

REPUBLIC OF SOUTH AFRICA

JUDICIAL MATTERS AMENDMENT BILL

*(As introduced in the National Assembly (proposed section 75); explanatory summary of
Bill and prior notice of its introduction published in Government Gazette No. 51802 of
20 December 2024)
(The English text is the official text of the Bill)*

(MINISTER OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT)

[B 8—2025]

ISBN 978-1-4850-1019-7

No. of copies printed 150

[] Words in bold type in square brackets indicate omissions from existing enactments.

To amend the—

- **Judicial Service Commission Act, 1994**, so as to further regulate the composition of the Judicial Conduct Committee;
- **Promotion of Access to Information Act, 2000**, so as to—
 - make provision for the manual to also contain the website link to the latest notice regarding the records held by public bodies that are automatically available;
 - assign the duty to keep certain details of information officers of public bodies to the Information Regulator; and
 - provide for the mandatory disclosure of certain records of the South African Revenue Service in the public interest;
- **Prevention and Combating of Corrupt Activities Act, 2004**, so as to further regulate offences and penalties committed in terms of the Act;
- **Child Justice Act, 2008**, so as to provide for a procedure for dealing with children arrested for possession or use of cannabis as provided for in the Cannabis for Private Purposes Act, 2024;
- **Legal Practice Act, 2014**, so as to—
 - insert new definitions;
 - delete the reference to state advocate;
 - revise the provisions dealing with institutions where practical vocational training may be performed;
 - revise the requirements relating to the right of appearance in the High Court and the requirements for admission as a legal practitioner;
 - to revise the provisions relating to the right of appearance for candidate attorneys and pupils at the expiry of the practical vocational training;
 - further regulate the payment of professional fees;
 - provide for attorneys and advocates employed in certain institutions to practise; and
 - revise the requirements for possessing a Fidelity Fund certificate; and
- **Cybercrimes Act, 2020**, so as to amend a definition and to empower the Minister to make regulations relating to search warrants, and to provide for matters connected therewith.

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

Amendment of section 8 of Act 9 of 1994, as inserted by section 9 of Act 20 of 2008 and substituted by section 19 of Act 42 of 2013

1. Section 8 of the Judicial Service Commission Act, 1994, is hereby amended— 5
 - (a) by the substitution in subsection 1 for paragraph (c) of the following paragraph:

“(c) [**four**] eight judges, at least [**two**] four must be women, designated by the Chief Justice in consultation with the Minister, for the period determined at the time of such designation, provided that such 10 period may not exceed two years.”; and
 - (b) by the addition of the following subsection:

“(7) The Chairperson may appoint not more than three judges as temporary members of the Committee, for a specified period of not more than six months, to deal with specific complaints in terms of section 16 15 or 17 provided that—

 - (a) at least three members are unavailable;
 - (b) in the opinion of the Chairperson, it is necessary to deal with backlogs; or
 - (c) it is necessary to dispose of certain matters expeditiously.”. 20

Amendment of section 14 of Act 2 of 2000, as amended by section 27 of Act 42 of 2001 and substituted by section 110 of Act 4 of 2013

2. Section 14 of the Promotion of Access to Information Act, 2000, is hereby amended—
 - (a) by the substitution in subsection (1)(b) for subparagraph (iii) of the following subparagraph:

“(iii) the website link to the latest notice, in terms of section [**15(2)**] 15(1)(a), if any, regarding the categories of records of the body which are available without a person having to request access in terms of this Act;” and 30
 - (b) by the substitution in subsection (1)(b) for subparagraph (v) of the following subparagraph:

“(v) a description of any arrangement or provision for public participation, through any suitable manner that may be expedient and convenient, in the formulation of a policy, legislation or the exercise of powers or performance of duties by the body”.

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Amendment of section 15 of Act 2 of 2000, as amended by section 110 of Act 4 of 2013

3. Section 15 of the Promotion of Access to Information Act, 2000, is hereby amended by the substitution in subsection (1) for the words preceding paragraph (a) of the following words: 40

“The information officer of [**a**] each public body[, referred to in paragraph (a) or (b)(i) of the definition of ‘public body’ in section 1,] must make available in the prescribed manner a description of—”.

