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THE PRESIDENCY

No. 113 17 January 2003

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

No. 55 of 2002: Judicial Matters Amendment Act, 2002.

DIE PRESIDENSIE

No. 113 17 Januarie 2003

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 2002: Wysigingswet op Geregtelike Aangeleenthede, 2002.



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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 30 December 2002.)

ACT

To amend the Magistrates' Courts Act, 1944, so as to further regulate the rescission of judgments; to amend the Stock Theft Act, 1959, so as to repeal certain obsolete provisions; to amend the General Law Further Amendment Act, 1962, so as to make further provision for access to children under custodianship; to amend the South African Law Commission Act, 1973, so as to effect a change of name; to further regulate the appointment of members of the Commission; and to further regulate requirements in respect of the reports of the Commission; to amend the Companies Act, 1973, so as to further regulate the examination of directors and others during and after the winding-up of a company; to amend the Criminal Procedure Act, 1977, so as to bring certain provisions in line with the Mental Health Care Act, 2002; to amend the Attorneys Act, 1979, so as to authorise the Attorneys Fidelity Fund Board of Control to enter into contracts for the provision of professional indemnity insurance cover; and to further regulate payments to and refunds from the Fidelity Fund; to amend the Correctional Services Act, 1998, so as to effect a technical correction; to amend the Mental Health Care Act, 2002, so as to amend a definition; and to provide for matters connected therewith.

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

Substitution of section 36 of Act 32 of 1944

1. The following section is hereby substituted for section 36 of the Magistrates' Courts Act, 1944:

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“What judgments may be rescinded

36. (1) The court may, upon application by any person affected thereby, or, in cases falling under paragraph (c), *suo motu*—

- (a) rescind or vary any judgment granted by it in the absence of the person against whom that judgment was granted;
- (b) rescind or vary any judgment granted by it which was void *ab origine* or was obtained by fraud or by mistake common to the parties;
- (c) correct patent errors in any judgment in respect of which no appeal is pending;

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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 30 Desember 2002.)

WET

Tot wysiging van die Wet op Landdroshowe, 1944, ten einde die vernietiging van vonnisse verder te reël; tot wysiging van die Wet op Veediefstal, 1959, ten einde sekere verouderde bepalings te herroep; tot wysiging van die Verdere Algemene Regswysigingswet, 1962, ten einde verder voorsiening te maak vir toegang tot kinders onderhewig aan ouerlike bewaring; tot wysiging van die Wet op die Suid-Afrikaanse Regskommissie, 1973, ten einde 'n naamsverandering aan te bring; die aanstelling van lede van die Kommissie verder te reël; en die vereistes ten opsigte van die verslae van die Kommissie verder te reël; tot wysiging van die Maatskappywet, 1973, ten einde die ondervraging van direkteure en ander persone gedurende en na afloop van die likwidasië van 'n maatskappy verder te reël; tot wysiging van die Strafproseswet, 1977, ten einde sekere bepalings in ooreenstemming met die "Mental Health Care Act, 2002", te bring; tot wysiging van die Wet op Prokureurs, 1979, ten einde die Raad van Beheer oor die Getrouheidsfonds vir Prokureurs in staat te stel om kontrakte te sluit vir die verskaffing van versekeringsdekking vir professionele skadeloosstelling; en om betalings aan en terugbetalings van die Getrouheidsfonds verder te reël; tot wysiging van die Wet op Korrektiewe Dienste, 1998, ten einde 'n tegniese regstelling aan te bring; tot wysiging van die *isiXhosa* teks van die "Mental Health Care Act, 2002", ten einde 'n woordskrywing te wysig; en om voorsiening te maak vir aangeleentheid wat daarmee in verband staan.

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

Vervanging van artikel 36 van Wet 32 van 1944

1. Artikel 36 van die Wet op Landdroshowe, 1944, word hierby deur die volgende artikel vervang:

"Watter vonnisse vernietig kan word

36. (1) Die hof kan, op aansoek van enige persoon wat daardeur geraak word of, in gevalle wat onder paragraaf (c) val, *suo motu*—

- (a) 'n vonnis wat deur hom gevel is in die afwesigheid van die persoon teen wie daardie vonnis gevel is, vernietig of wysig;
- (b) 'n vonnis deur hom gevel wat *ab origine* nietig was of wat deur bedrog of ten gevolge van 'n aan die partye gemene dwaling verkry is, vernietig of wysig;
- (c) klaarblyklike foute in 'n vonnis ten aansien waarvan geen appèl hangende is nie, herstel;

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(d) rescind or vary any judgment in respect of which no appeal lies.

