

1/5/9

CONSTITUTIONAL ASSEMBLY

**TUESDAY
23 APRIL 1996**

BRIEFING MEMORANDUM

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CONSTITUTIONAL ASSEMBLY

BRIEFING MEMORANDUM

TO: MEMBERS OF THE CONSTITUTIONAL ASSEMBLY
FROM: EXECUTIVE DIRECTOR
DATE: 23 APRIL 1996
RE: PROCEDURES FOR ADOPTION AND CERTIFICATION

1. INTRODUCTION

This memorandum is produced to update all members of the Constitutional Assembly on the procedures for adoption, amendments to the Constitution and procedures for certification.

2. ADOPTION PROCEDURES -CA RULES

2.1 FIRST STAGE

- 2.1.1 The Constitutional Assembly of 29 March 1996 adopted new Rules for Adoption. These rules provide for three stages of adoption.
- 2.1.2 The first stage, also called the First Reading Stage, takes place from 23 to 24 April 1996.
- 2.1.3 During this stage, the member in charge of the Bill, the Chairperson, will place the draft Constitution in the form of a Bill, on the Order Paper for the First Reading.
- 2.1.4 No amendments are allowed to the motion for the First Reading of the Bill.
- 2.1.5 After moving that the Bill be read a first time, the Chairperson will deliver his introductory speech on the Bill on Tuesday 23 April 1996.
- 2.1.6 After the introductory speech, one member of each political party in the CA will be given 15 minutes for a statement on the Bill on behalf of their party.
- 2.1.7 A period of debate will then follow. The time for this debate has been allocated proportionately to parties, with some flexibility with regard to smaller political parties. There is no set subject matter for the debate and parties may address any subject in the draft Constitution. The Whips have been provided with the allocation of time to draw up speakers' lists.
- 2.1.8 After the debate, the presiding officer will order the Bill to be read a first time.

2.2 SECOND STAGE

- 2.2.1 The second stage is also called the Committee Stage.
- 2.2.2 During the Committee Stage, the draft Constitution will be referred to the Constitutional Committee together with any amendments to the Bill.
- 2.2.3 The Constitutional Committee will meet on 25,26 and 29 April 1996. The programme for this meeting is yet to be considered.
- 2.2.4 According to the Rules, all amendments must be submitted in writing and signed by the proposer. The Management Committee has agreed that there should be some flexibility with regard to the deadline for submissions.
- 2.2.5 The Chairperson has the final say on whether any proposed amendment is out of order for any reason and whether it will be considered by the Constitutional Committee.
- 2.2.6 After considering the proposed amendments, the Constitutional Committee will make whatever changes to the draft Constitution it has agreed to and will prepare a report for the Constitutional Assembly.

2.3 THIRD STAGE

- 2.3.1 The Third Stage is also called the Second Reading Stage.
- 2.3.2 This stage begins when the Constitutional Assembly convenes again on 3 May 1996. The amended draft Constitution and report of the Constitutional Committee will be placed before the Constitutional Assembly for the Second Reading.
- 2.3.3 No amendments will be allowed to the motion for the Second Reading of the Bill.
- 2.3.4 A further period of debate will take place in the Constitutional Assembly on the amended draft Constitution from 3 to 7 May 1996. The programme for these four days still has to be considered by the Management Committee.
- 2.3.5 On the last day of this stage, 8 May, voting will take place.
- 2.3.6 The number of members in favour will be recorded, whether a division is called for or not. The number of senators who vote or are in favour will be recorded separately.
- 2.3.7 In terms of section 73(2) of the interim Constitution, a two-thirds majority is required to pass the Constitution. In addition, a two-thirds majority of Senators is required for any provisions relating to the boundaries, powers and functions of provinces.

- 2.3.6 A draft programme for 8 May 1996 is being considered by the Chairpersons and will be distributed shortly to all members.

