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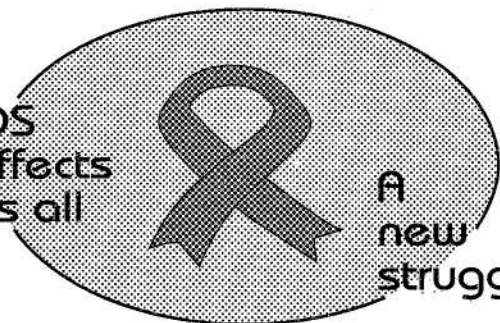
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AUGUSTUS 2000

No. 21499

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DEPARTMENT OF HEALTH

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GOVERNMENT NOTICE GOEWERMENTSKENNISGEWING

DEPARTMENT OF JUSTICE DEPARTEMENT VAN JUSTISIE

No. R. 849

25 August 2000

AMENDMENT OF THE RULES REGULATING THE CONDUCT OF THE PROCEEDINGS OF THE SEVERAL PROVINCIAL AND LOCAL DIVISIONS OF THE HIGH COURT OF SOUTH AFRICA

The Rules Board for Courts of Law has, under section 6 of the Rules Board for Courts of Law Act, 1985 (Act No. 107 of 1985), with the approval of the Minister for Justice and Constitutional Development, made the rules in the Schedule.

SCHEDULE

Definitions

1. In these rules "the Rules" means the rules regulating the conduct of the proceedings of the several provincial and local divisions of the High Court of South Africa published under Government Notice No. R. 48 of 12 January 1965, as amended by Government Notices Nos. R. 235 of 18 February 1966, R. 2004 of 15 December 1967, R. 3553 of 17 October 1969, R. 2021 of 5 November 1971, R. 1985 of 3 November 1972, R. 480 of 30 March 1973, R. 639 of 4 April 1975, R. 1816 of 8 October 1976, R. 1975 of 29 October 1976, R. 2477 of 17 December 1976, R. 2365 of 18 November 1977, R. 1546 of 28 July 1978, R. 1577 of 20 July 1979, R. 1535 of 25 July 1980, R. 2527 of 5 December 1980, R. 500 of 12 March 1982, R. 773 of 23 April 1982, R. 775 of 23 April 1982, R. 1873 of 3 September 1982, R. 2171 of 6 October 1982, R. 645 of 25 March 1983, R. 841 of 22 April 1983, R. 1077 of 20 May 1983, R. 1996 of 7 September 1984,

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GENERAL EXPLANATORY NOTE:

[] Expressions in bold type in square brackets indicate omissions from existing rules.

— Expressions underlined with a solid line indicate insertions in existing rules.

Amendment of the Index to the Rules

2. The Index to the Rules is hereby amended by -

- (a) the insertion after the reference to rule 10 of the following reference:
"10A Joinder of provincial or national executive authorities."; and
- (b) the insertion after the reference to rule 16 of the following reference:
"16A Submissions by an *amicus curiae*."

Insertion of rule 10A into the Rules

3. The Rules are hereby amended by the insertion after rule 10 of the following rule:

"10A Joinder of provincial or national executive authorities"

If in any proceedings before the court, the constitutional validity of a law is challenged, the party challenging the validity of the law shall join the provincial or national executive authorities responsible for the administration of the law in the proceedings."

Insertion of rule 16A into the Rules

4. The Rules are hereby amended by the insertion after rule 16 of the following rule:

"16A Submissions by an *amicus curiae*"

- (1)
 - (a) Any person raising a constitutional issue in an application or action shall give notice thereof to the registrar at the time of filing the relevant affidavit or pleading.
 - (b) Such notice shall contain a clear and succinct description of the constitutional issue concerned.
 - (c) The registrar shall, upon receipt of such notice, forthwith place it on a notice board designated for that purpose.
 - (d) The notice shall be stamped by the registrar to indicate the date upon which it was placed on the notice board and shall remain on the notice board for a period of 20 days.
- (2) Subject to the provisions of national legislation enacted in accordance with section 171 of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996), and these rules, any interested party in a constitutional issue raised in proceedings before a court may, with the written consent of all the parties to the proceedings, given not later than 20 days after the filing of the affidavit or pleading in which the constitutional issue was first raised, be admitted therein as *amicus curiae* upon such terms and conditions as may be agreed upon in writing by the parties.
- (3) The written consent contemplated in subrule (2) shall, within five

days of its having been obtained, be lodged with the registrar and the *amicus curiae* shall, in addition to any other provision, comply with the times agreed upon for the lodging of written argument.

