REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NO.: 2024-148142

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED: NO

Date: 8 September 2026 E van der Schyff

In the matter between:

SAKELIGA NPC	**APPLICANT**
and	
PROPERTY PRACTITIONERS REGULATORY AUTHORITY	**FIRST RESPONDENT**
MINISTER OF HUMAN SETTLEMENTS WATER AND SANITATION	**SECOND RESPONDENT**
MINISTER OF TRADE, INDUSTRY AND COMPETITION	**THIRD RESPONDENT**
NATIONAL PROPERTY FORUM NPO	**FOURTH RESPONDENT**

Delivered: This judgment is handed down electronically by uploading it to the electronic file of this matter on CaseLines. In the event that there is a discrepancy between the date the judgment is signed and the date it is uploaded to CaseLines, the date the judgment is uploaded to CaseLines is deemed to be the date that the judgment is handed down.

JUDGMENT

VAN DER SCHYFF J

Introduction

[1] The applicant, Sakeliga NPC, a non-profit company (Sakeliga) seeks an order declaring paragraphs (a)(iv) to (e) of the definition of "property practitioner" in s 1 of the Property Practitioners Act 22 of 2019 (PPA), and s 50(a)(x) of the Act, unconstitutional and invalid to the extent of their inconsistency with the Constitution, together with costs and further or alternative relief.

[2] Although its notice of motion also challenged regulation 2 of the Property Practitioners Regulations, Sakeliga expressly abandoned that challenge. Its case is that the impugned parts of the definition are impermissibly overbroad and infringe s 22 of the Constitution, alternatively lack a rational connection to a legitimate governmental purpose.

[3] Section 50(a)(x), which provides that the Authority may not issue a Fidelity Fund certificate to any person who is not in possession of a 'valid BEE certificate', is attacked on substantially similar constitutional and rationality grounds.

[4] Sakeliga's attack on s 50(a)(x) is that the provision makes possession of a valid BEE certificate a condition for the issue of a Fidelity Fund certificate, although, on its case, the two serve materially different purposes. It contends that a Fidelity Fund certificate is concerned with the regulation and protection of consumers in the conduct of property-practitioner business, while possession of a BEE certificate bears no rational relationship to those purposes. The requirement is therefore said to constitute an irrational barrier to the lawful practice of the occupation and, for that reason, to offend s 22 of the Constitution. A related difficulty arising from the papers concerns what documentary requirement s 50(a)(x) in fact imposes and how the requirement is to be implemented since the term 'valid BEE certificate' is not defined in the PPA.

[5] The two surviving challenges are related in that each concerns the consequences of being brought within the PPA's regulatory scheme, but they raise distinct questions. The first concerns the permissible reach of the statutory definition of "property practitioner". The second concerns the validity of a particular condition which must be met before a Fidelity Fund certificate may be issued. I deal with them separately after setting out the statutory scheme and the parties' cases.

The parties

[6] For its *locus standi in iudicio,* Sakeliga relies on s 38 of the Constitution and states that it litigates in the interests of its members and in the public interest.

[7] The Authority disputed Sakeliga's standing in its answering affidavit. It contended that Sakeliga is not itself a property practitioner, that it is unaffected by the definition or by s 50(a)(x), and that it may not litigate on behalf of the wider community of property practitioners or in the public interest.

[8] Section 38(d) and (e) of the Constitution entitle a person acting in the public interest, and an association acting in the interest of its members, to approach a court alleging that a right in the Bill of Rights has been infringed or threatened. Sakeliga is a business association whose stated objects include the protection of constitutional rights, the rule of law, and a sustainable business environment, and whose members include persons required to hold Fidelity Fund certificates under the PPA. A challenge to the constitutional validity of provisions of general application which regulate entry into an occupation is pre-eminently one which such an association may bring, and the objective nature of the enquiry into constitutional validity does not depend on the deponent's own position. I am satisfied that Sakeliga has established standing under s 38(d) and (e).

[9] The first respondent is the Property Practitioners Regulatory Authority (the Authority), established under the PPA.

[10] The second respondent is the Minister responsible for the administration of the PPA. The third respondent is the Minister responsible for the administration of the Broad-Based Black Economic Empowerment Act 53 of 2003. The second and third respondents elected to abide the Court's decision.

[11] The National Property Forum NPO (NPF) was not originally cited. It applied for leave to intervene, and on 17 September 2025 leave to intervene was granted and its joinder as fourth respondent ordered. The NPF opposes the constitutional relief and places particular emphasis on the transformation objectives of the PPA.

Condonation

[12] The NPF seeks condonation for the late filing of its answering affidavit. It explains the delay with reference to the time required to convene its members, obtain instructions and consider the papers. Sakeliga opposes condonation and contends that the explanation is inadequate. The NPF's affidavit has nevertheless been fully answered. Due to the importance of having sufficient submissions when considering a constitutional challenge to a statute, condonation is granted.

[13] Sakeliga also objects to portions of the NPF's affidavit on the basis that they comprise legal argument, inadmissible hearsay or unsupported assertions. To the extent that an affidavit contains legal submission, I treat it as submission rather than evidence. No factual finding in this judgment is based on a contested assertion merely because it appears in an affidavit.

The statutory scheme and the purposes of the PPA

[14] The PPA came into operation on 1 February 2022 and repealed the Estate Agency Affairs Act 112 of 1976. The new statute is framed more broadly than the repealed Act. Its preamble refers, among other matters, to historically imbalanced patterns of property ownership, transformation of the property market, the need for consumer assistance in property transactions and the need for that assistance to be rendered professionally.

[15] Section 2 provides that the PPA applies to the marketing, promotion, managing, sale, letting, financing and purchase of immovable property and to rights, obligations, interests, duties or powers associated with or relevant to such property.

[16] Section 3 identifies several objects the Act aims to attain. They include the regulation of property practitioners, consumer protection, education and training, licensing, a just and equitable framework for property-market activity, meaningful participation by historically disadvantaged individuals and small, micro and medium enterprises, and transformation of the property market.

[17] The statutory scheme gives effect to those objects through different mechanisms. The Authority is charged with regulating property practitioners and protecting consumers.

Chapter 4 deals with transformation. Other chapters deal with compliance and enforcement,[1] the Property Practitioners Fidelity Fund,[2] the Fidelity Fund certificate regime,[3] conduct of property practitioners,[4] and consumer protection.[5]

[18] The definition of "property practitioner" is therefore significant because it identifies, directly or for specified purposes, persons who may become subject to these regulatory mechanisms. The constitutional challenge cannot be resolved merely by comparing the new definition with the former definition of "estate agent". It is nevertheless necessary to determine precisely what the new definition means before deciding whether its reach bears the constitutionally required relationship to the purposes of the statute.

