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No. 24112

THE PRESIDENCY

No. 1497 28 November 2002

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

No. 40 of 2002: Institution of Legal Proceedings against certain Organs of State Act, 2002.

DIE PRESIDENSIE

No. 1497 28 November 2002

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

No. 40 van 2002: Wet op die Instel van Regsgedinge teen sekere Staatsorgane, 2002.



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Act No. 40, 2002

INSTITUTION OF LEGAL PROCEEDINGS AGAINST
CERTAIN ORGANS OF STATE ACT, 2002**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.

(English text signed by the President.)
(Assented to 24 November 2002.)

ACT

To regulate the prescription and to harmonise the periods of prescription of debts for which certain organs of state are liable; to make provision for notice requirements in connection with the institution of legal proceedings against certain organs of state in respect of the recovery of debt; to repeal or amend certain laws; and to provide for matters connected therewith.

PREAMBLE

RECOGNISING THAT certain provisions of existing laws provide for—

- * different notice periods for the institution of legal proceedings against certain organs of state in respect of the recovery of debts;
- * different periods of prescription in respect of such debts;

AND RECOGNISING THAT—

- * the Prescription Act, 1969 (Act No. 68 of 1969), being the cornerstone of the laws regulating the extinction of debts by prescription, consolidated and amended the laws relating to prescription;
- * some of the provisions of existing laws which provide for different periods of prescription in respect of certain debts are inconsistent with the periods of prescription prescribed by the Prescription Act, 1969;

AND BEARING IN MIND THAT—

- * South Africa has moved from a parliamentary sovereign state to a democratic constitutional sovereign state;
- * the Bill of Rights is the cornerstone of democracy in South Africa and that the State must respect, protect, promote and fulfil the rights in the Bill of Rights;
- * section 34 of the Constitution provides that everyone has the right to have any dispute that can be resolved by the application of law decided in a fair public hearing before a court or, where appropriate, another independent and impartial tribunal or forum;
- * the right of access to courts may be limited to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom as contemplated in section 36 of the Constitution;

AND RECOGNISING the need to harmonise and create uniformity in respect of the provisions of existing laws which provide for—

ALGEMENE VERDUIDELIKENDE NOTA:

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

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

WET

Om die verjaring te reël en die verjaringstermyne te harmonieer van skulde waarvoor sekere staatsorgane aanspreeklik is; om, ten opsigte van die invordering van skuld, voorsiening te maak vir kennisgewingsvereistes in verband met die instel van regsgedinge teen sekere staatsorgane; om sekere wette te herroep of te wysig; en om voorsiening te maak vir aangeleenthede wat daarmee in verband staan.

AANHEF

MET ERKENNING DAT sekere bepalings van bestaande wette voorsiening maak vir—

- * verskillende kennisgewingstydperke vir die instel van regsgedinge teen sekere staatsorgane ten opsigte van die invordering van skulde;
- * verskillende verjaringstermyne ten opsigte van sodanige skulde;

EN MET ERKENNING DAT—

- * die Verjaringswet, 1969 (Wet No. 68 van 1969), synde die hoeksteen van die wette wat die uitwissing van skulde deur verjaring reël, die wette wat met verjaring verband hou saamgevat en gewysig het;
- * sommige van die bepalings van bestaande wette wat voorsiening maak vir verskillende verjaringstermyne ten opsigte van sekere skulde onbestaanbaar is met die verjaringstermyne deur die Verjaringswet, 1969, voorgeskryf;

EN GEDAGTIG DAARAAN DAT—

- * Suid-Afrika van 'n parlementêre soewereine staat na 'n demokratiese soewereine regstaat beweeg het;
- * die Handves van Regte die hoeksteen van demokrasie in Suid-Afrika is en dat die Staat die regte in die Handves van Regte moet eerbiedig, beskerm, bevorder en verwesenlik;
- * artikel 34 van die Grondwet bepaal dat elkeen die reg het dat 'n geskil wat deur die toepassing van die reg besleg kan word, in 'n billike openbare verhoor beslis word voor 'n hof of, waar dit gepas is, 'n ander onafhanklike en onpartydige tribunaal of forum;
- * die reg op toegang tot howe beperk kan word in die mate waarin die beperking redelik en regverdigbaar is in 'n oop en demokratiese samelewing gebaseer op menswaardigheid, gelykheid en vryheid soos beoog in artikel 36 van die Grondwet;

EN MET ERKENNING van die behoefte om harmonie en eenvormigheid te bewerkstellig ten opsigte van die bepalings van bestaande wette wat voorsiening maak vir—

