

REPUBLIC OF SOUTH AFRICA

**PORTFOLIO COMMITTEE AMENDMENTS
TO**

**SOUTH AFRICAN HUMAN
RIGHTS COMMISSION BILL**

[B 5—2013]

*(As agreed to by the Portfolio Committee on Justice and
Constitutional Development (National Assembly))*

[B 5A—2013]

ISBN 978-1-77597-160-3

No. of copies printed 800

AMENDMENTS AGREED TO

SOUTH AFRICAN HUMAN RIGHTS COMMISSION BILL

[B 5—2013]

LONG TITLE

1. On page 2, second line, after “Commission;” to insert “to repeal the Human Rights Commission Act, 1994;”.

PREAMBLE

1. On page 2, fifth line, to omit “**WHEREAS**” and to substitute, “**SINCE**”.
2. On page 2, eleventh line, to omit “**WHEREAS**” and to substitute, “**SINCE**”.
3. On page 2, twentieth line, to omit “**WHEREAS**” and to substitute, “**SINCE**”.

CLAUSE 1

1. On page 2, in line 8, to omit “20” and to substitute, “19”.
2. On page 2, after line 10, to insert the following:

“ **“commissioner”** means a commissioner referred to in section 5(1).”.
3. On page 3, in line 1, to omit “includes” and to substitute, “means”.
4. On page 3, in line 2, to omit “and relevant international and regional human rights instruments”.
5. On page 3, from line 7, to omit “and includes, where applicable, a person seconded in terms of section 20(6)”
6. On page 3, in line 3, to omit “16” and to substitute, “15”.
7. On page 3, from line 4, to omit the definition of “member”.
8. On page 3, in line 7, to omit “20” and to substitute, “19”.
9. On page 3, in line 8, to omit “20” and to substitute, “19”.
10. On page 3, in line 12, to omit “, and includes any other statutory body or functionary”.
11. On page 3, in line 13, to omit “road,”.
12. On page 3, in line 21, to omit “17” and to substitute, “16”.

CLAUSE 3

1. On page 3, in line 28, to omit “determined by the President”, and to substitute, “in the province of Gauteng”.

CLAUSE 4

1. On page 3, in line 33, to omit “(a) The Commission is independent.”
2. On page 3, in line 34, to omit “(b)”.
3. On page 3, in line 34, to omit “member”, and to substitute, “commissioner”.
4. On page 3, in line 35, to omit “(i)” and to substitute, “(a)”.
5. On page 3, in line 38, to omit “(ii)” and to substitute, “(b)”.
6. On page 3, in line 38, to omit “member”, and to substitute, “commissioner”.
7. On page 3, in line 40, to omit “(iii)” and to substitute, “(c)”.
8. On page 3, in line 45, to omit “member”, and to substitute, “commissioner”.
9. On page 3, in line 46, to omit “member”, and to substitute, “commissioner”.
10. On page 3, in line 47, to omit “20(7)” and to substitute, “19(5)”.
11. On page 3, in line 49, to omit “member”, and to substitute, “commissioner”.
12. On page 3, in line 53, to omit “member”, and to substitute, “commissioner”.
13. On page 3, after line 57, to insert the following:

“(6) In the interest of transparency and accountability, a commissioner must, in the manner determined by the Commission, annually disclose his or her financial interests and any other interests determined by the Commission, which information must be accessible to the public.”.
14. On page 4, in line 1, to omit “member”, and to substitute, “commissioner”.

