

REPUBLIC OF SOUTH AFRICA

JUDGES' REMUNERATION AND CONDITIONS OF EMPLOYMENT BILL

*(As presented by the Portfolio Committee on Justice and Constitutional Development
(National Assembly), after consideration of the Judicial Officers Amendment Bill
[B 72—2001]) (The English text is the official text of the Bill)*

(MINISTER FOR JUSTICE AND CONSTITUTIONAL DEVELOPMENT)

[B 83—2001]

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BILL

To provide for the remuneration and conditions of employment of judges of the Constitutional Court, the Supreme Court of Appeal and the High Courts; and for matters connected therewith.

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

CHAPTER 1

DEFINITIONS

(s 1)

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Definitions and application of Act

1. (1) In this Act, unless the context indicates otherwise—
- “active service” means any service performed as a Constitutional Court judge or judge in a permanent capacity, irrespective of whether or not such service was performed prior to or after the date of commencement of this Act, and includes any continuous period—
- (a) of longer than 29 days of such service in an acting capacity prior to assuming office as a Constitutional Court judge or judge in a permanent capacity if such service was performed before the date of commencement of this Act; and
- (b) of such service in an acting capacity prior to assuming office as a Constitutional Court judge or judge in a permanent capacity if such service was performed after the date of commencement of this Act;
- “annual salary” means the annual salary and the allowance payable to a Constitutional Court judge and judge in terms of section 2;
- “Constitution” means the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996);
- “Constitutional Court judge” means any person holding the office of—
- (a) Chief Justice of South Africa;
- (b) Deputy Chief Justice; or
- (c) judge of the Constitutional Court,
- and includes any person who, since 7 June 1994, held, the office of—
- (i) President of the Constitutional Court;
- (ii) Deputy President of the Constitutional Court; or
- (iii) judge of the Constitutional Court;
- “fixed date” is 1 April 1989;
- “judge” means any person holding the office of—
- (a) President or Deputy President of the Supreme Court of Appeal;
- (b) judge of the Supreme Court of Appeal;
- (c) Judge President or Deputy Judge President of any High Court; or
- (d) judge of any High Court,
- and includes any person who, at or since the fixed date, held the office of—
- (i) Chief Justice of South Africa or Deputy Chief Justice;
- (ii) judge of the Appellate Division of the Supreme Court of South Africa or of the Supreme Court of Appeal;

- (iii) Judge President or Deputy Judge President of any provincial or local division of the Supreme Court of South Africa or of any High Court;
 - (iv) judge of any provincial or local division of the Supreme Court of South Africa or of any High Court; or
 - (v) judge of any court of a homeland referred to in Item 16 of Schedule 6 to the Constitution, read with Item 1 thereof; 5
- “Minister” means the Cabinet member responsible for the administration of justice;
- “salary” means the salary payable to a Constitutional Court judge or judge in terms of section 5; 10
- “service” means—
- (a) service as a judge of the Supreme Court of Appeal or a High Court as contemplated in the Supreme Court Act, 1959 (Act No. 59 of 1959), in the same or a higher office held by the judge concerned on discharge from active service, or, with the approval of the judge concerned, service in a lower office; 15
 - (b) service as a chairperson or a member of a commission as contemplated in the Commissions Act, 1947 (Act No. 8 of 1947);
 - (c) service as a chairperson or a member of a body or institution established by or under any law; or
 - (d) any other service which the Minister may request him or her to perform. 20
- (2) This Act applies to all Constitutional Court judges and judges—
- (a) to whom the Judges’ Remuneration and Conditions of Employment Act, 1989 (Act No. 88 of 1989) applied; and
 - (b) to whom corresponding legislation in any homeland, as defined in Item 1 of Schedule 6 to the Constitution, which, immediately before the date of commencement of this Act, had not been repealed, applied. 25

CHAPTER 2

REMUNERATION AND CONDITIONS OF EMPLOYMENT OF CONSTITUTIONAL COURT JUDGES AND JUDGES

(ss 2-11)

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Annual salary of Constitutional Court judges and judges

2. (1) Any person who holds office as a Constitutional Court judge or as a judge, whether in an acting or permanent capacity, shall in respect thereof, in addition to the amounts referred to in section 13 and an allowance at the rate of R3 500 per annum, be paid an annual salary at a rate determined by the President by proclamation in the *Gazette*. 35

(2) A proclamation in terms of subsection (1) may be issued with effect from a date which may not be earlier than one year prior to the date of the proclamation.