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- * different notice periods for the institution of legal proceedings against certain organs of state for the recovery of a debt, by substituting those notice periods with a uniform notice period which will apply in respect of the institution of legal proceedings against certain organs of state for the recovery of a debt;
- * different periods of prescription, by making the provisions of Chapter III of the Prescription Act, 1969, applicable to all debts;

AND RECOGNISING the need to provide for transitional arrangements to ensure a smooth transition between the various existing statutory provisions regulating notice periods for the institution of legal proceedings against certain organs of state in respect of the recovery of debts and the periods of prescription of such debts, and the provisions of this Act;

AND BEARING IN MIND the limited need, for legal or practical purposes, to retain certain provisions of existing laws which provide for—

- * notice periods that differ from the envisaged uniform notice period;
- * periods of prescription that differ from the periods of prescription prescribed by Chapter III of the Prescription Act, 1969,

BE IT THEREFORE ENACTED by the Parliament of the Republic of South Africa, as follows:—

Definitions

1. (1) In this Act, unless the context indicates otherwise—
 - (i) “creditor” means a person who intends to institute legal proceedings against an organ of state for the recovery of a debt or who has instituted such proceedings, and includes such person’s tutor or curator if such person is a minor or mentally ill or under curatorship, as the case may be;
 - (ii) “Constitution” means the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996);
 - (iii) “debt” means any debt arising from any cause of action—
 - (a) which arises from delictual, contractual or any other liability, including a cause of action which relates to or arises from any—
 - (i) act performed under or in terms of any law; or
 - (ii) omission to do anything which should have been done under or in terms of any law; and
 - (b) for which an organ of state is liable for payment of damages, whether such debt became due before or after the fixed date;
 - (iv) “fixed date” means the date of commencement of this Act;
 - (v) “national department” means—
 - (a) a department mentioned in the first column of Schedule 1 to the Public Service Act, 1994 (Proclamation No. 103 of 1994), but excludes a provincial administration; or
 - (b) an organisational component mentioned in the first column of Schedule 3 to that Act;
 - (vi) “notice” means a notice contemplated in section 3(1)(a);
 - (vii) “organ of state” means—
 - (a) any national or provincial department;
 - (b) a municipality contemplated in section 151 of the Constitution;
 - (c) any functionary or institution exercising a power or performing a function in terms of the Constitution, or a provincial constitution referred to in section 142 of the Constitution;
 - (d) the South African Maritime Safety Authority established by section 2 of the South African Maritime Safety Authority Act, 1998 (Act No. 5 of 1998);
 - (e) The South African National Roads Agency Limited contemplated in section 3 of The South African National Roads Agency Limited and National Roads Act, 1998 (Act No. 7 of 1998); and
 - (f) any person for whose debt an organ of state contemplated in paragraphs (a) to (e) is liable;

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- * verskillende kennisgewingstydperke vir die instel van regsgedinge teen sekere staatsorgane vir die invordering van 'n skuld, deur daardie kennisgewingstydperke met 'n eenvormige kennisgewingstydperk te vervang wat ten opsigte van die instel van regsgedinge teen sekere staatsorgane vir die invordering van 'n skuld van toepassing sal wees;
- * verskillende verjaringstermyne, deur die bepalinge van Hoofstuk III van die Verjaringswet, 1969, op alle skulde van toepassing te maak;

EN MET ERKENNING van die behoefte om vir oorgangsreëlings voorsiening te maak om 'n egalige oorgang tussen die verskeie bestaande statutêre bepalinge wat kennisgewingstydperke vir die instel van regsgedinge teen sekere staatsorgane ten opsigte van die invordering van skulde en die verjaringstermyne van sodanige skulde reël, en die bepalinge van hierdie Wet, te verseker;

EN GEDAGTIG AAN die beperkte behoefte, vir regs- of praktiese doeleindes, om sekere bepalinge van bestaande wette te behou wat voorsiening maak vir—

- * kennisgewingstydperke wat van die beoogde eenvormige kennisgewingstydperk verskil;
- * verjaringstermyne wat verskil van die verjaringstermyne deur Hoofstuk III van die Verjaringswet, 1969, voorgeskryf,

WORD DAAR DERHALWE BEPAAL deur die Parlement van die Republiek van Suid-Afrika, soos volg:—