- (4) The terms and conditions agreed upon in terms of subrule (2) may be amended by the court.
- (5) If the interested party contemplated in subrule (2) is unable to obtain the written consent as contemplated therein, he or she may, within five days of the expiry of the 20 - day period prescribed in that subrule, apply to the court to be admitted as an *amicus curiae* in the proceedings.
- (6) An application contemplated in subrule (5) shall -
 - (a) briefly describe the interest of the *amicus curiae* in the proceedings;
 - (b) clearly and succinctly set out the submissions which will be advanced by the *amicus curiae*, the relevance thereof to the proceedings and his or her reasons for believing that the submissions will assist the court and are different from those of the other parties; and
 - (c) be served upon all parties to the proceedings.
- (7)
 - (a) Any party to the proceedings who wishes to oppose an application to be admitted as an *amicus curiae*, shall file an answering affidavit within five days of the service of such application upon such party.
 - (b) The answering affidavit shall clearly and succinctly set out the grounds of such opposition.
- (8) The court hearing an application to be admitted as an *amicus curiae* may refuse or grant the application upon such terms and conditions as it may determine.
- (9) The court may dispense with any of the requirements of this rule if it is in the interests of justice to do so."

Substitution for rule 48 of the Rules

5. The following rule is hereby substituted for rule 48 of the Rules:

"48 Review of Taxation

- [(1) Any party dissatisfied with the ruling of the taxing master as to any item or part of an item which was objected to or disallowed *mero motu* by the taxing master, may within fifteen days after the *allocatur* require the taxing master to state a case for the decision of a judge, which case shall set out each item or part of an item together with the grounds of objection advanced at the taxation and shall embody any finding of facts by the taxing master: Provided that, save with the consent of the taxing master, no case shall be stated where the amount, or the total of the amounts, which the taxing master has disallowed or allowed, as the case may be, and which the party dissatisfied seeks to have allowed or disallowed, respectively, is less than R 50.**
- (2) The taxing master shall supply a copy of the case to each of the parties, who may within ten days after receipt thereof submit contentions in writing thereon, including grounds of objection not advanced at the taxation, in respect of any item or part of an item which was objected to before the taxing master or disallowed *mero motu* by the taxing master. Thereafter the taxing master shall frame his report and shall supply a copy thereof to each of the parties, who may within ten days after receipt thereof submit contentions in writing thereon to the taxing master, who shall forthwith lay the case together with the contentions of the parties thereon, his report and any contentions thereon before a judge, who may then decide the matter upon the case and contentions so submitted, together with any further information which he may require from the taxing master, or may decide it after hearing, if he deems fit, the parties or their advocates or attorneys in his chambers, or he may refer the case for**

decision to the court. Any further information to be supplied by the taxing master to the judge shall be supplied by him to the parties who may within fifteen days after receipt thereof submit contentions in writing thereon to the taxing master, who shall forthwith lay such further information together with any contentions of the parties thereon before the judge.

- (3) The judge or court so deciding may make such order as to the costs of the case as he or it may deem fit, including an order that the unsuccessful party shall pay to the opposing party a sum fixed by the judge or court as and for costs.]

(1) Any party dissatisfied with the ruling of the taxing master as to any item or part of an item which was objected to or disallowed *mero motu* by the taxing master, may within 15 days after the *allocatur* by notice require the taxing master to state a case for the decision of a judge.

(2) The notice referred to in subrule (1) must -

- (a) identify each item or part of an item in respect of which the decision of the taxing master is sought to be reviewed;
- (b) contain the allegation that each such item or part thereof was objected to at the taxation by the dissatisfied party, or that it was disallowed *mero motu* by the taxing master;
- (c) contain the grounds of objection relied upon by the dissatisfied party at the taxation, but not argument in support thereof; and
- (d) contain any finding of fact which the dissatisfied party contends the taxing master has made and which the dissatisfied party intends to challenge, stating the ground of such challenge, but not argument in support thereof.

