

REPUBLIC OF SOUTH AFRICA

SOUTH AFRICAN JUDICIAL EDUCATION INSTITUTE 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. 53530 of
17 October 2025)
(The English text is the official text of the Bill)*

(MINISTER OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT)

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 South African Judicial Education Institute Act, 2008, so as to provide for the appointment of a Dean; to provide for the powers and duties of the Dean; to amend the title of Director to Executive Director; to further regulate the appointment, powers and duties of the Executive Director; to provide for the reimbursement of members of the Council for subsistence and travelling expenses; 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 14 of 2008, as amended by section 16 of Act 24 of 2015

1. Section 1 of the South African Judicial Education Institute Act, 2008 (Act No. 14 of 2008) (hereinafter referred to as the “principal Act”), is hereby amended— 5
- (a) by the insertion after the definition of “Council” of the following definition:
 “**‘Dean’** means a judge appointed by the Council in terms of section 12A(1) as the academic head of the Institute;”; 10
 - (b) by the deletion of the definition of “Director”; and
 - (c) by the insertion before the definition of “Institute” of the following definition:
 “**‘Executive Director’** means the Executive Director appointed in terms of section 12;”. 20

Amendment of section 7 of Act 14 of 2008

2. Section 7 of the principal Act is hereby amended— 15
- (a) by the insertion in subsection (1) after paragraph (b) of the following paragraph:
 “(bA) the Dean;”; and
 - (b) by the substitution in subsection (1) for paragraph (h) of the following paragraph: 20
 “(h) the Executive Director;”.

Amendment of section 11 of Act 14 of 2008

3. Section 11 of the principal Act is hereby amended by the substitution for paragraph (a) of the following paragraph: 25
- “(a) employ [a] an Executive Director as the administrative head of the Institute;”.

Substitution of section 12 of Act 14 of 2008, as amended by section 17 of Act 24 of 2015

4. The following section is hereby substituted for section 12 of the principal Act:

“Appointment of Executive Director

- 12.** (1) The Council must appoint an Executive Director for a specific term and on such conditions as the Council may determine. 5
- (2) The Council may re-appoint the Executive Director at the end of the term.
- (3) The Executive Director, as the administrative head of the Institute, is responsible for the general administration of the Institute, and must— 10
- (a) manage and direct the activities of the Institute subject to the direction of the Council;
- (b) appoint and supervise the administrative staff of the Institute;
- (c) provide quarterly management reports to the Secretary-General;
- (d) submit an annual report to the Minister as contemplated in section 15; 15
- and
- (e) perform any other duties as provided for in this Act.
- (4) The Minister must, with the concurrence of the Council and after consultation with the Minister of Finance, determine the Executive Director’s remuneration, allowances, benefits and other terms and conditions of employment: Provided that the Executive Director must be paid such remuneration and allowances, and be provided with such pension and other employment benefits, as are consistent with those paid in the public sector.”. 20

Insertion of sections 12A and 12B in Act 14 of 2008

5. The following sections are hereby inserted in the principal Act after section 12:

“Appointment of Dean

- 12A.** (1)(a) The Council must appoint a judge as Dean, who is the academic head of the Institute, on a full-time or a part-time basis for a term not exceeding five years and on such conditions as the Council may determine. 30
- (b) The Council may only, after consultation with the President of the Supreme Court of Appeal or Judge President concerned, appoint a judge, who is in active service as Dean for a non-renewable term.
- (c) The Dean, who is a judge referred to in subsection (4)(c) and who has been appointed on a full-time or part-time basis, at the end of the term referred to in paragraph (a) may be re-appointed for an additional non-renewable period not exceeding five years. 35
- (d) If a judge, referred to in subsection (4)(b), is appointed as Dean, that judge is deemed to perform ‘service’ in terms of paragraph (c) of the definition of ‘service’ in the Judges Remuneration and Conditions of Employment Act, 2001 (Act No. 47 of 2001). 40
- (2)(a) A judge of the Supreme Court of Appeal or a division of the High Court who has been appointed in terms of subsection (1)(a) remains a judge of that Court or division. 45
- (b) The vacancy for a judge that has been created by virtue of a full-time appointment in terms of subsection (1)(a) may be filled by an acting judge until such time as the judge, referred to in subsection (1)(a), returns to the respective Court or division.
- (3) The Dean— 50
- (a) must, for the duration of the Dean’s term, if appointed on a full-time basis, be stationed at the Head Office of the Institute; and
- (b) is entitled to reimbursement, if appointed on a full-time or part-time basis, for subsistence and travelling expenses as provided for in the regulations under the Judges Remuneration and Conditions of Employment Act, 2001. 55

