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THE PRESIDENCY

No. 446

2 June 2014

It is hereby notified that the President has assented to the following Act, which is hereby published for general information:—

Act No. 22 of 2014: Determination of Remuneration of Office-Bearers of Independent Constitutional Institutions Laws Amendment Act, 2014



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AND SINCE it is recognised that no uniformity exists in the procedures for determining the salaries, allowances and benefits of the Public Protector, the Auditor-General and members of Commissions established by the Constitution, including the broadcasting authority referred to in section 192 of the Constitution,

PARLIAMENT of the Republic of South Africa therefore enacts, as follows:—

Amendment of section 1 of Act 23 of 1994, as amended by section 35 of Act 47 of 1997, section 3 of Act 113 of 1998 and section 1 of Act 22 of 2003

1. Section 1 of the Public Protector Act, 1994, is hereby amended— 5
- (a) by the substitution for the definition of “Constitution” of the following definition:
- “(iA) **‘Constitution’** means the Constitution of the Republic of South Africa, 1996 [(Act No. 108 of 1996)]; (iiA)”;
- (b) by the insertion of the following definition after the definition of “Deputy Public Protector”:
- “(iiA) **‘Independent Commission’** means the Independent Commission for the Remuneration of Public Office-bearers established by section 2 of the Independent Commission for the Remuneration of Public Office-bearers Act, 1997 (Act No. 92 of 1997); (ivB)”. 10 15

Amendment of section 2 of Act 23 of 1994, as amended by section 5 of Act 113 of 1998 and section 3 of Act 22 of 2003

2. Section 2 of the Public Protector Act, 1994, is hereby amended—
- (a) by the substitution for the heading of the following heading:
- “**[Remuneration, vacancies in office] Salary, allowances and [other terms and conditions of employment] benefits and vacancies in office of Public Protector**”;
- (b) by the substitution for subsection (2) of the following subsection:
- “(2) The **[remuneration and other terms and conditions of employment of the Public Protector shall from time to time be determined by the National Assembly upon the advice of the committee]** Public Protector shall be entitled to such salary, allowances and benefits— 25
- (a) as determined by the President, from time to time, by notice in the *Gazette*, after taking into consideration the recommendations of the Independent Commission; and 30
- (b) approved by the National Assembly in terms of subsection (2C): Provided that such **[remuneration] salary**—
- (a) **shall not be less than that of a judge of a High Court; and**
- (b) shall not be reduced, nor shall the **[terms and conditions of employment] allowances and benefits** be adversely altered, during his or her term of office.”; and 35
- (c) by the insertion of the following subsections after subsection (2):
- “(2A) The Independent Commission shall, when investigating or considering the salary, allowances and benefits of the Public Protector, consult with the Minister and the Cabinet member responsible for finance. 40
- (2B) A notice in terms of subsection (2)(a) or any provision thereof may commence with effect from a date specified in the notice, which date may not be more than one year before the date of publication of the notice. 45
- (2C) (a) A notice issued under subsection (2)(a) shall be submitted to the National Assembly for approval before publication thereof.
- (b) The National Assembly shall, by resolution— 50
- (i) approve the notice, whether in whole or in part; or
- (ii) disapprove the notice.”.

Amendment of section 2A of Act 23 of 1994, as inserted by section 4 of Act 22 of 2003

3. Section 2A of the Public Protector Act, 1994, is hereby amended—

(a) by the substitution for the heading of the following heading:

“**Appointment, [remuneration] salary, allowances and [other terms and conditions of employment] benefits, vacancies in office and removal from office of Deputy Public Protector**”;

(b) by the substitution for subsection (5) of the following subsection:

“(5) The [remuneration and other terms and conditions of employment of the Deputy Public Protector shall from time to time be determined by the National Assembly upon the advice of the committee] Deputy Public Protector shall be entitled to such salary, allowances and benefits—

(a) as determined by the President, from time to time, by notice in the *Gazette*, after taking into consideration the recommendations of the Independent Commission; and

(b) approved by the National Assembly in terms of subsection (5C): Provided that such salary shall not be reduced, nor shall the allowances and benefits be adversely altered, during his or her term of office.”; and

(c) by the insertion of the following subsections after subsection (5):

“(5A) The Independent Commission shall, when investigating or considering the salary, allowances and benefits of the Deputy Public Protector, consult with the Minister and the Cabinet member responsible for finance.

(5B) A notice in terms of subsection (5)(a) or any provision thereof may commence with effect from a date specified in the notice, which date may not be more than one year before the date of publication of the notice.

