

**C - O - M - M - I - S - S - I - O - N**  
FOR THE PROMOTION & PROTECTION  
OF THE RIGHTS OF CULTURAL, RELIGIOUS  
& LINGUISTIC COMMUNITIES

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Date: 30 January 2014

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Dear Mr Ramaano

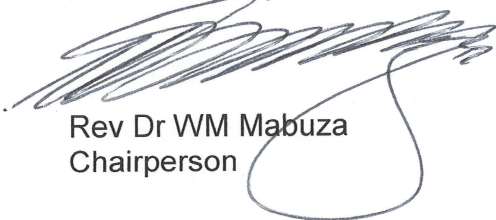
**DETERMINATION OF REMUNERATION OF MEMBERS OF CONSTITUTIONAL  
INSTITUTIONS BILL, 2013**

Your telephonic discussion with Adv. K.A Sedupane on 27 January 2014 refers.

The Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities hereby submits its input into the Determination of Remuneration of members of Constitutional Institutions Bill, 2013. Please find the attached inputs for consideration.

Should there be any query, please do not hesitate to contact Adv Kgositoi Sedupane at 011 537 7600 or 082 889 3885.

Yours sincerely



Rev Dr WM Mabuza  
Chairperson

# Determination of Remuneration of Members of Constitutional Institutions Bill, 2013

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## 1. Definitions

**A Bill** is a proposed legislation. Has no effect (does not apply) until approved by Parliament and assented to by the President.

## 2. General explanatory note

[ ] words a square brackets are words **removed** from the existing law

\_\_\_\_\_ words underlined with solid line are **new words** in the existing law. They can be used only as an insertion or to substitute the words in square brackets.

## 3. Long title:

Defines the nature and scope of the Bill – the purpose of the Bill.

For example the Bill reads as: to amend the Public Protector Act so as to substitute a definition and insert a definition; and to further regulate the determination of remuneration and other terms and conditions of employment of the Public Protector and Deputy; to amend the Human Rights Commission Act, 1994, so as to insert a definition; to further regulate the determination of remuneration, allowance and other terms and conditions of office and service benefits of members of the SAHRC; ..... **the Human Rights Commission long title applies to the CGE and IEC.**

CRL Rights Commission Long Title read as follows: to amend the CRL Rights Commission Act, 2002, so as to insert a definition; and to further regulate the determination of the conditions of employment of members of the CRL Rights Commission. **The Public Audit Act, 2004, (re the Auditor-General) reads in the same way as the CRL Rights Commission.**

## 4. Comparison in terms of the provisions of the Bill between Chapter 9s

The CRL Rights Commission and A-G amendments focus only on the conditions of employment but not determination of remuneration as against the Human Rights Commission and others.

**Preamble** looks at the mischief/problem of lack of uniformity. The Bill therefore seeks to address that.

**Section 10(f) of the Bill:** The Independent Commission for the Remuneration of Public Office-bearers Act 92 of 1997 is amended to include any member of a constitutional institution in the definition of an office bearer.

**Section 11(3) of the Bill:** The Independent Commission for the Remuneration of Public Office-bearers Act 92 of 1997 may conduct research and obtain information from the chief executive officer of any constitutional institution as may be necessary for the performance of the functions of the Commission under this Act, section 219 of the Constitution or any other law.

(3A) Whenever the Commission performs any function in terms of this Act relating to the remuneration of any office-bearer as defined-

- (a) In paragraph (d)(i) of the definition of office-bearer in section 1, must have regard to the provisions of the Judges' Remuneration and Condition of Employment Act 47 of 2001, and in particular to section 2<sup>1</sup> of the Act;
- (b) The magistrate Act.....
- (c) In paragraph (f) of the definition of office-bearer in section 1, it must have regard to the provisions of the law in terms which such an office bearer has been appointed.