3. CERTIFICATION

- 3.1 If the Constitution is passed in terms of section 73(2), the new Rules of the CA state that "two fair copies" must be sent to the Constitutional Court for certification.
- 3.2 Section 71(2) of the interim Constitution states that the new constitutional text will have no force or effect unless it is certified by the Constitutional Court to be in compliance with the 34 Constitutional Principles enshrined in Schedule 4 of the interim Constitution.
- 3.3 Preliminary discussions with the President of the Constitutional Court have taken place and it has been provisionally agreed that a special session of the Court will be convened in June for the process of certification.
- 3.4 The Chairpersons, on the instructions of Management Committee, are proceeding with the appointment of counsel to appear for the CA.
- 3.5 In terms of the Rules of the Constitutional Court, any political party represented in the Constitutional Assembly is entitled to present oral argument to the Court. The Court may require that written submissions are also sent in advance of the oral argument.
- 3.6 The Chairperson of the CA will need to inform the Court whether any of the political parties wish to make use of this opportunity.
- 3.7 Once the Constitution has been certified, it will be sent to the President for him to sign.

4. AMENDMENT OF THE INTERIM CONSTITUTION

- 4.1 The Constitutional Assembly on 29 March 1996 amended the interim Constitution with the Constitution of the Republic of South Africa Third Amendment Bill.
- 4.2 The first objective of these amendments is to ensure that if the draft Constitution, is not passed with a two-thirds majority on 8 May 1996, the Constitutional Assembly is still able to refer it to the Independent Panel of Constitutional Experts in terms of Section 73(2).
- 4.3 If this takes place, the Panel will be required to give its advice within a period of 30 days on amendments to the proposed draft which might secure a two-thirds majority of the Constitutional Assembly. These amendments must still be in compliance with the Constitutional Principles.

- 4.4 Once the amended draft is submitted to the Constitutional Assembly, it must be voted on within 14 days.
- 4.5 If the Panel does not submit an amended draft within 30 days, or if the amended draft fails to get a two-thirds majority, the draft may be passed by a majority of the members and then referred to the Court for certification. After certification this text will be referred by the President to the electorate in a national referendum. The question put to the electorate will be the acceptance or rejection of the text. If the text is supported by at least 60% of the electorate, it becomes the new Constitution.
- 4.6 Another scenario could also take place if the text put to the Constitutional Assembly on 8 May fails to obtain the support of a majority of its members, or if the amended text proposed by the Panel is not supported by a two-thirds majority, or if the amended text is not supported by 60 % of the electorate.
- 4.7 The President will then have to dissolve Parliament by proclamation in the Gazette within 14 days of the date of the referendum or 14 days after the date on which the text failed to obtain a majority, after failing to get a two-thirds majority .
- 4.8 After Parliament is dissolved, an election will be held and the Constitutional Assembly will be reconstituted. The new Constitutional Assembly will have to pass the new text within a period of one year from the date of its first sitting.
- 4.9 The new text put to the reconstituted Constitutional Assembly will have to obtain at least 60% support of its members. Provisions relating to boundaries, powers and functions of provinces will have to obtain 60% support of all members of the Senate.

4.10 NON-CERTIFICATION BY CONSTITUTIONAL COURT

- 4.10.1 A new section 73A was inserted into the interim Constitution on 29 March 1996 to deal with the procedure if the Constitutional Court does not certify the approved text.
- 4.10.2 If the Court finds that the approved text referred to it, does not comply with the Constitutional Principles, it will refer the text back to the Constitutional Assembly together with the reasons for its decision.
- 4.10.3 The Constitutional Assembly now has a period of three months to pass an amended text after having considered the reasons of the Constitutional Court for non-certification.
- 4.10.4 If the Constitutional Assembly fails to pass an amended text with a two-thirds majority, the same kind of scenarios sketched out above are again possible.

That is, the text could be referred to the Panel, and if the Panel's text is not passed, or if the Panel fails to provide an amended text, then any text supported by a majority is referred to the electorate in a referendum.

- 4.10.6 A second scenario once again kicks in if the Constitutional Assembly is not able to pass a text with a majority or if the text put to the electorate in a referendum fails to obtain at least 60% support of the electorate. Parliament is dissolved, elections are held and a newly constituted Constitutional Assembly has one year to pass a new Constitution.

Note: This is a briefing memorandum. The CA Rules and amended section of the Interim Constitution are attached hereto.

23/4/96 DDA22046.MEM

**EXTRACT FROM THE RESOLUTIONS OF THE
CONSTITUTIONAL ASSEMBLY,
FRIDAY, 29 MARCH 1996**

First Reading Stage

Notice of First Reading

78A. (1) The member in charge of the bill shall place the bill on the Order Paper for First Reading.

