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THE PRESIDENCY

No. 428

31 March 2004

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

No. 55 of 2003: Judicial Matters Second Amendment Act, 2003.

DIE PRESIDENSIE

No. 428

31 Maart 2004

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

No. 55 van 2003: Tweede Wysigingswet op Geregtelike Aangeleenthede, 2003.



AIDS HELPLINE: 0800-0123-22 Prevention is the cure

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 25 March 2004.)

ACT

To amend the Administration Amendment Act, 1929, so as to eliminate any uncertainty relating to the appointment of presiding officers of Divorce Courts in an acting, temporary or permanent capacity; to amend the Insolvency Act, 1936, so as to further regulate agreements providing for termination and netting of certain unperformed obligations and obligations in respect of assets transferred as collateral security in the event of sequestration; to amend the Prevention of Counterfeiting of Currency Act, 1965, so as to make further provision regarding the evidentiary burden of proof on an accused person; to amend the Criminal Procedure Act, 1977, so as to ensure the consideration of a pre-trial services report in respect of bail proceedings; to further regulate correctional supervision as a sentencing option in certain circumstances; to make provision for a complainant to make representations with regard to the placement of accused persons on parole and to set out the duties of such complainant; and to make provision for the submission of a report to Parliament containing certain particulars in respect of accused persons whose trials have not commenced and who have been in custody for a particular period of time; to amend the Attorneys Act, 1979, so as to provide for the mandatory attendance of a legal practice management course by certain attorneys; to amend the Divorce Act, 1979, so as to make further provision regarding pension benefits in respect of the division of assets and maintenance of parties; to amend the Sheriffs Act, 1986, so as to effect a change of name; to amend the Mediation in Certain Divorce Matters Act, 1987, so as to prescribe the circumstances in which a Family Advocate may intervene in maintenance and domestic violence proceedings; to amend the Maintenance Act, 1998, so as to provide for the consideration by a court of the report and recommendations of a Family Advocate at a maintenance enquiry; to further regulate the payment of a maintenance benefit by a third party; and to extend maintenance orders by including maintenance orders made by High Courts and Divorce Courts in certain circumstances; to amend the Domestic Violence Act, 1998, so as to provide for the consideration by a court of the report and recommendations of a Family Advocate; to amend the Promotion of Access to Information Act, 2000, so as to extend the period within which the South African Human Rights Commission must compile a guide to assist persons who wish to gain access to information; to make provision regarding the exclusion of the Judicial Service Commission from the application of that Act in certain circumstances; to extend the period of time within which the rules of procedure must be made; to further regulate the institution of legal proceedings in terms of the Act in a court; to make provision regarding the failure to comply with certain provisions of the Act; and to sanction the punishment for failure to comply with certain regulations; to amend the Promotion of Administrative Justice Act, 2000, so as to adapt the definition of "administrative action"; to

ALGEMENE VERDUIDELIKENDE NOTA:

- [] Woorde in vet druk tussen vierkantige hake dui skrappings uit
bestaande verordenings aan.
- _____ Woorde met 'n volstreep daaronder, dui invoegings in
bestaande verordenings aan.

(Engelse teks deur die President geteken.)
(Goedgekeur op 25 Maart 2004.)

WET

Tot wysiging van die Administrasie Wysigingswet, 1929, ten einde enige onsekerheid uit die weg te ruim ten opsigte van die aanstelling van voorsittende beamptes van Egskeidingshowe in 'n waarnemende, tydelike of vaste hoedanigheid; tot wysiging van die Insolvensiewet, 1936, ten einde ooreenkomste wat voorsiening maak vir beëindiging en nettoberekening van sekere verpligtinge wat nie nagekom is nie en verpligtinge ten opsigte van bates wat as kollaterale sekuriteit in die geval van sekwestrasie oorgedra is, verder te reël; tot wysiging van die Wet op Voorkoming van Vervalsing van Betaalmiddele, 1965, ten einde die bewysregterlike las wat op 'n beskuldigde rus, verder te reël; tot wysiging van die Strafproseswet, 1977, ten einde te verseker dat 'n voorverhoordiensteverslag in borgverrigtinge oorweeg word; om korrektiewe toesig as 'n vonnisopsie in sekere omstandighede verder te reël; om voorsiening te maak dat 'n klaer verhoër kan rig met betrekking tot die uitplasing van beskuldigdes op parool en om die verpligtinge van so 'n klaer uit een te sit; en om voorsiening te maak vir die voorlegging van 'n verslag aan die Parlement wat sekere besonderhede bevat ten opsigte van beskuldigdes wie se verhoër nie 'n aanvang geneem het nie en wat in aanhouding vir 'n bepaalde tydperk is; tot wysiging van die Wet op Prokureurs, 1979, ten einde voorsiening te maak vir die verpligte bywoning van 'n praktiese regspraktyk-bestuurskursus deur sekere prokureurs; tot wysiging van die Wet op Egskeiding, 1979, ten einde verder voorsiening te maak aangaande pensioenvoordele ten opsigte van die verdeling van bates en onderhoud van partye; tot wysiging van die Wet op Balju's, 1986, ten einde 'n naamsverandering aan te bring; tot wysiging van die Wet op Bemiddeling in Sekere Egskeidingsaangeleenthede, 1987, ten einde die omstandighede voor te skryf waarin 'n Gesinsadvokaat in onderhouds- en gesinsgeweldverrigtinge kan ingryp; tot wysiging van die Wet op Onderhoud, 1998, ten einde voorsiening te maak vir die oorweging deur die hof van die verslag en aanbevelings van 'n Gesinsadvokaat by 'n onderhoudsonderzoek; om die betaling van 'n onderhoudsvoordeel deur 'n derde party verder te reël; en om onderhoudsbevele uit te brei om onderhoudsbevele in te sluit wat deur Hoë Howe en Egskeidingshowe in sekere omstandighede gemaak word; tot wysiging van die Wet op Gesinsgeweld, 1998, ten einde voorsiening te maak vir die oorweging deur 'n hof van die verslag en aanbevelings van 'n Gesinsadvokaat; tot wysiging van die Wet op Bevordering van Toegang tot Inligting, 2000, ten einde die tydperk te verleng waarbinne die Suid-Afrikaanse Menseregtekommissie 'n gids moet saamstel om persone te help wat toegang tot inligting wil verkry; om voorsiening te maak met betrekking tot die uitsluiting van die Regterlike Dienskommissie van die toepassing van daardie Wet in sekere omstandighede; om die tydperk waarbinne die reëls van prosedure gemaak moet word, te verleng; om die instelling van geregtelike verrigtinge ingevolge die Wet in 'n hof verder te reël; om voorsiening te maak met betrekking tot die versuim om aan sekere bepalings van die Wet te voldoen; en om die strafoplegging vir die versuim om aan sekere regulasies te

extend the period of time within which the rules of procedure for judicial review must be made; and to further regulate the institution of legal proceedings in terms of the Act in a court; to amend the Promotion of Equality and Prevention of Unfair Discrimination Act, 2000, so as to further regulate the publication of a notice altering the boundaries of an equality court; and to make provision for the delegation of certain powers; to amend the Cross-Border Insolvency Act, 2000, so as to regulate the position of legal proceedings when a notice designating a State for the purposes of that Act is withdrawn; to amend the Judges' Remuneration and Conditions of Employment Act, 2001, so as to address a technical problem during the enactment of the Judicial Officers (Amendment of Conditions of Service) Act, 2003; and to make provision regarding pensions paid to retired judges and to surviving spouses of retired judges; to amend the Judicial Officers (Amendment of Conditions of Service) Act, 2003, so as to address a technical problem during the enactment of that Act; and to provide for matters connected therewith.

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

Amendment of section 10 of Act 9 of 1929, as amended by section 5 of Act 42 of 1942, section 27 of Act 56 of 1949, section 26 of Act 54 of 1952, section 2 of Act 34 of 1986, section 1 of Act 51 of 1991, section 1 of Act 65 of 1997 and section 1 of Act 42 of 2001 5

1. Section 10 of the Administration Amendment Act, 1929, is hereby amended —
 (a) by the substitution in subsection (3) for paragraph (b) of the following paragraph:

“(b) A division of the court— 10

- (i) shall consist of one or more presiding officers, one of whom shall be the president of the division, who shall be fit and proper persons appointed by the Minister of Justice in a permanent capacity after consultation with the Magistrates Commission[.]; and 15
- (ii) such persons shall for the purposes of the Magistrates Act, 1993 (Act No. 90 of 1993), be deemed to be magistrates of a regional division as contemplated in the Magistrates' Courts Act, 1944 (Act No. 32 of 1944).”; and 20

- (b) by the insertion after subsection (3) of the following subsection: 20

“(3A) Section 9 of the Magistrates' Courts Act, 1944 (Act No. 32 of 1944), relating to the appointment of magistrates in an acting or temporary capacity is applicable with the changes required by the context in respect of the appointment of acting or temporary presiding officers of Courts established under this section.”. 25

Substitution of section 35B of Act 24 of 1936, as inserted by section 1 of Act 32 of 1995

