

REPUBLIC OF SOUTH AFRICA

**PORTFOLIO COMMITTEE AMENDMENTS
TO
PUBLIC PROTECTOR
AMENDMENT BILL**

[B 6—2003]

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

[B 6A—2003]

REPUBLIEK VAN SUID-AFRIKA

**PORTEFEULJEKOMITEE-AMENDEMENTE
OP
WYSIGINGSWETSONTWERP
OP DIE OPENBARE
BESKERMER**

[W 6—2003]

*(Soos goedgekeur deur die Portefeuljekomitee oor Justisie en Staatkundige Ontwikkeling
* (Nasionale Vergadering))*

[W 6A—2003]

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AMENDMENTS AGREED TO
PUBLIC PROTECTOR AMENDMENT BILL
[B 6—2003]

CLAUSE 1

1. On page 2, after line 6, to insert:
 - (a) by the substitution for the definition of “committee” of the following definition:

“ ‘committee’ means a committee **[established under]** referred to in section 2(1);”;
2. On page 2, in line 10, to omit “and”.
3. On page 2, after line 10, to insert:
 - (c) by the substitution for the definition of “member of the office of the Public Protector” of the following definition:

“ ‘member of the office of the Public Protector’ includes the Public Protector, **[a]** the Deputy Public Protector, a member of the staff of the Public Protector and any person contemplated in sections 3(12) and 7(3)(b);”;

NEW CLAUSE

1. That the following be a new Clause:

Amendment of section 1A of Act 23 of 1994, as inserted by section 4 of Act 113 of 1998

2. Section 1A of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection:

“(3) The Public Protector shall be a South African citizen who is a fit and proper person to hold such office, and who—

- (a) is a Judge of a High Court; or
- (b) is **[qualified to be]** admitted as an advocate or an attorney and has, for a cumulative period of at least 10 years after having been so **[qualified—**
 - (i) admitted, practised as an advocate or an attorney; [or
 - (ii) **lectured in law at a university;]** or
- (c) 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, lectured in law at a university; or
- ~~[(c)]~~(d) has specialised knowledge of or experience, for a cumulative period of at least 10 years, in the administration of justice, public administration or public finance; or
- (e) has, for a cumulative period of at least 10 years, been a member of Parliament.”.

NEW CLAUSE

1. That the following be a new Clause:

Amendment of section 2 of Act 23 of 1994, as amended by section 5 of Act 113 of 1998

3. Section 2 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) The National Assembly shall[, **in accordance with the rules and orders of the National Assembly, appoint a committee for the purpose of**] refer to a committee of the National Assembly the—

- (a) nomination of a person in terms of section 193(5)(a) of the Constitution to be appointed as Public Protector;
- (b) nomination of a person in terms of section 2A(3)(a) to be appointed as Deputy Public Protector;
- (c) consideration in terms of section 194(1)(b) and (3)(a) of the Constitution of the removal from office of the Public Protector;
- (d) consideration in terms of section 2A(9)(b) and (11)(a)(ii) of the removal from office of the Deputy Public Protector; and
- (e) **[considering matters]** consideration of any other matter that can be referred to [it] such a committee in terms of the Constitution or this Act: **Provided that the composition of such committee shall be in accordance with the provisions of section 193(5)(a) of the Constitution].”**

CLAUSE 2

Clause rejected.

NEW CLAUSE

1. That the following be a new Clause:

Insertion of section 2A in Act 23 of 1994

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

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

2A. (1) The President, on the recommendation of the National Assembly, shall appoint a person as Deputy Public Protector for such period as the President may determine at the time of such appointment, but not exceeding seven years.

(2) The Deputy Public Protector may at the end of his or her term of office be reappointed in terms of subsection (1) for one additional term.

(3) The National Assembly shall recommend a person—

- (a) nominated by the committee; and
- (b) approved by the National Assembly by a resolution adopted with a supporting vote of a majority of the members of the National Assembly.

