



Government Gazette Staatskoerant

REPUBLIC OF SOUTH AFRICA
REPUBLIEK VAN SUID-AFRIKA

Vol. 460 Cape Town, 31 October 2003 No. 25650
Kaapstad, Oktober

THE PRESIDENCY

No. 1607 31 October 2003

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

No. 28 of 2003: Judicial Officers (Amendment of Conditions of Service) Act, 2003.

DIE PRESIDENSIE

No. 1607 31 Oktober 2003

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

No. 28 van 2003: Wet op Regterlike Beamptes (Wysiging van Diensvoorwaardes), 2003.



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JUDICIAL OFFICERS (AMENDMENT OF
CONDITIONS OF SERVICE) ACT, 2003

[] 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 28 October 2003.)*

To amend the Magistrates' Courts Act, 1944, so as to further regulate the appointment of magistrates in an acting or temporary capacity; and

- * further regulate the remuneration of magistrates;
- * further regulate the suspension of magistrates; and
- * make provision generally for equal benefits to accrue to spouses and heterosexual or same-sex life partners of magistrates; and

- * the definition of “office-bearer” to include judges and magistrates;
- * the composition of the Independent Commission for the Remuneration of Public Office-bearers; and
- * the functions of the Independent Commission for the Remuneration of Public Office-bearers; and

- * further regulate the remuneration of judges;
- * bring the provisions relating to benefits accruing to spouses and heterosexual or same-sex life partners of judges in line with a decision of the Constitutional Court; and

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

WET OP REGTERLIKE BEAMPTES
(WYSIGING VAN DIENSVOORWAARDES), 2003

Wet No. 28, 2003

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.

(Engelse teks deur die President geteken.)
(Goedgekeur op 28 Oktober 2003.)

WET

Tot wysiging van die Wet op Landdroshowe, 1944, ten einde die aanstelling van landdroste in 'n waarnemende of tydelike hoedanigheid verder te reël; en

Tot wysiging van die Wet op Landdroste, 1993, ten einde—

- * die besoldiging van landdroste verder te reël;
- * die skorsing van landdroste verder te reël; en
- * in die algemeen voorsiening te maak dat gelyke voordele aan gades en heteroseksuele of selfde-geslag lewensmaats van landdroste toekom; en

Tot wysiging van die Wet op die Onafhanklike Kommissie vir die Besoldiging van Openbare Ampsbekleërs, 1997, ten einde—

- * die omskrywing van “ampsbekleër” uit te brei om regters en landdroste in te sluit;
- * die samestelling van die Onafhanklike Kommissie vir die Besoldiging van Openbare Ampsbekleërs uit te brei; en
- * die werksaamhede van die Onafhanklike Kommissie vir die Besoldiging van Openbare Ampsbekleërs uit te brei; en

Tot wysiging van die Wet op Openbare Finansiële Bestuur, 1999, ten einde die besoldiging van landdroste tot Bylae 5 daarvan by te voeg; en

Tot wysiging van die Wet op Besoldiging en Diensvoorwaardes van Regters, 2001, ten einde—

- * die besoldiging van regters verder te reël; en
- * die bepalinge betreffende die voordele wat aan gades en heteroseksuele of selfde-geslag lewensmaats van regters toekom in ooreenstemming met 'n beslissing van die Konstitusionele Hof te bring; en

Om voorsiening te maak vir verbandhoudende aangeleenthede.

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

Act No. 28, 2003

JUDICIAL OFFICERS (AMENDMENT OF
CONDITIONS OF SERVICE) ACT, 2003

Amendment of section 9 of Act 32 of 1944, as substituted by section 2 of Act 8 of 1967, and as amended by section 4 of Act 53 of 1970, section 8 of Act 102 of 1972, section 11 of Act 29 of 1974, section 24 of Act 94 of 1974, section 1 of Act 28 of 1981, section 2 of Act 34 of 1986, section 17 of Act 90 of 1993, section 3 of Act 104 of 1996, section 3 of Act 66 of 1998 and section 1 of Act of 62 of 2000

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1. Section 9 of the Magistrates' Courts Act, 1944, is amended by the substitution for subsections (3), (4) and (5) of the following subsections:

“(3) Subject to subsections (4) and (5), the Minister, after consultation with the head of the court concerned, may appoint any appropriately qualified and fit and proper person to act—

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(a) in the place of any magistrate, additional magistrate or assistant magistrate who is not available; or

(b) in any vacant office of magistrate; or

(c) as a magistrate in addition to any magistrate of a regional division or a district.

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(4) (a) A magistrate at the head of a regional division or a person occupying the office of chief magistrate, including an acting chief magistrate authorized thereto in writing by the Minister, may—

(i) whenever a magistrate, additional magistrate or assistant magistrate is for any reason unavailable to carry out the functions of his or her office; and

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(ii) in consultation with the Minister or an officer in the Department of Justice and Constitutional Development designated by the Minister,

temporarily appoint any competent person in the place of the magistrate concerned.

(b) An appointment in terms of paragraph (a) remains valid for the duration of the unavailability of the magistrate in question, or for a period not exceeding five consecutive court days, whichever period is the shortest.

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(c) Any person appointed in terms of paragraph (a) may—

(i) upon the expiry of the appointment in terms of paragraph (b); and

(ii) if the magistrate in whose place the appointment has been made, is still unavailable,

be reappointed once only in terms of paragraph (a) in the place of that magistrate.

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(5) (a) Any person appointed in terms of subsection (3)—

(i) holds that office for a period determined by the Minister at the time of the appointment, but the period so determined may not exceed three months; and

(ii) may be reappointed to that office in terms of subsection (3).

(b) The Minister must cause Parliament and the Magistrates Commission to be informed whenever any vacancy in the office of a magistrate has remained unfilled for a continuous period exceeding three months.

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(6) Any person appointed in terms of subsection (3) or (4) is also deemed to have been so appointed in respect of any period during which he or she is necessarily engaged in connection with the disposal of any proceedings—

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(a) in which he or she has participated as such a magistrate, including an application for leave to appeal in respect of such proceedings; and

(b) which have not yet been disposed of at the expiry of the period for which he or she was appointed.”

Amendment of section 1 of Act 90 of 1993, as amended by section 8 of Act 35 of 1996

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2. Section 1 of the Magistrates Act, 1993, is amended—

(a) by the substitution for the definition of “magistrate” of the following definition:

“ ‘magistrate’ means a judicial officer appointed under section 9 of the Magistrates' Courts Act read with section 10 of this Act [, **excluding any person occupying that office in an acting or temporary capacity and any assistant magistrate**];”

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(b) by the deletion of the definition of “salary”;

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Wysiging van artikel 9 van Wet 32 van 1944, soos vervang deur artikel 2 van Wet 8 van 1967, en gewysig deur artikel 4 van Wet 53 van 1970, artikel 8 van Wet 102 van 1972, artikel 11 van Wet 29 van 1974, artikel 24 van Wet 94 van 1974, artikel 1 van Wet 28 van 1981, artikel 2 van Wet 34 van 1986, artikel 17 van Wet 90 van 1993, artikel 3 van Wet 104 van 1996, artikel 3 van Wet 66 van 1998 en artikel 1 van Wet 62 van 2000 5

1. Artikel 9 van die Wet op Landdroshowe, 1944, word gewysig deur subartikels (3), (4) en (5) deur die volgende subartikels te vervang:

“(3) Behoudens subartikels (4) en (5), kan die Minister, na oorleg met die hoof van die betrokke hof, enige toepaslik gekwalifiseerde en geskikte en gepaste persoon aanstel om waar te neem— 10

(a) in die plek van enige landdros, addisionele landdros of assistant landdros wat nie beskikbaar is nie; of

(b) in ’n vakante amp van landdros; of

(c) as ’n landdros benewens enige landdros van ’n streekafdeling of ’n distrik. 15

(4) (a) ’n Landdros aan die hoof van ’n streekafdeling of ’n persoon wat die amp van hooflanddros beklee, met inbegrip van ’n waarnemende hooflanddros skriftelik deur die Minister daartoe gemagtig, kan—

(i) wanneer ook al ’n landdros, addisionele landdros of assistant landdros om enige rede nie beskikbaar is om die werksaamhede van sy of haar amp te verrig nie; en 20

(ii) in oorleg met die Minister of ’n beampte van die Departement van Justisie en Staatkundige Ontwikkeling skriftelik deur die Minister daartoe gemagtig, tydelik ’n bevoegde persoon in die plek van die betrokke landdros aanstel.

