

INVITATION FOR PUBLIC COMMENTS
ON
THE SMALL CLAIMS COURTS AMENDMENT BILL

1. INVITATION

1.1 The Department of Justice and Constitutional Development invites interested parties to submit written comments on the proposed draft Small Claims Courts Amendment Bill (the Bill), which is attached.

1.2 The comments on the Bill must be submitted not later than **22 August 2014**, marked for the attention of Mr JA de Lange, and —

(a) if they are forwarded by post, be addressed to —

The Director-General: Justice and Constitutional Development

Private Bag X 81

Pretoria

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(b) if they are submitted by email, be emailed to JDelange@justice.gov.za

(d) if they are faxed, be faxed to 086 507 2569

1.3 For further information, please do not hesitate to contact JA de Lange at 021 – 832 3111

2. BACKGROUND NOTE

The following background information is hereby furnished in order to assist interested parties to comment on the proposed amendment of the Small Claims Courts Act, 1984 (Act No. 61 of 1984) (the Act).

2.1 Small claims courts were established by, and function in terms of, the principal Act. The main objective of the Act is to provide an inexpensive and accessible adjudication forum to individuals in respect of relatively small monetary claims that are not of a complex nature. The maximum amount of a claim in a small claims court is presently fixed at R15 000. Small claims courts are presided over by commissioners, appointed mostly from the ranks legal practitioners, who deliver this service free of charge. Legal representation is not allowed in a small claims court and a judgment of the court is final and cannot be appealed against.

2.2 In line with the concept of providing individual parties with an inexpensive and accessible forum for the adjudication of relatively minor disputes, the principal Act has from the outset provided (in section

14(2)) that “*no action shall be instituted against the State in a (small claims) court*”. It is important to note that the principal Act does not prevent an aggrieved party from instituting an action against the State, it only prevents a party from bringing such action in a small claims court. The State, which comprises of all organs of state at the national, provincial and local government levels, clearly does not fit the description of “individuals” as contemplated above. The *Institution of Legal Proceedings Against Certain Organs of State Act, 2002* (Act 40 of 2002), sets out the framework within which legal proceedings might be brought against the State.

2.3 Notwithstanding the exclusion of actions against the State in the small claims courts, there have lately been a number of attempts to institute actions against functionaries or employees of the State, in their personal capacity, in respect of their acts or omissions in the course of performing their official duties. (An example of such an action was where an official was involved in a motor vehicle accident whilst driving in the course of official duties.) Such attempts are not in line with the prohibition contained in section 14(2) of the principal Act.

2.4 The Bill firstly amends section 1 of the principal Act by inserting a definition of the expression "State". In terms of the definition, “State” would include-

- (a) any national or provincial department;
- (b) a municipality contemplated in section 151 of the Constitution;
- (c) any functionary or institution exercising a power or performing a function in terms of the Constitution or a provincial constitution referred to in section 142 of the Constitution;
- (d) any other institution listed in Schedule 1, 2, or 3 of the Public Finance Management Act, 1999 (Act No. 1 of 1999); and
- (e) any municipal entity as defined in section 1 of the Local Government Municipal Systems Act, 2000 (Act No. 32 of 2000);”.

2.5 The Bill also amends section 14(2) by adding that an action may not be instituted in a small claims court against any functionary or employee of the State arising out of any act or omission by him or her in the exercise of his or her powers or the performance of his or her functions as such functionary or employee.

REPUBLIC OF SOUTH AFRICA

DRAFT SMALL CLAIMS COURTS AMENDMENT BILL

(MINISTER OF JUSTICE AND CORRECTIONAL SERVICES)

[B – 2014]

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.

B I L L

To amend the Small Claims Courts Act, 1984, so as to insert a definition; to further regulate the jurisdiction of a small claims court; and to provide for matters connected therewith.

PARLIAMENT of the Republic of South Africa, enacts as follows:—

Amendment of section 1 of Act 61 of 1984, as amended by section 1 of Act 92 of 1986 and section 1 of Act 14 of 1990

1. Section 1 of the Small Claims Courts Act, 1984 (Act No. 61 of 1984), is hereby amended by the insertion, after the definition of “record”, of the following definition:

“ ‘State’ means—

- (a) any national or provincial department;
- (b) a municipality contemplated in section 151 of the Constitution;
- (c) any functionary or institution exercising a power or performing a function in terms of the Constitution or a provincial constitution referred to in section 142 of the Constitution;
- (d) any other institution listed in Schedule 1, 2, or 3 of the Public Finance Management Act, 1999 (Act No. 1 of 1999); and
- (e) any municipal entity as defined in section 1 of the Local Government Municipal Systems Act, 2000 (Act No. 32 of 2000);”.

Amendment of section 14 of Act 61 of 1984, as amended by section 23 of Act 139 of 1992

2. Section 14 of the Small Claims Courts Act, 1984 (Act No. 61 of 1984), is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) No action shall be instituted in a court against the State **[in a court]** or against any functionary or employee of the State arising out of any act or omission by him or her in the exercise of his or her powers or the performance of his or her functions as such functionary or employee.”.

Short title

3. This Act is called the Small Claims Courts Amendment Act, 2014.