(3) (a) A copy of a proclamation issued under subsection (1) shall be submitted to Parliament within 14 days after publication thereof. 40

(b) If Parliament rejects such proclamation or any provision thereof, such proclamation or provision shall thereafter cease to be of force and effect to the extent to which it was so rejected but without prejudice to the validity of anything done in terms of such proclamation up to the date upon which it so ceased to be of force and effect, or to any right, privilege, obligation or liability acquired, accrued or incurred as at the said date under and by virtue of such proclamation. 45

(4) The allowance payable in terms of subsection (1) shall not be taxable, unless Parliament expressly provides otherwise.

(5) The amount of the annual salary and allowance payable in terms of subsection (1), shall be paid as a direct charge against the National Revenue Fund. 50

(6) No Constitutional Court judge may, without the consent of the Minister, accept, hold or perform any other office of profit or receive in respect of any service any fees, emoluments or other remuneration apart from his or her salary and any amount which may be payable to him or her in his or her capacity as a Constitutional Court judge.

Discharge of Constitutional Court judges and judges from active service

3. (1) A judge who holds office in a permanent capacity—
- (a) shall, subject to the provisions of section 4, be discharged from active service on the date on which he or she attains the age of 70 years, if he or she has on that date completed a period of active service of not less than 10 years, or, if he or she has on that date not yet completed a period of 10 years' active service, on the date immediately following the day on which he or she completes a period of 10 years' active service; 5
 - (b) who has already attained the age of 65 years and has performed active service for a period of 15 years, and who informs the Minister in writing that he or she no longer wishes to perform active service, shall be discharged by the President from active service; 10
 - (c) may at any time be discharged by the President from active service if he or she becomes afflicted with a permanent infirmity of mind or body which renders him or her incapable of performing his or her official duties; or 15
 - (d) may at any time on his or her request and with the approval of the President be discharged from active service if there is any reason which the President deems sufficient. 20
- (2) A Constitutional Court judge who holds office in terms of section 176(1) of the Constitution— 20
- (a) must, subject to the provisions of section 4(2) or (3), be discharged from active service as a Constitutional Court judge, on the date on which he or she—
 - (i) attains the age of 70 years; or
 - (ii) has completed a 12 year term of office as a Constitutional Court judge, whichever occurs first; 25
 - (b) may at any time be discharged by the President from active service if he or she becomes afflicted with a permanent infirmity of mind or body which renders him or her incapable of performing his or her official duties; or
 - (c) may at any time on his or her request and with the approval of the President be discharged from active service if there is any reason which the President deems sufficient. 30

Continuation of active service by Constitutional Court judges and judges

4. (1) A judge who on attaining the age of 70 years has not yet completed 15 years' active service, may continue to perform active service to the date on which he or she completes a period of 15 years' active service or attains the age of 75 years, whichever occurs first, whereupon he or she must be discharged from active service. 35
- (2) A Constitutional Court judge whose 12 year term of office as a Constitutional Court judge expires before he or she has completed 15 years' active service must, subject to subsection (3), continue to perform active service as a Constitutional Court judge to the date on which he or she completes a period of 15 years' active service, whereupon he or she must be discharged from active service. 40
- (3) A Constitutional Court judge who, on attaining the age of 70 years, has not yet completed 15 years' active service, must continue to perform active service as a Constitutional Court judge to the date on which he or she completes a period of 15 years' active service or attains the age of 75 years, whichever occurs first, whereupon he or she must be discharged from active service. 45
- (4) (a) A Constitutional Court judge who is discharged from active service in terms of section 3(2) or subsection (2) or (3) and who is also a judge contemplated in section 174(5) of the Constitution, may continue to perform active service as a judge in the court in which he or she held office as such immediately before he or she was appointed as a Constitutional Court judge if— 50
- (i) he or she indicates his or her willingness to do so in writing to the President three months before he or she is so discharged from active service; and
 - (ii) he or she still qualifies to hold office as such a judge in a permanent capacity in terms of section 3(1) or 4(1) of this Act. 55
- (b) Nothing in this Act precludes a Constitutional Court judge—
- (i) who is discharged from active service in terms of section 3(2) or subsection (2) or (3); and
 - (ii) who is not a judge contemplated in section 174(5) of the Constitution, 60

from being appointed to the office of judge in a court other than the Constitutional Court by the President on the advice of the Judicial Service Commission as contemplated in the Constitution, if he or she still qualifies to hold office as such a judge in a permanent capacity in terms of section 3(1) or 4(1) of this Act.

