

REPUBLIC OF SOUTH AFRICA

**CONSTITUTIONAL COURT
COMPLEMENTARY ACT
AMENDMENT BILL**

(As introduced)

(MINISTER OF JUSTICE)

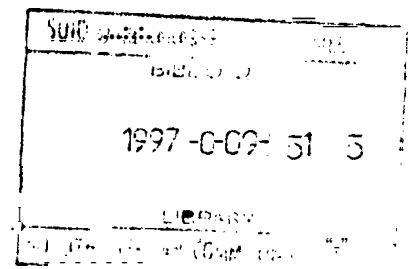
[B 87—97]

REPUBLIEK VAN SUID-AFRIKA

**WYSIGINGSWETSONTWERP OP
DIE AANVULLENDE WET OP DIE
KONSTITUSIONELE HOF**

(Soos ingedien)

(MINISTER VAN JUSTISIE)



[W 87—97]

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GENERAL EXPLANATORY NOTE:

[}] Words in bold type in square brackets indicate omissions from existing enactments.

_____ Words underlined with a solid line indicate insertions in existing enactments.

BILL

To amend the Constitutional Court Complementary Act, 1995, so as to provide for the referral of orders of constitutional invalidity of Acts of Parliament, provincial Acts or conduct of the President to the Constitutional Court; the appointment of counsel to argue issues of constitutional invalidity before the Constitutional Court; and the prescribing of rules regulating the proceedings of the Constitutional Court; and to provide for incidental matters.

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

Amendment of section 1 of Act 13 of 1995

1. Section 1 of the Constitutional Court Complementary Act, 1995, is hereby amended by the substitution for the definition of “rules” of the following definition: 5
 “ ‘rules’ means the rules of the Court promulgated under section [100(1) of the Constitution] 16.”.

Insertion of section 8 in Act 13 of 1995

2. The following section is hereby inserted in the Constitutional Court Complementary Act, 1995. after section 7: 10

“Referral of order of constitutional invalidity to Court

8. (1) Whenever the Supreme Court of Appeal or a High Court declares an Act of Parliament, a provincial Act or conduct of the President invalid as contemplated in section 172 of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996), that Court shall, in accordance with the rules, refer the order of constitutional invalidity to the Court for confirmation. 15

(2) If requested by the President of the Court to do so, the Minister shall appoint counsel to present argument to the Court in respect of any matter referred to the Court as contemplated in subsection (1).” 20

Insertion of section 16 in Act 13 of 1995

3. The following section is hereby inserted in the Constitutional Court Complementary Act, 1995, after section 15:

“Engaging the Court, rules and saving

16. (1) The manner in which the Court may be engaged in any matter in respect of which it has jurisdiction, and all matters relating to the proceedings of and before the Court, including the referral of an order of constitutional invalidity to the Court as contemplated in section 172 of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996), shall be regulated by the rules prescribed by the President of the Court in consultation with the Chief Justice, which rules shall be promulgated in the *Gazette*.

(2) The rules shall, when it is in the interests of justice and with leave of the Court, allow a person—

(a) to bring a matter directly to the Court: or

(b) to appeal directly to the Court from any other court.

(3) The Constitutional Court Rules, 1995, promulgated by Government Notice R5 of 6 January 1995, as amended, shall remain in force until repealed or amended under subsection (1).”.

Short title and commencement

4. This Act shall be called the Constitutional Court Complementary Act Amendment Act, 1997, and shall come into operation on a date fixed by the President by proclamation in the *Gazette*.

**MEMORANDUM ON THE OBJECTS OF THE CONSTITUTIONAL
COURT COMPLEMENTARY ACT AMENDMENT BILL, 1997**

1. Section 172(2)(a) of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996), provides that the Supreme Court of Appeal, a High Court or a court similar in 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. In terms of section 172(2)(c) of the Constitution national legislation must provide for the referral of an order of constitutional invalidity to the Constitutional Court. National legislation includes subordinate legislation made in terms of an Act of Parliament.

2. Although rules 22 to 24 of the Constitutional Court Rules deal with the referral of matters to the Constitutional Court, they are inappropriate with regard to the referral of decisions relating to the constitutional invalidity of legislation or conduct as contemplated in section 172(2)(c) of the Constitution. Although the existing rules of the Constitutional Court remain in force in terms of item 2 of Schedule 6 to the Constitution no provision exists or is made for the amendment of those rules or for the making of new rules.

3. The Constitutional Court Complementary Act Amendment Bill, 1997, makes provision for the referral of an order of constitutional validity to the Constitutional Court, and aims at empowering the President of the Constitutional Court, in consultation with the Chief Justice, to make rules prescribing the manner in which the Constitutional Court may be engaged and regarding all matters in respect of which the Court has jurisdiction.

4. The following interested parties were consulted:

- (a) the President of the Constitutional Court;
- (b) the Chief Justice;
- (c) the Judges President;
- (d) the Regional Representatives of the Department of Justice;
- (e) General Council of the Bar of South Africa;
- (f) Association of Law Societies of the Republic of South Africa;
- (g) National Association for Democratic Lawyers;
- (h) Black Lawyers Association;
- (i) Lawyers for Human Rights; and
- (j) the State Attorney.

5. The Department and the State Law Advisers are of the opinion that the procedure contemplated in section 75 of the Constitution must be followed in connection with this Bill.