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VOLKSRAAD.

Die volgende Wetsontwerp, ingedien in die Volksraad, word gepubliseer ingevolge artikel 160 van die Reglement van Orde.

J. M. HUGO,
Klerk van die Volksraad.

BLADSY

VW. 63—'52: Wetsontwerp op die Hoë Hof van die Parlement 2

HOUSE OF ASSEMBLY.

The following Bill having been introduced into the House of Assembly, is published in accordance with Standing Order No. 160.

J. M. HUGO,
Clerk of the House of Assembly.

PAGE

A.B. 63—'52: High Court of Parliament Bill 3

WETSONTWERP

Om 'n Hoë Hof van die Parlement in te stel en sy regsbevoegdheid te bepaal en vir daarmee in verband staande aangeleenthede voorsiening te maak.

(Ingedien deur die MINISTER VAN BINNELANDSE SAKE.)

DIT WORD BEPAAL deur Haar Majesteit die Koningin, die Senaat en die Volksraad van die Unie van Suid-Afrika, as volg:—

Wette van die Parlement.

1. By die toepassing van hierdie Wet is enige akte wat te eniger tyd sedert die elfde dag van Desember 1931 ingevolge artikel *sewen-en-sestig* van die „Zuid-Afrika Wet, 1909”, in die kantoor van die Griffier van die Afdeling van Appèl van die Hooggeregshof van Suid-Afrika geregistreer is of wat te eniger tyd hierna aldus geregistreer mag word, uit hoofde van die feit dat dit 'n Wet van die Parlement heet te wees, en wat deur die Koning, die Senaat en die Volksraad heet bepaal te wees, hetsy dit deur 'n gesamentlike sitting van die Senaat en die Volksraad of deur die Senaat en die Volksraad in afsonderlike sittings heet aangeneem te gewees het, en ongeag die onderwerp daarvan, 'n Wet van die Parlement van die Unie.

Sekere uitsprake en bevels van die Afdeling van Appèl is aan hersiening deur die Hoë Hof van die Parlement onderworpe.

2. Ondanks andersluidende wetsbepalings, is enige uitspraak of bevel van die Afdeling van Appèl van die Hooggeregshof van Suid-Afrika, hetsy voor of na die inwerkingtreding van hierdie Wet gegee of uitgereik, waarby bedoelde Afdeling van Appèl enige bepaling van 'n in artikel *een* bedoelde Wet van die Parlement ongeldig verklaar het of verklaar of waarby dit verklaar het of verklaar dat so 'n Wet nie 'n Wet van die Parlement van die Unie is nie, of waarby dit geweier het of weier om uitvoering aan enige bepaling van so 'n Wet te gee of iemand verbied het of verbied om uitvoering daaraan te gee of so 'n bepaling op enige wyse buite werking gestel het of stel of ontken het of ontken dat dit regsrag het, is, behoudens die bepaling van hierdie Wet, onderworpe aan hersiening deur die Hoë Hof van die Parlement (hieronder die Hof genoem) wat saamgestel word soos hieronder bepaal.

Samestelling van Hof.

3. (1) Iedere senator en iedere lid van die Volksraad is 'n lid van die Hof en bly, ondanks die ontbinding van die Senaat of die Volksraad, na gelang van die geval, 'n lid van die Hof totdat 'n nuwe Senaat saamgestel is of, na gelang van die geval, 'n algemene verkiesing van lede van die Volksraad gehou is, of totdat 'n saak wat onder hersiening by die Hof is deur hom afgehandel is, watter oorkal later mag wees: Met dien verstande dat 'n lid van die Hof sy amp as lid van die Hof ontruim indien hy ophou om 'n senator of 'n lid van die Volksraad te wees anders dan ten gevolge van die ontbinding van die Senaat of die Volksraad.

(2) Die Goewerneur-generaal kan een van die lede van die Hof as die President daarvan aanstel.

(3) Die President sit by alle sittings van die Hof voor en beklee sy amp vir so lank dit die Goewerneur-generaal behaag: Met dien verstande dat die President enige ander lid van die Hof kan aanwys om gedurende sy tydelike afwesigheid van die Hof voor te sit.