2. The following section is hereby substituted for section 35B of the Insolvency Act, 1936:

“Agreements providing for termination and netting 30

35B. (1) Notwithstanding any rule of the common law to the contrary, all unperformed obligations arising out of one or more master agreements between the parties, or obligations arising from such agreement or agreements in respect of assets in which ownership has been transferred as collateral security, shall, upon the sequestration of the estate of a party to such master agreement, terminate automatically at the date of sequestration, the values of those obligations shall be calculated at market value as at that date, the values so calculated shall be netted and the net amount shall be payable. 35

voldoen, te magtig; tot wysiging van die “Promotion of Administrative Justice Act, 2000” ten einde die omskrywing van “administratiewe handeling” aan te pas; om die tydperk waarbinne die reëls van prosedure vir geregetelike hersiening gemaak moet word, te verleng; en om die instelling van geregetelike verrigtinge ingevolge die Wet in ’n hof verder te reël; tot wysiging van die “Promotion of Equality and Prevention of Unfair Discrimination Act, 2000”, ten einde die publikasie van ’n kennisgewing wat die grense van ’n gelykheidshof verander, verder te reël; en om voorsiening te maak vir die delegasie van sekere bevoegdhede; tot wysiging van die Wet op Insolvensie oor Landsgrense, 2000, ten einde die posisie van geregetelike verrigtinge verder te reël wanneer ’n kennisgewing wat ’n Staat vir doeleindes van daardie Wet aanwys, ingetrek word; tot wysiging van die Wet op Besoldiging en Diensvoorwaardes van Regters, 2001, ten einde ’n tegniese probleem aan te spreek tydens die verordening van die Wet op Regterlike Beamptes (Wysiging van Diensvoorwaardes), 2003; en om voorsiening te maak vir pensioene betaalbaar aan afgetrede regters en aan oorlewende gades van afgetrede regters; tot wysiging van die Wet op Regterlike Beamptes (Wysiging van Diensvoorwaardes), 2003, ten einde ’n tegniese probleem aan te spreek tydens die verordening van daardie Wet; en om voorsiening te maak vir aangeleenthede wat daarmee verband hou.

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

Wysiging van artikel 10 van Wet 9 van 1929, soos gewysig deur artikel 5 van Wet 42 van 1942, artikel 27 van Wet 56 van 1949, artikel 26 van Wet 54 van 1952, artikel 2 van Wet 34 van 1986, artikel 1 van Wet 51 van 1991, artikel 1 van Wet 65 van 1997 en artikel 1 van Wet 42 van 2001 5

1. Artikel 10 van die Administrasie Wysigingswet, 1929, word hierby gewysig—

(a) deur paragraaf (b) van subartikel (3) deur die volgende paragraaf te vervang:

“(b) ’n Afdeling van die hof—

(i) bestaan uit een of meer voorsittende beamptes, waarvan een die president van die afdeling is, wat geskikte persone is wat deur die Minister van Justisie na oorleg met die Landdrostekommissie in ’n vaste hoedanigheid aangestel word[.]; en 10

(ii) sodanige persone word vir die doeleindes van die Wet op Landdroste, 1993 (Wet No. 90 van 1993), geag landdroste van ’n streekafdeling soos beoog in die Wet op Landdroshowe, 1944 (Wet No. 32 van 1944), te wees.”; en 15

(b) deur die volgende subartikel na subartikel (3) in te voeg:

“(3) Artikel 9 van die Wet op Landdroshowe, 1944 (Wet No. 32 van 1944), wat met die aanstelling van landdroste in ’n waarnemende of tydelike hoedanigheid verband hou, is met die nodige veranderinge soos vereis deur die samehang, van toepassing met betrekking tot die aanstelling van waarnemende of tydelike voorsittende beamptes van Howe ingestel kragtens hierdie artikel.”. 20

Vervanging van artikel 35B van Wet 24 van 1936, soos ingevoeg deur artikel 1 van Wet 32 van 1995 25

2. Artikel 35B van die Insolvensiewet, 1936, word hierby deur die volgende artikel vervang:

“Ooreenkomste wat vir beëindiging en nettoberekening voorsiening maak 30

35B. (1) Ondanks enige andersluidende reël van die gemenereg, word alle verpligtinge wat nie nagekom is nie wat uit een of meer meestersooreenkomste tussen die partrye voortspruit, of verpligtinge wat uit so ’n ooreenkoms of ooreenkomste voortspruit ten opsigte van bates waarin eiendom as kollaterale sekuriteit oorgedra is, by sekwestrasie van die boedel van ’n party tot sodanige meestersooreenkoms, outomaties vanaf die datum van sekwestrasie beëindig, word die waardes van vermelde verpligtinge teen markwaarde soos op daardie datum bereken en is die netto bedrag betaalbaar. 35

Act No. 55, 2003 JUDICIAL MATTERS SECOND AMENDMENT ACT, 2003

- (2) For purposes of this section “master agreement” means—
- (a) an agreement in accordance with standard terms published by the International Swaps and Derivatives Association, the International Securities Lenders Association, the Bond Market Association or the International Securities Market Association, or any similar agreement, which provides that, upon the sequestration of one of the parties—
 - (i) all unperformed obligations of the parties in terms of the agreement—
 - (aa) terminate or may be terminated; or
 - (bb) become or may become due immediately; and
 - (ii) the values of the unperformed obligations are determined or may be determined; and
 - (iii) the values are netted or may be netted, so that only a net amount (whether in the currency of the Republic or any other currency) is payable to or by a party,
 and which may further provide that the values of assets which have been transferred as collateral security for obligations under that agreement shall be included in the calculation of the net amount payable upon sequestration; or
 - (b) any agreement declared by the Minister, after consultation with the Minister of Finance, by notice in the *Gazette* to be a master agreement for the purposes of this section.
- (3) The provisions of this section shall not apply to—
- (a) a transaction contemplated in section 35A; or
 - (b) a netting arrangement contemplated in the National Payment System Act, 1998 (Act No. 78 of 1998).
- (4) Section 341(2) of the Companies Act, 1973 (Act No. 61 of 1973), and sections 26, 29 and 30 of this Act shall not apply to dispositions in terms of a master agreement.”.

Amendment of section 4 of Act 16 of 1965, as amended by section 4 of Act 18 of 1996

3. Section 4 of the Prevention of Counterfeiting of Currency Act, 1965, is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) If in any prosecution for a contravention of paragraph (d), (j) or (l) of section [two] 2 the question arises whether any person had lawful authority or excuse for possessing or doing any thing referred to in the said paragraphs, [the onus of proving that such was the case shall be on the accused] in the absence of evidence to the contrary which raises reasonable doubt, proof of possession or conduct contemplated in the said paragraphs (d), (j) and (l) shall be sufficient evidence of the absence of lawful authority or excuse.”.

Amendment of section 60 of Act 51 of 1977, as substituted by section 3 of Act 75 of 1995 and amended by section 4 of Act 85 of 1997, section 5 of Act 34 of 1998 and section 9 of Act 62 of 2000

4. Section 60 of the Criminal Procedure Act, 1977, is hereby amended by the insertion after subsection (2) of the following subsection:

“(2A) The court must, before reaching a decision on the bail application, take into consideration any pre-trial services report regarding the desirability of releasing an accused on bail, if such a report is available.”.

Amendment of section 276 of Act 51 of 1977, as amended by section 3 of Act 107 of 1990, section 41 of Act 122 of 1991, section 18 of Act 139 of 1992, section 20 of Act 116 of 1993, section 2 of Act 33 of 1997 and section 34 of Act 105 of 1997

5. Section 276 of the Criminal Procedure Act, 1977, is hereby amended by the substitution for subsection (3) of the following subsection:

TWEDE WYSIGINGSWET OP GEREGETELIKE
AANGELEENTHEDE, 2003

Wet No. 55, 2003

- (2) By die toepassing van hierdie artikel beteken “meesters-ooreenkoms”—
- (a) ’n ooreenkoms in ooreenstemming met die standaard bepalinge uitgegee deur die “International Swaps and Derivatives Association”, die “International Securities Lenders Association”, die “Bond Market Association” of die “International Securities Market Association”, of enige soortgelyke ooreenkoms, wat bepaal dat, by sekwestrasie van een van die partye—
- (i) alle verpligtinge van die partye ingevolge die ooreenkoms wat nie nagekom is nie—
- (aa) beëindig word of beëindig kan word; of
- (bb) onverwyld betaalbaar word of betaalbaar kan word;
- (ii) die waarde van die verpligtinge wat nie nagekom is nie bepaal word of bepaal kan word; en
- (iii) die netto waarde bereken word of bereken kan word, sodat slegs ’n netto bedrag (hetsy in die valuta van die Republiek of enige ander valuta) aan of deur ’n party betaalbaar is; en
- wat verder kan bepaal dat die waarde van bates wat as kollaterale sekuriteit vir verpligtinge kragtens daardie ooreenkoms oorgedra is, in die berekening van die netto bedrag ingesluit word wat by sekwestrasie betaalbaar is; of
- (b) enige ooreenkoms wat deur die Minister na oorlegpleging met die Minister van Finansies as ’n meestersooreenkoms by die toepassing van hierdie artikel by kennisgewing in die *Staatskoerant* verklaar word.
- (3) Die bepalinge van hierdie artikel is nie ten opsigte van—
- (a) ’n transaksie beoog in artikel 35A; of
- (b) ’n nettoberekening beoog in die Nasionale Betalingstelselwet, 1998 (Wet No. 78 van 1998),
- van toepassing nie.
- (4) Artikel 341(2) van die Maatskappywet, 1973 (Wet No. 61 van 1973), en artikels 26, 29 en 30 van hierdie Wet is nie van toepassing ten opsigte van vervreemdings ingevolge ’n meestersooreenkoms nie.”.