Woordomskrywing

1. (1) In hierdie Wet, tensy uit die samehang anders blyk, beteken—
 - (i) “Grondwet” die Grondwet van die Republiek van Suid-Afrika, 1996 (Wet No. 108 van 1996);
 - (ii) “kennisgewing” ’n kennisgewing in artikel 3(1)(a) beoog;
 - (iii) “nasionale departement”—
 - (a) ’n departement in die eerste kolom van Bylae 1 by die Staatsdienswet, 1994 (Proklamasie No. 103 van 1994), vermeld, maar nie ook ’n provinsiale administrasie nie; of
 - (b) ’n organisasiekomponent in die eerste kolom van Bylae 3 by daardie Wet vermeld;
 - (iv) “provinsiale departement”—
 - (a) ’n provinsiale administrasie in die eerste kolom van Bylae 1 by die Staatsdienswet, 1994 (Proklamasie No. 103 van 1994), vermeld; of
 - (b) ’n departement binne ’n provinsiale administrasie en in die eerste kolom van Bylae 2 by daardie Wet vermeld;
 - (v) “skuld” enige skuld wat ontstaan uit ’n skuldoorsaak—
 - (a) wat ontstaan uit deliktuele, kontraktuele of enige ander aanspreeklikheid, met inbegrip van ’n skuldoorsaak wat verband hou met of ontstaan uit enige—
 - (i) handeling kragtens of ingevolge ’n wet verrig; of
 - (ii) versuim om iets te doen wat kragtens of ingevolge ’n wet gedoen behoort te word; en
 - (b) waarvoor ’n staatsorgaan vir betaling van skadevergoeding aanspreeklik is,
 - (vi) “skuldeiser” ’n persoon wat beoog om ’n regsgeding teen ’n staatsorgaan in te stel vir die invordering van ’n skuld of wat alreeds so ’n geding ingestel het, en ook so ’n persoon se voog of kurator indien sodanige persoon ’n minderjarige of geestesongesteld of onder kuratele is, na gelang van die geval;
 - (vii) “staatsorgaan”—
 - (a) ’n nasionale of provinsiale departement;
 - (b) ’n munisipaliteit in artikel 151 van die Grondwet beoog;
 - (c) ’n funksionaris of instelling wat ingevolge die Grondwet, of ’n provinsiale grondwet in artikel 142 van die Grondwet bedoel, ’n bevoegdheid uitoefen of ’n funksie verrig;

(viii) "provincial department" means—

- (a) a provincial administration mentioned in the first column of Schedule 1 to the Public Service Act, 1994 (Proclamation No. 103 of 1994); or
- (b) a department within a provincial administration and mentioned in the first column of Schedule 2 to that Act.

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(2) This Act does not apply to any debt—

- (a) which has been extinguished by prescription before the fixed date; or
- (b) which has not been extinguished by prescription before the fixed date and in respect of which any legal proceedings were instituted before the fixed date.

(3) Any legal proceedings referred to in subsection (2)(b) must be continued and concluded as if this Act had not been passed. 10

(4) For purposes of this Act, legal proceedings are instituted by service of any process, excluding a notice, on an organ of state in which a creditor claims payment of a debt.

Part 1

Prescription of debts, and amendment or repeal of laws and transitional arrangements relating to prescription of debts 15

2. (1) The laws referred to in the Schedule are, as from the fixed date, amended or repealed to the extent set out in the third column of the Schedule.

(2) Subject to section 3 and subsections (3) and (4), a debt which became due—

- (a) before the fixed date, which has not been extinguished by prescription and in respect of which legal proceedings were not instituted before that date; or 20
- (b) after the fixed date,

will be extinguished by prescription as contemplated in Chapter III of the Prescription Act, 1969 (Act No. 68 of 1969), read with the provisions of that Act relating thereto.

(3) Subject to subsection (4), any period of prescription which was applicable to any debt referred to in subsection (2)(a), before the fixed date, will no longer be applicable to such debt after the fixed date. 25

(4) (a) The expired portion of any period of prescription applicable to a debt referred to in subsection (2)(a), must be deducted from the said period of prescription contemplated in Chapter III of the Prescription Act, 1969, read with the provisions of that Act relating thereto, and the balance of the period of prescription so arrived at will constitute the new unexpired portion of prescription for such debt, applicable as from the fixed date. 30

(b) If the unexpired portion of the period of prescription of a debt referred to in paragraph (a) will be completed within 12 months after the fixed date, that period of prescription must only be regarded as having been completed 12 months after the fixed date. 35

Part 2

Notice of intended legal proceedings to be given to organ of state

3. (1) No legal proceedings for the recovery of a debt may be instituted against an organ of state unless— 40

- (a) the creditor has given the organ of state in question notice in writing of his or her or its intention to institute the legal proceedings in question; or
- (b) the organ of state in question has consented in writing to the institution of that legal proceedings— 45
 - (i) without such notice; or
 - (ii) upon receipt of a notice which does not comply with all the requirements set out in subsection (2).