(b) ’n Aanstelling ingevolge paragraaf (a) bly geldig terwyl die betrokke landdros nie beskikbaar is nie, of vir ’n tydperk wat nie vyf agtereenvolgende hofdae te bowe gaan nie, watter tydperk ook al die kortste is. 25

(c) ’n Persoon wat ingevolge paragraaf (a) aangestel is, kan—

(i) by die verstryking van die aanstelling ingevolge paragraaf (b); en

(ii) indien die landdros in wie se plek die aanstelling gedoen is, steeds nie beskikbaar is nie, 30

slegs eenmalig heraangestel word ingevolge paragraaf (a) in die plek van daardie landdros.

(5) (a) ’n Persoon wat ingevolge subartikel (3) aangestel is—

(i) beklee daardie amp vir ’n tydperk wat ten tye van die aanstelling deur die Minister bepaal is, maar die tydperk aldus bepaal mag nie drie maande te bowe gaan nie; en 35

(ii) kan in daardie amp heraangestel word ingevolge subartikel (3).

(b) Die Minister moet toesien dat die Parlement en die Landdrostekommissie ingelig word wanneer ook al ’n vakature in die pos van ’n landdros vir ’n aanenlopende tydperk wat drie maande te bowe gaan nie gevul is nie. 40

(6) ’n Persoon wat ingevolge subartikel (3) of (4) aangestel is, word geag ook aldus aangestel te wees ten opsigte van enige tydperk waartydens hy of sy noodsaaklikerwys besig is in verband met die afhandeling van verrigtings—

(a) waaraan hy of sy as so ’n landdros deelgeneem het, met inbegrip van ’n aansoek om verlof tot appèl ten opsigte van daardie verrigtings; en 45

(b) wat by die verstryking van die tydperk waarvoor hy of sy aangestel is, nog nie afgehandel is nie.”.

Wysiging van artikel 1 van Wet 90 van 1993, soos gewysig deur artikel 8 van Wet 35 van 1996 50

2. Artikel 1 van die Wet op Landdroste, 1993, word gewysig—

(a) deur die omskrywing van “landdros” deur die volgende omskrywing te vervang:

“‘landdros’ ’n regterlike beampte kragtens artikel 9 van die Wet op Landdroshowe saamgelees met artikel 10 van hierdie Wet aangestel[, 55
uitgesonderd ’n persoon wat daardie amp waarnemend of tydelik beklee en ’n assistent-landdros];”;

(b) deur die omskrywing van “salaris” te skrap;

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(c) by the addition of the following definition:

“‘remuneration’ means the remuneration that a magistrate is entitled to in terms of section 12.”

Substitution of section 12 of Act 90 of 1993, as amended by section 4 of Act 18 of 1996, section 8 of Act 35 of 1996, section 19 of Act 104 of 1996 and section 35 of Act 47 of 1997 5

3. The following section is substituted for section 12 of the Magistrates Act, 1993:

“Remuneration of magistrates

12. (1) (a) Magistrates are entitled to such salaries, allowances or benefits— 10

(i) as determined by the President from time to time by notice in the *Gazette*, after taking into consideration the recommendations of the Independent Commission for the Remuneration of Public Office-bearers established under section 2 of the Independent Commission for the Remuneration of Public Office-bearers Act, 1997 (Act No. 92 of 1997); and 15

(ii) approved by Parliament in terms of subsection (3).

(b) Different categories of salaries and salary scales may be determined by the President in respect of different categories of magistrates.

(c) The Commission referred to in paragraph (a)(i) must, when investigating or considering the remuneration of magistrates, consult with— 20

(i) the Minister and the Cabinet member responsible for finance; and

(ii) the Chief Justice or a person designated by the Chief Justice.

(2) A notice in terms of subsection (1)(a) or any provision thereof may commence with effect from a date specified in the notice, which date may not be more than one year before the date of publication of the notice. 25

(3) (a) A notice issued under subsection (1)(a) must be submitted to Parliament for approval before publication thereof.

(b) Parliament must by resolution— 30

(i) approve the notice, whether in whole or in part; or

(ii) disapprove the notice.

(4) The amount of any remuneration payable in terms of subsection (1), shall be paid out of the National Revenue Fund as contemplated in section 213 of the Constitution. 35

(5) (a) If any magistrate is appointed in an acting or temporary capacity to any other judicial office—

(i) for a continuous period exceeding one day; and

(ii) the remuneration attached to that office exceeds the remuneration attached to the office ordinarily held by the magistrate, 40

he or she shall, for the duration of such appointment, be entitled to such additional remuneration as determined from time to time by the Minister.

(b) For the purpose of paragraph (a) additional remuneration must be calculated by the day, and any part of a day must be reckoned as a day.

(6) The remuneration of magistrates shall not be reduced except by an Act of Parliament. 45

(7) If an officer or employee in the public service is appointed as a magistrate, the period of his or her service as a magistrate shall be reckoned as part of and continuous with his or her service in the public service for the purposes of leave, pension and any other condition of service.”. 50

Amendment of section 13 of Act 90 of 1993, as amended by section 4 of Act 85 of 1995, section 4 of Act 18 of 1996, section 6 of Act 35 of 1996 and section 11 of Act 122 of 1998

4. Section 13 of the Magistrates Act, 1993, is amended by the substitution for subsections (3) and (4) of the following subsections: 55

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- (c) deur die byvoeging van die volgende omskrywing:
 “ ‘besoldiging’ die besoldiging waarop ’n landdros ingevolge artikel 12 geregtig is;”.

Vervanging van artikel 12 van Wet 90 van 1993, soos gewysig deur artikel 4 van Wet 18 van 1996, artikel 8 van Wet 35 van 1996, artikel 19 van Wet 104 van 1996 en artikel 35 van Wet 47 van 1997 5

3. Artikel 12 van die Wet op Landdroste, 1993, word deur die volgende artikel vervang:

“Besoldiging van landdroste

- 12. (1) (a)** Landdroste is geregtig op die salarisse, toelae of voordele— 10
- (i) wat die President van tyd tot tyd by kennisgewing in die *Staatskoerant* bepaal, na inagneming van die aanbevelings van die Onafhanklike Kommissie vir die Besoldiging van Openbare Ampsbekleërs, ingestel by artikel 2 van die Wet op die Onafhanklike Kommissie vir die Besoldiging van Openbare Ampsbekleërs, 1997 (Wet No. 92 van 1997); en 15
- (ii) deur die Parlement goedgekeur ingevolge subartikel (3).
- (b) Verskillende kategorieë salarisse en salarisskale kan deur die President ten opsigte van verskillende kategorieë landdroste bepaal word.
- (c) Die Kommissie bedoel in paragraaf (a)(i) moet, wanneer die besoldiging van landdroste ondersoek of oorweeg word, oorleg pleeg met— 20
- (i) die Minister en die Kabinetslid verantwoordelik vir finansies; en
- (ii) die Hoofregter of ’n persoon deur die Hoofregter aangewys.
- (2) ’n Kennisgewing ingevolge subartikel (1)(a) of enige bepaling daarvan kan van krag word met ingang van ’n datum in die kennisgewing gespesifiseer, welke datum nie meer as een jaar vroeër as die datum van publikasie van die kennisgewing mag wees nie. 25
- (3) (a) ’n Kennisgewing kragtens subartikel (1)(a) uitgereik, moet vir goedkeuring aan die Parlement voorgelê word voor publikasie daarvan. 30
- (b) Die Parlement moet by resoluë—
- (i) die kennisgewing goedkeur, hetsy in die geheel of gedeeltelik; of
- (ii) die kennisgewing afkeur.
- (4) Die bedrag van enige besoldiging ingevolge subartikel (1) betaalbaar, word betaal uit die Nasionale Inkomstefonds in artikel 213 van die Grondwet bedoel. 35
- (5) (a) Indien ’n landdros in ’n waarnemende of tydelike hoedanigheid in ’n ander regterlike amp aangestel word—
- (i) vir ’n aaneenlopende tydperk wat een dag te bowe gaan; en
- (ii) die besoldiging verbonde aan daardie amp oorskry die besoldiging verbonde aan die amp wat daardie landdros normaalweg beklee, is hy of sy, vir die duur van daardie aanstelling, geregtig op die addisionele besoldiging wat die Minister van tyd tot tyd bepaal. 40
- (b) Vir die doel van paragraaf (a) moet addisionele besoldiging per dag bereken word, en enige gedeelte van ’n dag moet as ’n dag gereken word. 45
- (6) Die besoldiging van landdroste mag nie verminder word nie behalwe by Wet van die Parlement.
- (7) Indien ’n beampte of werknemer in die staatsdiens as ’n landdros aangestel word, word die tydperk van sy of haar diens as landdros gereken as deel van en as aaneenlopend met sy of haar diens in die staatsdiens vir die doeleindes van verlof, pensioen en enige ander diensvoorwaarde.”. 50

