

REPUBLIC OF SOUTH AFRICA

**PORTFOLIO COMMITTEE AMENDMENTS
TO
PUBLIC PROTECTOR
AMENDMENT BILL**

[B 79—98]

(As agreed to by the Portfolio Committee on Justice (National Assembly))

[B 79A—98]

REPUBLIEK VAN SUID-AFRIKA

**PORTEFEULJEKOMITEE-AMENDEMENTE
OP
WYSIGINGSWETSONTWERP OP
DIE OPENBARE BESKERMER**

[W 79—98]

(Soos goedgekeur deur die Portefeuljekomitee oor Justisie (Nasionale Vergadering))

[W 79A—98]

ISBN 0 621 28523 4

AMENDMENTS AGREED TO

PUBLIC PROTECTOR AMENDMENT BILL
[B 79—98]

CLAUSE 2

1. On page 2, in lines 14 and 15, to omit “in order” and to substitute:
[in order] and that the Public Protector has the power, as regulated by national legislation,
2. On page 4, in line 2, after “prejudice,” to insert:
to report on that conduct and to take appropriate remedial action,
3. On page 4, in line 2, after “strengthen” to insert “and support”.
4. On page 4, after line 2, to insert:
AND WHEREAS sections 193 and 194 of the Constitution provide for a mechanism for the appointment and removal of the Public Protector;
5. On page 4, in line 5, to omit all the words after “Protector” up to and including “Protector” in line 7 and to substitute:
[, including the remuneration and conditions of employment, immunities and privileges, powers and functions and staff of the Public Protector]

CLAUSE 3

1. On page 4, in line 16, to omit “and” and to substitute “, including”.
2. On page 4, after line 18, to insert:
(d) by the insertion of the following definition after the definition of “member of the office of the Public Protector”:
“ ‘Minister’ means the Minister of Justice;”;

CLAUSE 5

1. On page 6, in line 26, to omit “Parliament” and to substitute:
[Parliament] the National Assembly: Provided that any decision taken by the committee in terms of this subsection must be ratified by the National Assembly
2. On page 6, in line 30, to omit all the words from “which” up to and including “Act” in line 31.

CLAUSE 6

1. On page 6, from line 36, to omit subsection (2) and to substitute:

“(2) The Minister shall, after consultation with the Public Protector, appoint one or more persons as Deputy Public Protectors.”;
2. On page 8, after line 13, to insert:

(c) by the substitution for subsection (5) of the following subsection:
 “(5) If a vacancy occurs in the office of the Deputy Public Protector the **[President]** Minister may, subject to the provisions of this section, appoint another person to that office.”;
3. On page 8, from line 18, to omit “[Parliament] the National Assembly upon the advice of the committee” and to substitute:

[Parliament upon the advice of the committee] the Minister, after consultation with the Public Protector
4. On page 8, after line 19, to insert:

(e) by the substitution for subsection (10) of the following subsection:
 “(10) The Minister or the Public Protector, as the case may be, shall exercise the powers referred to in subsections (1), (8) and (9), in consultation with the Minister of Finance.”.
5. On page 8, in line 23, after “by” to insert “the Minister or”.
6. On page 8, in line 23, after “Protector” to insert “, as the case may be,”.
7. On page 8, in line 24, to omit “subsection (9)” and to substitute “[**subsection (9)**] this section”.
8. On page 8, after line 28, to insert:

(f) by the substitution for subsection (12) of the following subsection:
 “(12) The Public Protector may, in the performance of the functions contemplated in subsection (1)(b) and (c), at his or her request, be assisted by officers in the Public Service seconded to the service of the Public Protector in terms of any law regulating such secondment.”.
9. On page 8, from line 29, to omit paragraph (f).

CLAUSE 8

1. On page 8, in line 56, to omit “subsection (4)(d) [**or section 112(1)(a)(v) of the Constitution**]” and to substitute:

[subsection (4)(d) or section 112(1)(a)(v) of the Constitution] subsections (4) and (5) or section 182(1)(a) of the Constitution
2. On page 8, in line 59, to omit “subsection (4) of the following subsection” and to substitute “subsections (4) and (5) of the following subsections”.

3. On page 10, from line 1, to omit all the words up to and including line 38 and to substitute:

“(4) The Public Protector shall, be competent—

- (a) to investigate, on his or her own initiative or on receipt of a complaint, any alleged—
 - (i) maladministration in connection with the affairs of government at any level;
 - (ii) abuse or unjustifiable exercise of power or unfair, capricious, discourteous or other improper conduct or undue delay by a person performing a public function;
 - (iii) improper or dishonest act, or omission or corruption, with respect to public money;
 - (iv) improper or unlawful enrichment, or receipt of any improper advantage, or promise of such enrichment or advantage, by a person as a result of an act or omission in the public administration or in connection with the affairs of government at any level or of a person performing a public function; or
 - (v) act or omission by a person in the employ of government at any level, or a person performing a public function, which results in unlawful or improper prejudice to any other person;
- (b) to endeavour, in his or her sole discretion, to resolve any dispute or rectify any act or omission by—
 - (i) mediation, conciliation or negotiation;
 - (ii) advising, where necessary, any complainant regarding appropriate remedies; or
 - (iii) any other means that may be expedient in the circumstances;
- (c) at any time prior to, during or after an investigation—
 - (i) if he or she is of the opinion that the facts disclose the commission of an offence by any person, to bring the matter to the notice of the relevant authority charged with prosecutions; or
 - (ii) if he or she deems it advisable, to refer any matter which has a bearing on an investigation, to the appropriate public body or authority affected by it or to make an appropriate recommendation regarding the redress of the prejudice resulting therefrom or make any other appropriate recommendation he or she deems expedient to the affected public body or authority.