The impugned definition

[19] The term 'property practitioner' is defined in the PPA to mean:

> (a) any natural or juristic person who or which for the acquisition of gain on his, her or its own account or in partnership, in any manner holds, himself, herself or itself out as a person who or which, directly or indirectly, on the instructions of or on behalf of any other person –
>
> (i) by auction or otherwise sells, purchases, manages or publicly exhibits for sale property or any business undertaking or negotiates in connection therewith or canvasses or undertakes or offers to canvas a seller or purchaser in respect thereof;
>
> (ii) lets or hires or publicly exhibits for hire property or any business undertaking by electronic or other means or negotiates in connection therewith or canvasses or undertakes or offers to canvass a lessee or lessor in respect thereof;
>
> (iii) collects or receives any monies payable on account of a lease of a property or a business undertaking;
>
> (iv) provides, procures, facilitates, secures or otherwise obtains or markets financing for or in connection with the management, sale

[1] Chapter 5.
[2] Chapter 7.
[3] Chapter 8.
[4] Chapter 9.
[5] Chapter 10.

or lease of a property or a business undertaking, including a provider of bridging finance and a bond broker, but excluding any person contemplated in the definition of 'financial institution' in section 1 of the Financial Services Board Act, 1990 (Act No. 97 of 1990);

(v) in any other way acts or provides services as intermediary or facilitator with the primary purpose to, or to attempt to effect the conclusion of an agreement to sell and purchase, or hire or let, as the case may be, a property, or business undertaking, including, if performing the acts mentioned in this subparagraph, a home ownership association, but does not include –

(aa) a person who does not do so in the ordinary course of business;

(bb) where the person is a natural person and that person in the ordinary course of business offers a property for sale which belongs to him or her in his or her personal capacity;

(cc) an attorney or candidate attorney as defined in section 1 of the Attorneys Act, 1979 (Act No. 53 of 1979); or

(dd) a sheriff as defined in section 1 of the Sheriffs Act, 1986 (Act No. 90 of 1986), when he or she performs any functions contemplated in paragraph (a) of this definition, irrespective of whether or not he or she has been ordered by a court of law to do so; or

(vi) renders any other service specified by the Minister on the recommendation of the Board from time to time by notice in the *Gazette*;

(b) includes any person who sells, by auction or otherwise, or markets, promotes or advertises any part, unit or section of, or rights or shares, including time share and fractional ownership, in a property or property development;

(c) includes any person who for remuneration manages a property on behalf of another;

(d) includes a trust in respect of which the trustee, for the acquisition of gain on the account of the trust, directly or indirectly in any manner hold out that it is a business which, on the instruction of or on behalf of another person, performs any act referred to in paragraph (a);

(e) for the purposes of sections 34, 46, 48, 59, 60, 61 and 65 includes –

(i) any director of a company or a member of a close corporation who is a property practitioner as defined in paragraph (a);

(ii) any person who is employed by a property practitioner as envisaged in paragraph (a) and performs on his, her or its behalf any act referred to in subparagraph (i), (ii), (iv), (v) or (vi) of that paragraph;

(iii) any trustee of a trust which is a property practitioner as envisaged in paragraph (d);

(iv) any person who is employed by a property practitioner as envisaged in paragraph (b) and performs on its behalf any act referred to in subparagraph (i), (ii), (iv), (v) or (vi) of paragraph (a); and

(v) any person who is employed by a property practitioner contemplated in paragraph (a) or (b) to manage, supervise or control the day-to-day operations of the business of that property practitioner;

(f) includes any person who is employed by or renders services to an attorney or a professional company as defined in section 1 of the Attorneys Act, 1979, other than an attorney or candidate attorney, and whose duties consist wholly or primarily of the performance of any act referred to in subparagraphs (i), (ii), (iii), (iv), (v) or (vi) of paragraph (a), on behalf of such attorney or professional company whose actions will be specifically covered by the Attorneys' Fidelity Fund and not the Property Practitioners Fidelity Fund;

(g) for the purposes of section 61 and any regulation made under section 70, includes any person who was a property practitioner at the time when he or she was guilty of any act or omission which allegedly constitutes sanctionable conduct referred to in section 62,

but does not include an attorney who, on his own account, or as a partner in a firm of attorneys or as a member of a professional company, as defined in section 1 of the Attorneys Act, 1979, or a candidate attorney as defined in that section, who performs any act referred to in paragraph (a), in the course of and in the name of and from the premises of such attorney's or professional company's practice, provided that such an act may not be performed –

(i) in partnership with any person other than a partner in the practice of that attorney as defined in section 1 of the Attorneys Act, 1979; or

(ii) through the medium of or as a director of a company other than such professional company.

and 'advertise' for the purposes of this definition does not include advertising in compliance with the provisions of any other law;

The parties' cases

The challenge to the definition

[20] Sakeliga's starting point is that the repealed Estate Agency Affairs Act regulated a recognisable intermediary relationship: a person acted for gain on another's mandate in relation to property transactions and could receive or account for client money. It contends that this relationship established the rational basis for the burdens historically imposed on estate agents.

[21] The introductory words to paragraph (a) of the new definition (the opening qualification) retain the requirement that the person act, directly or indirectly, "on the instructions of or on behalf of any other person" for such person to fall in the definition of a property practitioner. Sakeliga emphasises that the words are not repeated in paragraphs

(b) and (c). It contends that the omission materially, and irrationally, enlarges the class of regulated persons.

[22] The founding affidavit gives examples of the alleged breadth. Sakeliga says that paragraph (b) may include a private owner selling without an intermediary, a developer marketing its own property, and persons who advertise such property, including publication and internet platforms. It says paragraph (c), read literally, may extend to caretakers, farm managers, residence matrons, factotums or housekeepers who manage property for remuneration. It also relies on regulation 41.15, which contemplates exemption for a party acting solely as a conduit or advertising platform, as illustrating the asserted reach of paragraph (b).

[23] Paragraphs (d) and (e) are also included in the relief sought. Sakeliga's broader complaint is that the definition extends statutory status and regulatory consequences beyond persons performing what it regards as the conventional estate-agency function. It relies in this regard on the breadth of the definition, the licensing consequences that follow from classification, and the possibility of criminal consequences for acting without the required Fidelity Fund certificate.

[24] The Authority rejects the premise that the PPA must remain confined to the former estate-agency model. It says the enactment responded to an evolving property sector no longer limited to estate agents concerned only with sale and letting on another's mandate. The Authority relies on the PPA's broader purposes, including transformation and consumer protection. It also contends that, although the notice of motion impugns paragraphs (a)(iv) to (e), the founding affidavit advances factual allegations only in respect of paragraphs (b) and (c).

[25] The NPF likewise contends that the broader definition reflects a legislative decision to regulate a wider property sector, with emphasis on transformation, market participation and regulation beyond the traditional estate-agent category. The respondents therefore dispute that the extension identified by Sakeliga is overbroad, irrational or constitutionally impermissible.

The challenge to s 50(a)(x)

[26] Sakeliga's complaint concerning s 50(a)(x) is narrower. The section prohibits the Authority from issuing a Fidelity Fund certificate to a person who does not hold a valid BEE certificate. Sakeliga contends that the Fidelity Fund certificate and a BEE certificate serve different purposes and that there is no rational relationship between possession of the latter and the consumer-protection purpose which, on its case, underlies the Fidelity Fund certificate regime.

[27] The founding affidavit also challenges the meaning of the requirement. It says the Act does not define what constitutes a 'valid BEE certificate' or specify the requirements for validity, leaving the Authority to decide whether a certificate is valid. It also records the Authority's shifting practice.

[28] The Rule 16A notice identified s 50(a)(x) as a provision whose constitutional validity was challenged. Although the notice formulated the challenge principally in terms of s 22 and irrationality, the founding affidavit squarely raised the uncertainty concerning the meaning of "valid BEE certificate". That issue was answered by the respondents and fully ventilated in the papers and argument. I am satisfied that the Rule 16A notice was consonant with the constitutional challenge advanced on the papers.

[29] The Authority addresses the challenge primarily by relying on the PPA's transformation purpose. It contends that the impugned provision is directed at that legitimate governmental objective and denies that the requirement is irrational. The NPF likewise places transformation at the center of its answer and contends that the challenged condition forms part of the broader statutory effort to transform and track the status of transformed participation in the property sector.