CLAUSE 5

1. Clause rejected.

NEW CLAUSE

1. That the following be a new clause.

Composition of Commission

5. (1) (a) The Commission consists of eight commissioners, who must—

- (i) be South African citizens and fit and proper persons to hold office of the Commission, as contemplated in section 193(1) of the Constitution;
 - (ii) have a record of commitment to the promotion of respect for human rights and a culture of human rights;
 - (iii) be persons with applicable knowledge or experience with regard to matters connected with the objects of the Commission; and
 - (iv) be appointed by the President in accordance with section 193(4) and (5) of the Constitution.
- (b) Subject to paragraph (a), any person is eligible to be appointed as a commissioner, except—
- (i) anyone who is appointed by, or is in the service of, the state and receives remuneration for that appointment or service;
 - (ii) unrehabilitated insolvents;
 - (iii) anyone declared to be of unsound mind by a court of the Republic;
 - (iv) anyone who, after this section took effect, is convicted of an offence and sentenced to more than 12 months' imprisonment without the option of a fine, either in the Republic, or outside the Republic if the conduct constituting the offence would have been an offence in the Republic; or
 - (v) anyone who is an office-bearer or a staff member of a political party, a member of the National Assembly, a permanent delegate to the National Council of Provinces, a member of a provincial legislature or a member of a municipal council or who is on a candidate list for any of those positions.

(2) The commissioners referred to in subsection (1) may, on the recommendation of the National Assembly, be appointed as full-time or part-time commissioners and hold office for such fixed term as the National Assembly may determine at the time of such appointment, but not exceeding seven years: Provided that not fewer than six commissioners are appointed on a full-time basis and not more than two commissioners are appointed on a part-time basis.

(3) The President may, on the recommendation of the National Assembly, appoint a part-time commissioner as a full-time commissioner for the unexpired portion of that part-time commissioner's term of office if a vacancy in the office of a full-time commissioner occurs.

(4) Any person whose term of office as a commissioner has expired, may be reappointed for one additional term.

(5) (a) A commissioner may resign from office by submitting at least three calendar months' written notice thereof to the National Assembly, unless the National Assembly by resolution allows a shorter period in a specific case.

(b) A commissioner is regarded as having resigned if that commissioner—

- (i) accepts nomination for the National Assembly, the National Council of Provinces, a provincial legislature or a municipal council; or
- (ii) is elected or appointed as an office-bearer of a political party.

(c) The Commission must take appropriate steps, where necessary, against a commissioner—

- (i) who fails to give notice in terms of paragraph (a); or
- (ii) who gives such notice, but fails to comply with the prescribed period referred to in that paragraph, for the recovery of any remuneration and allowances, if any, that were paid to that commissioner in the case of—

(aa) subparagraph (i), for the three months immediately preceding the date on which his or her resignation took effect; and

(bb) subparagraph (ii), for the period that was less than the prescribed period referred to in paragraph (a).

(6) A commissioner may be removed from office in accordance with section 194(1) and (2) of the Constitution.

(7) The President may suspend a commissioner from office in accordance with section 194(3)(a) of the Constitution.

(8) The President must remove a commissioner from office in accordance with section 194(3)(b) of the Constitution.

CLAUSE 6

1. On page 5, from line 7, to omit “designate two of the full-time members as Chairperson and Deputy Chairperson of the Commission, respectively, who must be fit and proper persons to hold office as Chairperson and Deputy Chairperson”, and to substitute, “, on the recommendation of the National Assembly, appoint a Chairperson and Deputy Chairperson of the Commission, respectively”.
2. On page 5, in line 16, to omit “members”, and to substitute, “commissioners”.
3. On page 5, in line 18, to omit “member”, and to substitute, “commissioner”.

CLAUSE 7

1. On page 5, in line 24, to omit “member”, and to substitute, “commissioner”.
2. On page 5, in line 25, after the third “or”, to insert “delegated to him or her by”.
3. On page 5, from line 29, to omit sub-clause (4), and to substitute the following sub-clause:

“(4)The Deputy Chairperson and any other commissioner are, for the purposes of exercising the powers and performing the functions-

- (a) conferred on or assigned to him or her by the Commission, accountable to the Commission; or
- (b) delegated to him or her by the Chairperson, accountable to the Chairperson.”

CLAUSE 8

1. On page 5, in line 36, to omit “member’s”, and to substitute, “commissioner”.
2. On page 5, in line 37, to omit “member”, and to substitute, “commissioner”.

