

REPUBLIC OF SOUTH AFRICA

CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA AMENDMENT BILL

*(As introduced in the National Assembly as a section 74 Bill; explanatory summary of Bill
published in Government Gazette No. 25302 of 4 August 2003)
(The English text is the official text of the Bill)*

(MINISTER FOR JUSTICE AND CONSTITUTIONAL DEVELOPMENT)

[B 60—2003]

ISBN 0 621 33934 2

No. of copies printed 1 800

[] 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 Constitution of the Republic of South Africa, 1996, so as to make provision for the appointment of two Deputy Presidents to the Supreme Court of Appeal; to make provision for the conversion of the various High Courts into a single High Court of South Africa; and to provide for matters connected therewith.

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

1. Section 166 of the Constitution of the Republic of South Africa, 1996 (hereinafter referred to as the Constitution), is amended—

- (a) by the substitution for paragraph (c) of the following paragraph:
- “(c) the **[High Courts, including any high court of appeal that may be established by an Act of Parliament to hear appeals from High Courts]** High Court of South Africa;” and
- (b) by the substitution for paragraph (e) of the following paragraph:
- “(e) any other court established or recognised in terms of an Act of Parliament, including any court of a status similar to either the **[High Courts]** High Court of South Africa or the Magistrates’ Courts.”.

Amendment of section 167 of Act 108 of 1996, as amended by section 11 of Act 34 of 2001

2. Section 167 of the Constitution is amended by the substitution for subsection (5) of the following subsection:
- “(5) The Constitutional Court makes the final decision whether an Act of Parliament, a provincial Act or conduct of the President is constitutional, and must confirm any order of invalidity made by the Supreme Court of Appeal, [a] the High Court of South Africa, or a court of similar status, before that order has any force.”.

Amendment of section 168 of Act 108 of 1996, as amended by section 12 of Act 34 of 2001

- 3.** Section 168 of the Constitution is amended by the substitution for subsection (1) of the following subsection:

“(1) The Supreme Court of Appeal consists of a President, **[a Deputy President]** two Deputy Presidents and the number of judges of appeal determined in terms of an Act of Parliament.”.

Substitution of section 169 of Act 108 of 1996

4. The following section is substituted for section 169 of the Constitution: 5

“High Court of South Africa

169. (1) **[A]** The High Court of South Africa may decide—

- (a) any constitutional matter except a matter that—
 - (i) only the Constitutional Court may decide; or
 - (ii) is assigned by an Act of Parliament to another court of a status similar to **[a]** the High Court of South Africa; and
- (b) any other matter not assigned to another court by an Act of Parliament.

(2) The High Court of South Africa consists of the Divisions, with the areas of jurisdiction, as determined in terms of an Act of Parliament.”.

Amendment of section 172 of Act 108 of 1996 15

5. Section 172 of the Constitution is amended by the substitution for paragraph (a) of subsection (2) of the following paragraph:

“(a) The Supreme Court of Appeal, **[a]** the High Court of South Africa or a court of similar status may make an order concerning the constitutional validity of an Act of Parliament, a provincial Act or any conduct of the President, but an order of constitutional invalidity has no force unless it is confirmed by the Constitutional Court.”.

Substitution of section 173 of Act 108 of 1996

6. The following section is substituted for section 173 of the Constitution:

“Inherent power 25

173. The Constitutional Court, Supreme Court of Appeal and High **[Courts]** Court of South Africa have the inherent power to protect and regulate their own process, and to develop the common law, taking into account the interests of justice.”.

Amendment of section 174 of Act 108 of 1996, as amended by section 13 of Act 34 of 2001 30

7. Section 174 of the Constitution is amended by the substitution for subsection (3) of the following subsection:

“(3) The President as head of the national executive, after consulting the Judicial Service Commission and the leaders of parties represented in the National Assembly, appoints the Chief Justice and the Deputy Chief Justice and, after consulting the Judicial Service Commission, appoints the President and Deputy **[President]** Presidents of the Supreme Court of Appeal.”.

Amendment of section 178 of Act 108 of 1996, as amended by section 2 of Act 65 of 1998 and section 16 of Act 34 of 2001 40

8. Section 178 of the Constitution is amended—

- (a) by the substitution for paragraph (k) of subsection (1) of the following paragraph:

“(k) when considering matters relating to a specific Division of the High Court of South Africa, the Judge President of that **[Court]** Division and the Premier of the province concerned, or an alternate designated by each of them.”; and

(b) by the substitution for subsection (7) of the following subsection:

“(7) If the Chief Justice or the President of the Supreme Court of Appeal is temporarily unable to serve on the Commission, the Deputy Chief Justice or [the] a Deputy President of the Supreme Court of Appeal, as the case may be, acts as his or her alternate on the Commission.”. 5

Amendment of Schedule 6 to Act 108 of 1996, as amended by section 3 of Act 35 of 1997, section 5 of Act 65 of 1998 and section 20 of Act 34 of 2001

9. Schedule 6 to the Constitution is amended by the addition to item 16 of the following subitem: 10

“(8) Anyone holding office, when the Act of Parliament referred to in section 169(2) of the new Constitution takes effect, as a Judge President, Deputy Judge President or a judge of a High Court, becomes a Judge President, a Deputy Judge President or judge of the relevant Division of the High Court of South Africa in accordance with the provisions of that Act.”. 15

Short title and commencement

10. This Act is called the Constitution of the Republic of South Africa Third Amendment Act, 2003, and comes into effect on a date set by the President by proclamation in the *Gazette*.

MEMORANDUM ON THE OBJECTS OF THE CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA AMENDMENT BILL, 2003

1. OBJECTS OF BILL

1.1 The Bill amends the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996), in two respects:

- (a) Firstly, provision is made for a single “High Court of South Africa”, consisting of the Divisions, with the areas of jurisdiction, as determined in terms of an Act of Parliament.
- (b) Secondly, provision is made for the appointment of a second Deputy President of the Supreme Court of Appeal.

1.2 The amendments contained in the Bill are required in order to constitutionally sanction certain corresponding provisions of the Superior Courts Bill, 2003. The Superior Courts Bill will largely be giving effect to item 16(6) of Schedule 6 to the Constitution, in terms of which all courts must be rationalised with the view to establishing a judicial system suited to the requirements of the Constitution. This Bill aims to rationalise and to consolidate the laws pertaining to the Constitutional Court, the Supreme Court of Appeal and the High Courts, referred to collectively as the “Superior Courts”. It also merges the Labour Court and the Labour Appeal Court with the proposed High Court of South Africa and the Supreme Court of Appeal, respectively.

2. DEPARTMENTS/BODIES/PERSONS CONSULTED

The Bill was published for public comment in *Government Gazette* No. 25302 of 4 August 2003 in accordance with section 74(5)(a) of the Constitution.

3. IMPLICATIONS FOR PROVINCES

None.

4. FINANCIAL IMPLICATIONS FOR STATE

None.

5. 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 74(3)(a) of the Constitution since it contains no amendment which—

- (i) relates to a matter that affects the National Council of Provinces;
- (ii) alters provincial boundaries, functions or institutions; or
- (iii) amends a provision that deals specifically with a provincial matter.