

OFFICE OF THE PRESIDENT

No. 1465. 20 September 1995

NO. 44 OF 1995: CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA SECOND AMENDMENT ACT, 1995.

It is hereby notified that the President has assented to the following Act which is hereby published for general information:-

GENERAL EXPLANATORY NOTE:

Words in ***bold italics*** indicate omissions from existing enactments.

Words in *italics* indicate insertions in existing enactments.

ACT

To amend the Constitution of the Republic of South Africa, 1993, so as to provide for the appointment and duties of a Deputy President of the Constitutional Court; to determine the quorum of the Constitutional Court; to make further provision with respect to the orders which the divisions of the Supreme Court may make; to provide anew for the appointment of a Secretary and other members of staff of a provincial legislature; to empower the President to determine the remuneration and allowances of the Premier and members of the Executive Council of the various provinces; to further regulate local government elections and to provide that a person holding any office of profit under the Republic may take part as a candidate in the forthcoming local government elections; to make further provision in respect of the ex officio membership of traditional leaders of an elected local government; to make further provision in respect of the referral of parliamentary Bills to the Council of Traditional Leaders; to provide for the appointment of a Secretary for Defence; to provide that all the debts and liabilities which vested in certain authorities immediately before the commencement of the Constitution, shall be assumed by the national government; to further regulate the restructuring of local government; to substitute certain expressions; and to provide for matters incidental thereto.

(English text signed by the President.) (Assented to 20 September 1995.)

BE IT ENACTED BY the Parliament of the Republic of South Africa, as follows:-

Amendment of section 99 of Act 200 of 1993, as amended by section 3 of Act 29 of 1994

1. Section 99 of the Constitution of the Republic of South Africa, 1993 (Act No.

200 of 1993) (hereinafter referred to as the principal Act), is hereby amended by the addition of the following subsection:

"(12)(a) The President shall, at the request of the President of the Constitutional Court, appoint a Deputy President of the Constitutional Court from among the judges of that Court.

(b) A Deputy President of the Constitutional Court may be appointed for the duration of his or her term of office as a judge of the Constitutional Court or for such shorter period as the President may determine.

(c) A Deputy President of the Constitutional Court shall-

(i) in the absence of the President of the Constitutional Court, and if an Acting President of the Constitutional Court has not been appointed in terms of subsection (8), perform the functions of the President of the Constitutional Court; and

(ii) perform such other functions of the President of the Constitutional Court as he or she may assign to him or her."

Amendment of section 100 of Act 200 of 1993

2. Section 100 of the principal Act is hereby amended by the addition of the following subsection:

"(3) (a) Subject to the provisions of the Constitutional Court Complementary Act, 1995 (Act No. 13 of 1995), and the rules of the Constitutional Court, matters which come before the Court shall be heard and determined by the President of the Constitutional Court and all the judges of the Court.

(b) Whenever a member of the Constitutional Court is absent or unable to perform his or her functions, or if a vacancy among the members of the Court arises, the remaining members of the Court may hear and determine any matter: Provided that no matter shall be heard and determined by less than eight members of the Court.

(c) If, at any stage of a hearing, a member of the Constitutional Court is absent or unable to perform his or her functions, or if a vacancy among the members of the Court arises-

(i) and the remaining members of the Court are not less than eight in number-

(aa) such hearing shall continue before the remaining members of the Court; and

(bb) the decision of the majority of the remaining members of the Court shall, if that majority is also a majority of the members of the Court before whom the hearing commenced, be the decision of the Court; or

(ii) and the remaining members of the Court are less than eight, or if the majority of the remaining members of the Court is not also a majority of the members of the Court before whom the hearing commenced, the proceedings shall be stopped and commenced de novo."

