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DEPARTEMENT VAN DIE EERSTE MINISTER

DEPARTMENT OF THE PRIME MINISTER

No. 1170.

1 Julie 1977.

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1 July 1977.

Hierby word bekend gemaak dat die Staatspresident sy goedkeuring geheg het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

It is hereby notified that the State President has assented to the following Act which is hereby published for general information:—

No. 91 van 1977: Wysigingswet op Laer Howe, 1977.

No. 91 of 1977: Lower Courts Amendment Act, 1977.

Act No. 91, 1977

LOWER COURTS AMENDMENT ACT, 1977.

ACT

To amend the Magistrates' Courts Act, 1944, in order to restrict the operation of certain provisions to civil matters; to exclude certain records in criminal cases from records to which the public has access; to provide for the appointment of a clerk of the court by the magistrate of the district; to increase the fines in respect of certain offences; to provide for additional circumstances in which a magistrate's court and the court of a regional division shall have jurisdiction in criminal cases; to increase the punitive jurisdiction of magistrates' courts and the courts of regional divisions; to change the basis on which compensation is payable to assessors; to amend section 21 of the General Law Amendment Act, 1962, and the Terrorism Act, 1967, in order to extend the jurisdiction of courts of regional divisions to offences under those Acts; and to provide for incidental matters.

*(English text signed by the State President.)
(Assented to 20 June 1977.)*

BE IT ENACTED by the State President, the Senate and the House of Assembly of the Republic of South Africa, as follows:—

Amendment of section 5 of Act 32 of 1944, as amended by section 6 of Act 40 of 1952.

1. Section 5 of the Magistrates' Courts Act, 1944 (hereinafter referred to as the principal Act), is hereby amended—

(a) by the substitution for subsections (2) and (3) of the following subsections:

“(2) The court may in any case, in the interests of good order or public morals, direct that a civil trial shall be held with closed doors, or that (with such exceptions as the court may direct) females or minors or the public generally shall not be permitted to be present thereat.

(3) If any person present at any civil proceedings in any court disturbs the peace or order of the court, the court may order that person to be removed and detained in custody until the rising of the court, or, if in the opinion of the court peace cannot be otherwise secured, may order the court room to be cleared and the doors thereof to be closed to the public.”; and

(b) by the deletion of subsection (4).

Amendment of section 7 of Act 32 of 1944, as substituted by section 1 of Act 8 of 1967 and amended by section 27 of Act 70 of 1968 and section 14 of Act 80 of 1971.

2. Section 7 of the principal Act is hereby amended by the substitution in subsection (1) for the words preceding the first proviso of the following words:

“(1) Subject to the rules the records of the court, other than a record with reference to which a direction has been issued under section 153 (2) or 154 (1) of the Criminal Procedure Act, 1977, or with reference to which the provisions of section 154 (2) (a) or 154 (3) of that Act apply, shall be accessible to the public under supervision of the

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clerk of the court at convenient times and upon payment of the fees prescribed from time to time by the Minister in consultation with the Minister of Finance, and for this purpose and for all other purposes the records of any magistrate's court which has at any time existed within the Republic, shall be deemed to be the records of the court of the district in which the place where such court was held is situated, and such records shall be preserved at the seat of magistracy of that district for such periods as the Secretary for Justice may from time to time determine."

Amendment of section 13 of Act 32 of 1944.

3. Section 13 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) There shall be appointed for every court by the magistrate of the district in which such court is situated so many clerks of the court and assistant clerks of the court as may be necessary."

Substitution of section 17 of Act 32 of 1944.

4. The following section is hereby substituted for section 17 of the principal Act:

"Messenger's 17. The return of a messenger or of any person return to be authorized to perform any of the functions of a evidence. messenger to any civil process of the court, shall be prima facie evidence of the matters therein stated."

Amendment of section 51 of Act 32 of 1944, as amended by section 7 of Act 19 of 1963 and section 9 of Act 80 of 1964.

5. Section 51 (2) of the principal Act is hereby amended by the substitution in paragraph (a) for the words "fifty rand" of the words "one hundred rand".

Amendment of section 79 of Act 32 of 1944, as amended by section 13 of Act 19 of 1963.

6. Section 79 of the principal Act is hereby amended by the substitution for the word "fifty", wherever it occurs, of the words "one hundred".

Amendment of section 89 of Act 32 of 1944, as substituted by section 1 of Act 75 of 1959.

7. Section 89 of the principal Act is hereby amended by the deletion of the proviso to subsection (2).

Amendment of section 90 of Act 32 of 1944, as substituted by section 20 of Act 40 of 1952 and amended by section 2 of Act 75 of 1959 and section 3 of Act 17 of 1969.

8. Section 90 of the principal Act is hereby amended—

(a) by the substitution in paragraphs (a), (b) and (c) of subsection (2) for the words "two miles" of the words "four kilometres"; and

(b) by the substitution for subsections (8) and (9) of the following subsections:

"(8) Where an accused is alleged to have committed various offences within different districts within the area of jurisdiction of any attorney-general, the attorney-general concerned may in writing direct that criminal proceedings in respect of such various offences be commenced in the court of any particular district within his area of jurisdiction, whereupon such court shall have jurisdiction to act with regard to any such offence as if such offence had been committed within the area of jurisdiction of that court, and the court of the regional division within whose area of jurisdiction the court of such district is situated, shall likewise have jurisdiction in respect of any such offence if such offence is an offence which may be tried by the court of a regional division.

