was payable to that Constitutional Court judge or judge in terms of subsection (3)(a) or (5)(a), which amount shall be payable until the death of such spouse or partner: Provided that if the Constitutional Court judge or judge is survived by more than one spouse, the amount concerned shall be divided equally between the spouses concerned, unless the judge concerned determined otherwise in accordance with a regulation made under section 13(1)(cB).”.

NEW CLAUSE

1. That the following be a new Clause:

Repeal of section 18 of Act 28 of 2003

33. Section 18 of the Judicial Officers (Amendment of Conditions of Service) Act, 2003, is hereby repealed.

CLAUSE 20

1. On page 12, in line 35, after “**title**” to insert “**and commencement**”.

2. On page 12, in line 36, after “2003” to insert:

, and comes into operation on a date fixed by the President by proclamation in the *Gazette*

LONG TITLE

Long Title rejected.

NEW LONG TITLE

1. That the following be a new Long Title:

To amend the Administration Amendment Act, 1929, so as to eliminate any uncertainty relating to the appointment of presiding officers of Divorce Courts in an acting, temporary or permanent capacity; to amend the Insolvency Act, 1936, so as to further regulate agreements providing for termination and netting of certain unperformed obligations and obligations in respect of assets transferred as collateral security in the event of sequestration; to amend the Prevention of Counterfeiting of Currency Act, 1965, so as to make further provision regarding the evidentiary burden of proof on an accused person; to amend the Criminal Procedure Act, 1977, so as to ensure the consideration of a pre-trial services report in respect of bail proceedings; to further regulate correctional supervision as a sentencing option in certain circumstances; to make provision for a complainant to make representations with regard to the placement of accused persons on parole and to set out the duties of such complainant; and to make provision for the submission of a report to Parliament containing certain particulars in respect of accused persons whose trials have not commenced and who have been in custody for a particular period of time; to amend the Attorneys Act, 1979, so as to provide for the mandatory attendance of a legal practice management course by certain attorneys; to amend the Divorce Act, 1979, so as to make further provision regarding pension benefits in respect of the division of assets and maintenance of parties; to amend the Sheriffs Act, 1986, so as to effect a change of name; to amend the Mediation in Certain Divorce Matters Act, 1987, so as to prescribe the circumstances in which a Family Advocate may intervene in maintenance and domestic violence proceedings; to amend the Maintenance Act, 1998, so as to provide for the consideration by a court of the report and recommendations of a Family Advocate at a maintenance enquiry; to further regulate the payment of a maintenance benefit by a third party; and to extend maintenance orders by including maintenance orders made by High Courts and Divorce Courts in certain circumstances; to amend the Domestic Violence Act, 1998, so as to provide for the consideration by a court of the report and recommendations of a Family Advocate; to amend the Promotion of Access to Information Act, 2000, so as to extend the period within which the South African Human Rights Commission must compile a guide to assist persons who wish to gain access to information; to make provision regarding the exclusion of the Judicial Service Commission from the application of that Act in certain circumstances; to extend the period of time within which the rules of procedure must be made; to further regulate the institution of

legal proceedings in terms of the Act in a court; to make provision regarding the failure to comply with certain provisions of the Act; and to sanction the punishment for failure to comply with certain regulations; to amend the Promotion of Administrative Justice Act, 2000, so as to adapt the definition of “administrative action”; to extend the period of time within which the rules of procedure for judicial review must be made; and to further regulate the institution of legal proceedings in terms of the Act in a court; to amend the Promotion of Equality and Prevention of Unfair Discrimination Act, 2000, so as to further regulate the publication of a notice altering the boundaries of an equality court; and to make provision for the delegation of certain powers; to amend the Cross-Border Insolvency Act, 2000, so as to regulate the position of legal proceedings when a notice designating a State for the purposes of that Act is withdrawn; to amend the Judges’ Remuneration and Conditions of Employment Act, 2001, so as to address a technical problem during the enactment of the Judicial Officers (Amendment of Conditions of Service) Act, 2003; and to make provision regarding pensions paid to retired judges and to surviving spouses of retired judges; to amend the Judicial Officers (Amendment of Conditions of Service) Act, 2003, so as to address a technical problem during the enactment of that Act; and to provide for matters connected therewith.