(2) A notice must—

- (a) within six months from the date on which the debt became due, be served on the organ of state in accordance with section 4(1); and 50
- (b) briefly set out—

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- (d) die Suid-Afrikaanse Maritieme Veiligheidsowerheid by artikel 2 van die Wet op die Suid-Afrikaanse Maritieme Veiligheidsowerheid, 1998 (Wet No. 5 van 1998), ingestel;
 - (e) Die Suid-Afrikaanse Nasionale Padagentskap Beperk in artikel 3 van die Wet op Die Suid-Afrikaanse Nasionale Padagentskap Beperk en op Nasionale Paaie, 1998 (Wet No. 7 van 1998), beoog; en
 - (f) enige persoon vir wie se skuld 'n staatsorgaan in paragrawe (a) tot (e) beoog, aanspreeklik is;
- (viii) "vasgestelde datum" die datum van inwerkingtreding van hierdie Wet.
- (2) Hierdie Wet is nie van toepassing nie op 'n skuld—
- (a) wat voor die vasgestelde datum deur verjaring uitgewis is; of
 - (b) wat nie voor die vasgestelde datum deur verjaring uitgewis is nie en ten opsigte waarvan 'n regsgeging voor die vasgestelde datum ingestel was.
- (3) 'n Regsgeging in subartikel (2)(b) bedoel, word voortgesit en afgehandel asof hierdie Wet nie aangeneem is nie.
- (4) Vir doeleindes van hierdie Wet word regsgeginge ingestel deur betekening van enige prosesstukke, uitgesonderd 'n kennisgewing, aan 'n staatsorgaan waarin 'n skuldeiser voldoening van 'n skuld vorder.

Deel 1

Verjaring van skulde, en wysiging of herroeping van wette en oorgangsreëlings wat met verjaring van skulde verband hou

2. (1) Die wette in die Bylae bedoel, word, vanaf die vasgestelde datum, gewysig of herroep in die mate uiteengesit in die derde kolom van die Bylae.
- (2) Behoudens artikel 3 en subartikels (3) en (4), word 'n skuld wat opeisbaar geword het—
- (a) voor die vasgestelde datum, wat nie deur verjaring uitgewis is nie en ten opsigte waarvan 'n regsgeging nie voor daardie datum ingestel was nie; of
 - (b) na die vasgestelde datum,
- deur verjaring uitgewis soos beoog in Hoofstuk III van die Verjaringswet, 1969 (Wet No. 68 van 1969), gelees met die bepalinge van daardie Wet wat daarmee verband hou.
- (3) Behoudens subartikel (4), is 'n verjaringstermyn wat voor die vasgestelde datum op 'n skuld in subartikel (2)(a) bedoel, van toepassing was, na die vasgestelde datum nie langer op sodanige skuld van toepassing nie.
- (4) (a) Die verstreke gedeelte van enige verjaringstermyn wat van toepassing is op 'n skuld in subartikel (2)(a) bedoel, moet afgetrek word van die vermelde verjaringstermyn beoog in Hoofstuk III van die Verjaringswet, 1969, gelees met die bepalinge van daardie Wet wat daarmee verband hou, en die balans van die verjaringstermyn wat so bereik word, maak die nuwe onverstreke gedeelte van verjaring vir sodanige skuld uit, wat vanaf die vasgestelde datum van toepassing is.
- (b) Indien die onverstreke gedeelte van die verjaringstermyn van 'n skuld in paragraaf (a) bedoel binne 12 maande na die vasgestelde datum voltooi sal word, word daardie verjaringstermyn slegs geag voltooi te wees 12 maande na die vasgestelde datum.

Deel 2

Kennisgewing van voorgenome regsgeging moet aan staatsorgaan gegee word

3. (1) Geen regsgeging vir die invordering van 'n skuld word teen 'n staatsorgaan ingestel nie tensy—
- (a) die skuldeiser die betrokke staatsorgaan skriftelik kennis gegee het van sy of haar voorneme om die betrokke regsgeging in te stel; of
 - (b) die betrokke staatsorgaan skriftelik toegestem het tot die instel van daardie regsgeging—
 - (i) sonder sodanige kennisgewing; of
 - (ii) by ontvangs van 'n kennisgewing wat nie aan al die vereistes in subartikel (2) uiteengesit, voldoen nie.
- (2) 'n Kennisgewing moet—
- (a) binne ses maande vanaf die datum waarop die skuld opeisbaar geword het, ooreenkomstig artikel 4(1) aan die staatsorgaan beteken word; en
 - (b) bondig uiteensit—

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- (i) the facts giving rise to the debt; and
- (ii) such particulars of such debt as are within the knowledge of the creditor.
- (3) For purposes of subsection (2)(a)—
 - (a) a debt may not be regarded as being due until the creditor has knowledge of the identity of the organ of state and of the facts giving rise to the debt, but a creditor must be regarded as having acquired such knowledge as soon as he or she or it could have acquired it by exercising reasonable care, unless the organ of state wilfully prevented him or her or it from acquiring such knowledge; and
 - (b) a debt referred to in section 2(2)(a), must be regarded as having become due on the fixed date.
- (4) (a) If an organ of state relies on a creditor's failure to serve a notice in terms of subsection (2)(a), the creditor may apply to a court having jurisdiction for condonation of such failure.
- (b) The court may grant an application referred to in paragraph (a) if it is satisfied that—
 - (i) the debt has not been extinguished by prescription;
 - (ii) good cause exists for the failure by the creditor; and
 - (iii) the organ of state was not unreasonably prejudiced by the failure.
- (c) If an application is granted in terms of paragraph (b), the court may grant leave to institute the legal proceedings in question, on such conditions regarding notice to the organ of state as the court may deem appropriate.

