

REPUBLIC OF SOUTH AFRICA

**REMUNERATION OF PUBLIC
OFFICE BEARERS 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. 47883
of 20 January 2023)
(The English text is the official text of the Bill)*

(Dr LA SCHREIBER, MP)

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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 Remuneration of Public Office Bearers Act, 1998, so as to provide for a definition of ‘tools of trade’; to require that the President be provided with such tools of trade as the National Assembly by resolution may determine, and to stipulate the factors to be considered by the National Assembly when doing so; to require that the Deputy President, Ministers and Deputy Ministers be provided with such tools of trade as the President by proclamation in the *Gazette* may determine, and to stipulate the factors to be considered by the President when doing so; to provide that any changes effected to the provision of allowances, benefits or tools of trade of the Deputy President, Ministers and Deputy Ministers must be reported to the National Assembly; to provide for a review of all allowances, tools of trade and benefits of the President, Deputy President, Ministers and Deputy Ministers and regular reviews thereafter; and to provide for matters connected therewith.

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

Amendment of section 1 of Act 20 of 1998, as amended by section 1 of Act 21 of 2000, section 29 of Act 41 of 2003, section 25 of Act 23 of 2009 and by section 64 of Act 3 of 2019

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1. Section 1 of the Remuneration of Public Office Bearers Act, 1998 (hereinafter referred to as the “principal Act”), is hereby amended by the insertion after the definition of “the Constitution” of the following definition:

“**tools of trade**” means the resources or enabling facilities required by the President, Deputy President, Ministers and Deputy Ministers to perform their duties professionally, effectively and efficiently, and includes—

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- (a) administrative and professionally qualified staff to provide the required professional support to the President, Deputy President, a Minister or Deputy Minister in order to be able to perform their duties;
- (b) communication and technological hardware and software required for communication, such as cellphones, computers and printers;
- (c) offices, including parking, provided to the President, Deputy President, a Minister or Deputy Minister by the State, to perform their duties;
- (d) office supplies and stationery needed for day-to-day tasks including letter-heads, business cards, diaries, reading material and office furniture;
- (e) reasonable safety measures provided by the State for the President, Deputy President, a Minister or Deputy Minister, in their official capacity, during and after working hours, in and outside of their home environment, to safely and securely live and perform their duties;

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- (f) state-owned residences or rental subsidies provided to the President, Deputy President, a Minister or Deputy Minister to use during their term of office; and
 (g) travelling facilities provided by the State to empower the President, Deputy President, a Minister or Deputy Minister to execute their duties in the most cost-effective manner; and".

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Amendment of section 2 of Act 20 of 1998

2. Section 2 of the principal Act is hereby amended—

- (a) by the substitution for the heading of section 2 of the following heading:
“Salary, allowances, tools of trade and benefits of President”; and
 (b) by the insertion after subsection (4) of the following subsection: 10
“(4A) (a) The President shall be provided with tools of trade as may be determined from time to time by resolution of the National Assembly.
(b) When considering the tools of trade that the President may require, the National Assembly must consider the following factors: 15
 (i) the recommendations of the Commission;
 (ii) the role, status, duties, functions and responsibilities of the President;
 (iii) affordability and comparative cost of the proposed tools of trade; and
 (iv) current practices, developments and standards related to tools of trade required for performing professional services in society generally.”.

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Amendment of section 4 of Act 20 of 1998

3. Section 4 of the principal Act is hereby amended—

- (a) by the substitution for the heading of section 4 of the following heading: 25
“Salaries, [and] allowances, tools of trade and benefits of Deputy President, Ministers and Deputy Ministers”;
 (b) by the insertion after subsection (6) of the following subsection:
“(6A) (a) The Deputy President, Ministers and Deputy Ministers shall be provided with tools of trade as may be determined by the President from time to time by proclamation in the *Gazette*. 30
(b) When considering the tools of trade that the Deputy President, Ministers and Deputy Ministers may require, the President must consider the following factors:
 (i) the recommendations of the Commission; 35
 (ii) the role, status, duties, functions and responsibilities of the Deputy President, Ministers and Deputy Ministers;
 (iii) affordability and comparative cost of the proposed tools of trade; and
 (iv) current practices, developments and standards related to tools of trade required for performing professional services in society generally.”; and 40
 (c) by the addition of the following subsection:
“(8) The President must table a report in the National Assembly prior to publishing any changes to the allowances, provision of benefits, or tools of trade of the Deputy President, Ministers and Deputy Ministers setting out details of— 45
 (a) the proposed changes to the allowances, provision of benefits, or tools of trade;
 (b) factors considered by the President to determine the proposed changes and their extent; 50
 (c) the recommendations of the Commission;
 (d) costing models considered by the President to support the proposed changes; and
 (e) the cost associated with the proposed changes.”.