(2) If a plaintiff in whose favour a default judgment has been granted has agreed in writing that the judgment be rescinded or varied, a court must rescind or vary such judgment on application by any person affected by it.”.

Substitution of section 3 of Act 57 of 1959

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2. The following section is hereby substituted for section 3 of the Stock Theft Act, 1959:

“Absence of reasonable cause for believing stock or produce properly acquired

3. (1) Any person who in any manner, otherwise than at a public sale, 10
acquires or receives into his or her possession from any other person stolen
stock or stolen produce without having reasonable cause [**proof of which**
shall be on such firstmentioned person,] for believing, at the time of such
acquisition or receipt, that such stock or produce is the property of the
person from whom he or she acquires or receives it or that such person has 15
been duly authorized by the owner thereof to deal with it or dispose of it
shall be guilty of an offence.

(2) In the absence of evidence to the contrary which raises a reasonable
doubt, proof of possession as contemplated in subsection (1) shall be
sufficient evidence of the absence of reasonable cause.”. 20

Substitution of section 1 of Act 93 of 1962

3. The following section is hereby substituted for section 1 of the General Law Further Amendment Act, 1962:

“Failure to comply with order of court relating to access to children or to notify change of address of parent having custody of child 25

1. (1) Any parent having [**the sole**] custody, whether sole custody or not, 30
of his or her minor child in terms of an order of court, who contrary to such
order and without reasonable cause refuses the child's other parent access to
such child or prevents such other parent from having such access, shall be
guilty of an offence and liable on conviction to a fine [**not exceeding two**
hundred rand] or to imprisonment for a period not exceeding one year or
to such imprisonment without the option of a fine.

(2) Any parent having [**the sole**] custody, whether sole custody or not, of 35
his or her minor child in terms of an order of court whereby the other parent
is entitled to access to such child shall upon any change in his or her
residential address forthwith in writing notify such other parent of such
change.

(3) Any person who fails to comply with the provisions of subsection (2)
shall be guilty of an offence and liable on conviction to a fine [**not**
exceeding one hundred rand] or to imprisonment for a period not 40
exceeding three months.

[(4) Notwithstanding anything to the contrary contained in any other
law, a magistrate's court shall have jurisdiction to impose any penalty
prescribed by this section.]”.

WYSIGINGSWET OP GEREGETELIKE
AANGELEENTHEDE, 2002

Wet No. 55, 2002

(d) 'n vonnis wat nie aan appèl onderhewig is nie, vernietig of wysig.

(2) Indien 'n eiser of eiseres in wie se guns 'n bestekbevel verleen is skriftelik ooreenkom dat die vonnis vernietig of gewysig word, moet 'n hof, op aansoek van enige persoon wat daardeur geraak word, sodanige vonnis vernietig of wysig.”

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Vervanging van artikel 3 van Wet 57 van 1959

2. Artikel 3 van die Wet op Veediefstal, 1959, word hierby deur die volgende artikel vervang:

“Afwesigheid van redelike gronde om aan te neem dat vee of produkte wettiglik verkry is

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3. (1) Iemand wat op enige wyse, behalwe by 'n openbare verkoping, gesteelde vee of gesteelde produkte van iemand anders verkry of in sy of haar besit ontvang sonder om redelike gronde[, waarvan die bewyslas op eersgenoemde persoon rus,] daarvoor te hê om ten tyde van sodanige verkryging of ontvangs aan te neem dat die vee of produkte die eiendom is van die persoon van wie hy of sy dit verkry of ontvang of dat daardie persoon deur die eienaar daarvan behoorlik gemagtig is om daarvoor te beskik of om dit van die hand te sit, is aan 'n misdryf skuldig.