- (c) The holding of office by a judge referred to in paragraph (a) or (b)— 5
 - (i) interrupts that judge's discharge from active service in terms of section 3(2) or subsection (2) or (3); and
 - (ii) suspends any salary payable in terms of section 5 to that judge pursuant to such discharge from active service.
- (d) The holding of office by a judge referred to in paragraph (a) or (b), entitles such 10
 a judge to an annual salary which—
 - (i) is payable in terms of section 2; and
 - (ii) may not be less than the annual salary applicable to the highest office held as a Constitutional Court judge or a judge.

**Salary payable to Constitutional Court judges and judges after discharge from 15
active service**

5. (1) Subject to subsection (2), a Constitutional Court judge or a judge who on or after the fixed date was or is discharged from active service in terms of section 3 or 4 shall be paid a salary in accordance with the formula—

$$\frac{A}{B} \times C \quad 20$$

in which formula the factor—

- (a) A represents the annual salary applicable to the highest office held by the Constitutional Court judge or judge concerned in a permanent capacity during the period of his or her active service: Provided that, subject to section 25 11(3)(a) and (5)(a), the factor 'A' in the said formula must be adjusted whenever the annual salary applicable to the highest office held by the Constitutional Court judge or judge concerned during the period of his or her active service, is increased;
- (b) B represents 15; and 30
- (c) C represents the period in years of active service of such Constitutional Court judge or judge.
- (2) The aggregate of the salary payable in terms of subsection (1) to a Constitutional Court judge or judge who was or is discharged from active service—
 - (a) in terms of section 3 (1)(a), (c) or (d), 3(2) or 4(1), (2) or (3) shall not be less 35 than 40 per cent of his or her highest annual salary during the period of his or her active service and shall not exceed such salary;
 - (b) in terms of section 3(1) or 3(2) and has performed active service for a period of not less than 20 years, shall be equivalent to the annual salary applicable to the highest office held by him or her in a permanent capacity during his or her 40 period of active service;
 - (c) in terms of section 3 (1)(b), shall, subject to paragraph (b), be 80 per cent of his or her highest annual salary during the period of his or her active service, plus 2 per cent of that salary for every year of active service which he or she performs after attaining the age of 65 years; 45
 - (d) in terms of section 3 (1)(c) or (d) or 3(2)(b) or (c) before he or she attains the age of 65 years, shall, subject to paragraph (b), be not more than 80 per cent of his or her highest annual salary during the period of his or her active service.
- (3) For the purposes of subsection (1) the period of active service in any particular 50 office shall be calculated by the year and the month, and fractions of a month shall—
 - (a) in respect of any active service performed before the date of commencement of this Act, be disregarded; and
 - (b) in respect of any active service performed after the date of commencement of this Act be taken into account. 55
- (4) If a Constitutional Court judge or a judge to whom a salary is payable in terms of this section dies, the payment of the salary shall cease with effect from the first day of the month following the month in which he or she died.

Gratuity payable to Constitutional Court judges and judges after discharge from active service

6. (1) Subject to the provisions of subsections (2), (3) and (4), any Constitutional Court judge or judge who on or after the fixed date was or is discharged from active service in terms of section 3 or 4, shall, in addition to any salary payable to him or her in terms of section 5, be paid a gratuity which shall in respect of every office held by him or her in a permanent capacity during his or her active service be calculated in accordance with the formula—

$$D \times 2 \times \frac{E}{15}$$

in which formula the factor—

- (a) D represents the annual salary which at the time of the discharge of such Constitutional Court judge or judge from active service was applicable to the office concerned;
- (b) E represents the period in years of active service, but not exceeding 20 years, of such a Constitutional Court judge or judge in the office concerned.

(2) After the completion of 15 years' active service a Constitutional Court judge or judge shall once be entitled, if he or she so requests, to be paid the gratuity (or any part thereof) which has until the date of the request accrued in accordance with the formula in subsection (1).

(3) After the completion of 20 years' active service a Constitutional Court judge or judge shall once be entitled, if he or she so requests, to be paid the gratuity (or any portion thereof) which has until that date accrued in accordance with the formula in subsection (1), or the balance available after the exercise of the power in terms of subsection (2).

(4) A judge referred to in section 4(1) shall once be entitled, when he or she attains the age of 70 years and has completed not less than 10 years' active service, to be paid, if he or she so requests, the gratuity (or any portion thereof) which has until the date of that request accrued in accordance with the formula in subsection (1).

