

REPUBLIC OF SOUTH AFRICA

**CONSTITUTION OF THE
REPUBLIC OF SOUTH AFRICA
AMENDMENT BILL**

(As amended by the Portfolio Committee on Constitutional Affairs (National Assembly))

(MINISTER FOR PROVINCIAL AFFAIRS AND CONSTITUTIONAL DEVELOPMENT)

[B 49B—97]

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GENERAL EXPLANATORY NOTE:

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

BILL

To amend the Constitution of the Republic of South Africa, 1996, so as to make further provision in relation to the oath sworn or affirmation made by an Acting President; to extend the cut-off date in respect of the granting of amnesty; and to provide for matters connected therewith.

BE IT ENACTED BY the Parliament of the Republic of South Africa. as follows:—

Amendment of section 90 of Act 108 of 1996

1. Section 90 of the Constitution of the Republic of South Africa, 1996 (hereinafter referred to as the principal Act), is hereby amended by the addition of the following subsection:

“(4) A person who as Acting President has sworn or affirmed faithfulness to the Republic need not repeat the swearing or affirming procedure for any subsequent term as Acting President during the period ending when the person next elected President assumes office.” 10

Amendment of Schedule 2 to Act 108 of 1996

2. Schedule 2 to the principal Act is hereby amended by the substitution in item 1, for the introductory words preceding the oath or solemn affirmation, of the following words:

“The President or Acting President, before the President of the Constitutional Court, or another judge designated by the President of the Constitutional Court, 15
must swear/affirm as follows:”.

Amendment of Schedule 6 to Act 108 of 1996

3. Schedule 6 to the principal Act is hereby amended by the addition to item 22 of the following subitem, the existing item becoming subitem (1):

“(2) For the purposes of subitem (1), the date ‘6 December 1993’, where it 20
appears in the provisions of the previous Constitution under the heading ‘National Unity and Reconciliation’, must be read as ‘11 May 1994’ .“.

Short title and commencement

4. This Act is called the Constitution of the Republic of South Africa Amendment Act, 1997, and must be regarded as having taken effect on 4 February 1997.

**MEMORANDUM ON THE OBJECTS OF THE CONSTITUTION OF
THE REPUBLIC OF SOUTH AFRICA AMENDMENT BILL**

On 13 December 1996, the President announced that the cut-off date for amnesty is to be extended to 10 May 1994, and that he will approach Parliament to effect the necessary legislative amendments. The Bill seeks to provide for the extension of the cut-off date in respect of amnesty.

Section 90(3) of the Constitution, read with item 1 of Schedule 2 thereto, requires the President of the Constitutional Court to administer the oath or solemn affirmation of an Acting President to any person designated as an Acting President each and every time such person is so designated. The Chief State Law Adviser and the President of the Constitutional Court hold the view that because of these provisions—

- (a) the President of the Constitutional Court cannot designate another judicial officer to administer the oath or solemn affirmation;
- (b) the Acting President must appear personally before, or be in the presence of, the President of the Constitutional Court when the oath or solemn affirmation is administered; and
- (c) an oath or solemn affirmation previously taken or made by an Acting President is not valid for a subsequent designation.

The practical difficulties in the implementation of these provisions are substantial, and in some cases insurmountable. In the case where the President of the Constitutional Court leaves the country and the President is required to attend urgently to matters outside the country, it is not possible to appoint an Acting President unless the President of the Constitutional Court returns to South Africa simply to administer the oath or solemn affirmation. Such a case has recently arisen. In addition, where it is frequently necessary to appoint an Acting President because of the President's international schedule, it is required that the President of the Constitutional Court personally attend to the administration of the oath *or* solemn affirmation at the place where the person designated as Acting President is—very often at short notice. These problems are compounded when the Deputy President is also obliged to pursue a busy international schedule.

Unless an appropriate amendment is made there is a risk that it might be impossible to swear the Acting President in. This might affect the validity of the exercise of formal powers by the Acting President during the absence, however temporary, of the President.

Clause 1 of the Bill seeks to provide for the continued validity of an oath sworn *or* affirmation made by an Acting President during subsequent terms as such.

Clause 2 of the Bill seeks to make it possible for the President of the Constitutional Court to designate the Deputy President of that Court, or a Judge President of the High Court, to administer the oath or solemn affirmation if the President of the Constitutional Court is unable to do so.

Clause 3 of the Bill seeks to extend the cut-off date for amnesty to a date before 11 May 1994 in order to accommodate the extension of the date to 10 May 1994.

The amendments to the Constitution effecting an extension of the cut-off date for amnesty and making further provision in relation to the oath sworn *or* affirmation made by an Acting President, do not relate to a matter that affects the National Council of Provinces, alters provincial boundaries, powers, functions or institutions; nor do they amend a provision that deals specifically with a provincial matter. Consequently, the Department of Constitutional Development and the State Law Advisers hold the view that the legislative procedure established by section 74(3)(a) of the Constitution has to be followed, and that the Bill is only to be passed by the National Assembly.