Substitution of section 16 of Act 2 of 2000 45

4. Section 16 of the Promotion of Access to Information Act, 2000, is hereby substituted for the following section:

“Contact information of Information Officer

16. The Information Regulator must, upon registration of the information officer and deputy information officer of a public body in terms of section 55(2) of the Protection of Personal Information Act, 2013 (Act No. 4 of 2013)— 50
 - (a) keep the register; and

- (b) ensure the publication on its website of the postal address, street address, contact number, and if available, electronic mail address of the information officer and deputy information officer concerned.”.

Amendment of section 17 of Act 2 of 2000

5. Section 17 of the Promotion of Access to Information Act, 2000, is hereby amended—

- (a) by the substitution in subsection (6) for the words preceding paragraph (a) of the following words:
 “Any designation or delegation in terms of [subsection] subsections (1) and (3)—”; and
- (b) by the substitution in subsection 6 for paragraph (b) of the following paragraph:
 “(b) does not prohibit the person who made the designation or delegation from exercising the power concerned or performing the duty concerned himself or herself; and”.

Amendment of section 46 of Act 2 of 2000

6. Section 46 of the Promotion of Access to Information Act, 2000, is hereby amended by the substitution for the words preceding paragraph (a) of the following words:

- “Despite any other provision of this Chapter, the information officer of a public body must grant a request for access to a record of the body contemplated in section 34(1), 35(1), 36(1), 37(1)(a) or (b), 38(a) or (b), 39(1)(a) or (b), 40, 41(1)(a) or (b), 42(1) or (3), 43(1) or (2), 44(1) or (2) or 45, if—”.

Amendment of section 26 of Act 12 of 2004, substituted by section 35 of Act 66 of 2008

7. Section 26 of the Prevention and Combating of Corrupt Activities Act, 2004, is hereby amended by the substitution in subsection (1)(a) for the words preceding subparagraph (i) of the following words:

- “Part 1, 2, 3 or 4, or section 18 of Chapter 2, or section 34A, is liable—.”.

Amendment of section 5 of Act 75 of 2008, as amended by section 3 of Act 28 of 2019

8. Section 5 of the Child Justice Act, 2008, is hereby amended by the substitution for subsection (1) of the following subsection:

- “(1) Every child who is alleged to have committed an offence—
 (a) and is under the age of 12 years[,]; or
 (b) referred to in section 3(1)(a) of the Cannabis for Private Purposes Act, 2024 (Act No. 7 of 2024), and is 12 years or older, but under the age of 18 years, must be referred to a probation officer to be dealt with in terms of section 9.”.

Amendment of section 9 of Act 75 of 2008, as amended by section 6 of Act 28 of 2019

9. Section 9 of the Child Justice Act, 2008, is hereby amended—

- (a) by the substitution for the heading of the following heading:
 “**Manner of dealing with child under age of 12 years or child under age of 18 years under certain circumstances**”; and
- (b) by the addition of the following subsection:
 “(8)(a) A police official may not arrest a child who is 12 years or older, but under the age of 18 years who is suspected of having committed an offence referred to in section 3(1)(a) of the Cannabis for Private Purposes Act, 2024 (Act No. 7 of 2024), and must, in the prescribed manner, immediately hand the child over—
 (i) to his or her parents, an appropriate person or a guardian; or
 (ii) if no parent, appropriate person or a guardian is available or if it is not in the best interest of the child to be handed over to the parent, an appropriate person or a guardian, to a suitable child and youth care centre,
 and must notify a probation officer.
 (b) The provisions of subsections (2) to (7) apply, with the necessary changes required by the context, to a child referred to in paragraph (a).”.

Amendment of section 12 of Act 75 of 2008, as substituted by section 9 of Act 28 of 2019

10. Section 12 of the Child Justice Act, 2008, is hereby amended by the substitution for paragraph (a) of the following paragraph:

“(a) the person may be a child under the age of 12 years, or a child who is 12 years or older, but under the age of 18 years who is suspected of having committed an offence referred to in section 3(1)(a) of the Cannabis for Private Purposes Act, 2024 (Act No. 7 of 2024), the police official must act in accordance with the provisions of section 9; or”.