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

- (a) is admitted as an advocate or an attorney and has, for a cumulative period of at least 10 years after having been so admitted, practised as an advocate or an attorney; or
- (b) 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, lectured in law at a university; or
- (c) has specialised knowledge of or experience, for a cumulative period of at least 10 years, in the administration of justice, public administration or public finance; or
- (d) has, for a cumulative period of at least 10 years, been a member of Parliament.

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

(6) The Deputy Public Protector shall have such powers as the Public Protector may delegate to him or her.

(7) Whenever the Public Protector is, for any reason, unable to perform the functions of his or her office, or while the appointment of a person to the office of Public Protector is pending, the Deputy Public Protector shall perform such functions.

(8) The provisions of section 2(3) and (4) shall apply with the necessary changes in respect of the vacation of office of the Deputy Public Protector.

(9) The Deputy Public Protector may be removed from office only on—

- (a) the ground of misconduct, incapacity or incompetence;
- (b) a finding to that effect by the committee; and
- (c) the adoption by the National Assembly of a resolution calling for his or her removal from office.

(10) A resolution of the National Assembly concerning the removal from office of the Deputy Public Protector must be adopted with a supporting vote of a majority of the members of the National Assembly.

(11) (a) The President may suspend the Deputy Public Protector from office at any time after any complaint relating to the grounds referred to in subsection (9) against him or her has been received by the National Assembly, if the President deems the complaint against the Deputy Public Protector to be of such a serious nature as to make it inappropriate for him or her to perform his or her functions while the complaint is being investigated.

(b) The President may suspend the Deputy Public Protector in terms of paragraph (a) on such terms and conditions as the President may determine, including the suspension of the payment of his or her remuneration or the suspension of any other term or condition of his or her employment.

(12) The President shall remove the Deputy Public Protector from office upon adoption by the National Assembly of the resolution calling for his or her removal.

(13) If a vacancy occurs in the office of the Deputy Public Protector the President shall, subject to this section, as soon as possible, appoint another person to that office.

CLAUSE 3

Clause rejected.

NEW CLAUSE

1. That the following be a new Clause:

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

5. 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 substitution in subsection (1) for paragraph (a) of the following paragraph:
“(a) [one or more] the Deputy Public [Protectors] Protec-tor.”;
 - (c) by the deletion of subsection (2);
 - (d) by the substitution for subsection (3) of the following subsection:
“(3) A [Deputy Public Protector and a] person referred to in subsection (1)(c) shall have such powers as the Public Protector may delegate to him or her.”;
 - (e) by the deletion of subsections (4), (5) and (8);
 - (f) 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.”; and
 - (g) by the substitution in subsection (13) for paragraph (b) of the following paragraph:
“(b) serve in a full-time capacity to the exclusion of any other duty or obligation arising out of any other employment or occupation or the holding of any other office: Provided that the committee may exempt [a] the Deputy Public Protector and a person contemplated in section 7(3)(b) shall be exempted from the provisions of this paragraph.”.

CLAUSE 6

Clause rejected.

NEW CLAUSE

1. That the following be a new Clause:

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

8. Section 7 of the principal Act is hereby amended—
 - (a) by the substitution for subsection (2) of the following subsection:
“(2) Notwithstanding anything to the contrary contained in any law no person shall disclose to any other

person the contents of any document in the possession of a member of the office of the Public Protector or the record of any evidence given before the Public Protector, [a] the Deputy Public Protector or a person contemplated in subsection (3)(b) during an investigation, unless the Public Protector determines otherwise.”; and

- (b) 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.”.

NEW CLAUSE

1. That the following be a new Clause:

Amendment of section 9 of Act 23 of 1994

9. Section 9 of the principal Act is hereby amended by the substitution in subsection (1) for paragraph (a) of the following paragraph:

“(a)insult the Public Protector or [a] the Deputy Public Protector;”.

LONG TITLE

1. On page 2, in the second line, after “of” to insert “the Public Protector and the”.
2. On page 2, in the second line, to omit “Protectors” and to substitute “Protector”.