(2) The First Reading may be set down for the day on which the bill is laid upon the Table, provided members are supplied with copies of the bill before the First Reading is moved.

No amendment allowed

79A. No amendment shall be allowed to the motion for the First Reading of the bill.

Introduction of bill

80A. The member in charge of the bill, after moving that the bill be read a first time, may deliver his or her introductory speech on the bill.

Statements on behalf of parties

81A. (1) After the introductory speech one member of each political party in the Constitutional Assembly may make a statement on the bill on behalf of his or her party.

(2) A period of debate, as determined by the presiding officer, may follow statements on the bill in terms of Subrule (1).

Bill read a first time

82A. When statements on the bill have been made on behalf of all political parties in the Constitutional Assembly who wish to be heard, and after the period of debate referred to in Subrule 81A(2), the presiding officer shall order the bill to be read a first time, without the question being put.

*Committee Stage**Referral of bill to Constitutional Committee*

83A. After the bill has been read a first time, it stands referred to the Constitutional Committee for consideration of amendments.

Amendments for consideration by Constitutional Committee

84A. (1) Proposed amendments to the clauses or other provisions of the bill may be submitted for consideration by the Constitutional Committee.

(2) An amendment which is out of order for any reason shall not be considered by the Constitutional Committee, and the Chairperson's decision on any question as to whether an amendment is or is not out of order, shall be final.

x (3) An amendment must be in writing, signed by the proposer, and must be delivered to the Secretary not later than 12:00 on the day preceding the first day set aside for consideration of the bill by the Constitutional Committee.

(4) An amendment which has not been submitted as provided under Subrule (3) may not be referred to the Constitutional Committee except by or by leave of the Chairperson.

Amendment of bill and preparation of report

85A. The Constitutional Committee shall effect such amendments to the bill as it sees fit after due consideration of the proposed amendments submitted and found to be in order in terms of Standing Rule 84A, and shall prepare a report.

*Second Reading Stage**Notice of Second Reading*

86A. After the conclusion of the Committee Stage of the bill, the member in charge of the bill shall place the bill or, as the

circumstances may require, the bill as amended, on the Order Paper for Second Reading, the bill to be accompanied by the report referred to in Standing Rule 85A.

Printing of amended bill

87A. (1) If the bill is amended in terms of Standing Rule 85A, the Secretary shall cause the bill as so amended to be printed and copies to be supplied to members.

(2) The Second Reading of the bill shall not commence before Subrule (1) has been complied with.

No amendment allowed

88A. No amendments shall be allowed to the motion for the Second Reading of the bill.

Recording of number of members in favour of bill

89A. In determining the question on the Second Reading, the number of members in favour of the question shall be recorded, whether a division is called for or not, and the number of senators who vote or are in favour of the question shall in any event be recorded separately.

Bill passed in accordance with section 73(2)

Lodging of bill with Constitutional Court

90A. If the bill is passed in accordance with section 73(2) of the Constitution at the Second Reading, two fair copies thereof shall be certified accordingly by the Secretary and lodged with the Constitutional Court with a view to the certification of the text in terms of section 71(2) of the Constitution.

Tabling of amended text submitted

91A. If the bill was not passed at the Second Reading in accordance with subsection (2) of section 73 of the Constitution and an amended text is submitted by the panel of constitutional experts in accordance with subsection (4) of that section, the Chairperson shall lay such text upon the Table.

Amended text passed in accordance with section 73(2)

92A. If passed in accordance with section 73(2) of the Constitution at the Second Reading, the bill embodying the amended text shall be further dealt with in accordance with Rules 90A and 91A.

Debate concluded.

Question agreed to.

REPUBLIC OF SOUTH AFRICA

**CONSTITUTION OF THE
REPUBLIC OF SOUTH AFRICA
THIRD AMENDMENT BILL**

(As introduced in the Constitutional Assembly)

(CHAIRPERSON OF THE CONSTITUTIONAL ASSEMBLY)

[B —96]

REPUBLIEK VAN SUID-AFRIKA

**DERDE
WYSIGINGSWETSONTWERP OP
DIE GRONDWET VAN DIE
REPUBLIEK VAN SUID-AFRIKA**

(Soos ingedien in die Grondwetlike Vergadering)

(VOORSITTER VAN DIE GRONDWETLIKE VERGADERING)

[W —96]

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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.
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BILL

To amend the Constitution of the Republic of South Africa, 1993, so as to make further provision in relation to the adoption of the new constitutional text; and to provide for matters connected therewith.

