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GENERAL NOTICES • ALGEMENE KENNISGEWINGS

DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT

NOTICE 1196 OF 2022

PUBLICATION OF EXPLANATORY SUMMARY OF THE DRUGS AND DRUG TRAFFICKING AMENDMENT BILL, 2022

1. Notice is hereby given in terms of Rule 276(1)(b) of the Rules of the National Assembly that the Minister of Justice and Correctional Services intends to introduce the Drugs and Drug Trafficking Amendment Bill, 2022 (the Bill), in the National Assembly shortly.

2. The explanatory summary of the Bill is hereby published in accordance with Rule 276(1)(c) of the Rules of the National Assembly.

3.1 The Drugs and Drug Trafficking Act, 1992 (Act No. 140 of 1992) (the Act), criminalises the manufacturing and supplying of any substance included in Schedule 1 to the Act; and the use, possession and dealing in any drug included in Schedule 2 to the Act. In terms of section 63 of the Act, the Cabinet member responsible for the administration of justice (the Minister) may, by notice in the *Gazette*, amend Schedules 1 and 2 to the Act. The Minister has in terms of section 63 of the Act, by means of Government Notices No. R. 1765 of 1 November 1996; No. R. 344 of 13 March 1998; No. R. 760 of 11 June 1999; No. R. 521 of 15 June 2001; No. R. 880 of 8 October 2010; and No. R. 222 of 28 March 2014, effected amendments to the Schedules to the Act.

3.2 In *Jason Smit v Minister of Justice and Constitutional Development and Others* [2020] ZACC 29, the Constitutional Court held that -

- (a) section 63 of the Act, to the extent that it purports to delegate plenary legislative power to the Minister to amend the Schedules to the Act, is inconsistent with the Constitution and therefore invalid; and
- (b) the amendments (see paragraph 3.1 above) that have been effected in terms of section 63 to the Schedules to the Act, are invalid.

The Constitutional Court suspended the orders of invalidity for a period of 24 months to give Parliament an opportunity to cure the defect.

3.3 The Bill seeks to:

- (a) Repeal section 63 of the Act;
- (b) substitute Schedules 1 and 2 to the Act to effect the amendments referred to in paragraph 3.1 above, thereto; and
- (c) provide for matters connected therewith.

4. A copy of the Bill can be found on the websites of the Parliamentary Monitoring Group at <http://www.pmg.org.za> and the Department of Justice and Constitutional Development at www.justice.gov.za and, after introduction, may also be obtained from the Government Printers: Cape Town (Telephone number: (021) 465-7531).

DEPARTEMENT VAN JUSTISIE EN STAATKUNDIGE ONTWIKKELING

KENNISGEWING 1196 VAN 2022

PUBLIKASIE VAN VERDUIDELIKENDE OPSOMMING VAN DIE
WYSIGINGSWETSONTWERP OP DWELMMIDDELS EN DWELMSMOKKELARY, 2022

1. Kragtens Reël 276(1)(b) van die Reëls van die Nasionale Vergadering word hiermee kennis gegee dat die Minister van Justisie en Korrektiewe Dienste beoog om die Wysigingswetsontwerp op Dwelmmiddels en Dwelmsmokkelary, 2022 (die Wetsontwerp), eersdaags in die Nasionale Vergadering in te dien.

2. Die verduidelikende opsomming van die Wetsontwerp word hierby ooreenkomstig Reël 276(1)(c) van die Reëls van die Nasionale Vergadering gepubliseer.

3.1 Die Wet op Dwelmmiddels en Dwelmsmokkelary, 1992 (Wet No. 140 van 1992) (die Wet) kriminaliseer die vervaardiging en verskaffing van enige stof in Bylae 1 tot die Wet gemeld; en die gebruik, besit en handeldryf in enige dwelmmiddel in Bylae 2 tot die Wet gemeld. Ingevolge artikel 63 van die Wet kan die lid van die Kabinet verantwoordelik vir die regspleging (die Minister) by kennisgewing in die *Staatskoerant* Bylaes 1 en 2 tot die Wet wysig. Die Minister het ingevolge artikel 63 van die Wet, by wyse van Goewermentskennisgewings No. R. 1765 van 1 November 1996; No. R. 344 van 13 Maart 1998; No. R. 760 van 11 Junie 1999; No. R. 521 van 15 Junie 2001; No. R. 880 van 8 Oktober 2010; en No. R. 222 van 28 Maart 2014, die Bylaes tot die Wet gewysig.

3.2 Die Konstitusionele Hof het in **Jason Smit v Minister of Justice and Constitutional Development and Others** [2020] ZACC beslis dat -

- (a) artikel 63 van die Wet, tot die mate dat dit voorgee om volledige wetgewende gesag aan die Minister te deleger om die Bylaes tot die Wet te wysig, onbestaanbaar is met die Grondwet en derhalwe ongeldig is; en
- (b) die wysigings (sien paragraaf 3.1 hierbo) wat kragtens artikel 63 aan die Bylaes tot die Wet gemaak is, ongeldig is.

Die Konstitusionele Hof het die bevel van ongeldigheidsverklaring vir 'n tydperk van 24 maande opgeskort ten einde Parlement die geleentheid te bied om die gebrek reg te stel.

3.3 Die Wetsontwerp beoog om:

- (a) Artikel 63 van die Wet te herroep;
- (b) Bylaes 1 en 2 tot die Wet te vervang ten einde die wysigings in paragraaf 3.1 hierbo na verwys, daartoe aan te bring; en
- (c) om voorsiening te maak vir aangeleenthede wat daarmee in verband staan.

4. 'n Afskrif van die Wetsontwerp kan op die webtuistes van die Parlementêre Moniteringsgroep by <http://www.pmq.org.za> en die Departement van Justisie en Staatkundige Ontwikkeling by www.justice.gov.za gevind word en, na indiening, ook verkry word van die Staatsdrukkers: Kaapstad (Telefoonnommer: (021) 465-7531).

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