The constitutional and interpretative framework

Statutory interpretation

[30] Statutory interpretation is a unitary exercise in which text, context and purpose are considered together. The language chosen by the Legislature remains the point of departure, to be read in its statutory setting and in light of its purpose. That approach was

formulated in *Natal Joint Municipal Pension Fund v Endumeni Municipality*[6] and endorsed by the Constitutional Court in *Chisuse and Others v Director-General, Department of Home Affairs and Another,*[7] and *University of Johannesburg v Auckland Park Theological Seminary and Another*.[8]

[31] Context forms part of the enquiry from the outset and may include the surrounding provisions, the chapter, long title, preamble, objects and structure of the statute.[9]

[32] Purpose is important, but does not permit a court to replace Parliament's language with wording that would better achieve the perceived statutory purpose. *Endumeni* at para 18 cautions against crossing the divide between interpretation and legislation.[10] *Chisuse* likewise confirms that contextual and purposive interpretation must remain faithful to the text.[11]

[33] The Constitution adds a further dimension. Section 39(2) requires legislation to be interpreted in a manner that promotes the spirit, purport and objects of the Bill of Rights. Where a provision is reasonably capable of more than one meaning, a court should prefer the meaning that preserves constitutional validity.

[34] That principle is, however, bounded by the language Parliament chose. A constitutionally compliant interpretation should be preferred only if the provision can reasonably bear it without undue strain.[12] *Chisuse* confirms that constitutional avoidance cannot become judicial amendment.[13] If the text cannot reasonably bear a compliant meaning, validity and remedy must be confronted.

---

[6] 2012 (4) SA 593 (SCA) at para 18.
[7] 2020 (6) SA 14 (CC) at paras 46-52.
[8] 2021 (6) SA 1 (CC) at paras 64-65.
[9] *Bato Star Fishing (Pty) Ltd v Minister of Environmental Affairs and Tourism and Others* 2004 (4) SA 490 (CC) at para 89, and *Cool Ideas 1186 CC v Hubbard and Another* 2014 (4) SA 474 (CC) at para 28.
[10] At para 18.
[11] At paras 48 and 52.
[12] *Investigating Directorate: Serious Economic Offences and Others v Hyundai Motor Distributors (Pty) Ltd and Others: In re Hyundai Motor Distributors (Pty) Ltd and Others v Smit NO and Others* 2001 (1) SA 545 (CC) at paras 22-26.
[13] At paras 53-59.

[35] The sequence matters here. The Court must first determine what the challenged provisions mean when read textually, contextually and purposively within the PPA, and only then determine whether the provisions so understood are constitutionally valid.[14] The statutory context shows that the PPA pursues related but distinct purposes, including consumer protection, professional regulation, licensing, market participation and transformation. They are not interchangeable. Each impugned provision must therefore be assessed against the purpose or purposes to which it is directed.

[36] The PPA advances its objects through different, sometimes overlapping mechanisms. Within this framework, section 50(a)(x) is best understood as a transformation-focused licensing mechanism. It makes compliance with a BEE-related requirement a condition for obtaining the Fidelity Fund certificate required for lawful practice. The question is therefore not whether transformation is legitimate, but whether the mechanism Parliament chose bears the required relationship to that objective and can operate coherently within the statutory scheme.

Section 22 of the Constitution

[37] Sakeliga relies on *Affordable Medicines Trust and Others v Minister of Health and* Another.[15] Here, the Constitutional Court held that s 22 protects both the freedom to choose a trade, occupation or profession and the practice of the chosen vocation. Sakeliga's case is that a statutory condition that prevents a person from obtaining the certificate necessary to practice lawfully may go beyond regulating practice and negatively affect occupational choice.

[38] That test was restated by the Constitutional Court in *South African Diamond Producers Organisation v Minister of Minerals and Energy NO and Others*.[16] Here the Constitutional Court held that a provision which, objectively analysed, has a negative impact on the choice of a trade, occupation or profession must be tested against the criterion of reasonableness in s 36(1), while a provision which regulates only the practice

[14] *Chisuse* at para 46.
[15] 2006 (3) SA 247 (CC), particularly paras 58-66.
[16] 2017 (6) SA 331 (CC) at para 65.

of a trade will pass constitutional muster if it satisfies the rationality standard and violates no other right in the Bill of Rights.

[39] The Authority's position is that the PPA regulates the manner in which activities in the property sector are practised and does not deprive persons of the freedom to choose an occupation. The NPF similarly contends that the impugned provisions regulate participation in, and the practice of, property-related occupations rather than prevent their free choice. In the alternative, it submits that any limitation of s 22 is reasonable and justifiable under s 36, having regard to the Act's regulatory, consumer-protection and transformation objectives.

Rationality and the rule of law

[40] Sakeliga's alternative attack is founded on rationality. It claims that the impugned provisions include persons and impose conditions without rational connection to a legitimate governmental purpose. The respondents rely on the PPA's consumer-protection, regulatory and transformation objectives.

[41] The applicable standard against which the relevant provisions must be measured is stated in *Pharmaceutical Manufacturers Association of SA and Another: In re Ex parte President of the Republic of South Africa and Others*[17] and applied in *Affordable Medicines*[18] - legislative power must bear a rational connection to a legitimate governmental purpose. The enquiry is objective and does not ask whether better means were available.

[42] Sakeliga also invokes the rule of law, contending that persons must be able to ascertain whether the Act applies to them, particularly because acting without the required Fidelity Fund certificate may incur criminal consequences. That concern must be distinguished from mere breadth. A provision may be broad without being uncertain; the question of meaning must therefore be resolved before the constitutional consequence is considered.

[17] 2000 (2) SA 674 (CC) at paras 85 -86.
[18] At para 74.

[43] The rule of law requires legislation to be sufficiently clear for those bound by it to ascertain what is required.[19] Perfect precision is not required, nor is a provision invalid merely because interpretation is necessary or difficult cases arise at the margins. Invalidity follows where those affected cannot determine with reasonable certainty how the provision operates, including where officials charged with applying it face the same difficulty, and where criminal penalties are involved.[20]

Interpretation of the definition of "property practitioner"

Overview

[44] The definition is composite. Paragraph (a) contains the principal definition. Its opening qualification refers to a natural or juristic person who, for the acquisition of gain on his, her or its own account or in partnership, holds himself, herself or itself out as a person who, directly or indirectly, acts "on the instructions of or on behalf of any other person". The activities listed in subparagraphs (i) to (vi) are therefore performed within those confines.

[45] Paragraphs (b), (c) and (d) are expressed as inclusive extensions of the definition. Paragraph (e) operates differently: it extends the definition only for the purposes of the specified sections and only to the persons identified in its five subparagraphs. The structure of the definition therefore requires each challenged provision to be read on its own terms, while remaining part of the statutory scheme as a whole.

Paragraph (a)(iv)-(vi)

[46] Paragraph (a)(iv) includes a person who provides, procures, facilitates, secures, otherwise obtains or markets financing for or in connection with the management, sale or lease of a property or a business undertaking. It expressly includes a provider of bridging finance and a bond broker, but excludes a person contemplated in the statutory definition of "financial institution" to which the paragraph refers.

---

[19] *Affordable Medicines* at paras 108-109; *Dawood and Another v Minister of Home Affairs and Others* 2000 (3) SA 936 (CC) at paras 47-48.

[20] *Bertie Van Zyl (Pty) Ltd and Another v Minister for Safety and Security and Others* 2010 (2) SA 181 (CC) at para 47; *Chisuse* at para 54, adopting *Abahlali Basemjondolo Movement SA and Another v Premier of the Province of KwaZulu-Natal and Others* 2010 (2) BCLR 99 (CC) at paras 124-125.

[47] Because subparagraph (iv) forms part of paragraph (a), the financing activity does not stand alone. It must be performed by a person who satisfies the opening qualification, including the requirements of gain, holding out and acting, directly or indirectly, on the instructions of or on behalf of another. On its ordinary reading, the provision therefore reaches financing activity connected with a property transaction when performed within that representative or facilitative setting.