BE IT ENACTED by the Constitutional Assembly, as follows:—

Substitution of section 73 of Act 200 of 1993

1. The following section is hereby substituted for section 73 of the Constitution of the Republic of South Africa, 1993: 5

“Adoption of new constitutional text

73. (1) The Constitutional Assembly shall pass the new constitutional text within two years as from the date of the first sitting of the National Assembly under this Constitution.

(2) For the passing of the new constitutional text by the Constitutional Assembly, a majority of at least two-thirds of all members of the Constitutional Assembly shall be required: Provided that provisions of such text relating to the boundaries, powers and functions of provinces shall not be considered passed by the Constitutional Assembly unless approved also by a majority of two-thirds of all the members of the Senate. 10
15

(3) If the Constitutional Assembly fails to pass a proposed draft of the new constitutional text in accordance with [subsection (2)], subsections (1) and (2), but such draft is supported by a majority of all its members, such proposed draft shall be referred by the Chairperson to the panel of constitutional experts referred to in section 72(2) for its advice, to be given within 30 days of such referral, on amendments to the proposed draft, within the framework of the Constitutional Principles, which might secure the support required in terms of subsection (2). 20

(4) An amended draft text unanimously recommended by the panel of constitutional experts and submitted to the Constitutional Assembly within the said period of 30 days shall be considered by the Constitutional Assembly and [if passed in accordance with subsection (2), it shall become the Constitution of the Republic of South Africa] be voted on within 14 days of the date on which it was submitted to the Constitutional Assembly, and may be passed in terms of subsection (2). 5

(5) Should the panel of constitutional experts fail to submit within the said period of 30 days to the Constitutional Assembly an amended draft text which is unanimously recommended by the panel, or should such an amended draft text not be passed by the Constitutional Assembly in accordance with subsection (2), any proposed draft text before the Constitutional Assembly may be approved by it by resolution of a majority of its members for the purposes of subsection (6) within 14 days of the date of submission of the amended Draft Text by the panel or, if no amended draft text is submitted by the panel, within 44 days after the date of referral of the draft to the panel, in terms of subsection (3). 10 15

(6) A text approved under subsection (5) shall, after it has been certified by the Constitutional Court in terms of section 71(2), be referred by the President, for a decision by the electorate by way of a national referendum, which shall be called within 14 days after certification by the Constitutional Court, and which shall be held within 90 days of the date on which the referendum is called. 20

(7) The question put before the electorate in the referendum shall be the acceptance or rejection of the text approved under subsection (5). 25

(8) The text presented to the electorate in the referendum shall, if approved by a majority of at least 60 per cent of the votes cast in the referendum and subject to subsection (13), become the Constitution of the Republic of South Africa.

(9) If the relevant text, or any amended text, taking into account the reasons of the Constitutional Court, is not supported or approved in terms of subsection (3) or (5), or is not approved in the referendum, in accordance with subsection (8) [or if a new constitutional text is not passed in terms of this Chapter within the period of two years referred to in subsection (1)], the President shall dissolve Parliament by proclamation in the Gazette within 14 days of the date of the referendum [or the expiry of the said period] or after the date on which the relevant text was not supported or approved in terms of subsection (3) or (5), whereupon an election contemplated in section 39(1)(a) shall be held. 30 35

(10) The Constitutional Assembly as constituted after such an election, shall pass the new constitutional text within a period of one year as from the date of its first sitting after such election. 40

(11) For the passing of the new constitutional text referred to in subsection (10) by the Constitutional Assembly, a majority of at least 60 per cent of all the members of the Constitutional Assembly shall be required: 45
Provided that provisions of such text relating to the boundaries, powers and functions of provinces shall not be considered passed by the Constitutional Assembly unless approved also by a majority of at least 60 per cent of all the members of the Senate.