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(2) In die afwesigheid van getuienis tot die teendeel wat redelike twyfel skep, is bewys van besit soos beoog in subartikel (1) voldoende bewys vir die afwesigheid van redelike gronde.”

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Vervanging van artikel 1 van Wet 93 van 1962

3. Artikel 1 van die Verdere Algemene Regswysigingswet, 1962, word hierby deur die volgende artikel vervang:

“Versuim om hofbevel met betrekking tot toegang tot kinders na te kom of om kennis te gee van verandering van adres van ouer in wie se bewaring kind is

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1. (1) 'n Ouer aan wie [die uitsluitlike] bewaring, hetsy uitsluitlike bewaring al dan nie, van sy of haar minderjarige kind by hofbevel toegeken is, wat in stryd met daardie bevel en sonder redelike oorsaak die kind se ander ouer toegang tot die kind weier of die ander ouer verhoed om toegang tot die kind te hê, is aan 'n misdryf skuldig en by skuldigbevinding strafbaar met 'n boete [van hoogstens tweehonderd rand] of met gevangenisstraf vir 'n tydperk van hoogstens 'n jaar of met sodanige gevangenisstraf sonder die keuse van 'n boete.

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(2) 'n Ouer aan wie [die uitsluitlike] bewaring, hetsy uitsluitlike bewaring al dan nie, van sy of haar minderjarige kind toegeken is by hofbevel waarvolgens die ander ouer op toegang tot die kind geregtig is, moet by verandering van sy of haar woonadres die ander ouer onverwyld van die verandering skriftelik in kennis stel.

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(3) Iemand wat versuim om die bepalings van sub-artikel (2) na te kom, is aan 'n misdryf skuldig en by skuldigbevinding strafbaar met 'n boete [van hoogstens honderd rand] of met gevangenisstraf vir 'n tydperk van hoogstens drie maande.

[(4) Ondanks andersluidende wetsbepalings, het 'n landdroshof regsbevoegdheid om enige straf op te lê wat by hierdie artikel voorgeskryf word.]”

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Amendment of section 1 of Act 19 of 1973, as amended by section 1 of Act 49 of 1996

4. Section 1 of the South African Law Commission Act, 1973, is hereby amended by the substitution for the definition of "Commission" of the following definition:

" 'Commission' means the South African Law Reform Commission [**established by section 2**] referred to in section 2(2).".

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Substitution of section 2 of Act 19 of 1973

5. The following section is hereby substituted for section 2 of the South African Law Commission Act, 1973:

"Establishment of Commission

2. (1) There is hereby established a body to be known as the South African Law Commission. 10

(2) As from the date of the commencement of the Judicial Matters Amendment Act, 2002, the Commission referred to in subsection (1) shall be known as the South African Law Reform Commission.".

Amendment of section 3 of Act 19 of 1973, as amended by section 1 of Act 85 of 1984, section 4 of Act 18 of 1996 and section 4 of Act 42 of 2001 15

6. Section 3 of the South African Law Commission Act, 1973, is hereby amended by the substitution in subsection (1)(a) for subparagraph (ii) of the following subparagraph:

"(ii) [**six**] not more than eight persons who appear to the President to be fit for appointment on account of the tenure of a judicial office or on account of experience as an advocate or as an attorney or as a professor of law at any university, or on account of any other qualification relating to the objects of the Commission.".

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Amendment of section 7 of Act 19 of 1973, as amended by section 3 of Act 85 of 1984

7. Section 7 of the South African Law Commission Act, 1973, is hereby amended by the substitution for subsection (2) of the following subsection: 25

"(2) The Commission shall [**annually not later than the first day of March**] within five months of the end of a financial year of the Department of Justice and Constitutional Development submit to the Minister a report on all its activities during [**the previous**] that financial year.".

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Substitution of section 10 of Act 19 of 1973

8. The following section is hereby substituted for section 10 of the South African Law Commission Act, 1973:

"Short title

10. This Act shall be called the South African Law Reform Commission Act, 1973 [**and shall come into operation on a date to be fixed by the State President by proclamation in the *Gazette*.**]."