[48] Paragraph (a)(v) is framed as a residual intermediary provision. It applies to a person who, in any other way, acts or provides services as an intermediary or facilitator with the primary purpose of effecting, or attempting to effect, the conclusion of an agreement to sell and purchase, or hire or let, property or a business undertaking. A home ownership association is expressly included when it performs those acts.

[49] The subparagraph then excludes four categories. It excludes a person who does not act in the ordinary course of business; a natural person who, in the ordinary course of business, offers for sale property belonging to him or her in a personal capacity; attorneys and candidate attorneys in the circumstances specified; and sheriffs performing the identified functions. Those exclusions delimit the reach of subparagraph (v).

[50] Paragraph (a)(vi) includes a person who renders any other service specified by the Minister, on the recommendation of the Board, by notice in the Gazette. The subparagraph is not a free-standing definition. It remains part of paragraph (a), and any service specified under it is consequently subject to the opening qualification and must be understood within the subject matter and purposes of the PPA. The power is also conditioned on a recommendation by the Board and the publication of a notice in the Gazette.

Paragraph (b)

[51] Paragraph (b) "includes any person who sells, by auction or otherwise, or markets, promotes or advertises any part, unit or section of, or rights or shares, including time share and fractional ownership, in a property or property development". Unlike paragraph (a), it does not repeat the requirements of gain, holding out or acting on the instructions of or on behalf of another. That omission must be given effect. The paragraph is therefore capable of applying to a person who sells, markets, promotes or advertises the listed property interests whether or not that person acts on the mandate of another.

[52] A developer marketing units in its own development can therefore fall within paragraph (b), notwithstanding that it does not act "on behalf of another" in the sense contemplated by paragraph (a). The same is true of a person who undertakes the sale, marketing or promotion of those interests for others.

[53] The use of the word "advertises" extends the provision further. The definition excludes, for its purposes, advertising in compliance with another law, but that qualification does not on its face exclude every publisher, broadcaster or online platform that merely carries another person's property advertisement.

[54] Regulation 41.15 is significant in this regard. It proceeds on the footing that a person acting solely as a conduit or platform for advertisements may nevertheless fall within the definition and require exemption. The regulation cannot determine the meaning or validity of paragraph (b), but it confirms the breadth identified is a practical, and not merely hypothetical, concern.

[55] In addition, the breadth of paragraph (b) is not confined to developers or commercial marketers. Because it contains no requirement of gain, ordinary course of business or acting for another, its wording is capable of including a private owner who sells his or her own part, unit, section, right or share of the kind listed in the paragraph.

[56] This is significant for the interpretation of the definition as a whole. Paragraph (a) is structured around acting on the instructions of or on behalf of another, and paragraph (a)(v) expressly excludes both a person, whether natural or juristic, who does not act in the ordinary course of business and, separately, a natural person who in the ordinary course of business offers for sale property belonging to him or her in a personal capacity. Paragraph (b) contains no corresponding qualification or exclusion.

[57] On its ordinary wording, paragraph (b) is therefore capable of extending beyond developers and commercial property intermediaries in three material respects. It may include a natural person who privately sells, markets or advertises his or her own unit, section or other listed interest merely because of the form of the property interest concerned. It may also include a person, whether natural or juristic, who sells, markets,

promotes or advertises such an interest otherwise than in the ordinary course of business, which in turn may include a person who acts purely as a conduit for the distribution or publication of advertisements or marketing material.

Paragraph (c)

[58] Paragraph (c) includes "any person who for remuneration manages a property on behalf of another". Unlike paragraph (b), the relationship to another person is express. The interpretative difficulty lies in the scope of the word "manages".

[59] Read in isolation, the word "manages" is capable of a very wide meaning. In the statutory context, however, paragraph (c) is more naturally directed at property management as a remunerated service rendered on behalf of another, rather than every subordinate task of oversight, care or physical upkeep relating to premises. This construction accords with a statute regulating property-sector activity through licensing, conduct, accounting and consumer-protection obligations.

Paragraph (d)

[60] Paragraph (d) extends the definition to a trust in respect of which the trustee, for the acquisition of gain on account of the trust, directly or indirectly holds out that it is a business which, on the instruction of or on behalf of another person, performs an act referred to in paragraph (a).

[61] The paragraph thus reproduces the central limiting features of paragraph (a): acquisition of gain, holding out as a business, acting on the instructions of, or on behalf of, another, and performing an activity referred to in paragraph (a). Its effect is to bring within the definition a trust as an organisational form through which property-practitioner activity is conducted.

Paragraph (e)

[62] Paragraph (e) operates only for the purposes of ss 34, 46, 48, 59, 60, 61 and 65. It does not create an undifferentiated extension of the definition for every purpose of the PPA.

[63] Its five subparagraphs identify different relationships to an underlying property-practitioner business. They include a director of a company or member of a close corporation who is a property practitioner as defined in paragraph (a); an employee of a

paragraph (a) property practitioner who performs on its behalf specified paragraph (a) acts; a trustee of a trust contemplated in paragraph (d); an employee of a paragraph (b) property practitioner who performs specified paragraph (a) acts on its behalf; and a person employed by a paragraph (a) or (b) property practitioner to manage, supervise or control the day-to-day operations of that business.

[64] The effect is consequence-specific. Paragraph (e) attributes the status of property practitioner to those associated persons only when one of the listed sections is engaged. Its reach must therefore be assessed with regard to the categories of persons identified in paragraph (e), the limited statutory purposes for which the definition is extended to them, and the regulatory consequences which attach when the relevant listed section is engaged.

The constitutional challenge to the definition

Breadth, certainty and rationality

[65] The challenged provisions differ materially. Paragraphs (a)(iv), (a)(v) and (a)(vi) remain subject to paragraph (a)'s opening qualification; paragraph (b) is an independent inclusive provision; paragraph (c) concerns remunerated property management on behalf of another; paragraph (d) substantially reproduces paragraph (a)'s limits for trusts; and paragraph (e) extends the definition only to specified associated persons and statutory purposes. The rationality enquiry must respect those distinctions.

[66] The definition's extension beyond the former estate-agent model does not, by itself, establish irrationality. The PPA regulates a broader range of property-market activity and pursues regulatory, consumer-protection, and transformation objectives. Nor is rational regulation confined to persons who handle trust money. The question is whether each category included bears a rational connection to one or more statutory purposes. The enquiry is objective, and I had regard to the purposes of the PPA disclosed by the preamble and ss 2 and 3 of the Act as a whole.

[67] Paragraph (a)(iv) is rationally connected to those purposes. It reaches financing activity connected with the management, sale or lease of property only where the person also satisfies the opening qualification in paragraph (a). A person who, for gain and on the instructions of or on behalf of another, procures, facilitates or markets financing for a

property transaction performs a facilitative function in that transaction. I am unable to discern a rational disconnect between regulating that activity and the PPA's consumer-protection and market-regulation objectives.

[68] The same applies to paragraph (a)(v). It is expressly concerned with an intermediary or facilitator whose primary purpose is to effect, or attempt to effect, a sale, purchase, letting or hiring agreement. The exclusions in items (aa) to (dd) further limit its reach, including by excluding a person who does not act in the ordinary course of business and a natural person who in the ordinary course of business offers for sale property belonging to him or her in a personal capacity. On the interpretation adopted above, the provision remains anchored to intermediary or facilitative activity and bears a rational relationship to the purposes of the Act.

[69] Paragraph (a)(vi) is not a free-standing extension. Any service specified by the Minister remains subject to paragraph (a)'s opening qualification and must fall within the PPA's subject matter and purposes. The power is further conditioned on a Board recommendation and publication in the *Gazette*. I am not persuaded that the conferral of that power is itself irrational or constitutionally overbroad.