3. On page 5, in line 38, to omit “member”, and to substitute, “commissioner”.
4. On page 5, in line 40, to omit “member’s”, and to substitute, “commissioner’s”.
5. On page 5, from line 44, to omit sub-clause (3), and to substitute the following sub-clause:
 - “(3) (a) The Commission must, as soon as a vacancy occurs, in writing, inform the National Assembly of such vacancy.
 - (b) A vacancy in the Commission must, as soon as practicable after the National Assembly becomes aware thereof, be filled in accordance with section 193(4) and (5) of the Constitution.”.

CLAUSE 9

1. On page 5, in line 47, to omit “members”, and to substitute, “commissioners”.
2. On page 5, in line 49, to omit “members”, and to substitute, “commissioners”.
3. On page 6, in line 1, to omit “member”, and to substitute, “commissioner”.

CLAUSE 10

1. On page 6, in line 7, after “Commission”, to insert “: Provided that the chief executive officer must, in the absence of the Chairperson, convene the first meeting of the Commission”.
2. On page 6, in line 10, to omit “members”, and to substitute, “commissioners”.
3. On page 6, in line 13, to omit “members”, and to substitute, “commissioners”.
4. On page 6, in line 14, to omit “members”, and to substitute, “commissioners”.
5. On page 6, in line 16, to omit “member”, and to substitute, “commissioner”.

CLAUSE 11

1. On page 6, in line 25, to omit the first “members”, and to substitute, “commissioners”.
2. On page 6, in line 25, to omit “or one or more members and members of staff”.
3. On page 6, in line 27, after “it”, to insert “for the purposes of advising the Commission or make recommendations to it, in respect of the matter for which the committee has been established”.
4. On page 6, in line 31, after “chairperson”, to insert “,who must be a commissioner,”.
5. On page 6, in line 32, after “chairperson”, to insert “, who must also be a commissioner”.

6. On page 6, from line 44, to omit “(7) The provisions of section 10 apply, with the necessary changes, to a meeting of a committee.”.

CLAUSE 12

1. On page 6, in line 49, to omit “member” and to substitute, “commissioner”.

CLAUSE 13

1. Clause rejected.

CLAUSE 14

1. On page 7, in line 10, to omit “184(1) and (2)” and to substitute, “184(1), (2) and (3)”.
2. On page 7, in line 11, to omit “referred to in section 3”.
3. On page 7, from line 13, to omit subparagraphs (i) and (ii).
4. On page 7, in line 28, after “understanding”, to insert, “and awareness”.
5. On page 7, in line 41, after “rights”, to insert, “and may make recommendations”.
6. On page 7, in line 48, after “Commission;”, to insert, “and”.
7. On page 7, in line 51, to omit “19”, and to substitute, “18”.
8. On page 7, from line 54, to omit subparagraph (ix).
9. On page 8, from line 5, to omit sub-clause (3), and to substitute, the following sub-clause:
 - “(3) The Commission is competent—
 - (a) to investigate on its own initiative or on receipt of a complaint, any alleged violation of human rights, and if, after due investigation, the Commission is of the opinion that there is substance in any complaint made to it, it must, in so far as it is able to do so, assist the complainant and other persons adversely affected thereby, to secure redress, and where it is necessary for that purpose to do so, it may arrange for or provide financial assistance to enable proceedings to be taken to a competent court for the necessary relief or may direct a complainant to an appropriate forum; and
 - (b) to bring proceedings in a competent court or tribunal in its own name, or on behalf of a person or a group or class of persons.”.
10. On page 8, in line 13, to omit “—”.
11. On page 8, from line 14, to omit paragraph (a).
12. On page 8, in line 16, to omit “(b)”.

CLAUSE 16

1. On page 8, in line 24, to omit “14”, and to substitute, “13”.
2. On page 8, in line 28, to omit “member”, and to substitute, “commissioner”.
3. On page 8, in line 31, to omit “member”, and to substitute, “commissioner”.
4. On page 8, in line 39, to omit “member”, and to substitute, “commissioner”.
5. On page 8, in line 56, to omit “after”, and to substitute, “in”.
6. On page 9, in line 12, to omit “23”, and to substitute, “22”.
7. On page 9, from line 18, to omit “an advocate or an attorney, or both”, and to substitute, “a legal representative”.
8. On page 9, in line 20, to omit “or minutes as are reasonable necessary to refresh his or her memory”, and to substitute, “or any other relevant documents”.
9. On page 9, in line 30, to omit “from time to time by notice in the *Gazette*”.
10. On page 9, in line 30, after “known”, to insert “publicly”.
11. On page 9, in line 36, to omit “person”, and to substitute, “commissioner or member of staff”.