Service of notice

- 4. (1) A notice must be served on an organ of state by delivering it by hand or by sending it by certified mail or, subject to subsection (2), by sending it by electronic mail or by transmitting it by facsimile, in the case where the organ of state is—
 - (a) a national or provincial department mentioned in the first column of Schedule 1, 2 or 3 to the Public Service Act, 1994 (Proclamation No. 103 of 1994), to the officer who is the incumbent of the post bearing the designation mentioned in the second column of the said Schedule 1, 2 or 3 opposite the name of the relevant national or provincial department;
 - (b) a municipality, to the municipal manager appointed in terms of section 82 of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998);
 - (c) a functionary or institution referred to in paragraph (c) of the definition of "organ of state", to the chairperson, head, chief executive officer, or equivalent officer, of that functionary or institution, or where such functionary is a natural person, to that natural person;
 - (d) the South African Maritime Safety Authority, to the chief executive officer of that Authority appointed under section 22 of the South African Maritime Safety Authority Act, 1998 (Act No. 5 of 1998);
 - (e) The South African National Roads Agency Limited, to the chief executive officer of that Agency appointed under section 19 of The South African National Roads Agency Limited and National Roads Act, 1998 (Act No. 7 of 1998); or
 - (f) a person referred to in paragraph (f) of the definition of "organ of state", to that person.
- (2) If a notice has been sent by electronic mail or transmitted by facsimile as contemplated in subsection (1), the creditor must—
 - (a) take all reasonable steps to ensure that the notice has been received by the officer or person to whom it was so sent or transmitted; and
 - (b) within seven days after the date upon which that notice was so sent or transmitted, deliver by hand or send by certified mail a certified copy of that notice to the relevant officer or person referred to in subsection (1), which must be accompanied by an affidavit by the creditor or the person who sent or transmitted the notice—
 - (i) indicating the date on which and the time at which, and the electronic mail address or facsimile number to which, the notice was so sent or transmitted;

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- (i) die feite wat tot die skuld aanleiding gegee het; en
- (ii) die besonderhede van sodanige skuld waarvan die skuldeiser kennis dra.
- (3) By die toepassing van subartikel (2)(a)—
 - (a) word 'n skuld nie geag opeisbaar te wees voordat die skuldeiser kennis dra van die identiteit van die staatsorgaan en van die feite wat tot die skuld aanleiding gegee het nie, maar 'n skuldeiser word geag sodanige kennis te bekom het sodra hy of sy dit deur die uitoefening van redelike sorg kon bekom het, tensy die staatsorgaan hom of haar opsetlik verhinder het om sodanige kennis te bekom; en
 - (b) word 'n skuld in artikel 2(2)(a) bedoel, geag op die vasgestelde datum opeisbaar te geword het.
- (4) (a) Indien 'n staatsorgaan steun op 'n skuldeiser se versuim om ingevolge subartikel (2)(a) 'n kennisgewing te beteken, kan die skuldeiser by 'n hof wat regsbevoegdheid het, aansoek doen vir kondonasie van sodanige versuim.
- (b) Die hof kan 'n aansoek in paragraaf (a) bedoel, toestaan indien dit tevrede is dat—
 - (i) die skuld nie deur verjaring uitgewis is nie;
 - (ii) daar gegronde rede vir die skuldeiser se versuim bestaan; en
 - (iii) die staatsorgaan nie onredelik deur die versuim benadeel is nie.
- (c) Indien 'n aansoek ingevolge paragraaf (b) toegestaan word, kan die hof verlof tot die instel van die betrokke regsgeding verleen, op die voorwaardes met betrekking tot kennisgewing aan die staatsorgaan wat die hof goedvind.