(5) The total amount of any gratuity payable in terms of this section to a Constitutional Court judge or judge shall not exceed three times his or her highest annual salary during the period of his or her active service.

(6) For the purposes of this section the period of active service shall be calculated by the year and the month, and fractions of a month shall be taken into account.

(7) Notwithstanding anything to the contrary contained in any other law, the gratuity payable to Constitutional Court judges or judges under this section shall not be taxable.

Performance of service by Constitutional Court judges and judges discharged from active service

7. (1) (a) A Constitutional Court judge or judge who has been discharged from active service, except a Constitutional Court judge or judge who has been discharged in terms of section 3(1)(b), (c) or (d) or (2)(b) or (c), who—

- (i) has not attained the age of 75 years must, subject to paragraph (c), be available to perform service until he or she attains the age of 75 years, for a period or periods which, in the aggregate, amount to three months a year: Provided that such a Constitutional Court judge or judge may voluntarily perform more than three months' service a year, if his or her services are so requested; or
- (ii) has already attained the age of 75 years, may voluntarily perform further service, if his or her services are so requested,

if that Constitutional Court judge's or judge's mental and physical health enable him or her to perform such service.

(b) Service contemplated in paragraph (a) of the definition of "service" in section 1 may only be performed if—

- (i) after consultation with the Judicial Service Commission, such service is requested by the Chief Justice, President of the Supreme Court of Appeal or the judge president in whose area of jurisdiction the Constitutional Court judge or judge resides or of the court to which he or she was attached when discharged from active service, or with his or her consent, any other judge president, in consultation with the Chief Justice or the said judge president, as the case may be; and
- (ii) the Minister so approves.

(c) Service as mentioned in paragraph (b), (c) or (d) of the definition of “service” in section 1 may be performed only with the consent of the Constitutional Court judge or judge concerned.

(2) (a) A Constitutional Court judge or judge who performs service in terms of subsection (1), as contemplated in paragraph (a) of the definition of “service” in section 1, shall, subject to paragraph (b)(ii), monthly be paid an additional amount in remuneration which is equal to the amount which at that time is payable to the holder of the office which he or she holds for that period. 5

(b) A Constitutional Court judge or judge who performs service in terms of subsection (1) as contemplated in— 10

(i) paragraphs (b) to (d) of the definition of “service” in section 1 ; and

(ii) the proviso to subsection(1)(a)(i) or in subsection(1)(a)(ii), read with paragraph (a) of the definition of “service” in section 1,

shall monthly be paid such remuneration as the President may determine.

(3) The salary of a Constitutional Court judge or judge who contrary to subsection (1)(a)(i) fails to perform the minimum period of service referred to in that subsection if so requested, shall, for every full year during which he or she so fails, be reduced by two per cent: Provided that such reduction shall, in the aggregate, not amount to more than 10 per cent of such salary. 15

(4) The registrar of the Supreme Court of Appeal or a High Court where a Constitutional Court judge or judge performs service in terms of subsection (1), shall notify the Director-General: Justice and Constitutional Development immediately of the commencement and duration of the service. 20

(5) The Director-General: Justice and Constitutional Development shall keep a register of all service performed by Constitutional Court judges or judges in terms of subsection (1). 25

Performance of service as Chief Justice by Chief Justice or as President of Supreme Court of Appeal by President of Supreme Court of Appeal in certain circumstances

8. (a) A Chief Justice who becomes eligible for discharge from active service in terms of section 3(2)(a) or 4(2) or (3), may, at the request of the President, from the date on which he or she becomes so eligible for discharge from active service, continue to perform active service as Chief Justice of South Africa for a period determined by the President, which shall not extend beyond the date on which such Chief Justice attains the age of 75 years. 30

(b) A President of the Supreme Court of Appeal who becomes eligible for discharge from active service in terms of section 3(1)(a) or 4(1), may, at the request of the President, from the date on which he or she becomes so eligible for discharge from active service, continue to perform active service as President of the Supreme Court of Appeal for a period determined by the President, which may not extend beyond the date on which such President of the Supreme Court of Appeal attains the age of 75 years. 35 40

Amount payable to surviving spouse of Constitutional Court judge and judge

9. (1) The surviving spouse of a Constitutional Court judge or judge who on or after the fixed date was or is discharged from active service in terms of section 3 or 4 or who died or dies while performing active service, shall be paid with effect from the first day of the month immediately succeeding the month in which he or she dies an amount— 45