Wysiging van artikel 13 van Wet 90 van 1993, soos gewysig deur artikel 4 van Wet 85 van 1995, artikel 4 van Wet 18 van 1996, artikel 6 van Wet 35 van 1996 en artikel 11 van Wet 122 van 1998

4. Artikel 13 van die Wet op Landdroste, 1993, word gewysig deur subartikels (3) en (4) deur die volgende subartikels te vervang: 55

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“(3) (a) The Minister, on the advice of the Commission, may provisionally suspend a magistrate from office if—

- (i) the Commission, after affording the magistrate a reasonable opportunity to be heard regarding the desirability of such provisional suspension, is satisfied that reliable evidence exists indicating that an allegation against that magistrate is of such a serious nature as to make it inappropriate for the magistrate to perform the functions of a magistrate while the allegation is being investigated; and
- (ii) an investigation has been instituted by the Commission into such magistrate’s fitness to hold office.

(b) A report in which the provisional suspension in terms of paragraph (a) of a magistrate and the reasons therefor are made known, must be tabled in Parliament by the Minister within seven days of such suspension, if Parliament is then in session, or, if Parliament is not then in session, within seven days after the commencement of its next ensuing session.

(c) Parliament must, as soon as is reasonably possible, pass a resolution as to whether or not the provisional suspension of the magistrate is confirmed.

(d) If Parliament passes a resolution as contemplated in paragraph (c) that the provisional suspension is not confirmed, the suspension lapses.

(e) The provisional suspension of a magistrate in terms of paragraph (a) lapses after 60 days from the date of the suspension, unless the Commission, within that period, commences its inquiry into the allegation in question by causing a written notice containing the allegation concerned to be served on the magistrate.

(f) An inquiry referred to in paragraph (e) must be concluded as soon as possible, and the Commission must cause a report on the progress in respect of that inquiry to be submitted to Parliament every three months.

(g) Parliament may, at any stage pending—

- (i) the conclusion of an inquiry referred to in paragraph (e); or
 - (ii) a resolution referred to in subsection (4)(c),
- pass a resolution setting aside the suspension of the magistrate concerned, whereupon the suspension shall lapse forthwith.

(4) (a) If the Commission recommends that a magistrate be removed from office—

- (i) on the ground of misconduct;
 - (ii) on account of continued ill-health; or
 - (iii) on account of incapacity to carry out the duties of his or her office efficiently,
- the Minister must suspend that magistrate from office or, if the magistrate is at that stage provisionally suspended in terms of subsection (1)(a), confirm the suspension.

(b) A report in which the suspension in terms of paragraph (a) of a magistrate and the reason therefor are made known, must be tabled in Parliament by the Minister within 14 days of such suspension, if Parliament is then in session, or, if Parliament is not then in session, within 14 days after the commencement of its next ensuing session.

(c) Parliament must, as soon as is reasonably possible, pass a resolution as to whether or not the restoration to his or her office of a magistrate so suspended is recommended.

(d) After a resolution has been passed by Parliament as contemplated in paragraph (c), the Minister shall restore the magistrate concerned to his or her office or remove him or her from office, as the case may be.

(4A) (a) The remuneration of a magistrate is not affected during a period of suspension in terms of subsection (3)(a) or (4)(a), unless the Commission determines otherwise.

(b) If the Commission determines that the remuneration of a magistrate shall be reduced or withheld in terms of paragraph (a), a report regarding that determination and the reason therefor must be tabled in Parliament by the Minister within seven days of such determination, if Parliament is then in session, or, if Parliament is not then in session, within seven days after the commencement of its next ensuing session.

(c) Parliament must, as soon as is reasonably possible, consider that report and pass a resolution as to whether or not the determination concerned is confirmed, either with or without amendment, or set aside.

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“(3) (a) Die Minister, op advies van die Kommissie, kan ’n landdros voorlopig in sy of haar amp skors indien—

- (i) die Kommissie, nadat die landdros ’n redelike geleentheid gebied is om aangehoor te word rakende die wenslikheid van sodanige voorlopige skorsing, tevrede is dat betroubare getuienis bestaan wat aandui dat ’n bewering teen daardie landdros van so ’n ernstige aard is dat dit onvanpas sal wees vir die landdros om voort te gaan om die werksaamhede van ’n landdros te verrig terwyl die bewering ondersoek word; en
- (ii) ’n ondersoek deur die Kommissie ingestel is na die geskiktheid van daardie landdros om sy of haar amp te beklee.

(b) ’n Verslag waarin die voorlopige skorsing van ’n landdros ingevolge paragraaf (a) en die redes daarvoor bekend gemaak word, moet deur die Minister in die Parlement ter tafel gelê word binne sewe dae na sodanige skorsing, indien die Parlement dan in sitting is, of, indien die Parlement nie dan in sitting is nie, binne sewe dae na die aanvang van sy eersvolgende sitting.

(c) Die Parlement moet so gou as wat redelikerwys moontlik is, ’n resolusie aanneem betreffende die bekragtiging al dan nie van die voorlopige skorsing van die landdros.

(d) Indien die Parlement ’n resolusie aanneem soos beoog in paragraaf (c) dat die voorlopige skorsing nie bekragtig word nie, verval die skorsing.

(e) Die voorlopige skorsing van ’n landdros ingevolge paragraaf (a) verval na 60 dae vanaf die datum van die skorsing, tensy die Kommissie binne daardie tydperk sy ondersoek na die betrokke bewering begin deur ’n skriftelike kennisgewing waarin die betrokke bewering vervat is, aan die landdros laat beteken.

(f) ’n Ondersoek in paragraaf (e) bedoel, moet so gou as moontlik voltooi word, en die Kommissie moet ’n verslag oor die vordering ten opsigte van daardie ondersoek elke drie maande aan die Parlement laat voorlê.

(g) Die Parlement kan, gedurende enige stadium hangende—

- (i) die voltooiing van ’n ondersoek in paragraaf (e) bedoel; of
 - (ii) ’n resolusie in subartikel (4)(c) bedoel,
- ’n resolusie aanneem wat die skorsing van die betrokke landdros ter syde stel, waarop die skorsing onverwyld verval.

(4) (a) Indien die Kommissie aanbeveel dat die betrokke landdros van sy of haar amp onthef moet word—

- (i) op grond van wangedrag;
 - (ii) as gevolg van voortdurende swak gesondheid; of
 - (iii) as gevolg van onvermoë om sy of haar ampspligte doeltreffend uit te voer,
- moet die Minister daardie landdros in sy of haar amp skors of, indien die landdros in daardie stadium ingevolge subartikel (1)(a) voorlopig geskors is, die skorsing bekragtig.

(b) ’n Verslag waarin die skorsing van ’n landdros ingevolge paragraaf (a) en die redes daarvoor bekend gemaak word, moet binne 14 dae na sodanige skorsing deur die Minister in die Parlement ter tafel gelê word, indien die Parlement dan in sitting is, of, indien die Parlement nie dan in sitting is nie, binne 14 dae na die aanvang van sy eersvolgende sitting.

(c) Die Parlement moet so gou as wat redelikerwys moontlik is, ’n resolusie aanneem oor die vraag of die herstel in sy of haar amp al dan nie van die betrokke landdros aanbeveel word.

(d) Nadat ’n resolusie deur die Parlement aangeneem is soos beoog in paragraaf (c), moet die Minister die betrokke landdros in sy of haar amp herstel, of van sy of haar amp onthef, na gelang van die geval.

(4A) (a) Die besoldiging van ’n landdros word nie geraak gedurende ’n tydperk van skorsing ingevolge subartikel (3)(a) of (4)(a) nie, tensy die Kommissie anders bepaal.