Amendment of section 34 of Act 75 of 2008, as amended by section 12 of Act 28 of 2019

11. Section 34 of the Child Justice Act, 2008, is hereby amended by the substitution for subsection (3) of the following subsection:

“(3) A probation officer who has been notified by a police official that a child—
 (a) under the age of 12 years; or
 (b) 12 years or older, but under the age of 18 years who is suspected of having committed an offence referred to in section 3(1)(a) of the Cannabis for Private Purposes Act, 2024 (Act No. 7 of 2024),
 has been dealt with in terms of section 9, must make arrangements to assess the child within seven days of the notification.”.

Amendment of section 35 of Act 75 of 2008, as amended by section 13 of Act 28 of 2019

12. Section 35 of the Child Justice Act, 2008, is hereby amended by substitution for paragraph (f) of the following paragraph:

“(f) in the case of a child—
 (i) under the age of 12 years;
 (ii) a child referred to in section 10(2)(b); or
 (iii) 12 years or older, but under the age of 18 years who is suspected of having committed an offence referred to in section 3(1)(a) of the Cannabis for Private Purposes Act, 2024 (Act No. 7 of 2024),
 establish what measures need to be taken in terms of section 9;”.

Amendment of section 40 of Act 75 of 2008, as amended by section 14 of Act 28 of 2019

13. Section 40 of the Child Justice Act, 2008, is hereby amended by the substitution in subsection (1) of paragraph (e) for the following paragraph:

“(e) in the case of a child—
 (i) under the age of 12 years[,]; or
 (ii) 12 years or older, but under the age of 18 years who is suspected of having committed an offence referred to in section 3(1)(a) of the Cannabis for Private Purposes Act, 2024 (Act No. 7 of 2024),
 establish what measures need to be taken in terms of section 9;”.

Amendment of section 1 of Act 28 of 2014

14. Section 1 of the Legal Practice Act, 2014, is hereby amended—

- (a) by the insertion after the definition of “code of conduct” of the following definition:

“**‘Commission for Gender Equality’** means the Commission for Gender Equality referred to in Chapter 9 of the Constitution;”;
- (b) by the deletion of the definition of “justice centre”;
- (c) by the insertion after the definition of “law clinic” of the following definition:

“**‘Legal Aid office’** means a national, provincial or local office of Legal Aid South Africa, and includes a satellite office;”;
- (d) by the substitution for the definition of “Legal Aid South Africa” of the following definition:

“**Legal Aid South Africa**” means the national public entity, that is established in terms of section 2 of the Legal Aid South Africa Act, 2014 (Act No. 39 of 2014);”;

- (e) by the substitution for the definition of “Minister” of the following definition:
 “**Minister**” means the Cabinet member responsible for the administration of justice;”;
- (f) by the insertion after the definition of “South African Human Rights Commission” of the following definition:
 “**Special Investigating Unit**” means a Special Investigating Unit contemplated in section 2 of the Special Investigating Units and Special Tribunals Act, 1996 (Act No. 74 of 1996);”;
- (g) by the deletion of the definition of “state advocate”.

Amendment of section 25 of Act 28 of 2014

15. Section 25 of the Legal Practice Act, 2014, is hereby amended—

- (a) by the substitution for subsection (2) of the following subsection: 15
 “(2)(a) A legal practitioner, whether practising as an advocate or an attorney, has the right to appear on behalf of any person in any court in the Republic or before any board, tribunal or similar institution[, **subject to subsections (3) and (4) or any other law**].
 (b) A legal practitioner, whether practising or not, who was admitted and enrolled to practise as such before the amendment of this section, automatically acquires the right to appear in any court in the Republic upon the commencement of this section.”;
- (b) by the deletion of subsections (3) and (4); and
- (c) by the addition of the following subsection: 25
 “(6)(a) A candidate attorney who is entitled to appear as contemplated in subsection (5) remains so entitled to appear at the expiry of the practical vocational training, but not for longer than six months, until that candidate attorney is admitted as an attorney: Provided that such candidate attorney— 30
 (i) remains in the employ of the attorney who was a principal to that candidate attorney immediately before such expiry; or
 (ii) remains in the service of Legal Aid South Africa, a legal aid office or other institution approved by the Council concerned, as the case may be. 35
 (b) A pupil who has completed the practical vocational training remains so entitled to appear at the expiry of the practical vocational training, but not for longer than six months, until that pupil is admitted as an advocate, provided that such pupil remains under the supervision of the training supervisor of such pupil.”. 40

Amendment of section 26 of Act 28 of 2014

16. Section 26 of the Legal Practice Act, 2014, is hereby amended by the substitution in subsection (1) for paragraph (a) of the following paragraph:

- “(a) satisfied all the requirements for the LLB degree obtained at any higher education institution referred to in the Higher Education Act, 1997 (Act No. 101 of 1997), which degree must be registered with the South African Qualifications Authority established in terms of the National Qualifications Framework Act, 2008 (Act No. 67 of 2008), and has been approved by the Council on Higher Education in terms of the Higher Education Act, 1997; or”.