(3) The taxing master must -

- (a) supply his or her stated case to each of the parties within 20 days after he or she has received a notice referred to in subrule (1); and
- (b) set out any finding of fact in the stated case.

- (4) Save with the consent of the taxing master, no case shall be stated where the amount, or the total of the amounts, which the taxing master has disallowed or allowed, as the case may be, and which the dissatisfied party seeks to have allowed or disallowed respectively, is less than R100.
- (5) (a) The parties to whom a copy of the stated case has been supplied, may within 15 days after receipt thereof make submissions in writing thereon, including grounds of objection not raised at the taxation, in respect of any item or part of any item which was objected to before the taxing master or disallowed *mero motu* by the taxing master.
- (b) The taxing master must within 20 days after receipt of the submissions referred to in paragraph (a), supply his or her report to each of the parties.
- (c) The parties may within 10 days after receipt of the report by the taxing master, make further written submissions thereon to the taxing master, who shall forthwith lay the case together with the submissions before a judge.
- (6) (a) The judge may -
- (i) decide the matter upon the merits of the case and submissions so submitted;
 - (ii) require any further information from the taxing master;
 - (iii) if he or she deems it fit, hear the parties or their advocates or attorneys in his or her chambers; or
 - (iv) refer the case for decision to the court.
- (b) Any further information to be supplied by the taxing master to the judge must also be supplied to the parties who may within 10 days after receipt thereof, make written submissions thereon to the taxing master, who shall forthwith lay such information together with any submissions of the parties thereon before the judge.
- (7) The judge or court deciding the matter may make such order as to

costs of the case as he or she or it may deem fit, including an order that the unsuccessful party pay to the successful party the costs of review in a sum fixed by the judge or court."

Commencement

6. These rules shall come into operation on 25 September 2000.

WYSIGING VAN DIE REËLS WAARBY DIE VERRIGTINGE VAN DIE VERSKILLENDE PROVINSIALE EN PLAASLIKE AFDELINGS VAN DIE HOË HOF VAN SUID-AFRIKA GEREËL WORD

Die Reëlsraad vir Geregshowe het kragtens artikel 6 van die Wet op die Reëlsraad vir Geregshowe, 1985 (Wet No. 107 van 1985), met die goedkeuring van die Minister van Justisie en Staatkundige Ontwikkeling, die reëls in die Bylae gemaak.

BYLAE

Woordomskrywing

1. In hierdie reëls beteken "die Reëls" die reëls waarby die verrigtinge van die verskillende provinsiale en plaaslike afdelings van die Hoë Hof van Suid-Afrika gereël word, afgekondig by Goewermentskennisgewing No. R. 48 van 12 Januarie 1965, soos gewysig by Goewermentskennisgewings Nos. R. 235 van 18 Februarie 1966, R. 2004 van 15 Desember 1967, R. 3553 van 17 Oktober 1969, R. 2021 van 5 November 1971, R. 1985 van 3 November 1972, R. 480 van 30 Maart 1973, R. 639 van 4 April 1975, R. 1816 van 8 Oktober 1976, R. 1975 van 29 Oktober 1976, R. 2477 van 17 Desember 1976, R. 2365 van 18 November 1977, R. 1546 van 28 Julie 1978, R. 1577 van 20 Julie 1979, R. 1535 van 25 Julie 1980, R. 2527 van 5 Desember 1980, R. 500 van 12 Maart 1982, R. 773 van 23 April 1982, R. 775 van 23 April 1982, R. 1873 van 3 September 1982, R. 2171 van 6 Oktober 1982, R. 645 van 25 Maart 1983, R. 841 van 22 April 1983, R. 1077 van 20 Mei 1983, R. 1996 van 7 September 1984, R. 2094 van 13 September 1985, R. 810 van 2 Mei 1986, R. 2164 van 2 Oktober 1987, R. 2642 van 27 November 1987, R. 1421 van 15 Julie 1988, R. 210 van 10 Februarie 1989, R. 608 van 31 Maart 1989, R. 2628 van 1 Desember 1989, R.

