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[No. 8295

KANTOOR VAN DIE EERSTE MINISTER

OFFICE OF THE PRIME MINISTER

No. 1285.

7 Julie 1982.

No. 1285.

7 July 1982.

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. 105 van 1982: Wysigingswet op Appèlle, 1982.

No. 105 of 1982: Appeals Amendment Act, 1982.

APPEALS AMENDMENT ACT, 1982

Act No. 105, 1982

GENERAL EXPLANATORY NOTE:

[Words in bold type in square brackets indicate omissions from existing enactments.

 Words underlined with solid line indicate insertions in existing enactments.

ACT

To amend the Magistrates' Courts Act, 1944, so as to further regulate appeals in civil suits or proceedings to the Supreme Court; to amend the Supreme Court Act, 1959, so as to further regulate the constitution of the Appellate Division, and of courts of provincial or local divisions, of the Supreme Court; to provide for the conferring of appeal and review jurisdiction upon the Witwatersrand Local Division of the Supreme Court; and to further regulate appeals to the Supreme Court; to amend the Criminal Procedure Act, 1977, so as to further regulate reviews and appeals in the case of criminal proceedings in lower courts and appeals in the case of criminal proceedings in superior courts; and to provide for matters connected therewith.

(English text signed by the State President.)
(Assented to 23 June 1982.)

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

1. Section 1 of the Magistrates' Courts Act, 1944, is hereby amended by the substitution for the definition of "court of appeal" of the following definition:

"court of appeal' means the provincial or local division of the Supreme Court to which an appeal lies from the magistrate's court;"

Amendment of section 1 of Act 32 of 1944, as substituted by section 1 of Act 53 of 1970 and amended by section 23 of Act 94 of 1974.
2. Section 83 of the Magistrates' Courts Act, 1944, is hereby amended by the substitution for the words preceding paragraph (a) of the following words:

"Subject to the provisions of section 82, a party to any civil suit or proceeding in a court may appeal to the provincial or local division of the Supreme Court having **[local]** jurisdiction to hear the appeal, against—"

Amendment of section 83 of Act 32 of 1944, as substituted by section 16 of Act 15 of 1969.
3. Section 1 of the Supreme Court Act, 1959, is hereby amended by the substitution in subsection (1) for the definition of "full court" of the following definition:

"full court', except for the purposes of section 13 (1), means a court of a provincial or local division consisting of **[two or more]** three judges;"

Amendment of section 1 of Act 59 of 1959, as amended by section 1 of Act 15 of 1969.
4. Section 12 of the Supreme Court Act, 1959, is hereby amended—

(a) by the substitution in subsection (1) for the words preceding the proviso of the following words:

Amendment of section 12 of Act 59 of 1959, as amended by section 1 of Act 46 of 1980.

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“The quorum of the appellate division shall, subject to the provisions of subsection (2), be five judges in all [criminal matters arising out of proceedings instituted before a special criminal court constituted under section 148 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977) and three judges in other] criminal [matters] and [in] civil matters.”;

(b) by the insertion in subsection (1) after paragraph (b) of the proviso of the following paragraph:

“(bA) the Chief Justice or, in his absence, the senior available judge of the appellate division may direct that an appeal in a criminal or civil matter, save a criminal matter arising out of proceedings instituted before a special criminal court constituted under section 148 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), be heard before a court consisting of three judges;”;

(c) by the substitution for subsection (5) of the following subsection:

“(5) During any period which may be fixed by rule of court as a vacation of the appellate division, one judge thereof shall have power and jurisdiction to hear and determine applications for [leave to appeal or for] leave to proceed *in forma pauperis* or for any interlocutory order.”.

