INTRODUCTION

The short title clause and the commencement clause are standard clauses in Acts drafted within the Common law legislative drafting style and conventions. 132 South African Acts,selected at random, were analysed with the aim of establishing to what extent they conform to the Common law legislative drafting conventions.

SHORT TITLES

2.1 Function

The short title is given to facilitate reference to the Act. It functions as a label. It is a nickname statutorily given “[…] to obviate the necessity of always referring to the Act under its full and descriptive title”3, i.e. its long title. It provides an accurate, though generalised, indication of what users of the Act can expect to find in the instrument. It is short and snappy, distinctive and unique, and there must be no likelihood of confusing it with titles to other legislation. It is easy to remember.4 “It identifies and describes. Its sole purpose is to enable facility of reference and the objective is therefore identification rather than description.”5 The short title thus facilitates citation, for instance in other legislation or in court, and facilitates reference and retrieval (e.g. from tables of legislation or an index).6

2.2 The section heading and location of provision

All the Acts use the words “Short title” in the section heading. Most of the Acts (i.e. 98) use the words “Short title and commencement”, as the section contains both the short title and the commencement provision. However, the following exceptions appear:

“Short title and commencement

This Act is called the Appropriation Act, 2006.”

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1 BA BLur LLB (Unisa) LLD (UOFS)
3 Atrre 53 and Thornton 158 both referring to a statement by Lord Mouton in Vacher & Sons Ltd v London society of Compositors [1913] AC 107 at 128.
4 Commonwealth of Learning, Module 5A, Section One.
5 Thornton 158.
No commencement provision is attached.

“Short title
This Act may be cited for all purposes as the Magistrates' Courts Act, 1944, and shall come into operation on a date to be fixed by the Governor-General by proclamation in the Gazette.”

No reference is made to the commencement provision. The following two Acts have the short title and the commencement provisions as separate provisions:

“Short title
79. This Act is the National Forests Act, 1998.

Commencement
80. This Act takes effect on a date fixed by the President in the Gazette.”

“52 Short title
This Act is called the National Environmental Management Act, 1998.

53 Commencement
This Act comes into operation on a date fixed by the President in the Gazette.”

In each of the Acts analysed, the short title is the final section in the Act, in many cases followed by Schedules.

2.3 Convention relating to length of short title
The short title should be really short. Bennion says as follows:

“The following example from Africa is not recommended: ‘This Act may be cited as ‘The Law for the people who do not pay their taxes before the end of the year for which its (sic) is due, 1910’’.”

The examples given by Thornton contain two or three words only, including the word “Act”. An analysis of the Acts brought the following to light: The short titles are between 2 words and 12 words long. A few examples will suffice. Short titles consisting of two words:

Appropriation Act
Arbitration Act

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7 Interesting is the fact that the two Acts are from the same year, i.e. 1998, but that the location of the section heading differs. In the one instance the words “Short title” and “commencement” follow on the section number. This paper will not further deal with the conventions relating to this matter.


Broadcasting Act
Businesses Act
Children’s Act
Liquor Act
Nursing Act

Short titles consisting of 3 to 5 words:
International Trade Administration Act
Labour Relations Act
Local Government: Municipal Electoral Act
Local Government: Municipal Structures Act
Local Government: Municipal Systems Act
Magistrates' Courts Act
Mandating Procedures of Provinces Act
National Arts Council Act
National Environmental Management Act.

Short titles consisting of 6 words and more:
Public Funding of Represented Political Parties Act
2010 Fifa World Cup South Africa Special Measures Act
Compensation for Occupational Injuries and Diseases Act
National Archives and Records Service of South Africa Act
National Building Regulations and Building Standards Act
National Radioactive Waste Disposal Institute Act
Prevention and Combating of Corrupt Activities Act
Prevention and Treatment of Drug Dependency Act
Prevention of Illegal Eviction from and Unlawful Occupation of Land Act
Promotion of Equality and Prevention of Unfair Discrimination Act
Criminal Law (Sexual Offences and Related Matters) Amendment Act
South African Red Cross Society and Legal Protection of Certain Emblems Act
Regulation of interception of Communications and Provision of Communication-Related Information Act
These short titles obviously do not follow the convention - they are too long and are clumsy. They are not “short and snappy”. The short title is ultimately the responsibility of the drafter.\textsuperscript{10} Perhaps the following could have been used, without losing too much information:

- Funding of Political Parties Act
- 2010 Fifa World Cup Act
- Occupational injuries and Diseases Act
- Corrupt Activities Act
- Drug Dependency Act
- Illegal Eviction and Unlawful Occupation of Land Act
- Equality and Unfair Discrimination Act
- Red Cross Society and Emblems Act
- Interception of Communications Act

\textbf{2.4 Conventions relating to citation}

Thornton\textsuperscript{11} advises as follows:

When an Act is cited by means of the short title, the first word of the short title is usually preceded by the word ‘the’. This word is not part of the short title and should not begin with a capital letter… The short title should not be enclosed by inverted commas. Do not write – ‘This Act may be cited as ‘The Forests Act 1986’.

Do write – This Act may be cited as the Forests Act 1986.’’

Each Common law jurisdiction has its own house-style. However, the generics of the Common law legislative drafting style could be summarised as follows:\textsuperscript{12}

\begin{itemize}
  \item The year is the year of enactment, not the year when the legislation is drafted or introduced into Parliament.
  \item The title actually begins after the definite article "the", thus “the” is not given a capital letter.
  \item The first word of the title must be distinctive which enables users to recognise the subject of the legislation.
  \item Each word of the title begins with a capital letter, except an article or preposition.
\end{itemize}

\textsuperscript{10} Commonwealth of Learning, Module 5A, Section One: “Your instructions may well contain a name under which the matter has been approved by Cabinet. Even so, the choice of the most appropriate title for the draft is the drafter’s responsibility. Try to choose one which will be both convenient and helpful. Put yourself in the place of users.”

\textsuperscript{11} Thornton 162.

\textsuperscript{12} Commonwealth of Learning, Module 5A, Section One.
* The use of brackets must be used sparingly.13
* Punctuation, other than the final full stop, is rarely needed. A comma between "Act" and the date is unnecessary.
* Both Thornton and CoL recommends the wording “This Act may be cited as […]”

Regarding the last two items above, South Africa has its own house-style. An analysis of the Acts brings to light that in the citation of South African Acts commas are used, and different wording is used. Examples:

“This Act shall be called the Land Survey Act, 1997.”

“This Act shall be called the Legal Aid Act, 1969.”

“This Act is called the Local Government: Municipal Electoral Act, 2000.”

“This Act is called the National House of Traditional Leaders Act, 2009.”

The word “Act” before the date is followed by a comma. A full stop completes the citation. The South African convention regarding wording is that most Acts (i.e. 74) use the words: “This Act is called….”14 Fifty-one Acts use the words: “This act shall be called the…” .15

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13 Commonwealth of Learning, Module 5A, Section One. “Brackets may be used where the Act solely amends or repeals an earlier Act, or where the Act deals with a matter already the subject of other legislation, but is concerned with a specific aspect only, or when the subject matter is of a general nature but is confined to a limited geographic area or group of people, or if the legislation is one of a series of subsidiary instruments made under the same Act, but dealing with a different aspect.” The only short title that uses brackets is the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 32 of 2007, which is line with the first and second usages above.

Two Acts use the words: “This is the… Act…” 16 Two Acts use the words: “This Act is the… Act”. 17 Each of the following phrases is used once: “This Act may be cited for all purposes as…” 18 and “This Act shall be referred to as…”. 19

3 COMMENCEMENT CLAUSES

3.1 Function

Commencement provisions are used to prescribe the date when the Act is to come into force or, if that date is not settled at the time of making, the mechanism by which that date is to be fixed. 20 Thornton 21 identifies the following four possibilities:


15 “This is the Refugees Act, 1998”, and “This is the Basic Conditions of Employment Act, 1997”.

16 “This is the National Forests Act, 1998” and “This Act is the Promotion of Access to Information Act, 2000”.

17 “This is the National Forests Act, 1998” and “This Act is the Promotion of Access to Information Act, 2000”.

