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VAN DIE REPUBLIEK VAN SUID-AFRIKA

REPUBLIC OF SOUTH AFRICA

GOVERNMENT GAZETTE

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DEPARTEMENT VAN DIE EERSTE MINISTER

DEPARTMENT OF THE PRIME MINISTER

No. 1170.

1 Julie 1977.

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

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

No. 1170.

1 July 1977.

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

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

WET

Tot wysiging van die Wet op Landdroshowe, 1944, ten einde die werking van sekere bepalings tot siviele aangeleenthede te beperk; om sekere stukke in strafsake uit te sluit van stukke waartoe die publiek toegang het; om voorsiening te maak vir die aanstelling van 'n klerk van die hof deur die landdros van die distrik; om boetes vir sekere oortredings te verhoog; om voorsiening te maak vir bykomende omstandighede waarin 'n landdroshof en 'n hof vir 'n streekafdeling in strafsake jurisdiksie het; om die strafjurisdiksie van landdroshowe en die howe vir streekafdelings te verhoog; om die grondslag te verander waarop vergoeding aan assessore betaalbaar is; tot wysiging van artikel 21 van die Algemene Regswysigingswet, 1962, en die Wet op Terrorisme, 1967, ten einde die regsbevoegdheid van howe vir streekafdelings uit te brei tot misdrywe ingevolge daardie Wette; en om vir bykomende aangeleenthede voorsiening te maak.

(Engelse teks deur die Staatspresident geteken.)
(Goedgekeur op 20 Junie 1977.)

DAAR WORD BEPAAL deur die Staatspresident, die Senaat en die Volksraad van die Republiek van Suid-Afrika, soos volg:—

1. Artikel 5 van die Wet op Landdroshowe, 1944 (hieronder die Hoofwet genoem), word hierby gewysig—

(a) deur subartikels (2) en (3) deur die volgende subartikels te vervang:

„(2) Die hof kan, in die belang van die goeie orde of die openbare sedelikheid, beveel dat 'n siviele verhoor agter geslote deure moet plaasvind, of dat (met sulke uitsonderings as wat die hof bepaal) vroue of minderjariges of die publiek in die algemeen nie daarby aanwesig mag wees nie.

(3) Indien iemand wat by siviele verrigtinge in 'n hof aanwesig is, die rus of orde van die hof versteur, dan kan die hof so iemand laat verwyder en tot na afloop van die sitting in versekerde bewaring laat aanhou, of die hof kan, indien hy van mening is dat die orde nie anders gehandhaaf kan word nie, die hofsaal laat ontruim en die publiek laat uitsluit.”; en

(b) deur subartikel (4) te skrap.

Wysiging van artikel 5 van Wet 32 van 1944, soos gewysig deur artikel 6 van Wet 40 van 1952.

2. Artikel 7 van die Hoofwet word hierby gewysig deur in subartikel (1) die woorde wat die eerste voorbehoudsbepaling voorafgaan, deur die volgende woorde te vervang:

„(1) Behoudens die bepalings van die reëls lê die stukke van die hof, behalwe 'n stuk met betrekking waartoe 'n lasgewing ingevolge artikel 153 (2) of 154 (1) van die Strafproseswet, 1977, uitgereik is of met betrekking waartoe die bepalings van artikel 154 (2) (a) of 154 (3) van daardie Wet van toepassing is, op gepaste tye en teen betaling van

Wysiging van artikel 7 van Wet 32 van 1944, soos vervang deur artikel 1 van Wet 8 van 1967 en gewysig deur artikel 27 van Wet 70 van 1968 en artikel 14 van Wet 80 van 1971.

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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 return to be evidence. 17. The return of a messenger or of any person authorized to perform any of the functions of a 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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die gelde van tyd tot tyd deur die Minister in oorleg met die Minister van Finansies voorgeskryf, ter insae van die publiek onder toesig van die klerk van die hof, en vir hierdie doel en vir alle ander doeleindes word die stukke van 'n magistraats-hof wat te eniger tyd in die Republiek bestaan het, geag stukke te wees van die hof van die distrik waarin die plek geleë is waar sodanige hof sitting gehou het, en word sodanige stukke by die magistraatsetel van daardie distrik bewaar vir die tydperke wat die Sekretaris van Justisie van tyd tot tyd bepaal."

3. Artikel 13 van die Hoofwet word hierby gewysig deur subartikel (1) deur die volgende subartikel te vervang:

Wysiging van
artikel 13 van
Wet 32 van 1944.

„(1) Daar word vir elke hof deur die landdros van die distrik waarin die hof geleë is so 'n aantal klerke van die hof en assistent-klerke van die hof aangestel as wat nodig is.”

4. Artikel 17 van die Hoofwet word hierby deur die volgende artikel vervang:

Vervanging van
artikel 17 van
Wet 32 van 1944.