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Insertion of section 9A in Act 20 of 1998

4. The following section is hereby inserted in the principal Act after section 9:

“Review of allowances, tools of trade and benefits

- 9A.** (1) Any guideline, policy, proclamation or other document purporting to deal with the allowances, tools of trade or benefits of the President, Deputy President, Ministers or Deputy Ministers, must be reviewed at least every five years by the— 5
- (a) National Assembly, in respect of the President; and
 - (b) President, in respect of the Deputy President, Ministers or Deputy Ministers. 10
- (2) The National Assembly must at least six months prior to the expiry of the review period contemplated in subsection (1), or immediately following any other review conducted during the interim of the contemplated review period, debate—
- (a) any proposed changes to the allowances, provision of benefits, or tools of trade of the President; 15
 - (b) factors considered to determine whether changes to the allowances, provision of benefits, or tools of trade of the President should be proposed;
 - (c) the recommendations of the Commission; 20
 - (d) costing models considered to make proposals to change the allowances, provision of benefits, or tools of trade of the President; and
 - (e) the cost of the allowances, tools of trade or benefits of the President as reviewed, 25
- and must approve or reject any proposed changes as well as the cost of the allowances, tools of trade or benefits of the President, as reviewed.
- (3) The President must table a report in the National Assembly at least one year prior to the expiry of the review period contemplated in subsection (1), or immediately following any other review conducted during the interim of the contemplated review period, setting out details of— 30
- (a) any proposed changes to the allowances, provision of benefits, or tools of trade of the Deputy President, Ministers or Deputy Ministers;
 - (b) factors considered by the President to determine whether changes to the allowances, provision of benefits, or tools of trade of the Deputy President, Ministers or Deputy Ministers should be proposed; 35
 - (c) the recommendations of the Commission;
 - (d) costing models considered by the President to make proposals to change the allowances, provision of benefits, or tools of trade of the Deputy President, Ministers or Deputy Ministers; and
 - (e) the cost of the allowances, tools of trade or benefits of the Deputy President, Ministers and Deputy Ministers, respectively, as reviewed. 40
- (4) The National Assembly must debate the report contemplated in subsection (3) within three months of its tabling, or within such period as the National Assembly by resolution determines, and must approve, reject or propose amendments to— 45
- (a) any proposed changes to the allowances, provision of benefits, or tools of trade of the Deputy President, Ministers or Deputy Ministers; and
 - (b) the cost of the allowances, tools of trade or benefits of the Deputy President, Ministers and Deputy Ministers, respectively, as reviewed. 50
- (5) The first review period contemplated in subsection (1) commences 12 months from the date of commencement of this section.”.

Transitional provision

- 5.** (1) Any guideline, policy, proclamation or other document purporting to deal with the allowances, tools of trade or benefits of the President, Deputy President, Ministers or Deputy Ministers, must be reviewed within 12 months of commencement of this Act, in respect of— 55
- (a) the President, by the National Assembly; and
 - (b) the Deputy President, Ministers or Deputy Ministers, by the President.

- (2) The National Assembly must within nine months after the commencement of this Act, debate—
- (a) any proposed changes to the allowances, provision of benefits, or tools of trade of the President;
 - (b) factors considered to determine whether changes to the allowances, provision of benefits, or tools of trade of the President should be proposed; 5
 - (c) the recommendations of the Commission;
 - (d) costing models considered to make proposals to change the allowances, provision of benefits, or tools of trade of the President; and
 - (e) the cost of the allowances, tools of trade or benefits of the President as reviewed, 10
- and must approve or reject any proposed changes as well as the cost of the allowances, tools of trade or benefits of the President, as reviewed.
- (3) The President must table a report in the National Assembly within six months after the commencement of this Act, setting out details of— 15
- (a) any proposed changes to the allowances, provision of benefits, or tools of trade of the Deputy President, Ministers or Deputy Ministers;
 - (b) factors considered by the President to determine whether changes to the allowances, provision of benefits, or tools of trade of the Deputy President, Ministers or Deputy Ministers should be proposed; 20
 - (c) the recommendations of the Commission;
 - (d) costing models considered by the President to make proposals to change the allowances, provision of benefits, or tools of trade of the Deputy President, Ministers or Deputy Ministers; and
 - (e) the cost of the allowances, tools of trade or benefits of the Deputy President, Ministers and Deputy Ministers, respectively, as reviewed. 25
- (4) The National Assembly must debate the report contemplated in subsection (3) within three months of its tabling, or within such period as the National Assembly by resolution determines, and must approve, reject or propose amendments to—
- (a) any proposed changes to the allowances, provision of benefits, or tools of trade of the Deputy President, Ministers or Deputy Ministers; and 30
 - (b) the cost of the allowances, tools of trade or benefits of the Deputy President, Ministers and Deputy Ministers, respectively, as reviewed.