(9) Notwithstanding anything contained in this section, the provisions of section 125 of the Criminal Procedure Act, 1977, shall *mutatis mutandis* apply in respect of the trial of any person by any court."

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Amendment of section 92 of Act 32 of 1944, as substituted by section 30 of Act 94 of 1974.

9. Section 92 of the principal Act is hereby amended by the substitution for paragraphs (a) and (b) of subsection (1) of the following paragraphs:

- “(a) by imprisonment, may impose a sentence of imprisonment for a period not exceeding twelve months, where the court is not the court of a regional division, or not exceeding ten years, where the court is the court of a regional division;
- (b) by fine, may impose a fine not exceeding one thousand rand, where the court is not the court of a regional division, or not exceeding ten thousand rand, where the court is the court of a regional division;”

Amendment of section 93ter of Act 32 of 1944, as inserted by section 3 of Act 14 of 1954 and amended by section 2 of Act 16 of 1959.

10. Section 93ter of the principal Act is hereby amended—

- (a) by the substitution for subsection (1) of the following subsection:

“(1) The judicial officer presiding at any trial may, before any evidence has been led, with the approval of the Minister, summon to his assistance any person who has or any two persons who have, in his opinion, experience in the administration of justice or skill in any matter which may have to be considered at the trial, to sit with him at the trial as assessor or assessors.”;

- (b) by the deletion of subsection (2);
- (c) by the substitution for subsection (4) of the following subsection:

“(4) If any such assessor is not a person employed in a full-time capacity in the service of the State he shall be entitled to such compensation as the Minister, in consultation with the Minister of Finance, may determine in respect of expenses incurred by him in connection with his attendance at the trial, and in respect of his services as assessor.”; and

- (d) by the substitution for subsection (5) of the following subsection:

“(5) The provisions of section 147 of the Criminal Procedure Act, 1977, shall *mutatis mutandis* apply where an assessor referred to in this section dies or becomes in the opinion of the presiding judicial officer incapable of continuing to act as an assessor.”

Substitution of section 112 of Act 32 of 1944.

11. The following section is hereby substituted for section 112 of the principal Act:

“Administra- 112. The oath to be taken by any witness in any
tion of civil proceedings in any court shall be administered
oath or by the officer presiding at such proceedings or by the
affirmation. clerk of the court (or any person acting in his stead) in
the presence of the said officer, or if the witness is to
give his evidence through an interpreter, by the said
officer through the interpreter or by the interpreter in
the said officer's presence.”

Amendment of section 114 of Act 32 of 1944, as amended by section 9 of Act 16 of 1959.

12. Section 114 of the principal Act is hereby amended by the substitution in subsection (1) for the expression “1955” of the expression “1977”.

Amendment of section 115A of Act 32 of 1944, as inserted by section 21 of Act 53 of 1970.

13. Section 115A of the principal Act is hereby amended by the deletion of subsections (2) and (3).

Amendment of section 21 of Act 76 of 1962, as amended by section 19 of Act 62 of 1966.

14. Section 21 of the General Law Amendment Act, 1962, is hereby amended—

- (a) by the deletion of paragraph (a) of subsection (4);
- (b) by the substitution for paragraph (b) of subsection (4) of the following paragraph:

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and section 33 of
Act 34 of 1969.

“(b) the trial of any person accused of having committed the offence of sabotage may be held at any time and at any place within the area of jurisdiction of the division of the Supreme Court, or of the magistrate’s court for the regional division, concerned;” and

(c) by the deletion of paragraphs (d) and (e) of subsection (4).

Amendment of
section 4 of
Act 83 of 1967.

15. Section 4 of the Terrorism Act, 1967, is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) Notwithstanding anything to the contrary in any law or the common law contained any superior court or magistrate’s court for a regional division or attorney-general in the Republic shall have jurisdiction in respect of any offence under this Act committed outside the area of jurisdiction of such court or attorney-general, as if it had been committed within such area.”

Amendment of
section 5 of
Act 83 of 1967,
as amended by
section 34 of
Act 34 of 1969
and section 15 of
Act 79 of 1976.

16. Section 5 of the Terrorism Act, 1967, is hereby amended—

(a) by the deletion of paragraph (a);

(b) by the substitution for paragraph (b) of the following paragraph:

“(b) the trial of any person accused of having committed any offence under this Act may, subject to the provisions of section 4, be held at any time and at any place within the area of jurisdiction of the division of the Supreme Court of South Africa, or of the Magistrate’s court for the regional division, concerned;” and

(c) by the deletion of paragraphs (d) and (e).

Short title and
commencement.

17. (1) This Act shall be called the Lower Courts Amendment Act, 1977, and shall come into operation on a date to be fixed by the State President by proclamation in the *Gazette*.

(2) The State President may under subsection (1) fix different dates in respect of different provisions of this Act and may fix different dates for the commencement of any such provision in the Republic, the territory and the Eastern Caprivi Zipfel.