

REPUBLIC OF SOUTH AFRICA

PUBLIC PROTECTOR AMENDMENT BILL

(As introduced in the National Assembly as a section 75 Bill; explanatory summary of Bill published in Government Gazette No 23966 of 21 October 2002) (The English text is the official text of the Bill)

(MINISTER FOR JUSTICE AND CONSTITUTIONAL DEVELOPMENT)

[B 6—2003]

REPUBLIEK VAN SUID-AFRIKA

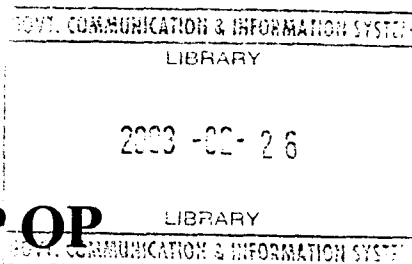
WYSIGINGSWETSONTWERP OP DIE OPENBARE BESKERMER

*(Soos ingedien by die Nasionale Vergadering as 'n artikel 75-wetsontwerp; verduidelikende opsomming van Wetsontwerp in Staatskoerant No 23966 van 21 Oktober 2002 gepubliseer)
(Die Afrikaanse teks is die amptelike vertaling van die Wetsontwerp)*

(MINISTER VIR JUSTISIE EN STAATKUNDIGE ONTWIKKELING)

[W 6—2003]

ISBN 0 621 33749 8



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.

BILL

To amend the Public Protector Act, 1994, so as to update certain obsolete provisions; to further regulate the appointment of Deputy Public Protectors; and to provide for matters connected therewith.

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

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

1. Section 1 of the Public Protector Act, 1994 (hereinafter referred to as the principal Act), is hereby amended— 5

(a) by the substitution for the definition of “Deputy Public Protector” of the following definition:

“ ‘Deputy Public Protector’ means any person appointed as such in terms of section [3(2)] 2A(1);” and 10

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

“ ‘Minister’ means the [Minister of Justice] Cabinet member responsible for the administration of justice;”.

Insertion of section 2A in Act 23 of 1994

2. The following section is hereby inserted in the principal Act after section 2: 15

“Appointment, remuneration and other terms and conditions of employment, vacancies in office and removal from office of Deputy Public Protector

2A. (1) The President may appoint one or more persons as Deputy Public Protectors for such periods as he or she may determine. 20

(2) A Deputy Public Protector shall be a South African citizen who is a fit and proper person to hold such office, and who—

(a) is qualified to be admitted as an advocate or an attorney and has, for a cumulative period of at least 10 years after having so qualified— 25

(i) practised as an advocate or an attorney; or

(ii) lectured in law at a university; or

(b) has specialised knowledge of or experience, for a period of at least 10 years, in the administration of justice, public administration or public finance.

(3) The remuneration and other terms and conditions of employment of a Deputy Public Protector shall from time to time be determined by the National Assembly upon the advice of the committee: 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.

(4) The President may allow a Deputy Public Protector to vacate his or her office—

(a) on account of continued ill-health; or

(b) at his or her request: Provided that such request shall be addressed to the President at least three calendar months prior to the date on which he or she wishes to vacate such office, unless the President allows a shorter period in a specific case.

(5) The President may suspend a Deputy Public Protector from his or her office, pending such enquiry into his or her fitness to hold such office as the President deems fit and may thereupon remove him or her from office on the ground of misconduct, incapacity or incompetence.

(6) If a vacancy occurs in the office of a Deputy Public Protector the President may, subject to this section, appoint another person to that office.”.

Amendment of section 3 of Act 23 of 1994, as amended by section 35 of Act 47 of 1997 and section 6 of Act 113 of 1998

3. Section 3 of the principal Act is hereby amended—

(a) by the substitution for the heading of the following heading:

“**[Deputy Public Protector and staff] Staff of Public Protector**”;

(b) by the deletion of subsections (2), (5) and (8); and

(c) by the substitution in subsection (11) for paragraph (a) of the following paragraph:

“(a) A document setting out the remuneration, allowances and other conditions of employment determined by **[the Minister or]** the Public Protector~~], as the case may be,~~ in terms of this section, shall be tabled in the National Assembly within 14 days after such determination.”.

Amendment of section 4 of Act 23 of 1994

4. Section 4 of the principal Act is hereby amended by the substitution in subsection

(1)(a) for the words preceding subparagraph (i) of the following words:

“shall, subject to the **[Exchequer Act, 1975 (Act No. 66 of 1975)] Public Finance Management Act, 1999 (Act No. 1 of 1999)**—”.

Amendment of section 6 of Act 23 of 1994, as amended by section 8 of Act 113 of 1998 and section 91 of Act 2 of 2000

5. Section 6 of the principal Act is hereby amended by the substitution in subsection (5) for paragraph (a) of the following paragraph:

“(a) maladministration in connection with the affairs of any institution in which the State is the majority or controlling shareholder or of any public entity as defined in section 1 of the **[Reporting by Public Entities Act, 1992 (Act No. 93 of 1992)] Public Finance Management Act, 1999 (Act No. 1 of 1999)**”.

Amendment of section 7 of Act 23 of 1994, as amended by section 9 of Act 113 of 1998

6. Section 7 of the principal Act is hereby amended by the substitution in subsection

(3)(b) for subparagraph (ii) of the following subparagraph:

“(ii) The provisions of section 9 and of the regulations and instructions issued by the Treasury under section [39 of the Exchequer Act, 1975 (Act No. 66 of 1975)] 76 of the Public Finance Management Act, 1999 (Act No. 1 of 1999), in respect of Commissions of Inquiry, shall apply with the necessary changes in respect of that person.”.

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Short title

7. This Act is called the Public Protector Amendment Act, 2003.

MEMORANDUM ON THE OBJECTS OF THE PUBLIC PROTECTOR AMENDMENT BILL, 2003

1. PURPOSE OF BILL

The main purpose of the Bill is to further regulate the appointment of Deputy Public Protectors.

2. OBJECTS OF BILL

2.1 The Public Protector is an institution incorporated in Chapter 9 of the Constitution, dealing with State Institutions supporting constitutional democracy. As such the Public Protector is independent and accountable to Parliament. The Public Protector Act, 1994, currently provides for the appointment of Deputy Public Protectors by the Cabinet member responsible for the administration of justice. There have been arguments that this erodes the independence of that Office as such a person may eventually assume the duties of the Public Protector. The amendments in the Bill propose that Deputy Public Protectors, as is the case with the Public Protector, be appointed by the President, but without the involvement of Parliament.

2.2 The Bill also contains a few minor technical amendments, bringing the terminology in the principal Act in line with latest developments.

3. DEPARTMENTS/BODIES/PERSONS CONSULTED

The Office of the Public Protector.

4. IMPLICATIONS FOR PROVINCES

None.

5. FINANCIAL IMPLICATIONS FOR STATE

None.

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.