

**PORTFOLIO COMMITTEE AMENDMENTS
TO**

**JUDICIAL MATTERS
AMENDMENT BILL**

[B 2-2005]

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

[B 2A-2005]

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AMENDMENTS AGREED TO

**JUDICIAL MATTERS AMENDMENT BILL
[B 2-2005]**

NEW CLAUSE

That the following be a new Clause:

Amendment of section 9 of Act 32 of 1944, as substituted by section 2 of Act 8 of 1967 and amended by section 4 of Act 53 of 1970, section 8 of Act 102 of 1972, section 11 of Act 29 of 1974, section 24 of Act 94 of 1974, section 1 of Act 28 of 1981, section 2 of Act 34 of 1986, section 17 of Act 90 of 1993, section 3 of Act 104 of 1996, section 3 of Act 66 of 1998, section 1 of Act 62 of 2000 and section 1 of Act 28 of 2003

1. Section 9 of the Magistrates' Courts Act, 1944, is hereby amended by the addition of the following subsection after subsection (6):

"(7) (a) A magistrate appointed in terms of subsection (1) who presided in criminal proceedings in which a plea was recorded in accordance with section 106 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), shall, notwithstanding his or her subsequent vacation of the office of magistrate at any stage, dispose of those proceedings and, for such purpose, shall continue to hold such office in respect of any period during which he or she is necessarily engaged in connection with the disposal of those proceedings-

- (i) in which he or she participated, including an application for leave to appeal in respect of such proceedings; and
- (ii) which were not disposed of when he or she vacated the office of magistrate.

(b) The proceedings contemplated in paragraph (a) shall be disposed of at the court where the proceedings were commenced, unless all parties to the proceedings agree unconditionally in writing to the proceedings being resumed in another court mentioned in the agreement.

(c) If the magistrate contemplated in paragraph (a) has subsequently been appointed as a Constitutional Court judge or judge as defined in section 1 of the Judges' Remuneration and Conditions of Employment Act, 2001 (Act No. 47 of 2001)-

- (i) he or she shall only be entitled to the benefits to which such a Constitutional Court judge or judge is entitled as contemplated in the Judges' Remuneration and Conditions of Employment Act, 2001, in respect of any period taken to dispose of the proceedings as contemplated in paragraph (a); and
- (ii) the period taken to dispose of the proceedings as contemplated in paragraph (a) is deemed to be active service for purposes of the Judges' Remuneration and Conditions of Employment Act, 2001.

(d) If the magistrate contemplated in paragraph (a) has subsequently not been appointed as a Constitutional Court judge or judge as contemplated in paragraph (c), he or she is entitled to such benefits as determined by the Minister from time to time by notice in the *Gazette* at an hourly rate.

(e) A magistrate contemplated in paragraph (a) who is, in the opinion of the Minister-

- (i) unfit to continue holding the office of magistrate for purposes of disposing of the proceedings in question; or
 - (ii) incapacitated and is not able to dispose of the proceedings in question due to such incapacity,
- may be exempted by the Minister from the provisions of this subsection, after consultation with the Chief Justice."

CLAUSE 5

Clause rejected.

CLAUSE 6

- 1. On page 6, from line 34, to omit paragraph (b).

CLAUSE 7

- 1. On page 6, in line 40, to omit "may appear in any High Court in the Republic" and substitute:

shall be entitled to appear in any court throughout the Republic

NEW CLAUSE

- 1. That the following be a new Clause:

Amendment of section 5 of Act 99 of 1998

9. Section 5 of the Maintenance Act, 1998, is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) The Minister, or any officer of the Department of Justice and Constitutional Development authorised thereto in writing by the Minister, may -

(a) subject to the laws governing the public service appoint or designate one or more officers in the Department; or

(b) appoint in the prescribed manner and on the prescribed conditions one or more persons,

as maintenance investigators of a maintenance court to exercise or perform any power, duty or function conferred upon or assigned to maintenance investigators by or under this Act."

CLAUSE 9

Clause rejected.

NEW CLAUSE

- 1. That the following be a new Clause:

Amendment of section 1 of Act 114 of 1998

10. Section 1 of the Debt Collectors Act, 1998, is hereby amended by the substitution in the definition of "debt collector" for paragraph (c) of the following paragraph:

"(c) a person who, as an agent or employee of a person referred to in paragraph (a) or (b) or as an agent of an attorney, collects the debts on behalf of such person or attorney, excluding an employee whose duties are purely administrative, clerical or otherwise subservient to the actual occupation of debt collector;"

CLAUSE 11

1. On page 8, in line 40, after "**disapproved**" to insert:

, who is in possession of a valid certificate of registration contemplated in section 11

2. On page 8, from line 40, to omit "and whose registration has not been cancelled or withdrawn".

3. On page 10, after line 4, to add:

(5) The Council shall, when it submits the register to Parliament as contemplated in subsection (2)(d), publish a notice in the Gazette and in a national newspaper, setting out the prescribed places and Particulars where the register is available for inspection by the public."