[70] Paragraph (b) stands differently. Its inclusion of developers and persons engaged in selling, marketing, promoting or advertising the listed property interests has an intelligible connection to the field which the PPA regulates. Developers and commercial marketers participate directly in bringing property interests to market, and their activities may affect consumers, market access and transformation. The fact that they may act in respect of their own property does not, by itself, render their inclusion irrational.

[71] The difficulty lies in the additional reach of paragraph (b). As interpreted above, it is also capable of treating a private natural-person owner as a property practitioner merely because the property disposed of takes the form of a part, unit, section, right or share listed in the paragraph. A natural person selling a freestanding property belonging to him or her does not, merely for that reason, fall within paragraph (a), and paragraph (a)(v) expressly recognises the position of a natural person disposing of property held in a personal capacity. Paragraph (b) contains no equivalent protection for a natural person who owns a sectional-title unit, section or other listed interest.

[72] The comparison is therefore between private natural-person owners disposing of their own assets. The fact that one asset is a freestanding property and the other a unit, section, right or share does not provide a rational basis for treating only the latter owner as a property practitioner. Section 3(k)'s reference to the affordable and secondary market does not answer that distinction, because both transactions may occur in the secondary market.

[73] This conclusion does not deny Parliament's power to regulate sectional-title, time-share or fractional-ownership transactions. The difficulty is narrower. It lies in attaching the status and regulatory consequences of a property practitioner to a private owner solely because of the form of the proprietary interest disposed of.

[74] It may be said that paragraph (b) does not differentiate between classes of seller, but between forms of property interest, and that the preamble’s reference to distortions in the property market “especially the secondary property market”, supports broader regulation of transactions involving such interests. That explains why Parliament may regulate those transactions. It does not explain why a private owner making an isolated disposal should, for that reason alone, become a property practitioner when the same consequence does not attach to the private owner of a freestanding property.

[75] A second difficulty is not confined to natural persons. Paragraph (b) contains no equivalent of item (aa) of paragraph (a)(v), which removes from that subparagraph a person who does not act in the ordinary course of business. Paragraph (b) requires neither gain nor conduct in the ordinary course of business. It is therefore capable of applying to a juristic person or trust which is neither a developer nor a commercial marketer of the listed interests, but sells, markets, promotes or advertises such an interest on an isolated occasion. A company disposing of the sectional-title unit from which it trades, or a body corporate disposing of a single unit, is an example. The considerations that rationally justify the inclusion of developers and commercial marketers stem from their participation in the property market as businesses. They do not explain the inclusion of a juristic person or trust who does not carry on the relevant activity in the ordinary course of business, but merely disposes of its asset. In that respect, its position is materially indistinguishable from that of the private owner considered above. I am unable to discern a rational connection between

the purposes of the PPA and subjecting such a person to the statutory status and regulatory consequences of a property practitioner.

[76] A third difficulty arises from paragraph (b)'s application to a person whose role is confined to providing a conduit or platform for advertisements. There is a rational distinction between a person who itself markets, promotes or advertises a property interest as part of bringing that interest to the market, and one which merely provides the medium through which another person places an advertisement. The former participates substantively in the marketing of the property interest. The latter does not market or promote the interest on behalf of the seller, but merely provides the means by which the seller's advertisement is communicated. Paragraph (b), however, does not draw that distinction. Nor does the definition of "advertise" cure the difficulty. Its exclusion of "advertising in compliance with the provisions of any other law" does not distinguish between a person who substantively markets a property interest and one who merely provides the medium through which another person advertises it. I am unable to discern a rational connection between the purposes of the PPA and subjecting a person whose role is confined to providing such an advertising medium to the regulatory status and regulatory consequences of a property practitioner.

[77] It was submitted that s 4 addresses these difficulties, as a person brought within the definition may apply for exemption from compliance with a specific provision of the PPA. I disagree. An exemption presupposes that the applicant is a property practitioner and remains subject to the Act until exempted. Section 4(6)(a) provides that an exemption may not exceed three years and may not be applied retrospectively, so the relief is neither permanent nor curative.

[78] Paragraph (c), properly interpreted, does not have the unlimited reach for which Sakeliga contends. It applies to a person who, for remuneration, **manages the property on behalf of another**. That is different from merely performing a discrete service of care, maintenance or upkeep in relation to the property. The latter does not, without more, amount to managing the property. Remunerated property management is a recognised property-sector activity capable of affecting owners, tenants and other consumers and of

engaging the regulatory concerns addressed by the PPA. I am therefore not persuaded that the inclusion of such activity lacks a rational connection to the purposes of the Act.

[79] Paragraph (d) is still more closely tied to paragraph (a). It reproduces the central limiting features of acquisition of gain, holding out as a business, acting on the instructions of or on behalf of another, and performing a paragraph (a) activity. Treating a trust through which such activity is conducted as a property practitioner is rationally connected to the regulation of the activity itself; the use of the trust form does not alter the nature of the underlying property-practitioner activity.

[80] The final question is whether there is a rational basis for extending the definition, for the specified statutory purposes, to persons identified in paragraph (e). In my view there is. Each category has a defined connection to an existing property-practitioner business. The person either performs regulated activities on its behalf, occupies a position of responsibility within it, or manages, supervises or controls its operations. The extension therefore reaches persons through whom the regulated enterprise acts or by whom its activities are directed or controlled.

[81] It is rational for the regulatory scheme to operate not only against the property-practitioner enterprise itself, but also, for identified purposes, against the persons through whom that enterprise conducts its regulated activities. Otherwise, provisions directed at certification, conduct, supervision and accountability could operate at the level of the enterprise while excluding the individuals who actually perform or control the relevant activity. The extension in paragraph (e) therefore bears a rational relationship to the effective regulation of property-practitioner businesses and the protection of those who deal with them.

[82] That conclusion is not altered because every listed section may not have the same practical application to every category of person identified in paragraph (e). The extension makes those persons property practitioners only for the purposes of the specified sections; each section must still operate according to its own terms. The fact that a particular provision has limited application to a particular category does not render the legislative extension itself irrational.

[83] I am therefore not persuaded that the rationality challenge succeeds in relation to paragraphs (a)(iv), (a)(v), (a)(vi), (c), (d) or (e). Paragraph (b) is different in three limited respects. Although its application to developers, promoters and persons substantively engaged in commercial property marketing is rationally connected to the purposes of the PPA, I am unable to identify a rational connection between those purposes and treating as a property practitioner: (i) a private natural-person owner merely because of the legal form of the property interest disposed of; (ii) a person, whether natural or juristic, who sells, markets, promotes or advertises such an interest otherwise than in the ordinary course of business; or (iii) a person whose role is confined to providing a medium or conduit for another's advertisement. To that extent, paragraph (b) fails the rationality requirement.

[84] The challenge based on vagueness does not justify a broader declaration of invalidity. On the interpretations adopted above, the impugned provisions have a sufficiently ascertainable meaning. The fact that non-compliance with the certification regime may attract serious consequences, including criminal consequences, requires the provisions to be construed with care, but does not render paragraphs (a)(iv) to (e), as interpreted, void for vagueness.

Section 22

[85] Applying the distinction identified above, classification as a property practitioner does not, without more, establish an infringement of occupational freedom. The question is whether the regulatory consequences of that classification, viewed objectively, negatively affect the choice of the relevant trade, occupation or profession, including the ability to enter or remain in it, or merely regulate the manner in which it is practised.

[86] The papers do not establish that persons rationally brought within the challenged parts of the definition are, by classification alone, unable to enter or continue their occupations. Compliance with a licensing and regulatory regime ordinarily regulates practice. Sakeliga's training objection is more specific. It contends that persons newly brought within the definition could not lawfully continue their existing occupations because the education and training requirements carried over from the former regime applied to estate agents, while no corresponding route to qualification had been established for the

newly included categories. On that basis, it says that such persons could neither regularise their position nor obtain the Fidelity Fund certificate required for lawful practice.