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Substitution of long title of Act 19 of 1973

9. The following long title is hereby substituted for the long title to the South African Law Commission Act, 1973: 40

"To establish a South African Law Reform Commission and to provide for matters incidental thereto."

Wysiging van artikel 1 van Wet 19 van 1973, soos gewysig deur artikel 1 van Wet 49 van 1996

4. Artikel 1 van die Wet op die Suid-Afrikaanse Regskommissie, 1973, word hierby gewysig deur die woordskrywing van "Kommissie" deur die volgende woordskrywing te vervang:

" 'Kommissie' die Suid-Afrikaanse [Regskommissie] Regshervormingskommissie [by artikel 2 ingestel] bedoel in artikel 2(2);".

Vervanging van artikel 2 van Wet 19 van 1973

5. Artikel 2 van die Wet op die Suid-Afrikaanse Regskommissie, 1973, word hierby deur die volgende artikel vervang:

"Instelling van Kommissie

2. (1) Hierby word 'n liggaam ingestel met die naam die Suid-Afrikaanse Regskommissie.

(2) Vanaf die datum van inwerkingtreding van die Wysigingswet op Geregetelike Aangeleenthede, 2002, staan die Kommissie bedoel in subartikel (1) as die Suid-Afrikaanse Regshervormingskommissie bekend."

Wysiging van artikel 3 van Wet 19 van 1973, soos gewysig deur artikel 1 van Wet 85 van 1984, artikel 4 van Wet 18 van 1996 en artikel 4 van Wet 42 van 2001

6. Artikel 3 van die Wet op die Suid-Afrikaanse Regskommissie, 1973, word hierby gewysig deur subparagraaf (ii) in subartikel (1)(a) deur die volgende subparagraaf te vervang:

"(ii) [ses] nie meer nie as agt persone wat, na dit vir die President voorkom, geskik is vir aanstelling op grond van die bekleding van 'n regterlike amp, of op grond van ondervinding as advokaat, of as prokureur of as professor in die regsgeleerdheid aan 'n universiteit, of op grond van enige ander kwalifikasie wat op die doelstellings van die Kommissie betrekking het."

Wysiging van artikel 7 van Wet 19 van 1973, soos gewysig deur artikel 3 van Wet 85 van 1984

7. Artikel 7 van die Wet op die Suid-Afrikaanse Regskommissie, 1973, word hierby gewysig deur subartikel (2) deur die volgende subartikel te vervang:

"(2) Die Kommissie lê [jaarliks nie later nie as die eerste dag van Maart] binne vyf maande na die einde van 'n finansiële jaar van die Departement van Justisie en Staatkundige Ontwikkeling 'n verslag oor al sy bedrywighede gedurende [die voorafgaande] daardie finansiële jaar aan die Minister voor."

Vervanging van artikel 10 van Wet 19 van 1973

8. Artikel 10 van die Wet op die Suid-Afrikaanse Regskommissie, 1973, word hierby deur die volgende artikel vervang:

"Kort titel

10. Hierdie Wet heet die Wet op die Suid-Afrikaanse [Regskommissie] Regshervormingskommissie, 1973[, en tree in werking op 'n datum wat die Staatspresident by proklamasie in die Staatskoerant bepaal]."

Vervanging van lang titel van Wet 19 van 1973

9. Die lang titel van die Wet op die Suid-Afrikaanse Regskommissie, 1973, word hierby deur die volgende lang titel vervang:

"Tot instelling van 'n Suid-Afrikaanse [Regskommissie] Regshervormingskommissie en om voorsiening te maak vir aangeleenthede wat daarmee in verband staan."

Amendment of section 415 of Act 61 of 1973

10. Section 415 of the Companies Act, 1973, is hereby amended—

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

“(3) No person interrogated under subsection (1) shall be entitled at such interrogation to refuse to answer any question upon the ground that the answer would tend to incriminate him or her and shall, if he or she does so refuse on that ground, be obliged to so answer at the instance of the Master or officer presiding at such meeting: Provided that the Master or officer presiding at such meeting may only oblige the person in question to so answer after the Master or officer presiding at such meeting has consulted with the Director of Public Prosecutions who has jurisdiction.”; and

(b) by the substitution for subsection (5) of the following subsection:

“(5) Any incriminating answer or information directly obtained, or incriminating evidence directly derived from, an interrogation in terms of subsection (1) shall not be admissible as evidence in criminal proceedings in a court of law against the person concerned or the body corporate of which he or she is or was an officer, except in criminal proceedings where the person concerned is charged with an offence relating to—
 (a) the administering or taking of an oath or the administering or making of an affirmation;
 (b) the giving of false evidence;
 (c) the making of a false statement; or
 (d) a failure to answer lawful questions fully or satisfactorily.”.