Wysiging van artikel 4 van Wet 16 van 1965, soos gewysig deur artikel 4 van Wet 18 van 1996

3. Artikel 4 van die Wet op Voorkoming van Vervalsing van Betaalmiddele, 1965, word hierby gewysig deur subartikel (2) deur die volgende subartikel te vervang:
- “(2) Indien in ’n vervolging weens ’n oortreding van paragraaf (d), (j) of (l) van artikel [twee] 2 die vraag ontstaan of iemand wettige magtiging of verskoning gehad het om iets vermeld in genoemde paragrafe te besit of te doen, [rus die las om te bewys dat dit die geval was, op die beskuldigde] by ontstentenis van getuienis tot die teendeel wat redelike twyfel laat ontstaan, is bewys dat besit of optrede beoog in genoemde paragrafe (d), (j) en (l) voldoende getuienis van die afwesigheid van wettige magtiging of verskoning.”.

Wysiging van artikel 60 van Wet 51 van 1977, soos vervang deur artikel 3 van Wet 75 van 1995 en gewysig deur artikel 4 van Wet 85 van 1997, artikel 5 van Wet 34 van 1998 en artikel 9 van Wet 62 van 2000

4. Artikel 60 van die Strafproseswet, 1977, word hierby gewysig deur die volgende subartikel na subartikel (2) in te voeg:
- “(2A) Die hof moet, alvorens hy ’n borgaansoek beslis, enige voorverhoordienste verslag in ag neem oor die wenslikheid om ’n beskuldigde op borgtog vry te stel, indien so ’n verslag beskikbaar is.”.

Wysiging van artikel 276 van Wet 51 van 1977, soos gewysig deur artikel 3 van Wet 107 van 1990, artikel 41 van Wet 122 van 1991, artikel 18 van Wet 139 van 1992, artikel 20 van Wet 116 van 1993, artikel 2 van Wet 33 van 1997 en artikel 34 van Wet 105 van 1997

5. Artikel 276 van die Strafproseswet, 1977, word hierby gewysig deur subartikel (3) deur die volgende subartikel te vervang:

“(3) Notwithstanding anything to the contrary in any law contained, other than the Criminal Law Amendment Act, 1997 (Act No. 105 of 1997), the provisions of subsection (1) shall not be construed as prohibiting the court—

- (a) from imposing imprisonment together with correctional supervision; 5
- or
- (b) from imposing the punishment referred to in subsection (1)(h) or (i) in respect of any offence, whether under the common law or a statutory provision, irrespective of whether the law in question provides for such or any other punishment: Provided that any punishment 10 contemplated in this paragraph may not be imposed in any case where the court intends imposing a sentence contemplated in section 51(1) or (2), read with section 52, of the Criminal Law Amendment Act, 1997.”.

Insertion of section 299A in Act 51 of 1977

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6. The following section is hereby inserted in the Criminal Procedure Act, 1977, after section 299:

“Right of complainant to make representations in certain matters with regard to placement on parole, on day parole, or under correctional supervision 20

299A. (1) When a court sentences a person to imprisonment for—

- (a) murder or any other offence which involves the intentional killing of a person; 25
- (b) rape;
- (c) robbery where the wielding of a fire-arm or any other dangerous weapon or the infliction of grievous bodily harm or the robbery of a motor vehicle is involved;
- (d) assault of a sexual nature;
- (e) kidnapping; or 30
- (f) any conspiracy, incitement or attempt to commit any offence contemplated in paragraphs (a) to (e),

it shall inform—

- (i) the complainant; or
 - (ii) in the case of murder or any other offence contemplated in paragraph (a), any immediate relative of the deceased, 35
- if he or she is present that he or she has a right, subject to the directives issued by the Commissioner of Correctional Services under subsection (4), to make representations when placement of the prisoner on parole, on day parole or under correctional supervision is considered or to attend any relevant meeting of the parole board. 40

(2) If the complainant or a relative intends to exercise the right contemplated in subsection (1) by making representations to or attending a meeting of the parole board, he or she has a duty—

- (i) to inform the Commissioner of Correctional Services thereof in writing; 45
- (ii) to provide the said Commissioner with his or her postal and physical address in writing; and
- (iii) to inform the said Commissioner in writing of any change of address. 50

(3) The Commissioner of Correctional Services shall inform the parole board in question accordingly and that parole board shall inform the complainant or relative in writing when and to whom he or she may make representations or when and where a meeting will take place.

(4) (a) The Commissioner of Correctional Services must issue directives regarding the manner and circumstances in which a complainant or relative contemplated in subsection (1) may exercise the right contemplated in that subsection. 55

(b) Directives issued under paragraph (a) must be published in the *Gazette*.

“(3) Ondanks enige andersluidende wetsbepalings, anders as die Strafwysigingswet, 1997 (Wet No. 105 van 1997), word die bepaling van subartikel (1) nie so uitgelê as sou dit die hof verbied—

- (a) om gevangenisstraf saam met korrektiewe toesig op te lê nie; of
- (b) om ’n straf in subartikel (1)(h) of (i) bedoel ten opsigte van enige misdryf op te lê nie, hetsy kragtens die gemenereg of ’n statutêre bepaling, ongeag of die betrokke wet vir sodanige of enige ander straf voorsiening maak: Met dien verstande dat enige straf beoog in hierdie paragraaf word nie opgelê in enige saak waar die hof van voornemens is om ’n vonnis beoog in artikel 51(1) of (2), saamgelees met artikel 52 van die Strafwysigingswet, 1997, op te lê nie.”.

Invoeging van artikel 299A in Wet 51 van 1977

6. Die volgende artikel word hierby na artikel 299 van die Strafproseswet, 1977, ingevoeg:

“Reg van klaer om vertoë te rig in sekere sake met betrekking tot uitplasing op parool, op dagparool, of onder korrektiewe toesig

299A. (1) Wanneer ’n hof iemand tot gevangenisstraf vonnis vir—

- (a) moord of enige ander misdryf wat met die opsetlike doodmaak van ’n persoon betrekking het;
- (b) verkragting;
- (c) roof waar die hanteer van ’n vuurwapen of ’n ander gevaarlike wapen of die toedeling van ’n ernstige liggaamlike besering of die roof van ’n motorvoertuig betrokke is;
- (d) aanranding van ’n seksuele aard;
- (e) menseroof; of
- (f) ’n sameswering, uitlokking of poging om ’n misdryf bedoel in paragraaf (a) tot (e) te pleeg,

moet die hof—

- (i) die klaer; of
- (ii) in die geval van moord of enige ander misdryf beoog in paragraaf (a), enige familielid van die oorledene,

indien hy of sy teenwoordig is, inlig dat hy of sy ’n reg het om, behoudens die voorskrifte wat deur die Kommissaris van Korrektiewe Dienste kragtens subartikel (4) uitgereik is, vertoë te rig wanneer die uitplasing van die gevangene op parool, op dagparool of onder korrektiewe toesig oorweeg word of om ’n tersaaklike vergadering van die paroolraad by te woon.

(2) Indien die klaer of ’n familielid van voornemens is om die reg beoog in subartikel (1) uit te oefen deur vertoë te rig of om ’n vergadering van die paroolraad by te woon, het hy of sy die verantwoordelikheid om—

- (i) die Kommissaris van Korrektiewe Dienste skriftelik daarvan in kennis te stel;
- (ii) bedoelde Kommissaris skriftelik van sy of haar pos- en woonadres te voorsien; en
- (iii) bedoelde Kommissaris skriftelik van enige adresverandering in kennis te stel.

(3) Die Kommissaris van Korrektiewe Dienste moet die betrokke paroolraad dienooreenkomstig inlig en daardie paroolraad moet die klaer of familielid skriftelik in kennis stel wanneer en aan wie hy of sy vertoë kan rig of wanneer en waar ’n vergadering gaan plaasvind.

(4) (a) Die Kommissaris van Korrektiewe Dienste moet voorskrifte uitreik oor die wyse en omstandighede waaronder ’n klaer of familielid beoog in subartikel (1) die reg beoog in daardie subartikel kan uitoefen.

(b) Voorskrifte uitgereik kragtens paragraaf (a) moet in die Staatskoerant gepubliseer word.

(c) Before the directives issued under paragraph (a) are published in the *Gazette*, the Commissioner of Correctional Services must submit them to Parliament, and the first directives so issued, must be submitted to Parliament within three months of the commencement of this section.