(5) In addition to the powers referred to in subsection (4), the Public Protector shall on his or her own initiative or on receipt of a complaint be competent to investigate any alleged—

- (a) maladministration in connection with the affairs of any institution in which the State is the majority or controlling shareholder or of any public entity as defined in section 1 of the Reporting by Public Entities Act, 1992 (Act No. 93 of 1992);
- (b) abuse or unjustifiable exercise of power or unfair, capricious, discourteous or other improper conduct or undue delay by a person performing a function connected with his or her employment by an institution or entity contemplated in paragraph (a);
- (c) improper or unlawful enrichment or receipt of any improper advantage, or promise of such enrichment or advantage, by a person as a result of an act or omission in connection with the

affairs of an institution or entity contemplated in paragraph (a);
or

(d) act or omission by a person in the employ of an institution or entity contemplated in paragraph (a), which results in unlawful or improper prejudice to any other person.

(6) Nothing in subsections (4) and (5) shall be construed as empowering the Public Protector to investigate the performance of judicial functions by any court of law.

(7) The Public Protector shall be competent to investigate, on his or her own initiative or on receipt of a complaint, any alleged attempt to do anything which he or she may investigate under subsections (4) or (5) or section 182(1) of the Constitution.

4. On page 10, in line 42, after “information” to insert “relating to the investigation”.
5. On page 10, from line 44, to omit subsection (8).

CLAUSE 9

1. On page 12, in line 6, after “power,” to insert:

on his or her own initiative or

2. On page 12, in line 30, after “her” to insert “in writing”.
3. On page 12, in line 51, after “thereto” to insert:

, provided that such rules must be published in the *Government Gazette* and tabled in the National Assembly

NEW CLAUSE

1. That the following be a new Clause to follow Clause 9:

Insertion of section 7A into Act 23 of 1994

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

“Entering upon premises by the Public Protector

7A. (1) The Public Protector shall be competent to enter, or authorise another person to enter, any building or premises and there to make such investigation or inquiry as he or she may deem necessary, and to seize anything on those premises which in his or her opinion has a bearing on the investigation.

(2) The premises referred to in subsection (1) may only be entered by virtue of a warrant issued by a magistrate or a judge of the area of jurisdiction within which the premises is situated: Provided that such a warrant may be issued by a judge in respect of premises situated in another area of jurisdiction, if he or she deems it justified.

(3) A warrant contemplated in subsection (2) may only be issued if it appears to the magistrate, or a judge from information on oath or affirmation, stating—

- (a) the nature of the investigation or inquiry;
- (b) the suspicion which gave rise to the investigation or inquiry; and
- (c) the need, in regard to the investigation, for a search and seizure in terms of this section,

that there are reasonable grounds for believing that anything referred to in subsection (1) is on or in such premises or suspected to be on or in such premises.

(4) A warrant issued in terms of this section may be issued on any day and shall be of force until—

- (a) it has been executed;
- (b) it is cancelled by the person who issued it or, if such person is not available, by any person with like authority; or
- (c) the expiry of three months from the day of its issue, whichever may occur first.

(5) (a) Any person who acts on authority of a warrant issued in terms of this section may use such force as may be reasonably necessary to overcome any resistance against the entry and search of the premises, including the breaking of any door or window of such premises: Provided that such person shall first audibly demand admission to the premises and state the purpose for which he or she seeks to enter such premises.

(b) The proviso to paragraph (a) shall not apply where the person concerned is on reasonable grounds of the opinion that any object, book or document which is the subject of the search may be destroyed, tampered with or disposed of if the provisions of the said proviso are first complied with.

(6) A warrant issued in terms of this section shall be executed by day unless the person who issues the warrant authorises the execution thereof by night at times which shall be reasonable in the circumstances.

(7) Any person executing a warrant in terms of this section shall immediately before commencing with the execution—

- (a) identify himself or herself to the person in control of the premises, if such person is present, and hand to such person a copy of the warrant or, if such person is not present, affix such copy to a prominent place on the premises; and
- (b) supply such person at his or her request with particulars regarding his or her authority to execute such a warrant.

(8) If during the execution of a warrant or the conducting of a search in terms of this section, a person claims that any item found on or in the premises concerned contains privileged information and for that reason refuses the inspection or removal of such item, the person executing the warrant or conducting the search shall, if he or she is of the opinion that the item contains information which is relevant to the investigation or inquiry and that such information is necessary for the investigation or inquiry, request the registrar of the High Court which has jurisdiction or his or her delegate, to seize and remove that item for safe custody until a court of law has made a ruling on the question whether the information concerned is privileged or not.”.

CLAUSE 10

1. On page 14, in line 2, to omit “Parliament” and to substitute “National Assembly”.

2. On page 14, in line 7, to omit “Parliament” and to substitute “[**Parliament**] National Assembly”.
3. On page 14, in line 11, to omit “Parliament” and to substitute “[**Parliament**] National Assembly”.
4. On page 14, in line 23, to omit “paper” and to substitute “document”.
5. On page 14, in line 27, to omit “or”.
6. On page 14, from line 28, to omit subparagraph (ii) and to substitute:
 - (ii) to prejudice any other investigation or pending investigation;
 - (iii) disturb the public order or undermine the public peace or security of the Republic;
 - (iv) to be prejudicial to the interests of the Republic; or
 - (v) in the opinion of the Public Protector to have a bearing on the effective functioning of his or her office.

