



27 October 2015

JUDICIAL MATTERS AMENDMENT BILL [B2B – 2015] – KEY PORTFOLIO COMMITTEE AMENDMENTS

1. INTRODUCTION

The Judicial Matters Amendment Bill was introduced in Parliament as a s75 Bill.

Role players consulted by the Department included the Office of the Chief Justice, lower court judiciary, the Intersectoral Committee for the Management of Sexual Offences Matters and the National Treasury. There are, however, no financial implications associated with the amendments proposed by the Bill.

2. PUBLIC CONSULTATION DONE BY PARLIAMENT

The Portfolio Committee (PC) on Justice and Correctional Services received a joint submission by the Centre for Child law; Community Law Centre, RAPCAN; Women's Legal Centre, L Wakefield and L Vetten, as well as submissions from the Special Investigating Unit (SIU), Law Society of South Africa, Commission for Gender Equality, Banking Association South Africa and James Galloway.

Public hearings on the Bill were held at Parliament on 5 August 2015 which only dealt with the joint submission and that of the SIU.

The Portfolio Committee concluded its deliberations and adopted the Bill with amendments on 21 October 2015.

3. SELECTED AMENDMENTS PROPOSED BY THE JUDICIAL MATTERS AMENDMENT BILL

The Bill seeks to amend a number of different Acts administered by the Department of Justice and Constitutional Development in order to address identified practical challenges in their implementation. These include:

- *Challenges experienced by the Magistrate's Commission to fill vacant posts within three months. The Bill therefore amends section 9(5) of the Magistrate's Court Act 32 of 1944, to increase the period of employment of an acting magistrate from the current three months to 12 months.*
- *Currently magistrates who are appointed as judges are deemed to have retired, and can receive certain retirement benefits. The Bill amends section 13 of the Magistrate's Court Act 90 of 1993, to reverse the current situation and provide that affected magistrates can request the Government Employees Pension Fund (GEPF) to (a) transfer the actuarial interest¹ to a designated preservation fund until the member actually retires; or (b) pay out the full benefit amount.*
- *The establishment of the Office of the Chief Justice (OCJ) and Judicial Administration as a separate Department to oversee the judiciary and the courts means that the current reporting and other responsibilities assigned to relevant office bearers in the Department of Justice must be amended in relevant legislation.*

¹ The value of the member's share in the GEPF based *inter alia* on age, years of service and final salary, calculated in terms of a specified formula.



- **The Bill amends sections 1 and 91A of the Promotion of Access to Information Act (PAIA), section 1 and 9A of the Promotion of Administrative Justice Act 3 of 2000 (PAJA) and sections 11 and 31 of the Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000 (PEPUDA) to:**
 - (a) Extend training on PAIA and PAJA applicable to regional magistrates and (b) provide for the (i) Magistrates Commission to be informed about regional court magistrates who have completed PAIA and PAJA training courses and (ii) South African Judicial Education Institute to develop and implement PAIA and PAJA training courses for presiding officers.**
- **The Bill amends the Judges' Remuneration and Conditions of Employment Act 47 of 2001, to provide that the Secretary-General of the OCJ:**
 - (a) must be notified when superior court judges who have been discharged from active service commence their mandatory annual three month service period and (b) is responsible for (i) keeping a register of the service of such judges and (ii) the administration of the Judges' Remuneration and Conditions of Employment Act.**
- **The Bill also amends sections 1 and 13 of the South African Judicial Education Institute Act 14 of 2008, to make the Secretary-General of the OCJ the Accounting officer of the South African Judicial Education Institute who is also responsible for the administration of the South African Judicial Education Institute Act.**
- *The Department cites practical challenges in complying with the current annual intersectoral consolidated reports that must be submitted to Parliament in terms of the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007 (SOA) and the Child Justice Act 75 of 2008 (CJA). The Bill amends the SOA and the CJA to allow role player departments and institutions to submit separate annual reports on the implementation of these Acts.*
- *Currently there is no retrospective expungement that applies to less serious offences committed by children. The Bill therefore amends section 98 of the CJA to allow for the expungement of the criminal records of children who have committed less serious offences.*
- *The Prevention and Combating of Trafficking in Persons Act 7 of 2013 ('Trafficking Act') provides that a visitor's visa can be granted to a victim of trafficking. However, there is uncertainty regarding this provision in the case of a trafficking victim who already has a visitor's visa.*
- **The Bill amends sections 15 and 43 of the Trafficking Act to (i) clarify that a visitor's visa can only be granted to a foreign victim of trafficking (aa) who does not already have such a visa, (bb) if the existing visa is about to expire and (cc) the victim co-operates with law enforcement agencies; and (ii) provide that the Minister of Home Affairs may make regulations regarding the extension or withdrawal of a visitor's visa.**

