



DEPARTMENT: JUSTICE AND CONSTITUTIONAL DEVELOPMENT
REPUBLIC OF SOUTH AFRICA

SA030106

Private Bag X81 PRETORIA 0001 - Tel (021) 467 1760 - Fax (021) 461 4426
Momentum Centre - Pretorius Street - Pretoria

Ref: 8/6/Geregs/1
Enq: J H Bruwer
✓ e-mail: JBruwer@Justice.gov.za
Date: 06 March 2006

Ms M P Mentor, MP
The Chairperson
Standing Committee on Private Members'
Legislative Proposals and Special Petitions
P O Box 15
CAPE TOWN
8000

Dear Ms Mentor

LEGISLATIVE PROPOSAL OF MR L K JOUBERT, MP

With reference to the briefing which Advocates T D Rudman and J H Bruwer of our Department gave to your Committee on 15 November 2005, regarding certain proposed amendments to the Magistrates' Courts Act, 1944 (Act No. 32 of 1944), and our evenly numbered letter and accompanying memorandum dated 17 November 2005, I am pleased to report further as follows.

1. The Secretariat of the Magistrates Commission reported that the judgement in *JAFTHA V SCHOEMAN AND OTHERS; VAN ROOYEN V STOLTZ AND OTHERS* (Case No. CCT 74/03) was on 21 February 2005 circulated by the said Secretariat to all Regional Court Presidents and Heads of Administrative Regions (Cluster Heads), by means of Circular Letter 14 of 2005, for the information of all magistrates.
2. Our Branch: Court Services has on 17 February 2006 sent out a circular letter to all clerks of civil courts, all court managers/administrative office managers and heads of offices to draw their attention yet again to the effect of the above judgement and to request them to ensure that the judgement is implemented.

3. The S A Board for Sheriffs acknowledged receipt of our letter and reported that the contents were noted and the letter has been referred to the Chairperson of their Legal and Compliance Committee.

With reference to paragraph 3 of the memorandum which accompanied our above letter, I am pleased to report that our proposed amendment to the National Credit Bill [B18B – 2005] was accepted and the Bill was passed by Parliament as Bill 18D – 2005. In future, after the Bill becomes law, it will be unlawful to express in a credit agreement consent on behalf of the consumer (debtor) to the jurisdiction of the High Court, if the magistrate's court has concurrent jurisdiction, or of another court as that in whose area of jurisdiction the debtor lives or works or where the relevant goods, if any, are being kept. See Clause 90(2)(k)(vi) of the Bill which reads as follows:

"Unlawful provisions of credit agreement

90. (1) ...
(2) A provision of a credit agreement is unlawful if—
...
(k) it expresses, on behalf of the consumer—
...
(vi) a consent to the jurisdiction of—
(aa) the High Court, if the magistrate's court has concurrent jurisdiction; or
(bb) any court seated outside the area of jurisdiction of a court having concurrent jurisdiction and in which the consumers resides or works or where the goods in question (if any) are ordinarily kept;"

Kind regards



25.4.06

4. DIRECTOR-GENERAL: JUSTICE AND CONSTITUTIONAL DEVELOPMENT