



REPUBLIC OF SOUTH AFRICA

# GOVERNMENT GAZETTE

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## STAATSKOERANT

VAN DIE REPUBLIEK VAN SUID-AFRIKA

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PRESIDENT'S OFFICE

No. 1562.

21 November 1997

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

No. 65 of 1997: Divorce Courts Amendment Act, 1997

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KANTOOR VAN DIE PRESIDENT

No. 1562.

21 November 1997

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

No. 65 van 1997: Wysigingswet op Egskeidingshowe, 1997.

Act No. 65, 1997

DIVORCE COURTS AMENDMENT ACT, 1997

**GENERAL EXPLANATORY NOTE:**

[ ]

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

Words underlined with a solid line indicate insertions in existing enactments.

# ACT

To amend the Black Administration Act, 1927, Amendment Act, 1929, so as to make courts established in terms of section 10 of that Act accessible to all; to extend the operation of that Act to the entire national territory of the Republic; and to substitute the short title of that Act; and to provide for matters connected therewith.

**PREAMBLE**

The divorce courts established in terms of section 10 of the Black Administration Act, 1927, Amendment Act, 1929, are competent to hear and adjudicate upon lawsuits relating to divorce and the nullity of marriages which involve persons belonging to one particular population group.

The Bill of Rights contained in Chapter 2 of the Constitution of the Republic of South Africa, 1996, enshrines the rights of all persons in the country, and confirms the democratic values of human dignity, equality and freedom. The law as so enshrined binds the legislature, the executive authority, the judiciary and all organs of State.

The recognition of the said rights and the application of the said democratic values require that all people in the country should be dealt with on an equal basis in relation to the status, standard and accessibility of judicial institutions which have been established in the country.

*(English text signed by the President.)  
(Assented to 13 November 1997.)*

**I**n order to give effect to the said principles in respect of the matters dealt with by the said Act, the Parliament of the Republic enacts as follows:—

**Amendment of section 10 of Act 9 of 1929, as amended by section 5 of Act 42 of 1942, section 27 of Act 56 of 1949, section 26 of Act 54 of 1952, section 2 of Act 34 of 1986 and section 1 of Act 51 of 1991**

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1. Section 10 of the Black Administration Act, 1927, Amendment Act, 1929 (hereinafter referred to as the principal Act), is hereby amended—

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

“(1) (a) Notwithstanding anything to the contrary in any other law contained, the [Governor-General] President may by proclamation in 10

**ALGEMENE VERDUIDELIKENDE NOTA:**

[ ]      Woorde in vet druk tussen vierkantige hake dui skrappings uit bestaande verordenings aan.

\_\_\_\_\_      Woorde met 'n volstreep daaronder, dui invoegings in bestaande verordenings aan.

**WET**

Tot wysiging van die Swart Administrasiewet, 1927, Wysigingswet, 1929, ten einde die howe ingevolge artikel 10 van daardie Wet ingestel vir almal toeganklik te maak; om die toepassing van daardie Wet tot die hele nasionale gebied van die Republiek uit te brei; en om die kort titel van daardie Wet te vervang; en om voorsiening te maak vir aangeleenthede wat daarmee in verband staan.

**AANHEF**

Die egskeidingshowe ingestel ingevolge artikel 10 van die Swart Administrasiewet, 1927, Wysigingswet, 1929, is bevoeg om regsgedinge betreffende egskeiding en die nietigheid van huwelike waarby persone betrokke is wat aan een besondere bevolkingsgroep behoort, aan te hoor en te bereg.

Die Handves van Menseregte vervat in Hoofstuk 2 van die Grondwet van die Republiek van Suid-Afrika, 1996, verskans die regte van alle mense in die land, en bevestig die demokratiese waardes van menswaardigheid, gelykheid en vryheid. Die reg soos aldus verskans, bind die wetgewer, die uitvoerende gesag, die regbank en alle organe van die Staat.

Die erkenning van gemelde regte en die toepassing van gemelde demokratiese waardes vereis dat alle mense in die land op 'n gelyke grondslag met betrekking tot die status, standaard en toeganklikheid van geregtelike instellings wat in die land tot stand gebring is, behandel moet word.

(Engelse teks deur die President geteken.)  
(Goedgekeur op 13 November 1997.)

