

Government Gazette Vol. 396, No. 18982, 19 June 1998

**GENERAL NOTICE**

**NOTICE 1014 OF 1998**

**MINISTRY FOR PROVINCIAL AFFAIRS AND CONSTITUTIONAL DEVELOPMENT**

**CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA AMENDMENT BILL, 1998**

1. I, Mohammed Valli Moosa, Minister for Provincial Affairs and Constitutional Development, under section 74 (5) (a) of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996), hereby publish the Constitution of the Republic of South Africa Amendment Bill, 1998, for public comment.
2. Comments must please be submitted in writing to:  
**The Director-General**  
**Attention: Dr P. J. Boucher**  
**Department of Constitutional Development**  
**Private Bag X804**  
**Pretoria 0001.**
3. Comments may also be faxed to facsimile number (012) 334-0614 at the above address.
4. Comments must be received by no later than **20 July 1998**.

**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 Constitution of the Republic of South Africa, 1996, by altering the term of Municipal Councils; to provide for the designation of alternates in respect of certain members of the Judicial Service Commission; to amend the name of the Human Rights Commission; to adjust the powers of the Public Service Commission; to extend, with modifications, the Application of transitional arrangements in respect of local government; and to provide for matters connected therewith**

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

**Amendment of section 159 of Act 108 of 1996**

1. Section 159 of the Constitution of the Republic of South Africa, 1996 (hereinafter referred to as the principal Act), is hereby amended—
  - a. by the substitution for the word "four" of the word "five"; and
  - b. by the addition of the following subsection, the existing section becoming subsection (1):  
"(2) A Municipal Council remains competent to function from the time it is dissolved in terms

of national legislation or its term expires, until the day before the first meeting of the newly elected Council, which meeting must be held within 14 days of a valid election."

#### **Amendment of section 178 of Act 108 of 1996**

2. Section 178 of the principal Act is hereby amended:

- a. by the substitution for paragraph (k) of subsection (1 ) of the following paragraph:  
"(k) when considering matters specifically relating to a provincial or local division of the High Court, the Judge President of that division and the Premier of the province concerned, or an alternate designated by **[the Premier, of the province concerned]** either of them.";

- b. (b) by the addition of the following subsections:

"(7) If the Chief Justice or the President of the Constitutional Court is temporarily unable to serve on the Commission, the Deputy Chief Justice or the Deputy President of the Constitutional Court, as the case may be, acts as his or her alternate on the Commission.

(8) The President and the persons who appoint, nominate or designate the members of the commission in terms of subsection (1)(c), (e), (f) and (9), may, in the same manner appoint, nominate or designate an alternate for each of those members, to serve on the Commission whenever the member concerned is temporarily unable to do so by reason of his or her incapacity, absence from the Republic or such other cause as the person presiding at any meeting of the Commission may deem sufficient."

#### **Amendment of section 196 of Act 108 of 1996**

3. Section 196 of the principal Act, is hereby amended by the addition to subsection (4) of the following paragraph:

"(g) to exercise such other powers or functions as may from time to time be allocated to it by an Act of Parliament."

#### **Substitution of expression in Act 108 of 1996**

4. The principal Act is hereby amended by the substitution for the expression "Human Rights Commission", wherever it occurs, of the expression "South African Human Rights Commission".

#### **Amendment of item 26 of Schedule 6 to Act 108 of 1996**

5. Item 26 of Schedule 6 to the principal Act, is hereby amended—

- a. by the substitution for paragraph (a) of subitem (1 ) of the following paragraph:  
"(a) the provisions of the Local Government Transition Act, 1993 (Act 209 of 1993), as may be amended from time to time by national legislation consistent with the new Constitution, remain in force in respect of a Municipal Council until **[30 April 1999 or until repealed, whichever is sooner]** that Council has been declared elected as a result of the first general election of Municipal Councils after the commencement of the new Constitution; and"; and

- b. by the substitution for paragraph (b) of subitem (1 ) of the following paragraph:

"(b) a traditional leader of a community observing a system of indigenous law and residing on land within the area of a transitional local council, transitional rural council or transitional

representative council, referred to in the Local Government Transition Act, 1993, and who has been identified as set out in section 182 of the previous Constitution, is *ex officio* entitled to be a member of that council until **[30 April 1999 or until an Act of Parliament provides otherwise]** a Municipal Council replacing that council has been declared elected as a result of the first general election of Municipal Councils after the commencement of the new Constitution.".