CLAUSE 17

1. On page 9, in line 41, to omit “member”, and to substitute, “commissioner”.
2. On page 9, in line 42, to omit “member”, and to substitute, “commissioner”.
3. On page 9, in line 43, to omit “14”, and to substitute “13”.
4. On page 9, in line 52, to omit “member”, and to substitute, “commissioner”.
5. On page 10, in line 15, to omit “an advocate or an attorney, or both”, and to substitute, “a legal representative”.
6. On page 10, in line 31, to omit “member”, and to substitute, “commissioner”.
7. On page 10, in line 53, to omit “member”, and to substitute, “commissioner”.
8. On page 10, in line 54, to omit “member”, and to substitute, “commissioner”.
9. On page 11, from line 11, to omit paragraph (b).

CLAUSE 18

1. On page 11, in line 25, to omit “**Compensation for certain expenses and damage**”, and to substitute, “**Compensation for expenses**”.
2. On page 11, from line 26, to omit sub-clause (1).
3. On page 11, from line 36, to omit sub-clause (3).

CLAUSE 19

1. On page 11, in line 51, after “fit,” to insert “in writing”.
2. On page 11, in line 51, after “person,” to insert “the head of the”.
3. On page 11, in line 51, after “institution” to insert “, or the executive authority of any national or provincial department”.
4. On page 11, in line 54, after “the” to insert “head of the”.
5. On page 11, in line 54, after “institution” to insert “, or the executive authority of any national or provincial department”.
6. On page 11, from line 54, to omit “that organisation or institution” and to substitute, “the head of the organisation or institution or the executive authority of any national or provincial department concerned”.
7. On page 11, in line 55, to omit “30” and to substitute “60”.
8. On page 11, from line 56, to omit “the steps it has taken” and to substitute, “whether his or her organisation, institution or department intends taking any steps”.

CLAUSE 20

1. On page 12, from line 5, to omit “or a person seconded in terms of subsection (6)”.
2. On page 12, from line 10, to omit paragraph (a).
3. On page 12, from line 28, to omit “, all the persons seconded in terms of subsection (6)”.
4. On page 12, in line 30, to omit “(7)”, and to substitute “(5)”.
5. On page 12, from line 44, to omit sub-clauses (5) and (6).
6. On page 12, in line 58, to omit “in consultation with the Minister of Finance”.
7. On page 13, in line 5, before “by”, to insert “conferred upon him or her”.

CLAUSE 21

1. On page 13, in line 10, to omit “, expenditure and finances”.
2. On page 13, from line 14, to omit sub-clauses (2) and (3).

CLAUSE 22

1. On page 13, in line 37, to omit “member”, and to substitute, “commissioner”.
2. On page 13, in line 39, to omit “20(7)”, and to substitute “19(5)”.
3. On page 13, in line 40, to omit “member”, and to substitute, “commissioner”.

CLAUSE 23

1. On page 13, in line 47, to omit “16”, and to substitute, “15”.
2. On page 13, in line 48, to omit “16”, and to substitute, “15”.
3. On page 13, in line 49, to omit “16”, and to substitute, “15”.
4. On page 13, in line 52, to omit “16”, and to substitute, “15”.
5. On page 13, from line 56, to omit paragraph (*d*).
6. On page 14, in line 9, to omit “16”, and to substitute, “15”.
7. On page 14, in line 11, to omit “14”, and to substitute, “13”.
8. On page 14, in line 13, to omit “17”, and to substitute, “16”.
9. On page 14, in line 14, to omit “17”, and to substitute, “16”.

CLAUSE 24

1. On page 14, in line 28, to omit “22”, and to substitute, “21”.
2. On page 14, in line 59, to omit “before”, and to substitute, “after”.