(5C) (a) A notice issued under subsection (5)(a) shall be submitted to the National Assembly for approval before publication thereof.

(b) The National Assembly shall, by resolution—

(i) approve the notice, whether in whole or in part; or

(ii) disapprove the notice.”.

Amendment of section 1 of Act 39 of 1996, as amended by section 35 of Act 47 of 1997 and section 2 of Act 17 of 2013

4. Section 1 of the Commission for Gender Equality Act, 1996, is hereby amended by the insertion of the following definition after the definition of “committee”:

“(iiiA) ‘**Independent Commission**’ means the Independent Commission for the Remuneration of Public Office-bearers established by section 2 of the Independent Commission for the Remuneration of Public Office-bearers Act, 1997 (Act No. 92 of 1997); (ivA)”.

Substitution of section 8 of Act 39 of 1996

5. The following section is hereby substituted for section 8 of the Commission for Gender Equality Act, 1996:

“**[Remuneration and] Salary, allowances and benefits of members of Commission**

8. (1) The full-time and part-time members of the Commission shall be entitled to such [remuneration] salary, allowances and [other terms and conditions of office and service] benefits [of the full-time and part-time members of the Commission shall be determined by the President]—

(a) as determined by the President, from time to time, by notice in the *Gazette*, after taking into consideration the recommendations of the Independent Commission; and

(b) approved by the National Assembly in terms of subsection (5).

(2) The [remuneration] salary of the members of the Commission shall not be reduced, nor shall the allowances and benefits be adversely altered, during their term of office.

(3) [A part-time member of the Commission may, for any period during which that member, with the approval of the Commission, performs additional duties and functions, be paid such additional remuneration as may be determined by the President] The Independent Commission shall, when investigating or considering the salary, allowances and benefits of the members of the Commission, consult with the Minister and the Cabinet member responsible for finance.

(4) A notice in terms of subsection (1)(a) or any provision thereof may commence with effect from a date specified in the notice, which date may not be more than one year before the date of publication of the notice.

(5) (a) A notice issued under subsection (1)(a) shall be submitted to the National Assembly for approval before publication thereof.

(b) The National Assembly shall, by resolution—

(i) approve the notice, whether in whole or in part; or

(ii) disapprove the notice.

[4] The provisions of section 7(3) shall apply, with the necessary changes, in respect of the tabling in Parliament of a document setting out the remuneration, allowances and other terms and conditions of office and service benefits of the full-time and part-time members of the Commission.]”.

Amendment of section 1 of Act 51 of 1996

6. Section 1 of the Electoral Commission Act, 1996, is hereby amended by the insertion of the following definition after the definition of “Electoral Court”:

“(vA) **‘Independent Commission’** means the Independent Commission for the Remuneration of Public Office-bearers established by section 2 of the Independent Commission for the Remuneration of Public Office-bearers Act, 1997 (Act No. 92 of 1997); (ivA)”.

Amendment of section 7 of Act 51 of 1996, as amended by section 1 of Act 14 of 2004

7. Section 7 of the Electoral Commission Act, 1996, is hereby amended—

(a) by the substitution for the heading of the following heading:

“**Terms of office, [conditions of service] salary, allowances and benefits, removal from office and suspension of commissioners**”;

(b) by the substitution for subsection (2) of the following subsection:

“(2) [The conditions of service, remuneration, allowances and other benefits of commissioners shall from time to time be determined by the President after consultation with the Commission on Remuneration of Representatives established by section 2 of the Commission on the Remuneration of Representatives Act, 1994 (Act No. 37 of 1994), and a distinction may be made between commissioners appointed in a full-time and part-time capacity] The full-time and part-time members of the Commission shall be entitled to such salary, allowances and benefits—

(a) as determined by the President, from time to time, by notice in the *Gazette*, after taking into consideration the recommendations of the Independent Commission; and

(b) approved by the National Assembly in terms of subsection (2C): Provided that a distinction may be made between commissioners appointed in a full-time and part-time capacity: Provided further that such salary shall not be reduced, nor shall the allowances and benefits be adversely altered, during their term of office.”; and

(c) by the insertion of the following subsections after subsection (2):

“(2A) The Independent Commission shall, when investigating or considering the salary, allowances and benefits of the members of the Commission, consult with the Cabinet members responsible for home affairs and for finance.

(2B) A notice in terms of subsection (2)(a) or any provision thereof may commence with effect from a date specified in the notice, which date may not be more than one year before the date of publication of the notice.

