

REPUBLIC OF SOUTH AFRICA

REINSTATEMENT OF ENROLMENT OF CERTAIN DECEASED LEGAL PRACTITIONERS BILL

*(As amended by the Portfolio Committee on Justice and Constitutional Development
(National Assembly))
(Introduced as Reinstatement of Enrolment of Certain Legal Practitioners Bill)
(The English text is the official text of the Bill)*

(MINISTER FOR JUSTICE AND CONSTITUTIONAL DEVELOPMENT)

[B 6B—2002]

ISBN 0 621 32186 9

No. of copies printed 1 800

BILL

To provide for the reinstatement of the enrolment of certain deceased legal practitioners who were struck off the roll of advocates or attorneys as a result of their opposition to the previous political dispensation of apartheid or their assistance to persons who were opposed to the said apartheid dispensation; and to provide for matters connected therewith.

PREAMBLE

WHEREAS it is appropriate to honour the memory of those legal practitioners who made a contribution to the opposition to the previous political dispensation of apartheid, or who assisted persons who were so opposed, and who were struck off the roll on account of such opposition or assistance;

AND IN ORDER TO redress the injustices of the past by restoring the professional status of those legal practitioners who were so removed during the apartheid dispensation,

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

Reinstatement on roll of advocates or attorneys

1. (1) Despite the provisions of the Admission of Advocates Act, 1964 (Act No. 74 of 1964), and the Attorneys Act, 1979 (Act No. 53 of 1979), the name of any deceased person who was removed from the roll of advocates or attorneys prior to 27 April 1994, may, upon application brought by a member of such deceased person's family or, after consultation with the deceased person's family, by—

- (a) the General Council of the Bar of South Africa;
- (b) the Bar Council concerned;
- (c) the Society of Advocates concerned;
- (d) the Law Society of South Africa;
- (e) the law society concerned; or
- (f) any other interested person,

to any High court, be reinstated to the roll of advocates or attorneys, as the case may be, if the court is satisfied that the conduct that led to that person's name being removed from the roll in question was directly related to that person's opposition to the previous political dispensation of apartheid and to bringing about political or constitutional change in the Republic, or to assisting persons who were likewise opposed to the said apartheid dispensation.

(2) If a High Court orders that the name of a person be reinstated as contemplated in subsection (1)—

- (a) to the roll of advocates, the registrar of the Court must forthwith forward a certified copy of that order to the Director-General: Justice and Constitutional Development, who must enter a reference to that order opposite the name of the person in question; or

- (b) to the roll of attorneys, the registrar of the Court must enter a reference to that order opposite the name of the person in question in the registers kept by him or her for that purpose and forward certified copies of that order to the registrars of the other High Courts and the registrars of deeds appointed in terms of the Deeds Registries Act, 1937 (Act No. 47 of 1937), who, in turn, must enter a reference to that order opposite the name of the person in question in the registers kept by them for that purpose. 5

Names of reinstated persons to be submitted to Parliament

2. The Cabinet member responsible for the administration of justice must cause the name of any person who was reinstated to the roll of advocates or attorneys in terms of section 1 to be submitted to Parliament. 10

Short title

3. This Act is called the Reinstatement of Enrolment of Certain Deceased Legal Practitioners Act, 2002.

MEMORANDUM ON THE OBJECTS OF THE REINSTATEMENT OF ENROLMENT OF CERTAIN DECEASED LEGAL PRACTITIONERS BILL, 2002

1. OBJECTS OF BILL

The objects of the Bill are to make provision for the reinstatement of the enrolment of legal practitioners who were struck off the roll of advocates or attorneys as a result of their opposition to the political dispensation of apartheid, or who assisted persons who were so opposed, and who are deceased.

2. DISCUSSION

The Bill seeks to provide that the name of any deceased person who was removed from the roll of advocates or attorneys prior to 1994, may, on application to the High Court, be reinstated on the roll of advocates or attorneys, as the case may be.

The application may be brought by a member of the deceased person's family, or after consultation with that person's family—

- * the General Council of the Bar of South Africa;
- * the Bar Council concerned;
- * the Society of Advocates;
- * the Law Society of South Africa;
- * the law society concerned;
- * any other interested person.

The Court would have to be satisfied that the conduct that led to the deceased person's name being removed from the roll was directly related to that person's opposition to the previous political dispensation of apartheid, or assistance to persons who were so opposed and to bringing about political and constitutional change in South Africa.

If the High Court orders that the name of the person be reinstated to the roll of advocates, the registrar of the Court must forward a certified copy of the order to the Director-General: Justice and Constitutional Development who must, in turn, cause the particulars of the order to be entered on the roll of advocates. If the Court orders that the name of the person be reinstated to the roll of attorneys, the registrar of the Court must enter the particulars of the order in the appropriate registers.

3. DEPARTMENTS/BODIES/PERSONS CONSULTED

The draft Bill was circulated to the following persons for comment:

- 3.1 The Judicial Service Commission
- 3.2 Judges President
- 3.3 General Council of the Bar
- 3.4 Law Societies
- 3.5 The Law Society of South Africa
- 3.6 Black Lawyers Association
- 3.7 NADEL
- 3.8 Legal Resources Centre
- 3.9 Lawyers for Human Rights
- 3.10 Independent Association of Advocates

4. IMPLICATION 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 of the Republic of South Africa 1996 since it contains no provision to which the procedure set out in section 74 of 76 of the Constitution applies.