

REPUBLIC OF SOUTH AFRICA

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# PROMOTION OF ADMINISTRATIVE JUSTICE AMENDMENT BILL

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*(As introduced in the National Assembly as a section 75 Bill; explanatory summary of Bill  
published in Government Gazette No 23807 of 30 August 2002) (The English text is the  
official text of the Bill)*

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(MINISTER FOR JUSTICE AND CONSTITUTIONAL DEVELOPMENT)

[B 46—2002]

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IRIPHABLIKHI YOMZANTSI AFRIKA

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# UMTHETHO OYILWAYO OLUNGISAYO WENKUTHAZO YOKUPHATHA NGOBULUNGISA

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*(Njengoko yazisiwe kwiNdibano yeSizwe njengoMthetho oYilwayo wesiqendu 75;  
isishwankathelo saloMthetho sipapashwe kwiPhephandaba loMbuso iNombolo 23807  
lomhla we 30 EyeThupha 2002)*

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(UMPHATHISWA WEZOBULUNGISA NOPHUHLISO LOMGAQO-SISEKO)

[U 46—2002]

ISBN 0 621 32983 5

## 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.

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# BILL

**To amend the Promotion of Administrative Justice Act, 2000, so as to amend a definition; and to provide for matters connected therewith.**

**B**E IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

### **Amendment of section 1 of Act 3 of 2000**

**1.** Section 1 of the Promotion of Administrative Justice Act, 2000, is hereby amended by the substitution for the definition of “court” of the following definition: 5

“ ‘court’ means—

- (a) the Constitutional Court acting in terms of section 167(6)(a) of the Constitution; or
- (b) (i) a High Court or another court of similar status; or 10  
(ii) a Magistrate’s Court, either generally or in respect of a specified class of administrative actions, designated by the Minister by notice in the *Gazette* and presided over by a magistrate designated in writing by the **[Minister]** head of an administrative region defined in section 1 of the Magistrates’ Courts Act, 1944 (Act No. 32 of 1944), after consultation 15  
with the Magistrates Commission,

within whose area of jurisdiction the administrative action occurred or the administrator has his or her or its principal place of administration or the party whose rights have been affected is domiciled or ordinarily resident or the adverse effect of the administrative action was, is or will be experienced;”.

**Short title** 20

**2.** This Act is called the Promotion of Administrative Justice Amendment Act, 2002.

## **MEMORANDUM ON THE OBJECTS OF THE PROMOTION OF ADMINISTRATIVE JUSTICE AMENDMENT BILL, 2002**

### **1. PURPOSE OF BILL**

The purpose of the Bill is to further regulate the designation of magistrates for purposes of presiding in court proceedings for the judicial review of administrative actions as provided for in the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000) (“the Act”).

### **2. OBJECTS OF BILL**

The term “court” is for purposes of the Act, among others, defined as a Magistrate’s Court, either generally or in respect of a specified class of administrative actions, designated by the Minister by notice in the *Gazette* and presided over by a magistrate designated in writing by the Minister after consultation with the Magistrates Commission. The objection which has been raised against the provisions of the definition which deal with the designation of magistrates is that they infringe on the independence of the judiciary and the principle of the separation of powers. Clause 1 of the Bill therefore aims to amend the definition of “court” contained in section 1 of the Act so as to address the aforementioned objection.

### **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**

None.

### **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.