### Short title

6. This Act is called the Constitution of the Republic of South Africa Amendment Act, 1998

## MEMORANDUM ON THE OBJECTS OF THE CONSTITUTION OF THE REPUBLIC OF SOUTH AFRICA AMENDMENT BILL

In terms of section 159 of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996, hereinafter "The Constitution"), and with reference to the previous local government elections, the final date for the holding of local government elections differs in respect of different parts of the country.

The maximum term of Municipal Councils is one year shorter than those of the national legislature and provincial legislatures, which complicates efforts to synchronise elections within all spheres.

The Judicial Service Commission has requested that section 178 of the Constitution be amended in order to provide for the designation of alternates in respect of certain members of the Commission in order to facilitate the work of that Commission. The Commission stated its preference for a provision in terms of which the designating authority could name an alternate in advance, so as to avoid a situation where alternates would be nominated on an ad-hoc basis.

The previous Constitution specifically conferred the power to consider appeals from public servants in misconduct or inefficiency cases on the Public Service Commission. On a wide interpretation of section 196 of the Constitution, it will be competent for the Public Service Commission only to hear the appeals in question, and not to enforce appropriate remedies, as envisaged in section 5 of the Public Service Act, 1994. In addition, an overly liberal interpretation of section 196(4) would effectively confer powers on the Public Service Commission to reinvestigate (and not merely to hear appeals arising from) cases of misconduct or inefficiency, thereby potentially interfering in the maintenance of discipline within departments. There is a need to provide for the conferral of this power on the Public Service Commission. As the need to adjust the powers and functions of the Public Service Commission may be anticipated to recur from time to time, the amendment has been structured so as to enable the adjustment of the powers and functions of the Public Service Commission in future, without recourse to constitutional amendment.

The Chairperson of the Human Rights Commission has proposed that the name of that Commission be changed to the "South African Human Rights Commission". It is argued that it is practice for national human rights institutions to bear the appellation of the countries concerned and that the present name results in confusion of the Human Rights Commission with the Human Rights Committee, which was formerly known as the Human Rights Commission.

The provisions of item 26(1)(a) of Schedule 6 to the Constitution, which provide special constitutional protection to the provisions of the Local Government Transition Act, 1993 (Act No.

209 of 1983, "the LGTA"), are due to lapse on 30 April 1999. Fundamental facets of the present local government dispensation are dependent for their constitutional tenability on this protection, which must be extended beyond that date, in order to apply the provisions of the LGTA until the next local government elections.

Clause 1 of the Bill amends section 159 of the Constitution, so as to determine the term of Municipal Councils to be not more than five years; and to regulate the functioning of an existing Municipal Council until the newly elected Council assumes office.

Clause 2 amends section 178 of the Constitution so as to regulate the designation of alternates for certain members of the Judicial Services Commission.

Clause 3 provides for the allocation of additional powers and functions to the Public Service Commission, by an Act of Parliament.

Clause 4 effects a change of name of the Human Rights Commission to that of the "South African Human Rights Commission".

Clause 5 of the Bill provides for the extension of the duration of the transitional arrangement in respect of the provisions of the LGTA, in respect of a Municipal Council until the date on which that Council has been declared elected as a result of the first general election of Municipal Councils after the commencement of the new Constitution; and further provides for the ex officio membership of a traditional leader on a Municipal Council until that Council has been declared elected as a result of the first general election of Municipal Councils after the commencement of the new Constitution.

None of the above amendments relates to a matter that affects the National Council of Provinces, alters provincial boundaries, powers, functions or institutions, or amends a provision that deals specifically with a provincial matter. Consequently, the Department of Constitutional Development is of the view that the legislative procedure established by section 74(3)(a) of the Constitution has to be followed and that the Bill is required to be passed by the National Assembly only.