5. Section 13 of the Supreme Court Act, 1959, is hereby amended—

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

“(b) A single judge of a division may at any time discontinue the hearing of any matter which is being heard before him and refer it for hearing to the full court of [the appropriate] that division, constituted in accordance with the proviso to paragraph (a).”;

(b) by the substitution for paragraph (a) of subsection (2) of the following paragraph:

“(a) The court of a provincial or local division shall, except where it is in terms of any law required or permitted to be otherwise constituted—

(i) for the hearing of any appeal against a judgment or order of an inferior court, be constituted before not less than two judges; and

(ii) for the hearing of any appeal against a judgment or order of a court of a provincial or local division constituted before a single judge of such provincial or local division, be constituted before three judges.”;

(c) by the substitution for subsection (5) of the following subsection:

“(5) During any period which may by rule of court be fixed as vacation of any division, one judge thereof shall, notwithstanding anything contained in this Act or any other law, but subject to the provisions of subsection (2) (a) (ii), be competent to exercise all the powers, jurisdiction and authority of a court of such division.”.

6. Section 19 of the Supreme Court Act, 1959, is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) (a) Subject to the provisions of paragraph (b), no appeal jurisdiction or review jurisdiction under subsection (1) shall be exercised by a local division.

Amendment of section 13 of Act 59 of 1959, as amended by section 3 of Act 3 of 1977 and section 37 of Proclamation 222 of 1981.

Amendment of section 19 of Act 59 of 1959, as amended by section 6 of Act 15 of 1969 and section 2 of Act 41 of 1970.

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- (b) The Witwatersrand local division shall have power to hear and determine appeals from all inferior courts in such districts within its area of jurisdiction as the judge president of the Transvaal provincial division may from time to time determine by notice in the *Gazette*, and to review the proceedings of all such courts.
- (c) Any such notice may at any time be amended or withdrawn by the judge president by similar notice."

7. The following section is hereby substituted for section 20 of the Supreme Court Act, 1959:

Substitution of section 20 of Act 59 of 1959, as amended by section 2 of Act 85 of 1963, section 41 of Act 80 of 1964, section 7 of Act 15 of 1969 and section 37 of Proclamation 222 of 1981.

20. (1) An appeal from a judgment or order of the court of a provincial or local division in any civil proceedings or against any judgment or order of such a court given on appeal shall, subject to the provisions of subsection (3), be heard by the appellate division.

(2) (a) If leave is granted under subsection (4) (b) to appeal against a judgment or order, in any civil proceedings, of a court constituted before a single judge, the court against whose judgment or order the appeal is to be made or the appellate division, according to whether leave is granted by that court or the appellate division, shall, if it is satisfied that the questions of law and of fact and the other considerations involved in the appeal are of such a nature that the appeal does not require the attention of the appellate division, direct that the appeal be heard by a full court.

(b) Any such direction by the court of a provincial or local division may be set aside by the appellate division on application made to it by any interested party within 21 days, or such longer period as may on good cause be allowed, after the direction was given.

(c) Any application to the appellate division under paragraph (b) shall be submitted by petition addressed to the Chief Justice, and the provisions of section 21 (3) (b), (c) and (d) shall *mutatis mutandis* apply in respect thereof.

(3) An appeal which is to be heard by a full court in terms of a direction under paragraph (a) of subsection (2) which has not been set aside under paragraph (b) of that subsection, shall be heard—

(a) in the case of an appeal against a judgment or order of a provincial division, by the full court of the provincial division concerned;

(b) in the case of an appeal against a judgment or order of a local division other than the Witwatersrand local division, by the full court of the provincial division which exercises concurrent jurisdiction in the area of jurisdiction of the local division concerned;

(c) in the case of an appeal against a judgment or order of the Witwatersrand local division—

- (i) by the full court of the Transvaal provincial division, unless a direction by the judge president of that provincial division under subparagraph (ii) applies to it; or
- (ii) by the full court of the said local division, if the said judge president has so directed in the particular instance.

(4) No appeal shall lie against a judgment or order of the court of a provincial or local division in any

"Appeals to Supreme Court in general.