Amendment of section 417 of Act 61 of 1973, as amended by section 9 of Act 29 of 1985

11. Section 417 of the Companies Act, 1973, is hereby amended—

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

“(b) Any such person may be required to answer any question put to him or her at the examination, notwithstanding that the answer might tend to incriminate him [, and any answer given to any such question may thereafter be used in evidence against him] or her and shall, if he or she does so refuse on that ground, be obliged to so answer at the instance of the Master or the Court: Provided that the Master or the Court may only oblige the person in question to so answer after the Master or the Court has consulted with the Director of Public Prosecutions who has jurisdiction.”; and

(b) by the addition to subsection (2) of the following paragraph:

“(c) Any incriminating answer or information directly obtained, or incriminating evidence directly derived from, an examination in terms of this section shall not be admissible as evidence in criminal proceedings in a court of law against the person concerned or the body corporate of which he or she is or was an officer, except in criminal proceedings where the person concerned is charged with an offence relating to—
 (i) the administering or taking of an oath or the administering or making of an affirmation;
 (ii) the giving of false evidence;
 (iii) the making of a false statement; or
 (iv) a failure to answer lawful questions fully and satisfactorily.”.

Wysiging van artikel 415 van Wet 61 van 1973

10. Artikel 415 van die Maatskappywet, 1973, word hierby gewysig—

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

“(3) Geen persoon wat kragtens subartikel (1) ondervra word, is geregtig om by so ’n ondervraging te weier om ’n vraag te beantwoord op grond daarvan dat die antwoord hom of haar sal kan inkrimineer nie en is, indien hy of sy op daardie grond weier, verplig om so te antwoord op versoek van die Meester of beampte wat by so ’n vergadering voorsit: Met dien verstande dat die Meester of die beampte wat by sodanige vergadering voorsit slegs die persoon kan verplig om te antwoord nadat die Meester of die beampte wat by sodanige vergadering voorsit oorleg gepleeg het met die Direkteur van Openbare Vervolgings wat jurisdiksie het.”; en

(b) deur subartikel (5) deur die volgende subartikel te vervang:

“(5) Enige inkriminerende antwoord of inligting regstreeks verkry, of inkriminerende getuienis regstreeks afgelei uit, ’n ondervraging ingevolge subartikel (1) is nie toelaatbaar as getuienis in strafregtelike verrigtinge in ’n geregshof teen die betrokke persoon of regspersoon waarvan hy of sy ’n beampte is of was nie, behalwe in strafregtelike verrigtinge waar die betrokke persoon van ’n misdryf aangekla word wat verband hou met—
(a) die oplê of aflê van ’n eed of die oplê of doen van ’n bevestiging;
(b) die aflê van valse getuienis;
(c) die aflê van ’n valse verklaring; of
(d) ’n versuim om vrae regtens gestel ten volle en bevredigend te beantwoord.”.

Wysiging van artikel 417 van Wet 61 van 1973, soos gewysig deur artikel 9 van Wet 29 van 1985

11. Artikel 417 van die Maatskappywet, 1973, word hierby gewysig—

(a) deur paragraaf (b) in subartikel (2) deur die volgende paragraaf te vervang:

“(b) Van so ’n persoon kan vereis word dat hy of sy ’n vraag beantwoord wat aan hom of haar by die ondervraging gestel word, al kan die antwoord hom of haar inkrimineer [**en ’n antwoord op so ’n vraag kan daarna as getuienis teen hom gebruik word**] en is, indien hy of sy op daardie grond weier, verplig om so te antwoord op versoek van die Meester of die Hof: Met dien verstande dat die Meester of die Hof slegs die betrokke persoon kan verplig om te antwoord nadat die Meester of die Hof oorleg gepleeg het met die Direkteur van Openbare Vervolgings wat jurisdiksie het.”; en