185 van 2 Februarie 1990, R. 1929 van 10 Augustus 1990, R. 1262 van 30 Mei 1991, R. 2410 van 30 September 1991, R. 2845 van 29 November 1991, R. 406 van 7 Februarie 1992, R. 1883 van 3 Julie 1992, R. 109 van 22 Januarie 1993, R. 960 van 28 Mei 1993, R. 974 van 1 Junie 1993, R. 1356 van 30 Julie 1993, R. 1843 van 1 Oktober 1993, R. 2365 van 10 Desember 1993, R. 2529 van 31 Desember 1993, R. 181 van 28 Januarie 1994, R. 411 van 11 Maart 1994, R. 873 van 31 Mei 1996, R. 1063 van 28 Junie 1996, R. 1557 van 20 September 1996, R. 1746 van 25 Oktober 1996, R. 2047 van 13 Desember 1996, R. 417 van 14 Maart 1997, R. 491 van 27 Maart 1997, R. 700 van 16 Mei 1997, R. 798 van 13 Junie 1997, R. 1352 van 10 Oktober 1997, R. 785 van 5 Junie 1998, R. 881 van 26 Junie 1998, R. 1024 van 7 Augustus 1998, R. 1723 van 30 Desember 1998, R. 315 van 12 Maart 1999, R. 568 van 30 April 1999, R. 1084 van 10 September 1999, R. 1299 van 29 Oktober 1999 en R. 502 van 19 Mei 2000.

ALGEMENE VERDUIDELIKENDE NOTA:

[] Uitdrukkings in vet druk tussen vierkantige hake dui skrappings uit bestaande reëls aan.

— Uitdrukkings met 'n volstreep daaronder dui invoegings in bestaande reëls aan.

Wysiging van die Inhoudsopgawe by die Reëls

2. Die Inhoudsopgawe by die Reëls word hierby gewysig -
 - (a) deur die volgende verwysing na die verwysing na reël 10 in te voeg:
"10A Voeging van provinsiale of nasionale uitvoerende gesag"; en
 - (b) deur die volgende verwysing na die verwysing na reël 16 in te voeg:
"16A Voorleggings deur 'n amicus curiae".

Invoeging van reël 10A in die Reëls

3. Die Reëls word hierby gewysig deur die volgende reël na reël 10 in te voeg:

"10A Voeging van provinsiale of nasionale uitvoerende gesag

Wanneer die grondwetlike geldigheid van 'n wet in enige verrigtinge voor die hof betwis word, moet die party wat die geldigheid van die wet betwis, die provinsiale of nasionale uitvoerende gesag wat vir die administrasie

van die wet verantwoordelik is, by die verrigtinge voeg."

Invoeging van reël 16A in die Reëls

4. Die Reëls word hierby gewysig deur die volgende reël na reël 16 in te voeg:

"16A Voorleggings deur 'n *amicus curiae*

- (1)
 - (a) Enige persoon wat 'n grondwetlike geskilpunt in 'n aansoek of aksie ophaal, moet kennis daarvan aan die griffier gee ten tye van die indiening van die betrokke eedsverklaring of pleitstuk.
 - (b) Sodanige kennisgewing moet 'n duidelike en bondige beskrywing van die betrokke grondwetlike geskilpunt bevat.
 - (c) Die griffier moet by ontvangs van sodanige kennisgewing, dit onverwyld op 'n kennisgewingbord wat vir daardie doel uitgesonder is, aanbring.
 - (d) Die kennisgewing moet deur die griffier gestempel word om die datum waarop dit op die kennisgewingbord aangebring is, aan te dui en dit moet vir 'n tydperk van 20 dae op die kennisgewingbord bly.
- (2) Behoudens die bepalings van nasionale wetgewing uitgevaardig ooreenkomstig artikel 171 van die Grondwet van die Republiek van Suid-Afrika, 1996 (Wet No. 108 van 1996), en hierdie reëls, kan enige belanghebbende by 'n grondwetlike geskilpunt wat in verrigtinge voor die hof opgehaal is, met die skriftelike toestemming van al die partye in die verrigtinge, nie later gegee nie as 20 dae na die indiening van die eedsverklaring of pleitstuk waarin die grondwetlike geskilpunt oorspronklik opgehaal is, as 'n *amicus curiae* daarin toegelaat word ooreenkomstig sodanige bepalings en voorwaardes soos skriftelik deur die partye ooreengekom.
- (3) Die skriftelike toestemming bedoel in subreël (2) moet binne vyf dae nadat dit verkry is, by die griffier ingedien word en die *amicus curiae* moet, benewens enige ander bepaling, die ooreengekome tydperke vir die indiening van skriftelike betoog nakom.