(4) Vyftig van die lede van die Hof is 'n kworum vir 'n sitting van die Hof.

(5) Die Klerk van die Volksraad *s ex officio* die Griffier van die Hof: Met dien verstande, dat die President van die Hof enige ander persoon kan aanwys om gedurende die afwesigheid van die Griffier as Griffier van die Hof op te tree.

(6) Iemand wat, na die datum waarop 'n sitting van die Hof ingevolge 'n kragtens artikel *sewe* uitgevaardigde kennisgewing 'n aanvang geneem het, lid van die Hof word, is onbevoeg om in verband met die oorweging van die aansoek om hersiening van die uitspraak of bevel ten opsigte waarvan daardie sitting belê is, as lid van die Hof sitting te neem.

(7) Geen lid van die Hof is op enige grond hoegenaamd rekuseerbaar nie.

(8) Die lede van die Hof ontvang die toelaes ten opsigte van hul dienste as lede van die Hof wat die Goewerneur-generaal bepaal.

BILL

To establish a High Court of Parliament and to define its jurisdiction and to provide for matters incidental thereto.

(Introduced by the MINISTER OF THE INTERIOR.)

BE IT ENACTED by the Queen's Most Excellent Majesty, the Senate and the House of Assembly of the Union of South Africa, as follows:—

1. For the purposes of this Act every instrument which has
 5 at any time since the eleventh day of December, 1931 been
 enrolled of record in the office of the Registrar of the Appellate
 Division of the Supreme Court of South Africa in terms of
 section *sixty-seven* of the South Africa Act, 1909, or which may
 at any time hereafter be so enrolled, by virtue of the fact that it
 10 purports to be an Act of Parliament, and which purports to
 be enacted by the King, the Senate and the House of Assembly,
 whether it purports to have been passed by a joint sitting of the
 Senate and the House of Assembly or by the Senate and the
 House of Assembly in separate sittings, and irrespective of the
 15 subject matter thereof, shall be an Act of the Parliament of the
 Union. Acts of
Parliament.
2. Notwithstanding anything to the contrary in any law
 contained, any judgment or order of the Appellate Division of
 the Supreme Court of South Africa, whether given or made
 20 before or after the commencement of this Act, whereby the
 said Appellate Division declared or declares invalid any pro-
 vision of any Act of Parliament referred to in section *one*
 or whereby it declared or declares that any such Act is not an
 Act of the Parliament of the Union, or whereby it refused or
 25 refuses to give effect to any provision of such an Act or
 prohibited or prohibits any person from giving effect to any such
 provision or in any other manner rendered or renders such a
 provision inoperative or denied or denies that it has the force
 of law, shall, subject to the provisions of this Act, be subject
 30 to review by the High Court of Parliament (hereinafter referred
 to as the Court) constituted as hereinafter provided. Certain judgments
and orders of the
Appellate Division
subject to review
by High Court
of Parliament.
3. (1) Every senator and every member of the House of
 Assembly shall be a member of the Court and shall, notwith-
 standing the dissolution of the Senate or the House of Assembly,
 35 as the case may be, continue to be a member of the Court until
 a new Senate has been constituted or, as the case may be, a
 general election of members of the House of Assembly has been
 held, or until any matter under review by the Court has been
 disposed of by it, whichever may be the later: Provided that a
 40 member of the Court shall vacate his office as a member of the
 Court if he ceases to be a senator or a member of the House of
 Assembly otherwise than in consequence of the dissolution of
 the Senate or the House of Assembly. Constitution of
Court.
- (2) The Governor-General may appoint one of the members
 45 of the Court as the President thereof.
- (3) The President shall preside at all sittings of the Court
 and shall hold office during the pleasure of the Governor-
 General: Provided that the President may designate any other
 member of the Court to preside during his temporary absence
 50 from the Court.
- (4) Fifty of the members of the Court shall form a quorum
 at any sitting of the Court.
- (5) The Clerk of the House of Assembly shall be *ex officio*
 the Registrar of the Court: Provided that the President of the
 55 Court may designate any other person to act as Registrar of
 the Court during the absence of the Registrar.
- (6) A person who becomes a member of the Court after the
 date upon which a sitting of the Court in pursuance of a notice
 published under section *seven* has commenced, shall not be com-
 60 petent to take his seat as a member of the Court in connection
 with the consideration of the application for review of the judg-
 ment or order in respect of which that sitting has been convened.
- (7) No member of the Court shall be recusable on any ground
 whatsoever.
- (8) The members of the Court shall receive such allowances
 65 in respect of their services as members of the Court as the
 Governor-General may determine.