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civil proceedings or against any judgment or order of that court given on appeal to it except—

- 5 (a) in the case of a judgment or order given in any civil proceedings by the full court of such a division on appeal to it in terms of subsection (3), with the special leave of the appellate division;
- 10 (b) in any other case, with the leave of the court against whose judgment or order the appeal is to be made or, where such leave has been refused, with the leave of the appellate division.
- 15 (5) (a) Any leave required in terms of subsection (4) for an appeal against a judgment or order of a court given on appeal to it, may be granted subject to such conditions as the court concerned or the appellate division, according to whether leave is granted by that court or the appellate division, may determine, and such conditions may include a condition that the applicant shall pay the costs of the appeal.
- 20 (b) If such leave to appeal is granted in any civil proceedings, the court granting the leave may order the applicant to find security for the costs of the appeal in such an amount as the registrar may determine, and may fix the time within which the security is to be found.
- 25 (c) If the leave to appeal required in terms of subsection (4) (b) has been refused by the court of a provincial or local division but is granted by the appellate division, the appellate division may vary any order as to costs made by the court concerned in refusing leave.
- 30 (6) The power to grant leave to appeal as contemplated in this section—
- 35 (a) shall not be limited by reason only of the value of the matter in dispute or the amount claimed or awarded in the suit or by reason only of the fact that the matter in dispute is incapable of being valued in money; and
- 40 (b) shall be subject to the provisions of any other law which specifically limits it or specifically grants, limits or excludes any right of appeal.
- 45 (7) Notwithstanding anything to the contrary in any law contained, no appeal shall lie from a judgment or order of the court of a provincial or local division in proceedings in connection with an application—
- 50 (a) by one spouse against the other for maintenance *pendente lite*;
- (b) for contribution towards the costs of a pending matrimonial action;
- 55 (c) for the interim custody of a child when a matrimonial action between its parents is pending or is about to be instituted; or
- (d) by one parent against the other for interim access to a child when a matrimonial action between the parents is pending or is about to be instituted”.

8. Section 21 of the Supreme Court Act, 1959, is hereby amended—

- 60 (a) by the substitution for subsection (2) of the following subsection:
- “ (2) The leave of the appellate division to appeal referred to in subsection (4) of section 20 may be granted by it on application made to it within 21 days, or such longer period as may on good cause be allowed, after the judgment or order referred to in paragraph (a) of that subsection against which appeal is to be made, was

Amendment of section 21 of Act 59 of 1959, as amended by section 1 of Act 86 of 1977 and section 37 of Proclamation 222 of 1981.

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given or after the court referred to in paragraph (b) of that subsection refused leave to appeal, as the case may be.”;

(b) by the substitution for subsection (3) of the following subsection:

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“(3) (a) An application to the appellate division under subsection (2) shall be submitted by petition addressed to the Chief Justice **[within twenty-one days, or such longer period as may on good cause be allowed, after the special leave of the court against whose decision the relevant appeal is to be made was refused]**.

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(b) The petition **[may be considered by the Chief Justice or by any other judge of the appellate division to whom it may be referred by the Chief Justice]** shall be considered by three judges of the appellate division designated by the Chief Justice.

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(c) The **[Chief Justice or other judge]** judges considering the petition may order that the application be argued before **[him]** them at a time and place appointed, and may, whether or not **[he has]** they have so ordered—

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(i) grant or refuse the application; or
(ii) refer the application to the appellate division for consideration, whether upon argument or otherwise,

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and where an application has been so referred to the appellate division, that division may thereupon grant or refuse the application.

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(d) The decision of the **[Chief Justice or other judge or]** majority of the judges considering the application, or the decision of the appellate division, as the case may be, to grant or refuse the application shall be final.

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(e) Notice of the date fixed for the hearing of any application under this subsection, and of the place appointed for such hearing under paragraph (c), shall be given to the applicant and the respondent by the registrar of the appellate division.”; and

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

9. Section 22 of the Supreme Court Act, 1959, is hereby amended by the substitution for the words preceding paragraph (a) of the following words:

Amendment of section 22 of Act 59 of 1959, as amended by section 8 of Act 15 of 1969.