[87] The definition does not create a single, functionally uniform occupation of ‘property practitioner’. It brings materially different activities within one framework and, in paragraph (e), only for specified purposes. Section 50(b)(ii) disqualifies a property practitioner who does not comply with ‘the prescribed standard of training’ from being issued with a Fidelity Fund certificate. Regulation 33 supplies the framework for those standards. It requires the Authority, after consultation with representative bodies in the various industries, to establish qualification standards, course materials, examinations and practical-training standards, and expressly permits those requirements to vary according to industry.

[88] Regulation 33 is thus not framed on the basis of one undifferentiated standard for every property practitioner. It applies only to natural persons, permits requirements to vary by industry, allows industry representative bodies to seek variations to accommodate specific industry requirements, and provides for exemptions based on existing qualifications. The regulatory framework therefore contemplates differentiated training appropriate to different categories rather than the automatic application of estate-agent requirements to all property practitioners.

[89] The existence of that framework does not establish that appropriate standards had in fact been developed for every newly included category when this application was brought. Sakeliga's contention cannot therefore be answered on the basis that an existing standard was capable of being met. But that does not establish that the definition itself impermissibly limits occupational choice. The alleged obstacle lies, if anywhere, in whether the training framework contemplated by s 50(b)(ii) and regulation 33 had been implemented for those categories. Neither s 50(b)(ii) nor regulation 33 is challenged on that basis. On the case as pleaded, the training objection therefore does not justify invalidating the definition. The position is different where the Act itself imposes a condition which must be satisfied before the Fidelity Fund certificate necessary for lawful practice may be issued. That issue arises under s 50(a)(x).

Section 50(a)(x)

The function of the Fidelity Fund certificate

[90] Section 50(a)(x) presents a different question. The Fidelity Fund and the certificate regime are related but not identical. The certificate is the statutory gateway to lawful practice: s 48 prohibits a person from acting as a property practitioner without it, and s 50 contains disqualifications extending beyond trust-account risk. There is therefore nothing inherently irrational in Parliament using the certificate regime to secure compliance with other legitimate objects of the PPA, including transformation.

[91] That conclusion does not determine the validity of the particular condition chosen in s 50(a)(x). Where possession of a specified document is made an absolute condition for obtaining the certificate without which a person may not lawfully practise, the law must identify that condition with reasonable certainty and in a form capable of coherent application. The question is therefore not whether transformation may permissibly be linked to licensing. It is whether the requirement actually enacted - possession of a "valid BEE certificate" - has an ascertainable legal meaning and bears the required relationship to the transformation object relied upon.

[92] The Authority says Sakeliga's challenge is misdirected because s 50(a) contains ten disqualifications, of which only paragraph (x) is attacked, while provisions such as the requirement for a valid tax clearance certificate remain unchallenged. That does not answer the challenge. The validity of s 50(a)(x) must be determined on its own terms. The comparison is in any event instructive: a tax clearance certificate is an identifiable instrument issued by an identified organ of state under an identified legal framework. The difficulty with s 50(a)(x) is that its required instrument is not similarly identified.

The meaning of "valid BEE certificate"

[93] Section 50(a)(x) provides that the Authority may not issue a Fidelity Fund certificate to any person who is not "in possession of a valid BEE certificate". The PPA does not define that expression.

[94] The statutory context does not supply the meaning. Neither does the applicable B-BBEE framework. The Amended Property Sector Code[21] recognises different forms of proof of B-BBEE status according to the category of enterprise. In particular, paragraph 8.6 provides for an exempted micro enterprise to establish the relevant matters by sworn affidavit or a certificate issued by the Companies and Intellectual Property Commission, and paragraph 9.3.3 makes corresponding provision for a qualifying small enterprise which is at least 51 per cent black owned. The transformation framework therefore does not proceed on the basis that every person or enterprise to whom it applies must possess one uniform document called a “BEE certificate”.

[95] The respondents themselves do not attribute a single meaning to the expression. In its answering affidavit the Authority describes it as a certificate issued by an accredited agent and valid for the period stated in it. In its heads it submits that the requirement may also be satisfied by a sworn affidavit contemplated in the B-BBEE framework. The NPF similarly states in its affidavit that smaller enterprises may comply by affidavit, while larger entities require verified certificates, but in its heads, it describes the document without qualification as a certificate issued by an accredited B-BBEE verification agency. The differences concern not merely terminology, but the instrument required, the persons from whom it is required and the manner in which compliance is established.

[96] The administration of the provision illustrates the same uncertainty. Sakeliga records that the Authority reminded principal property practitioners of s 50(a)(x) on 13 February 2024. At a compliance webinar on 13 March 2024 it stated that natural persons were exempt, but thereafter rejected applications not accompanied by certificates issued by SANAS-accredited verification agencies and treated certificates below Level Eight under the Property Sector Scorecard as invalid. On 13 August 2024 the Authority advised industry bodies that it was reviewing its position because it had been advised that “valid” did not mean “compliant”.

[97] The Authority admits that the August letter emanated from it, but denies that the provision is unintelligible and contends that what was said at the webinar is irrelevant. Its

[21] *Amended Property Sector Code*, published under Government Notice 560 in Government Gazette 40910 of 9 June 2017, issued under s 9(1) of the Broad-Based Black Economic Empowerment Act 53 of 2003

conduct is not under review, and I make no finding as to its lawfulness. It is relevant only because the body charged with administering the provision adopted materially different understandings, within a relatively short period, of both what document was required and from whom.

[98] The regulations do not remove the uncertainty. Regulation 21.2 and the prescribed application form merely repeat the requirement that an applicant possess a "valid BEE certificate". They do not identify the document. Nor can subordinate legislation alter Parliament's requirement of a certificate into a requirement satisfied by either a certificate or a sworn affidavit.

[99] The provisions concerning natural persons do not alter that conclusion. Section 50(a)(x) applies to "any person". Regulations 41.20 and 41.21 create instead a mechanism under which a natural person applying for a Fidelity Fund certificate is deemed to have applied for exemption and the Authority must, by default, grant it. That is an exemption from the statutory requirement, not an indication that natural persons fall outside its terms.

[100] Reliance on terminology used in other sector codes takes the matter no further. Those instruments demonstrate that concepts such as a "B-BBEE verification certificate" can be defined expressly when that is what is intended. Section 50(a)(x) does not use that expression. It requires a "valid BEE certificate". A definition appearing elsewhere cannot supply words Parliament did not enact.

[101] The practical significance is heightened by the breadth of the statutory definition of "property practitioner". Paragraph (e) extends that definition, for purposes including s 48, to specified directors, members, trustees and employees. Section 48 in turn prohibits a person falling within its reach from rendering services without the requisite Fidelity Fund certificate. The uncertainty in s 50(a)(x) therefore concerns access to the statutory entitlement to practise and is not confined to conventional estate-agency enterprises.

[102] The NPF relies on the principle that legislation reasonably capable of a constitutionally compliant interpretation should be given that meaning. That principle is not in dispute. But interpretation cannot become legislation. *Chisuse* makes clear both that

statutory language must not unnecessarily be rendered ineffective merely because it is obscure, and that a court may not rewrite legislation under the guise of interpretation.[22]

[103] The difficulty here is not that the legislative object is obscure. The transformation objective is evident. What the text does not determine is the mechanism chosen to advance it. To sustain s 50(a)(x), the Court would have to decide whether the required proof is a verification certificate, a sworn affidavit, a CIPC certificate or some other recognised instrument; identify the persons from whom it is required; and determine what, if any, level of B-BBEE status the document must establish. Those choices are not supplied by the statutory text. They are matters of legislative design.