CLAUSE 12

1. On page 10, in line 10, to omit "and on such conditions as it may deem fit".

CLAUSE 13

Clause rejected.

NEW CLAUSE

1. That the following be a new Clause:

Amendment of section 20 of Act 114 of 1998

14. Section 20 of the Debt Collectors Act, 1998, is hereby amended—

- (a) by the substitution for subsections (2) and (3) of the following subsections, respectively:

"(2) The money deposited in terms of subsection (1) shall[, **together with the interest as determined under subsection (3),**] be paid within a reasonable or agreed time to the person on whose behalf the money is received or held: Provided that a settlement account, containing a complete exposition of all credits and debits reflected in the said account shall be delivered to that person at least once a month.

(3) All interest, if any, on money deposited in terms of subsection (1) shall be paid, [as] at the prescribed time and in the prescribed manner, to the [person on whose behalf the money was deposited] Council.";

(b) by the insertion after subsection (3) of the following subsection:

"(3A) The Council may, in accordance with a tariff and procedure determined by the Council reimburse the debt collector concerned for any bank charges or any portion thereof incurred by the debt collector in connection with the keeping of his or her trust account." and

(c) by the addition of the following subsections:

"(6) A debt collector must in the prescribed manner and period -

(a) cause his or her accounting records to be audited annually by a public accountant or auditor contemplated in the Public Accountants' and Auditors' Act, 1991 (Act No. 80 of 1991); and

(b) report to the Council thereon.

(7) No amount standing to the credit of a trust account contemplated in subsection (1) shall form part of the assets of a debt collector or may be attached on behalf of any creditor of such debt collector.

(8) If any debt collector -

(a) dies;

(b) becomes insolvent;

(c) in the case of a company or close corporation, is liquidated or placed under judicial management, whether, provisionally or finally;

(d) has his or her registration withdrawn;

(e) is declared by a competent court to be incapable of managing his or her own affairs; or

(f) abandons his or her practice or ceases to practise,

the Council must, where necessary, control and administer his or her trust

account until the Master of the High Court having jurisdiction has, on application made by the Council or by a person having an interest in the trust account of that debt collector, appointed a *curator bonis* with such rights, duties and powers as the Master may deem fit to control and administer such account."

CLAUSE 14

1. On page 14, from line 31, to omit "three years" and to substitute "42 months".
2. On page 14, in line 32, to omit "Act" and to substitute "[Act] section".

CLAUSE 15

1. On page 14, from line 38, to omit "an atypical congenital physical sexual differentiation" and to substitute:
a congenital sexual differentiation which is atypical, to whatever degree.

CLAUSE 18

Clause rejected.

NEW CLAUSE

1. That the following be a new Clause:

Short title and commencement

19. (1) This Act is called the Judicial Matters Amendment Act, 2005.

(2) Sections 1 and 10 to 14 come into operation on a date fixed by the President by proclamation in the *Gazette*.

(3) Section 6 comes into operation on the date of commencement of section 8 of the Judicial Matters Second Amendment Act, 2003 (Act No 55 of 2003).

(4) Section 9 comes into operation on the date of commencement of section 5 of the Maintenance Act, 1998 (Act No. 99 of 1998).

LONG TITLE

1. On page 2, after the first line, to insert:

the Magistrates' Courts Act, 1944, so as to provide for the disposal of part heard cases by permanently appointed magistrates who vacate the office of magistrate;

2. On page 2, from the seventh line, to omit all the words from "and" up to and including "supervision;" in the tenth line.
3. On page 2, in the sixteenth line, to omit "High Court" and to substitute "court".
4. On page 2, after the nineteenth line, to insert:

the Maintenance Act, 1998, so as to further regulate the appointment or designation of officers in the Department as maintenance investigators;

5. On page 2, from the twenty-third line, to omit "provide for the manner in which interest on money paid into" and substitute "further regulate the provisions relating to".
6. On page 2, in the twenty-fifth line, to omit "must be dealt with".
7. On page 2, in the twenty-eighth line, after "*Gazette*;" to insert:
and to extend the period of time within which the code of good administrative conduct must be made;
8. On page 2, in the thirty-first line, after "persons" to insert "within the definition of sex".