(b) Indien die Kommissie bepaal dat die besoldiging van ’n landdros verminder of weerhou moet word ingevolge paragraaf (a), moet ’n verslag betreffende daardie bepaling en die rede daarvoor deur die Minister in die Parlement ter tafel gelê word binne sewe dae na sodanige bepaling, indien die Parlement dan in sitting is, of, indien die Parlement nie dan in sitting is nie, binne sewe dae na die aanvang van sy eersvolgende sitting.

(c) Die Parlement moet so gou as wat redelikerwys moontlik is, daardie verslag oorweeg en ’n resolusie aanneem oor die vraag of die betrokke bepaling bekragtig word, hetsy met of sonder wysiging, of ter syde gestel word.

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(d) If Parliament passes a resolution as contemplated in paragraph (c) that the determination is set aside, that determination shall lapse with effect from the date when the determination was first made.”.

Insertion of section 15A in Act 90 of 1993

5. The following section is inserted in the Magistrates Act, 1993:

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“Equal benefits accruing to spouses and partners of magistrates

15A. If a magistrate who is not legally married is involved with not more than one person in a permanent heterosexual or same-sex life partnership—
(a) in which the magistrate and the person concerned have undertaken reciprocal duties of support; and
(b) which is registered with the Director-General: Justice and Constitutional Development in accordance with the regulations made under section 16,
that person is for all relevant purposes of this Act regarded as the lawfully wedded spouse of that magistrate.”.

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Amendment of section 16 of Act 90 of 1993, as amended by sections 7 and 8 of Act 35 of 1996, section 19 of Act 104 of 1996 and section 8 of Act 66 of 1998

6. Section 16 of the Magistrates Act, 1993, is amended by the insertion in subsection (1) of the following paragraph:

“(nA) the requirements for, and the registration of, not more than one person and the deregistration of that person as a partner of a magistrate, as envisaged in section 15A, with the Director-General: Justice and Constitutional Development;”.

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Amendment of section 1 of Act 92 of 1997

7. Section 1 of the Independent Commission for the Remuneration of Public Office-bearers Act, 1997, is amended by the substitution for the definition of “office-bearer” of the following definition:

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“ ‘office-bearer’ means—

- (a) any member of the Cabinet, any Deputy Minister, any member of the National Assembly or any permanent delegate to the National Council of Provinces [any member of the Council of Traditional Leaders, any member of any provincial house of traditional leaders or any traditional leader];
- (b) any member of the Executive Council of a province or any member of any provincial legislature [or any member of any Municipal Council of any category or type of municipality];
- (c) any member of any Municipal Council of any category or type of municipality;
- (d) any person holding the office of—
 - (i) Constitutional Court judge or a judge as defined in section 1 of the Judges’ Remuneration and Conditions of Employment Act, 2001 (Act No. 47 of 2001); and
 - (ii) magistrate who is appointed under section 9 of the Magistrates’ Courts Act, 1944 (Act No. 32 of 1944), read with section 10 of the Magistrates Act, 1993 (Act No. 90 of 1993); and
- (e) any member of the National House of Traditional Leaders, any member of any provincial house of traditional leaders or any traditional leader.”.

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Amendment of section 3 of Act 92 of 1997

8. Section 3 of the Independent Commission for the Remuneration of Public Office-bearers Act, 1997, is amended by the substitution for subsection (1) of the following subsection:

“(1) The Commission shall consist of [seven] eight members appointed by the President.”.

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(d) Indien die Parlement 'n resoluëie aanneem soos in paragraaf (c) beoog dat die bepaling ter syde gestel word, verval daardie bepaling met ingang van die datum waarop die bepaling oorspronklik gemaak is.”.

Invoëging van artikel 15A in Wet 90 van 1993

5. Die volgende artikel word in die Wet op Landdroste, 1993, ingevoëg:

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“Gelyke voordele aan gades en lewensmaats van landdroste

15A. Indien 'n landdros wat nie regtens getroud is nie betrokke is by nie meer nie as een persoon in 'n permanente heteroseksuele of selfde-geslag lewensverhouding—

(a) waarin die landdros en die betrokke persoon wederkerige onderhoudspligte onderneem het; en

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(b) wat by die Direkteur-Generaal: Justisie en Staatkundige Ontwikkeling geregistreer is ooreenkomstig die regulasies kragtens artikel 16 uitgevaardig,

word daardie persoon vir alle tersaaklike doeleindes van hierdie Wet as die regtens getroude gade van daardie landdros beskou.”.

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Wysiging van artikel 16 van Wet 90 van 1993, soos gewysig deur artikels 7 en 8 van Wet 35 van 1996, artikel 19 van wet 104 van 1996 en artikel 8 van Wet 66 van 1998

6. Artikel 16 van die Wet op Landdroste, 1993, word gewysig deur die byvoëging in subartikel (1) van die volgende paragraaf:

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“(nA) die vereistes vir, en die registrasie van, nie meer nie as een persoon en die deregistrasie van daardie persoon as 'n lewensmaat van 'n landdros, soos beoog in artikel 15A, by die Direkteur-Generaal: Justisie en Staatkundige Ontwikkeling.”.

Wysiging van artikel 1 van Wet 92 van 1997

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7. Artikel 1 van die Wet op die Onafhanklike Kommissie vir die Besoldiging van Openbare Ampsbekleërs, 1997, word gewysig deur die omskrywing van “ampsbekleër” deur die volgende omskrywing te vervang:

“ ‘ampsbekleër’ —

(a) 'n lid van die Kabinet, 'n Adjunkminister, 'n lid van die Nasionale Vergadering of 'n vaste afgevaardigde na die Nasionale Raad van Provinsies[, 'n lid van die Raad van Tradisionele Leiers, 'n lid van 'n provinsiale huis van tradisionele leiers of 'n tradisionele leier];

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(b) 'n lid van die Uitvoerende Raad van 'n provinsie of 'n lid van 'n provinsiale wetgewer [of 'n lid van 'n Munisipale Raad van 'n kategorie of soort munisipaliteit];

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(c) 'n lid van 'n Munisipale Raad van enige kategorie of soort munisipaliteit;

(d) 'n persoon wat die amp bekleë van—

(i) Konstitusionele Hof regter of 'n regter soos omskryf in artikel 1 van die Wet op Besoldiging en Diensvoorwaardes van Regters, 2001 (Wet No. 47 van 2001); en

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(ii) landdros wat aangestel is kragtens artikel 9 van die Wet op Landdroshowe, 1944 (Wet No. 32 van 1944), saamgelees met artikel 10 van die Wet op Landdroste, 1993 (Wet No. 90 van 1993); en

(e) 'n lid van die Nasionale Huis van Tradisionele Leiers, 'n lid van enige provinsiale huis van tradisionele leiers of enige tradisionele leier.”.

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Wysiging van artikel 3 van Wet 92 van 1997

8. Artikel 3 van die Wet op die Onafhanklike Kommissie vir die Besoldiging van Openbare Ampsbekleërs, 1997, word gewysig deur subartikel (1) deur die volgende subartikel te vervang:

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“(1) Die Kommissie bestaan uit [sewe] agt lede deur die President aangestel.”.

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JUDICIAL OFFICERS (AMENDMENT OF
CONDITIONS OF SERVICE) ACT, 2003**Substitution of section 4 of Act 92 of 1997**

9. The following section is substituted for section 4 of the Independent Commission for the Remuneration of Public Office-bearers Act, 1997:

“Persons not qualified to be members of Commission

4. (1) (a) Subject to paragraph (b), no person shall be appointed as a member of the Commission if— 5

[(a)](i) that person is an office-bearer as defined in paragraphs (a), (b), (c), (d)(ii) or (e) of the definition of ‘office-bearer’ in section 1; 10

[(b)](ii) that person holds office in any political party or political organisation; 10

[(c)](iii) that person is an unrehabilitated insolvent; or

[(d)](iv) that person has been convicted of any offence for which that person has been sentenced to imprisonment without the option of a fine for a period of not less than twelve months, unless a period of at least five years has expired after the date on which the sentence was served. 15

(b) A person as defined in paragraph (d)(i) of the definition of ‘office bearer’ may only be appointed as a member of the Commission if he or she is designated by the President as the chairperson of the Commission.