**T**en einde gevolg te gee aan gemelde beginsels ten opsigte van die aangeleenthede waarvoor gemelde Wet handel, bepaal die Parlement van die Republiek van Suid-Afrika, soos volg:—

Wysiging van artikel 10 van Wet 9 van 1929, soos gewysig deur artikel 5 van Wet 42 van 1942, artikel 27 van Wet 56 van 1949, artikel 26 van Wet 54 van 1952, artikel 2 van Wet 34 van 1986 en artikel 1 van Wet 51 van 1991

1. Artikel 10 van die Swart Administrasiewet, 1927, Wysigingswet, 1929 (hieronder die Hoofwet genoem), word hierby gewysig—

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

10      “(1) (a) [Nieteenstaande andersluidende bepalinge van ander wette] Ondanks enige andersluidende bepaling van enige ander wet kan

the *Gazette* establish Divorce Courts which shall **[be empowered to]** have jurisdiction to hear and determine suits **[of]** relating to the nullity of a marriage and relating to divorce **[and separation]** between **[Blacks domiciled within their respective areas of jurisdiction in respect of marriage]** persons and to decide upon any question arising therefrom **[:** 5 **Provided that the Matrimonial Causes Jurisdiction Act, 1939 (Act No. 22 of 1939), shall *mutatis mutandis* apply with reference to the powers and jurisdiction of such courts],** if the parties are or if either of the parties is—

- (i) domiciled in the area of jurisdiction of the court on the date on which the action is instituted; or 10
- (ii) ordinarily resident in the area of jurisdiction of the court on the said date and has or have been ordinarily resident in the Republic for a period of not less than one year immediately prior to that date.

(b) A Divorce Court hearing a matter referred to in paragraph (a), shall have the same jurisdiction as any High Court in relation to such a matter.”; 15

- (b) by the substitution for paragraphs (b) and (c) of subsection (3) of the following paragraphs:

“(b) A division of the court shall consist of **[a president]** one or more presiding officers, one of whom shall be the president of the division, who shall be fit and proper persons appointed by the Minister of Justice **[at which appointment the provisions of Chapter II of the Magistrates’ Courts Act, 1944 (Act No. 32 of 1944), are *mutatis mutandis* applicable in so far as those provisions relate to a magistrate of a regional division, and sittings of two or more divisions may be held simultaneously]** after consultation with the Magistrates Commission, and such persons shall for the purposes of the Magistrates Act, 1993 (Act No. 90 of 1993), be deemed to be magistrates of a regional division as contemplated in the Magistrates’ Courts Act, 1944 (Act No. 32 of 1944). 20 25 30

(c) The **[president of a division of the]** presiding officer of a court may in his or her discretion summon to his or her assistance two persons to sit and act with him or her as assessors in an advisory capacity on questions of fact.”;

- (c) by the substitution in paragraph (a) of subsection (4) for the expression “State President” of the expression “President”; 35

- (d) by the substitution for paragraph (b) of subsection (4) of the following paragraphs:

“(b) The rules **[which the State President has made under the repealed section 13(5) of the Black Administration Act, 1927 (Act No. 38 of 1927), and the substituted section 10(4) of the Black Administration Act, 1927, Amendment Act, 1929 (Act No. 9 of 1929),]** for Divorce Courts which are in force on the date of the commencement of the Divorce Courts Amendment Act, 1997, shall remain in force until they are repealed or amended under this subsection: 40 45 **Provided that any rule purporting to restrict access to the Courts on the grounds of a person’s race, shall be invalid and of no force.**

(bA) Sittings of two or more divisions of the court may be held simultaneously.”;

- (e) by the substitution for subsection (5) of the following subsection: 50

“(5) An appeal from the judgment of a Divorce Court shall lie to the **[provincial or local division of the Supreme Court]** High Court having jurisdiction.”;

- (f) by the substitution for subsection (6) of the following subsection:

“(6) **[Such]** An appeal referred to in subsection (5) shall be noted and **[prosecuted]** continued as if it were an appeal **[from]** against a judgment of a magistrate’s court in a civil matter, and all rules applicable to such lastmentioned appeal, whether in respect of the hearing, **[thereof or of]** the confirmation or setting aside of the proceedings appealed against, or 55



die [Goewerneur-generaal deur Proklamasie] President by proklamasie in die *Staatskoerant* Egskeidingshowe instel wat [bevoeg is en regsmag] regsbevoegdheid het om regsgedinge te verhoor [handelende oor] betreffende die nietigheid van 'n huwelik en betreffende egskeiding [en skeiding] tussen [Swartes gedomisileer binne hul onderskeidelike regsgebiede ten opsigte van huwelike] persone en om oor enige vraag wat daaruit voortspruit, te beslis [: Met dien verstande dat die Wet op Regsbevoegdheid in Matrimoniale Regsake, 1939 (Wet No. 22 van 1939), *mutatis mutandis* van toepassing is met betrekking tot die bevoegdheid en regsmag van bedoelde howe], indien die partye of enigeen van die partye—

- (i) op die datum waarop die geding ingestel word, in die regsgebied van die hof gedomisileer is; of
  - (ii) op daardie datum gewoonlik in die regsgebied van die hof woonagtig is en vir 'n tydperk van minstens een jaar onmiddellik voor daardie datum gewoonlik in die Republiek woonagtig was.
- (b) 'n Egskeidingshof wat 'n aangeleentheid bedoel in paragraaf (a) aanhoor, het dieselfde regsbevoegdheid as enige Hoë Hof met betrekking tot so 'n aangeleentheid.”;

- (b) deur paragrafe (b) en (c) van subartikel (3) deur die volgende paragrafe te vervang:

“(b) 'n Afdeling van die hof bestaan uit [’n voorsitter] een of meer voorsittende beamptes, waarvan een die president van die afdeling is, wat geskikte persone is wat deur die Minister van Justisie na oorleg met die Landdrostekommissie aangestel word, [by welke aanstelling die bepalinge van Hoofstuk II van die Wet op Landdroshowe, 1944 (Wet No. 32 van 1944), vir sover daardie bepalinge betrekking het op ’n landdros van ’n streekafdeling, *mutatis mutandis* van toepassing is, en sittings van twee of meer afdelings kan gelyktydig gehou word] en sodanige persone word vir die doeleindes van die Wet op Landdroshowe, 1993 (Wet No. 90 van 1993), geag landdroste van ’n streekafdeling soos beoog in die Wet op Landdroshowe, 1944 (Wet No. 32 van 1944), te wees.

(c) Die [voorsitter van ’n afdeling van die] voorsittende beampte van ’n hof kan na goeë dunks twee persone tot sy of haar hulp roep om met hom of haar as assessors in ’n adviserende hoedanigheid oor feitelike sake te sit en op te tree.”;

- (c) deur in paragraaf (a) van subartikel (4) die uitdrukking “Staatspresident” deur die uitdrukking “President” te vervang;

- (d) deur paragraaf (b) van subartikel (4) deur die volgende paragrafe te vervang:

“(b) Die reëls [wat die Staatspresident kragtens die herroepe artikel 13(5) van die Swart Administrasiewet, 1927 (Wet No. 38 van 1927), en die vervangde artikel 10(4) van die Swart Administrasiewet, 1927, Wysigingswet, 1929 (Wet No. 9 van 1929),] vir Egskeidingshowe wat van krag is op die datum van inwerkingtreding van die Wysigingswet op Egskeidingshowe, 1997, bly van krag totdat dit kragtens hierdie subartikel herroep of gewysig word: Met dien verstande dat ’n reël wat beoog om toegang tot die howe te beperk op grond van ’n persoon se ras, ongeldig is en geen regskrag het nie.

(bA) Sittings van twee of meer afdelings van die hof kan gelyktydig gehou word.”;

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

“(5) [Van] Teen die [vonnis] beslissing van ’n Egskeidingshof kan geappelleer word na die [provinsiale of plaaslike afdeling van die hooggeregshof] Hoë Hof wat [jurisdiksie] regsbevoegdheid het.”;

- (f) deur subartikel (6) deur die volgende subartikel te vervang:

“(6) ’n [Sodanige] Appèl in subartikel (5) bedoel, moet aangeteken en [vervolg] voortgesit word asof dit ’n appèl teen ’n [vonnis] beslissing van ’n [magistraathof] landdroshof in ’n siviele [aksie] geding was, en al die reëls wat op laasgenoemde appèl van toepassing is wat betref [sy] die verhoor, [of wat betref] die bekragtiging of [vernietiging] tersydestelling van die verrigtinge waarteen geappelleer

