
CONTENTS

| No. | | Page No. | Gazette No. |
|-----|--|-------------|----------------|
|-----|--|-------------|----------------|

GENERAL NOTICE

Justice and Constitutional Development, Department of

General Notice

| | | | |
|-----|--|---|-------|
| 292 | Criminal Matters Amendment Act (68/1998): Directives under section 7 | 3 | 23176 |
|-----|--|---|-------|

GENERAL NOTICE

NOTICE 292 OF 2002

DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT

DIRECTIVES UNDER SECTION 7 OF THE CRIMINAL MATTERS AMENDMENT ACT, 1998 (ACT NO. 68 OF 1998)

The Legal Aid Board has under section 7 of the Criminal Matters Amendment Act, 1998 (Act No. 68 of 1998), and in consultation with the Minister for Justice and Constitutional Development, drafted the directives in the Schedule, which directives were submitted to Parliament.

SCHEDULE

DIRECTIVES UNDER SECTION 7 OF THE CRIMINAL MATTERS AMENDMENT ACT, 1998 (ACT NO. 68 OF 1998)

1. **Definitions**

Act means the Legal Aid Act, 1969 (Act 22 of 1969) as amended.

Board means the Legal Aid Board established in terms of the Act.

Criminal Procedure Act means the Criminal Procedure Act, 1997 and specifically Section 77 thereof as amended by Section 10 of Act 33 of 1986, Section 9 of Act 51 of 1991, Section 42 of Act 129 of 1993 and Section 3 (a) of Act 68 of 1998.

Director means the Chief Executive Officer of the Board or any person delegated by him/her in writing.

Guide means the 1996 Legal Aid Guide, issued by the Board pursuant to its powers in terms of Section 3 (d) of the Act, as amended by Circulars issued by the Director from time to time.

Legal aid officer means a legal aid officer or assistant legal aid officer in the employ of the Board or any person in the employ of the Department of Justice delegated to carry out the functions of a legal aid officer on a agency basis.

Rotation List means the rotation list compiled from time to time by a legal aid officer acting in terms of the Guide.

2. **Substantial injustice**

2.1 Substantial injustice will arise in respect of a person who is the accused at proceedings in terms of Section 77 (1) and/or 78 (2) of the Criminal Procedure Act if legal representation is not made available to the accused at state expense in circumstances where the accused is unable to afford the cost of his/her own legal representation in respect of the contemplated proceedings.

2.2 Whether or not the accused is unable to afford the cost of his/her own legal representation in respect of the contemplated proceedings is a matter to be determined by legal aid officers as follows:

2.2.1 The legal aid applicant completes the means test as provided in

chapter 2 of the Guide (see Form A (LA13B) in the Annexure hereto). If the legal aid applicant qualifies for legal aid in terms of the means test the legal aid applicant is indigent and is obviously unable to afford the cost of his/her own legal representation. Consequently, if the legal aid applicant qualifies in terms of the means test, the enquiry in respect of the legal aid applicant's ability to pay for the cost of his/her own legal representation need to proceed no further.

- 2.2.2 If the legal aid applicant does not qualify for legal aid on the basis of the means test, then Form B (LA13C) in the Annexure hereto, is to be completed and forwarded to the Director who will consider whether or not the legal aid applicant qualifies for the assignment of legal representation at state expense, taking into account the income, expenditure, assets and liabilities of the legal aid applicant, the nature and number of the charges involved, the number of co-accused involved, the forum in which the proceedings are to take place, the anticipated duration of such proceedings and any other factors relating to the complexity and anticipated costs of the conduct of the matter which may be drawn to the attention of the Director.

3. **Assignment of legal representation at State expense**

- 3.1 If the legal aid applicant qualifies for legal aid in terms of the means test or in terms of the decision of the Director the legal aid officer receiving the application for legal aid shall instruct a legal practitioner to represent the legal aid applicant, selecting such legal practitioner from the Rotation List in accordance with the Guide.

3.2 In the event of a prisoner declining and/or failing to apply for legal representation at state expense the presiding judicial officer concerned shall nevertheless be entitled to advise the legal aid officer of the magisterial district in which the proceedings are scheduled to take place and/or are taking place that the said presiding judicial officer considers it to be in the interest of justice that a legal practitioner be appointed to represent the said prisoner. Upon receipt of such a notification by a presiding judicial officer the legal aid officer shall act as if the prisoner had applied for and qualified for legal aid.