- (4) ‘Judge’, for purposes of this section, means a judge—
- (a) of the Supreme Court of Appeal referred to in section 5(1)(a)(iii) of the Superior Courts Act, 2013 (Act No. 10 of 2013);
 - (b) of the High Court of South Africa referred to in section 6(2)(b) of the Superior Courts Act, 2013; or
 - (c) who has been discharged from active service in terms of section 3(1)(a) or (c) or section 3(2)(a), (b) or (d) of the Judges Remuneration and Conditions of Employment Act, 2001.

Powers and duties of Dean

- 12B.** The Dean is responsible for the general academic programme of the Institute, subject to such conditions as the Council may impose, and is responsible for, but not limited to—
- (a) providing a broader academic strategic vision for the Institute;
 - (b) supervising judicial educators;
 - (c) designing and developing, after consultation with the committees referred to in section 9(1)(a) and (b), the academic programme of the Institute;
 - (d) consulting with heads of court to identify professional training needs;
 - (e) facilitating seminars for judges and aspirant judges;
 - (f) reviewing publications;
 - (g) in conjunction with the Executive Director, overseeing or negotiating cooperation agreements and protocols with entities or organisations for the purpose of furthering or strengthening interest in judicial education; and
 - (h) directing, managing and coordinating research.”.

Amendment of section 13 of Act 14 of 2008, as amended by section 18 of Act 24 of 2015

- 6.** Section 13 of the principal Act is hereby amended by the substitution in subsection (8) for the words preceding paragraph (a) of the following words:
- “(8) Within six months after the end of each financial year, the Executive Director must prepare financial statements in accordance with established accounting practices, principles and procedures, comprising—”.

Substitution of section 14 of Act 14 of 2008

- 7.** Section 14 of the principal Act is hereby substituted for the following section:
- “**14.** The Council may, with the concurrence of the Minister who must consult with the Minister of Finance, determine the remuneration, allowances, benefits, and other terms and conditions of appointment of each member of staff as are consistent with those paid in the public sector.”.

Amendment of section 15 of Act 14 of 2008

- 8.** Section 15 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:
- “(1) The Executive Director must, in consultation with the Dean, prepare and submit an annual report in the prescribed form and manner to the Council for approval, whereafter the Executive Director must submit the approved annual report to the Minister within six months after the end of the Institute’s financial year.”.

Substitution of section 17 of Act 14 of 2008

9. The following section is hereby substituted for section 17 of the principal Act:

“Reimbursement of members of Council

17. (1) Any member of the Institute who is an office bearer as defined in section 1 of the Independent Commission for the Remuneration of Public Office-bearers Act, 1997 (Act No. 92 of 1997), may be reimbursed for subsistence and travelling expenses incurred by them in the performance of their functions as a member of the Institute, as the Minister may determine with the concurrence of the Minister of Finance. 5

(2) Any member of the Institute who is not— 10

(a) an office bearer as defined in section 1 of the Independent Commission for the Remuneration of Public Office-bearers Act, 1997; or

(b) in the employ of the State and subject to the laws governing the public service, 15

may be paid such remuneration, including allowances for subsistence and travelling expenses incurred by them in the performance of their functions as a member of the Institute, on the same tariffs as determined by the Minister in terms of the Judicial Service Commission Act, 1994 (Act No. 9 of 1994).”.

Short title and commencement 20

10. This Act is called the South African Judicial Education Institute Amendment Act, 2025, and comes into operation on a date fixed by the President by proclamation in the *Gazette*.

MEMORANDUM ON THE OBJECTS OF THE SOUTH AFRICAN JUDICIAL EDUCATION INSTITUTE AMENDMENT BILL, 2025

1. PURPOSE OF BILL

The purpose of the South African Judicial Education Institute Amendment Bill, 2025 (the “Bill”), is to amend the South African Judicial Education Institute Act, 2008 (Act No. 14 of 2008) (the “principal Act”), in order to provide for administrative and managerial matters relating to the South African Judicial Education Institute (the “Institute”).

