

GENERAL NOTICE

NOTICE 36 OF 2011

DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT

PUBLICATION OF BILL AMENDING CONSTITUTION

The Minister of Justice and Constitutional Development intends introducing the Constitution Amendment Bill of 2011, in the National Assembly. The Bill is hereby published for public comment in accordance with section 74(5)(a) of the Constitution of the Republic of South Africa, 1996. Any person wishing to comment on the proposed amendments is invited to submit written comments to the Minister of Justice and Constitutional Development. Comments should kindly be directed for the attention of Mrs. C van Vuuren, Private Bag X 81, Pretoria, 0001, by not later than 15 March 2011.

(Electronic mail address: cvanvuuren@justice.gov.za)

CONSTITUTION AMENDMENT BILL

(MINISTER OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT)

BILL

To amend the Constitution of the Republic of South Africa, 1996, so as to transfer the provincial functions relating to further education and training and adult education and training to the national level of government; and to provide for matters connected therewith.

PARLIAMENT of the Republic of South Africa enacts as follows: —

Amendment of Part A of Schedule 4 to the Constitution of the Republic of South Africa, 1996

1. Part A of Schedule 4 to the Constitution of the Republic of South Africa, 1996, is hereby amended by the substitution for the expression "Education at all levels, excluding tertiary education" of the expression "Education in schools".

Short title and commencement

2. This Act is called the Constitution Amendment Act of 2011, and comes into operation on a date determined by the President by proclamation in the *Gazette*.

MEMORANDUM ON THE OBJECTS OF THE CONSTITUTION AMENDMENT BILL OF 2011
(Published in terms of Rule 258(3) of the Rules of the National Assembly)

1. BACKGROUND

Presidential Minute No. 690 of 2009 created the Department of Higher Education and Training. The Department of Education was abolished and the Department of Basic Education was created. Following this re-organisation of government, Proclamation No. 44 of 2009, published in Government Gazette No. 32367 of 1 July 2009 transferred the administration of the Adult Basic Education and Training Act, 2000 (Act No. 52 of 2000), and the Further Education and Training Colleges Act, 2006 (Act No. 16 of 2006), from the Minister of Basic Education to the Minister of Higher Education and Training. In terms of Part A of Schedule 4 to the Constitution of the Republic of South Africa, 1996 (the Constitution), education at all levels, excluding tertiary education, is a functional area of concurrent national and provincial legislative competence. The purpose of the Bill is to remove legislative competence in respect of further education and training and adult education and training from the functional areas of concurrent national and provincial competence.

2. OBJECTS OF BILL

2.1 Clause 1 seeks to amend Part A of Schedule 4 to the Constitution by replacing the expression "Education at all levels, excluding tertiary education" with the expression "Education in schools". If the amendment is passed, only education at school level will be a functional area of concurrent national and provincial legislative competence and all other levels of education will be an exclusive national legislative competence.

2.2 Clause 2 contains the short title and commencement provision of the Bill.

3. DEPARTMENTS/BODIES/PERSONS CONSULTED

3.1 The Department of Higher Education and Training was consulted, which, in turn, consulted the Council of Education Ministers. This forum consists of the National Minister of Higher Education and Training and Members of the Executive Councils of all the nine provinces responsible for education.

4 IMPLICATIONS FOR PROVINCES

The Bill will transfer the powers and functions relating to further education and training and adult education and training from the various provincial administrations to the national level of government.

5 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 74(3) of the Constitution, since –

- (a) it amends a provision of the Constitution other than section 1, section 74(1) or Chapter 2;
and
 - (b) the amendment relates to a matter that affects the National Council of Provinces.
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