(2C) (a) A notice issued under subsection (2)(a) shall be submitted to the National Assembly for approval before publication thereof.

(b) The National Assembly shall, by resolution—

(i) approve the notice, whether in whole or in part; or

(ii) disapprove the notice.”.

Amendment of section 1 of Act 92 of 1997, as amended by section 7 of Act 28 of 2003

8. Section 1 of the Independent Commission for the Remuneration of Public Office-bearers Act, 1997, is hereby amended—

(a) by the substitution for the definition of “Constitution” of the following definition:

“(ii) **‘Constitution’** means the Constitution of the Republic of South Africa, 1996 [(Act No. 108 of 1996)]; (ii)”;

(b) by the insertion of the following definition after the definition of “Constitution”:

“(iiA) **‘constitutional institution’** means the Public Protector, the Auditor-General and any commission established by Chapter 9 of the Constitution, including the Independent Communications Authority of South Africa referred to in section 192 of the Constitution; (iiA)”;

(c) by the substitution for paragraphs (d) and (e) of the definition of “office-bearer” of the following paragraphs:

“(d) any person holding the office of—

(i) Constitutional Court judge or a judge as defined in section 1 of the Judges’ Remuneration and Conditions of Employment Act, 2001 (Act No. 47 of 2001); and

(ii) magistrate who is appointed under section 9 of the Magistrates’ Courts Act, 1944 (Act No. 32 of 1944), read with section 10 of the Magistrates Act, 1993 (Act No. 90 of 1993); **[and]**

(e) any member of the National House of Traditional Leaders, any member of any provincial house of traditional leaders or any traditional leader; and

(f) any member of an independent constitutional institution, including the Deputy Public Protector.”.

Amendment of section 8 of Act 92 of 1997, as amended by section 11 of Act 28 of 2003

9. Section 8 of the Independent Commission for the Remuneration of Public Office-bearers Act, 1997, is hereby amended—

(a) by the substitution for subsection (3) of the following subsection:

“(3) The Commission may conduct or cause to be conducted such research or obtain such information from the Secretary to Parliament, the secretary to any provincial legislature, the secretary to the National House of Traditional Leaders, the secretary to any provincial house of traditional leaders, the chief executive officer of any constitutional institution, the chief executive officer of any municipality, the Chief Justice or any person designated for that purpose by the Chief Justice, or any functionary or body as may be necessary for the performance of the

functions of the Commission under this Act, section 219 of the Constitution or any other law.”;

(b) by the substitution for subsection (3A) of the following subsection:

“(3A) Whenever the Commission performs any function in terms of this Act relating to the remuneration of any office-bearer as defined— 5

(a) in paragraph (d)(i) of the definition of ‘office-bearer’ in section 1, it must have regard to the provisions of the Judges’ Remuneration and Conditions of Employment Act, 2001 (Act No. 47 of 2001), and in particular to section 2 of that Act; **[or]**

(b) in paragraph (d)(ii) of the definition of ‘office-bearer’ in section 1, it must have regard to the provisions of the Magistrates Act, 1993 (Act No. 90 of 1993), and in particular to section 12 of that Act[.]; or

(c) in paragraph (f) of the definition of ‘office-bearer’ in section 1, it must have regard to the provisions of the law in terms of which such an ‘office-bearer’ has been appointed.”; 15

(c) by the substitution for subsection (4) of the following subsection:

“(4) The Commission shall, after taking into consideration the factors referred to in subsection (6), publish in the *Gazette* recommendations concerning—

(a) the salary, allowances and benefits of any office-bearer as defined in paragraphs (a), (d) **[and]**, (e) and (f) of the definition of ‘office-bearer’ in section 1; 20

(b) the upper limits of the salary, allowances or benefits of any office-bearer as defined in paragraphs (b) and (c) of the definition of ‘office-bearer’ in section 1; and 25

(c) the resources which are necessary to enable an office-bearer as defined in paragraphs (a), (b), (c) **[and]**, (e) and (f) of the definition of ‘office-bearer’ in section 1 to perform the office-bearer’s functions effectively.”; and

(d) by the substitution for subsection (6) of the following subsection: 30

“(6) (a) When making recommendations referred to in subsection (4) the Commission must take the following factors into account:

(i) The role, status, duties, functions and responsibilities of the office-bearers concerned;

(ii) the affordability of different levels of remuneration of public office-bearers; 35

(iii) current principles and levels of remuneration, particularly in respect of organs of state, and in society generally;

(iv) inflationary increases;

(v) the available resources of the state; and 40

(vi) any other factor which, in the opinion of the said Commission, is relevant.