(9) 'n Lid van die Hof word nie geag 'n winsbetrekking onder die Kroon volgens artikel *drie-en-vyftig* van die „Zuid-Afrika Wet, 1909”, te beklee nie.

Plek waar Hof sittings hou.

4. Die Hof hou sy sittings in die saal van die Volksraad of so 'n ander plek as wat die Goewerneur-generaal mag bepaal. 5

Aansoek om hersiening van uitsprake of bevel van die Afdeling van Appèl.

5. (1) Een of ander Staatsminister moet—

(a) in die geval van 'n in artikel *twee* bedoelde uitspraak of bevel wat voor die datum van inwerkingtreding van hierdie Wet gegee of uitgereik is, binne ses maande vanaf bedoelde datum; of 10

(b) in die geval van 'n in artikel *twee* bedoelde uitspraak of bevel wat na die datum van inwerkingtreding van hierdie Wet gegee of uitgereik word, binne ses maande vanaf die datum van die uitspraak of bevel,

by die President van die Hof 'n aansoek indien vir die hersiening 15 deur die Hof van bedoelde uitspraak of bevel en laat 'n afskrif van die aansoek deurstuur aan die Griffier van die Afdeling van Appèl van die Hooggeregshof en aan die persone wat die partye was by die geding waarin die uitspraak of bevel gegee is.

(2) 'n Aansoek wat ingevolge sub-artikel (1) by die President 20 van die Hof ingedien word, gaan vergesel van twee afskrifte van die tersaaklike prosesstukke wat by die Afdeling van Appèl van die Hooggeregshof ingedien was en van die uitspraak of bevel van bedoelde Afdeling en van die redes wat deur die regters van bedoelde Afdeling gegee is. 25

Oorweging van aansoek om hersiening deur 'n Komitee van die Hof.

6. (1) Binne dertig dae nadat 'n aansoek om hersiening ingevolge artikel *vyf* by hom ingedien is, verwys die President van die Hof dit na 'n komitee van die Hof (hieronder die Judisiële Komitee genoem) wat saamgestel word soos hieronder bepaal. 30

(2) Die Judisiële Komitee bestaan uit tien lede van die Hof wat deur die President by kennisgewing in die *Staatskoerant* aangestel word een van wie deur die President as die voorsitter daarvan aangewys word.

(3) Vier van die lede van die Judisiële Komitee is 'n kworum. 35

(4) Die Klerk van die Senaat is *ex officio* die Sekretaris van die Judisiële Komitee: Met dien verstande dat die President van die Hof enige ander persoon kan aanwys om gedurende die afwesigheid van die Sekretaris as Sekretaris van die Judisiële Komitee op te tree. 40

(5) 'n Besluit van die meerderheid van die aanwesige lede is die beslissing van die Judisiële Komitee.

(6) Die Judisiële Komitee hou sy sittings in die Komiteekamers van die Senaat of so 'n ander plek as wat die President mag bepaal. 45

(7) (a) Iemand wat 'n party was by die geding waarin die uitspraak of bevel onder hersiening gegee of uitgereik is, kan op die wyse voorgeskryf by die kragtens artikel *nege* uitgevaardigde reëls, skriftelike vertoë met betrekking tot die aansoek om hersiening, by die 50 Sekretaris van die Judisiële Komitee vir oorweging deur die Komitee en die Hof indien.

