

REPUBLIC OF SOUTH AFRICA

MAGISTRATES' COURTS AMENDMENT BILL

(As introduced in the National Assembly)

(MINISTER OF JUSTICE)

[B 33—98]

REPUBLIEK VAN SUID-AFRIKA

WYSIGINGSWETSONTWERP OP LANDDROSHOWE

(Soos ingedien in die Nasionale Vergadering)

(MINISTER VAN JUSTISIE)

[W 33—98]

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GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from existing enactments.

_____ 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 summoning of assessors in civil and criminal proceedings; to further regulate the procedure in the event of death, incapacity or absence of an assessor; to empower the Minister of Justice to make regulations in connection with matters pertaining to assessors; and to provide for matters connected therewith.

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

Amendment of section 34 of Act 32 of 1944

1. The following section is hereby substituted for section 34 of the Magistrates' Courts Act, 1944 (hereinafter referred to as the principal Act): 5

“Assessors

34. In any action the court may, upon the application of either party, summon to its assistance one or two persons **[of skill and experience in the matter to which the action relates]** who may be willing to sit and act as assessors in an advisory capacity.”. 10

Amendment of section 93ter of Act 32 of 1944, as substituted by section 10 (a) of Act 91 of 1977 and amended by section 1(a) of Act 118 of 1991

2. Section 93ter of the principal Act is hereby amended—

(a) by the substitution for subsection (1) of the following subsection:

“(1) (a) The judicial officer presiding at any proceedings may, subject 15
to paragraph (b), if he or she considers it expedient for the administration
of justice, summon to his or her assistance one or two persons who, in his
or her opinion, may be of assistance at a hearing of a matter or
determination of a sentence, to sit with him or her as assessor or
assessors; 20

- (b) The presiding judicial officer shall be assisted by two assessors at a hearing of a person who is charged with an offence in respect of which—
- (i) the infliction of bodily harm on another person constitutes an element, unless the prosecutor informs the court that, in his or her opinion, the offence is not of such a nature that the accused person would, upon conviction, be liable to imprisonment without the option of a fine; or
 - (ii) the prosecutor informs the court that, in his or her opinion, the offence concerned is of such prevalence in the jurisdiction of the court or of such a serious nature that the accused person would, upon conviction, be liable to imprisonment without the option of a fine.”; 5 10
- (b) by the deletion of paragraph (b) of subsection (2);
- (c) by the substitution for subsection (3) of the following subsection: 15
- “(3) Before the **[trial]** hearing of a matter or the imposition of punishment, **[as the case may be]**, the **[said]** presiding judicial officer shall administer an oath or affirmation to the **[person or persons whom he has called to his assistance]** assessor or assessors to the effect that the assessor or assessors **[that he or she or they]** will give a true verdict, or a considered opinion **[as the case may be]** according to the evidence tendered in the proceedings **[upon the issues to be tried]** or regarding the punishment, **[as the case may be]** and thereupon **[he or they]** such an assessor or assessors **[shall be]** becomes or become a member or members of the court subject to the following provisions: 20 25
- (a) any matter of law arising for decision at such **[trial]** proceedings, and any question arising thereat as to whether a matter for decision is a matter of fact or a matter of law, shall be decided by the presiding judicial officer and no assessor shall have a **[voice]** say in any such decision; 30
 - (b) the presiding judicial officer may adjourn the **[argument upon]** proceedings regarding any **[such]** matter or question **[as is mentioned]** referred to in subparagraph (a) and may sit alone for the hearing of such **[argument]** proceedings and the decision of such matter or question; 35
 - (c) whenever the **[said]** presiding judicial officer **[shall give]** delivers a decision in terms of paragraph (a) he or she shall give his or her reasons for that decision;
 - (d) upon all matters of fact the decision or finding of the majority of the members of the court shall be the decision or finding of the court, except when only one assessor sits with the presiding judicial officer in which case the decision or finding of such presiding judicial officer shall be the decision or finding of the court if there is a difference of opinion; 40
 - (e) it shall be incumbent on the court to give reasons for its decision or finding on any matter made under paragraph (d); 45
 - (f) **[in the event of a conviction the question of the punishment to be inflicted shall, except in a case contemplated in subsection (1)(b) be deemed, for the purposes of paragraph (a), to be a question of law]** an assessor shall, in determining an appropriate sentence, assist the presiding judicial officer in an advisory capacity only.; 50
- (d) by the repeal of subsection (4); and
- (e) by the substitution for subsection (5) of the following subsection: 55
- “(5) If an assessor dies or in the opinion of the presiding judicial officer becomes unable to act as an assessor or is absent at any stage before the completion of the proceedings concerned, the presiding judicial officer may, after due consideration of the arguments put forward by the accused person and the prosecutor and the interest of justice direct that— 60
- (a) the proceedings continue before the remaining member or members of the court; or