(d) Any directive issued under paragraph (a) may be amended or withdrawn in like manner." 5

Amendment of section 342A of Act 51 of 1977, as inserted by section 13 of Act 86 of 1996

7. Section 342A of the Criminal Procedure Act, 1977, is hereby amended by the addition of the following subsection: 10

"(7) (a) The National Director of Public Prosecutions must, within 14 days after the end of January and of July of each year, submit a report to the Cabinet member responsible for the administration of justice, containing the particulars indicated in the Table of Awaiting Trial Accused in respect of each accused whose trial has not yet commenced in respect of the leading of evidence, as contemplated in section 150 and who, by the end of the month in question, has been in custody for a continuous period exceeding— 15

- (i) 18 months from date of arrest, where the trial is to be conducted in a High Court; 20
- (ii) 12 months from date of arrest, where the trial is to be conducted in a regional court; and
- (iii) six months from date of arrest, where the trial is to be conducted in a magistrate's court.

(b) The Cabinet member responsible for the administration of justice must, within 14 days of receipt of a report contemplated in paragraph (a), table such report in Parliament. 25

Table of Awaiting Trial Accused							
Court and case number	Name and age of accused	Particulars of charge(s)	Period in detention	Number of court appearances	Date of next court appearance	Reasons why trial has not commenced	Whether bail has been granted and if so, the conditions of bail".

Insertion of section 13B in Act 53 of 1979 35

8. The following section is hereby inserted in the Attorneys Act, 1979, after section 13A:

"Certain attorneys to complete training in legal practice management 40

13B. After the commencement of the Judicial Matters Second Amendment Act, 2003, every attorney who, for the first time, practises as a partner in a firm of attorneys or who practises on his or her own account, must—

- (a) within the period contemplated in section 74(1)(dA); and 45
- (b) after payment of the fee prescribed in terms of section 80(1)(i), complete a legal practice management course approved by the council of the province in which he or she practises."

Amendment of section 74 of Act 53 of 1979, as amended by section 26 of Act 87 of 1989 and section 18 of Act 115 of 1993 50

9. Section 74 of the Attorneys Act, 1979, is hereby amended by the insertion in subsection (1) after paragraph (d) of the following paragraph:

"(dA) legal practice management courses to be completed by attorneys as contemplated in section 13B and determine the period within which such courses must be completed;" 55

TWEDE WYSIGINGSWET OP GEREGETELIKE
AANGELEENTHEDE, 2003

Wet No. 55, 2003

(c) Alvorens die voorskrifte wat kragtens paragraaf (a) uitgereik is, in die *Staatkoerant* gepubliseer word, moet die Kommissaris van Korrektiewe Dienste dit aan die Parlement voorlê, en die eerste voorskrifte aldus uitgereik, moet binne drie maande vanaf die inwerkingtreding van hierdie artikel aan die Parlement voorgelê word.

(d) 'n Voorskrif wat kragtens paragraaf (a) uitgereik word kan op soortgelyke wyse gewysig of ingetrek word."

Wysiging van artikel 342A van Wet 51 van 1977, soos ingevoeg deur artikel 13 van Wet 86 van 1996

7. Artikel 342A van die Strafproseswet, 1977, word hierby gewysig deur die byvoeging van die volgende subartikel:

"(7) (a) Die Nasionale Direkteur van Openbare Vervolgings moet, binne 14 dae na die einde van Januarie en van Julie van elke jaar, 'n verslag aan die Kabinetslid wat vir die regspleging verantwoordelik is, voorlê, wat besonderhede bevat wat in die Tabel van Verhoorafwagende Beskuldigdes aangedui word (sien hieronder) ten opsigte van elke beskuldigde wie se verhoor nog nie 'n aanvang geneem het nie ten opsigte van die aanbied van getuienis soos beoog in artikel 150 en wie, aan die einde van die betrokke maand vir 'n aaneenlopende tydperk in aanhouding was, wat—

- (i) 18 maande vanaf die datum van inhegtenisneming te bowe gaan, waar die verhoor in 'n Hoë Hof voortgesit staan te word;
- (ii) 12 maande vanaf die datum van inhegtenisneming te bowe gaan, waar die verhoor in 'n streekhof voortgesit staan te word; en
- (iii) ses maande vanaf die datum van inhegtenisneming te bowe gaan, waar die verhoor in 'n landdroshof voortgesit staan te word.

(b) Die Kabinetslid wat vir die regspleging verantwoordelik is, moet, binne 14 dae na ontvangs van 'n verslag beoog in paragraaf (a), sodanige verslag in die Parlement ter Tafel lê.

Tabel van Verhoorafwagende Beskuldigdes							
Hof en saaknommer	Naam en ouderdom van beskuldigde	Besonderhede van klagte(s)	Tydperk in aanhouding	Getal hof-verskynings	Datum van volgende hof-verskyning	Redes hoe-kom verhoor nie 'n aanvang geneem het nie	Of borgtog toegestaan is en indien wel, die borgvoorwaardes"

Invoeging van artikel 13B in Wet 53 van 1979

8. Die volgende artikel word hierby na artikel 13A van die Wet op Prokureurs, 1979, ingevoeg:

"**Sekere prokureurs moet opleiding in regspraktijkbestuur ondergaan**

"13B. Na die inwerkingtreding van die Tweede Wysigingswet op Geregetelike Aangeleenthede, 2003, moet elke prokureur wat vir die eerste maal as 'n vennoot in 'n prokureursfirma praktiseer of wat vir sy of haar eie rekening praktiseer—

- (a) binne die tydperk beoog in artikel 74(1)(dA); en
- (b) na betaling van die geld ingevolge artikel 80 voorgeskryf, 'n praktiese regspraktijkbestuurskursus voltooi wat goedgekeur is deur die raad van die provinsie waarbinne hy of sy praktiseer."

Wysiging van artikel 74 van Wet 53 van 1979, soos gewysig deur artikel 26 van Wet 87 van 1989 en artikel 18 van Wet 115 van 1993

9. Artikel 74 van die Wet op Prokureurs, 1979, word hierby gewysig deur die volgende paragraaf in subartikel (1) na paragraaf (d) in te voeg:

"(dA) regspraktijkbestuurskursusse wat deur prokureurs voltooi moet word soos beoog in artikel 13B en die tydperk bepaal waarbinne sodanige kursusse voltooi moet word;"

Act No. 55, 2003 JUDICIAL MATTERS SECOND AMENDMENT ACT, 2003

Amendment of section 80 of Act 53 of 1979, as amended by section 10 of Act 108 of 1984, section 19 of Act 115 of 1993 and section 12 of Act 104 of 1996

10. Section 80 of the Attorneys Act, 1979, is hereby amended by the addition to subsection (1) of the following paragraph:

“(i) the completion of legal practice management courses as contemplated in section 13B.”.

Amendment of section 7 of Act 70 of 1979, as amended by section 36 of Act 88 of 1984, section 2 of Act 3 of 1988, section 2 of Act 7 of 1989 and section 1 of Act 44 of 1992

11. Section 7 of the Divorce Act, 1979, is hereby amended by the substitution in subsection (8)(a) for subparagraph (ii) of the following subparagraph:

“(ii) the registrar of the court in question forthwith notify the fund concerned that an endorsement be made in the records of that fund that that part of the pension interest concerned is so payable to that other party and that the administrator of the pension fund furnish proof of such endorsement to the registrar, in writing, within one month of receipt of such notification;”.

Amendment of section 1 of Act 90 of 1986, as amended by section 1 of Act 74 of 1998

12. Section 1 of the Sheriffs Act, 1986, is hereby amended by the substitution for the definition of “Board” of the following definition:

“‘Board’ means the South African Board for Sheriffs established by section 7, and includes, for the purposes of Chapter IV (excluding section 52), a disciplinary committee;”.

Substitution of section 7 of Act 90 of 1986

13. The following section is hereby substituted for section 7 of the Sheriffs Act, 1986:

“Establishment of South African Board for Sheriffs”

7. There is hereby established a board to be known as the South African Board for Sheriffs and which shall be a juristic person.”.

Substitution of long title of Act 90 of 1986

14. The following long title is hereby substituted for the long title to the Sheriffs Act, 1986:

“To provide for the appointment of sheriffs, the establishment of a South African Board for Sheriffs and a Fidelity Fund for Sheriffs, the regulation of the conduct of sheriffs, and matters connected therewith.”.

Amendment of section 5 of Act 24 of 1987, as amended by section 2 of Act 121 of 1991 and section 9 of Act 86 of 1997

15. Section 5 of the Mediation in Certain Divorce Matters Act, 1987, is hereby amended by the insertion in subsection (1) after paragraph (d) of the following paragraph:

“(dA) the circumstances in which a court may cause an investigation to be carried out by a Family Advocate as contemplated in section 10(1A) of the Maintenance Act, 1998 (Act No. 99 of 1998), and section 5(1A) of the Domestic Violence Act, 1998 (Act No. 116 of 1998);”.

