
GENERAL NOTICES • ALGEMENE KENNISGEWINGS

PARLIAMENT OF THE REPUBLIC OF SOUTH AFRICA

NOTICE 4116 OF 2026

MR. M. MANYI, MP

NOTICE OF INTENTION TO INTRODUCE A PRIVATE MEMBER'S BILL AND INVITATION FOR COMMENT ON THE DRAFT SUPERIOR COURTS AMENDMENT BILL, 2026

Mr. M. Manyi, MP acting in accordance with section 73(2) of the Constitution of the Republic of South Africa, 1996 ("Constitution"), intends to introduce the Superior Courts Amendment Bill, 2026, in Parliament. An explanatory summary of the Bill is hereby published in accordance with Rule 276(1)(c) of the Rules of the National Assembly (9th Edition).

Section 9(1) of the Constitution of the Republic of South Africa, 1996, provides that "Everyone is equal before the law and has the right to equal protection and benefit of the law". Section 47 of the Superior Courts Act, 2013 (Act No. 10 of 2013) ("the Act"), imposes a unique procedural barrier that applies only to judges of the Superior Courts, requiring prior consent before civil proceedings may be instituted against them, or before a subpoena in civil proceedings may be served on them, thereby differentiating between judges and all other citizens on the basis of occupational status alone. Although there is a rationale for such differentiation, section 47 is too broad. Section 47 currently allows protection for judges on active service and those who are no longer on active service, to have the institution of civil proceedings by way of summons or notice of motion, and the serving of subpoenas in all civil proceedings – save for an application under the Domestic Violence Act, 1998 (Act 116 of 1998) - gatekept by requiring consent from the head of the relevant court, or in the case of a head of court or the Chief Justice, from the Chief Justice or the President of the Supreme Court of Appeal. The rationale for section 47 is only in relation to judicial activities of a judge, whether on active service or not, namely to not "in the execution of their judicial functions be inhibited by fear of being dragged to Court unnecessarily over their judgements". The Bill accordingly seeks to clarify that such judicial activities are the only activities that are to be gatekept by way of section 47. The Bill does not diminish the independence of the judiciary.

The Superior Courts Amendment Bill, 2026 ("draft Bill"), therefore seeks to limit the application of section 47 of the Act. The Bill proposes that section 47 only applies to civil proceedings related to judicial activities, which term is defined in the amendment. To ensure that the meaning of judicial

activity is clear for interpretation purposes, the definition of 'judicial activity' is not only limited to the exercise of judicial authority by a court, but expressly excludes participation in a commission of inquiry, independent panel, parliamentary process, disciplinary tribunal, internal workplace labour process or a process considering compliance with a code of ethics or other norms or standards associated with a profession, arbitration, mediation, administrative investigation or any other institution or process, the purpose of which is not the execution of judicial authority. Save for a few, such activities are extra judicial in nature and do not attract the procedural protections contemplated in section 47. Participation in a labour tribunal, workplace labour process, compliance process or arbitration may perhaps be viewed as a judicial function in that these activities result in decisions that require the exercise of judicial authority. However, these activities are expressly excluded from the application of section 47 as they are not exclusively headed by judges, whether on active service or not. As no provision similar to section 47 exists for the other professionals who may head these activities, it would constitute unfair treatment to such other professionals to extend the section 47 protection for judges to these activities.

Interested parties and institutions are invited to submit written representations on the proposed content of the draft Bill to the Speaker of the National Assembly within 30 days of the publication of this notice. Representations can be delivered to the Speaker, New Assembly Building, Parliament Street, Cape Town; mailed to the Speaker, P O Box 15 Cape Town 8000, or emailed to S47SCAB@parliament.gov.za and copied to mmanyi@parliament.gov.za.

Copies of the Superior Courts Amendment Bill, 2026, may, after introduction, be obtained from:

uMkhonto weSizwe Party

PO Box 15, Cape Town, 8000

Attention: Mr Manyi, MP

Telephone: 021 403 2911

E-mail: mmanyi@parliament.gov.za