18 Magistrates' Courts Act, 1944.

19 Immigration Act, 2002.

20 The Commonwealth of Learning, Module 5A, Section One, gives the following (general) advice: Write these provisions in the most direct terms; use the same terms to express commencement as are used in the sections of the Interpretation Act dealing with commencement; gather commencement provisions in one place, preferable in a single section. (But if the Bill is lengthy and different commencement dates may need to be set for different Parts, consider setting them out in a Schedule, to which attention must be directed by the commencement section); place the provisions in their own subsection in the section containing the short title, rather than combining them in the same subsection. (As they are usually omitted when the Act is reprinted in Revised Laws, do not use a separate section for them, since its omission would require renumbering of almost the whole Act); make sure that the section note includes the word “commencement”; and whenever possible, fix the date for commencement, either by giving a specific date or one from which it can be precisely calculated. (This saves users having to search for subsidiary instruments containing the commencement order.)
The legislation may make no provision;23
the legislation may specify a date for the commencement, or may have multiple
commencement dates, or may have conditional commencement dates, or may have
alternative commencement dates;
the legislation may empower some person or persons to specify a commencement
date; and
the legislation may provide for the Act to commence upon the occurrence of a
stipulated event.

Furthermore, an Act may use a combination of items (2), (3) and (4). One can safely assume
that the above are the conventions relating to commencement clauses. In the instance when
the Act makes no provision, the Common law drafting convention is that the legislation will
come into operation on the day of assent or on the day of publication in the Gazette. In South
Africa specific rules apply in this respect.24

3.2 Wording used
3.2.1 Section headings
The section heading to all of the Acts contains the words “Short title”. The majority of the
Acts (i.e. 98) contains the words “Short title and commencement”.

21 Commonwealth of Learning, Module 5A, Section One. The commencement of an Act is not the passing of an
Act – an Act that has been passed may not have commenced. See Thornton 163.
22 Thornton 163. The Commonwealth of Learning, Module 5A, Section One, however, identifies the following
four instances when commencement clauses are needed: A specific day (or days) is to be fixed; the legislation is
to come into force at the end of a specified period of time; it is to come into force on some day to be selected by
Government; different days are to be fixed for different provisions of the legislation.
23 Twenty-two of the Acts analysed to not contain commencement clauses. According to the Commonwealth of
Learning, Module 5A, Section One, the drafter must be satisfied that there is a good reason why the legislation
should not come into force at once. Reasons for providing commencement clauses are: retroactive legislation
(these provisions are essential if the Bill has to have retroactive effect, so that is to be treated as having come
into force at a particular date before in fact it was passed; problems of immediate implementation (e.g. a
Government Department needs time to set up new administrative arrangements; explanatory material has first to
be prepared and published for the guidance of users; subsidiary legislation must be drafted to implement the
scheme and interested parties may need to be consulted about it; the commencement is to be dependent upon the
happening of some awaited event, e.g. the coming into force of other linked legislation or a treaty); political
considerations (e.g. Government wishes, for reasons of its own, to select the most appropriate time at which new
legislation should begin to have its effect; Government wants to look at the legislation again before it comes into
force, so that it can be amended if that proves to be necessary; the public, or a section of the public, should be
given time to re-arrange their affairs in accordance with the new law).
24 Section 13 of the Interpretation Act, 1957(Act 33 of 1957) as well as section 39(2) in the Constitution apply.
322 Operative words regarding coming into operation

The most common phrase used (i.e. 41 Acts) is “comes into operation.” Example: “This Act is called the Auditing Profession Act, 2005, and comes into operation on a date determined by the Minister by notice in the Gazette.”

The phrase “shall come into operation” is used in 26 Acts. Example: “(1) This Act shall be called the Alienation of Land Act, 1981, and shall come into operation on a date fixed by the State President by proclamation in the Gazette.” A good number of Acts (i.e. 18) use the words “takes effect”. Example: “This Act is called the Children’s Act, 2005, and takes effect on a date fixed by the President by proclamation in the Gazette.”

Two Acts use the words “comes into effect”. Example: “This Act is called the Firearms Control Act, 2000, and comes into effect on a date to be fixed by the President by proclamation in the Gazette.” The following to Acts use rather unconventional wording:

“(1) This Act shall be referred to as the Immigration Act, 2002, and shall come into force and effect on a date determined by the President by proclamation in the Government Gazette.

(2) The date of coming into force and effect of section 37 shall be determined in consultation with the Minister for Justice and Constitutional Development.”

“(1) This Act is called the Rental Housing Act, 1999, and comes into operation on a date determined by the President by proclamation in the Gazette.

(2) In applying subsection (1) different sections of the Act may come into effect on different dates and different dates may be determined for different provinces.”