(2) For the purposes of subsection [(1)(d)] (1)(a)(iv), no person shall be deemed to have been sentenced until an appeal against the conviction or sentence has been disposed of or until the period has expired within which an appeal may be lodged, as the case may be.”. 20

Amendment of section 7 of Act 92 of 1997

10. Section 7 of the Independent Commission for the Remuneration of Public Office-bearers Act, 1997, is amended by the substitution for subsection (3) of the following subsection: 25

“(3) (a) If both the chairperson and the deputy chairperson of the Commission are absent or for any reason unable to act as chairperson at a meeting of the Commission, the members present must elect a chairperson from their number for the purpose of that meeting. 30

(b) The decision of a majority of the members of the Commission present at a meeting of the Commission shall constitute a decision of the Commission, and, in the event of an equality of votes on any matter, the person presiding at the meeting concerned shall have a casting vote in addition to that person’s deliberative vote.”. 35

Amendment of section 8 of Act 92 of 1997

11. Section 8 of the Independent Commission for the Remuneration of Public Office-bearers Act, 1997, is amended by the substitution for subsections (3) and (4) of the following subsections:

“(3) The Commission may conduct or cause to be conducted such research or obtain such information from the Secretary to Parliament, the secretary to any provincial legislature, the secretary to the [Council] National House of Traditional Leaders, the secretary to any provincial house of traditional leaders, the chief executive officer of any municipality, the Chief Justice or any person designated for that purpose by the Chief Justice, or any [office-bearer] functionary or body as may be necessary for the performance of the functions of the Commission under this Act, section 219 of the Constitution or any other law. 40 45

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Vervanging van artikel 4 van Wet 92 van 1997

9. Artikel 4 van die Wet op die Onafhanklike Kommissie vir die Besoldiging van Openbare Ampsbekleërs, 1997, word deur die volgende artikel vervang:

“Persone wat onbevoeg is om lede van Kommissie te wees

4. (1) (a) Geen persoon word as 'n lid van die Kommissie aangestel nie 5
indien—

[(a)] (i) daardie persoon 'n ampsbekleër is soos omskryf in paragrawe 5
(a), (b), (c), (d)(ii) of (e) van die omskrywing van ‘ampsbekleër’
in artikel 1;

[(b)] (ii) daardie persoon 'n amp in 'n politieke party of politieke 10
organisasie bekleë;

[(c)] (iii) daardie persoon 'n ongerehabiliteerde insolvent is; of

[(d)] (iv) daardie persoon skuldig bevind is aan 'n misdryf waarvoor 15
daardie persoon gevonnissen is tot gevangenisstraf sonder die keuse
van 'n boete vir 'n tydperk van minstens twaalf maande, tensy 'n
tydperk van minstens vyf jaar verstryk het na die datum waarop
die vonnis uitgedien is.

(b) 'n Persoon soos omskryf in paragraaf (d)(i) van die omskrywing van 20
‘ampsbekleër’ kan slegs as 'n lid van die Kommissie aangestel word indien
hy of sy deur die President as die voorsitter van die Kommissie aangewys
word.

(2) By die toepassing van subartikel [(1)(d)] (1)(a)(iv) word niemand 25
geag gevonnissen te gewees het nie totdat 'n appèl teen die skuldigbevinding
of vonnis afgehandel is of totdat die tydperk verstryk het waarbinne 'n
appèl aangeteken mag word, na gelang van die geval.”.

Wysiging van artikel 7 van Wet 92 van 1997

10. Artikel 7 van die Wet op die Onafhanklike Kommissie vir die Besoldiging van Openbare Ampsbekleërs, 1997, word gewysig deur die subartikel (3) deur die volgende subartikel te vervang:

“(3) (a) Indien beide die voorsitter en die ondervoorsitter van die Kommissie 30
afwesig is of om enige rede nie beskikbaar is om as voorsitter by 'n vergadering
van die Kommissie op te tree nie, moet die lede wat teenwoordig is vanuit hul
geledere 'n voorsitter verkies vir die doel van die vergadering.

(b) Die beslissing van 'n meerderheid van die lede van die Kommissie wat op 'n 35
vergadering van die Kommissie aanwesig is, maak 'n besluit van die Kommissie
uit, en, by 'n staking van stemme oor 'n aangeleentheid, het die persoon wat op die
betrokke vergadering voorsit, benewens daardie persoon se beraadslagende stem,
'n beslissende stem.”.

Wysiging van artikel 8 van Wet 92 van 1997

11. Artikel 8 van die Wet op die Onafhanklike Kommissie vir die Besoldiging van 40
Openbare Ampsbekleërs, 1997, word gewysig deur die subartikels (3) en (4) deur die
volgende subartikels te vervang:

“(3) Die Kommissie kan die navorsing doen of laat doen of die inligting by die 45
Sekretaris van die Parlement, die sekretaris van 'n provinsiale wetgewer, die
sekretaris van die [Raad] Nasionale Huis van Tradisionele Leiers, die sekretaris
van 'n provinsiale huis van tradisionele leiers, die hoofuitvoerende beampte van 'n
munisipaliteit, die Hoofregter of 'n persoon vir daardie doel deur die Hoofregter
aangewys, of 'n [ampsbekleër] funksionaris of liggaam verkry wat nodig is om die
werkzaamhede van die Kommissie kragtens hierdie Wet, artikel 219 van die
Grondwet of 'n ander wet te verrig. 50

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JUDICIAL OFFICERS (AMENDMENT OF
CONDITIONS OF SERVICE) ACT, 2003

(3A) Whenever the Commission performs any function in terms of this Act relating to the remuneration of any office-bearer as defined—

- (a) in paragraph (d)(i) of the definition of 'office-bearer' in section 1, it must have regard to the provisions of the Judges' Remuneration and Conditions of Employment Act, 2001 (Act No. 47 of 2001), and in particular to section 2 of that Act; or
- (b) in paragraph (d)(ii) of the definition of 'office-bearer' in section 1, it must have regard to the provisions of the Magistrates Act, 1993 (Act No. 90 of 1993), and in particular to section 12 of that Act.

(3B) (a) If the chairperson of the Commission is an office-bearer as defined in paragraph (d)(i) of the definition of 'office-bearer' in section 1, that member must refrain from participating in any of the Commission's deliberations relating to the remuneration of any office-bearer as defined in paragraph (d) of the said definition.

(b) Any member of the Commission who may directly or indirectly derive any benefit from the acceptance by the President of any recommendations by the Commission, must refrain from participating in any of the Commission's deliberations relating to such recommendations.

(4) The Commission shall, after taking into consideration the factors referred to in subsection (6), publish [annually] in the *Gazette* recommendations concerning—

- (a) the salary, allowances and benefits of any office-bearer as defined in [paragraph] paragraphs (a), (d) and (e) of the definition of 'office-bearer' in section 1;
- (b) the upper limits of the salary, allowances or benefits of any office-bearer as defined in [paragraph] paragraphs (b) and (c) of the definition of 'office-bearer' in section 1; and
- (c) the resources which are necessary to enable an office-bearer as defined in paragraphs (a), (b), (c) and (e) of the definition of 'office-bearer' in section 1 to perform the office-bearer's functions effectively.

(5) Recommendations referred to in subsection (4) must be published in the *Gazette* at least once a year in respect of each category of office-bearers and must be submitted to Parliament before publication.

(6) When making recommendations referred to in subsection (4) the Commission must take the following factors into account:

- (i) The role, status, duties, functions and responsibilities of the office-bearers concerned;
- (ii) the affordability of different levels of remuneration of public office bearers;
- (iii) current principles and levels of remuneration, particularly in respect of organs of state, and in society generally;
- (iv) inflationary increases;
- (v) the available resources of the state; and
- (vi) any other factor which, in the opinion of the said Commission, is relevant."

Amendment of section 13 of Act 92 of 1997

12. Section 13 of the Independent Commission for the Remuneration of Public Office-bearers Act, 1997, is amended by the addition of the following subsection: 45

"(3) The vacancy arising in the Commission on account of the amendment of section 3(1) by the Judicial Officers (Amendment of Conditions of Service) Act, 2003, shall be filled by the appointment of a member for such term, but not exceeding five years, as determined by the President at the time of such appointment."

Amendment of Schedule 5 to Act 1 of 1999

13. Schedule 5 to the Public Finance Management Act, 1999, is amended by the addition of the following item:

"4. Magistrates Act, 1993 (Act No. 90 of 1993) (covering remuneration of magistrates in terms of section 12)."