- (4) Die bepalings en voorwaardes waaroor ingevolge subreël (2) ooreengekom is, kan deur die hof gewysig word.
- (5) Indien die belanghebbende bedoel in subreël (2) nie in staat is om die skriftelike toestemming soos in daardie subreël bedoel, te verkry nie, kan hy of sy binne vyf dae na die verstryking van die tydperk van 20 dae in daardie subreël voorgeskryf, by die hof aansoek doen om as 'n *amicus curiae* in die verrigtinge toegelaat te word.
- (6) 'n Aansoek in subreël (5) beoog, moet -
- (a) die belang van die *amicus curiae* in die verrigtinge kortliks uiteensit;
 - (b) die voorleggings wat deur die *amicus curiae* gemaak sal word, die toepaslikheid daarvan op die verrigtinge en sy of haar redes waarom gemeen word dat die voorleggings die hof van hulp sal wees en verskillend van dié van die ander partye is, duidelik en bondig uiteensit; en
 - (c) aan al die partye in die verrigtinge beteken word.
- (7) (a) 'n Party in die verrigtinge wat wens om 'n aansoek om as 'n *amicus curiae* toegelaat te word, te bestry, moet 'n antwoordende eedsverklaring binne vyf dae na betekening van daardie aansoek aan sodanige party, indien.
- (b) Die antwoordende eedsverklaring moet die gronde van beswaar duidelik en bondig uiteensit.
- (8) Die hof wat 'n aansoek om as 'n *amicus curiae* toegelaat te word aanhoor, kan die aansoek weier of toestaan op sodanige bepalings en voorwaardes wat hy vasstel.
- (9) Die hof kan afstand doen van enige van die vereistes van hierdie reël indien dit in belang van die regspleging is om dit te doen."

Vervanging van reël 48 van die Reëls

5. Reël 48 van die Reëls word hierby deur die volgende reël vervang:

" 48 Hersiening van Taksasie

[(1) 'n Party wat ontevrede is met die beslissing van die takseermeester ten aansien van 'n item of deel van 'n item waarteen beswaar gemaak is of wat *mero motu* deur die takseermeester geweier is, kan binne vyftien dae na die *allocatur* eis dat die takseermeester 'n gestelde saak opstel vir beslissing deur 'n regter, waarin hy elke item of deel daarvan tesame met die gronde van beswaar wat by die taksasie geopper is, uiteensit, sowel as die feitebevindinge van die takseermeester: Met dien verstande dat behalwe met toestemming van die takseermeester geen gestelde saak opgestel word waar die bedrag of die totaal van die bedrae, hetsy weerings of toelatings, waaroor die beswaarmaker ontevrede voel, minder as R 50 is nie.

(2) Die takseermeester moet 'n afskrif van die gestelde saak aan elk van die partye verskaf en hulle mag dan binne 10 dae na ontvangs daarvan skriftelike betoog daaroor voorlê, insluitende gronde van beswaar wat nie by die taksasie geopper is nie, ten opsigte van 'n item of deel van 'n item waarteen by die takseermeester beswaar gemaak is of wat *mero motu* deur die takseermeester geweier is. Daarna stel die takseermeester sy verslag op en verskaf hy 'n afskrif daarvan aan elk van die partye, wat binne 10 dae na ontvangs daarvan 'n skriftelike betoog daaroor aan die takseermeester kan voorlê, wat onverwyld die saak tesame met die betoog van die partye daaroor, sy verslag en enige betoog daaroor voor 'n regter lê wat op grond daarvan kan beslis, of eers verdere inligting van die takseermeester kan vorder en, indien nodig, die partye of hul advokate of prokureurs in sy kamers kan aanhoor of die saak vir beslissing na die hof kan verwys. Die takseermeester verskaf enige verdere inligting wat hy aan die regter moet verskaf aan die partye, wat binne 15 dae na ontvangs daarvan 'n skriftelike betoog daaroor aan die

takseermeester kan voorlê, wat onverwyld sodanige verdere inligting tesame met enige betoog van die partye daaroor voor die regter lê.