323 Verbs used for fixing the date

The most popular verbs and subject, used in 25 and 24 Acts respectively, are: “on a date fixed by the President by proclamation in the Gazette” and “on a date fixed by the State President by proclamation in the Gazette”

The following phrase is used quite often (i.e. 17 times): “on a date determined by the President by proclamation in the Gazette.” The following phrases used appear but a few times each:

“on a date specified by the President by proclamation in the Gazette”
“on a date **to be fixed by the President** by proclamation in the Gazette”
“on a date **to be determined by the President** by proclamation in the Gazette”
“on a date **determined by the State President** by proclamation in the Gazette”

3.2.4  *The phrase used*

In the Acts analysed, the most common phrase used is the following:

This Act shall be called the ABC Act, 20XX, and shall come into operation on a date
to be fixed by the State President by proclamation in the Gazette.

The citation and the person empowered to fix the date are contained in one phrase. However, in a few instances the citation and the fixing of the commencement date are contained in two subsections.

“(1) This Act is called the Employment Equity Act, 1998.
(2) This Act takes effect on a date to be determined by the President by proclamation in the
Gazette.”

3.3  *Mechanisms by which date is to be fixed*

Thornton’s categories mentioned in 3.1 are used.

3.3.1  *The legislation may empower some person or persons to specify a commencement date*

Thornton\(^\text{25}\) gives the following examples, which can be regarded as being conventional:

“This Act shall come into force on such day as the Minister may appoint by notice in the Gazette”.

This Act comes into force on a day to be fixed by the President by his proclamation.”

In the Acts analysed, the most common phrase used and person empowered is the (State) President.

This Act shall be called the ABC Act, 20XX, and shall come into operation on a date
to be fixed by the **State President** by proclamation in the Gazette.

\(^\text{25}\) Thornton 164.
This Act is called the ABC Act, 20XX, and comes into operation on a date fixed by the President by proclamation in the Gazette.

In many instances the term “State President” is substituted with “President”. Other persons empowered are the “Minister” and, obviously, the “Governor-General” in the Union statutes. The Acts without commencement clauses do not empower anyone.

A number of variants appear in those Acts which do have a commencement clause but in which no person is directly stipulated, i.e. in the commencement clause.

Example:

“(1) This Act is called the National Nuclear Regulator Act, 1999.
(2) This Act takes effect on the date of commencement of the Nuclear Energy Act, 1999, as contemplated in section 61 of that Act.”

In this example the President (or whoever) is not empowered. Furthermore, the commencement clause is separate from the citation clause. In this instance the person empowered is empowered in/by another Act. The Nuclear Energy Act empowers the State President.

The short title and commencement clause in the Consumer Protection Act, 2008, reads as follows: “This Act is called the Consumer Protection Act, 2008, and comes into operation in accordance with item 2 of Schedule 2.”

Should one refer to Item 2 of Schedule 2, one finds that no one is empowered to proclaim the Act. In essence Item 2 reads as follows:

“Incremental effect of Act
2. (1) Chapters 1 and 5 of this Act, section 120 and any other provision authorising the Minister to make regulations, and this Schedule, take effect on the date that is one year after the date on which this Act was signed by the President.
(2) Subject to subitem (3), and items 4 and 5, any provision of this Act not contemplated in subitem (1) takes effect on the date that is 18 months after the date on which this Act was signed by the President.
(3) The Minister, by notice published in the *Gazette* at least 20 business days before the date contemplated in subitem (2), may -

(a) defer the effective date….

(b) defer until further notice the application of this Act to…”

In the following instance the President had the onerous task of publishing the Act in the Gazette: “This Act is called the Division of Revenue Act, 2009, and takes effect on 1 April 2009, or the date of publication thereof by the President in the Gazette, whichever is the later date.”

In the following instances no person proclaims:

“(1) This Act is called the Mineral and Petroleum Resources Royalty Act, 2008.

(2) This Act comes into operation on 1 May 2009 and applies in respect of a mineral resource transferred on or after that date.”

“This Act shall be called the Unauthorized Use of Emblems Act, 1961, and shall come into operation on the thirty-first day of May, 1961.”

In the following instance the President does not proclaim, but fix the date in the Gazette: “(1) This Act shall be called the Prevention of Organised Crime Act, 1998, and shall come into operation on a date fixed by the President in the Gazette.”