Betekening van kennisgewing

4. (1) 'n Kennisgewing word aan 'n staatsorgaan beteken deur dit per hand af te lewer of per gesertifiseerde pos te stuur of, behoudens subartikel (2), deur dit per elektroniese pos te stuur of per faksimilee te versend, in die geval waar die staatsorgaan—
- (a) 'n nasionale of provinsiale departement vermeld in die eerste kolom van Bylae 1, 2 of 3 by die Staatsdienswet, 1994 (Proklamasie No. 103 van 1994), is, aan die beampte wat die pos bekleed wat aangedui word met die naam vermeld in die tweede kolom van gemelde Bylae 1, 2 of 3 teenoor die naam van die betrokke nasionale of provinsiale departement;
 - (b) 'n munisipaliteit is, aan die munisipale bestuurder ingevolge artikel 82 van die Wet op Plaaslike Regering: Munisipale Strukture, 1998 (Wet No. 117 van 1998), aangestel;
 - (c) 'n funksionaris of instelling bedoel in paragraaf (c) van die omskrywing van "staatsorgaan" is, aan die voorsitter, hoof, hoof-uitvoerende beampte, of rangelyke beampte, van daardie funksionaris of instelling, of waar so 'n funksionaris 'n natuurlike persoon is, aan daardie natuurlike persoon;
 - (d) die Suid-Afrikaanse Maritieme Veiligheidsowerheid is, aan die hoof-uitvoerende beampte van daardie Owerheid kragtens artikel 22 van die Wet op die Suid-Afrikaanse Maritieme Veiligheidsowerheid, 1998 (Wet No. 5 van 1998), aangestel;
 - (e) Die Suid-Afrikaanse Nasionale Padagentskap Beperk is, aan die hoof-uitvoerende beampte van daardie Agentskap kragtens artikel 19 van die Wet op Die Suid-Afrikaanse Nasionale Padagentskap Beperk en op Nasionale Paaie, 1998 (Wet No. 7 van 1998), aangestel; of
 - (f) 'n persoon bedoel in paragraaf (f) van die omskrywing van "staatsorgaan" is, aan daardie persoon.
- (2) Indien 'n kennisgewing per elektroniese pos gestuur of per faksimilee versend is soos in subartikel (1) beoog, moet die skuldeiser—
- (a) alle redelike stappe doen om te verseker dat die kennisgewing ontvang is deur die beampte of persoon aan wie dit aldus gestuur of versend was; en
 - (b) binne sewe dae na die datum waarop daardie kennisgewing aldus gestuur of versend was, 'n gewaarmerkte afskrif van daardie kennisgewing per hand aflewer of per gesertifiseerde pos stuur aan die betrokke beampte of persoon in subartikel (1) bedoel, welke afskrif vergesel moet gaan van 'n beëdigde verklaring deur die skuldeiser of die persoon wat die kennisgewing gestuur of versend het, waarin—
 - (i) die datum en die tyd waarop, en die elektroniese posadres of faksimileenommer waarheen, die kennisgewing aldus gestuur of versend was, aangedui word;

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- (ii) containing any proof that it was sent or transmitted;
- (iii) setting out the steps taken in terms of paragraph (a); and
- (iv) indicating whether confirmation of the receipt of the notice has been obtained and, if applicable, the name of the officer or person who has given that confirmation.

5

Service of process

5. (1) (a) Any process by which any legal proceedings contemplated in section 3(1) are instituted must be served in the manner prescribed by the rules of the court in question for the service of process.

(b) Despite paragraph (a), any process by which any legal proceedings contemplated in section 3(1) are instituted and in which the— 10

- (i) Minister for Intelligence is the defendant or respondent, may be served on the Director-General: National Intelligence Agency or the Director-General: South African Secret Service, as the case may be;
- (ii) Minister for Safety and Security is the defendant or respondent, may be served on— 15
 - (aa) the National Commissioner of the South African Police Service as defined in section 1 of the South African Police Service Act, 1995 (Act No. 68 of 1995); or
 - (bb) the Provincial Commissioner of the South African Police Service as defined in section 1 of the South African Police Service Act, 1995, of the province in which the cause of action arose; or
- (iii) Minister of Correctional Services is the defendant or respondent, may be served on— 25
 - (aa) the Commissioner of Correctional Services as defined in section 1 of the Correctional Services Act, 1998 (Act No. 111 of 1998); or
 - (bb) the Provincial Commissioner of Correctional Services as defined in section 1 of the Correctional Services Act, 1998, of the province in which the cause of action arose.

(2) No process referred to in subsection (1) may be served as contemplated in that subsection before the expiry of a period of 30 days after the notice, where applicable, has been served on the organ of state in terms of section 3(2)(a). 30

(3) If any process referred to in subsection (1) has been served as contemplated in that subsection before the expiry of the period referred to in subsection (2), such process must be regarded as having been served on the first day after the expiry of the said period. 35

Short title

6. This is the Institution of Legal Proceedings against certain Organs of State Act, 2002.

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- (ii) enige bewys dat dit gestuur of versend was, vervat is;
- (iii) die stappe wat ingevolge paragraaf (a) gedoen is, uiteengesit word; en
- (iv) aangedui word of bevestiging van die ontvangs van die kennisgewing verkry is en, waar toepaslik, die naam van die beampte of persoon wat die bevestiging gegee het.