4. **Tariff**

The fees and disbursements allowable to legal practitioners in respect of legal services that are rendered pursuant to the provisions of Section 3 (a) of the Criminal Matters Amendment Act, 1998 (Act No 68 of 1998) shall be the same as those permitted to legal practitioners from time to time in terms of the representation of criminal accused in terms of the Guide.

ANNEXURE

FORM A

LA13B

MEANS TEST IN CONSTITUTIONAL MATTERS

| | | | | | |
|--|--|---|--|------------------|--|
| Location: | | Applicant: | | Ref No: | |
| | | | | Applicant | |
| GROSS INCOME: MONTHLY | | Salary | | R | |
| | | Plus Allowances | | +R | |
| | | Plus Subsidy | | +R | |
| | | Plus Bonuses | | +R | |
| | | Plus Interest | | +R | |
| | | Plus Rentals | | +R | |
| | | Plus Other | | +R | |
| | | TOTAL = | | R | |
| PLUS: PROPERTY | | | | | |
| IMMOVABLE: | | Reasonable Market value | | R | |
| | | Less bonds | | -R | |
| | | | | =R | |
| OTHER PROPERTY: | | Bank balances & savings | | +R | |
| | | Investments & Deposits | | +R | |
| | | Monies due to Applicant | | +R | |
| | | NETT value | | =R | |
| | | Divide by 120 | | R | |
| | | | | +R | |
| | | GROSS INCOME = | | =R | |
| DEDUCTIONS | | | | | |
| Income Tax | | | | R | |
| Unemployment Insurance | | | | +R | |
| Compulsory Group Insurance | | | | +R | |
| Medical Fund Contribution | | | | +R | |
| Pension Fund Contribution | | | | +R | |
| Rent or mortgage installment (Max R1000) | | | | +R | |
| Maintenance in terms of court order | | | | +R | |
| School fees & Contribution *** | | | | +R | |
| *** Not applicable to private schools | | TOTAL DEDUCTIONS | | - R | |
| = | | | | +R | |
| | | Calculated Income | | R | |
| | | Deduct R600 for Applicant | | =R | |
| | | SUB-TOTAL | | - R | |
| | | Deduct R180 per dependent child (if applicable) | | =R | |
| | |XR180.00= | | | |
| Dependents actually supported by the applicant | | | | | |

| | | | |
|------|-----|------|-----|
| Name | Age | Name | Age |
| Name | Age | Name | Age |
| Name | Age | Name | Age |

Complete details of my salary, property and all other income and assets are correctly set out above. All details of my expenses are correctly set out. All the deductions are actually and regularly paid by me on a monthly basis. I realise that if any of the information set out above is false or incomplete, legal aid will be suspended immediately, and I will be prosecuted for fraud.

Date: _____

Signature of application: _____

QUALFIES FOR LEGAL AID: YES/NO

Date: _____

Legal Aid officer: _____

FORM B

LA13C

**APPLICATION FOR THE PROVISION OF LEGAL REPRESENTATION AT STATE EXPENSE IN
TERMS OF SECTION 359(3)(g) OF THE CONSTITUTION**

PARTICULARS OF APPLICANT'S INCOME AND EXPENDITURE

| | |
|---|--|
| BRANCH OR MAGISTRATE'S OFFICE | |
| Reference Number | NAME OF APPLICANT |
| CHARGE(S) If more than one, record total: | |
| CASE NUMBER _____ | IN WHICH COURT WILL TRIAL TAKE PLACE: Supreme Court/ Regional Court/District Court (Delete those inapplicable) ANTICIPATED DURATION OF THE TRIAL: _____ |

| INCOME AND ASSETS | | EXPENDITURE AND LIABILITIES | |
|-------------------|-------|-----------------------------|---|
| 1. INCOME | | | |
| 1.1 Salary | R | 1. | R |
| 1.2 | R | 2. | R |
| 1.3 | R | 3. | R |
| 2. ASSETS | | 4. | R |
| 2.1 Immovable | Value | 5. | R |
| Residence | R | 6. | R |
| Other | R | 7. | R |
| 2.2 Movable | Value | TOTAL | R |
| Vehicle | R | <i>Liabilities</i> | |
| Furniture | R | 1. | R |
| Other | R | 2. | R |
| TOTAL | R | TOTAL | R |