“(6) (a)

(b) When making recommendations referred to in subsection (4)<sup>2</sup> in respect of any office-bearer as defined in paragraph (f) of the definition of office-bearer in section 1, the Commission must, where applicable, also take the following factors into account:

- (i) the remuneration, allowances and other benefits of members of other constitutional institutions;
- (ii) affordability in relation to the responsibilities of the constitutional institutions concerned; and
- (iii) the level of expertise and experience required of a member of the constitutional institutions concerned.”.

**Section 13 of the Bill:** is only concerned with the appointment of CRL Rights Commission members and their conditions of employment but does not make reference to remuneration.

**Section 15 of the Bill:** make provision to the salary, allowances and other benefits for the Auditor General as determined by the President

#### 5. Sections dealing with remuneration and allowance of members of Chapter 9 institution in their own specific Acts

PP, HRC, IEC, CGE Acts make provision for the remuneration and allowances of members of the Commissions. The CRL Right Commission does not.

IEC	HRC	CGE	PP	AG
Section 7	Section 13	Section 8	Section 2	Section 7

#### 6. Addressing lack of uniformity among Chapter 9 institutions on remuneration and allowance procedure (Recommendation)

<sup>1</sup> 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 amount referred to in section 13 (**regulations by President re recesses; leave of absence, method of transport, amount payable to for accommodation of CC judges or Supreme Court of Appeal**) 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.

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

<sup>2</sup> (a) Salary, allowances and benefits; (c) the resources to necessary to enable the office-bearer to perform functions effectively

Reading from the Long title of the Bill, the intention is to amend/supplement to address/ deal with the problem/matter. The matters refer to conditions of office/employment; and remuneration and benefits.

Realising the Commission's Act is silent about the remuneration and allowance of members of the Commission (part-time or full-time), and in order to address the lack of uniformity in the procedure for determining the salaries, allowances and benefits of members of Chapter 9 institutions as per the preamble of the current Bill, we therefore need to use this Bill to supplement the Commission's Act including an amendment in Bill on the remuneration and allowances of members of the Commission.

Section 14 of the Commission's Act deals with the conditions of appointment of members of the Commission. We there need to insert a section immediately after section 14 to provide for the remuneration and allowances of members of the Commission.

## **7. Numbering of the Act**

In order not to interfere with the numbering of the Commission's Act, the section on remuneration and allowances of members of the Commission shall be numbered as follows and shall read thus in the Bill:

### **Amendment of section 14 of Act 19 of 2002**

**16.** Section 14 of the principal Act is hereby amended by the insertion after section 14 of the following section:

#### **14(A) "Remuneration and allowances of members of the Commission**

(1) The full-time and part-time members of the commission shall be entitled to such remuneration, allowances and other terms and conditions of office and service benefits=

- (a) as determined by the President, from time to time, by notice in the Gazette, after taking into consideration the recommendations of the Independent Commission; and
- (b) approved by Parliament in terms of subsection (5).

(2) The remuneration of the members of the Commission shall not be reduced, nor shall the allowances and other terms and conditions of office and services benefits be adversely altered, during their continuation in office.

(3) The Independent Commission shall, when investigating or considering the remuneration, allowances and other terms and conditions of the office and service benefits of the members of the Commission, consult with the Cabinet member responsible for cooperative governance and traditional affairs and for finance.

(4) A notice in terms of subsection (1)(a) or any provision thereof may commence with effect from a date specified in the notice, which date may not be more than one year before the date of publication of the notice.

(5) (a) A notice issued under subsection (1)(a) shall be submitted to Parliament for approval before publication thereof.

(b) Parliament shall, by resolution—

- (i) approve the notice, whether in whole or in part; or
- (ii) disapprove the notice.

(6) A part-time member of the Commission may, for any period during which that member, with the approval of the Commission, performs additional duties and functions, be paid such additional remuneration as may be determined by the President after—

- (a) taking into consideration the recommendation of the Independent Commission; and

(b) consulting the Cabinet member responsible for cooperative governance and traditional affairs and for finance.".

**Prepared by Adv Kgositso Sedupane  
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CRL Rights Commission  
2013/01/24**