„Relaas van
bode het
bewyskrag.

17. Die relaas op 'n siviele prosesstuk, gemaak deur 'n geregsbode of deur iemand wat gemagtig is om die werksaamhede van 'n geregsbode te verrig, is *prima facie*-bewys van die verklarings wat daarin voorkom.”

5. Artikel 51 (2) van die Hoofwet word hierby gewysig deur in paragraaf (a) die woorde „vyftig rand” deur die woorde „honderd rand” te vervang.

Wysiging van
artikel 51 van
Wet 32 van 1944,
soos gewysig deur
artikel 7 van
Wet 19 van 1963
en artikel 9 van
Wet 80 van 1964.

6. Artikel 79 van die Hoofwet word hierby gewysig deur die woord „vyftig”, waar dit ook al voorkom, deur die woord „honderd” te vervang.

Wysiging van
artikel 79 van
Wet 32 van 1944,
soos gewysig deur
artikel 13 van
Wet 19 van 1963.

7. Artikel 89 van die Hoofwet word hierby gewysig deur die voorbehoudsbepaling by subartikel (2) te skrap.

Wysiging van
artikel 89 van
Wet 32 van 1944,
soos vervang deur
artikel 1 van
Wet 75 van 1959.

8. Artikel 90 van die Hoofwet word hierby gewysig—

(a) deur in paragrawe (a), (b) en (c) van subartikel (2) die woorde „twee myl” deur die woorde „vier kilometer” te vervang; en

(b) deur subartikels (8) en (9) deur die volgende subartikels te vervang:

„(8) Waar 'n beskuldigde na bewering verskeie misdrywe in verskillende distrikte binne die regsgebied van 'n prokureur-generaal gepleeg het, kan die betrokke prokureur-generaal skriftelik gelas dat strafregtelike verrigtinge ten opsigte van sodanige verskeie misdrywe in die hof van 'n bepaalde distrik binne sy regsgebied 'n aanvang neem, waarop so 'n hof regsbevoegdheid het om met betrekking tot enige sodanige misdryf op te tree asof daardie misdryf binne die regsgebied van daardie hof gepleeg is, en die hof van die streekafdeling binne wie se regsgebied die hof van daardie distrik geleë is, het insgelyks regsbevoegdheid met betrekking tot so 'n misdryf indien daardie misdryf 'n misdryf is wat deur die hof van 'n streekafdeling verhoor kan word.

(9) Ondanks die bepalings van hierdie artikel is die bepalings van artikel 125 van die Strafproseswet, 1977, *mutatis mutandis* ten aansien van die verhoor van enigiemand deur enige hof van toepassing.”

Wysiging van
artikel 90 van
Wet 32 van 1944,
soos vervang deur
artikel 20 van
Wet 40 van 1952
en gewysig deur
artikel 2 van
Wet 75 van 1959
en artikel 3 van
Wet 17 van 1969.

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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-
tion of
oath or
affirmation.

112. The oath to be taken by any witness in any civil proceedings in any court shall be administered by the officer presiding at such proceedings or by the 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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9. Artikel 92 van die Hoofwet word hierby gewysig deur paragrawe (a) en (b) van subartikel (1) deur die volgende paragrawe te vervang:

Wysiging van artikel 92 van Wet 32 van 1944, soos vervang deur artikel 30 van Wet 94 van 1974.

- „(a) met gevangenisstraf, gevangenisstraf vir 'n tydperk van hoogstens twaalf maande oplê, waar die hof nie die hof van 'n streekafdeling is nie, of van hoogstens tien jaar, waar die hof die hof van 'n streekafdeling is;
- (b) met boete, 'n boete van hoogstens duisend rand oplê, waar die hof nie die hof van 'n streekafdeling is nie, of van hoogstens tienduizend rand, waar die hof die hof van 'n streekafdeling is;”.

10. Artikel 93ter van die Hoofwet word hierby gewysig—

Wysiging van artikel 93ter van Wet 32 van 1944, soos ingevoeg deur artikel 3 van Wet 14 van 1954 en gewysig deur artikel 2 van Wet 16 van 1959.

