

REPUBLIC OF SOUTH AFRICA

PROMOTION OF EQUALITY AND PREVENTION OF UNFAIR DISCRIMINATION AMENDMENT BILL

*(As introduced in the National Assembly as a section 75 Bill; explanatory summary of Bill
published in Government Gazette No 23728 of 8 August 2002)
(The English text is the official text of the Bill)*

(MINISTER FOR JUSTICE AND CONSTITUTIONAL DEVELOPMENT)

[B 41—2002]

IRIPABLIKI YASENINGIZIMU AFRIKA

UMTHETHOSIVIVINYWA WOKUCHIBIYELA UKUQHUBEKISA UKULINGANA NOKUVIMBELA UBANDLULULO OLUNGALUNGILE

*(Njengokuba ungeniswe kuMgwamanqa kaZwelonke njengoMthethosivivinywa wesigaba
75; isiqoqo esichachisayo soMthethosivivinywa kuGazethi kaHulumeni No 23728 ka
8 kuAgasti 2002) (Ulimi lwesiNgisi ilona olubhalwe ngalo uMthethosivivinywa)*

(UNGQONGQOSHE WOBULUNGISWA NOKUTHUTHUKISWA
KOMTHETHOSISEKELO)

[B 41—2002]

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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.

BILL

To amend the Promotion of Equality and Prevention of Unfair Discrimination Act, 2000, so as to further regulate the designation of presiding officers of equality courts; to provide for the designation of magistrates' courts as equality courts; and to provide for matters connected therewith.

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

Substitution of section 16 of Act 4 of 2000

1. The following section is hereby substituted for section 16 of the Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 (hereinafter referred to as the principal Act): 5

“Equality courts and presiding officers

- 16.** (1) For the purposes of this Act, but subject to section 31—
- (a) every High Court is an equality court for the area of its jurisdiction;
 - (b) any judge may, subject to subsection (2), be designated in writing by the Judge President as a presiding officer of the equality court of the area in respect of which he or she is a judge and the Judge President must, without delay, inform the Director-General of the Department of such designation; 10
 - (c) the Minister must, in consultation with the head of an administrative region defined in section 1 of the Magistrates' Courts Act, 1944 (Act No. 32 of 1944), by notice in the *Gazette*— 15
 - (i) designate one or more magistrates' courts as equality courts for the administrative region concerned;
 - (ii) define the area of jurisdiction of each equality court, which may consist of any number of districts, subdistricts or other areas of jurisdiction created in terms of section 2 of the Magistrates' Courts Act, 1944; 20
 - (iii) increase or reduce the area of jurisdiction of each equality court;

- (iv) appoint one or more places within the area of jurisdiction of each equality court for the holding of equality court sittings; and
- (d) the head of an administrative region contemplated in paragraph (c) must, subject to subsection (2), designate in writing any magistrate or additional magistrate as a presiding officer of the equality court and such head must, without delay, inform the Director-General of the Department of such designation. 5
- (2) Only a judge, magistrate or additional magistrate, who has completed a training course as a presiding officer of an equality court, as contemplated in section 31(4), may be designated as such in terms of subsection (1). 10
- (3) The Director-General of the Department must compile and keep a list of every judge, magistrate and additional magistrate who has been designated as a presiding officer of an equality court in terms of subsection (1).
- (4) A presiding officer must perform the functions and exercise the powers assigned to or conferred on him or her under this Act or any other law.”. 15

Amendment of section 17 of Act 4 of 2000

2. Section 17 of the principal Act is hereby amended by the—

- (a) substitution for paragraphs (a) and (b) of subsection (1) of the following paragraphs, respectively: 20
 - “(a) Subject to subsection (2) and the laws governing the public service, the Director-General of the Department may, for every equality court, appoint or designate one or more officers in the Department, or may appoint one or more persons in the prescribed manner and on the prescribed conditions, as clerks of the equality court, who must generally assist the court to which they are attached in performing its functions and who must perform the functions as may be prescribed. 25
 - (b) If a clerk of an equality court is for any reason unable to act as such or if no clerk has been appointed or designated for any equality court under paragraph (a), the presiding officer concerned may, despite subsection (2), designate any competent officer in the Department to act as clerk for as long as the said clerk is unable to act or until a clerk is appointed or designated under paragraph (a), as the case may be.”; and 30
- (b) addition of the following subsection: 35
 - “(2) Only an officer or person contemplated in subsection (1)(a) who has completed a training course as clerk of an equality court, as contemplated in section 31(5), may be appointed or designated as such under subsection (1)(a).”.