(b) 'n Party wat ingevolge paragraaf (a) skriftelike vertoë by die Sekretaris van die Judisiële Komitee ingedien het, is geregtig om of in persoon of deur 'n advokaat 55 voor die Komitee te verskyn en kan, behoudens die kragtens artikel *nege* uitgevaardigde reëls, die Komitee toespreek oor enige aangeleentheid wat by die aansoek om hersiening ter sake is.

(8) Nadat die Judisiële Komitee die tersaaklike prosesstukke 60 en die redes wat deur die regters van die Afdeling van Appèl van die Hooggeregshof gegee is en die vertoë (indien daar is) van die persone wat die partye was by die geding waarin die uitspraak of bevel onder hersiening gegee of uitgereik is, oorweeg het, doen die Judisiële Komitee verslag aan die Hof en kan hy 65 die aanbevelings op die aansoek om hersiening doen wat hy goedgevind.

Byeenroeping van Hof.

7. So gou doenlik nadat die Judisiële Komitee sy verrigtinge afgehandel het, belê die President by kennisgewing in die *Staatskoerant* 'n sitting van die Hof vir die oorweging van die 70 verslag en aanbevelings van die Judisiële Komitee.

Regsbevoegdheid en uitsprake van die Hof.

8. (1) Die Hof kan by enige sitting wat ingevolge artikel *sewe* belê is, en nadat hy die verslag en aanbevelings van die Judisiële Komitee oorweeg het, 'n in artikel *twee* bedoelde uitspraak of bevel by besluit bevestig, wysig of tersyde stel of so 'n ander 75 bevel of so 'n bevel met betrekking tot koste uitreik as wat die Hof mag goedgevind.

(9) A member of the Court shall not be deemed to hold an office of profit under the Crown in terms of section *fifty-three* of the South Africa Act, 1909.

4. The Court shall hold its sittings in the Chamber of the House of Assembly or such other place as the Governor-General may determine. Place of sittings of Court.

5. (1) One or other Minister of State shall—
 (a) in the case of a judgment or order referred to in section *two* given or made prior to the date of commencement of this Act, within six months of the said date; or
 (b) in the case of a judgment or order referred to in section *two* given or made after the date of commencement of this Act, within six months of the date of the judgment or order, Application for review of judgments or orders of Appellate Division.

10 lodge with the President of the Court an application for the review by the Court of the said judgment or order and shall cause a copy of the application to be transmitted to the Registrar of the Appellate Division of the Supreme Court and to the persons who were the parties to the proceedings in which the judgment or order was given.

20 (2) An application lodged with the President of the Court in terms of sub-section (1) shall be accompanied by two copies of the relevant record of the proceedings which were lodged with the Appellate Division of the Supreme Court and of the judgment or order of the said Division and of the reasons given by the judges of the said Division.

6. (1) Within thirty days after an application for review has been lodged with him in terms of section *five*, the President of the Court shall refer it to a committee of the Court (hereinafter referred to as the Judicial Committee) constituted as hereinafter provided. Consideration of application for review by a Committee of the Court.

30 (2) The Judicial Committee shall consist of ten members of the Court appointed by the President by notice in the *Gazette* one of whom shall be designated by the President as the chairman thereof.

35 (3) Four of the members of the Judicial Committee shall form a quorum.

(4) The Clerk of the Senate shall be *ex officio* the Secretary of the Judicial Committee: Provided that the President of the Court may designate any other person to act as Secretary of the Judicial Committee during the absence of the Secretary.

(5) A decision of the majority of the members present shall be the decision of the Judicial Committee.

45 (6) The Judicial Committee shall hold its sittings in the Committee Rooms of the Senate or such other place as the President may determine.

(7) (a) A person who was a party to the proceedings in which the judgment or order under review was given or made, may lodge with the Secretary of the Judicial Committee, in the manner prescribed by the rules made under section *nine*, written representations relative to the application for review for the consideration of the Committee and the Court.

50 (b) A party who has in terms of paragraph (a) lodged written representations with the Secretary of the Judicial Committee, shall be entitled to appear before the Committee either in person or by Counsel and may, subject to the rules made under section *nine*, address the Committee on any matter relevant to the application for review.