(b) When making recommendations referred to in subsection (4) in respect of any office-bearer as defined in paragraph (f) of the definition of ‘office-bearer’ in section 1, the Commission must, where applicable, also take the following factors into account: 45

(i) The salary, allowances and benefits of members of other constitutional institutions;

(ii) affordability in relation to the responsibilities of the constitutional institution concerned; and 50

(iii) the level of expertise and experience required of a member of the constitutional institution concerned.”.

Amendment of section 1 of Act 13 of 2000, as amended by section 2 of Act 3 of 2006

10. Section 1 of the Independent Communications Authority of South Africa Act, 2000, is hereby amended by the insertion of the following definition after the definition of “former authorities”:

“(viA) **‘Independent Commission’** means the Independent Commission for the Remuneration of Public Office-bearers established by section 2 of the Independent Commission for the Remuneration of Public Office-bearers Act, 1997 (Act No. 92 of 1997); (vA)”.

Substitution of section 10 of Act 13 of 2000

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11. The following section is hereby substituted for section 10 of the Independent Communications Authority of South Africa Act, 2000:

“[Remuneration] Salary, allowances and benefits of councillors of Council

10. (1) The chairperson and other councillors **[must be paid such]** are entitled to the **[remuneration and]** salary, allowances and **[be entitled to such]** benefits, **as the Minister may determine with the concurrence of the Minister of Finance, subject to any applicable national legislation envisaged by section 219(5) of the Constitution]**—

(a) as determined by the President, from time to time, by notice in the *Gazette*, after taking into consideration the recommendations of the Independent Commission; and

(b) approved by the National Assembly in terms of subsection (5).

(2) The salary of the councillors may not be reduced, nor may the allowances and benefits be adversely altered, during their term of office.

(3) The Independent Commission shall, when investigating or considering the salary, allowances and benefits of councillors, consult with the Minister and the Cabinet member responsible for finance.

(4) A notice in terms of subsection (1)(a) or any provision thereof may commence with effect from a date specified in the notice, which date may not be more than one year before the date of publication of the notice.

(5) (a) A notice issued under subsection (1)(a) shall be submitted to the National Assembly for approval before publication thereof.

(b) The National Assembly shall, by resolution—

(i) approve the notice, whether in whole or in part; or

(ii) disapprove the notice.”.

Amendment of section 1 of Act 19 of 2002

12. Section 1 of the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities Act, 2002, is hereby amended by the insertion of the following definition after the definition of “constitutional institution”:

“**‘Independent Commission’** means the Independent Commission for the Remuneration of Public Office-bearers established by section 2 of the Independent Commission for the Remuneration of Public Office-bearers Act, 1997 (Act No. 92 of 1997);”.

Amendment of section 14 of Act 19 of 2002

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13. Section 14 of the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities Act, 2002, is hereby amended—

(a) by the substitution for the heading of the following heading:

“[Conditions of appointment] Salary, allowances and benefits of members”;

(b) by the substitution for subsection (1) of the following subsection:

“(1) The **[Minister, with the concurrence of the Minister of Finance, determines the conditions of appointment of the Chairperson, the Deputy Chairperson and the other members of the Commission, taking into account the conditions of appointment of**

members of other constitutional institutions] Chairperson, Deputy Chairperson and other members of the Commission are entitled to such salary, allowances and benefits—

(a) as determined by the President, from time to time, by notice in the *Gazette*, after taking into consideration the recommendations of the Independent Commission; and

(b) approved by the National Assembly in terms of subsection (1C): Provided that the salary of the Chairperson, Deputy Chairperson and other members of the Commission may not be reduced, nor may the allowances and benefits be adversely altered during their term of office.”; and

(c) by the insertion of the following subsections after subsection (1):

“(1A) The Independent Commission must, when investigating or considering the salary, allowances and benefits of the members of the Commission, consult with the Minister and the Cabinet member responsible for finance.

(1B) A notice in terms of subsection (1)(a) or any provision thereof may commence with effect from a date specified in the notice, which date may not be more than one year before the date of publication of the notice.

(1C) (a) A notice issued under subsection (1)(a) must be submitted to the National Assembly for approval before publication thereof.

(b) The National Assembly must, by resolution—

(i) approve the notice, whether in whole or in part; or

(ii) disapprove the notice.”.

