

REPUBLIC OF SOUTH AFRICA

INTERIM RATIONALISATION OF JURISDICTION OF HIGH COURTS BILL

*(As introduced in the National Assembly as a section 75 Bill; explanatory
summary of Bill published in Government Gazette No 22582 of 17 August 2001)
(The English text is the official text of the Bill)*

(MINISTER FOR JUSTICE AND CONSTITUTIONAL DEVELOPMENT)

[B 44—2001]

REPUBLIEK VAN SUID-AFRIKA

WETSONTWERP OP INTERIM RASIONALISERING VAN JURISDIKSIE VAN HOË HOWE

*(Soos ingedien in die Nasionale Vergadering as 'n artikel 75-wetsontwerp; verduidelikende
opsomming van Wetsontwerp in Staatskoerant No 22582 van 17 Augustus 2001
gepubliseer) (Die Afrikaanse teks is die amptelike vertaling van die Wetsontwerp)*

(MINISTER VIR JUSTISIE EN STAATKUNDIGE ONTWIKKELING)

[W 44—2001]

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BILL

To make provision for the interim rationalisation of the areas of jurisdiction of the High Courts; and to provide for matters connected therewith.

PREAMBLE

WHEREAS item 16(6)(a) of Schedule 6 to the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996), provides that as soon as practical after the new Constitution took effect all courts, including their structure, composition, functioning and jurisdiction, and all relevant legislation, must be rationalised with a view to establishing a judicial system suited to the requirements of the new Constitution;

AND WHEREAS item 16(6)(b) of Schedule 6 to the Constitution provides that the Cabinet member responsible for the administration of justice, acting after consultation with the Judicial Service Commission, must manage the said rationalisation;

AND WHEREAS item 16(4)(a) of Schedule 6 to the Constitution provides that a provincial or local division of the Supreme Court of South Africa or a supreme court of a homeland or a general division of such a court, becomes a High Court under the new Constitution without any alteration in its area of jurisdiction, subject to any rationalisation contemplated in item 16(6) of Schedule 6 to the Constitution;

AND WHEREAS the rationalisation process envisaged in item 16(6) of Schedule 6 to the Constitution is a comprehensive process which will require a considerable period to bring to its conclusion;

AND WHEREAS the interim rationalisation of the areas of jurisdiction of certain High Courts as a matter of urgency will promote the efficiency of, and equity relating to, the administration of justice throughout the whole of the Republic;

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

Definitions

1. In this Act, unless the context indicates otherwise—
 - “Constitution” means the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996);
 - “district” means any district referred to in section 2(1)(a) of the Magistrates’ Courts Act, 1944 (Act No. 32 of 1944);
 - “High Court” means any High Court contemplated in section 166(c) of the Constitution;
 - “Judicial Service Commission” means the Judicial Service Commission contemplated in section 178(1) of the Constitution;
 - “Minister” means the Cabinet member responsible for the administration of justice.

Minister may alter area of jurisdiction of any High Court

2. (1) Notwithstanding the provisions of any other law, the Minister may, after consultation with the Judicial Service Commission, by notice in the *Gazette*—

- (a) alter the area of jurisdiction for which a High Court has been established by including therein or excising therefrom any district or part thereof; 5
- (b) amend or withdraw any notice issued in terms of this section.

(2) The publication of a notice referred to in subsection (1) does not affect any proceedings which have been instituted but not yet completed at the time of such publication.

Transfer of proceedings from one High Court to another

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3. (1) If any civil proceedings have been instituted in any High Court, and it appears to the Court concerned that such proceedings—

- (a) should have been instituted in another High Court; or
- (b) would be more conveniently or more appropriately heard or determined in another High Court, 15

the Court may, upon application by any party thereto and after hearing all other parties thereto, order such proceedings to be removed to that other High Court.

(2) An order for removal under subsection (1) must be transmitted to the registrar of the High Court to which the removal is ordered, and upon receipt of such order that Court may hear and determine the proceedings in question. 20

Short title

4. This Act is called the Interim Rationalisation of Jurisdiction of High Courts Act, 2001.

MEMORANDUM ON THE INTERIM RATIONALISATION OF JURISDICTION OF HIGH COURTS BILL, 2001

1. OBJECTS OF BILL

1.1 The principal object of the Bill is to confer on the Minister for Justice and Constitutional Development the power to alter the area of jurisdiction of High Courts, where this is necessary, after consultation with the Judicial Service Commission (Clause 2). This measure is proposed as an interim arrangement, pending the completion of the rationalisation of the Republic's Superior Courts, to enable the Minister to address serious inconsistencies relating to the territorial jurisdiction of certain High Courts. The jurisdictional boundaries of those Courts were drawn before the new dispensation and, as a result, still reflect the old RSA/homeland/TBVC-structure.

1.2 Clause 3 makes provision for the transfer of civil cases from one High Court to another, if it appears to the Court that the matter—

- (a) should have been instituted in another High Court; or
- (b) may be dealt with more conveniently in another Court.

This provision is largely analogous to section 9 of the Supreme Court Act, 1959 (Act No. 59 of 1959), and will ensure that the Courts can assist parties who have instituted proceedings in the wrong court, where it appears that the proceedings could more conveniently be dealt with by another Court.

2. DEPARTMENTS/BODIES/PERSONS CONSULTED

The Bill was submitted for comment to all the Judges President of the High Courts, the General Council of the Bar of South Africa, the Law Society of South Africa and the National Director of Public Prosecutions.

3. IMPLICATIONS FOR PROVINCES

None.

4. FINANCIAL IMPLICATIONS FOR STATE

None.

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 75 of the Constitution since it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.