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“The appellate division or a provincial division, or a local division having appeal jurisdiction, shall have power—”.

10. Section 24 of the Supreme Court Act, 1959, is hereby amended by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

Amendment of section 24 of Act 59 of 1959, as amended by section 9 of Act 15 of 1969.

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“The grounds upon which the proceedings of any inferior court may be brought under review before a provincial division, or before a local division having review jurisdiction, are—”.

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11. Section 302 of the Criminal Procedure Act, 1977, is hereby amended by the insertion in subsection (1) after the word “provincial” of the words “or local”.

Amendment of section 302 of Act 51 of 1977.

12. Section 303 of the Criminal Procedure Act, 1977, is hereby amended by the insertion after the word “provincial” of the words “or local”.

Amendment of section 303 of Act 51 of 1977.

13. Section 304 of the Criminal Procedure Act, 1977, is hereby amended by the insertion after the word “provincial” wherever it occurs of the words “or local”.

Amendment of section 304 of Act 51 of 1977.

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14. Section 305 of the Criminal Procedure Act, 1977, is hereby amended by the insertion after the word "provincial" of the words "or local". Amendment of section 305 of Act 51 of 1977.
15. Section 306 of the Criminal Procedure Act, 1977, is hereby amended by the insertion in subsection (1) after the word "provincial" wherever it occurs of the words "or local". Amendment of section 306 of Act 51 of 1977.
16. Section 308 of the Criminal Procedure Act, 1977, is hereby amended by the insertion in subsection (1) after the word "provincial" of the words "or local". Amendment of section 308 of Act 51 of 1977.
17. Section 309 of the Criminal Procedure Act, 1977, is hereby amended by the insertion after the word "provincial" wherever it occurs, except in paragraph (b) of subsection (1), of the words "or local". Amendment of section 309 of Act 51 of 1977.
18. Section 310 of the Criminal Procedure Act, 1977, is hereby amended by the insertion after the word "provincial" wherever it occurs of the words "or local". Amendment of section 310 of Act 51 of 1977.
19. Section 311 of the Criminal Procedure Act, 1977, is hereby amended by the insertion in subsection (1) after the word "provincial" wherever it occurs of the words "or local". Amendment of section 311 of Act 51 of 1977.
20. The following section is hereby substituted for section 315 of the Criminal Procedure Act, 1977: Substitution of section 315 of Act 51 of 1977.
- 25 "Court of appeal in respect of superior court judgments. **315. (1)** In respect of appeals and questions of law reserved in connection with criminal cases heard by a provincial or local division or a special superior court, the court of appeal shall be the Appellate Division of the Supreme Court (in this Chapter referred to as the Appellate Division), except in so far as subsection (3) otherwise provides.
- 30 (2) (a) If an application (excluding an application of a person who has been sentenced to death) for leave to appeal in a criminal case heard by a single judge of a provincial or local division (irrespective of whether he sat with or without assessors) is granted under section 316, the court or judge or judges granting the application shall, if it or he or, in the case of the judges referred to in subsection (8) of that section, they or the majority of them, is or are satisfied that the questions of law and of fact and the other considerations involved in the appeal are of such a nature that the appeal does not require the attention of the Appellate Division, direct that the appeal be heard by a full court.
- 35 (b) Any such direction by the court or a judge of a provincial or local division may be set aside by the Appellate Division on application made to it by the accused or the attorney-general or other prosecutor within 21 days, or such longer period as may on application to the Appellate Division on good cause be allowed, after the direction was given.
- 40 (c) Any application to the Appellate Division under paragraph (b) shall be submitted by petition addressed to the Chief Justice, and the provisions of section 316 (6), (7), (8) and (9) shall apply *mutatis mutandis* in respect thereof.
- 45 (3) An appeal which is to be heard by a full court in terms of a direction under paragraph (a) of subsection (2) which has not been set aside under paragraph (b) of that subsection, shall be heard—
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- (a) in the case of an appeal in a criminal case heard by a single judge of a provincial division, by the full court of the provincial division concerned;
- 5 (b) in the case of an appeal in a criminal case heard by a single judge of a local division other than the Witwatersrand Local Division, by the full court of the provincial division which exercises concurrent jurisdiction in the area of jurisdiction of the local division concerned;
- 10 (c) in the case of an appeal in a criminal case heard by a single judge of the Witwatersrand Local Division—
- (i) by the full court of the Transvaal Provincial Division, unless a direction by the judge president of that provincial division under subparagraph (ii) applies to it; or
- 15 (ii) by the full court of the said local division if the said judge president has so directed in the particular instance.
- 20 (4) An appeal in terms of this Chapter shall lie only as provided in sections 316 to 319 inclusive, and not as of right.
- (5) In this Chapter—
- 25 (a) 'court of appeal' means, in relation to an appeal which in terms of subsection (3) is heard or is to be heard by a full court, the full court concerned and, in relation to any other appeal, the Appellate Division;
- 30 (b) 'full court' means the court of a provincial division, or the Witwatersrand Local Division, sitting as a court of appeal and constituted before three judges."