Amendment of section 101 of Act 200 of 1993, as amended by section 4 of Act 13 of 1994

3. Section 101 of the principal Act is hereby amended by the addition of the following subsection:

"(7) Any division of the Supreme Court shall have jurisdiction to grant an interim interdict or similar relief, pending the determination by the Constitutional Court of any matter referred to in section 98(2), notwithstanding that such interdict or relief might have the effect of suspending or otherwise interfering with the application of the provisions of an Act of Parliament. "

Substitution of section 143 of Act 200 of 1993

4. The following subsection is hereby substituted for subsection (2) of section 143 of the principal Act:

*"(2) (a) **The Executive Council of a province** A provincial legislature shall **after consultation with the Commission on Provincial Government** appoint a Secretary and such other staff as may be necessary for the discharge of the work of such legislature.*

(b) Except in so far as may be otherwise determined by resolution of the provincial legislature concerned, any person who was prior to the date of commencement of the Constitution of the Republic of South Africa Second Amendment Act, 1995, appointed to the staff, or as the Secretary, of a provincial legislature, and who is at such commencement still serving as such, shall be deemed to have been appointed in accordance with paragraph (a)."

Amendment of section 149 of Act 200 of 1993, as amended by section 11 of Act 13 of 1994

5. Section 149 of the principal Act is hereby amended by the substitution for subsection (10) of the following subsection:

"(10) There shall, subject to section 207(2), be paid out of and as a charge on the Provincial Revenue Fund of a province to the Premier and to a member of an Executive Council of such province such remuneration and allowances as may be *prescribed by or* determined *under a law of the provincial legislature by the President*."

Amendment of section 176 of Act 200 of 1993

6. Section 176 of the principal Act is hereby amended by the substitution for the proviso to paragraph (b) of the following proviso:

" : Provided that a council may delegate the power to make decisions on matters pertaining to town planning to the executive committee or to a committee appointed for this purpose *or to a person in its employ*:"

Provided further that section 177 shall apply mutatis mutandis to the appointment and functioning of a committee appointed for this purpose. "

Amendment of section 179 of Act 200 of 1993

7. Section 179 of the principal Act is hereby amended-

(a) by the deletion of the proviso to subsection (1); and

(b) by the substitution for paragraph (c) of subsection (5) of the following paragraph:

"(c) is ***not qualified to become** disqualified from becoming* a member of the National Assembly *in terms of section 42(1)(a), (b), (c) or (d)*."

Substitution of section 182 of Act 200 of 1993

8. The following section is hereby substituted for section 182 of the principal Act:

"Traditional authorities and local government

182. The traditional leader of a community observing a system of indigenous law and residing on land within the area of jurisdiction of an elected local government referred to in Chapter 10, shall ex officio be entitled to be a member of that local government, *provided that he or she has been identified in a manner and according to guidelines prescribed by the President by proclamation in the Gazette after consultation with the Council of Traditional Leaders, if then in existence, or if not, with the Houses of Traditional Leaders which have then been established*, and shall be eligible to be elected to any office of such local government."

Amendment of section 184 of Act 200 of 1993

9. Section 184 of the principal Act is hereby amended by the substitution for paragraph (a) of subsection (5) of the following paragraph:

"(a) Any parliamentary Bill pertaining to traditional authorities, indigenous law or the traditions and customs of traditional communities or any other matters having a bearing thereon, shall, ***after having been** if it is passed by the House in which it was introduced **but after the Chairperson and members of the Council have been elected and the Council has commenced its functions, and if the Council is then able to function***, before it is passed by the other House, be referred by the Secretary to Parliament to the Council for its comments.

(aA) If the Council is not in existence by 28 February 1996, any parliamentary Bill referred to in paragraph (a)

shall, after having been passed by the House in which it was introduced, but before it is passed by the other House, be referred to those Houses contemplated in section 183 which have then been established, and the further provisions of this subsection shall then mutatis mutandis apply."

Substitution of section 225 of Act 200 of 1993

10. The following section is hereby substituted for section 225 of the principal Act:

"Chief of South African National Defence Force and Secretary for Defence

225. (1) Subject to section 236(1) and (2), the President shall appoint a Chief of the *South African* National Defence Force, who shall exercise military executive command of the *South African* National Defence Force, subject to the directions of the Minister responsible for defence and, during a state of national defence, of the President.