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otherwise, shall *mutatis mutandis* apply to an appeal [under] in terms of this section.”; and

(g) by the substitution for subsection (7) of the following subsection:

“(7)(a) [Nothing in this] This section [shall be construed as in any manner divesting the Supreme Court] does not divest a High Court of jurisdiction in respect of any matter [specified] referred to in subsection (1). 5

(b) Any person who has been appointed as a Family Advocate or Family Counsellor under the Mediation in Certain Divorce Matters Act, 1987 (Act No. 24 of 1987), shall be deemed to have also been appointed in respect of any Divorce Court having jurisdiction in the area for which he or she had been so appointed.” 10

**Substitution of section 11 of Act 9 of 1929**

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

**“Short title 15**

11. This Act [may be cited] shall be called the [Black Administration Act, 1927, Amendment Act, 1929] Administration Amendment Act, 1929.”

**Extension of Act 9 of 1929**

3. The application of the principal Act is hereby extended to the entire national territory of the Republic: 20

**Amendment of section 1 of Act 70 of 1979, as amended by section 1 of Act 7 of 1989**

4. Section 1 of the Divorce Act, 1979, is hereby amended by the substitution for the definition of “court” of the following definition:

“‘court’ means [the provincial or local division of the Supreme Court of South Africa] any High Court as contemplated in section 166 of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996), or a divorce court established under section 10 of the [Black Administration Act, 1927, Amendment Act, 1929 (Act No. 9 of 1929)] Administration Amendment Act, 1929 (Act No. 9 of 1929), which has jurisdiction with respect to a divorce action;” 25 30

**Short title**

5. This Act shall be called the Divorce Courts Amendment Act, 1997, and shall come into operation on a date fixed by the President by proclamation in the *Gazette*.

word, of andersins, is *mutatis mutandis* van toepassing op 'n appèl ingevolge hierdie artikel."; en

(g) deur subartikel (7) deur die volgende subartikel te vervang:

5       “(7)(a) Hierdie artikel [**word nie geag nie enige**] doen geen afbreuk [**te doen**] aan die [**regs**mag] regsbevoegdheid van [**die hooggeregshof**] 'n Hoë Hof ten opsigte van enige [**saak genoem**] aangeleentheid in subartikel (1) bedoel nie.

10       (b) 'n Persoon wat kragtens die Wet op Bemiddeling in Sekere Egskeidingsaangeleenthede, 1987 (Wet No. 24 van 1987), as 'n Gesinsadvokaat of Gesinsraadgewer aangestel is, word geag ook aangestel te wees ten opsigte van 'n Egskeidingshof wat regsbevoegdheid het in die gebied ten opsigte waarvan hy of sy aldus aangestel is.

#### Vervanging van artikel 11 van Wet 9 van 1929

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

#### 15       “Kort titel

11. Hierdie Wet [**kan aangehaal word as**] heet die [**Swart Administrasiewet, 1927, Wysigingswet, 1929**] Administrasie Wysigingswet, 1929.”.

#### Uitbreiding van Wet 9 van 1929

20    3. Die toepassing van die Hoofwet word hierby uitgebrei tot die hele nasionale gebied van die Republiek.

#### Wysiging van artikel 1 van Wet 70 van 1979, soos gewysig deur artikel 1 van Wet 7 van 1989

25    4. Artikel 1 van die Wet op Egskeiding, 1979, word hierby gewysig deur die omskrywing van “hof” deur die volgende omskrywing te vervang:

30       “‘hof’ [**die provinsiale of plaaslike afdeling van die Hooggeregshof van Suid-Afrika**] 'n Hoë Hof beoog in artikel 166 van die Grondwet van die Republiek van Suid-Afrika, 1996 (Wet No. 108 van 1996), of 'n egskeidingshof ingestel kragtens artikel 10 van die [**Swart Administrasiewet, 1927, Wysigingswet, 1929 (Wet No. 9 van 1929)**] Administrasie Wysigingswet, 1929 (Wet No. 9 van 1929), wat met betrekking tot 'n egskeidingsgeding jurisdiksie het;”.

#### Kort titel

5. Hierdie Wet heet die Wysigingswet op Egskeidingshowe, 1997, en tree in werking op 'n datum deur die President by proklamasie in die *Staatskoerant* bepaal.

