

REPUBLIC OF SOUTH AFRICA

**PROMOTION OF
ADMINISTRATIVE JUSTICE
AMENDMENT BILL**

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

(MINISTER FOR JUSTICE AND CONSTITUTIONAL DEVELOPMENT)

[B 46B—2002]

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

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

To amend the Promotion of Administrative Justice Act, 2000, so as to amend a definition and to provide for the training of presiding officers in the magistrates' courts for purposes of the Act; and to provide for matters connected therewith.

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

1. Section 1 of the Promotion of Administrative Justice Act, 2000, is hereby amended by the substitution for the definition of “court” of the following definition: 5
“ ‘court’ means—

- (a) the Constitutional Court acting in terms of section 167(6)(a) of the Constitution; or
- (b) (i) a High Court or another court of similar status; or
- (ii) a Magistrate's Court, either generally or in respect of a specified class of administrative actions, designated by the Minister by notice in the *Gazette* and presided over by a magistrate or an additional magistrate designated in [writing by the Minister, after consultation with the Magistrates Commission] terms of section 9A,
- within whose area of jurisdiction the administrative action occurred or the administrator has his or her or its principal place of administration or the party whose rights have been affected is domiciled or ordinarily resident or the adverse effect of the administrative action was, is or will be experienced;”.

2. The following section is hereby inserted after section 9 of the Promotion of Administrative Justice Act, 2000:

9A. (1) (a) The head of an administrative region defined in section 1 of the Magistrates' Courts Act, 1944 (Act No. 32 of 1944), must, subject to subsection (2), designate in writing any magistrate or additional magistrate as a presiding officer of the Magistrate's Court designated by the Minister in terms of section 1 of this Act.

(b) 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.

(2) Only a magistrate or additional magistrate who has completed a training course—

(a) before the date of commencement of this section; or

(b) as contemplated in subsection (5),

and whose name has been included on the list contemplated in subsection (4)(a), may be designated in terms of subsection (1).

(3) The heads of administrative regions must—

(a) take all reasonable steps within available resources to designate at least one presiding officer for each magistrate's court within his or her area of jurisdiction which has been designated by the Minister in terms of section 1; and

(b) without delay, inform the Director-General: Justice and Constitutional Development of any magistrate or additional magistrate who has completed a training course as contemplated in subsections (5) and (6) or who has been designated in terms of subsection (1).

(4) The Director-General: Justice and Constitutional Development must compile and keep a list of every magistrate or additional magistrate who has—

(a) completed a training course as contemplated in subsections (5) and (6); or

(b) been designated as a presiding officer of a magistrate's court contemplated in subsection (1).

(5) The Chief Justice must, in consultation with the Judicial Service Commission and the Magistrates Commission, develop the content of training courses with the 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.

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

(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 (5) and (6)."

Short title

3. This Act is called the Promotion of Administrative Justice Amendment Act, 2002.

MEMORANDUM ON THE OBJECTS OF THE PROMOTION OF ADMINISTRATIVE JUSTICE AMENDMENT BILL, 2002

1. PURPOSE OF BILL

The purpose of the Bill is to further regulate the designation of magistrates or additional magistrates for purposes of presiding in court proceedings as contemplated in the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000) ("the Act"), and to provide for the training of such magistrates.

2. OBJECTS OF BILL

2.1 The term "court" is, for purposes of the Act, among others, defined as a Magistrate's Court, either generally or in respect of a specified class of administrative actions, designated by the Minister by notice in the *Gazette* and presided over by a magistrate designated in writing by the Minister after consultation with the Magistrates Commission. The objection has been raised against the provisions of the definition which deal with the designation of magistrates, to the effect that they infringe on the independence of the judiciary and principle of separation of powers. Clause 1 of the Bill, which must be read with clause 2, aims to amend the definition of "court" contained in section 1 of the Act so as to address this objection.

2.2 Clause 2 gives the head of an administrative region as defined in section 1 of the Magistrates' Courts Act, 1944 (Act No. 32 of 1944), the power to designate a magistrate or an additional magistrate for purposes of presiding in court proceedings as contemplated in the Act in that administrative region. Only magistrates or additional magistrates who have received training, the content of which is developed by the judiciary, may be so designated.

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 training of magistrates will be undertaken within the available resources of the Department of Justice and Constitutional Development.

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.