

REPUBLIC OF SOUTH AFRICA

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**PROMOTION OF EQUALITY  
AND PREVENTION OF UNFAIR  
DISCRIMINATION AMENDMENT  
BILL**

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*(As amended by the Portfolio Committee on Justice and Constitutional Development  
(National Assembly))  
(The English text is the official text of the Bill)*

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(MINISTER FOR JUSTICE AND CONSTITUTIONAL DEVELOPMENT)

[B 41B—2002]

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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 Promotion of Equality and Prevention of Unfair Discrimination Act, 2000, so as to further provide for the training and designation of presiding officers of equality courts for purposes of the Act; to provide for the designation of magistrates' courts as equality courts; to further regulate the training of the clerks of equality courts; and to provide for matters connected therewith.

**B**E IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

### Substitution of section 16 of Act 4 of 2000

1. The following section is hereby substituted for section 16 of the Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 (hereinafter referred to as the principal Act): 5

#### “Equality courts and presiding officers

**16. (1)** For the purposes of this Act, but subject to section 31—

- (a) every High Court is an equality court for the area of its jurisdiction;
- (b) any judge may, subject to subsection (2), be designated in writing by the Judge President as a presiding officer of the equality court of the area in respect of which he or she is a judge; 10
- (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*— 15
  - (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; 20
  - (iii) increase or reduce the area of jurisdiction of each equality court;
  - (iv) appoint one or more places within the area of jurisdiction of each equality court for the holding of equality court sittings;
  - (v) withdraw or vary any notice under this paragraph; and 25
- (d) the head of an administrative region contemplated in paragraph (c) must, subject to subsection (2), designate in writing any magistrate or additional magistrate as a presiding officer of the equality court.

- (2) Only a judge, magistrate or additional magistrate who has completed a training course as a presiding officer of an equality court—
- (a) before the date of commencement of section 31; or
  - (b) as contemplated in section 31(4),
- and whose name has been included on the list contemplated in subsection 4)(a), may be designated as such in terms of subsection (1). 5
- (3) The Judges President and the heads of administrative regions must—
- (a) take all reasonable steps within available resources to designate at least one presiding officer for each equality court within his or her area of jurisdiction; and 10
  - (b) without delay, inform the Director-General of the Department of any judge, magistrate or additional magistrate who has completed a training course as contemplated in section 31(4) and (5) or who has been designated in terms of subsection (1). 15
- (4) The Director-General of the Department must compile and keep a list of every judge, magistrate and additional magistrate who has—
- (a) completed a training course as contemplated in section 31(4) and (5); or
  - (b) been designated as a presiding officer of an equality court in terms of subsection (1). 20
- (5) A presiding officer must perform the functions and duties and exercise the powers assigned to or conferred on him or her under this Act or any other law.”.

#### Amendment of section 17 of Act 4 of 2000

2. Section 17 of the principal Act is hereby amended by the— 25
- (a) substitution for paragraphs (a) and (b) of subsection (1) of the following paragraphs, respectively:
    - “(a) Subject to subsection (2) and the laws governing the public service, the Director-General of the Department may, for every equality court, appoint or designate one or more officers in the Department, or may appoint one or more persons in the prescribed manner and on the prescribed conditions, as clerks of the equality court, who must generally assist the court to which they are attached in performing its functions and who must perform the functions as may be prescribed. 30
    - (b) If a clerk of an equality court is for any reason unable to act as such or if no clerk has been appointed or designated for any equality court under paragraph (a), the presiding officer concerned may, despite subsection (2), designate any competent officer in the Department to act as clerk for as long as the said clerk is unable to act or until a clerk is appointed or designated under paragraph (a), as the case may be.”; and 35
  - (b) addition of the following subsections: 40
    - “(2) Only an officer or person contemplated in subsection (1)(a) who has completed a training course as clerk of an equality court—
      - (a) before the date of commencement of section 31; or
      - (b) as contemplated in section 31(6),
 and whose name has been included on the list contemplated in subsection (3), may be appointed or designated as such under subsection (1)(a). 45
    - (3) The Director-General of the Department must compile and keep a list of every officer or person who has—
      - (a) completed a training course as contemplated in section 31(6); or
      - (b) been designated or appointed as a clerk of an equality court in terms of subsection (1)(a).” 50

#### Amendment of section 31 of Act 4 of 2000

3. The following section is hereby substituted for section 31 of the principal Act:

### “Implementation of Act

**31.** (1) Despite section 16(1) no proceedings may be instituted in any court unless a presiding officer and one or more clerks are available.

(2) For purposes of giving full effect to this Act and making the Act as accessible as possible—

(a) and in giving effect to subsection (1), judges, magistrates or additional magistrates, as the case may be, and clerks referred to in subsection (1) may be—

(i) designated as presiding officers; and

(ii) appointed or designated as clerks,

respectively, for one or more equality courts;

(b) the Minister must make the Act available in all official languages in the prescribed manner within a period of two years after the commencement of this Act.

(3) The Director-General of the Department must take all reasonable steps within the available resources of the Department to ensure that a clerk is available for each court in the Republic.

(4) The Chief Justice must, in consultation with the Judicial Service Commission and the Magistrates Commission, develop the content of training courses with a view to building a dedicated and experienced pool of trained and specialised presiding officers, for purposes of presiding in court proceedings as contemplated in this Act, by providing—

(a) social context training for presiding officers; and

(b) uniform norms, standards and procedures to be observed by presiding officers in the performance of their functions and duties and in the exercise of their powers.