(2) *The Minister responsible for defence may appoint a Secretary for Defence who shall exercise such powers and perform such duties as may be provided for in any law."*

Amendment of section 239 of Act 200 of 1993

11. Section 239 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection:

"(3)(a) *All debts and liabilities which immediately before the commencement of this Constitution vested in an authority referred to in section 235(1)(a), (b) or (c), or in a government, administration or force under the control of such authority shall be assumed by the national government.*

(b) *The debts and liabilities referred to in paragraph (a), shall be deemed to be State debt as defined in section 1 of the Exchequer Act, 1975 (Act No. 66 of 1975)."*

Substitution of section 245 of Act 200 of 1993

12. The following section is hereby substituted for section 245 of the principal Act:

"Transitional arrangements: Local government

245. (1) Until ***elections have been held in terms of the Local Government Transition Act, 1993 31 March 1996***, local government shall not be restructured otherwise than in accordance with ***that the Local Government Transition Act, 1993 (Act No. 209 of 1993)***.

(2) Restructuring of local government which takes place as a result of legislation enacted by a competent authority after ***the elections referred to in subsection (1) have been held, 31 March 1996*** shall be effected in accordance with the principles embodied in Chapter 10 and the Constitution as a whole.

(3) (a) For the purposes of the first election of members of ***a local government a transitional local council or a transitional metropolitan substructure as referred to in the Local Government Transition Act, 1993***, after the commencement of this Constitution, the area of jurisdiction of such ***local government transitional local council and transitional metropolitan substructure*** shall be divided into wards in accordance with ***thethat Act referred to in subsection (1)***.

(b) Forty per cent of the members of ***the local governmenta transitional local council and a transitional metropolitan substructure*** shall be elected according to the system of proportional representation applicable to an election of the National Assembly and regulated specifically by or under the ***Act referred to in subsection (1), Local Government Transition Act, 1993***, and sixty per cent of the members shall be elected ***on the basis that each such member shall to represent a wardwards*** as contemplated in paragraph (a): Provided that-

(i) if such wards are represented by more than one member, all such wards shall be represented by the same number of members; and

*(ii) notwithstanding anything to the contrary contained in this Constitution, where the area of jurisdiction of the **local government** transitional local council or transitional metropolitan substructure includes-*

(i)(aa) the area of jurisdiction of any institution or body as was referred to in section 84(1)(f) of the Provincial Government Act, 1961 (Act No. 32 of 1961); and

*(ii)(bb) any other area not falling within the area of jurisdiction of the institution or body referred to in **subparagraph (i) item (aa)**.*

no area referred to in **subparagraph (i) or (ii) items (aa) or (bb)** shall be allocated less than half of the total number of wards of the **local government** transitional local council or transitional metropolitan substructure concerned: Provided further that an area referred to in **subparagraph (i) item (aa)** shall be deemed not to include any area for which a local government body referred to in paragraphs (a), (b) and (c) of the definition of "local government body" in section 1(1) of the *Act Local Government Transition Act, 1993 referred to in subsection (1) of this section* (as that Act exists at the commencement of this Constitution), has been established."

Substitution of expressions in Act 200 of 1993

13. The principal Act is hereby amended by the substitution for the expressions "National Defence Force", "Eastern Transvaal" and "Northern Transvaal", wherever they occur of the expressions "South African National Defence Force", "Mpumalanga" and "Northern Province", respectively.

Amendment of Act 13 of 1995

14. The Constitutional Court Complementary Act, 1995 (Act No. 13 of 1995) is hereby amended by the repeal of sections 8, 13 and 16.

Short title and commencement

15. (1) This Act shall be called the Constitution of the Republic of South Africa Second Amendment Act, 1995.

(2) (a) Section 7(b), and the amendment effected to subsection (3) of section 245 of the principal Act by section 12 of this Act, shall be deemed to have come into operation on 1 June 1995.

(b) Sections 9 and 10 shall be deemed to have come into operation on 1 May 1994.