5

Betekening van prosesstuk

5. (1) (a) Enige prosesstuk waardeur 'n regsgeeding in artikel 3(1) beoog, ingestel word, word beteken op die wyse deur die reëls van die betrokke hof vir die betekening van prosesstukke voorgeskryf.

(b) Ondanks paragraaf (a) kan enige prosesstuk waardeur 'n regsgeeding in subartikel 3(1) beoog, ingestel word en waarin die— 10

- (i) Minister vir Intelligensie die verweerder of respondent is, beteken word aan die Direkteur-generaal: Nasionale Intelligensie-agentskap of die Direkteur-generaal: Suid-Afrikaanse Geheimeidiens, na gelang van die geval;
- (ii) Minister vir Veiligheid en Sekuriteit die verweerder of respondent is, beteken word aan— 15

(aa) die Nasionale Kommissaris van die Suid-Afrikaanse Polisiediens soos in artikel 1 van die Wet op die Suid-Afrikaanse Polisiediens, 1995 (Wet No. 68 van 1995), omskryf; of

(bb) die Provinsiale Kommissaris van die Suid-Afrikaanse Polisiediens soos in artikel 1 van die Wet op die Suid-Afrikaanse Polisiediens, 1995, omskryf, van die provinsie waarin die skuldoorsaak ontstaan het; of 20

- (iii) Minister van Korrektiewe Dienste die verweerder of respondent is, beteken word aan—

(aa) die Kommissaris van Korrektiewe Dienste soos in artikel 1 van die Wet op Korrektiewe Dienste, 1998 (Wet No. 111 van 1998), omskryf; of 25

(bb) die Provinsiale Kommissaris van Korrektiewe Dienste soos in artikel 1 van die Wet op Korrektiewe Dienste, 1998, omskryf, van die provinsie waarin die skuldoorsaak ontstaan het.

(2) Geen prosesstuk in subartikel (1) bedoel, mag beteken word soos in daardie subartikel beoog nie voor die verstryking van 'n tydperk van 30 dae nadat die kennisgewing, waar van toepassing, ingevolge artikel 3(2)(a) aan die staatsorgaan beteken is. 30

(3) Indien enige prosesstuk in subartikel (1) bedoel, beteken is soos in daardie subartikel beoog voor die verstryking van die tydperk in subartikel (2) bedoel, word sodanige prosesstuk geag beteken te gewees het op die eerste dag na die verstryking van die vermelde tydperk. 35

Kort titel

6. Hierdie Wet is die Wet op die Instel van Regsgedinge teen sekere Staatsorgane, 2002. 40

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SCHEDULE

(Laws amended or repealed by section 2(1))

No. and year of law	Short title	Extent of amendment or repeal
Act No. 38 of 1927	Black Administration Act, 1927	The repeal of section 32A.
Act No. 57 of 1951	Merchant Shipping Act, 1951	1. The repeal of section 343. 2. The amendment of section 344 by the deletion of subsection (4).
Act No. 44 of 1957	Defence Act, 1957	The repeal of section 113.
Act No. 94 of 1970	Limitation of Legal Proceedings (Provincial and Local Authorities) Act, 1970	The repeal of the whole.
Act No. 18 of 1973	Mental Health Act, 1973	The amendment of section 68 by the deletion of subsection (4).
Act No. 90 of 1979	Education and Training Act, 1979	The repeal of section 42A.
Act No. 70 of 1988	Education Affairs Act (House of Assembly), 1988	The repeal of section 108.
Act No. 122 of 1992	Audit Arrangements Act, 1992	The repeal of section 52.
Act No. 38 of 1994	Intelligence Services Act, 1994	The repeal of section 26.
Proclamation No. 103 of 1994	Public Service Act, 1994	The repeal of section 39.
Act No. 68 of 1995	South African Police Service Act, 1995	1. The repeal of section 57. 2. The amendment of section 64I— (a) by the substitution for subsection (1) of the following subsection: “(1) Any legal proceedings against a municipal police service or member of a municipal police service [in respect of any alleged act performed under or in terms of this Act or any other law, or an alleged failure to do anything which should have been done in terms of this Act or any other law] for the recovery of a debt as defined in the <u>Institution of Legal Proceedings against certain Organs of State Act, 2002</u> , shall be instituted against the municipal council in question.”; and (b) by the deletion of subsection (2).