[104] The difficulty is accordingly not merely one of interpretative complexity. Section 50(a)(x) makes possession of a "valid BEE certificate" a condition for the issue of a Fidelity Fund certificate, but neither the PPA nor the applicable statutory framework identifies with reasonable certainty what document is required, from whom it is required, or what substantive standard must be satisfied for the document to be "valid". Those affected by the provision, and the Authority charged with administering it, cannot determine those matters from the legislation with reasonable certainty. Applying the principles stated above, s 50(a)(x) therefore fails the requirement of legal certainty inherent in the rule of law.

Section 22

[105] There is, in addition, the effect of the provision on the freedom protected by s 22. Section 48 prohibits a person from acting as a property practitioner without a Fidelity Fund certificate, while s 50(a)(x) precludes the Authority from issuing such a certificate unless the applicant is in possession of a "valid BEE certificate". The requirement therefore operates as a condition of lawful practice. Where a statutory condition may prevent a person from obtaining the authorisation necessary to enter or remain in an occupation, it goes beyond regulating the manner in which the occupation is practised and may negatively affect occupational choice in the sense contemplated in *Affordable Medicines, supra.*

[22] At paras 54-59.

[106] The difficulty is not merely that an applicant must satisfy a regulatory requirement. An applicant may be prevented from obtaining the authorisation necessary for lawful practice because he or she cannot determine from the legislation what documentary requirement must be satisfied. The uncertainty therefore operates at the point of entry into, or continuation in, the occupation and not merely in relation to the manner in which it is practised. Section 50(a)(x) consequently negatively affects the freedom protected by s 22. As explained above, the exemption route does not resolve the issue.

[107] That limitation must accordingly be justified under s 36. Transformation is an important constitutional and statutory objective. The Authority submits that the limitation is reasonable and justifiable because a property practitioner need only obtain a valid B-BBEE certificate and that no less restrictive means are available. The NPF advances substantially the same position.

[108] The NPF also relies on s 9(2) of the Constitution. That provision confirms the constitutional legitimacy of measures designed to advance persons disadvantaged by unfair discrimination. It does not, however, answer whether the particular means chosen by Parliament are sufficiently defined and constitutionally permissible.

[109] Those submissions address the legitimacy of the objective, but not the means chosen to achieve it. Neither respondent explains why the transformation objective requires a condition expressed in terms that do not define the required document, provide the substantive standard to be met, or the forms of proof by which compliance may be established.

[110] The transformation objective may permissibly be pursued through legislation which identifies the documentary requirement, the persons to whom it applies and the substantive standard to be met. Section 50(a)(x) does not do so. The limitation it imposes on the freedom protected by s 22 has therefore not been shown to be reasonable and justifiable under s 36. This provides an additional and independent basis for the conclusion that s 50(a)(x) is constitutionally invalid.

Remedy

[111] Section 172(1)(a) requires invalidity to be declared only to the extent of the constitutional inconsistency. The two successful challenges require different remedies. Reading-in and notional severance are available only where a provision cannot be preserved by a reasonable, constitutionally compliant interpretation.[23]

[112] Paragraph (b) has a constitutionally unobjectionable core in its application to developers, promoters and persons commercially selling, marketing, promoting or advertising the listed interests. The defect lies in its extension beyond that field. On its ordinary wording it is capable of including a natural person who sells, markets, promotes or advertises his or her own unit, section or other listed interest in the secondary market, although that person is not engaged in property development or in the business of selling or marketing such interests.

[113] It is also capable of including a person whose involvement goes no further than carrying, hosting, publishing or disseminating an advertisement placed by another person. It is capable, in addition, of including a person, whether natural or juristic, who sells, markets, promotes or advertises such an interest otherwise than in the ordinary course of business. In none of these cases does the paragraph require gain, conduct in the ordinary course of business, an intermediary function or any comparable connection to commercial property activity. Striking the paragraph down in its entirety would therefore exceed the inconsistency found.

[114] None of these difficulties can be removed by interpretation alone. Paragraph (b) expressly extends to "any person" who performs the listed acts and contains none of the qualifications that would exclude any of those categories. To construe it as though such limitations were already present would require the Court to add restrictions which Parliament did not enact.

[115] Importing the whole of paragraph (a)'s opening qualification would also be inappropriate. It would make action on the instructions of or on behalf of another a condition of paragraph (b) and would thereby exclude, among others, a developer marketing units in its own development, whose inclusion I have found rational. The remedy must therefore

[23] *Chisuse* at para 55.

preserve paragraph (b)'s legitimate application to development and commercial property activity while removing only the extensions that give rise to the constitutional defect. That accords with the requirement that a reading-in should not interfere with the legislative scheme more than is necessary.[24]

[116] The first appropriate distinction is between activity undertaken in the course of property development or a business involving the sale, marketing, advertising or promotion of the listed interests, and the disposal by a natural person of his or her own property interest outside that context. Paragraph (b) should therefore be declared invalid to the extent that it includes a natural person who sells, markets, promotes or advertises a listed part, unit or section of a property or property development, or a right or share in such property or property development, where that part, unit, section, right or share belongs to him or her in his or her personal capacity, where that person does not do so in the course of property development or a business involving the sale, marketing, promotion or advertising of such interests and would not otherwise be a property practitioner as defined in the Act.

[117] A further qualification is required which is not confined to natural persons. Paragraph (b) should also be declared invalid to the extent that it includes a person who sells, markets, promotes or advertises a part, unit, section, right or share in property otherwise than in the ordinary course of business. That qualification mirrors item (aa) of paragraph (a)(v). It leaves untouched the application of paragraph (b) to developers, promoters and persons who deal in the listed interests as a business, and it removes from the paragraph only those who do not participate in the property market as a business at all.

[118] The advertising-conduit problem requires a separate qualification. The defect does not arise from the inclusion of persons who themselves advertise or promote property as part of a commercial property activity. It arises where the person's role goes no further than carrying, hosting, publishing or disseminating an advertisement placed by another. Paragraph (b) should therefore also be declared invalid to the extent that it includes a person whose involvement goes no further than carrying, hosting, publishing or disseminating an advertisement placed by another person, and who does not otherwise

[24] *Chisuse* at para 55.

participate in the sale, marketing, promotion or advertising of the property or property interest concerned.

[119] When deciding whether to read words into a statute, a court must satisfy the criteria identified in *National Coalition for Gay and Lesbian Equality and Others v Minister of Home Affairs and Others*.[25] The proposed reading-in meets those requirements. The qualifications are capable of precise formulation and are not foreign to the legislative scheme. The first and third reproduce, with the necessary adaptation, the exclusions which Parliament itself enacted in items (bb) and (aa) of paragraph (a)(v). The second gives effect to the distinction identified above between substantive participation in property marketing and merely providing the medium through which another person advertises. Together they remove only the irrational applications identified above, while preserving the operation of paragraph (b) in relation to developers, promoters and others substantively engaged in commercial property marketing.

[120] Parliament should be afforded an opportunity to correct paragraph (b). The declaration of invalidity should be suspended for 24 months from the date of confirmation by the Constitutional Court. A suspension unaccompanied by interim relief would leave the persons identified above subject to the statutory status of property practitioner, and to the consequences which attach to acting without a Fidelity Fund certificate, for a further two years in respect of conduct that cannot rationally attract that status. If Parliament does not correct the constitutional defect within the period of suspension, the reading-in should continue to operate until constitutionally compliant legislation comes into force.