(a) in the case of a surviving spouse of a Constitutional Court judge or judge who was so discharged from active service, equal to two thirds of the salary which was in terms of section 5 payable to that Constitutional Court judge or judge; or

(b) in the case of a surviving spouse of a Constitutional Court judge or judge who died while performing active service as a Constitutional Court judge or judge, equal to two thirds of the amount to which that Constitutional Court judge or judge would have been entitled in terms of section 5 if he or she was discharged from active service in terms of section 3 (1)(a) or (2)(a) on the date of his or her death. 50 55

(2) The amount payable to the surviving spouse of a Constitutional Court judge or judge in terms of subsection (1) shall be payable with effect from the first day of the month immediately succeeding the day on which he or she died, and shall be payable until the death of such spouse.

Gratuity payable to surviving spouse of Constitutional Court judge and judge

10. If a gratuity referred to in section 6 would have been payable to a Constitutional Court judge or judge who died or dies on or after the fixed date had he or she not died but, on the date of his or her death, was discharged from active service in terms of section 3 or 4, there shall—

- (a) if such Constitutional Court judge or judge is survived by a surviving spouse, be payable to such surviving spouse, in addition to any amount payable to that spouse in terms of section 9; or
 - (b) if such Constitutional Court judge or judge is not survived by a spouse, be payable to the estate of such Constitutional Court judge or judge,
- a gratuity which shall be equal to the amount of the gratuity which would have been so payable to such Constitutional Court judge or judge had he or she not died but was, on the date of his or her death, discharged from active service as aforesaid.

Resignation of Constitutional Court judges and judges from office in certain circumstances

11. (1) Any resignation by a Constitutional Court judge or judge which is not contemplated in this Act precludes the payment of any benefits to such person in terms of this Act to which a Constitutional Court judge or judge would otherwise be entitled on discharge from active service.

(2) A Constitutional Court judge who is a judge contemplated in section 174(5) of the Constitution or a judge who holds office in a permanent capacity, who already has attained the age of 65 years and has performed 15 years' active service may resign from office by notice in writing to the President that he or she no longer wishes to serve in the office of such judge, and shall vacate his or her office upon acceptance of such resignation.

(3) A Constitutional Court judge or a judge referred to in subsection (2) shall be paid—

- (a) a salary in accordance with the provisions of section 5: Provided that the proviso in section 5(1)(a) shall not apply in respect of him or her;
- (b) a gratuity in accordance with the formula set out in section 6(1).

(4) A Constitutional Court judge who is not a judge contemplated in section 174(5) of the Constitution who has completed a 12 year term of office as a Constitutional Court judge or who has attained the age of 70 years, whichever occurs first, may resign from office by notice in writing to the President and must vacate his or her office upon acceptance by the President of such resignation.

(5) A Constitutional Court judge referred to in subsection (4) must be paid—

- (a) a salary in accordance with the provisions of section 5: Provided that the proviso in section 5(1)(a) does not apply in respect of him or her;
- (b) a gratuity in accordance with the formula set out in section 6(1).

(6) The provisions of section 6(7) apply with the necessary changes in respect of any gratuity payable in terms of this section.

(7) The surviving spouse of a Constitutional Court judge or judge referred to in subsection (2) or (4) must, with effect from the first day of the month immediately succeeding the month in which he or she dies, be paid an amount equal to two thirds of the salary which was payable to that Constitutional Court judge or judge in terms of subsection (3)(a) or (5)(a), which amount shall be payable until the death of such spouse.

CHAPTER 3

GENERAL PROVISIONS

(ss 12-18)

Making available of motor vehicles to Constitutional Court judges and judges

12. A motor vehicle owned by the State may, on such conditions as the Minister may determine with the concurrence of the Minister of Transport, be made available to any person who holds office as a Constitutional Court judge or judge in a permanent or acting capacity, whether he or she performs active service or service, for use, in

accordance with the conditions so determined, in the course of his or her official functions as well as for his or her private purposes.