- (a) deur subartikel (1) deur die volgende subartikel te vervang:

„(1) Die regterlike amptenaar wat by 'n verhoor voorsit, kan, voor daar enige getuienis voorgelê is, met goedkeuring van die Minister, een of twee persone, wat na sy mening in die regspleging ervare is of bedrewe is in een of ander onderwerp wat by die verhoor ter oorweging geopper mag word, aansê om hom by te staan, en om met hom as assessor of assessore by die verhoor sitting te neem.”;

- (b) deur subartikel (2) te skrap;
- (c) deur subartikel (4) deur die volgende subartikel te vervang:

„(4) Indien so 'n assessor nie 'n persoon in voltydse diens van die Staat is nie, is hy geregtig op die vergoeding wat die Minister, in oorleg met die Minister van Finansies, bepaal ten opsigte van uitgawes wat hy in verband met sy bywoning van die verhoor aangaan, en ten opsigte van sy dienste as assessor.”; en

- (d) deur subartikel (5) deur die volgende subartikel te vervang:

„(5) Die bepalings van artikel 147 van die Strafpreswetswet, 1977, is *mutatis mutandis* van toepassing waar 'n assessor in hierdie artikel vermeld, te sterwe kom of volgens die oordeel van die presiderende regterlike amptenaar onbekwaam word om verder as assessor te dien.”.

11. Artikel 112 van die Hoofwet word hierby deur die volgende artikel vervang:

Vervanging van artikel 112 van Wet 32 van 1944.

„Afneem van eed of bevestiging.

112. Die eed wat in siviele verrigtinge in 'n hof deur 'n getuie afgelê moet word, moet afgeneem word deur die amptenaar wat by daardie verrigtinge presideer of deur die klerk van die hof (of iemand wat in sy plek optree) in die teenwoordigheid van bedoelde amptenaar of, indien die getuie sy getuienis deur 'n tolk sal aflê, deur bedoelde amptenaar deur bemiddeling van die tolk of deur die tolk in die teenwoordigheid van bedoelde amptenaar.”.

12. Artikel 114 van die Hoofwet word hierby gewysig deur in subartikel (1) die uitdrukking „1955” deur die uitdrukking „1977” te vervang.

Wysiging van artikel 114 van Wet 32 van 1944, soos gewysig deur artikel 9 van Wet 16 van 1959.

13. Artikel 115A van die Hoofwet word hierby gewysig deur subartikels (2) en (3) te skrap.

Wysiging van artikel 115A van Wet 32 van 1944, soos ingevoeg deur artikel 21 van Wet 53 van 1970.

14. Artikel 21 van die Algemene Regswysigingswet, 1962, word hierby gewysig—

Wysiging van artikel 21 van Wet 76 van 1962, soos gewysig deur artikel 19 van Wet 62 van 1966.

- (a) deur paragraaf (a) van subartikel (4) te skrap;
- (b) deur paragraaf (b) van subartikel (4) deur die volgende paragraaf te vervang:

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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.

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- „(b) kan die verhoor van 'n persoon wat daarvan beskuldig word dat hy die misdryf van sabotasie gepleeg het te eniger tyd en op enige plek binne die regsgebied van die betrokke afdeling van die Hooggeregshof, of landdroshof vir 'n streekafdeling, gehou word;” en
- (c) deur paragrawe (d) en (e) van subartikel (4) te skrap.

en artikel 33 van Wet 34 van 1969.

15. Artikel 4 van die Wet op Terrorisme, 1967, word hierby gewysig deur subartikel (1) deur die volgende subartikel te vervang:

Wysiging van artikel 4 van Wet 83 van 1967.

„(1) Ondanks andersluidende wetsbepalings of gemeenregtelike bepalings, besit enige hoër hof of landdroshof vir 'n streekafdeling of prokureur-generaal in die Republiek ten opsigte van enige misdryf ingevolge hierdie Wet wat buite die regsgebied van daardie hof of prokureur-generaal gepleeg is, regsbevoegdheid asof dit binne bedoelde regsgebied gepleeg is.”

16. Artikel 5 van die Wet op Terrorisme, 1967, word hierby gewysig—

Wysiging van artikel 5 van Wet 83 van 1967, soos gewysig deur artikel 34 van Wet 34 van 1969 en artikel 15 van Wet 79 van 1976.

- (a) deur paragraaf (a) te skrap;
- (b) deur paragraaf (b) deur die volgende paragraaf te vervang:
- „(b) kan die verhoor van 'n persoon wat daarvan beskuldig word dat hy 'n misdryf ingevolge hierdie Wet gepleeg het, behoudens die bepalings van artikel 4, te eniger tyd en op enige plek binne die regsgebied van die betrokke afdeling van die Hooggeregshof van Suid-Afrika, of landdroshof vir 'n streekafdeling, plaasvind;” en
- (c) deur paragrawe (d) en (e) te skrap.

17. (1) Hierdie Wet heet die Wysigingswet op Laer Howe, 1977, en tree in werking op 'n datum wat die Staatspresident by proklamasie in die *Staatskoerant* bepaal.

Kort titel en inwerkingtreding.

(2) Die Staatspresident kan ingevolge subartikel (1) verskillende datums ten opsigte van verskillende bepalings van hierdie Wet bepaal en kan verskillende datums vir die inwerkingtreding van enige so 'n bepaling in die Republiek, die gebied en die Oostelike Caprivi Zipfel bepaal.