60 (8) After the Judicial Committee has considered the relevant record of the proceedings and the reasons given by the judges of the Appellate Division of the Supreme Court and the representations (if any) of the persons who were the parties to the proceedings in which the judgment or order under review, was given or made, the Judicial Committee shall make a report to the Court and may make such recommendations on the application for review as it may deem fit.

7. As soon as practicable after the Judicial Committee has concluded its proceedings, the President shall by notice in the *Gazette* convene a sitting of the Court for the consideration of the report and the recommendations of the Judicial Committee. Convening of Court.

8. (1) The Court may at any sitting convened in terms of section *seven* and after consideration of the report and the recommendations of the Judicial Committee by resolution confirm, vary or set aside any judgment or order referred to in section *two* or make such other order or such order as to costs as the Court may deem fit. Jurisdiction and decisions of the Court.

(2) 'n Besluit van die meerderheid van die aanwesige lede is die beslissing van die Hof.

(3) 'n Beslissing van die Hof is finaal en bindend en word in alle opsigte ten uitvoer gelê asof dit 'n beslissing was van die Provinsiale Afdeling van die Hooggeregshof waarin die saak aanvanklik verhoor is. 5

(4) Enige kostebevel deur die Hof uitgereik, word getakseer deur die Griffier van die Provinsiale Afdeling van die Hooggeregshof waarin die saak aanvanklik verhoor is asof dit 'n kostebevel was wat deur daardie Afdeling uitgereik is en word vir alle doeleindes van die taksasie daarvan geag 'n bevel van daardie Afdeling te wees. 10

Reëls.

9. (1) Die Goewerneur-generaal kan reëls uitvaardig met betrekking tot—

(a) die orde en bestuur van die verrigtinge van die Hof 15 of 'n Judisiële Komitee; en

(b) in die algemeen, enige aangeleentheid wat hy nodig of dienstig ag om voor te skryf ten einde die Hof of 'n Judisiële Komitee in staat te stel om sy werksaamhede behoorlik en sonder onnodige versuim te verrig. 20

(2) Reëls kragtens sub-artikel (1) uitgevaardig kan enige reël wat kragtens artikel *agt-en-vyftig* van die „Zuid-Afrika Wet, 1909”, deur die Volksraad vir die orde en bestuur van sy werksaamhede en verrigtinge uitgevaardig is, of enige reël wat kragtens artikel *honderd-en-sewe* of *honderd-en-agt* van bedoelde 25 Wet deur die Hoofregter van Suid-Afrika en die regters van die Hooggeregshof vir die bestuur van die verrigtinge van die Afdeling van Appèl of van die verskeie provinsiale of plaaslike afdelings van die Hooggeregshof uitgevaardig is, met of sonder wysigings opneem. 30

Kort titel.

10. Hierdie Wet heet die Wet op die Hoë Hof van die Parlement, 1952.

(2) A decision of the majority of the members present shall be the decision of the Court.

(3) A decision of the Court shall be final and binding, and shall be executed in every respect as if it were a decision of the
5 Provincial Division of the Supreme Court in which the matter was originally heard.

(4) Any order of costs made by the Court shall be taxed by the Registrar of the Provincial Division of the Supreme Court in which the matter was originally heard as if it were an order
10 of costs made by that Division and shall for all purposes of the taxation thereof be deemed to be an order of that Division.

9. (1) The Governor-General may make rules as to— Rules.

(a) the order and conduct of the proceedings of the Court or a Judicial Committee; and

15 (b) generally, any matter which he considers it necessary or expedient to prescribe in order to enable the Court or a Judicial Committee to perform its functions properly and without unnecessary delay.

(2) Rules made under sub-section (1) may incorporate with
20 or without amendments any rule or order made by the House of Assembly under section *fifty-eight* of the South Africa Act, 1909, for the order and conduct of its business and proceedings, or any rule made by the Chief Justice of South Africa and the Judges of the Supreme Court under section *one hundred and*
25 *seven or one hundred and eight* of the said Act for the conduct of the proceedings of the Appellate Division or of the several provincial or local divisions of the Supreme Court.

10. This Act shall be called the High Court of Parliament Act, Short title.
1952.