(5) The Chief Justice must, in consultation with the Judicial Service Commission, the Magistrates Commission and the Minister, implement the training courses contemplated in subsection (4).

(6) The Director-General of the Department must develop and implement a training course for clerks of equality courts with the view to building a dedicated and experienced pool of trained and specialised clerks, for purposes of performing their functions and duties as contemplated in this Act, by providing—

(a) social context training for clerks; and

(b) uniform norms, standards and procedures to be observed by clerks in the performance of their functions and duties.

(7) The Minister must table a report in Parliament, as prescribed, relating to the content and implementation of the training courses referred to in subsections (4) and (5).”

### Short title

4. This Act is called the Promotion of Equality and Prevention of Unfair Discrimination Amendment Act, 2002.

## **MEMORANDUM ON THE OBJECTS OF THE PROMOTION OF EQUALITY AND PREVENTION OF UNFAIR DISCRIMINATION AMENDMENT BILL, 2002**

### **1. PURPOSE OF BILL**

The purpose of the Bill is to further regulate the training and designation of presiding officers of equality courts established in terms of Chapter 4 of the Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 (Act No. 4 of 2000) ("the Act"), and to provide for the incremental implementation of equality courts at magistrate's court level.

### **2. OBJECTS OF BILL**

2.1 Since its enactment the objection has been raised that the provisions of sections 16 and 31 of the Act infringe on the independence of the judiciary and the principle of the separation of powers. Clause 1 of the Bill aims to substitute section 16 of the Act. Firstly it provides that every High Court is an equality court for the area of its jurisdiction (proposed new section 16(1)(a)). This is the current situation. The proposed new section 16(1)(b) provides that only a judge who has completed a training course contemplated in the new subsection (2) may be designated by the Judge President concerned as a presiding officer of the equality court. This is in contrast to the existing provision (section 31(1)(a)) which provides that presiding officers are designated by reason of their training, experience, expertise and suitability in the field of equality and human rights. It has been pointed out that the provision may lead to a situation where the designation of a presiding officer can be challenged by unhappy litigants on the grounds of non-suitability, for instance.

2.2 The proposed new section 16(1)(c) provides that the Minister must, after consultation with the head of an administrative region defined in section 1 of the Magistrates' Courts Act, 1944, designate one or more magistrate's courts as equality courts for the administrative region concerned. The Minister is further empowered to define the area of jurisdiction of each equality court for the holding of equality court sittings. The relevant amendment aims to facilitate the incremental implementation of equality courts at magistrate's court level. This is contrast to the existing position which provides that every magistrate's court is an equality court for the area of its jurisdiction. The departure from this approach is necessitated by resource problems which not only apply in respect of trained presiding officers and clerks but also in respect of finances for equipment and furniture. This is aggravated by the fact in many magistrate's courts there is a shortage of suitable court rooms.

2.3 The designation of magistrates and additional magistrates will in terms of the proposed new section 16(1)(d) be left to the head of every administrative region concerned. The designations, as is the case with judges, may only take place from the group of magistrates and additional magistrates who have completed the relevant training course contemplated in the proposed new subsection (2).

2.4 The proposed new subsection (4) places an obligation on the Director-General to compile and keep a list of the names of judges, magistrates, and additional magistrates who have completed training courses, and of those judges, magistrates and additional magistrates who have been designated as presiding officers of the equality courts. This is in the interests of transparency and openness. Subsection (5) makes it clear that a presiding officer of an equality court may also perform his or her duties as a magistrate in the normal course of events.

2.5 Clause 2 of the Bill aims to amend section 17 of the Act so as to provide that only an officer in the Department of Justice and Constitutional Development or another person who has completed a training course as clerk of the equality court may be appointed or designated as such. The Director-General must also compile and keep a list which is similar to the list required in terms of the proposed new section 16(4) of the Act, in respect of clerks.

2.6 Clause 3 of the Bill aims to effect certain consequential amendments to section 31 in view of the proposed substitution of section 16 of the Act. The most notable amendment to section 31 is the proposed amendment of subsection (4) which presently provides that the Minister must, after consultation with the Magistrates Commission and the Judicial Service Commission, issue policy directives and develop training courses for presiding officers and clerks. The proposed new subsection (4) places the obligation

to develop the content of the training courses on the Chief Justice who must do so in consultation with the Judicial Service Commission and the Magistrates Commission. This amendment aims to enhance the independence of the judiciary. The proposed new subsection (5) provides that the Chief Justice must, in consultation with the Judicial Service Commission, Magistrates Commission and the Minister, implement the relevant courses.

### **3. DEPARTMENTS/BODIES/PERSONS CONSULTED**

The Judges President of the High Courts, Chief Magistrates, Regional Court Presidents and Heads of Administrative Regions were consulted.

### **4. IMPLICATIONS FOR PROVINCES**

None.

### **5. FINANCIAL IMPLICATIONS FOR STATE**

The proposed amendments will contribute towards a more efficient management of the resources available to the Department to implement the provisions of Chapter 4 of the Promotion of Equality and Prevention of Unfair Discrimination Act, 2000.

### **6. PARLIAMENTARY PROCEDURE**

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.