Amendment of section 1 of Act 25 of 2004

14. Section 1 of the Public Audit Act, 2004, is hereby amended by the insertion of the following definition after the definition of “fruitless and wasteful expenditure”:

“**‘Independent Commission’** means the Independent Commission for the Remuneration of Public Office-bearers established by section 2 of the Independent Commission for the Remuneration of Public Office-bearers Act, 1997 (Act No. 92 of 1997);”.

Amendment of section 7 of Act 25 of 2004

15. Section 7 of the Public Audit Act, 2004, is hereby amended—

(a) by the substitution for the heading of the following heading:

“**[Conditions of employment] Salary, allowances and benefits of Auditor-General**”;

(b) by the substitution for subsection (1) of the following subsection:

“(1) The [oversight mechanism must consult the person recommended in terms of section 193 of the Constitution for appointment as Auditor-General and make recommendations to the President for the determination of the conditions of employment of that person, including an appropriate salary, allowances and other benefits] Auditor-General is entitled to such salary, allowances and benefits—

(a) as determined by the President, from time to time, by notice in the *Gazette*, after taking into consideration the recommendations of the Independent Commission; and

(b) approved by the National Assembly in terms of subsection (1C).”;

(c) by the insertion of the following subsections after subsection (1):

“(1A) The Independent Commission must, when investigating or considering the salary, allowances and benefits of the Auditor-General, consult with the Cabinet member responsible for finance.

(1B) A notice in terms of subsection (1)(a) or any provision thereof may commence with effect from a date specified in the notice, which date may not be more than one year before the date of publication of the notice.

- (1C) (a) A notice issued under subsection (1)(a) must be submitted to the National Assembly for approval before publication thereof.
- (b) The National Assembly must, by resolution—
- (i) approve the notice, whether in whole or in part; or
- (ii) disapprove the notice.”; 5
- (d) by the substitution for subsection (2) of the following subsection:
- “(2) The salary, allowances and **[other]** benefits of a person appointed as Auditor-General must—
- (a) take into account the knowledge and experience of the prospective incumbent; and
- (b) **[be substantially the same as those of the top echelon of the judiciary; and**
- (c)] be paid from the funds of the Auditor-General.”; and
- (e) by the substitution for subsection (3) of the following subsection: 10
- “(3) The salary of the Auditor-General may not be reduced, nor may his or her allowances and benefits be adversely altered, during his or her term of office.” 15

Amendment of section 1 of Act 40 of 2013

16. Section 1 of the South African Human Rights Commission Act, 2013, is hereby amended by the insertion of the following definition after the definition of “human rights”:

“**‘Independent Commission’** means the Independent Commission for the Remuneration of Public Office-bearers established by section 2 of the Independent Commission for the Remuneration of Public Office-bearers Act, 1997 (Act No. 92 of 1997);” 25

Substitution of section 9 of Act 40 of 2013

17. The following section is hereby substituted for section 9 of the South African Human Rights Commission Act, 2013:

“[Remuneration and] Salary, allowances and benefits of commissioners 30

9. (1) The full-time and part-time commissioners are entitled to such [remuneration] salary, allowances and [other terms and conditions of office and service] benefits [of the full-time and part-time commissioners are determined by the President in consultation with the Cabinet and the Minister of Finance]— 35

(a) as determined by the President, from time to time, by notice in the *Gazette*, after taking into consideration the recommendations of the Independent Commission; and

(b) approved by the National Assembly in terms of subsection (5).

(2) The **[remuneration] salary** of the commissioners may not be reduced, nor may the allowances and **[other terms and conditions of office and service]** benefits be adversely altered, during their **[continuation in]** term of office. 40

(3) **[A part-time commissioner may, for any period during which that commissioner, with the approval of the Commission, performs additional functions, be paid such additional remuneration as may be determined by the President in consultation with the Cabinet and the Minister of Finance]** The Independent Commission shall, when investigating or considering the salary, allowances and benefits of commissioners, consult with the Minister and the Cabinet member responsible for finance. 45

(4) A notice in terms of subsection (1)(a) or any provision thereof may commence with effect from a date specified in the notice, which date may not be more than one year before the date of publication of the notice. 50

(5) (a) A notice issued under subsection (1)(a) shall be submitted to the National Assembly for approval before publication thereof.

(b) The National Assembly shall, by resolution—

- (i) approve the notice, whether in whole or in part; or
- (ii) disapprove the notice.”

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Short title and commencement

18. This Act is called the Determination of Remuneration of Office-bearers of Independent Constitutional Institutions Laws Amendment Act, 2014, and comes into operation on a date set by the President by proclamation in the *Gazette*.