

REPUBLIC OF SOUTH AFRICA

**JUDICIAL MATTERS
AMENDMENT BILL**

(As introduced in the National Assembly as a section 75 Bill)

(MINISTER OF JUSTICE)

[B 36—99]

REPUBLIEK VAN SUID-AFRIKA

**WYSIGINGSWETSONTWERP OP
GEREGTELIKE
AANGELEENTHEDE**

(Soos ingedien in die Nasionale Vergadering as 'n artikel 75-wetsontwerp)

Minister or the delegated officer such and so many persons as **[he]** the Minister or the delegated officer thinks fit, to be appraisers for the valuation of property for the purposes of this Act, and may at any time revoke any appointments so made.”.

Amendment of section 9 of Act 61 of 1984, as amended by section 5 of Act 92 of 1986, section 1 of Act 63 of 1989 and section 4 of Act 18 of 1996 5

4. Section 9 of the Small Claims Courts Act, 1984, is hereby amended by the substitution for paragraph (a) of subsection (1) of the following paragraph:

“(a) Subject to the provisions of this section, the Minister or any officer of the Department of Justice with the rank of director, or an equivalent or higher rank, delegated thereto in writing by the Minister may appoint one or more commissioners for any court.”. 10

Short title

5. This Act shall be called the Judicial Matters Amendment Act, 1999.

**MEMORANDUM ON THE OBJECTS OF THE JUDICIAL MATTERS
AMENDMENT BILL, 1999**

1. The Justices of the Peace and Commissioners of Oaths Act, 1963 (Act No. 16 of 1963), the Administration of Estates Act, 1965 (Act No. 66 of 1965), and the Small Claims Courts Act, 1984 (Act No. 61 of 1984), confer the power to appoint justices of the peace, commissioners of oaths, appraisers and commissioners for small claims upon the Minister of Justice. In terms of section 93(4) of the Constitution, the Deputy Minister of Justice exercises the said power on behalf of the Minister.

2. The Department of Justice processes an average of 50 applications for the appointment of commissioners of oaths weekly. Due to the large number of applications received the appointment of commissioners of oaths may be delayed, which could cause the civil justice system to be crippled. In view of the above, the power to sign certificates of commissioners of oaths on behalf of the Deputy Minister was delegated to the Chief Director: Administration of Courts and Witness Protection.

3. However, since the legislation does not provide for the delegation of the power, a legal opinion in this regard was obtained from the State Law Advisers which stated as follows:

“Due to the urgency of the matter and the number of Acts involved it is not possible to give a final answer regarding the question posed. However, looking for example at section 2 of the Justices of the Peace and Commissioners of Oaths Act, 1963 (Act No. 16 of 1963), which stipulates, inter alia, that the Minister may appoint so many justices of the peace as he may deem fit and a justice of the peace shall hold office during the Minister’s pleasure, it seems clear to us that there is definitely no room for any delegation or power to any other official than the Minister (Deputy Minister) himself or herself. The same conclusion can be made in the case of the appointment of appraisers in section 6 of the Administration of Estates Act, 1965 (Act No. 66 of 1965).”

4. To this end, the Bill seeks to amend the relevant Acts so as to provide for the delegation by the Minister of Justice of the power to appoint justices of the peace, commissioners of oaths, appraisers and commissioners for small claims.

5. The State Law Advisers and the Department of Justice 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.