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(3A) Wanneer ook al die Kommissie 'n werksaamheid ingevolge hierdie Wet verrig betreffende die besoldiging van 'n ampsbeker soos omskryf—

- (a) in paragraaf (d)(i) van die omskrywing van 'ampsbeker' in artikel 1, moet hy ag slaan op die bepalings van die Wet op Besoldiging en Diensvoorwaardes van Regters, 2001 (Wet No. 47 van 2001), en in die besonder op artikel 2 van daardie Wet; of 5
- (b) in paragraaf (d)(ii) van die omskrywing van 'ampsbeker' in artikel 1, moet hy ag slaan op die bepalings van die Wet op Landdroste, 1993 (Wet No. 90 van 1993), en in die besonder op artikel 12 van daardie Wet. 10

(3B) (a) Indien die voorsitter van die Kommissie 'n ampsbeker is soos omskryf in paragraaf (d)(i) van die omskrywing van 'ampsbeker' in artikel 1, moet daardie lid hom of haar weerhou van deelname in enige van die Kommissie se beraadslagings betreffende die besoldiging van 'n ampsbeker soos omskryf in paragraaf (d) van bedoelde omskrywing. 15

(b) Enige lid van die Kommissie wat regstreeks of onregstreeks enige voordeel kan put uit die aanvaarding deur die President van enige aanbevelings deur die Kommissie, moet hom of haar weerhou van deelname in enige van die Kommissie se beraadslagings betreffende sodanige aanbevelings. 20

(4) Die Kommissie moet [jaarliks], na inagneming van die faktore bedoel in subartikel (6), in die Staatskoerant aanbevelings publiseer aangaande— 25

- (a) die salaris, toelaes en voordele van 'n ampsbeker soos in [paragraaf] paragrafe (a), (d) en (e) van die omskrywing van 'ampsbeker' in artikel 1 omskryf; 20
- (b) die boonste perke van die salaris, toelaes of voordele van 'n ampsbeker soos in [paragraaf] paragrafe (b) en (c) van die omskrywing van 'ampsbeker' in artikel 1 omskryf; en 25
- (c) die hulpmiddele wat nodig is om 'n ampsbeker soos in paragrafe (a), (b), (c) en (e) van die omskrywing van 'ampsbeker' in artikel 1 omskryf, in staat te stel om die ampsbeker se werksaamhede doeltreffend te verrig. 30

(5) Aanbevelings bedoel in subartikel (4) moet minstens een keer per jaar in die Staatskoerant gepubliseer word ten opsigte van elke kategorie van ampsbekers en moet voor publikasie aan die Parlement voorgelê word. 35

(6) By die maak van aanbevelings in subartikel (4) bedoel, moet die Kommissie die volgende faktore in aanmerking neem:

- (i) Die rol, status, pligte, werksaamhede en verantwoordelikhede van die betrokke ampsbekers; 35
- (ii) die bekostigbaarheid van verskillende vlakke van besoldiging van openbare ampsbekers; 40
- (iii) heersende beginsels en vlakke van besoldiging, in die besonder ten opsigte van staatsorgane, en in die gemeenskap oor die algemeen; 40
- (iv) inflasionêre stygings;
- (v) die middele aan die staat beskikbaar; en
- (vi) enige ander faktor wat, na mening van die bedoelde Kommissie, relevant is.”

Wysiging van artikel 13 van Wet 92 van 1997

12. Artikel 13 van die Wet op die Onafhanklike Kommissie vir die Besoldiging van Openbare Ampsbekers, 1997, word gewysig deur die volgende subartikel by te voeg: 45

“(3) Die vakature wat in die Kommissie ontstaan uit hoofde van die wysiging van artikel 3(1) deur die Wet op Regterlike Beamptes (Wysiging van Diensvoorwaardes), 2003, word aangevul deur die aanstelling van 'n lid vir 'n termyn, wat nie vyf jaar te bowe mag gaan nie, wat die President ten tye van die aanstelling bepaal.” 50

Wysiging van Bylae 5 tot Wet 1 van 1999

13. Bylae 5 tot die Wet op Openbare Finansiële Bestuur, 1999, word gewysig deur die volgende item by te voeg:

“4. Wet op Landdroste, 1993 (Wet No. 90 van 1993) (dek die besoldiging van landdroste ingevolge artikel 12).” 55

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JUDICIAL OFFICERS (AMENDMENT OF
CONDITIONS OF SERVICE) ACT, 2003**Amendment of section 1 of Act 47 of 2001**

14. Section 1 of the Judges' Remuneration and Conditions of Employment Act, 2001, is amended—

- (a) by the substitution for the definition of "annual salary" of the following definition:

"**'annual salary'** means the annual salary referred to in section 2(1)(a) and the allowance referred to in section 2(1)(b) payable to a Constitutional Court judge or a judge **[in terms of section 2];**";

- (b) by the insertion in subsection (1) after the definition of "Minister" of the following definition:

"**'partner'** means only one person with whom a Constitutional Court judge or judge, who is not legally married, is involved in a permanent heterosexual or same-sex life partnership—

- (a) in which the Constitutional Court judge or judge and the person concerned have undertaken reciprocal duties of support; and

- (b) which is, for the purposes of this Act, registered as such with the Director-General: Justice and Constitutional Development in accordance with the regulations made under section 13;"

- (c) by the insertion in subsection (1) after the definition of "service" of the following definition:

"**'spouse'** means a person to whom a Constitutional Court judge or judge is legally married;"

Substitution of section 2 of Act 47 of 2001

15. The following section is substituted for section 2 of the Judges' Remuneration and Conditions of Employment Act, 2001:

"Remuneration of Constitutional Court judges and judges

2. (1) Any person who holds office as a Constitutional Court judge or as a judge, whether in an acting or permanent capacity, shall in respect thereof, **in addition to the amounts referred to in section 13 and an allowance at the rate of R3 500 per annum,** be paid—

- (a) an annual salary **[at a rate]** and such allowances or benefits—

- (i) as determined by the President, from time to time, by notice in the *Gazette*, after taking into consideration the recommendations of the Independent Commission for the Remuneration of Public Office-bearers, established under section 2 of the Independent Commission for the Remuneration of Public Office-bearers Act, 1997 (Act No. 92 of 1997); and

- (ii) approved by Parliament in terms of subsection (4); and

- (b) an allowance at the rate of R3 500 per annum, which allowance shall not be taxable, unless Parliament expressly provides otherwise.

(2) The Commission referred to in subsection (1)(a) must, when investigating or considering the salaries, allowances or benefits of Constitutional Court judges and judges—

- (i) consult with the Minister and the Cabinet member responsible for finance; and

- (ii) the Chief Justice or a person designated by the Chief Justice.

(3) A notice in terms of subsection (1)(a) or any provision thereof may commence with effect from a date specified in the notice, which date may not be more than one year before the date of publication of the notice.

(4) **[The allowance payable in terms of subsection (1) shall not be taxable, unless Parliament expressly provides otherwise.]**

- (a) A notice issued under subsection (1)(a) must be submitted to Parliament for approval before publication thereof.

- (b) Parliament must, by resolution—

Wysiging van artikel 1 van Wet 47 van 2001

14. Artikel 1 van die Wet op Besoldiging en Diensvoorwaardes van Regters, 2001, word gewysig—

- (a) deur die omskrywing van “jaarlikse salaris” deur die volgende omskrywing te vervang:

“ ‘jaarlikse salaris’ die jaarlikse salaris bedoel in artikel 2(1)(a) en die toelae bedoel in artikel 2(1)(b) wat [ingevolge artikel 2] aan ’n Konstitusionele Hof regter of regter betaalbaar is;”;

- (b) deur die volgende omskrywing in subartikel (1) na die omskrywing van “jaarlikse salaris” in te voeg:

“ ‘lewensmaat’ slegs een persoon met wie ’n Konstitusionele Hof regter of regter, wat nie regtens getroud is nie, betrokke is in ’n permanente heteroseksuele of selfde-geslag lewensverhouding—

- (a) waarin die Konstitusionele Hof regter of regter en die betrokke persoon wederkerige onderhoudspligte onderneem het; en

- (b) wat vir doeleindes van hierdie Wet by die Direkteur-Generaal: Justisie geregistreer is ooreenkomstig die regulasies kragtens artikel 13 uitgevaardig;”;

- (c) deur die volgende omskrywing in subartikel (1) na die omskrywing van “diens” in te voeg:

“ ‘gade’ ’n persoon met wie ’n Konstitusionele Hof regter of regter regtens getroud is;”.