Amendment of section 31 of Act 4 of 2000

3. Section 31 of the principal Act is hereby amended by the—

- (a) substitution for subsection (1) of the following subsection: 40
 - “(1) Despite section 16(1)[(a) and (b), and until the Minister determines by notice in the *Gazette*,] no proceedings may be instituted in any court unless[— 45
 - (a)] a presiding officer [is available who has been designated, by reason of his or her training, experience, expertise and suitability in the field of equality and human rights;] and
 - [(b)] one or more [trained] clerks are available.”;

- (b) substitution for paragraph (a) of subsection (2) of the following paragraph:
 “(a) and in giving effect to subsection (1), **[the Minister may designate suitable]** magistrates, additional magistrates or judges, as the case may be, and clerks referred to in subsection (1) may be—
 (i) designated as presiding officers; and
 (ii) appointed or designated as clerks,
 respectively, for one or more equality courts;”;
- (c) substitution for subsections (3), (4) and (5) of the following subsections, respectively:
- “(3) (a) The **[Minister]** Director-General of the Department must take all reasonable steps within the available resources of the Department to **[designate at least one presiding officer and]** ensure that a **[trained]** clerk is available for each court in the Republic.
 (b) The Judges President and the heads of administrative regions must take all reasonable steps within available resources to designate at least one presiding officer for each equality court within his or her area of jurisdiction.
 (4) The **[Minister]** Judicial Service Commission must, **[after]** in consultation with the Magistrates Commission, **[and the Judicial Service Commission, issue policy directives and]** develop and implement training courses with a view to—
 (a) establishing uniform norms, standards and procedures to be observed by presiding officers **[and clerks]** in the performance of their functions and duties and in the exercise of their powers; and
 (b) building a dedicated and experienced pool of trained and specialised presiding officers **[and clerks]**.
 (5) The **[Minister must table a copy of any policy directive issued in terms of subsection (4) in Parliament within a reasonable period after the finalisation thereof]** Director-General of the Department must develop and implement a training course for clerks of equality courts with a view to—
 (a) establishing uniform norms, standards and procedures to be observed by clerks in the performance of their functions and duties; and
 (b) building a dedicated and experienced pool of trained and specialised clerks.”.

Short title

4. This Act is called the Promotion of Equality and Prevention of Unfair Discrimination Amendment Act, 2002.

MEMORANDUM ON THE OBJECTS OF THE PROMOTION OF EQUALITY AND PREVENTION OF UNFAIR DISCRIMINATION AMENDMENT BILL, 2002

1. PURPOSE OF BILL

The purpose of the Bill is to further regulate the training and designation of presiding officers of equality courts established in terms of Chapter 4 of the Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 (Act No. 4 of 2000) (“the Act”), and to provide for the incremental implementation of equality courts at magistrate’s court level.

2. OBJECTS OF BILL

2.1 Since its enactment the objection has been raised that the provisions of sections 16 and 31 of the Act infringe on the independence of the judiciary and the principle of the separation of powers. Clause 1 of the Bill aims to substitute section 16 of the Act. Firstly it provides that every High Court is an equality court for the area of its jurisdiction (proposed new section 16(1)(a)). This is the current situation. The proposed new section 16(1)(b) provides that only a judge who has completed a training course contemplated in the new subsection (2) may be designated by the Judge President concerned as a presiding officer of the equality court. This is in contrast to the existing provision (section 31(1)(a)) which provides that presiding officers are designated by reason of their training, experience, expertise and suitability in the field of equality and human rights.

2.2 The proposed new section 16(1)(c) provides that the Minister must, in consultation with the head of an administrative region defined in section 1 of the Magistrates’ Courts Act, 1944, designate one or more magistrates’ courts as equality courts for the administrative region concerned. The Minister is further empowered to define the area of jurisdiction of each equality court, increase or reduce the area of jurisdiction of each equality court and appoint one or more places within the area of jurisdiction of each equality court for the holding of equality court sittings. The relevant amendment aims to facilitate the incremental implementation of equality courts at magistrate’s court level. This is in contrast to the existing position which provides that every magistrate’s court is an equality court for the area of its jurisdiction.

2.3 The designation of magistrates and additional magistrates will in terms of the proposed new section 16(1)(d) be left to the head of every administrative region concerned. The designations, as is the case with judges, may only take place from the group of magistrates and additional magistrates who have completed the relevant training course contemplated in the proposed new subsection (2).

2.4 The proposed new subsection (3) places an obligation on the Director-General to compile and keep a list of the names of designated presiding officers in the interests of transparency and openness. Subsection (4) makes it clear that a presiding officer of an equality court may also perform his or her duties as a magistrate in the normal course of events.

2.5 Clause 2 of the Bill aims to amend section 17 of the Act so as to provide that only an officer in the Department of Justice and Constitutional Development or another person who has completed a training course as clerk of the equality court may be appointed or designated as such.

2.6 Clause 3 of the Bill aims to effect certain consequential amendments to section 31 in view of the proposed substitution of section 16 of the Act. The most notable amendment to section 31 is the proposed amendment of subsection (4) which currently provides that the Minister must, after consultation with the Magistrates Commission and Judicial Service Commission, issue policy directives and develop training courses for presiding officers and clerks. The proposed amendment to subsection (4) aims to place

the obligation to develop and implement training courses for presiding officers on the Judicial Service Commission and the Magistrates Commission.

3. DEPARTMENTS/BODIES/PERSONS CONSULTED

The Judges President, Chief Magistrates, Regional Court Presidents and Heads of Administrative Regions were consulted.

4. IMPLICATIONS FOR PROVINCES

None

5. FINANCIAL IMPLICATIONS FOR STATE

The proposed amendments will contribute towards a more efficient management of the resources available to the Department to implement the provisions of Chapter 4 of the Promotion of Equality and Prevention of Unfair Discrimination Act, 2000.

6. PARLIAMENTARY PROCEDURE

The State Law Advisers and the Department of Justice and Constitutional Development are of the opinion that the 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.