Regulations

13. (1) The President may, after consultation by the Minister with the Chief Justice, the President of the Supreme Court of Appeal and the judges president of the respective High Courts, make regulations as to— 5

- (a) arrangements regarding administrative recesses;
- (b) the periods for which and the circumstances under which and conditions upon which leave of absence may be granted to Constitutional Court judges or acting Constitutional Court judges, judges or acting judges; 10
- (c) the method of transport of such Constitutional Court judges or judges, and of Constitutional Court judges or judges on their discharge from active service or their vacation of office and of Constitutional Court judges or judges in the performance of service in terms of section 7, and of the members of their families and of the effects of Constitutional Court judges or judges or 15 Constitutional Court judges or judges who have been discharged from active service or who have vacated their offices or Constitutional Court judges or judges who perform service in terms of section 7 or deceased Constitutional Court judges or judges, the amounts to be paid to Constitutional Court judges or judges or acting Constitutional Court judges or judges in connection with 20 transport and subsistence, and the circumstances in which any such transport may be provided and any such amounts may be paid;
- (d) the amounts which may be paid to acting Constitutional Court judges or acting judges in connection with the maintenance by them of their practices as advocates or attorneys; and 25
- (e) the amounts payable to Constitutional Court judges and judges of the Supreme Court of Appeal in connection with their accommodation.

(2) A regulation under subsection (1) may provide that an amount referred to in paragraph (c) or (d) of that subsection shall be calculated either in accordance with a scale or having regard to the expenses actually incurred in connection with the matter 30 concerned.

Administration of Act

14. The Director-General: Justice and Constitutional Development shall, subject to the directions of the Minister, be charged with the general administration of this Act.

Method of payment of salaries, allowances and benefits 35

15. Salaries, allowances and benefits payable in terms of sections 2, 5, 6, 7, 9, 10 and 11 of this Act shall be paid as a direct charge against the National Revenue Fund and on such dates and in such manner as the Minister may from time to time determine.

Transitional provisions

16. (1) Notwithstanding the repeal of— 40

- (a) the Judges' Remuneration and Conditions of Employment Act, 1989 (Act No. 88 of 1989);
- (b) the Judges' Remuneration and Conditions of Employment Act, 1989 (Act No. 27 of 1989)(Bophuthatswana); and
- (c) Decree No. 19 (Judges' Remuneration and Conditions of Service) of 1990 45 (Decree No. 19 of 1990) (Transkei),

by section 17 of this Act, the regulations which were made under the said Acts and were in force immediately before the date of commencement of this Act and which are not inconsistent with this Act, continue in force in respect of those judges to which the regulations applied immediately prior to the commencement of this Act until they are 50 repealed, withdrawn or amended by regulations made under section 13 of this Act.

(2) (a) Any active service or service referred to in—

- (i) section 1 of the Judges' Remuneration and Conditions of Employment Act, 1989 (Act No. 27 of 1989) (Bophuthatswana); or

(ii) section 1 of Decree No. 19 (Judges' Remuneration and Conditions of Service) of 1990 (Decree No. 19 of 1990) (Transkei), performed by a judge referred to in section 1 prior to the commencement of this Act is, for the purposes of this Act, deemed to be active service or service as contemplated in section 1(1) of this Act. 5

(b) For the purposes of section 1(1) of this Act the word "service" in the definition of "active service" in section 1(1), preceding paragraph (a) thereof, is construed to include service performed by—

(i) a judge of the Republic of South Africa, prior to the commencement of the Interim Constitution, who was seconded to serve as a judge in any court of a homeland referred to in Item 16 of Schedule 6 to the Constitution, read with Item 1 thereof, while he or she was so seconded and so served; or 10

(ii) a judge in the former South West Africa prior to its independence and who, at the commencement of this Act, holds office as a judge of a High Court.

(c) If a judge who has been seconded for active service or service as a judge of a High Court or Supreme Court of a homeland as defined in Item 1 of Schedule 6 to the Constitution, dies or is discharged from active service while holding the office of chief justice of such a High Court or Supreme Court of such a homeland in a permanent capacity, his or her salary shall for the purposes of this Act be deemed to be that of a judge president of a High Court. 15 20

(d) If a judge who has been seconded for service as a judge of a High Court or Supreme Court of a homeland as defined in Item 1 of Schedule 6 to the Constitution, holds the office of chief justice of such a High Court or Supreme Court in a permanent or acting capacity, and if the amount of the salary and allowance payable to him or her in terms of section 2(1) is less than the amount of the salary and allowance payable in terms of that subsection to a judge president of a High Court, he or she shall, in addition to the salary and allowance payable to him or her as aforesaid, be paid an allowance equal to the difference between the amount of the salary and allowance payable to him or her as aforesaid and the amount of the salary and allowance payable as aforesaid to such a judge president. 25 30

(3) Section 4 of Decree No. 19 (Judges' Remuneration and Conditions of Service) of 1990 (Decree No. 19 of 1990) (Transkei) continues to apply to any person to whom it applied at the date of commencement of this Act as if it had not been repealed.