Vervanging van artikel 2 van Wet 47 van 2001

15. Artikel 2 van die Wet op Besoldiging en Diensvoorwaardes van Regters, 2001, word deur die volgende artikel vervang:

“Besoldiging van Konstitusionele Hof regters en regters

2. (1) Aan iemand wat die amp van Konstitusionele Hof regter of van regter beklee, hetsy in ’n waarnemende of permanente hoedanigheid, word ten opsigte daarvan [benewens die in artikel 13 bedoelde bedrae en ’n toelae teen die skaal van R3 500 per jaar,] betaal—

- (a) ’n jaarlikse salaris [betaal teen ’n skaal] en die toelae of voordele—

- (i) wat van tyd tot tyd deur die President by proklamasie in die Staatskoerant bepaal word, na inagneming van die aanbevelings van die Onafhanklike Kommissie vir die Besoldiging van Openbare Ampsbekleërs, ingestel by artikel 2 van die Wet op die Onafhanklike Kommissie vir die Besoldiging van Openbare Ampsbekleërs, 1997 (Wet No. 92 van 1997); en

- (ii) deur die Parlement goedgekeur ingevolge subartikel (4); en

- (b) ’n toelae teen die skaal van R3 500 per jaar, welke toelae nie belasbaar is nie, tensy die Parlement uitdruklik anders bepaal.

(2) Die Kommissie bedoel in subartikel (1)(a) moet, wanneer die salarisse, toelae en voordele van Konstitusionele Hof regters en regters ondersoek of oorweeg word—

- (i) oorleg pleeg met die Minister en die Kabinetslid verantwoordelik vir finansies; en

- (ii) die Hoofregter of ’n persoon deur die Hoofregter aangewys.

(3) ’n Kennisgewing ingevolge subartikel (1)(a) of enige bepaling daarvan kan van krag word met ingang van ’n datum in die kennisgewing gespesifiseer, welke datum nie meer as een jaar vroeër as die datum van publikasie van die kennisgewing mag wees nie.

(4) [Die toelae ingevolge subartikel (1) betaalbaar, is nie belasbaar nie, tensy die Parlement uitdruklik anders bepaal.]

- (a) ’n Kennisgewing kragtens subartikel (1)(a) uitgereik, moet vir goedkeuring aan die Parlement voorgelê word voor publikasie daarvan.

- (b) Die Parlement moet by resoluë—

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- (i) approve the notice, whether in whole or in part; or
- (ii) disapprove the notice.

(5) **[The amount of the annual salary and allowance payable in terms of]** Any remuneration contemplated in subsection (1), shall be paid as a direct charge against the National Revenue Fund. 5

(6) No Constitutional Court judge or judge may, without the consent of the Minister, accept, hold or perform any other office of profit or receive in respect of any service any fees, emoluments or other remuneration apart from his or her salary and any amount which may be payable to him or her in his or her capacity as such a Constitutional Court judge or judge.”. 10

Substitution of sections 9 and 10 of Act 47 of 2001

16. The following sections are substituted for sections 9 and 10 of the Judges' Remuneration and Conditions of Employment Act, 2001:

“Amount payable to surviving spouse or partner of Constitutional Court judge and judge 15

9. (1) The surviving spouse or partner of a Constitutional Court judge or judge who on or after the fixed date was or is discharged from active service in terms of section 3 or 4 or who died or dies while performing active service, shall be paid with effect from the first day of the month immediately succeeding the month in which he or she dies an amount— 20

(a) in the case of a surviving spouse or partner of a Constitutional Court judge or judge who was so discharged from active service, equal to two thirds of the salary which was in terms of section 5 payable to that Constitutional Court judge or judge; or

(b) in the case of a surviving spouse or partner of a Constitutional Court judge or judge who died while performing active service as a Constitutional Court judge or judge, equal to two thirds of the amount to which that Constitutional Court judge or judge would have been entitled in terms of section 5 if he or she was discharged from active service in terms of section 3(1)(a) or (2)(a) on the date of his or her death; 25 30

Provided that if the Constitutional Court judge or judge is survived by more than one spouse, the amount envisaged in paragraph (a) or (b) shall be divided equally between the spouses concerned, unless the judge concerned determined otherwise in accordance with a regulation made under section 13(1)(cB). 35

(2) The amount payable to the surviving spouse or partner of a Constitutional Court judge or judge in terms of subsection (1) shall be payable with effect from the first day of the month immediately succeeding the day on which he or she died, and shall be payable until the death of such spouse or partner. 40

Gratuity payable to surviving spouse or partner of Constitutional Court judge and judge

10. If a gratuity referred to in section 6 would have been payable to a Constitutional Court judge or judge who died or dies on or after the fixed date had he or she not died but, on the date of his or her death, was discharged from active service in terms of section 3 or 4, there shall— 45

(a) if such Constitutional Court judge or judge is survived by a **[surviving]** spouse or partner, be payable to such surviving spouse or partner, in addition to any amount payable to that spouse or partner in terms of section 9; or 50

(b) if such Constitutional Court judge or judge is not survived by a spouse or partner, be payable to the estate of such Constitutional Court judge or judge,

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- (i) die kennisgewing goedkeur, hetsy in die geheel of gedeeltelik; of
- (ii) die kennisgewing afkeur.

(5) [Die bedrag van die jaarlikse salaris en toelae ingevolge] Enige besoldiging in subartikel (1) [betaalbaar] beoog, word betaal as 'n regstreekse las teen die Nasionale Inkomstefonds.

(6) Geen Konstitusionele Hof regter of regter mag, sonder toestemming van die Minister, 'n ander winsbetrekking aanvaar of beklee of daarin dien of ten opsigte van enige diens enige gelde, emolumente of ander besoldiging benewens sy of haar salaris en enige bedrag wat in sy of haar hoedanigheid as so 'n Konstitusionele Hof regter of regter aan hom of haar betaalbaar is, ontvang nie."

Vervanging van artikels 9 en 10 van Wet 47 van 2001

16. Artikels 9 en 10 van die Wet op Besoldiging en Diensvoorwaardes van Regters, 2001, word deur die volgende artikels vervang:

"Bedrag betaalbaar aan oorlewende gade of lewensmaat van Konstitusionele Hof regter en regter

9. (1) Die oorlewende gade of lewensmaat van 'n Konstitusionele Hof regter of regter wat op of na die vasgestelde datum ingevolge artikel 3 of 4 van aktiewe diens onthef is of onthef word of te sterwe gekom het of te sterwe kom terwyl hy of sy aktiewe diens verrig, word, met ingang van die eerste dag van die maand wat onmiddellik volg op die maand waarin hy of sy te sterwe kom, 'n bedrag betaal wat—

- (a) in die geval van 'n oorlewende gade of lewensmaat van 'n Konstitusionele Hof regter of regter wat aldus van aktiewe diens onthef is, gelyk is aan twee derdes van die salaris wat ingevolge artikel 5 aan daardie Konstitusionele Hof regter of regter betaalbaar was; of
- (b) in die geval van 'n oorlewende gade of lewensmaat van 'n Konstitusionele Hof regter of regter wat te sterwe gekom het terwyl hy of sy aktiewe diens as Konstitusionele Hof regter of regter verrig het, gelyk is aan twee derdes van die bedrag waarop daardie Konstitusionele Hof regter of regter ingevolge artikel 5 geregtig sou gewees het indien hy of sy op die datum van sy of haar afsterwe ingevolge artikel 3(1)(a) of (2)(a) van aktiewe diens onthef is;

Met dien verstande dat indien die Konstitusionele Hof regter of regter deur meer as een gade oorleef word, die bedrag beoog in paragraaf (a) of (b) gelykop tussen die betrokke gades verdeel word, tensy die betrokke regter anders bepaal het ooreenkomstig 'n regulasie kragtens artikel 13(1)(cB) uitgevaardig.

(2) Die bedrag betaalbaar aan die oorlewende gade of lewensmaat van 'n Konstitusionele Hof regter of regter ingevolge subartikel (1) is betaalbaar met ingang van die eerste dag van die maand wat onmiddellik volg op die dag waarop hy of sy te sterwe kom, en bly betaalbaar tot by so 'n gade of lewensmaat se dood.