SIGNATURE OF APPLICANT

SIGNATURE OF LEGAL AID OFFICER

DATE: _____

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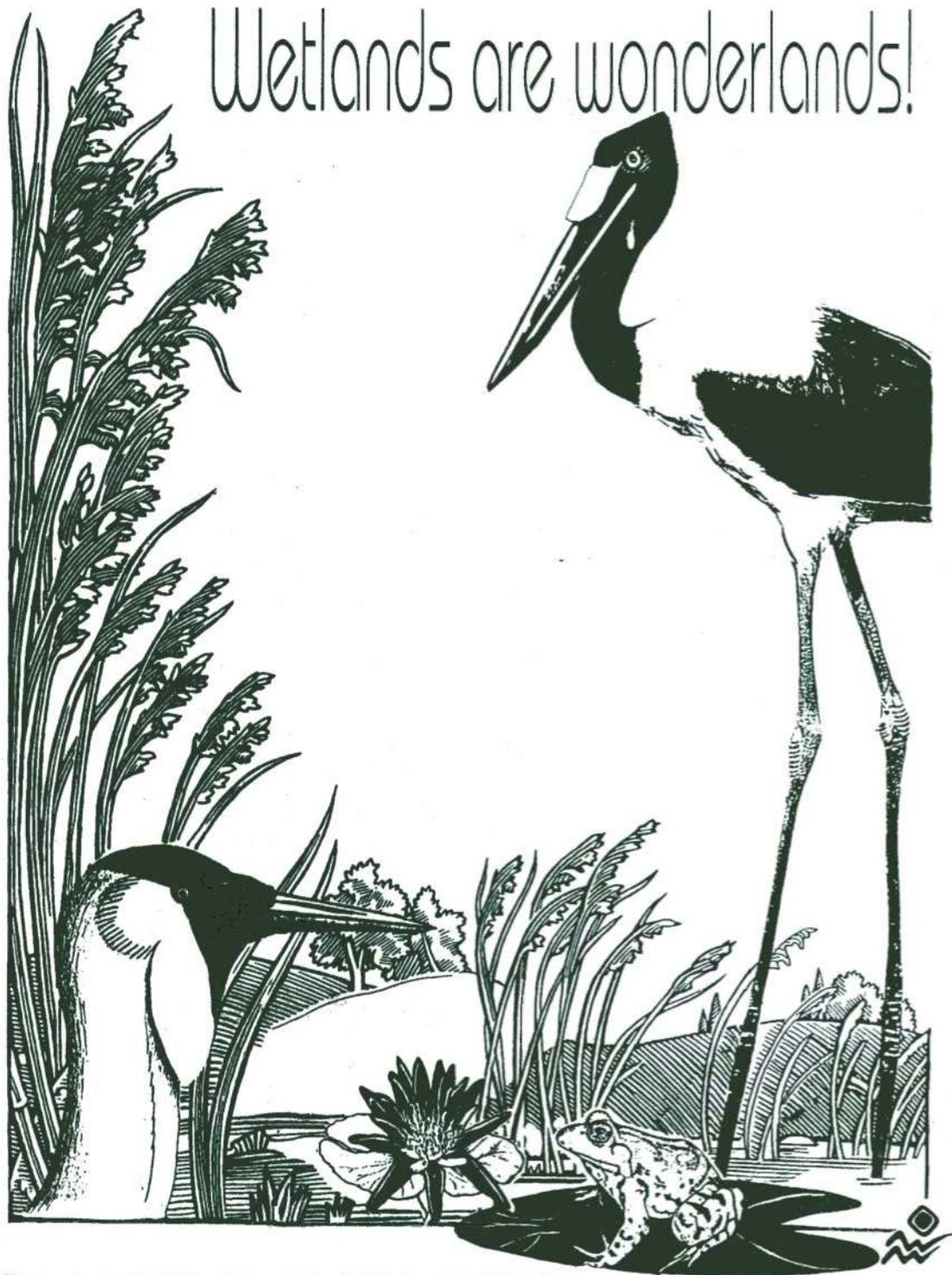