- (3) Die regter of hof kan na goeddunke 'n kostebevel in die gestelde saak gee, insluitende 'n bevel dat die onsuksesvolle party aan die teenparty 'n deur die regter of hof vasgestelde bedrag vir koste betaal.]**

(1) 'n Party wat ontevrede is met die beslissing van die takseermeester ten opsigte van 'n item of deel van 'n item waarteen beswaar gemaak is of wat *mero motu* deur die takseermeester geweier is, kan binne 15 dae na die *allocatur* by kennisgewing eis dat die takseermeester 'n gestelde saak opstel vir beslissing deur 'n regter.

(2) Die kennisgewing in subreël (1) bedoel moet -

- (a) elke item of deel van 'n item ten opsigte waarvan die takseermeester se beslissing in hersiening geneem word, identifiseer;**
- (b) die bewering bevat dat die ontevrede party by die taksasie teen elke sodanige item beswaar gemaak het of dat dit *mero motu* deur die takseermeester geweier is;**
- (c) die gronde van beswaar waarop die ontevrede party by die taksasie gesteun het, bevat, maar nie betoog ter ondersteuning daarvan nie; en**
- (d) enige feitebevinding bevat wat die ontevrede party beweer die takseermeester gemaak het en wat die ontevrede party van voorneme is om te betwis en die gronde daarvoor, maar nie betoog ter ondersteuning daarvan nie.**

(3) Die takseermeester moet -

- (a) binne 20 dae nadat hy of sy 'n kennisgewing in subreël (1) bedoel, ontvang het, sy of haar gestelde saak aan elk van die partye verskaf; en**
- (b) enige feitebevinding in die gestelde saak uiteensit.**

(4) Behalwe met die toestemming van die takseermeester word geen

saak opgestel waar die bedrag of die totaal van die bedrae wat die takseermeester geweier of toegelaat het, na gelang van die geval, en wat die ontevrede party onderskeidelik toegelaat of geweier wil hê, minder as R100 is nie.

- (5) (a) Die partye aan wie 'n afskrif van die gestelde saak verskaf is, kan binne 15 dae na ontvangs daarvan skriftelike voorleggings daarop doen, insluitende gronde van beswaar wat nie by die taksasie geopper is nie, ten opsigte van enige item of deel van 'n item waarteen by die takseermeester beswaar gemaak is of *mero motu* deur die takseermeester geweier is.
- (b) Die takseermeester moet binne 20 dae na ontvangs van die voorleggings in paragraaf (a) bedoel, sy of haar verslag aan elk van die partye verskaf.
- (c) Die partye kan binne 10 dae na ontvangs van die takseermeester se verslag, verdere skriftelike voorleggings daarop aan die takseermeester doen, wat onverwyld die saak tesame met die voorleggings aan 'n regter moet voorlê.
- (6) (a) Die regter kan -
 - (i) die aangeleentheid beslis op die meriete van die saak en die voorleggings aldus voorgelê;
 - (ii) enige verdere inligting van die takseermeester vereis;
 - (iii) indien hy of sy dit nodig ag, die partye of hul advokate of prokureurs in sy of haar kamers aanhoor; of
 - (iv) die saak vir beslissing na die hof verwys.
- (b) Enige verdere inligting wat die takseermeester aan die regter moet verskaf, moet ook aan die partye verskaf word, wat binne 10 dae na ontvangs daarvan skriftelike voorleggings daarop aan die takseermeester kan doen, wat onverwyld sodanige inligting tesame met enige

voorleggings van die partye daaroor aan die regter moet voorlê.

- (7) Die regter of hof wat die saak aanhoor, kan na goeddunke sodanige kostebevel in die gestelde saak gee as wat hy of sy goeddunk, insluitende 'n bevel dat die onsuksesvolle party die koste van die hersiening aan die suksesvolle party betaal in 'n bedrag deur die regter of hof vasgestel."