Short title and commencement

6. This Act is called the Remuneration of Public Office Bearers Amendment Act, 2023, and comes into operation on a date determined by the President by proclamation in the *Gazette*. 35

MEMORANDUM ON THE OBJECTS OF THE REMUNERATION OF PUBLIC OFFICE BEARERS AMENDMENT BILL, 2023

1. INTRODUCTION AND PURPOSE

- 1.1. In October 2022, the Democratic Alliance (“DA”) revealed that President Cyril Ramaphosa had amended the Guide for Members of the Executive in April 2022 (“Guide”) without informing the National Assembly or the public. This was despite the fact that the amendments made to the Guide, which is popularly known as the “Ministerial Handbook”, included that Ministers and Deputy Ministers would be exempt from paying for water and electricity at their private residences, which were designated as official residences (the limit of R5,000 that the State bears in this regard as per the 2019 Guide, was removed), and that the private offices of Ministers and Deputy Ministers would be dramatically expanded. The DA estimated that the cost of expanding the offices alone would cost taxpayers upwards of R87 million more every year.
- 1.2. The President’s unannounced and expensive changes to the Guide triggered weeks of public outcry. Following the public outcry, the President decided in late October 2022 to rescind these changes and reverted to the previous version of the Guide adopted in 2019, pending an independent review.
- 1.3. Despite the President bowing to public pressure over the latest amendments to the Guide, systemic problems with the Guide remain. Principal among these are a lack of controls and transparency. In his written reply to a Parliamentary question, the President confirmed that “the adoption of the Guide is not done in terms of any legislative provision, but is the result of a Cabinet decision that the tools of the trade need to be defined and regulated.” The Remuneration of Public Office Bearers Act, 1998 (Act No. 20 of 1998), does allow transparency in respect of the salary, allowances and benefits of President, as these are determined by resolution of that House, but not in respect of the Deputy President, Ministers and Deputy Ministers.
- 1.4. There is also no requirement for the National Assembly, or the President, to consider other relevant factors, such as prevailing economic conditions in the country or the comparative costs of different tools of trade. Also, in contrast to other remuneration decisions, there is no legal requirement for the President to report changes to the Guide to the National Assembly, nor is there any requirement to regularly review these allowances and benefits.
- 1.5. The purpose of the Bill is to provide for—
 - 1.5.1. tools of trade to be provided to the President, Deputy President, Ministers and Deputy Ministers;
 - 1.5.2. transparency and oversight where the President makes a decision about allowances, benefits, or tools of trade for the Deputy President, Ministers and Deputy Ministers.

2. OBJECTS OF THE BILL

The Remuneration of Public Office Bearers Amendment Bill, 2023 (the “Bill”), amends the Remuneration of Public Office Bearers Act, 1998 (Act No. 20 of 1998) (hereinafter referred to as the “principal Act”), by—

- 2.1. requiring that tools of trade shall be provided to the President, Deputy President, Ministers and Deputy Ministers;
- 2.2. providing for the requirements to be considered by the National Assembly and by the President when determining such tools of trade;

- 2.3. providing for transparency and oversight where the President makes a decision about allowances, benefits, or tools of trade for the Deputy President, Ministers and Deputy Ministers; and
- 2.4. providing for a review of all allowances, tools of trade and benefits of the President, Deputy President, Ministers and Deputy Ministers and regular reviews thereafter.

3. CONTENTS OF THE BILL

- 3.1. Clause 1 makes provision for the definition of ‘tools of trade’.
- 3.2. Clause 2 amends section 2, and its heading, to provide for tools of trade for the President. It also provides the factors to consider when determining tools of trade.
- 3.3. Clause 3 amends section 4, and its heading, to provide for tools of trade for the Deputy President, Ministers and Deputy Ministers. It also provides the factors to consider when determining tools of trade.
- 3.4. Clause 4 inserts section 9A in the principal Act, which provides for a review of all allowances, tools of trade and benefits at least every five years and the process to report thereon to the National Assembly. Section 9A also requires that the National Assembly must approve or reject any proposed changes as well as the cost of the allowances, tools of trade or benefits of the President, Deputy President, Ministers and Deputy Ministers.
- 3.5. Clause 5 provides for a transitional provision that requires a review of any guideline, policy, proclamation or other document purporting to deal with the allowances, tools of trade or benefits of the President, Deputy President, Ministers or Deputy Ministers, within 12 months of commencement of this Act.
- 3.6. Clause 6 provides for the short title of the Bill and commencement.

4. ORGANISATIONAL AND PERSONNEL IMPLICATIONS

The coming into operation of the Bill will have no additional personnel implications.

5. FINANCIAL IMPLICATIONS FOR THE STATE

The Bill does not propose obligations that will require additional resources. Transparency and oversight over the cost of benefits, allowances and tools of trade will allow for efficiency and is likely to save the country a significant amount of money.

6. PARLIAMENTARY PROCEDURE

- 6.1. The Member proposes that the Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution since it contains no provisions to which the procedures set out in section 74, 76 or 77 of the Constitution apply.
- 6.2. The Member is of the opinion that it is not necessary to refer this Bill to the National House of Traditional and Khoi-San Leaders in terms of section 39(1)(a) of the Traditional and Khoi-San Leadership Act, 2019 (Act No. 3 of 2019), since it does not contain provisions pertaining to customary law or customs of traditional communities.

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