Wysiging van artikel 80 van Wet 53 van 1979, soos gewysig deur artikel 10 van Wet 108 van 1984, artikel 19 van Wet 115 van 1993 en artikel 12 van Wet 104 van 1996

10. Artikel 80 van die Wet op Prokureurs, 1979, word hierby gewysig deur die volgende paragraaf in subartikel (1) by te voeg:

“(i) voltooiing van regspraktykbestuurskursusse soos beoog in artikel 13B.”. 5

Wysiging van artikel 7 van Wet 70 van 1979, soos gewysig deur artikel 36 van Wet 88 of 1984, artikel 2 van Wet 3 van 1988, artikel 2 van Wet 7 van 1989 en artikel 1 van Wet 44 van 1992

11. Artikel 7 van die Wet op Egskeiding, 1979, word hierby gewysig deur subparagraaf (ii) in subartikel (8)(a) deur die volgende subparagraaf te vervang: 10

“(ii) die griffier van die betrokke hof onverwyld die betrokke fonds in kennis stel dat ’n aantekening in die rekords van daardie fonds gemaak word dat daardie deel van die betrokke pensioenbelang aldus aan daardie ander party betaalbaar is en dat die administrateur van die pensioenfonds, binne een maand van ontvangs van sodanige kennisgewing, skriftelike bewys van sodanige 15
aantekening aan die griffier lewer.”.

Wysiging van artikel 1 van Wet 90 van 1986, soos gewysig deur artikel 1 van Wet 74 van 1998

12. Artikel 1 van die Wet op Balju’s, 1986, word hierby gewysig deur die omskrywing van “Raad” deur die volgende omskrywing te vervang: 20

“‘Raad’ ” die Suid-Afrikaanse Raad vir Balju’s by artikel 7 ingestel, en ook, by die toepassing van Hoofstuk IV (uitgesonderd artikel 52), ’n tugkomitee.”.

Vervanging van artikel 7 van Wet 90 van 1986

13. Artikel 7 van die Wet op Balju’s, 1986, word hierby deur die volgende artikel vervang: 25

“Instelling van Suid-Afrikaanse Raad vir Balju’s

7. Daar word hierby ’n raad ingestel wat die Suid-Afrikaanse Raad vir Balju’s heet en ’n regspersoon is.”.

Vervanging van lang titel van Wet 90 van 1986

14. Die lang titel van die Wet op Balju’s, 1986, word hierby deur die volgende lang titel vervang: 30

“Om voorsiening te maak vir die aanstelling van balju’s, die instelling van ’n Suid-Afrikaanse Raad vir Balju’s en ’n Getrouheidsfonds vir Balju’s, die reëling van die gedrag van balju’s, en aangeleentheid wat daarmee in verband staan.”. 35

Wysiging van artikel 5 van Wet 24 van 1987, soos gewysig deur artikel 2 van Wet 121 van 1991 en artikel 9 van Wet 86 van 1997

15. Artikel 5 van die Wet op Bemiddeling in Sekere Egskeidingsaangeleentheid, 1987, word hierby gewysig deur die volgende paragraaf na paragraaf (d) van subartikel (1) in te voeg: 40

“(dA) die omstandighede waaronder ’n hof ’n ondersoek kan laat instel deur ’n Gesinsadvokaat soos beoog in artikel 10(1A) van die Wet op Onderhoud, 1998 (Wet No. 99 van 1998), en artikel 5(1A) van die Wet op Gesinsgeweld, 1998 (Wet No. 116 van 1998);”.

Amendment of section 10 of Act 99 of 1998

16. Section 10 of the Maintenance Act, 1998, is hereby amended by the insertion after subsection (1) of the following subsection:

“(1A) Where circumstances permit and where a Family Advocate is available, a maintenance court may, in the circumstances as may be prescribed in the Mediation in Certain Divorce Matters Act, 1987 (Act No. 24 of 1987), at any time during the enquiry, cause an investigation to be carried out by a Family Advocate, contemplated in the Mediation in Certain Divorce Matters Act, 1987, in whose area of jurisdiction that maintenance court is, with regard to the welfare of any minor or dependent child affected by such enquiry, whereupon the provisions of that Act apply with the changes required by the context.”.

Amendment of section 16 of Act 99 of 1998

17. Section 16 of the Maintenance Act, 1998, is hereby amended by the substitution for paragraph (a) of subsection (2) of the following paragraph:

“(a) Any court—
 (i) that has at any time, whether before or after the commencement of this Act, made a maintenance order under subsection (1)(a)(i) or (b)(i);
 (ii) that makes such a maintenance order; or
 (iii) that convicts any person of an offence referred to in section 31(1), shall, subject to paragraph (b)(i), make an order directing any person, including any administrator of a pension fund, who is obliged under any contract to pay any sums of money on a periodical basis to the person against whom the maintenance order in question has been or is made, to make on behalf of the latter person such periodical payments from moneys at present or in future owing or accruing to the latter person as may be required to be made in accordance with that maintenance order if that court is satisfied—
 (aa) in the case of subparagraph (i), after hearing such evidence, either in writing or orally, as that court may consider necessary;
 (bb) in the case of subparagraph (ii), after referring to the evidence adduced at the enquiry or the application for an order by default, as the case may be; or
 (cc) in the case of subparagraph (iii), after referring to the evidence at the trial, that it is not impracticable in the circumstances of the case.”.

Amendment of section 26 of Act 99 of 1998, as amended by section 18 of Act 42 of 2001

18. Section 26 of the Maintenance Act, 1998, is hereby amended—
 (a) by the substitution in subsection (1) for paragraph (a) of the following paragraph:

“(a) against whom any maintenance order has been made [under this Act] has failed to make any particular payment in accordance with that maintenance order; or”; and

(b) by the substitution in subsection (2) for paragraph (a) of the following paragraph:

“(a) If any maintenance order [made under this Act] or any order made under section 16(1)(a)(ii), 20 or 21(4) has remained unsatisfied for a period of ten days from the day on which the relevant amount became payable or any such order was made, as the case may be, the person in whose favour any such order was made may apply to the maintenance court where that person is resident—

(i) for the authorisation of the issue of a warrant of execution referred to in section 27(1);

(ii) for an order for the attachment of emoluments referred to in section 28(1); or

(iii) for an order for the attachment of any debt referred to in section 30(1).”.

Wysiging van artikel 10 van Wet 99 van 1998

16. Artikel 10 van die Wet op Onderhoud, 1998, word hierby gewysig deur die volgende subartikel na subartikel (1) in te voeg:

“(1A) Waar omstandighede dit toelaat en waar ’n Gesinsadvokaat beskikbaar is, kan ’n onderhoudshof, in die omstandighede soos in die Wet op Bemiddeling in Sekere Egskeidingsaangeleenthede, 1987 (Wet No. 24 van 1987), voorgeskryf, ter eniger tyd tydens die ondersoek, ’n ondersoek laat instel deur ’n Gesinsadvokaat, beoog in die Wet op Bemiddeling in Sekere Egskeidingsaangeleenthede, 1987, in wie se regsgebied daardie onderhoudshof geleë is, met betrekking tot die welsyn van enige minderjarige of afhanklike kind wat deur sodanige ondersoek geraak word, waarop die bepalings van daardie Wet van toepassing is met die nodige veranderinge soos vereis deur die samehang.”.

Wysiging van artikel 16 van Wet 99 van 1998

17. Artikel 16 van die Wet op Onderhoud, 1998, word hierby gewysig deur paragraaf (a) van subartikel (2) deur die volgende paragraaf te vervang:

- (a) ’n Hof—
- (i) wat [ter] te eniger tyd, hetsy voor of na die inwerkingtreding van hierdie Wet, ’n onderhoudsbevel kragtens subartikel (1)(a)(i) of (b)(i) gegee het;
 - (ii) wat sodanige onderhoudsbevel gee; of
 - (iii) wat ’n persoon aan ’n misdryf bedoel in artikel 31(1) skuldig bevind, moet, behoudens paragraaf (b)(i), ’n bevel gee wat enige persoon, met inbegrip van ’n administrateur van ’n pensioenfonds, wat ingevolge die een of ander kontrak verplig is om enige bedrae geld op ’n periodieke grondslag te betaal aan die persoon teen wie [’n] die betrokke onderhoudsbevel gegee is of gegee word, gelas om namens laasgenoemde persoon die periodieke betalings uit gelde wat tans of in die toekoms aan laasgenoemde persoon verskuldig is of hom of haar toekom, te doen wat ooreenkomstig daardie onderhoudsbevel gedoen moet word indien daardie hof oortuig is—
 - (aa) in die geval van subparagraaf (i), na aanhoring van die getuienis, hetsy skriftelik of mondelings, wat daardie hof nodig ag;
 - (bb) in die geval van subparagraaf (ii), na raadpleging van die getuienis aangebied by die ondersoek of die aansoek om ’n bevel by verstek, na gelang van die geval; of
 - (cc) in die geval van subparagraaf (iii), na raadpleging van die getuienis aangebied by die verhoor,
- dat dit nie ondoenlik in die omstandighede van die geval is nie.”.

