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**No. 37662**

## THE PRESIDENCY

No. 386      19 May 2014

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

**Act No. 13 of 2014: State Attorney Amendment Act, 2014**



**AIDS HELPLINE: 0800-0123-22 Prevention is the cure**

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

                 Words underlined with a solid line indicate insertions in existing enactments.

# ACT

**T**HE PARLIAMENT of the Republic of South Africa enacts, as follows:—

2. (1) The Minister of Justice and Constitutional Development may, subject to the laws governing the public service, appoint as Solicitor-General, a fit and proper person, with due regard to his or her experience,

conscientiousness and integrity, to be entrusted with the responsibilities of the office concerned—

(a) who is admitted as an attorney in any division of the High Court of South Africa; or

(b) who—

(i) is admitted as an advocate in any division of the High Court of South Africa;

(ii) was previously admitted as an attorney in any division of the High Court of South Africa and practised as such;

(iii) has not been struck off the Roll of attorneys or Roll of advocates, as the case may be; and

(iv) is eligible to be re-admitted as an attorney,

and who shall, with due regard to the ethical norms and standards in the attorneys' profession, be subject to the direction and supervision of the Minister.

(2) The Solicitor-General is appointed for a term of five years, which may be extended by the Minister of Justice and Constitutional Development for any further period or periods of not more than five years at a time.

(3) The Minister of Justice and Constitutional Development may, subject to the laws governing the public service and after consultation with the Solicitor-General, appoint—

(a) as State Attorneys, fit and proper persons who are admitted and entitled to practise as attorneys in any division of the High Court of South Africa, and who shall be the heads of offices of State Attorney established or deemed to have been established in terms of section 1;

(b) as many persons, who are fit and proper, and who are admitted and entitled to practise as attorneys in any division of the High Court of South Africa, as may be necessary for the proper performance of the business of an office of State Attorney; and

(c) such other persons as may be necessary for the proper performance of the business of an office of State Attorney.

(4) (a) The appointment of a Solicitor-General in terms of this section shall, subject to the laws governing the public service, and after following due process, terminate—

(i) if a division of the High Court of South Africa orders that—

(aa) his or her name be struck off the Roll of attorneys or Roll of advocates, as the case may be; or

(bb) he or she be suspended from practice as a sanction arising out of disciplinary processes instituted by the relevant professional governing body in the legal profession; or

(ii) in terms of any ground provided for in section 17 of the Public Service Act, 1994 (Proclamation No. 103 of 1994).

(b) The appointment of a State Attorney or attorney in terms of this section shall, subject to the laws governing the public service, and after following due process, terminate—

(i) if a division of the High Court of South Africa orders that—

(aa) his or her name be struck off the Roll of attorneys; or

(bb) he or she be suspended from practice as a sanction arising out of disciplinary processes instituted by the relevant professional governing body in the legal profession; or

(ii) in terms of any ground provided for in section 17 of the Public Service Act, 1994.

(5) (a) Whenever the post of Solicitor-General is vacant or if the Solicitor-General is for any reason absent or unable to exercise his or her powers or to perform his or her functions in terms of this Act, the Minister of

Justice and Constitutional Development may appoint any person who meets the criteria for appointment referred to in subsection (1), to act in that post.

(b) Whenever a post of state attorney is vacant or if a state attorney is for any reason absent or unable to perform his or her functions in terms of this Act, the Minister of Justice and Constitutional Development may, after consultation with the Solicitor-General, appoint any person who meets the criteria for appointment referred to in subsection (3), to act in that post.

(6) The Minister of Justice and Constitutional Development may delegate any power conferred on him or her under this section to the Solicitor-General.

(7) The creation, grading and classification of the post of Solicitor-General and all posts on the establishment of all offices of State Attorney and the remuneration and conditions of service of all persons occupying such posts, are determined by the laws governing the public service.

(8) (a) The person holding office as State Attorney in charge of the office of the State Attorney in Pretoria and any person in charge of any branch of that office at the commencement of the State Attorney Amendment Act, 2014, is deemed to have been appointed as a State Attorney under this section.

(b) Any other person holding an appointment in the office of the State Attorney in Pretoria and any branch thereof at the commencement of the State Attorney Amendment Act, 2014, is deemed to have been appointed under this section.

(9) The Minister of Justice and Constitutional Development may require any person appointed in terms of subsection (3) or deemed to have been appointed under subsection (8), to exercise such powers and perform such functions as the Minister may determine, in addition to the exercise of their powers and performance of their functions in terms of this Act.

(10) Despite anything to the contrary in any law, practice or custom in force or prevailing in any part of the Republic, the Solicitor-General and any person holding an appointment in an office of State Attorney may, notwithstanding that he or she is an attorney, notary or conveyancer, receive a salary in respect of all services rendered or to be rendered by him or her under his or her appointment.”.

**Substitution of section 3 of Act 56 of 1957, as amended by section 35 of Act 93 of 1962, section 2 of Act 7 of 1966 and section 1 of Act 49 of 1966**

3. The following section is hereby substituted for section 3 of the principal Act:

**“Functions of [State Attorney’s office] offices of State Attorney**

3. (1) The functions of the [**office of the State Attorney and of its branches**] offices of State Attorney shall be the performance in any court or in any part of the Republic of such work on behalf of the Government of the Republic as is by law, practice or custom performed by attorneys, notaries and conveyancers [**or by parliamentary agents: Provided that the functions in regard to his duties as parliamentary agent shall be subject to the Standing Rules of the respective Houses of Parliament**].

(2) There may also be performed at the [**State Attorney’s office or at any of its branches**] offices of State Attorney like functions for or on behalf of the administration of any province, [**and the South African Railways and Harbours Administration,**] subject to such terms and conditions as may be arranged between the Minister of Justice and Constitutional Development and the [**Administration**] administration concerned.

(3) Unless the Minister of Justice and Constitutional Development otherwise directs, there may also be performed at the [**State Attorney’s**