4. MAIN ISSUES / CONCERNS RAISED IN SUBMISSIONS

- The SIU's submissions dealt with provisions that provided for interested persons to request progress reports on matters under investigation by the SIU. These provisions (originally Clauses 6 and 15 of the Bill) were later deleted by the Department with the PC's agreement. A consequential amendment was



made to the Long Title to delete references to the SIU as the Bill no longer deals with any matters concerning the SIU.

- The joint submission by a number of NGOs and academia related to the amendment to the requirement that the Minister of Justice and Correctional Services must submit reports compiled by interdepartmental committee of Directors-General regarding the implementation of the SOA and the CJA, respectively, which also require the role player departments (Justice and Constitutional Development, Health, Social Development, the South African Police Services, the National Prosecuting Authority and Correctional Services) to co-operate on planning and implementation (and thus no longer work in silos).

Despite the shortcomings in these annual implementation reports, Parliament and civil society are at least provided with information about the implementation of the respective Acts in a single, comprehensive and dedicated inter-sectoral report. According to the submission the proposed amendments will dilute the reporting provisions as information on the Acts' implementation will instead be contained in a section of the affected Departments' Annual Reports (with possibly significantly less information on the implementation of these key Acts), as the Annual Reports also deal with *inter alia* annual performance and financial statements.

4. PORTFOLIO COMMITTEE AMENDMENTS TO THE JUDICIAL MATTERS AMENDMENT BILL

- **LONG TITLE**

The Long Title was amended to delete the reference to the Special Investigating Unit and Tribunals Act, 1996 and the SIU.

- **CLAUSE 6**

Clause 6 was deleted (technically 'rejected') as the Department no longer wants the Bill to deal with matters pertaining to the SIU.

- **CLAUSE 15**

Clause 15, which dealt with the amendment of section 65 of the SOA, was deleted (technically 'rejected') by the Portfolio Committee and substituted with a new clause. This clause provides that the Minister of each role player Department must submit separate annual reports (in a manner to be prescribed by Regulations) to Parliament by no later than 30 September of every year.

Clause 15 now becomes Clause 14 due to the deletion of Clause 3.

- **CLAUSE 17**

Clause 17, which dealt with the amendment of section 1 of the South African Judicial Education Institute Act 14 of 2008, was rejected by the Portfolio Committee and substituted with a new clause.

Clause 17 now becomes Clause 16 and contains a new subsection (c) to clarify the reference to the OCJ as the national department proclaimed in 2010; and the Secretary-General to mean the Secretary-General of the OCJ.



The Portfolio Committee also inserted a new subsection (d) in the new Clause 16 to provide that the definition of ‘the Act’ also includes guidelines issued under section 16 (i.e. Clause 16 when enacted).

- **NEW CLAUSE 17**

The Portfolio Committee inserted a new Clause 17 to amend section 12 of the South African Judicial Education Institute Act 14 of 2008, which was not contained in the original Bill.

The new provision provides for the submission of quarterly management reports to the Secretary-General of the OCJ.

- **CLAUSE 19**

Clause 19, which dealt with section 96 of the CJA, was rejected by the Portfolio Committee and substituted with a new clause. The new Clause 19 provides that the Minister of each role player Department must submit a separate annual report (in a manner to be prescribed by Regulations) to Parliament by no later than 30 September.

- **CLAUSE 23**

The Short title and commencement clause was amended to include reference to section 12 of the South African Judicial Education Institute Act 14 of 2008, which was amended by the new Clause 17 inserted in the Bill.

5. ROLE OF THE NCOP

The Bill is classified as a s75 Bill.

The Select Committee on Security and Justice can make non-binding proposal(s) on possible amendments to the National Assembly for consideration.

SOURCES

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