Inwerkingtreding

6. Hierdie reëls tree op **25 September 2000** in werking.

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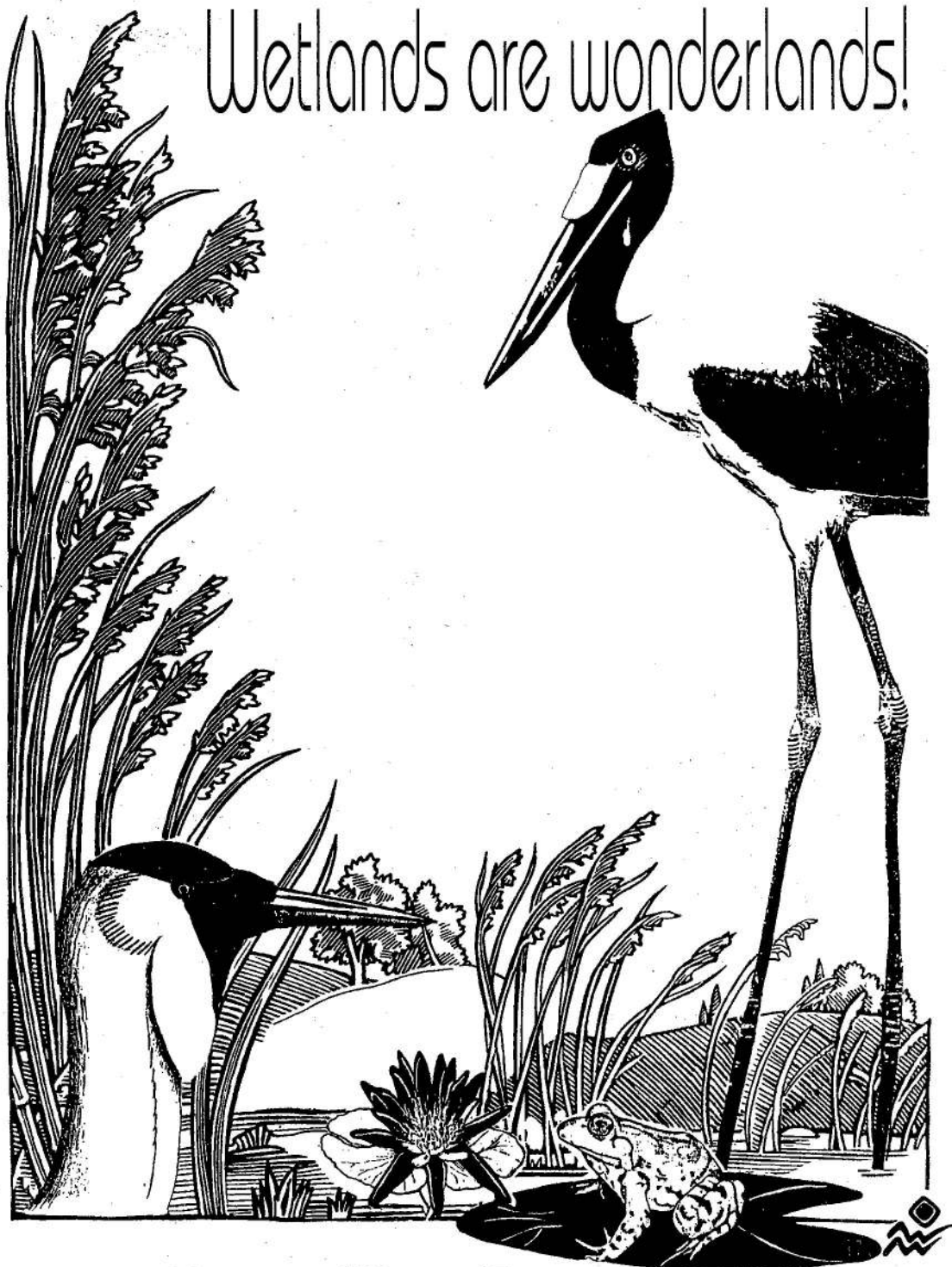
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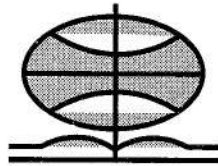
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