Wysiging van artikel 26 van Wet 99 van 1998, soos gewysig deur artikel 18 van Wet 42 van 2001

18. Artikel 26 van die Wet op Onderhoud, 1998, word hierby gewysig—

- (a) deur paragraaf (a) in subartikel (1) deur die volgende paragraaf te vervang:
- “(a) teen wie ’n onderhoudsbevel [kragtens hierdie Wet] gegee is, versuim het om ’n bepaalde betaling ooreenkomstig daardie onderhoudsbevel te doen; of”; en
- (b) deur paragraaf (a) in subartikel (2) deur die volgende paragraaf te vervang:
- “(a) Indien ’n onderhoudsbevel [wat kragtens hierdie Wet] of ’n bevel wat kragtens artikel 16(1)(a)(ii), 20 of 21(4) gegee is, onvoldaan gebly het vir ’n tydperk van 10 dae vanaf die dag waarop die betrokke bedrag betaalbaar geword het of sodanige bevel gegee is, na gelang van die geval, kan die persoon ten gunste van wie sodanige bevel gegee is by die onderhoudshof waar daardie persoon woonagtig is, aansoek doen —
- (i) om die magtiging vir die uitreiking van ’n lasbrief vir eksekusie in artikel 27(1) bedoel;
 - (ii) om ’n bevel vir die beslaglegging op besoldiging in artikel 28(1) bedoel; of
 - (iii) om ’n bevel vir die beslaglegging op enige skuld in artikel 30(1) bedoel.”.

Act No. 55, 2003 JUDICIAL MATTERS SECOND AMENDMENT ACT, 2003

Amendment of section 5 of Act 116 of 1998

19. Section 5 of the Domestic Violence Act, 1998, is hereby amended by the insertion after subsection (1) of the following subsection:

“(1A) Where circumstances permit and where a Family Advocate is available, a court may, in the circumstances as may be prescribed in the Mediation in Certain Divorce Matters Act, 1987 (Act No. 24 of 1987), when considering an application contemplated in subsection (1), cause an investigation to be carried out by a Family Advocate, contemplated in the Mediation in Certain Divorce Matters Act, 1987, in whose area of jurisdiction that court is, with regard to the welfare of any minor or dependent child affected by the proceedings in question, whereupon the provisions of that Act apply with the changes required by the context.”.

Amendment of section 10 of Act 2 of 2000, as amended by section 24 of Act 42 of 2001

20. Section 10 of the Promotion of Access to Information Act, 2000, is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) The Human Rights Commission must, within [18 months] three years after the commencement of this section, compile in each official language a guide containing such information, in an easily comprehensible form and manner, as may reasonably be required by a person who wishes to exercise any right contemplated in this Act.”.

Substitution of section 12 of Act 2 of 2000, as substituted by section 25 of Act 42 of 2001

21. The following section is hereby substituted for section 12 of the Promotion of Access to Information Act, 2000:

“Act not applying to certain public bodies or officials thereof

12. This Act does not apply to a record—

- (a) of the Cabinet and its committees;
- (b) relating to the judicial functions of—
 - (i) a court referred to in section 166 of the Constitution;
 - (ii) a Special Tribunal established in terms of section 2 of the Special Investigating Units and Special Tribunals Act, 1996 (Act 74 of 1996); or
 - (iii) a judicial officer of such court or Special Tribunal; [or]
- (c) of an individual member of Parliament or of a provincial legislature in that capacity[.] ; or
- (d) relating to a decision referred to in paragraph (gg) of the definition of “administrative action” in section 1 of the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000), regarding the nomination, selection or appointment of a judicial officer or any other person by the Judicial Service Commission in terms of any law.”.

Amendment of section 44 of Act 2 of 2000, as amended by section 36 of Act 42 of 2001

22. Section 44 of the Promotion of Access to Information Act, 2000, is hereby amended by the substitution for subsection (4) of the following subsection:

“(4) A record may not be refused in terms of subsection (1) or (2) insofar as it consists of an account or a statement of reasons required to be given in accordance with section 5 of the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000), except if the record relates to a decision referred to in paragraph (gg) of the definition of “administrative action” in section 1 of the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000), regarding the nomination, selection or appointment of a judicial officer or any other person by the Judicial Service Commission in terms of any law.”.

Wysiging van artikel 5 van Wet 116 van 1998

19. Artikel 5 van die Wet op Gesinsgeweld, 1998, word hierby gewysig deur die volgende subartikel na subartikel (1) in te voeg:

“(1A) Waar omstandighede dit toelaat en waar ’n Gesinsadvokaat beskikbaar is, kan ’n hof, in die omstandighede soos in die Wet op Bemiddeling in Sekere Egskeidingsaangeleenthede, 1987 (Wet No. 24 van 1987), voorgeskryf, ’n aansoek beoog in subartikel (1) oorweeg, ’n ondersoek laat instel deur ’n Gesinsadvokaat, beoog in die Wet op Bemiddeling in Sekere Egskeidingsaangeleenthede, 1987 in wie se regsgebied daardie hof geleë is, met betrekking tot die welsyn van enige minderjarige of afhanklike kind wat deur die betrokke verrigtinge geraak word, waarop die bepalings van daardie Wet van toepassing is met die nodige veranderinge soos vereis deur die samehang.”.

Wysiging van artikel 10 van Wet 2 van 2000, soos gewysig deur artikel 24 van Wet 42 van 2001

20. Artikel 10 van die Wet op Bevordering van Toegang tot Inligting, 2000, word hierby gewysig deur subartikel (1) deur die volgende subartikel te vervang:

“(1) Die Menseregtekommissie moet, binne [18 maande] drie jaar na die inwerkingtreding van hierdie artikel, in elke amptelike taal ’n gids publiseer wat in ’n maklik verstaanbare vorm en wyse die inligting bevat wat redelikerwys benodig word deur ’n persoon wat enige reg in hierdie Wet beoog, wil uitoefen.”.

Vervanging van artikel 12 van Wet 2 van 2000, soos vervang deur artikel 25 van wet 42 van 2001

21. Artikel 12 van die Wet op Bevordering van Toegang tot Inligting, 2000, word hierby deur die volgende artikel vervang:

“Wet nie van toepassing nie op sekere openbare liggame of beamptes daarvan

12. Hierdie Wet is nie van toepassing nie op ’n rekord—

- (a) van die Kabinet en sy komitees;
- (b) met betrekking tot die regterlike funksies van—
 - (i) ’n hof in artikel 166 van die Grondwet bedoel;
 - (ii) ’n Speciale Tribunaal ingestel ingevolge artikel 2 van die Wet op Speciale Ondersoekeenhede en Speciale Tribunale, 1996 (Wet No. 74 van 1996); of
 - (iii) ’n regterlike amptenaar van sodanige hof of Speciale Tribunaal; [of]
- (c) van ’n individuele lid van die Parlement of van ’n provinsiale wetgewer in daardie hoedanigheid[.] of
- (d) wat verband hou met ’n besluit bedoel in paragraaf (gg) van die omskrywing van “administratiewe handeling” in artikel 1 van die “Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000)”, met betrekking tot die benoeming, verkiesing of aanstelling van ’n regterlike amptenaar of enige ander persoon ingevolge enige wet deur die Regterlike Dienskommissie.”.

Wysiging van artikel 44 van Wet 2 van 2000, soos gewysig deur artikel 36 van Wet 42 van 2001

22. Artikel 44 van die Wet op Bevordering van Toegang tot Inligting, 2000, word hierby gewysig deur subartikel (4) deur die volgende subartikel te vervang:

“(4) ’n Rekord kan nie ingevolge subartikel (1) of (2) geweier word nie vir sover dit bestaan uit ’n verslag of ’n opgaaf van redes wat vereis gegee te word ooreenkomstig artikel 5 van die “Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000)”, behalwe indien die rekord verband hou met ’n besluit bedoel in paragraaf (gg) van die omskrywing van “administratiewe handeling” in artikel 1 van die “Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000)”, met betrekking tot die benoeming, verkiesing of aanstelling van ’n regterlike amptenaar of enige ander persoon ingevolge enige wet deur die Regterlike Dienskommissie.”.

Amendment of section 79 of Act 2 of 2000

23. Section 79 of the Promotion of Access to Information Act, 2000, is hereby amended—

- (a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words: 5
 “(1) The Rules Board for Courts of Law, established by section 2 of the Rules Board for Courts of Law Act, 1985 (Act 107 of 1985), must within **[12 months]** four years after the commencement of this section, make **[and implement]** rules of procedure for—”; and
- (b) by the substitution for subsection (2) of the following subsection: 10
 “(2) **[Before the implementation of]** Until the rules of procedure in terms of subsection (1)(a) come into operation, an application in terms of section 78 **[may only]** must be lodged with a High Court or another court **[of similar status]** having jurisdiction.”.

