

REPUBLIC OF SOUTH AFRICA

**REPEAL OF THE BLACK
ADMINISTRATION ACT AND
AMENDMENT OF CERTAIN LAWS
AMENDMENT BILL**

*(As introduced in the National Assembly (proposed section 75); explanatory summary of
Bill published in Government Gazette No. 30172 of 13 August 2007)
(The English text is the official text of the Bill)*

(MINISTER FOR JUSTICE AND CONSTITUTIONAL DEVELOPMENT)

[B 34—2007]

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BILL

To amend the Repeal of the Black Administration Act and Amendment of Certain Laws Act, 2005, so as to substitute a date; and to provide for matters connected therewith.

PREAMBLE

WHEREAS the current functions of traditional leaders relating to the administration of justice are regulated largely by some of the provisions of the Black Administration Act, 1927, which do not, in all respects, accord with constitutional imperatives;

AND WHEREAS national legislation has already been enacted to repeal the Black Administration Act, 1927, with effect from 30 September 2007;

AND WHEREAS comprehensive national legislation to regulate the functions of traditional leaders in the administration of justice should be informed by a policy framework, after the necessary consultation, particularly with the institution of traditional leadership;

AND WHEREAS it is necessary to postpone the repeal of certain provisions of the Black Administration Act, 1927, pending the finalisation of the policy framework, the consultation process and the enactment of legislation to regulate the functions of traditional leaders in the administration of justice, in order to avoid a legal vacuum,

BE IT THEREFORE ENACTED by the Parliament of the Republic of South Africa, as follows:—

Amendment of section 1 of Act 28 of 2005, as amended by section 1 of Act 8 of 2006

1. Section 1 of the Repeal of the Black Administration Act and Amendment of Certain Laws Act, 2005, is hereby amended by the substitution in subsection (3) for the date “30 September 2007”, of the date “30 June 2008”. 5

Short title and commencement

2. This Act is called the Repeal of the Black Administration Act and Amendment of Certain Laws Amendment Act, 2007, and comes into operation on 29 September 2007.

**MEMORANDUM ON THE OBJECTS OF THE REPEAL OF THE
BLACK ADMINISTRATION ACT AND AMENDMENT OF CERTAIN
LAWS AMENDMENT BILL, 2007**

1. PURPOSE OF BILL

The purpose of the Bill is to amend the Repeal of the Black Administration Act and Amendment of Certain Laws Act, 2005, in order to substitute a date.

2. OBJECTS OF BILL

2.1 Section 1(3) of the Repeal of the Black Administration Act and Amendment of Certain Laws Act, 2005 (the Act), provides that the remaining provisions of sections 12 and 20 and the Third Schedule of the Black Administration Act, 1927 (Act No. 38 of 1927), will be repealed on 30 September 2007 or on such date as national legislation to further regulate the matters dealt with in these provisions has been implemented, whichever occurs first. These sections deal with the functions of traditional leaders in relation to the administration of justice.

2.2 Shortly after the enactment of the Repeal of the Black Administration Act and Amendment of Certain Laws Act, 2005, work began on the preparation of national legislation to substitute sections 12 and 20 of the Black Administration Act, 1927. It soon became evident that the existing legal regime regulating the judicial functions of traditional leaders is so complex and disjointed, that in October 2006 the Minister for Justice and Constitutional Development appointed an interdepartmental task team, consisting of representatives of the Departments of Justice and Constitutional Development, of Land Affairs and of Provincial and Local Government, to develop a policy framework which will culminate in the enactment of legislation for the entire country. This task team has reached an advanced stage in the preparation of a document that is intended to form the basis of a comprehensive consultation process. The enactment of legislation flowing from this policy document before the deadline of 30 September 2007 is, however, not achievable; hence the need for this Bill.

3. DEPARTMENTS/BODIES/PERSONS CONSULTED

The following Departments were consulted on the Bill:

- Land Affairs; and
- Provincial and Local Government.

4. IMPLICATIONS FOR PROVINCES

None.

5. FINANCIAL IMPLICATIONS

None.

6. PARLIAMENTARY PROCEDURE

6.1 The State Law Advisers and the Department of Justice and Constitutional Development are of the view that this Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution since it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.

6.2 The State Law Advisers are of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities, as it only relates to the substitution of a date.

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