3.3.2 *The legislation may provide for the Act to commence upon the occurrence of a stipulated event* 26

In the following instance the date when the Act comes into operation is dependent upon the establishment of a corporation:

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26 Thornton 164 says: “The event need not be one which will inevitably occur, but its nature must be such that no doubt can arise whether it has or has not occurred. It is preferable, in the interest of certainty, that the occurrence of the event be a matter of public record, such as the commencement of another statute or the publication of some kind of instrument in the Gazette.” He uses the following as examples: “This Act shall come into force at the expiration of one month beginning on the day on which it is passed.” This Act shall come into force on the day that the Minister, by notice in the Gazette, certifies to be the day on which the Fishing Limits Convention comes into force as regards the Republic.” “This Act shall come into force on the day on which it receives the Royal Assent.” This Act shall come into force, or be deemed to have come into force, as the case requires, on the commencement of the Petroleum Act 1986.” “This Act shall come into force on the same day as the Apply Tax Act 1986 comes into force.”
“(1) This Act is called the Nuclear Energy Act, 1999.

(2) (a) Except for section 4, this Act comes into operation on a date specified by the President by proclamation in the Gazette.

(b) The date to be so specified must be so determined by the President, after consultation with the Registrar of Companies, as to coincide with the incorporation of the South African Nuclear Energy Corporation Limited in accordance with section 4.”

In the following instances the date depends upon the assent by the President:

“This Act is called the Companies Act, 2008, and comes into operation on a date fixed by the President by proclamation in the Gazette, which may not be earlier than one year following the date on which the President assented to this Act.”

“This Act is called the Financial Management of Parliament Act, 2009 and comes into operation on assent by the President and in accordance with the transitional arrangements set out in Schedule 4 to this Act.”

An amendment takes effect upon the abolitions of a Department:

“(1) This Act is called the South African Revenue Service Act, 1997, and takes effect, subject to subsection (2), on a date fixed by the President by proclamation in the Gazette.

(2) The amendment to Schedule 1 of the Public Service Act, 1994 (Proclamation 103 of 1994), in terms of Schedule 3 of this Act, takes effect on the date on which the Department: South African Revenue Service is abolished in terms of item 2 of Schedule 2 of this Act.”

3 3 3 The legislation may specify a date for the commencement, or may have multiple commencement dates, or may have conditional commencement dates, or may have alternative commencement dates

This applies to dates of commencement of Acts, Chapters, Parts or sections.
3.3.3.1 The legislation may specify a date. Thornton says that the following form is adequate: “This Act shall come into force on 1 June 1986.” However, where retrospective operation is necessary, he uses the following form: “This Act shall be deemed to have come into force on 1 June 1986.”

When the commencement of a statute or part of a statute must take place at a specified point in time (e.g. imposition of a tax or alteration in a tax rate), he uses the following form: “This Act shall be deemed to have come into force at six o’clock in the evening of 1 June 1986.”

In a few instances the Acts specify a specific date for the commencement of the whole Act or for the commencement of certain provisions.

“‘This Act shall be called the Unauthorized Use of Emblems Act, 1961, and shall come into operation on the thirty-first day of May, 1961.’”

“(1) This Act is called the Mineral and Petroleum Resources Royalty Act, 2008.
(2) This Act comes into operation on 1 May 2009 and applies in respect of a mineral resource transferred on or after that date.”

“(1) This Act is called the Electricity Regulation Act, 2006, and comes into operation on a date fixed by the President by proclamation in the Gazette.
(2) Despite subsection (1), section 34 must be regarded as having come into operation on 1 December 2004.”

“This Act is called the Prevention and Combating of Corrupt Activities Act, 2004, and shall, subject to subsection (2), come into operation on 27 April 2004 or on such earlier date as the President may determine by proclamation in the Gazette.
(2) Section 34(2) shall come into operation on 31 July 2004.”

27 The Commonwealth of Learning, Module 5A, Section One, advises as follows: “If a specific date is given in a Bill, it may need to be changed as the Bill goes through Parliament because of an unexpected delay which affects your original calculations; if a period or interval of delay is specified, it should be of a reasonable length capable of giving sufficient time for whatever has to be done (for a Bill, a period expressed in months is appropriate); and do not select a date randomly; it should be convenient or memorable, e.g. at the beginning of a month or year.”

28 Thornton 164.
In the following instance a date is deemed:

“This Act shall be called the Road Accident Fund Act, 1996, and shall come into operation on a date fixed by the President by proclamation in the Gazette, except section 10, which shall be deemed to have come into operation on 21 April 1996.”

3 3 3 2  The legislation may have multiple commencement dates

Instances appear where different dates are set for the coming into operation of different sections. The following phrase is commonly used: “Different dates may be fixed for the coming into operation of different sections of this Act by proclamation in the Gazette.”