Amendment of section 29 of Act 28 of 2014

17. Section 29 of the Legal Practice Act, 2014 is hereby amended by the substitution in subsection (2) for paragraph (b) of the following paragraph:

- “(b) service at the South African Human Rights Commission[;] or Commission for Gender Equality, or any other state institution referred to in Chapter 9 of the Constitution, as approved by the Minister by notice in the *Gazette*;”;

Amendment of section 30 of Act 28 of 2014

18. Section 30 of the Legal Practice Act, 2014, is hereby amended by the deletion of paragraph (h) of subsection (3).

Amendment of section 34 of Act 28 of 2014

19. Section 34 of the Legal Practice Act, 2014, is hereby amended— 5
- (a) by the substitution in subsection (2)(a) for subparagraph (ii) of the following subparagraph:
 - “(ii) upon receipt of a request directly from a member of the public or from a **[justice centre]** Legal Aid office for that service, subject to paragraph (b).”; 10
 - (b) by the substitution in subsection (2) for paragraph (b) of the following paragraph:
 - “(b) An advocate contemplated in paragraph (a)(ii) may only render those legal services rendered by advocates before the commencement of this Act as determined by the Council in the rules, if **[he or she]** that advocate— 15
 - (i) is in possession of a Fidelity Fund certificate and conducts **[his or her]** practice in accordance with the relevant provisions of Chapter 7, with particular reference to sections 84, 85, 86 and 87; and 20
 - (ii) has notified the Council thereof in terms of section 30(1)(b)(ii).”; 20
 - (c) by the substitution in subsection (2) for paragraph (c) of the following paragraph:
 - “(c) An advocate may render legal services in criminal or civil matters in expectation of a fee, commission, gain or reward as contemplated in this Act or any other applicable law upon receipt of a request directly from a **[justice centre]** Legal Aid office for that service, in which event the provisions of paragraph (b) do not apply.”; 25
 - (d) by the substitution in subsection (5) for paragraph (a) of the following paragraph:
 - “(a) for their own account and as such, may only make over to, share or divide any portion of their professional fee with an attorney;”; 30
 - (e) by the substitution in subsection (5) for paragraphs (d) and (e) of the following paragraphs: 35
 - “(d) as part of Legal Aid South Africa; **[or]**
 - (e) as an attorney in the full-time employment of, the State as a state attorney, **[or]** the South African Human Rights Commission~~[.]~~ or the Commission for Gender Equality, or any other state institution referred to in Chapter 9 of the Constitution, as approved by the Minister by notice in the Gazette; or; 40
 - (f) by the addition in subsection (5) of the following paragraph:
 - “(f) as an attorney employed as a member of a Special Investigating Unit.”; 45
 - (g) by the substitution in subsection (6) for paragraphs (c) and (d) of the following paragraphs: 45
 - “(c) as part of Legal Aid South Africa; **[or]**
 - (d) as an advocate in the full-time employment of the **[State as a state advocate or the]** South African Human Rights Commission~~[.]~~ or the Commission for Gender Equality, or any other state institution referred to in Chapter 9 of the Constitution, as approved by the Minister by notice in the Gazette; or; 50
 - (h) by the addition in subsection (6) of the following paragraph:
 - “(e) as an advocate employed as a member of a Special Investigating Unit.”; 55

- (i) by the substitution in subsection (7) for paragraph (a) of the following paragraph:
“(a) its shareholding, directorship, partnership or membership as the case may be, is comprised exclusively of attorneys;”;
- (j) by the substitution in subsection (7) for paragraph (c) of the following paragraph: 5
“(c) all present and past shareholders, directors, partners and members, as the case may be, are liable jointly and severally together with the commercial juristic entity for—
 - (i) the debts and liabilities of the commercial juristic entity as are 10
or were contracted during their period of office; and
 - (ii) **[in respect of]** any theft of trust money or assets entrusted to the juristic entity committed during their period of office.”.