(12) The provisions of subsections (3) to (9) of this section and the other sections of this Chapter shall apply *mutatis mutandis* in respect of the Constitutional Assembly referred to in subsection (10) of this section. 50

(13) A new constitutional text adopted in terms of this Chapter shall be assented to by the President and shall upon its promulgation be the Constitution of the Republic of South Africa." 55

Insertion of section 73A in Act 200 of 1993

2. The following section is hereby inserted after section 73 of the Constitution of the Republic of South Africa, 1993:

“Procedure in event of non-certification

73A. (1) If the Constitutional Court finds that a draft of the new constitutional text passed by the Constitutional Assembly in terms of section 73(2) or approved by it in accordance with section 73(5), does not comply with the Constitutional Principles, the Constitutional Court shall refer the draft text back to the Constitutional Assembly together with the reasons for its finding. 5

(2) The Constitutional Assembly shall within three months of the date of referral pass an amended text in accordance with section 73(2) or approve an amended text in accordance with section 73(5), as the case may be, taking into account the reasons of the Constitutional Court. 10

(3) The amended text shall be referred to the Constitutional Court for certification in terms of section 71, whereupon the provisions of subsections (1) and (2) again apply, except that the period of three months mentioned in (2) is reduced to a period of one month. 15

(4) If, in the case of a draft text where section 73(2) applies, the Constitutional Assembly fails to amend the draft text in accordance with section 73(2) within the period prescribed in subsection (2) of this section, the provisions of section 73(3) to (9) shall apply *mutatis mutandis*.”. 20

Short title

3. This Act shall be called the Constitution of the Republic of South Africa Third Amendment Act, 1996. 25

**MEMORANDUM ON THE OBJECTS OF THE CONSTITUTION OF
THE REPUBLIC OF SOUTH AFRICA THIRD AMENDMENT BILL,
1996**

Chapter 5 of the Constitution of the Republic of South Africa, 1993, provides that the Constitutional Assembly shall pass a new constitutional text within two years as from the date of the first sitting of the National Assembly (i.e. before 10 May 1996). However, the new constitutional text shall not be of force unless the Constitutional Court has certified that all the provisions of that text comply with the Constitutional Principles set out in Schedule 4 to the Constitution.

The main object of this Bill is to provide for the eventuality of— *

the Constitutional Assembly failing to pass the new constitutional text with the requisite majority within the said period of two years; or

*
the Constitutional Court not being able to certify that the draft complies with the Constitutional Principles.

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ALGEMENE VERDUIDELIKENDE NOTA:

[] Woorde in vet druk tussen vierkantige hake dui skappings uit bestaande verordenings aan.

_____ Woorde met 'n volstreep daaronder, dui invoegings in bestaande verordenings aan.

WETSONTWERP

Tot wysiging van die Grondwet van die Republiek van Suid-Afrika, 1993, ten einde verdere voorsiening te maak met betrekking tot die aanneming van die nuwe grondwetlike teks; en om voorsiening te maak vir aangeleenthede wat daarmee verband hou.

—

DAAR WORD BEPAAL deur die Grondwetlike Vergadering, soos volg:—

Vervanging van artikel 73 van Wet 200 van 1993

1. Artikel 73 van die Grondwet van die Republiek van Suid-Afrika, 1993, word 5 hierby deur die volgende artikel vervang:

“Aanneming van nuwe grondwetlike teks

73. (1) Die Grondwetlike Vergadering moet die nuwe grondwetlike teks aanneem binne twee jaar vanaf die datum van die eerste sitting van die Nasionale Vergadering kragtens hierdie Grondwet.

10 (2) Vir die aanneming van die nuwe grondwetlike teks deur die Grondwetlike Vergadering, word 'n meerderheid van minstens twee derdes van al die lede van die Grondwetlike Vergadering vereis: Met dien verstande dat bepalinge van die teks wat betrekking het op die grense, bevoegdhede en werksaamhede van provinsies nie geag word deur die 15 Grondwetlike Vergadering aangeneem te wees nie tensy dit ook deur 'n meerderheid van minstens twee derdes van al die lede van die Senaat goedgekeur is.

