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PARLIAMENT

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Briefing document: Determination of Remuneration of Office Bearers of Independent Constitutional Institutions Laws Amendment Bill [B31B-2013]

1. Introduction

The Bill seeks to give effect to section 219 of the Constitution, 1996 which deals with the remuneration of public office bearers and which states that “[n]ational legislation must establish frameworks for determining the salaries, allowances and benefits of judges, the Public Protector, the Auditor-General and members of any commission provided for in the Constitution, including the broadcasting authority (ICASA) referred to in section 192”.

Currently Parliament considers notices in respect of the recommendations made to the President by the Independent Commission for the Remuneration of Public Office Bearers on the annual salary adjustments of the Judges, Magistrates, Members of Parliament, Members of the Cabinet, the President and Traditional Leaders. The Bill will thus bring salary determinations of the Public Protector, the Auditor-General, the South African Human Rights Commission, other commissions, as well as ICASA, also under the ambit of the Independent Commission for the Remuneration of Public Office Bearers.

2. Objects of Bill

The Bill amends the relevant legislation to provide for a uniform procedure to be followed in respect of the determination of the remuneration, allowances and other terms and conditions of employment and service benefits of the Public Protector, the Deputy Public Protector, the Auditor-General and office bearers of other Chapter 9 Institutions (Commission for Gender Equality, South African Human Rights Commission and Independent Electoral Commission). It states that they will be entitled to such remuneration, allowances and other terms and conditions of employment and service benefits, as the case may be, as determined by the President, from time to time, by notice in the Gazette, after taking into consideration the recommendations of the Independent Commission for the Remuneration of Public Office-bearers. The Independent Commission must consult in this regard with the responsible Cabinet member and the Cabinet member responsible for finance.

Currently a notice must be approved by Parliament which must, by resolution either approve the notice (in whole or in part); or disapprove the notice. In terms of the B-version of the bill, however, the Portfolio Committee of Justice and Constitutional Development (“the Portfolio Committee”) decided that such notices must be referred to the National Assembly only, as the NCOP does not play a role in the appointment of office bearers of ICASA and Chapter 9 institutions.

3. Summary of main Portfolio Committee amendments

(a) Title of Bill

The Portfolio Committee changed the title of the bill so that the new short title reads "Determination of Remuneration of Office Bearers of Independent Constitutional Institutions Laws Amendment Bill". "Remuneration" would cover salaries, allowances and benefits.

(b) Clauses deleted that would affect tagging of bill

New clauses inserted to cater for the contemplation of inclusion of the Public Service Act were deleted, as references to the Public Service Commission and Financial and Fiscal Commission would have affected the tagging of the bill.

(c) New definitions to be inserted in founding Act of Independent Remuneration Commission

New definitions are to be inserted into the Remuneration of Public Office Bearers Act, 1998 for "constitutional institution" and "office bearer". Members decided that it was very important to retain the new section 8(6)(b)(ii) on page 19, which spoke to considerations around affordability.

(d) No benchmarking of salaries in bill

On the question whether salaries of the Auditor-General and the Public Protector should be pegged at a certain level, the Portfolio Committee decided that it would prefer not to include any benchmarking and that the determination should be left entirely to the Independent Remuneration Commission.

(e) General principles

- (i) It was agreed that the Bill should consistently reflect the wording used in section 219(5) of the Constitution, namely "salaries, allowances and benefits", in reference to all institutions.
- (ii) References to approval by or tabling in "Parliament" were replaced with "the National Assembly" due to its role in the appointment of public office bearers of Chapter 9 institutions and of ICASA.
- (iii) The Portfolio Committee majority decided that the bill should provide that the Independent Remuneration Commission must, when investigating or considering the remuneration recommendations, consult with both the relevant line minister and the Cabinet member responsible for finance.

- (iv) Part-time and full-time members of the Commission for Gender Equality, South African Human Rights Commission and Independent Electoral Commission should have their “salaries, allowances and benefits” determined by the Independent Commission. The references to additional work or remuneration should be deleted from the respective Acts governing these bodies,