[121] During the period of suspension, paragraph (b) should be read as excluding- (i) a natural person who sells, markets, advertises or promotes his or her own listed property interest otherwise than in the course of property development or a business involving the sale, marketing, advertising or promotion of such interests, and who would not otherwise be a property practitioner as defined in the Act; (ii) a person whose involvement goes no further than carrying, hosting, publishing or disseminating an advertisement placed by another person, and who does not otherwise participate in the sale, marketing, promotion or advertising of the property or property interest concerned; and, (iii) a person who sells,

[25] 2000 (2) SA 1 (CC) at paras 74-75.

markets, advertises or promotes such an interest otherwise than in the ordinary course of business, and who would not otherwise be a property practitioner as defined in the PPA.

[122] Section 50(a)(x) cannot be cured by severance or reading-in. Any such remedy would require the Court to select the relevant proof of B-BBEE status, identify the person or entity from whom this is required, and determine the applicable substantive standard. Those are legislative choices, not matters of interpretation. To supply them would create a new compliance mechanism and exceed the limits of permissible reading-in.

[123] Section 50(a)(x) must therefore be declared invalid in its entirety, leaving Parliament to decide whether and on what terms a transformation-related condition should attach to Fidelity Fund certification. Because continued enforcement would permit certificates to be withheld under a constitutionally defective provision, the declaration should not be suspended. It should operate prospectively and not affect Fidelity Fund certificates already issued.

[124] Both declarations concern an Act of Parliament and have no force unless confirmed by the Constitutional Court under s 172(2)(a). The suspension and the reading-in which will operate following confirmation are made under s 172(1)(b) as just and equitable relief. Pending the decision of the Constitutional Court, temporary relief is warranted under s 172(2)(b) to prevent the provisions found constitutionally defective from continuing to produce the consequences identified above.

[125] The challenge to paragraphs (a)(iv), (a)(v), (a)(vi), (c), (d) and (e) is dismissed. The challenge to paragraph (b) succeeds only to the limited extent identified above, and the challenge to s 50(a)(x) succeeds.

Costs

[126] The costs enquiry is governed by *Biowatch Trust v Registrar Genetic Resources and Others*.[26] As a general rule, a private litigant achieving substantial success in constitutional proceedings against the State should receive its costs. Sakeliga has achieved substantial

---

[26] 2009 (6) SA 232 (CC) at para 24.

success: it succeeds entirely on s 50(a)(x) and, although on narrower grounds, in relation to paragraph (b).

[127] Sakeliga's failure on paragraphs (a)(iv), (a)(v), (a)(vi), (c), (d) and (e) does not justify apportionment. Those issues formed part of a closely related challenge to the reach and consequences of the same definition and cannot sensibly be separated for costs. There is no conduct warranting departure from *Biowatch*. The first respondent opposed the constitutional relief and should bear Sakeliga's costs.

[128] The second and third respondents abided. The fourth respondent intervened to defend the legislation, principally on transformation grounds. Consistently with the approach to private parties participating in constitutional litigation, I make no costs order for or against it on the merits.

[129] The late delivery of the fourth respondent's answering affidavit is different. It was about two weeks late and required Sakeliga to file a further replying affidavit. The fourth respondent sought and obtained condonation and should bear the costs occasioned by the late delivery, including the further replying affidavit.

[130] The applicant was represented by two counsel. Given the importance and complexity of the matter, the employment of two counsel was warranted. The first and fourth respondents are accordingly ordered to pay the applicant's costs, on the terms set out in the order, including the costs of two counsel where so employed, on scale C.

ORDER

In the result, the following order is granted:

1. The late filing of the fourth respondent's answering affidavit is condoned.

2. Paragraph (b) of the definition of "property practitioner" in s 1 of the Property Practitioners Act 22 of 2019 (the Act) is declared inconsistent with the Constitution and invalid to the extent that it includes –

    (a) a natural person who sells, markets, promotes or advertises a part, unit or section of, or rights or shares in, a property or property development where the part, unit, section, right or share belongs to him or her in his or her personal capacity, where that person does not do so in the course of property development or a business involving the sale, marketing, advertising or promotion of such interests, and who would not otherwise be a property practitioner as defined in the Act;

(b) a person whose involvement goes no further than carrying, hosting, publishing or disseminating an advertisement placed by another person in respect of a part, unit or section of, or rights or shares in, a property or property development, and who does not otherwise participate in the sale, marketing, promotion or advertising of that property interest;

(c) a person who sells, markets, promotes or advertises a part, unit or section of, or rights or shares in, a property or property development otherwise than in the ordinary course of business, and who would not otherwise be a property practitioner as defined in the Act.

3. The declaration of invalidity in paragraph 2 is suspended for 24 months from the date of confirmation by the Constitutional Court, to enable Parliament to correct the defect.

4. During the period of suspension, paragraph (b) of the definition of "property practitioner" in s 1 of the Property Practitioners Act 22 of 2019 is to be read as though the following words appeared at the end thereof:

"but does not include –

(i) a natural person who sells, markets, promotes or advertises a part, unit or section of, or rights or shares in, a property or property development where that part, unit, section, right or share belongs to him or her in his or her personal capacity, where that person does not do so in the course of property development or a business involving the sale, marketing, advertising or promotion of such interests, and who would not otherwise be a property practitioner as defined in the Act; or

(ii) a person whose involvement goes no further than carrying, hosting, publishing or disseminating an advertisement placed by another person in respect of a part, unit or section of, or rights or shares in, a property or property development, and who does not otherwise participate in the sale, marketing, promotion or advertising of that property interest; or

(iii) a person who sells, markets, promotes or advertises a part, unit or section of, or rights or shares in, a property or property development otherwise than in the ordinary course of business, and who would not otherwise be a property practitioner as defined in the Act."

If Parliament does not correct the constitutional defect within the period referred to in paragraph 3, the reading-in in this paragraph shall continue to operate until legislation correcting the defects comes into force.

5. Section 50(a)(x) of the Property Practitioners Act 22 of 2019 is declared inconsistent with the Constitution and invalid.

6. The declaration of invalidity in paragraph 5 operates prospectively from the date of confirmation by the Constitutional Court and does not affect the validity of any Fidelity Fund certificate issued before that date.

7. The declarations of invalidity in paragraphs 2 and 5 are referred to the Constitutional Court for confirmation in terms of s 172(2)(a) of the Constitution.

8. Pending the decision of the Constitutional Court, and in terms of s 172(2)(b) of the Constitution:

(a) paragraph (b) of the definition of "property practitioner" is to be read as set out in paragraph 4 above; and

(b) the first respondent may not refuse to issue a Fidelity Fund certificate solely by reason of s 50(a)(x) of the Property Practitioners Act 22 of 2019.

9. Save as set out above, the application is dismissed.

10. The first respondent is ordered to pay the applicant's costs, including the costs of two counsel where so employed, on scale C, save for the costs to be paid by the fourth respondent as determined below.

11. The fourth respondent is ordered to pay the costs occasioned by the late delivery of its answering affidavit, including the costs of the applicant's further replying affidavit, on scale C.

12. The Registrar of this Court is directed to comply with Constitutional Court Rule 16 by lodging a copy of the order and judgment with the Registrar of the Constitutional Court within 15 days of this order.

E VAN DER SCHYFF

JUDGE OF THE HIGH COURT

GAUTENG DIVISION, PRETORIA

For the applicant:	Adv. P Ellis SC
With:	Adv. JL Verwey
Instructed by:	Kriek Wassenaar & Venter Inc.
For the first respondent:	Adv. WR Mokhare SC
With:	Adv. MR Maphutha
Instructed by:	Chitha Inc.
For the fourth respondent:	Adv. M Ramaili SC
With:	Adv. K Maponya
And:	Adv. S Mutemwa
Instructed by:	Kgobokoe & Company Inc.
Date of the hearing:	5 June 2026
Date of judgment:	8 September 2026