 (3) Indien die Grondwetlike Vergadering nie daarin slaag om 'n voorgestelde konsep van die nuwe grondwetlike teks ooreenkomstig 20 [subartikel (2)] subartikels (1) en (2) aan te neem nie, maar so 'n konsep deur die meerderheid van al die lede daarvan ondersteun word, moet die voorgestelde konsep deur die Voorsitter na die paneel van grondwetlike deskundiges bedoel in artikel 72(2) verwys word vir sy advies, wat binne 25 30 dae vanaf sodanige verwysing gegee moet word, oor wysigings aan die voorgestelde konsep, binne die raamwerk van die Grondwetlike Beginsels,

[B/W —96]

1 wat die ondersteuning wat ingevolge subartikel (2) vereis word, sou kon
verseker.

5 (4) 'n Gewysigde konsepteks wat eenparig deur die paneel van
grondwetlike deskundiges aanbeveel is en aan die Grondwetlike Vergade-
ring binne genoemde tydperk van 30 dae voorgelê is, moet deur die
10 Grondwetlike Vergadering oorweeg word en [indien dit ooreenkomstig
subartikel (2) aangeneem word, word dit die Grondwet van die
Republiek van Suid-Afrika] moet oor gestem word binne 14 dae vanaf
die datum waarop dit aan die Grondwetlike Vergadering voorgelê is, en
kan ingevolge subartikel (2) aangeneem word.

15 (5) Indien die paneel van grondwetlike deskundiges nie daarin slaag om
binne genoemde tydperk van 30 dae 'n gewysigde konsepteks wat
eenparig deur die paneel aanbeveel word, aan die Grondwetlike Vergade-
ring voor te lê nie, of indien so 'n gewysigde konsepteks nie ooreen-
komstig subartikel (2) deur die Grondwetlike Vergadering aangeneem word
nie, kan enige voorgestelde konsepteks wat voor die Grondwetlike
Vergadering dien deur die Grondwetlike Vergadering by 'n besluit van 'n
meerderheid van sy lede vir die doeleindes van subartikel (6) goedgekeur
20 word binne 14 dae na die datum van voorlegging van 'n gewysigde
konsepteks of, indien 'n gewysigde konsepteks nie binne 44 dae na die
datum waarop die teks na die paneel verwys is deur die paneel voorgelê
word nie, ingevolge subartikel (3).

25 (6) 'n Teks wat kragtens subartikel (5) goedgekeur is, word nadat dit
deur die Konstitusionele Hof ingevolge artikel 71(2) gesertifiseer is, deur
die President na die kiesers vir 'n beslissing by wyse van 'n nasionale
referendum verwys, wat afgekondig moet word binne 14 dae na sertifis-
ering deur die Konstitusionele Hof, en wat gehou moet word binne 90 dae
vanaf die datum waarop die referendum afgekondig is.

30 (7) Die vraag wat by die referendum aan die kiesers voorgehou word, is
die aanvaarding of verwerping van die teks wat kragtens subartikel (5)
goedgekeur is.

35 (8) Die teks wat aan die kiesers by die referendum voorgehou word,
word, indien dit goedgekeur word deur 'n meerderheid van minstens 60
persent van die stemme in die referendum uitgebring en behoudens
subartikel (13), die Grondwet van die Republiek van Suid-Afrika.

40 (9) Indien die betrokke teks of 'n gewysigde teks, met inagneming van
die redes van die Konstitusionele Hof, nie ingevolge subartikel (3) of (5)
ondersteun of goedgekeur word nie of nie in die referendum ooreen-
komstig subartikel (8) goedgekeur word nie [of indien 'n nuwe grondwet-
like teks nie ingevolge hierdie Hoofstuk binne die tydperk van twee
jaar bedoel in subartikel (1) aangeneem word nie], ontbind die
President die Parlement by proklamasie in die Staatskoerant binne 14 dae
na die datum van die referendum [of die verstryking van genoemde
45 tydperk] of na die datum waarop die betrokke teks nie ingevolge
subartikel (3) of (5) ondersteun of goedgekeur is nie, waarna 'n
verkieping soos beoog in artikel 39(1)(a) gehou moet word.

(10) Die Grondwetlike Vergadering soos saamgestel na so 'n verkiesing,
moet die nuwe grondwetlike teks aanneem binne 'n tydperk van een jaar
vanaf die datum van sy eerste sitting na sodanige verkiesing.