Amendment of section 84 of Act 28 of 2014

20. Section 84 of the Legal Practice Act, 2014, is hereby amended— 15

- (a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:
“Every attorney or any advocate referred to in section 34(2)(b), other than a legal practitioner in the full-time employ of the South African Human Rights Commission, the Commission for Gender Equality, or 20
any other state institution referred to in Chapter 9 of the Constitution, as approved by the Minister by notice in the Gazette, the Special Investigating Unit or the State as a state attorney [or state advocate] and who practises or is deemed to practise—”;
- (b) by the substitution for subsection (9) of the following subsection: 25
“(9) No legal practitioner in the full-time employ of the South African Human Rights Commission, the Commission for Gender Equality, or any other state institution referred to in Chapter 9 of the Constitution, as approved by the Minister by notice in the Gazette, the Special Investigating Unit or the State as a state attorney, [state advocate,] state 30
law adviser or in any other professional capacity may receive or keep money or property belonging to any person, except during the course of employment of such legal practitioner with the State or the South African Human Rights Commission, the Commission for Gender Equality, or any other state institution referred to in Chapter 9 of the Constitution, as approved by the Minister by notice in the Gazette, the Special Investigating Unit and in such case only on behalf of the South African 35
Human Rights Commission, the Commission for Gender Equality, or any other state institution referred to in Chapter 9 of the Constitution, as approved by the Minister by notice in the Gazette, the Special Investigating Unit or the State and for no other purpose.”; and 40
- (c) by the addition of the following subsection:
“(10) The Council may exempt a legal practitioner referred to in subsection (1), who practises as part of a law clinic, from the requirement of possessing a Fidelity Fund certificate, in so far as it pertains to legal 45
services rendered by that legal practitioner at that law clinic, after consideration of a written application from the legal practitioner.”.

Amendment of section 1 of Act 19 of 2020

21. Section 1 of the Cybercrimes Act, 2020, is hereby amended by the substitution of the definition of “police official” of the following definition: 50

“**‘police official’** means a member of the South African Police Service as defined in section 1 of the South African Police Service Act, 1995, or for the purposes of Chapter 4 of this Act, any official who by virtue of their office is authorised to investigate any offence in terms of any law, where such investigation relates to search, access or seizure of an ‘article’ as defined in section 1 of this Act;”.

Amendment of section 59 of Act 19 of 2020

22. Section 59 of the Cybercrimes Act, 2020, is hereby amended by the insertion after subparagraph (xiv) in paragraph (a) of subsection (1) of the following subparagraph:

“(xivA) form and manner of application for a search warrant contemplated in section 29;”.

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Short title

23. This Act is called the Judicial Matters Amendment Act, 2025.

MEMORANDUM ON THE OBJECTS OF THE JUDICIAL MATTERS AMENDMENT BILL, 2025

1. PURPOSE OF BILL

The primary aim of the Judicial Matters Amendment Bill (“the Bill”), 2025 is to amend numerous laws which are administered by the Department of Justice and Constitutional Development (“the Department”) and are intended to address practical and technical issues of a non-contentious nature.