2. OBJECTS OF BILL

The Bill aims to amend the principal Act in order to—

- (a) provide for the appointment of a judge as the Dean to serve as the academic head of the Institute;
- (b) provide for the powers and duties of the Dean;
- (c) further clarify the appointment process for the Executive Director and powers and duties of the Executive Director; and
- (d) provide for the reimbursement of members of the Institute for subsistence and travelling expenses.

3. CLAUSE BY CLAUSE ANALYSIS

- 3.1 **Clause 1** seeks to amend section 1 of the principal Act, so as to include the definition of “Dean” and amend the title of “Director” by deleting the definition of “Director” and including a new definition of “Executive Director”.
- 3.2 **Clause 2** seeks to amend section 7 of the principal Act. Section 7 provides for the composition of the Council and the proposed amendments include the Dean in the composition of the Council. This clause also provides for necessary consequential amendments to include reference to the “Dean” and “Executive Director”.
- 3.3 **Clause 3** seeks to amend section 11 of the principal Act and is a consequential amendment as a result of the change in terminology from “Director” to “Executive Director”.
- 3.4 **Clause 4** seeks to substitute section 12 of the principal Act, relating to the appointment of the Director, so as to effect further consequential amendments. Clause 4 further provides that the Executive Director must be paid such remuneration and allowances and such pension and other employment benefits as are consistent with those paid in the public sector.
- 3.5 **Clause 5** seeks to amend the principal Act by inserting sections 12A and 12B. Section 12A provides for matters relating to the appointment of the Dean. Section 12B provides for the powers and duties of the Dean. The Dean will, amongst other things, be responsible for—
 - (a) providing a broader academic strategic vision for the Institute;
 - (b) supervising judicial educators;
 - (c) designing and developing the academic programme of the Institute;
 - (d) consulting with heads of court on any training needs;
 - (e) directing, managing and coordinating research; and
 - (f) performing any other functions in terms of the principal Act.
- 3.6 **Clause 6** seeks to amend section 13 of the principal Act and is a consequential amendment to ensure the consistent use of the term “Executive Director”.
- 3.7 **Clause 7** seeks to substitute section 14 of the principal Act, relating to the remuneration of the staff of the Institute, by ensuring that they are remunerated consistently with others in the public sector.

- 3.8 **Clause 8** seeks to amend section 15 of the principal Act relating to the reporting procedure. The Executive Director must, in consultation with the Dean, prepare and submit an annual report to the Council for approval after which the report must be submitted to the Minister of Justice and Constitutional Development within six months after the end of the financial year of the Institute.
- 3.9 **Clause 9** seeks to substitute section 17 of the principal Act, which provides for the reimbursement of members of the Council by, amongst other things, clarifying that any member of the Institute, who is not an office bearer, as defined in section 1 of the Independent Commission for the Remuneration of Public Office-bearers Act, 1997 (Act No. 92 of 1997), or in the employ of the State may be paid such remuneration, including allowances for subsistence and travelling expenses incurred by him or her in the performance of his or her functions as a member of the Institute, on the same tariffs as determined by the Minister in terms of the Judicial Service Commission Act, 1994 (Act No. 9 of 1994).
- 3.10 **Clause 10** provides for the short title of the Act and indicates the procedure for when the Act will come into operation.

4. DEPARTMENTS/BODIES/PERSONS CONSULTED

The Council for the South African Judicial Education Institute was consulted on the Bill and indicated their general agreement with the proposed amendments to the principal Act. However, the Council confirmed that they will provide additional comments and recommendations with regard to the proposed amendment of the principal Act, as and when necessary.

5. IMPLICATIONS FOR PROVINCES

None.

6. FINANCIAL IMPLICATIONS FOR STATE

The proposed amendment of section 17 of the principal Act, dealing with the reimbursement of members of the Council and possibly the appointment of support personnel, such as a personal assistant and an administrative assistant, for the Dean, may result in an increase in the financial expenditure of the State. The number of members of the Council that may qualify for reimbursement is not quantifiable at this stage and therefore also not the concomitant financial impact in respect thereof, which expenditure will likely be negligible.