(4) (a) Any person who retired as a judge in terms of the Judges' Pensions Act, 1978 (Act No. 90 of 1978), and who, at the commencement of this Act, receives a pension in terms of the said Judges' Pensions Act, 1978, is, from the date of commencement of this Act, entitled to an amount equal to two thirds of the salary payable to a judge contemplated in section 5(1) of this Act who held the same or a similar office to that of the retired judge on the date of the latter's retirement from office and who has the same number of years' active service. 35 40

(b) Any surviving spouse of a judge referred to in paragraph (a) who, at the commencement of this Act receives a pension in terms of the said Judges' Pensions Act, 1978, is, from the date of commencement of this Act entitled to a salary equal to one half of the salary of his or her deceased spouse contemplated in paragraph (a).

Repeal of laws 45

17. The laws mentioned in the Schedule are hereby repealed to the extent set out in the third column thereof.

Short title and commencement

18. (1) This Act shall be called the Judges' Remuneration and Conditions of Employment Act, 2001. 50

(2) Section 16(4) comes into operation on a date fixed by the President by proclamation in the *Gazette*.

SCHEDULE

No. and year of law	Title	Extent of repeal	
Act 27 of 1989	Judges' Remuneration and Conditions of Employment Act, 1989 (Bophuthatswana)	The whole	5
Act 88 of 1989	Judges' Remuneration and Conditions of Employment Act, 1989	The whole	
Decree 19 of 1990	Judges' Remuneration and Conditions of Service, 1990 (Transkei)	The whole	10
Decree 43 of 1990	Supreme Court Decree, 1990 (Ciskei)	Section 5(1), (2) (3) and (4)	
Act 139 of 1992	General Law Amendment Act, 1992	Sections 27 and 28	15
Act 91 of 1993	Judges' Remuneration and Conditions of Employment Amendment Act, 1993	The whole	
Act 129 of 1993	General Law Third Amendment Act, 1993	Section 71	20
Act 157 of 1993	General Law Fifth Amendment Act, 1993	Section 8	
Act 204 of 1993	General Law Sixth Amendment Act, 1993	Section 15	25
Act 10 of 1994	Judges' Remuneration and Conditions of Employment Amendment Act, 1994	The whole	
Act 104 of 1996	Judicial Matters Amendment Act, 1996	Section 14	30
Act 77 of 1997	Judges' Remuneration and Conditions of Employment Amendment Act, 1997	The whole	

**MEMORANDUM ON THE OBJECTS OF THE JUDGES’
REMUNERATION AND CONDITIONS OF EMPLOYMENT BILL, 2001**

1. After the Department of Justice and Constitutional Development had briefed the Portfolio Committee on Justice and Constitutional Development on the Judicial Officers Amendment Bill [B72-01], the Committee received written submissions on the Bill and held public hearings thereon. It considered the scope of all the issues dealt with in the Bill, most of which involve comprehensive and fundamental changes to existing laws. The Committee pointed out that the Bill was only submitted to Parliament after 17 August 2001, the deadline for the submission of draft legislation to Parliament for consideration during the 2001 session of Parliament. It also took into account the limited time remaining to deal with issues of this nature during the 2001 session of Parliament which is drawing to a close. In the light of the above the Committee was of the opinion that it should present its own Bill in terms of the Rules of Parliament in order to deal with only those urgent matters contained in the Judicial Officers Amendment Bill, pertaining to judges’ remuneration and conditions of employment, which cannot be held in abeyance until the 2002 session of Parliament.

2. The Committee was consequently of the view that it would be expedient to deal with those issues in the Judicial Officers Amendment Bill which emanate from the Republic of South Africa Constitution Amendment Bill [B68-01], relating to courts and the administration of justice, as contemplated in Chapter 8 of the Constitution, namely the Constitutional amendments dealing with—

- (a) the offices of Chief Justice of South Africa and Deputy Chief Justice and President and Deputy President of the Supreme Court of Appeal; and
- (b) the terms of office of Constitutional Court judges.

3. Whilst confining itself to the issues referred to in paragraph 2, which entail amendments to virtually every section of the Judges’ Remuneration and Conditions of Employment Act, 1989 (Act No. 88 of 1989), the Committee came to the conclusion that, rather than to present cumbersome and cluttered amending legislation, it would be more appropriate to recommend an entirely new statute to regulate the remuneration and conditions of employment of Constitutional Court judges and judges, which would, at the same time, rationalise the laws regulating this important aspect of the administration of justice; hence the inclusion of provisions in the Bill which purport to make the legislation applicable throughout the Republic and which envisage the repeal of the Judges’ Remuneration and Conditions of Employment Act, 1989, and the corresponding legislation in the former homelands, which is still applicable in those geographical areas.