21. Section 316 of the Criminal Procedure Act, 1977, is hereby amended—

- 35 (a) by the deletion in subsection (1) of the words "to the court of appeal", and the word "so" where it occurs for the last time;
- (b) by the insertion after subsection (1) of the following subsection:
- 40 "(1A) (a) No appeal shall lie against the judgment or order of a full court given on appeal to it in terms of section 315 (3), except with the special leave of the Appellate Division on application made to it by the accused or, where a full court has for the purposes of such judgment or order given a decision in favour of the accused on a question of law, on application on the grounds of such decision made to that division by the attorney-general or other prosecutor against whom the decision was given.
- 45 (b) An application to the Appellate Division under paragraph (a) shall be submitted by petition addressed to the Chief Justice within 21 days, or such extended period as may on application by petition so addressed on good cause be allowed, after the judgment or order against which appeal is to be made was given.
- 50 (c) The accused or attorney-general or other prosecutor shall, when submitting in accordance with paragraph (b) the application for special leave to appeal, at the same time give written notice that this has been done to the registrar of the court against whose decision he wishes to appeal, and thereupon such registrar shall forward a certified copy of the record prepared in terms of subsection (5) for the purposes of such judgment or order, and of the
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Amendment of section 316 of Act 51 of 1977.

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- reasons for such judgment or order, to the registrar of the Appellate Division.
- (d) The provisions of subsections (2), (7), (8) and (9) shall apply *mutatis mutandis* with reference to any application and petition contemplated in paragraph (b) of this subsection.
- (e) Upon an appeal under this subsection the provisions of section 322 shall apply *mutatis mutandis* with reference to the powers of the Appellate Division.”;
- (c) by the substitution for subsection (5) of the following subsection:
- “(5) (a) If an application under subsection (1) for leave to appeal is granted and the appeal is not under section 315 (3) to be heard by the full court of the provincial or local division from which the appeal is made, the registrar of the court granting such application shall cause notice to be given accordingly to the registrar of the court of appeal without delay, and shall cause to be transmitted to the said registrar a certified copy of the record, including copies of the evidence, whether oral or documentary, taken or admitted at the trial, and a statement of the grounds of appeal: Provided that, instead of the whole record, with the consent of the accused and the attorney-general, copies (one of which shall be certified) may be transmitted of such parts of the record as may be agreed upon by the attorney-general and the accused to be sufficient, in which event the court of appeal may nevertheless call for the production of the whole record.
- (b) If an application under subsection (1) for leave to appeal is granted and the appeal is under section 315 (3) to be heard by the full court of the provincial or local division from which the appeal is made, the registrar shall without delay prepare a certified copy of the record, including copies of the evidence, whether oral or documentary, taken or admitted at the trial, and a statement of the grounds of appeal: Provided that, instead of the whole record, with the consent of the accused and the attorney-general, copies (one of which shall be certified) may be prepared of such parts of the record as may be agreed upon by the attorney-general and the accused to be sufficient, in which event the court of appeal may nevertheless call for the production of the whole record.”;
- (d) by the substitution in subsection (6) for the words “court of appeal” wherever they occur of the words “Appellate Division”;
- (e) by the substitution for subsection (7) of the following subsection:
- “(7) The petition **[may]** shall be considered in chambers by **[the Chief Justice or by any other judge of the court of appeal to whom it may be referred by the Chief Justice]** three judges of the Appellate Division designated by the Chief Justice.”;
- (f) by the substitution for subsection (8) of the following subsection:
- “(8) The **[judge]** judges considering the petition may—