7. PARLIAMENTARY PROCEDURE

- 7.1. The Constitution of the Republic of South Africa, 1996 (the “Constitution”) regulates the manner in which legislation may be enacted by the legislature and thus prescribes the different procedures to be followed for such enactment. The national legislative process is governed by sections 73 to 77 of the Constitution. Furthermore, Schedules 4 and 5 to the Constitution list functional areas of concurrent national and provincial legislative competence and functional areas of exclusive provincial legislative competence, respectively. It must be emphasised that the tagging of Bills is dealt with either in terms of section 75 or section 76 of the Constitution, and these sections set out the process that must be followed when a Bill is submitted for approval.
- 7.2. In terms of section 44(1)(a)(ii) of the Constitution, the national legislative authority has concurrent competence with a provincial legislative authority within a functional area listed in Schedule 4 because it may pass legislation with regard to any matter, including a matter within a functional area listed in Schedule 4, but excluding, a matter within a functional area listed in

Schedule 5 to the Constitution (i.e. a functional area of exclusive provincial legislative competence).

- 7.3. Section 76(3) of the Constitution states that “*a Bill must be dealt with in accordance with the procedure established by either subsection (1) or subsection (2) if it falls within a functional area listed in Schedule 4 . . .*”.
- 7.4. The test for tagging is not concerned with determining the sphere of government that has competence to legislate on a matter, nor the process concerned with preventing interference in the legislative competence of another sphere of government.¹ In *Tongoane v Minister of Agriculture and Land Affairs* 2010 (6) SA 214 (CC), the Constitutional Court ruled on the test to be used when tagging a Bill. The Court held in paragraph 70 that the “*test for determining how a Bill is to be tagged must be broader than that for determining legislative competence*”.² *Whether a Bill is section 76 Bill is determined in two ways. First by the explicit list of legislative matters in section 76(3), and second by whether the provisions of a Bill in substantial measure fall within a concurrent legislative competence.*³ The Court held⁴ that the tagging test focuses on all provisions of the Bill in order to determine the extent to which they substantially affect functional areas listed in Schedule 4, and not on whether any of its provisions are incidental to its substance.
- 7.5. We observed that the Bill does not provide for the amendment of the Constitution or money matters, as stated in section 77 of the Constitution and therefore we do not regard it necessary, for the purposes of this opinion, to discuss section 74 and section 77 of the Constitution.
- 7.6. We have considered all the provisions in the Bill in light of Schedules 4 and 5 to the Constitution. The purpose of this Bill is to amend the Act to provide for matters relating to the South African Judicial Education Institute. The South African Judicial Education Institute is a juristic body formed at national level and is responsible for the judicial education and training of judicial officers and aspiring judicial officers. This area is not listed as a functional area of concurrent national and provincial legislative competence, as contemplated in Schedule 4 to the Constitution, neither does the Bill affect any of the listed functional areas in a substantial measure. It would therefore seem that the Bill, in its current form, would not, in substantial measure, fall within a functional area listed in Schedule 4 to the Constitution or substantially affect the provinces. These provisions do not appear to affect the interests of the province, since they do not impose a function or duty on the provinces or have any financial implications that would substantially affect the provinces. It is therefore our view that this Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution.
- 7.7 The State Law Advisers and the Department of Justice and Constitutional Development 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 section 76 of the Constitution applies.
- 7.8 Section 39(1)(a) of the Traditional and Khoi-San Leadership Act, 2019 (Act No. 3 of 2019), provides for the referral of Bills to the National House of Traditional and Khoi-San Leaders (“National House”), and states as follows:

1. *Tongoane and Others v Minister for Agriculture and Land Affairs and Others*, 2010(8) BCLR 741 (CC), at paragraph 60.

2. At paragraph 70.

3. At paragraph 72.

4. At paragraph 59.

“Referral of Bills to National House

39. (1)(a) Any Parliamentary Bill—

- (i) *which directly affects traditional or Khoi-San communities or pertaining to customary law or customs of traditional or Khoi-San communities; or*
- (ii) *pertaining to any matter referred to in section 154(2) of the Constitution,*

must, in the case of a Bill contemplated in subparagraph (i) and may, in the case of a Bill contemplated in subparagraph (ii), before it is passed by the house of Parliament where it was introduced, be referred by the Secretary to Parliament to the National House for its comments.” (Our emphasis.)

- 7.9 We are of the view 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, as the Bill does not contain any provisions which directly affect traditional or Khoi-San communities or provisions which pertain to customary law or customs of traditional or Khoi-San communities, nor any matter referred to in section 154(2) of the Constitution.

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