In all instances, except one, the phrase is a sentence separate from the citation phrase.

This Act shall be called the Prevention and Treatment of Drug Dependency Act, 1992, and shall come into operation on a date to be fixed by the State President by proclamation in the Gazette, and different dates may be so fixed in respect of different provisions thereof.

Interesting is the use of the passive voice in above examples. The subject of the sentence is not mentioned. Who must fix the dates? Compare the following provisions in which the person who may fix different dates is mentioned:

“(1) This Act is called the Competition Act and comes into operation on a date fixed by the President by proclamation in the Gazette.

(2) The President may set different dates for different provisions of this Act to come into operation.”

“(1) This Act is called the Employment Equity Act, 1998.

(2) This Act takes effect on a date to be determined by the President by proclamation in the Gazette. The President may determine different dates in respect of different provisions of this Act.”

29 The Commonwealth of Learning, Module 5A, Section One, advises as follows: “If an Act is of some length and complexity, it may need to be brought into force by stages. For this, provide for the making of a series of commencement orders, unless general authority is given in the Interpretation Act. But, use this device sparingly, as readers have difficulty in finding all the orders, or knowing how many to look for, in order to discover how many provisions are in force; only use it for distinct Parts or groups of provisions in the Act which are capable of operating without the support of other provisions that are not in force; the commencement provisions themselves, and the short title, must be brought into force on the passing of the Act, if not, the power to make the commencement orders is not in force.”

In the following instance the commencement of the Act, except section 16(4) would follow the provisions of the Interpretation Act.

“(1) This Act shall be called the Judges’ Remuneration and Conditions of Employment Act, 2001.

(2) Section 16(4) comes into operation on a date fixed by the President by proclamation in the Gazette.”

Section 10 in the following example is to commence on another date.

“This Act shall be called the Road Accident Fund Act, 1996, and shall come into operation on a date fixed by the President by proclamation in the Gazette, except section 10, which shall be deemed to have come into operation on 21 April 1996.”

In the following instance section 37 is to come into operation on another date, but it is also conditional – the Minister must be consulted.

“(1) This Act shall be referred to as the Immigration Act, 2002, and shall come into force and effect on a date determined by the President by proclamation in the Government Gazette.

(2) The date of coming into force and effect of section 37 shall be determined in consultation with the Minister for Justice and Constitutional Development.”

Regarding the postponing of the commencement of legislation until Government decides, the Commonwealth of Learning advises as follows:

- State that a Minister or, in a case of constitutional significance, the Head of State is the body to make the order;
- The Minister must be identified (unless the Interpretation Act covers the matter);
- state how the fixing is to be done and made public;
- confer this in terms of a power, rather than a duty, since there will be a judgment about timing to be made; and
- in principle, it is undesirable to postpone commencement without setting time limits. Governments should not be free to delay for excessive periods. 32

31 Subsection (2) contains two separate full sentences. This is unconventional, as a subsection normally consists of one sentence only. The use of the word “and” can solve this irregularity: (2) This Act takes effect on a date to be determined by the President by proclamation in the Gazette, and the President may determine different dates in respect of different provisions of this Act.

32 Thornton 165 says: “Where different provisions or purposes of an Act require different treatment, the following examples may be adapted: ‘The provisions of this Act shall come into force on such day as is, or day
The legislation may have conditional commencement dates

Thornton\textsuperscript{33} uses the following example:

“(1) Subject to subsection (2), this Act shall come into operation on 1 July 1987.
(2) If Part II of the Financial Administration Act 1986 does not come into operation on or before 1 July 1987, subsection (1) shall not apply and this Act shall come into operation on a day to be fixed by proclamation of the President.”

In the following instance the date when the Act comes into operation is dependent upon the condition that an agreement becomes law in South Africa:

“(1) This Act is called the International Trade Administration Act, 2002, and comes into operation on a date fixed by the President by proclamation in the Gazette.
(2) Sections 4, 15(3), 16(3), 19, 20, 30, 31 and 46(2) and item 2(3) of Schedule 2, may not come into operation until the SACIJ Agreement has become law in the Republic.”

“This Act is called the Financial Management of Parliament Act, 2009 and comes into operation on assent by the President and in accordance with the transitional arrangements set out in Schedule 4 to this Act.”

