

REPUBLIC OF SOUTH AFRICA

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# **SPECIAL INVESTIGATING UNITS AND SPECIAL TRIBUNALS AMENDMENT BILL**

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*(As introduced in the National Assembly as a section 75 Bill; explanatory summary of Bill published in Government Gazette No 22073 of 16 February 2001) (The English text is the official text of the Bill)*

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(MINISTER FOR JUSTICE AND CONSTITUTIONAL DEVELOPMENT)

**[B 9—2001]**

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REPUBLIEK VAN SUID-AFRIKA

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# **WYSIGINGSWETSONTWERP OP SPESIALE ONDERSOEKEENHEDE EN SPESIALE TRIBUNALE**

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*(Soos ingedien in die Nasionale Vergadering as 'n artikel 75-wetsontwerp; verduidelikende opsomming van Wetsontwerp in Staatskoerant No 22073 van 16 Februarie 2001 gepubliseer) (Die Afrikaanse teks is die amptelike vertaling van die Wetsontwerp)*

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(MINISTER VIR JUSTISIE EN STAATKUNDIGE ONTWIKKELING)

**[W 9—2001]**

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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.

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# BILL

To amend the Special Investigating Units and Special Tribunals Act, 1996, so as to bring the appointment of the Head of a Special Investigating Unit into line with a judgment of the Constitutional Court; to empower the President to appoint a person as Acting Head of a Special Investigating Unit in the absence of the Head of a Special Investigating Unit; and to provide for matters connected therewith.

**B**E IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

### Amendment of section 3 of Act 74 of 1996

1. Section 3 of the Special Investigating Units and Special Tribunals Act, 1996 (hereinafter referred to as the principal Act), is hereby amended by the substitution— 5

(a) for subsection (1) of the following subsection:

“(1) (a) The President must appoint a **[judge or acting judge of the Supreme Court of South Africa, as]** person who is a South African citizen and who, with due regard to his or her experience, is a fit and proper person to be entrusted with the responsibilities of the office of the head of a Special Investigating Unit established by **[him or her]** the President. 10

(b) If the office of Head of a Special Investigating Unit becomes vacant, or if the Head of such Unit is for any reason not available, the President may appoint any person meeting the requirements referred to in paragraph (a) as the Acting Head of such Unit for the period determined by the President.”; 15

(b) for paragraph (d) of subsection (4) of the following paragraph:

“(d) **[the Head of a Special Investigating Unit must stand down from such office if the President, in consultation with the Judicial Service Commission, so requests.]** the President may at any time remove the Head of a Special Investigating Unit from office if there are sound reasons for doing so.”; and 20

(c) for subsection (5) of the following subsection:

“(5) (a) A member of a Special Investigating Unit **[who is not a judge and]** whose remuneration is not defrayed from public money, may be paid such remuneration, including allowances for subsistence and travelling expenses incurred by him or her in the performance of his or 25

her functions in terms of this Act, as the Minister of Justice in consultation with the Minister of Finance may determine.

(b) A member of a Special Investigating Unit [**who is a judge or** whose remuneration is defrayed from public money, may be paid such allowances in respect of his or her service as such member, including allowances for subsistence and travelling expenses incurred by him or her in the performance of his or her functions in terms of this Act, as the Minister of Justice in consultation with the Minister of Finance may determine.”. 5

#### **Amendment of section 5 of Act 74 of 1996** 10

2. Section 5 of the principal Act is hereby amended by the deletion of subsection (8).

#### **Short title and commencement**

3. This Act is called the Special Investigating Units and Special Tribunals Amendment Act, 2001, and comes into operation on a date fixed by the President by proclamation in the *Gazette*. 15

## **MEMORANDUM ON THE OBJECTS OF THE SPECIAL INVESTIGATING UNITS AND SPECIAL TRIBUNALS AMENDMENT BILL, 2001**

### **1. BACKGROUND**

1.1 On 14 March 1997 the President established a Special Investigating Unit (SIU) in terms of section 2(1) of the Special Investigating Units and Special Tribunals Act, 1996 (the Act) (Proclamation R24 of 14 March 1997). In accordance with section 3(1) of the Act, which provides that "...the President must appoint a judge ... as head of a Special Investigating Unit established by him or her", Judge Heath was appointed as head of the SIU concerned.

1.2 In *South African Association of Personal Injury Lawyers v Heath and Others* (Case CCT 27/00 — judgment delivered on 28 November 2000) the Constitutional Court considered the constitutional validity of—

- (i) the appointment of a judge as the Head of a SIU (section 3(1) of the Act);
- (ii) the proclamation appointing Judge Heath as the Head of the SIU (Proclamation R24 of 1997); and
- (iii) the proclamation referring the allegations concerning the South African Association of Personal Injury Lawyers to the SIU for investigation (Proclamation R31 of 1999).

The Court held that all three of the above were unconstitutional, and the following order was made:

- “(i) *Section 3(1) of Act 74 of 1996 is declared to be inconsistent with the Constitution and invalid.*
- (ii) *Proclamation R24 of 14 March 1997 is declared to be inconsistent with the Constitution and invalid.*
- (iii) *The declarations of invalidity made in regard to section 3(1) of Act 74 of 1996 and Proclamation R24 of 14 March 1997 are suspended for a period of 1 year.*
- (iv) *Proclamation R31 of 1999 is declared to be inconsistent with the Constitution and invalid.*
- (v) *The declaration of invalidity made in regard to Proclamation R31 of 1999 is to take effect from the date of this order.”*

1.3 In terms of paragraph (iii) of the above order, the Legislature has until 27 November 2001 to amend the Act in order to make provision for the appointment of an appropriate person (other than a judge) as the Head of the SIU. The main object of the Bill is therefore to amend the Act in order to enable the President to appoint such a person.

### **2. CONTENTS OF BILL**

2.1 In terms of the amendments proposed in clause 1(a) and (b), the President will have to appoint a person who is a South African citizen and who, with due regard to his or her experience, is a fit and proper person to be entrusted with the responsibilities of that office, as the Head of a SIU. Provision is also made for the appointment of an acting Head of a SIU, should the need arise, and the President is empowered to remove the Head of the SIU from office if there are sound reasons for doing so.

2.2 Clause 1(c) aims to effect certain consequential amendments to section 3 of the Act, due to the fact that a judge will no longer be the head, or a member, of a SIU.

2.3 In terms of section 5(8) of the Act, the Head of a SIU has the power to issue a suspension order or an interdict if he or she has reasonable grounds to believe that any delay which may occur if an application for such an order or interdict is made to a Special Tribunal, may cause serious and irreparable harm to the interests of the public. The view is held that the exercising of this power is clearly a judicial function and, as a SIU will no longer be headed by a judge, it should not be conferred on the Head of a SIU. Clause 2 therefore provides for the deletion of the said subsection (8).

2.4 Clause 3 provides for the short title and commencement of the Bill.

### **3. OTHER DEPARTMENTS/BODIES CONSULTED**

As the Bill is aimed at giving effect to a judgment of the Constitutional Court, no other departments were consulted regarding the content thereof.

### **4. FINANCIAL IMPLICATIONS FOR STATE**

If a person who is not in the employ of the State is appointed as the Head or Acting Head of the SIU concerned, additional expenditure to the amount of approximately R550 000 per annum will be incurred.

### **5. IMPLICATIONS FOR PROVINCES**

None.

### **6. PARLIAMENTARY PROCEDURE**

The State Law Advisers and the Department of Justice and Constitutional Development are of the opinion that this Bill should 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.