

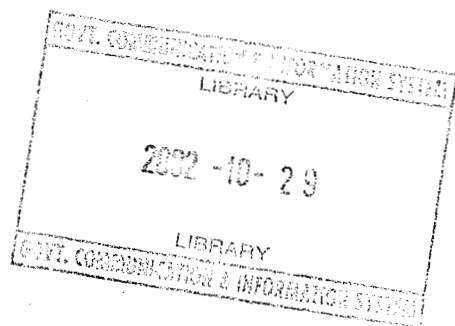
REPUBLIC OF SOUTH AFRICA

**PORTFOLIO COMMITTEE AMENDMENTS
TO**

**INSTITUTION OF LEGAL
PROCEEDINGS AGAINST
ORGANS OF STATE BILL**

[B 65B—99]

*(As agreed to by the Portfolio Committee on Justice and Constitutional Development
(National Assembly))*



[B 65C—99]

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AMENDMENTS AGREED TO

INSTITUTION OF LEGAL PROCEEDINGS AGAINST ORGANS OF STATE BILL [B 65B—99]

NEW PREAMBLE

1. On page 2, after the Long Title, to insert:

PREAMBLE

RECOGNISING THAT certain provisions of existing laws provide for—

- * different notice periods for the institution of legal proceedings against certain organs of state in respect of the recovery of debts;
- * different periods of prescription in respect of such debts;

AND RECOGNISING THAT—

- * the Prescription Act, 1969 (Act No. 68 of 1969), being the cornerstone of the laws regulating the extinction of debts by prescription, consolidated and amended the laws relating to prescription;
- * some of the provisions of existing laws which provide for different periods of prescription in respect of certain debts are inconsistent with the periods of prescription prescribed by the Prescription Act, 1969;

AND BEARING IN MIND THAT—

- * South Africa has moved from a parliamentary sovereign state to a democratic constitutional sovereign state;
- * the Bill of Rights is the cornerstone of democracy in South Africa and that the State must respect, protect, promote and fulfil the rights in the Bill of Rights;
- * section 34 of the Constitution provides that everyone has the right to have any dispute that can be resolved by the application of law decided in a fair public hearing before a court or, where appropriate, another independent and impartial tribunal or forum;
- * the right of access to courts may be limited to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom as contemplated in section 36 of the Constitution;

AND RECOGNISING the need to harmonise and create uniformity in respect of the provisions of existing laws which provide for—

- * different notice periods for the institution of legal proceedings against certain organs of state for the recovery of a debt, by substituting those notice periods with a uniform notice period which will apply in respect of the institution of legal proceedings against certain organs of state for the recovery of a debt;
- * different periods of prescription, by making the provisions of Chapter III of the Prescription Act, 1969, applicable to all debts;

AND RECOGNISING the need to provide for transitional arrangements to ensure a smooth transition between the various existing statutory provisions regulating notice periods for the institution of legal proceedings against certain organs of state in respect of the recovery of debts and the periods of prescription of such debts, and the provisions of this Act;

AND BEARING IN MIND the limited need, for legal or practical purposes, to retain certain provisions of existing laws which provide for—

- * notice periods that differ from the envisaged uniform notice period;
- * periods of prescription that differ from the periods of prescription prescribed by Chapter III of the Prescription Act, 1969,

ENACTING CLAUSE

1. On page 2, in line 1, after “IT” to insert “THEREFORE”.

CLAUSE 1

1. On page 2, from line 11, to omit paragraph (iii) and to substitute:
 - (iii) “debt” means any debt arising from any cause of action—
 - (a) which arises from delictual, contractual or any other liability, including a cause of action which relates to or arises from any—
 - (i) act performed under or in terms of any law; or
 - (ii) omission to do anything which should have been done under or in terms of any law; and
 - (b) for which an organ of state is liable for payment of damages,
 whether such debt became due before or after the fixed date;
2. On page 2, from line 29, to omit paragraph (d).
3. On page 3, after line 15, to insert:
 - (2) This Act does not apply to any debt—
 - (a) which has been extinguished by prescription before the fixed date; or
 - (b) which has not been extinguished by prescription before the fixed date and in respect of which any legal proceedings were instituted before the fixed date.
 - (3) Any legal proceedings referred to in subsection (2)(b) must be continued and concluded as if this Act had not been passed.