2. CLAUSE-BY-CLAUSE ANALYSIS

- 2.1 **Clause 1** of the Bill seeks to amend section 8 of the Judicial Service Commission Act, 1994 (Act No. 9 of 1994) (“JSC Act”) to amend the composition of the Judicial Conduct Committee by increasing the number of members of the committee and conferring power on the Chairperson to appoint temporary members of the Committee to expeditiously deal with complaints in terms of section 16 or 17 of the JSC Act.
- 2.2 **Clause 2** proposes an amendment to section 14 of the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000) (“PAIA”) to make provision for the manual to also contain the website link to the latest notice regarding the records held by public bodies that are automatically available in terms of PAIA.
- 2.3. **Clause 3** seeks to delete an incorrect reference in section 15 of PAIA.
- 2.4 **Clause 4** seeks to amend section 16 of PAIA, so as to transfer the responsibilities of keeping the register and publishing information from the Director-General to the Information Regulator established in terms of section 39 of the Protection of Personal Information Act, 2013 (Act No. 4 of 2013).
- 2.5 **Clause 5** seeks to effect consequential amendments to include the designation of persons as deputy information officers in terms of section 17 of PAIA.
- 2.6 **Clause 6** seeks to clarify that section 35(1) of PAIA is also applicable to section 46. The amendment also seeks to comply with the Constitutional Court in *Arena Holdings (Pty) Ltd t/a Financial Mail and Others v South African Revenue Service and Others [2023] ZACC 13* which declared sections 35 and 46 of the PAIA unconstitutional to the extent that they preclude access to tax records by a person other than the taxpayer even in circumstances where the requirements of section 46 of PAIA are met.
- 2.7 **Clause 7** proposes an amendment to section 26 of the Prevention and Combating of Corrupt Activities Act, 2004 (Act No.12 of 2004), so as to include section 34A under the provision dealing with penalties.
- 2.8 **Clause 8** seeks to effect a consequential amendment to section 5 of the Child Justice Act, 2008 (Act No. 75 of 2008) (“Child Justice Act”), in order to ensure that this section is in line with the proposed amendment of section 9 of the Act as reflected in clause 9 of the Bill.
- 2.9 **Clause 9** seeks to provide for the procedure to deal with children who are arrested for being in possession or the use of cannabis in order to align to section 3(1) of the Cannabis for Private Purposes Act, 2024 (Act No. 7 of 2024) (“Cannabis for Private Purposes Act”) which provides that that the best interests of a child must prevail in the response where such child is suspected of having contravened a provision of the Act relating to possession or use of cannabis and dealing in cannabis. The Act requires that such a child must be dealt with in terms of the Child Justice Act. Section 9 of the Child Justice Act requires that where a police official has reason to believe that a child suspected of having committed an offence is under the age of 12 years, he or she may not

arrest the child, but must hand the child over to his or her parents, to an appropriate person or a guardian and must notify a probation officer.

- 2.10 **Clauses 10 to 13** seeks to effect consequential amendments to sections 12, 34, 35 and 40 of the Child Justice Act, in order to ensure that those sections are in line with the proposed amendment of section 9 of the Act as reflected in clause 9 of the Bill.
- 2.11 **Clause 14** proposes the deletion of the definition of “justice centre” and proposes the insertion of new definitions in section 1 of the Legal Practice Act, 2014 (Act No 28 of 2014) (“the Legal Practice Act”).
- 2.12 **Clause 15** seeks to amend section 25 of the Legal Practice Act to provide for the automatic right of appearance in any court in the Republic for legal practitioners. Provision for an extension of the right of appearance is made for candidate attorneys and pupils whose practical vocational training contract has expired.
- 2.13 **Clause 16** seeks to amend section 26 of the Legal Practice Act to delete the length or duration of LLB degree and to provide that the LLB degree must be obtained at any higher education institution registered with the South African Qualifications Authority.
- 2.14 **Clause 17** proposes amendments to section 29 of the Legal Practice Act in order to include community service for practical vocational training at the Commission for Gender Equality or any state institution referred to in Chapter 9 of the Constitution, as approved by the Minister by notice in the *Gazette* for candidate legal practitioners.
- 2.15 **Clause 18** seeks to effect a consequential amendment to section 30 of the Legal Practice Act by deleting the responsibility of the Council to keep information relating to the right of appearance.
- 2.16 **Clause 19** seeks to delete obsolete terminologies in section 34 of the Legal Practice Act. The proposed amendment makes provision for attorneys to share or divide their professional fee with attorneys. In addition to the above, the proposed amendment also makes provision for employees of the Commission for Gender Equality, or any state institution referred to in Chapter 9 of the Constitution, as approved by the Minister by notice in the *Gazette*, and Special Investigating Unit, who are admitted as attorneys and advocates, to practise as such. Provision is also made for directors of commercial juristic entities who conduct a legal practice to be jointly and severally liable for any theft committed during the term of office.
- 2.17 **Clause 20** seeks to amend section 84 of the Legal Practice Act to make provision for the exemption of a legal practitioner who practises as part of a law clinic, from the requirement of possessing a Fidelity Fund certificate, in so far as it pertains to legal services rendered by that legal practitioner at the law clinic.
- 2.18 **Clause 21** seeks to amend the definition of “police official” in section 1 of the Cybercrimes Act, 2020 (Act No.19 of 2020) (“Cybercrimes Act”) to include, for the purposes of Chapter 4 of the Cybercrimes Act, any official who by virtue of their office is authorised in terms of the provisions of any other law to investigate an offence in terms of any law, where such investigation relates to search, access or seizure of an “article” as defined in section 1 of this Act.
- 2.19 **Clause 22** seeks to amend section 59 of the Cybercrimes Act by empowering the Minister to make regulations relating to the form and manner of application for a search warrant.
- 2.20 **Clause 23** contains the short title of the Act.