4. The Bill, presented by the Committee, consequently largely encapsulates the principles contained in the Judges’ Remuneration and Conditions of Employment Act, 1989; the main differences between the existing and proposed legislation are to be found in the provisions which deal with the offices of Chief Justice of South Africa and Deputy Chief Justice and President and Deputy President of the Supreme Court of Appeal and the terms of office of Constitutional Court judges, the latter category, particularly requiring comprehensive adaptations to the existing legislation. During the course of revisiting the provisions of the existing Judges’ Remuneration and Conditions of Employment Act, 1989, to bring them into line with the Constitutional amendments, the Committee has also suggested amendments of a technical nature in an effort to streamline and improve the legislation as a whole.

5. As indicated above, the Committee intends finalising the issues not dealt with in the Judicial Officers Amendment Bill during the 2002 session of Parliament when those important issues and principles can be debated without any time constraints.

6. The main objects of the Bill, which give rise to the amendments in question, are the following:

- (i) To give effect to the head of the Constitutional Court becoming the Chief Justice of South Africa and to the head of the Supreme Court of Appeal becoming the President of the Supreme Court of Appeal, in line with proposed Constitutional amendments.
- (ii) To include the offices of Deputy Chief Justice and Deputy President of the Supreme Court of Appeal in the legislation regulating the remuneration and conditions of employment of all judges, offices which are reflected in the Constitution.

- (iii) To extend the principles relating to benefits of judges of the Supreme Court of Appeal and High Courts, as contained in the Judges' Remuneration and Conditions of Employment Act, 1989, to Constitutional Court judges, whilst, at the same time, retaining the term of office of Constitutional Court judges, as now provided for in the Constitution, which includes the extension of such term of office in certain circumstances.
- (iv) To make the legislation regulating the remuneration and conditions of employment of all judges applicable throughout South Africa and to repeal the Judges' Remuneration and Conditions of Employment Act, 1989 (Act No. 88 of 1989), and the corresponding legislation in the former homelands.
- (v) To provide for numerous transitional arrangements in order to recognise the active service or service performed by judges who were appointed in terms of homeland legislation or by judges who were seconded to homelands and to bring those judges within the scope of a uniform statute.
- (vi) To provide that judges or their widows who receive pensions in terms of the Judges' Pensions Act, 1978 (Act No. 90 of 1978), the legislation which regulated the retirement dispensation of judges before the enactment and commencement of the Judges' Remuneration and Conditions of Employment Act, 1989 (Act No. 88 of 1989), will in future receive "pensions" which are coupled to the salaries of judges who are discharged from active service. This should alleviate the position of these "pensioners" or the widows of these "pensioners" who are paid a pension in terms of a formula which does not counter the effects of inflation, as is the case with judges who are discharged from active service in terms of the present legislation.

7. DEPARTMENTS/BODIES/PERSONS CONSULTED

Consultation took place in respect of the Judicial Officers Amendment Bill, as well as in respect of the Constitution of the Republic of South Africa Amendment Bill, dealing with the tenure of office of Constitutional Court judges, as mentioned in paragraph 1. Written submissions were considered by the Portfolio Committee and public hearings were held. The Department also consulted on the Judicial Officers Amendment Bill before the Bill was introduced into Parliament, as is indicated in the memorandum on the objects of that Bill.

8. IMPLICATIONS FOR PROVINCES

None.

9. FINANCIAL IMPLICATIONS FOR STATE

Although it is extremely difficult to quantify the financial implications of the Bill, the following provisions will have financial implications for the State:

- (i) The transitional provisions which bring all judges within the scope of a single uniform statute.
- (ii) The transitional provisions which incorporate the judges who retired under the repealed Judges' Pensions Act, 1978, or their widows, within the scope of the proposed legislation, the financial implications of which have been considered and approved by Cabinet.
- (iii) The provisions in clause 1 which extend the scope of active service to include all periods of active service as an acting judge.

10. PARLIAMENTARY PROCEDURE

The Committee, the State Law Advisers and the Department of Justice and Constitutional Development are of the opinion that this Bill must be dealt with in accordance with section 75 of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996), since it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.

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