Gratifikasie betaalbaar aan oorlewende gade of lewensmaat van Konstitusionele Hof regter en regter

10. Indien 'n gratifikasie in artikel 6 bedoel aan 'n Konstitusionele Hof regter of regter wat op of na die vasgestelde datum te sterwe gekom het of te sterwe kom, betaalbaar sou gewees het indien hy of sy nie te sterwe gekom het nie maar, op die datum van sy of haar afsterwe, ingevolge artikel 3 of 4 van aktiewe diens onthef is, word daar—

- (a) indien so 'n Konstitusionele Hof regter of regter deur 'n oorlewende gade of lewensmaat oorleef word, aan sodanige oorlewende gade of lewensmaat, benewens enige bedrag wat ingevolge artikel 9 aan daardie gade of lewensmaat betaalbaar is; of
- (b) indien so 'n Konstitusionele Hof regter of regter nie deur 'n gade of lewensmaat oorleef word nie aan die boedel van sodanige Konstitusionele Hof regter of regter,

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a gratuity which shall be equal to the amount of the gratuity which would have been so payable to such Constitutional Court judge or judge had he or she not died but was, on the date of his or her death, discharged from active service as aforesaid: Provided that if the Constitutional Court judge or judge is survived by more than one spouse, the gratuity calculated in terms of this section shall be divided equally between the spouses concerned, unless the judge concerned determined otherwise in accordance with a regulation made under section 13(1)(cB)." 5

Amendment of section 13 of Act 47 of 2001

17. Section 13 of the Judges' Remuneration and Conditions of Employment Act, 2001, is amended— 10

(a) by the addition in subsection (1) of the following paragraphs:

"(cA) the requirements for, and the registration of, not more than one person and the deregistration of that person as a partner of a Constitutional Court judge or a judge with the Director-General: Justice and Constitutional Development; 15

(cB) the determination, for the purposes of the proviso to section 9(1), 10(1) or 11(7), by a Constitutional Court judge or judge who has more than one spouse, of the division of the amounts referred to in those sections between those spouses in the event of his or her death;" 20

(b) by the deletion in subsection (1) of paragraph (e).

Amendment of section 13 of Act 47 of 2001

18. Section 13 of the Judges' Remuneration and Conditions of Employment Act, 2001, is amended by the addition in subsection (1) of the following paragraphs: 25

"(cA) the requirements for, and the registration of, not more than one person and the deregistration of that person as a partner of a Constitutional Court judge or a judge with the Director-General: Justice and Constitutional Development; 30

(cB) the determination, for the purposes of the proviso to section 9(1), 10(1) or 11(7), by a Constitutional Court judge or judge who has more than one spouse, of the division of the amounts referred to in those sections between those spouses in the event of his or her death;" 35

Transitional provisions

19. (1) Subject to subsection (2), any remuneration, including any annual salary, salary, allowance or benefit accruing immediately before the commencement of this Act to a magistrate or a judge, is deemed to have been determined in accordance with— 35

(a) section 12 of the Magistrates Act, 1993 (Act No. 90 of 1993), as amended by this Act; or

(b) section 2 of the Judges' Remuneration and Conditions of Employment Act, 2001 (Act No. 47 of 2001), as amended by this Act, 40

as the case may be.

(2) The remuneration referred to in subsection (1) does not include any amount payable—

(a) to a magistrate under a regulation made in terms of section 16(1)(a) or (g) of the Magistrates Act, 1993; or 45

(b) to a judge under a regulation made in terms of section 13(1)(c) or (d) of the Judges' Remuneration and Conditions of Employment Act, 2001.

(3) Any person who, immediately before the commencement of this Act, held an acting appointment as a magistrate in terms of section 9(3) of the Magistrates' Courts Act, 1944 (Act No. 32 of 1944)— 50

(a) is deemed to have been so appointed in terms of section 9(3) of that Act, as amended by section 1 of this Act; and

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'n gratifikasie betaal wat gelyk is aan die bedrag van die gratifikasie wat aldus aan sodanige Konstitusionele Hof regter of regter betaalbaar sou gewees het indien hy of sy nie te sterwe gekom het nie maar, op die datum van sy of haar afsterwe, van aktiewe diens onthef is soos voormeld: Met dien verstande dat indien die Konstitusionele Hof regter of regter deur meer as een gade oorleef word, die bedrag beoog in paragraaf (a) of (b) gelykop tussen die betrokke gades verdeel word, tensy die betrokke regter anders bepaal het ooreenkomstig 'n regulasie kragtens artikel 13(1)(cB) uitgevaardig."

Wysiging van artikel 13 van Wet 47 van 2001

17. Artikel 13 van die Wet op Besoldiging en Diensvoorwaardes van Regters, 2001, word gewysig—

(a) deur in subartikel (1) die volgende paragrawe by te voeg:

“(cA) die vereistes vir, en die registrasie van, nie meer nie as een persoon en die deregistrasie van daardie persoon as 'n lewensmaat van 'n Konstitusionele Hof regter of regter by die Direkteur-Generaal: Justisie en Staatkundige Ontwikkeling; (cB) die bepaling, vir doeleindes van die voorbehoud by artikel 9(1), 10(1) of 11(7), deur 'n Konstitusionele Hof regter of regter wat meer as een gade het, van die verdeling van die bedrae in daardie artikels bedoel tussen daardie gades in die geval van sy of haar afsterwe;” en

(b) deur paragraaf (e) van subartikel (1) te skrap.

Wysiging van artikel 13 van Wet 47 van 2001

18. Artikel 13 van die Wet op Besoldiging en Diensvoorwaardes van Regters, 2001, word gewysig deur in subartikel (1) die volgende paragrawe by te voeg:

“(cA) die vereistes vir, en die registrasie van, nie meer nie as een persoon en die deregistrasie van daardie persoon as 'n lewensmaat van 'n Konstitusionele Hof regter of regter by die Direkteur-Generaal: Justisie en Staatkundige Ontwikkeling; (cB) die bepaling, vir doeleindes van die voorbehoud by artikel 9(1), 10(1) of 11(7), deur 'n Konstitusionele Hof regter of regter wat meer as een gade het, van die verdeling van die bedrae in daardie artikels bedoel tussen daardie gades in die geval van sy of haar afsterwe;”.

Oorgangsbepalings

19. (1) Behoudens subartikel (2), word enige besoldiging, met inbegrip van enige jaarlikse salaris, salaris, toelae of voordeel wat onmiddellik voor die inwerkingtreding van hierdie Wet 'n landdros of 'n regter toegekome het, geag bepaal te gewees het ooreenkomstig—

(a) artikel 12 van die Wet op Landdroste, 1993 (Wet No. 90 van 1993), soos gewysig deur hierdie Wet; of

(b) artikel 2 van die Wet op Besoldiging en Diensvoorwaardes van Regters, 2001 (Wet No. 47 van 2001), soos gewysig deur hierdie Wet, na gelang van die geval.

(2) Die besoldiging in subartikel (1) bedoel, sluit geen bedrag in nie wat betaalbaar is—

(a) aan 'n landdros kragtens 'n regulasie uitgevaardig ingevolge artikel 16(1)(a) of (g) van die Wet op Landdroste, 1993; of

(b) aan 'n regter kragtens 'n regulasie uitgevaardig ingevolge artikel 13(1)(c) of (d) van die Wet op Besoldiging en Diensvoorwaardes van Regters, 2001.

(3) Enige persoon wat, onmiddellik voor die inwerkingtreding van hierdie Wet, 'n waarnemende aanstelling gehou het as 'n landdros ingevolge artikel 9(3) van die Wet op Landdroshowe, 1944 (Wet No. 32 van 1944)—

(a) word geag aldus aangestel te wees ingevolge artikel 9(3) van daardie Wet, soos gewysig deur artikel 1 van hierdie Wet; en

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- (b) notwithstanding section 9(5)(a)(i) of that Act, holds that office for the period determined before the commencement of this Act.

Short title and commencement

20. This Act is called the Judicial Officers (Amendment of Conditions of Service) Act, 2003, and comes into operation on 1 November 2003 or on such earlier date as may be fixed by the President by proclamation in the *Gazette*. 5

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- (b) niteenstaande artikel 9(5)(a)(i) van daardie Wet, bekleë daardie amp vir die tydperk wat voor die inwerkingtreding van hierdie Wet bepaal is.

Kort titel en inwerkingtreding

20. Hierdie Wet heet die Wet op Regterlike Beamptes (Wysiging van Diensvoorwaardes), 2003, en tree in werking op 1 November 2003 of op sodanige 5
vroëer datum wat die President by proklamasie in die *Staatskoerant* mag bepaal.

