

REPUBLIC OF SOUTH AFRICA

**MAGISTRATES' COURTS SECOND
AMENDMENT BILL**

(As introduced)

(MINISTER OF JUSTICE)

[B 77—97]

REPUBLIEK VAN SUID-AFRIKA

**TWEEDE
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LANDDROSHOWE**

(Soos ingedien)

(MINISTER VAN JUSTISIE)

[W 77—97]

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GENERAL EXPLANATORY NOTE:

Words underlined with a solid line indicate insertions in existing enactments.

BILL

To amend the Magistrates' Courts Act, 1944, so as to further regulate the power of a magistrates' court to pronounce on the validity of legislation; to provide for the postponement of proceedings so that pleas of unconstitutionality can be heard by a High Court; to amend the Magistrates' Courts Amendment Act, 1993, so as to repeal an obsolete provision; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

Substitution of section 110 of Act 32 of 1944, as substituted by section 20 of Act 53 of 1970

1. The following section is hereby substituted for section 110 of the Magistrates' Courts Act, 1944: 5

“Pronouncements on validity of legislation

110. (1) A court shall not be competent to pronounce on the validity of any law and a court shall assume that every law is valid.

(2) Notwithstanding subsection (1) and subject to section 170 of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996), a court may pronounce on the validity of any statutory regulation, order or bylaw. 10

(3) If in any proceedings before a court it is alleged that any law or any conduct of the President is invalid on the grounds of its inconsistency with a provision of the Constitution, the presiding officer may postpone the proceedings to enable the party who has so alleged to apply to a High Court for relief in terms of section 172 of the Constitution.”. 15

Repeal of section 66 of Act 120 of 1993

2. Section 66 of the Magistrates' Courts Amendment Act, 1993, is hereby repealed. 20

Short title

3. This Act shall be called the Magistrates' Courts Second Amendment Act, 1997.

MEMORANDUM ON THE OBJECTS OF THE MAGISTRATES' COURTS SECOND AMENDMENT BILL, 1997

1. Section 170 of the Constitution makes it clear that magistrates' courts and all other courts of a status lower than a High Court may not enquire into or rule on the constitutionality of any legislation (which includes statutory regulations, orders and bylaws) or any conduct of the President.

2. Section 110 of the Magistrates' Courts Act, 1944 (Act No. 32 of 1944), provides that magistrates' courts may not pronounce upon the validity of a provincial ordinance or a statutory proclamation of the President, but that "every such court shall be competent to pronounce upon the validity of any statutory regulation, order or bye-law".

3. It is clear that section 110 of the Magistrates' Courts Act, 1944, is inconsistent with section 170 of the Constitution in so far as enquiries relating to the constitutionality, as opposed to the general validity, of statutory regulations, orders and bylaws are concerned. Clause 1 therefore seeks to amend section 110 so as to bring it into line with section 170 of the Constitution.

4. Section 66 of the Magistrates' Courts Amendment Act, 1993 (Act No. 120 of 1993), also amended section 110 of the Magistrates' Courts Act, 1944. However, in view of the amendment envisaged by clause 1, the provisions of section 66, which have not yet been put into operation, have become redundant. Clause 2 seeks to repeal the said section 66.

PARTIES CONSULTED

The following interested parties were consulted:

- * The Chief Justice
- * Judges President of the High Courts
- * Regional Representatives of the Department of Justice
- * Magistrates Commission
- * Association of Regional Magistrates of South Africa
- * Magistrates' Association of South Africa
- * General Council of the Bar
- * Black Lawyers Association
- * National Association of Democratic Lawyers
- * Association of Law Societies of the RSA
- * Legal Resources Centre
- * Lawyers for Human Rights
- * Association of Advocates
- * Black Advocates Forum
- * Independent Association of Advocates
- * Human Rights Committee
- * Independent Complaints Directorate

PARLIAMENTARY PROCESS

The Department of Justice and the State Law Advisers are of the opinion that the procedure established by section 75 of the Constitution should be followed with regard to this Bill.