50 (11) Vir die aanneming van die nuwe grondwetlike teks bedoel in
subartikel (10) deur die Grondwetlike Vergadering, word 'n meerderheid
van minstens 60 persent van al die lede van die Grondwetlike Vergadering
vereis: Met dien verstande dat bepalings van die teks wat betrekking het op
die grense, bevoegdheide en werksaamhede van provinsies nie geag word
55 deur die Grondwetlike Vergadering aangeneem te wees nie tensy dit ook
deur 'n meerderheid van minstens 60 persent van al die lede van die Senaat
goedgekeur is.

60 (12) Die bepalings van subartikels (3) tot (9) van hierdie artikel en die
ander artikels van hierdie Hoofstuk is *mutatis mutandis* van toepassing op
die Grondwetlike Vergadering bedoel in subartikel (10) van hierdie artikel.

(13) 'n Nuwe grondwetlike teks wat ingevolge hierdie Hoofstuk
aangeneem is, moet deur die President bekragtig word en is by afkon-
diging daarvan die Grondwet van die Republiek van Suid-Afrika."

Invoeging van artikel 73A in Wet 20 van 1993

2. Die volgende artikel word hierby in die Grondwet van die Republiek van Suid-Afrika, 1993, na artikel 73 ingevoeg:

“Prosedure in geval van nie-sertifisering

- 5 73A. (1) Indien die Konstitusionele Hof bevind dat 'n konsep van die nuwe grondwetlike teks wat deur die Grondwetlike Vergadering ingevolge artikel 73(2) aangeneem is of ingevolge artikel 73(5) goedgekeur is, nie aan die Grondwetlike Beginsels voldoen nie, verwys die Konstitusionele Hof die konsepteks terug na die Grondwetlike Vergadering, tesame met die redes vir sy bevinding.
- 10 (2) Die Grondwetlike Vergadering moet binne drie maande na die datum van die verwysing 'n gewysigde teks ooreenkomstig artikel 73(2) aanneem of 'n gewysigde teks ooreenkomstig artikel 73(5) goedgekeur, na gelang van die geval, met inagneming van die redes van die Konstitusionele Hof.
- 15 (3) Die gewysigde teks word aan die Konstitusionele Hof voorgelê vir sertifisering ingevolge artikel 71, waarna die bepalings van subartikels (1) en (2) weer van toepassing is, behalwe dat die tydperk van drie maande in artikel 73(2) genoem, tot 'n tydperk van een maand verminder word.
- 20 (4) Indien, in die geval van 'n konsepteks waar artikel 73(2) van toepassing is, die Grondwetlike Vergadering nie daarin slaag om die konsepteks ooreenkomstig artikel 73(2) binne die tydperk voorgeskryf deur subartikel (2) van hierdie artikel te wysig nie, is die bepalings van artikel 73(3) tot (9) mutatis mutandis van toepassing.”

Kort titel

- 25 3.. Hierdie Wet heet die Derde Wysigingswet op die Grondwet van die Republiek van Suid-Afrika, 1996.

**MEMORANDUM OOR DIE OORWERK VAN DIE DERDE
WYSIGINGSWETSONTWERP OP DIE GRONDWET VAN DIE
REPUBLIEK VAN SUID-AFRIKA, 1996**

Hoofstuk 5 van die Grondwet van die Republiek van Suid-Afrika, 1993, bepaal dat die Grondwetlike Vergadering 'n nuwe grondwetlike teks moet aanneem binne twee jaar na die datum van die eerste sitting van die Nasionale Vergadering (d.i. voor 10 Mei 1996). Die nuwe grondwetlike teks sal egter nie van krag wees nie tensy die Konstitusionele Hof gesertifiseer het dat al die bepalings van daardie teks voldoen aan die Grondwetlike Beginsels in Bylae 4 by die Grondwet vermeld.

Die hoofmerk van hierdie Wetsontwerp is om voorsiening te maak vir die gebeurlikheid dat—

- * die Grondwetlike Vergadering nie daarin slaag om die nuwe grondwetlike teks binne die tydperk van twee jaar met die vereiste meerderheid aan te neem nie; of
- * die Konstitusionele Hof nie in staat is om te sertifiseer dat die konsep aan die Grondwetlike Beginsels voldoen nie.