Substitution of section 90 of Act 2 of 2000 15

24. The following section is hereby substituted for section 90 of the Promotion of Access to Information Act, 2000:

“Offences

- 90.** (1) A person who with intent to deny a right of access in terms of this Act— 20
- (a) destroys, damages or alters a record;
 - (b) conceals a record; or
 - (c) falsifies a record or makes a false record,
- commits an offence and is liable on conviction to a fine or to imprisonment for a period not exceeding two years. 25
- (2) An information officer who wilfully or in a grossly negligent manner fails to comply with the provisions of section 14 commits an offence and is liable on conviction to a fine, or to imprisonment for a period not exceeding two years.
- (3) A head of a private body who wilfully or in a grossly negligent manner fails to comply with the provisions of section 51 commits an offence and is liable on conviction to a fine, or to imprisonment for a period not exceeding two years.”. 30

Amendment of section 92 of Act 2 of 2000

25. Section 92 of the Promotion of Access to Information Act, 2000, is hereby amended by the addition of the following subsection: 35

- “(4) Any regulation in terms of subsection (1) may provide that any person who contravenes a provision thereof or fails to comply therewith is guilty of an offence and on conviction liable to a fine or to imprisonment for a period not exceeding two years.”. 40

Amendment of section 1 of Act 3 of 2000, as amended by section 1 of Act 53 of 2002

26. Section 1 of the Promotion of Administrative Justice Act, 2000, is hereby amended by the substitution for paragraph (gg) of the definition of “administrative action” of the following paragraph:

- “(gg) a decision relating to any aspect regarding the nomination, selection or appointment of a judicial officer or any other person, by the Judicial Service Commission in terms of any law.”. 45

Wysiging van artikel 79 van Wet 2 van 2000

23. Artikel 79 van die Wet op Bevordering van Toegang tot Inligting, 2000, word hierby gewysig—

- (a) deur subartikel (1) deur die volgende subartikel te vervang:
- “(1) Die Reëlsraad vir Geregshowe, ingestel by artikel 2 van die Wet op die Reëlsraad vir Geregshowe, 1985 (Wet No. 107 van 1985), moet, binne **[12 maande]** vier jaar na die inwerkingtreding van hierdie artikel, reëls van prosedure vir—
- (a) ’n hof in geval van aansoeke ingevolge artikel 78; en
- (b) ’n hof om verhoë *ex parte* ingevolge artikel 80(3)(a) aan te hoor, maak **[en implementeer]**.”; en
- (b) deur subartikel (2) deur die volgende subartikel te vervang:
- “(2) **[Alvorens]** Totdat die reëls van prosedure ingevolge subartikel (1)(a) **[geïmplementeer word]** in werking tree, **[kan]** moet ’n aansoek ingevolge artikel 78 **[slegs]** by die Hoë Hof of ’n ander hof **[met soortgelyke status]** wat jurisdiksie het, ingedien word.”.

Vervanging van artikel 90 van Wet 2 van 2000

24. Artikel 90 van die Wet op Bevordering van Toegang tot Inligting, 2000, word hierby deur die volgende artikel vervang:

“**Misdrywe** 20

- 90. (1)** ’n Persoon wat met die opset om ’n reg tot toegang ingevolge hierdie Wet te ontsê—
- (a) ’n rekord vernietig, beskadig of wysig;
- (b) ’n rekord verberg; of
- (c) ’n rekord vervals of ’n vals rekord skep, 25
- is skuldig aan ’n misdryf en by skuldigbevinding strafbaar met ’n boete of met gevangenisstraf vir ’n tydperk van hoogstens twee jaar.
- (2) ’n Inligtingsbeampte wat opsetlik of op ’n grof nalatige wyse versuim om aan die bepalings van arikel 14 te voldoen, is aan ’n misdryf skuldig en by skuldigbevinding strafbaar met ’n boete of met gevangenisstraf vir ’n tydperk van hoogstens twee jaar. 30
- (3) ’n Hoof van ’n privaatliggaam wat opsetlik of op ’n grof nalatige wyse versuim om aan die bepalings van arikel 51 te voldoen, is aan ’n misdryf skuldig en by skuldigbevinding strafbaar met ’n boete of met gevangenisstraf vir ’n tydperk van hoogstens twee jaar.”. 35

Wysiging van artikel 92 van Wet 2 van 2000

25. Artikel 92 van die Wet op Bevordering van Toegang tot Inligting, 2000, word hierby gewysig deur die volgende subartikel by te voeg:

- “(4) Enige regulasie ingevolge subartikel (1) kan bepaal dat enige persoon wat ’n bepaling daarvan oortree of wat versuim om daaraan te voldoen is aan ’n misdryf skuldig en by skuldigbevinding strafbaar met ’n boete of met gevangenisstraf vir ’n tydperk van hoogstens twee jaar.”. 40

Wysiging van artikel 1 van Wet 3 van 2000, soos gewysig deur artikel 1 van Wet 53 van 2002

26. Artikel 1 van die isiXhosa teks van die “Promotion of Administrative Justice Act, 2000”, word hierby gewysig deur paragraaf (gg) van die omskrywing van “senzo solawulo” deur die volgende paragraaf te vervang:

- “(gg) isigqibo malunga nawo nawuphina umba omayela nokuphakanyiswa, ukukhethwa okanye ukutyunjwa komgwebi okanye naye nawuphina omnye umntu yi Khomishini yeNkonzo yeeJaji nangawuphina umthetho;”.

Act No. 55, 2003 JUDICIAL MATTERS SECOND AMENDMENT ACT, 2003

Amendment of section 7 of Act 3 of 2000

27. Section 7 of the Promotion of Administrative Justice Act, 2000, is hereby amended—

(a) by the substitution for subsection (3) of the following subsection:

“(3) The Rules Board for Courts of Law established by section 2 of the Rules Board for Courts of Law Act, 1985 (Act 107 of 1985), must within **[one year]** three years after the date of commencement of section 10 of this Act, make **[and implement]** rules of procedure for judicial review.”; and

(b) by the substitution for subsection (4) of the following subsection:

“(4) **[Before the implementation of]** Until the rules of procedure referred to in subsection (3) come into operation, all proceedings for judicial review under this Act must be instituted in a High Court or **[the Constitutional Court]** another court having jurisdiction.”.

Amendment of section 16 of Act 4 of 2000, as substituted by section 1 of Act 52 of 2002

28. Section 16 of the Promotion of Equality and Prevention of Unfair Discrimination Act, 2000, is hereby amended by the substitution in subsection (1) for paragraph (c) of the following paragraph:

“(c) the Minister must, after consultation with the head of an administrative region defined in section 1 of the Magistrates’ Courts Act, 1944 (Act No. 32 of 1944), by notice in the *Gazette*—

- (i) designate one or more magistrate’s courts as equality courts for the administrative region concerned;
- (ii) define the area of jurisdiction of each equality court, which may consist of any number of districts, sub-districts or other areas of jurisdiction created in terms of section 2 of the Magistrates’ Courts Act, 1944;
- (iii) increase or reduce the area of jurisdiction of each equality court;
- (iv) appoint one or more places within the area of jurisdiction of each equality court for the holding of equality court sittings;
- (v) withdraw or vary any notice under this paragraph**[; and]**;

Provided that any proceedings pending before an equality court which are not finalised at the time of the publication of a notice in the *Gazette* as contemplated in this paragraph, must be finalised by that court, as if such notice had not been published; and”.

Amendment of section 17 of Act 4 of 2000, as amended by section 2 of Act 52 of 2002

29. Section 17 of the Promotion of Equality and Prevention of Unfair Discrimination Act, 2000, is hereby amended by the addition of the following subsection:

“(4) The Director-General may, subject to such conditions as he or she may determine, in writing delegate any power conferred on him or her by this section to an officer employed by the Department, but shall not be divested of any power so delegated and may amend or set aside any decision of the delegatee made in the exercise of such power.”.

Wysiging van artikel 7 van Wet 3 van 2000

27. Artikel 7 van die isiXhosa teks van die “Promotion of Administrative Justice Act, 2000”, word hierby gewysig—

(a) deur subartikel (3) deur die volgende subartikel te vervang:

“(3) Ibhodi yemiGaqo yeeNkundla zoMthetho emiswe sisiqendu (2) 5
somthetho webhodi yemiGaqo yeeNkundla zoMthetho 1995 (Umthetho
107 ka1985), iyakuthi ungekapheli [unyaka] iminyaka emithathu
sikalile isiquendu 10 salomthetho, yenze [izalisekise] imigaqo yokuhlola
ezinkundleni.”; en

(b) deur subartikel (4) deur die volgende subartikel te vervang:

“(4) [Phambi kokuba iqalise ukusebenza] Ide imigaqo ephantsi 10
kwasiquendwana (3), zonke inkqubo zohlolo phantsi kwalo mthetho
kufuneka ziqale kwiNkundla ePhakamileyo okanye [iNkundla
yomGaqo-Siseko] nayiphi enye inkundla enegunya.”.