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BYLAE

(Wette gewysig of herroep deur artikel 2(1))

No. en jaar van wet	Kort titel	Omvang van wysiging of herroeping
Wet No. 38 van 1927	Swart Administrasie Wet, 1927	Die herroeping van artikel 32A.
Wet No. 57 van 1951	Handelskeepvaartwet, 1951	1. Die herroeping van artikel 343. 2. Die wysiging van artikel 344 deur subartikel (4) te skrap.
Wet No. 44 van 1957	Verdedigingswet, 1957	Die herroeping van artikel 113.
Wet No. 94 van 1970	Wet op Beperking van Regsgedinge (Provinsiale en Plaaslike Besture), 1970	Die herroeping van die geheel.
Wet No. 18 van 1973	Wet op Geestesgesondheid, 1973	Die wysiging van artikel 68 deur subartikel (4) te skrap.
Wet No. 90 van 1979	Wet op Onderwys en Opleiding, 1979	Die herroeping van artikel 42A.
Wet No. 70 van 1988	Wet op Onderwysaangeleenthede (Volksraad), 1988	Die herroeping van artikel 108.
Wet No. 122 van 1992	Ouditreëlingswet, 1992	Die herroeping van artikel 52.
Wet No. 38 van 1994	Wet op Intelligensiedienste, 1994	Die herroeping van artikel 26.
Proklamasie No. 103 van 1994	Staatsdienswet, 1994	Die herroeping van artikel 39.
Wet No. 68 van 1995	Wet op die Suid-Afrikaanse Polisie, 1995	1. Die herroeping van artikel 57. 2. Die wysiging van artikel 64I— (a) deur subartikel (1) deur die volgende subartikel te vervang: “(1) ’n Regsgeding teen ’n munisipale polisie diens of lid van ’n munisipale polisie diens [ten opsigte van enige beweerde handeling kragtens of ingevolge hierdie Wet of enige ander wet verrig, of ’n beweerde versuim om iets te doen wat ingevolge hierdie Wet of enige ander wet gedoen behoort te word] vir die invordering van ’n skuld soos omskryf in die Wet op die Instel van Regsgedinge teen sekere Staatsorgane, 2002, word ingestel teen die betrokke munisipale raad.”; en (b) deur subartikel (2) te skrap.

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No. and year of law	Short title	Extent of amendment or repeal
Act No. 7 of 1998	The South African National Roads Agency Limited and National Roads Act, 1998	The amendment of section 59— (a) by the deletion of subsections (1) and (2); and (b) by the substitution for subsection (3) of the following subsection: “(3) Neither the Agency nor [any person mentioned in subsection (1)(b)]— (a) <u>any of the members of the Board;</u> (b) <u>the Chief Executive Officer;</u> (c) <u>any of the other employees of the Agency acting in the performance of their duties;</u> (d) <u>any person acting on behalf of the Agency on the authority of the Board; or</u> (e) <u>any person who operates or has constructed a national road,</u> will be liable for any damage or loss suffered by any person through the use of any part of the national road other than the roadway or as a result of the closure or deviation of a national road under this Act.”.
Act No. 111 of 1998	Correctional Services Act, 1998	The repeal of section 130.
Act No. 32 of 2000	Local Government: Municipal Systems Act, 2000	The amendment of section 109 by the deletion of subsection (1).

WET OP DIE INSTEL VAN REGSGEDINGE TEEN SEKERE **Wet No. 40, 2002**
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No. en jaar van wet	Kort titel	Omvang van wysiging of herroeping
Wet No. 7 van 1998	Wet op Die Suid-Afrikaanse Nasionale Padagentskap Beperk en op Nasionale Paaie, 1998	Die wysiging van artikel 59— (a) deur subartikels (1) en (2) te skrap; en (b) deur subartikel (3) deur die volgende subartikel te vervang: “(3) Nóg die Agentskap nóg [iemand in subartikel (1)(b) genoem]— (a) <u>enige van die lede van die Raad;</u> (b) <u>die Hoof Uitvoerende Beampte;</u> (c) <u>enige van die ander werknemers van die Agentskap wat in die uitvoering van hul pligte optree;</u> (d) <u>iemand wat op gesag van die Raad namens die Agentskap optree; of</u> (e) <u>iemand wat 'n nasionale pad bedryf of dit aangelê het,</u> is vir enige skade of verlies aanspreeklik wat deur iemand gely is weens die gebruik van 'n ander deel van die nasionale pad as die ryvlak of as gevolg van die sluiting of verlegging van 'n nasionale pad kragtens hierdie Wet.”.
Wet No. 111 van 1998	Wet op Korrektiewe Dienste, 1998	Die herroeping van artikel 130.
Wet No. 32 van 2000	Wet op Plaaslike Regering: Munisipale Stelsels, 2000	Die wysiging van artikel 109 deur subartikel (1) te skrap.