(b) the proceedings start afresh.”.

Insertion of section 93^{quat} in Act 32 of 1944

3. The following section is hereby inserted into the principal Act:

“Regulations pertaining to assessors

93^{quat}. The Minister may, in respect of assessors referred to in section 5
93^{ter} make regulations regarding—
(a) a code of conduct for such assessors, and mechanisms for the
enforcement of such code of conduct;
(b) the payment of allowances to such assessors in consultation with the
Minister of Finance; 10
(c) any other matter which the Minister deems expedient to prescribe in
order to regulate the service of assessors in courts.”

Short title

4. This Act is called the Magistrates’ Courts Amendment Act, 1998, and shall take
effect on a date fixed by the President by proclamation in the *Gazette*. 15

MEMORANDUM ON THE OBJECTS OF THE MAGISTRATES' COURTS AMENDMENT BILL

PART 1

OBJECTS AND EXPLANATION

1.1 The objects of the Magistrates' Courts Amendment Bill are to extend community participation in the trial of, especially, criminal matters in the magistrates' courts, through increased involvement of lay assessors, so as to address certain practical concerns regarding such participation.

1.2 In the Department of Justice's *National Strategy for Transforming the Administration of Justice and State Legal Affairs* (Justice Vision 2000) a strong emphasis is placed on community participation in the workings of the justice system. It is important to ensure that the administration of justice stays in touch with actual community experiences, and to reduce the risk of formal justice losing touch with reality.

PART 2

CLAUSE BY CLAUSE ANALYSIS

2.1 Clause 1 seeks to amend section 34 of the Magistrate's Courts Act, 1944, by removing the requirement that the assessor should have skill and experience in the matter to which he or she has been summoned to assist.

2.2 Clause 2 seeks to amend section 93*ter* of the Act by providing that assessors may be summoned to assist the presiding judicial officer at the hearing of any matter i.e. this includes bail applications, determination of sentences, etc.

It further provides for new principles regarding the continuation of proceedings in the absence of assessors.

2.3 Clause 3 prescribes regulations pertaining to assessors.

2.4 Clause 4 provides for a short title.

PART 3

PARTIES CONSULTED

3.1 During 1995 the Minister of Justice appointed an Assessors Co-ordinating Committee to oversee pilot projects aimed at encouraging the use of lay assessors in criminal matters in the magistrates' courts.

3.2 This Committee concentrated its efforts on establishing community structures in order to identify potential assessors and to liaise with the magistrates regarding their appointments, duty rosters and related matters. An important function of the Committee was to propose draft legislation aimed at the expansion of the lay assessor system. The Committee consulted extensively with various role players and all inputs were evaluated and submitted to the Department of Justice. Thereupon a draft Bill was prepared which was further refined in accordance with additional representations received from, among others, regional court magistrates. It is envisaged that further comments on the Bill will also be invited by the Portfolio Committee on Justice (National Assembly).

PART 4

PARLIAMENTARY PROCEDURE

In the opinion of the Department and State Law Advisers this Bill should be dealt with in terms of section 75 of the Constitution since it does not contain any provision to which the procedure established by section 74 or 76 applies.