3. CONSULTATION

- 3.1 The Bill was drafted in consultation with the Commission for Gender Equality, Special Investigating Unit, National Prosecution Authority, Legal Practice Council, Department of Forestry, Fisheries and the Environment, Office of the Chief Justice and the South African Police Service.
- 3.2 The Bill was not subjected to a broad consultation process, since the proposed amendments are primarily of a technical nature and to remedy constitutional defects where there is already a reading in.
- 3.3 The Development Committee of the Justice, Crime Prevention and Security (“JCPS”) Cluster was consulted on the Bill and gave its approval for the further processing of the Bill.
- 3.4 The JCPS Directors-General Cluster was also consulted, and approved the further processing of the Bill.

4. IMPLICATIONS FOR PROVINCES

There are no implications for the provinces.

5. FINANCIAL IMPLICATIONS FOR STATE

There are no financial implications for the State.

6. PARLIAMENTARY PROCEDURE

- 6.1 In *Tongoane and Others v Minister of Agriculture and Land Affairs and Others**, (*“Tongoane”*) the Constitutional Court (“CC”) confirmed the test formulated in order to determine the classification of a Bill (“tagging test”). According to the CC, what matters for the purposes of tagging, is not the substance or purpose of the Bill, but rather whether the provisions of the Bill in “substantial measure” fall within a functional area listed in Schedule 4.

- 6.2 In commenting on the “substantial measure test”, the CC made the following remarks:

“[60] The test for tagging must be informed by its purpose. Tagging is not concerned with determining the sphere of government that has the competence to legislate on a matter. Nor is the process concerned with preventing interference in the legislative competence of another sphere of government. The process is concerned with the question of how the Bill should be considered by the provinces and in the NCOP, and how a Bill must be considered by the provincial legislatures depends on whether it affects the provinces. The more it affects the interests, concerns and capacities of the provinces, the more say the provinces should have on its content. . . .

[71] On the other hand, the “substantial measure” test permits a consideration of the provisions of the Bill and their impact on matters that substantially affect the provinces. This test ensures that legislation that affects the provinces will be enacted in accordance with a procedure that allows the provinces to fully and effectively play their role in the law-making process. This test must therefore be endorsed.

[72] To summarise: any Bill whose provisions substantially affect the interests of the provinces must be enacted in accordance with the procedure stipulated in section 76. Whether a Bill is a section 76 Bill is determined in two ways. First, by the explicit list of legislative matters in section 76(3)(a)–(f), and second by whether the provisions of a Bill in substantial measure fall within a concurrent provincial legislative competence.”. [Our emphasis]

* CCT 100/09 [2010] ZACC 10.

- 6.3 As stated above, a Bill, the provisions of which in substantial measure fall within a functional area listed in Schedule 4 to the Constitution of the Republic of South Africa, 1996 (“Constitution”), must be classified as a section 76 Bill. In order to test whether the provisions of a Bill fall within a functional area listed in Schedule 4, the cumulative effect of all the provisions of the Bill must be taken into account in order to determine its impact on the provinces.
- 6.4 The Bill proposes amendments to a number of statutes and is intended to address practical and technical issues. The Department and State Law Advisers are of the view that the subject matter of the Bill does not fall within any of the functional areas listed in Schedule 4 to the Constitution. In view of the above discussion, the State Law Advisers and the Department are of the opinion that the Bill must be dealt with in terms of 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.
- 6.5 The State Law Advisers are of the opinion that it is not necessary to refer the Bill to the National House of Traditional and Khoi-San Leaders in terms of section 39(1)(a)(i) of the Traditional and Khoi-San Leadership Act, 2019 (Act No. 3 of 2019), since the Bill does not contain any provisions which directly affect customary law or the customs of traditional or Khoi-San communities.

Printed by Creda Communications

ISBN 978-1-4850-1019-7