NEW HEADING

1. On page 3, after line 17, to insert “**Part 1**”.

CLAUSE 2

Clause rejected.

NEW CLAUSE

1. That the following be a new Clause:

Prescription of debts, and amendment or repeal of laws and transitional arrangements relating to prescription of debts

2. (1) The laws referred to in the Schedule are, as from the fixed date, amended or repealed to the extent set out in the third column of the Schedule.

(2) Subject to section 3 and subsections (3) and (4), a debt which became due—

(a) before the fixed date, which has not been extinguished by prescription and in respect of which legal proceedings were not instituted before that date; or

(b) after the fixed date,
will be extinguished by prescription as contemplated in Chapter III of the Prescription Act, 1969 (Act No. 68 of 1969), read with the provisions of that Act relating thereto.

(3) Subject to subsection (4), any period of prescription which was applicable to any debt referred to in subsection (2)(a), before the fixed date, will no longer be applicable to such debt after the fixed date.

(4) (a) The expired portion of any period of prescription applicable to a debt referred to in subsection (2)(a), must be deducted from the said period of prescription contemplated in Chapter III of the Prescription Act, 1969, read with the provisions of that Act relating thereto, and the balance of the period of prescription so arrived at will constitute the new unexpired portion of prescription for such debt, applicable as from the fixed date.

(b) If the unexpired portion of the period of prescription of a debt referred to in paragraph (a) will be completed within 12 months after the fixed date, that period of prescription must only be regarded as having been completed 12 months after the fixed date.

NEW HEADING

1. On page 3, after line 38, to insert "**Part 2**".

CLAUSE 3

1. On page 3, from line 44, to omit paragraph (b) and to substitute:

(b) the organ of state in question has consented in writing to the institution of that legal proceedings—

(i) without such notice; or

(ii) upon receipt of a notice which does not comply with all the requirements set out in subsection (2).

2. On page 3, from line 59, to omit paragraph (b) and to substitute:

(b) a debt referred to in section 2(2)(a), must be regarded as having become due on the fixed date.

CLAUSE 4

1. On page 4, from line 31, to omit paragraph (d).
2. On page 4, in line 41, to omit the second "(g)" and to substitute "(f)".

CLAUSE 5

1. On page 5, in line 2, to omit “in terms of” and to substitute “by”.
2. On page 5, in line 4, to omit “in respect of” and to substitute “for”.
3. On page 5, in line 5, to omit “in terms of” and to substitute “by”.
4. On page 5, from line 7, to omit “Deputy President, in respect of anything done pursuant to the Intelligence Services Act, 1994 (Act No. 38 of 1994), or the”.
5. On page 5, in line 12, to omit “of” and to substitute “for”.
6. On page 5, in line 22, to omit “appointed under section 3(3)” and to substitute “as defined in section 1”.
7. On page 5, in line 24, after “Commissioner” to insert “of Correctional Services”.

CLAUSE 6

1. On page 5, in line 34, after “against” to insert “certain”.
2. On page 5, in line 34, to omit “2000” and to substitute “2002”.

SCHEDULE

1. On page 6, to omit the item relating to “Act No. 91 of 1964”.
2. On page 6, in the third column of the item relating to “Act No. 68 of 1995”, to omit “The repeal of section 57.” and to substitute:
 1. The repeal of section 57.
 2. The amendment of section 64I—
 - (a) by the substitution for subsection (1) of the following subsection:
 “(1) Any legal proceedings against a municipal police service or member of a municipal police service **[in respect of any alleged act performed under or in terms of this Act or any other law, or an alleged failure to do anything which should have been done in terms of this Act or any other law]** for the recovery of a debt as defined in the Institution of Legal Proceedings against certain Organs of State Act, 2002, shall be instituted against the municipal council in question.”; and
 - (b) by the deletion of subsection (2).
3. On page 7, after the item relating to “Act No. 111 of 1998”, to insert the following item:

Act No. 32 of 2000	Local Government: Municipal Systems Act, 2000	The amendment of section 109 by the deletion of sub- section (1).
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LONG TITLE

1. On page 2, in the first line, after “prescription” to insert:
and to harmonise the periods of prescription
2. On page 2, in the first line, to omit the first “certain”.
3. On page 2, in the third line, to omit “certain debts” and to substitute “the recovery of debt”.