Wysiging van artikel 16 van Wet 4 van 2000, soos vervang deur artikel 1 van Wet 52 van 2002

28. Artikel 16 van die isiZulu teks van die “Promotion of Equality and Prevention of Unfair Discrimination Act, 2000”, word hierby gewysig deur paragraaf (c) van subartikel (1) deur die volgende paragraaf te vervang:

“(c) uNgqongqoshe kufanele, ngokubonisana nenhloko yesifunda esiphethe 20
esichazwe esigabeni 1 soMthetho weZinkantolo zeZimantshi, 1944
(Umthetho No. 32 ka-1944), ngesaziso ku*Gazethi*—

(i) aqoke eyodwa noma ngaphezulu izinkantolo zezimantshi
njengezinkantolo zokulingana esifundeni esiphethe 25
okubhekenwe naso;

(ii) achaze umkhakha wamandla omthetho enkantolo yokulingana
ngayinye, okungaba nanoma iyiphi inombolo yezigodi, izigojana
noma ezinye izindawo zamandla omthetho ezenziwe
ngokwesigaba 2 soMthetho weZinkantolo zeZimantshi, 1944;

(iii) andise noma anciphise indawo yamandla omthetho weNkantolo 30
yokulingana ngayinye;

(iv) akhethe eyodwa noma izindawo eziningana endaweni yamandla
omthetho enkantolo yokulingana ngayinye ukuthi kubanjelwe
khona imihlangano yenkantolo yokulingana;

(v) ahoxise noma aguqule nanoma yisiphi isaziso esingaphansi 35
kwale ndima[; futhi]:

Uma kungukuthi noma yiziphi izinqubo ezilindile ngaphambi kwenkantolo
yokulingana ezingakaphethwa ngaleso sikhathi sokushicilelwa kwesaziso
ku*Gazethi* njengoba kushiwo kule ndima, kufanele ziphethwe yileyo nkantolo
sengathi leso saziso besingakashicilelwa; futhi”. 40

Wysiging van artikel 17 van Wet 4 van 2000, soos gewysig deur artikel 2 van Wet 52 van 2002

29. Artikel 17 van die isiZulu teks van die “Promotion of Equality and Prevention of Unfair Discrimination Act, 2000”, word hierby gewysig deur die volgende subartikel by te voeg:

“(4) UMqondisi Jikelele, ngaphansi kwalezi zimo njengoba enganquma, 45
ngokubhala anikezele nanoma yimaphi amandla athweswe wona yilesi sigaba
kumsebenzi oqashwe nguMnyango, kodwa angeke aphucwe nanoma yimaphi
amandla awanikezele futhi engachibiyela noma abekele eceleni noma yisiphi
isinqumo esenziwe umuntu othunyiwe ekusebenziseni lawo mandla.”. 50

Amendment of section 2 of Act 42 of 2000

30. Section 2 of the Cross-Border Insolvency Act, 2000, is hereby amended by the addition of the following subsection:

“(5) Where the Minister withdraws a notice in terms of subsection (3), such withdrawal does not affect any pending legal proceedings and such proceedings must continue as if the notice had not been withdrawn.”. 5

Amendment of section 11 of Act 47 of 2001

31. Section 11 of the Judges’ Remuneration and Conditions of Employment Act, 2001, is hereby amended by the substitution for subsection (7) of the following subsection: 10

“(7) The surviving spouse or partner of a Constitutional Court judge or judge referred to in subsection (2) or (4) must, with effect from the first day of the month immediately succeeding the month in which he or she dies, be paid an amount equal to two thirds of the salary which was payable to that Constitutional Court judge or judge in terms of subsection (3)(a) or (5)(a), which amount shall be payable until the death of such spouse or partner: Provided that if the Constitutional Court judge or judge is survived by more than one spouse, the amount concerned 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).” 15 20

Amendment of section 16 of Act 47 of 2001

32. Section 16 of the Judges’ Remuneration and Conditions of Employment Act, 2001, is hereby amended—

(a) by the substitution in subsection (4) for paragraphs (b) and (c) of the following paragraphs, respectively: 25

“(b) After [the commencement of this section] 3 May 2002, any surviving spouse of a retired judge referred to in paragraph (a) shall be paid with effect from the first day of the month immediately succeeding the day on which the retired judge dies or died, an amount equal to [one half] three quarters of the amount to which his or her deceased spouse would have been entitled under paragraph (a). 30

(c) Any surviving spouse of a judge who retired as a judge in terms of the Judges’ Pensions Act, 1978, and who, [at the commencement of this section] on or after 3 May 2002, receives a pension in terms of the said Act, is, from [the date of commencement of this section] 3 May 2002 or any later date from which such surviving spouse is entitled to such a pension, entitled to an amount equal to [one half] three quarters of the amount to which his or her deceased spouse would have been entitled under paragraph (a).”; and 35 40

(b) by the addition to subsection (4) of the following paragraphs:

“(d) The amounts payable to a surviving spouse contemplated in paragraphs (b) and (c) shall be payable until the death of such spouse.

(e) The amounts payable to persons in terms of this subsection shall be adjusted whenever the annual salary payable to a Constitutional Court judge or a judge, as the case may be, is increased. 45

(f) In applying this subsection, no person may be paid an amount which is less than that which he or she received before any adjustment was made under this subsection.”. 50

Repeal of section 18 of Act 28 of 2003

33. Section 18 of the Judicial Officers (Amendment of Conditions of Service) Act, 2003, is hereby repealed.

Wysiging van artikel 2 van Wet 42 van 2000

30. Artikel 2 van die Wet op Insolvensie oor Landsgrense, 2000, word hierby gewysig deur die volgende subartikel by te voeg:

“(5) Waar die Minister ’n kennisgewing ingevolge subartikel (3) intrek, raak sodanige intrekking nie enige hangende regsverrigtinge nie en word sodanige verrigtinge voortgesit asof daardie kennisgewing nie ingetrek is nie.”. 5

Wysiging van artikel 11 van Wet 47 van 2001

31. Artikel 11 van die Wet op Besoldiging en Diensvoorwaardes van Regters, 2001, word hierby gewysig deur subartikel (7) deur die volgende subartikel te vervang:

“(7) Aan die oorlewende gade of lewensmaat van ’n Konstitusionele Hof regter of regter in subartikel (2) of (4) bedoel, 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 gelyk is aan twee derdes van die salaris wat ingevolge subartikel (3)(a) of (5)(a) aan daardie Konstitusionele Hof regter of regter betaalbaar was, welke bedrag tot by sodanige gade of lewensmaat se dood betaalbaar is: Met dien verstande dat indien die Konstitusionele Hof regter of regter deur meer as een gade oorleef word, word die betrokke bedrag eweredig tussen die betrokke gades verdeel, tensy die betrokke regter anders ooreenkomstig ’n regulasie kragtens artikel 13(1)(cB) uitgevaardig, bepaal het.”. 10 15

Wysiging van artikel 16 van Wet 47 van 2001

32. Artikel 16 van die Wet op Besoldiging en Diensvoorwaardes van Regters, 2001, word hierby gewysig—

(a) deur paragrawe (b) en (c) in subartikel (4) deur onderskeidelik die volgende paragrawe te vervang:

“(b) Na [die inwerkingtreding van hierdie artikel] 3 Mei 2002, word aan enige oorlewende gade van ’n afgetrede regter bedoel in paragraaf (a) met ingang van die eerste dag van die maand wat onmiddellik volg op die dag waarop die afgetrede regter te sterwe kom of gekom het, ’n bedrag betaal wat gelyk is aan [die helfte] driekwart van die bedrag waarop sy of haar oorlede gade kragtens paragraaf (a) geregtig sou gewees het. 25 30

(c) Enige oorlewende gade van ’n regter wat as ’n regter ingevolge die Wet op Pensioene van Regters, 1978, afgetree het, en wat [by die inwerkingtreding van hierdie artikel] op of na 3 Mei 2002, ’n pensioen ingevolge vermeldde Wet ontvang, is, vanaf [die datum van inwerkingtreding van hierdie artikel] 3 Mei 2002 of ’n latere datum waarop sodanige oorlewende gade op sodanige pensioen geregtig is, geregtig op ’n bedrag wat gelyk is aan [die helfte] driekwart van die bedrag waarop sy of haar oorlede gade kragtens paragraaf (a) geregtig sou gewees het.”; en 35

(b) deur die volgende paragrawe by subartikel (4) te voeg: 40

“(d) Die bedrae wat aan ’n oorlewende gade beoog in paragrawe (b) en (c) betaalbaar is, is betaalbaar tot die afsterwe van sodanige gade.

(e) Die bedrae wat aan persone ingevolge hierdie subartikel betaalbaar is, word aangepas wanneer die jaarlikse salaris wat aan ’n Konstitusionele Hof regter of ’n regter betaalbaar is, na gelang van die geval, verhoog word. 45

(f) By die toepassing van hierdie subartikel, word geen persoon ’n bedrag betaal wat minder is as dit wat hy of sy ontvang het voor enige aanpassing kragtens hierdie subartikel gemaak is nie.”.

Herroeping van artikel 18 van Wet 28 van 2003

33. Artikel 18 van die Wet op Regterlike Beamptes (Wysiging van Diensvoorwaardes), 2003, word hierby herroep. 50

Act No. 55, 2003 JUDICIAL MATTERS SECOND AMENDMENT ACT, 2003**Short title and commencement**

34. This Act is called the Judicial Matters Second Amendment Act, 2003, and comes into operation on a date fixed by the President by proclamation in the *Gazette*.

TWEDE WYSIGINGSWET OP GEREGETELIKE
AANGELEENTHEDE, 2003

Wet No. 55, 2003

Kort titel en inwerkingtreding

34. Hierdie Wet heet die Tweede Wysigingswet op Geregetelike Aangeleenthede, 2003, en tree in werking op 'n datum deur die President by proklamasie in die *Staatskoerant* bepaal.