The conditions set out in the transitional provision must be met. On the following provision a time period creates a condition for the commencement:

“This Act shall be called the Merchandise Marks Act, 1941, and shall come into operation on a date to be fixed by the Governor-General by proclamation in the Gazette, which date shall not be earlier than six months after the date on which this Act is first published in the Gazette as a law.”

\textsuperscript{33} Thornton 164.
3.3.3.4 The legislation may have alternative commencement dates.
Thornton\textsuperscript{34} uses the following example: “This Act shall come into operation on 1 July 1987 or the day on which the Dogs Act 1987 comes into operation, whichever is the later.”

The following appear in the Acts analysed: “This Act is called the Division of Revenue Act, 2009, and takes effect on 1 April 2009, or the date of publication thereof by the President in the Gazette, \textit{whichever is the later date.”

“(1) This Act is called the Prevention and Combating of Corrupt Activities Act, 2004, and shall, subject to subsection (2), come into operation on 27 April 2004 \textit{or on such earlier date} as the President may determine by proclamation in the Gazette.
(2) Section 34(2) shall come into operation on 31 July 2004.”

“(1) This Act is called the Competition Act and comes into operation on a date fixed by the President by proclamation in the Gazette.
(2) The President may set different dates for different provisions of this Act to come into operation.
(3) Unless the context otherwise indicates, a \textit{reference in a section of this Act to a time when this Act comes into operation} must be construed as a reference to the \textit{time when that section comes into operation.”

“(1) This Act is called the Electoral Act, 1998.
(2) Subject to subsection (3), this Act takes effect on a date determined by the President by proclamation in the Government Gazette.
(3) Section 3 (c) must take effect \textit{on a later date than the remainder of this Act.”

“(1) This Act is called the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, and, subject to subsection (2), takes effect \textit{on 16 December 2007, or an earlier date} fixed by the President by proclamation in the Gazette.
(2) (a) Chapter 5 of the Act takes effect on \textit{21 March 2008, or an earlier date} fixed by the President by proclamation in the Gazette.
(b) Chapter 6 of the Act takes effect on \textit{16 June 2008, or an earlier} date fixed by the President by proclamation in the Gazette.”

\textsuperscript{34} Thornton 166.
Two interesting provisions

The following two provisions are interesting in the sense that the commencement dates relate to different goods, areas, bodies and persons:

“(1) This Act shall be called the National Road Traffic Act, 1996, and shall come into operation on a date fixed by the President by proclamation in the Gazette.

(2) Different dates may be so fixed in respect of different provisions of this Act, and dates so fixed may differ in respect of different -

(a) persons or goods or categories of persons or goods transported by means of a motor vehicle;

(b) kinds or classes of motor vehicles used in the transportation of persons or goods;

(c) persons or categories of persons; or

(d) areas in the Republic.

(3) More than one of the elements referred to in paragraphs (a) to (d), inclusive, of subsection (2) may be combined for the purposes of that subsection.”

“(1) This Act is the Promotion of Access to Information Act, 2000, and takes effect on a date determined by the President by proclamation in the Gazette.

(2) Different dates may be so determined in respect of -

(a) different provisions of this Act;

(b) different categories of public bodies, including, but not limited to, different public bodies contemplated in -

(i) paragraph (a);

(ii) paragraph (b)(i); and

(iii) paragraph (b)(ii),

of the definition of “public body” in section 1; and

(c) different categories of private bodies.”

4 CONCLUSION

The section headings to a number of Acts are not in accordance with convention, as they are too long. The citation does not follow the traditional wording (“may be cited as”) but the words “is called” or “shall be called” are used instead. This is clearly an in-house convention in South Africa. Operative words (in the commencement clauses regarding the coming into operation of Acts vary, but the conventional phrase used in South Africa is “shall come into
operation on” or “comes into operation on”. The verbs used for fixing the date vary, but the conventional use is “on a date fixed by the President by proclamation in the Gazette”. As a rule the citation and the person empowered to fix the date are contained in one phrase. In the Acts analysed, a number makes no provision for the commencement of the Act. However, in most Acts the date of commencement is specified, albeit a specific day, or multiple commencement dates, or conditional commencement dates, or alternative commencement dates. Exceptions occur as far as the empowerment of a person or persons who is or are to specify the commencement date is concerned. Some Acts commence upon the occurrence of a stipulated event. On the whole the format and wording of the commencement provision follow Common law legislative drafting conventions.