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- 5 (a) call for any further information from the judge who heard the application for condonation or the application for leave to appeal or the application for leave to call further evidence, or from the judge who presided at the trial to which any such application relates;
- (b) order that the application or applications in question or any of them be argued before **[him]** them at a time and place appointed;
- 10 (c) whether **[he has]** they have acted under paragraph (a) or (b) or not—
- (i) in the case of an application for condonation, grant or refuse the application and, if **[he grants]** the application is granted, direct that an application for leave to appeal shall be made, within the period fixed by **[him]** them, to the court or judge referred to in subsection (1) or, if **[he deems]** they deem it expedient, that an application for leave to appeal shall be submitted under subsection (6) within the period fixed by **[him]** them as if it had been refused by the court or judge referred to in subsection (1);
- 15 (ii) in the case of an application for leave to appeal or an application for leave to call further evidence, grant or refuse the application or, if **[such judge is]** they are of the opinion that the application for leave to call further evidence should have been granted, **[he]** they may, before deciding upon the application for leave to appeal, or, in the case where the court or judge referred to in subsection (1) has granted the application for leave to appeal but has refused leave to call further evidence, set aside the refusal of the said court or judge to grant leave to call further evidence and remit the matter in order that further evidence may be received in accordance with the provisions of subsection (3); or
- 20 (d) refer the matter to the **[court of appeal]** Appellate Division for consideration, whether upon argument or otherwise, and **[the court of appeal]** that division may thereupon deal with the matter in any manner referred to in paragraph (c).”; and
- 25 (g) by the substitution for subsection (9) of the following subsection:
- 30 “(9) (a) The decision of the **[court of appeal or of a judge of the court of appeal]** Appellate Division or of the judges thereof considering the petition, as the case may be, to grant or refuse any application, shall be final.
- 35 (b) For the purposes of this section any decision of the majority of the judges considering the petition, shall be deemed to be the decision of all three.”.
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55 22. Section 317 of the Criminal Procedure Act, 1977, is hereby amended by the substitution in subsection (5) for the words “court of appeal” of the words “Appellate Division”. Amendment of section 317 of Act 51 of 1977.

23. Section 318 of the Criminal Procedure Act, 1977, is hereby amended by the substitution for the words “court of appeal” Amendment of section 318 of Act 51 of 1977.
60 wherever they occur of the words “Appellate Division”.

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24. Section 319 of the Criminal Procedure Act, 1977, is hereby amended by the substitution in subsection (1) for the words "court of appeal" of the words "Appellate Division".
25. Section 323 of the Criminal Procedure Act, 1977, is hereby amended by the substitution for the words "court of appeal" wherever they occur of the words "Appellate Division".
26. No provision of this Act shall affect an appeal or any proceedings in connection therewith noted in terms of any Act before the commencement of such provision, and any such appeal shall be continued and concluded in every respect as if this Act had not been passed.
27. (1) This Act shall be called the Appeals Amendment Act, 1982, and shall come into operation on a date fixed by the State President by proclamation in the *Gazette*.
- (2) Different dates may under subsection (1) be fixed in respect of different provisions of this Act.

Amendment of section 319 of Act 51 of 1977.

Amendment of section 323 of Act 51 of 1977.

Saving with respect to pending appeals.

Short title and commencement.