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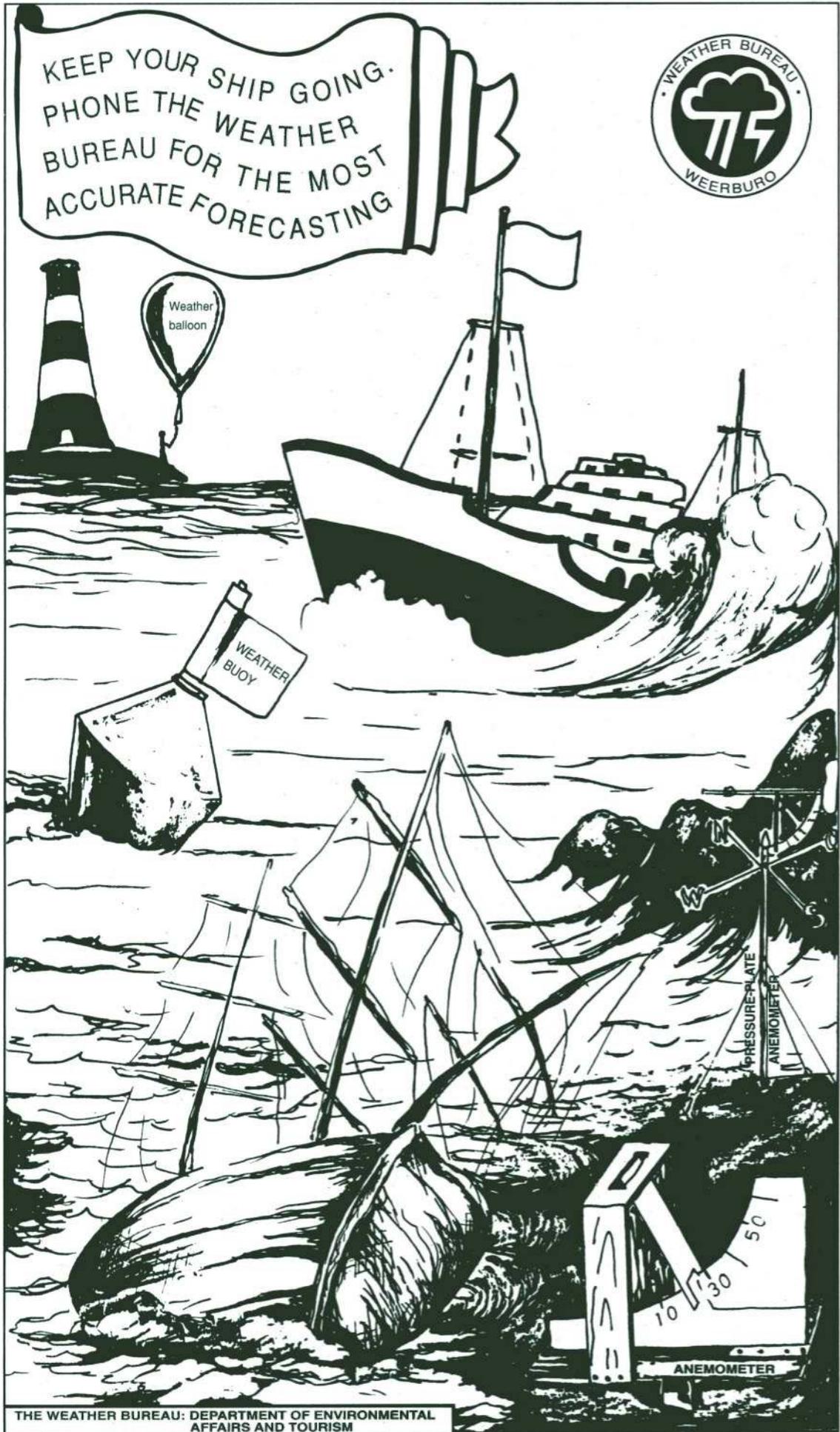
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