(b) deur die volgende paragraaf in subartikel (2) in te voeg:

“(c) Enige inkriminerende antwoord of inligting regstreeks verkry, of inkriminerende getuienis regstreeks afgelei uit, ’n ondervraging ingevolge hierdie artikel is nie toelaatbaar as getuienis in strafregtelike verrigtinge in ’n geregshof teen die betrokke persoon of regspersoon waarvan hy of sy ’n beampte is of was nie, behalwe in strafregtelike verrigtinge waar die betrokke persoon van ’n misdryf aangekla word wat verband hou met—
(i) die oplê of aflê van ’n eed of die oplê of doen van ’n bevestiging;
(ii) die aflê van valse getuienis;
(iii) die aflê van ’n valse verklaring; of
(iv) ’n versuim om vrae regtens gestel ten volle te beantwoord.”.

Amendment of section 77 of Act 51 of 1977, as amended by section 10 of Act 33 of 1986, section 9 of Act 51 of 1991, section 42 of Act 129 of 1993 and section 3 of Act 68 of 1998

12. Section 77 of the Criminal Procedure Act, 1977, is hereby amended by the substitution in subsection (6) for paragraph (a) of the following paragraph:

“(a) If the court which has jurisdiction in terms of section 75 to try the case, finds that the accused is not capable of understanding the proceedings so as to make a proper defence, the court may, if it is of the opinion that it is in the interests of the accused, taking into account the nature of the accused’s incapacity contemplated in subsection (1), and unless it can be proved on a balance of probabilities that, on the limited evidence available the accused committed the act in question, order that such information or evidence be placed before the court as it deems fit so as to determine whether the accused has committed the act in question and the court shall direct that the accused—

(i) in the case of a charge of murder or culpable homicide or rape or a charge involving serious violence or if the court considers it to be necessary in the public interest, where the court finds that the accused has committed the act in question, or any other offence involving serious violence, be detained in a psychiatric hospital or a prison pending the decision of a judge in chambers in terms of section [29(1)(a)] 47 of the Mental Health Care Act, [1973 (Act No. 18 of 1973)] 2002; or

(ii) where the court finds that the accused has committed an offence other than one contemplated in subparagraph (i) or that he or she has not committed any offence—

(aa) be admitted to[, and detained [and treated] in an institution stated in the order [in terms of Chapter 3] as if he or she were an involuntary mental health care user contemplated in section 37 of the Mental Health Care Act, [1973 (Act No. 18 of 1973)] 2002 [; or

(bb) be treated as an outpatient in terms of section 7 of that Act, pending discharge by a hospital board in terms of section 29(4A)(a) of that Act or an order that he or she shall no longer be treated as an outpatient],

and if the court so directs after the accused has pleaded to the charge, the accused shall not be entitled under section 106(4) to be acquitted or to be convicted in respect of the charge in question.”.

Amendment of section 78 of Act 51 of 1977, as amended by section 11 of Act 33 of 1986, section 9 of Act 51 of 1991, section 43 of Act 129 of 1993 and section 5 of Act 68 of 1998

13. Section 78 of the Criminal Procedure Act, 1977, is hereby amended by the substitution for subsection (6) of the following subsection:

“(6) If the court finds that the accused committed the act in question and that he or she at the time of such commission was by reason of mental illness or [mental defect] intellectual disability not criminally responsible for such act—

(a) the court shall find the accused not guilty; or

(b) if the court so finds after the accused has been convicted of the offence charged but before sentence is passed, the court shall set the conviction aside and find the accused not guilty,

by reason of mental illness or [mental defect] intellectual disability, as the case may be, and direct—

Wysiging van artikel 77 van Wet 51 van 1977, soos gewysig deur artikel 10 van Wet 33 van 1986, artikel 9 van Wet 51 van 1991, artikel 42 van Wet 129 van 1993 en artikel 3 van Wet 68 van 1998

12. Artikel 77 van die Strafproseswet, 1977, word hierby gewysig deur paragraaf (a) in subartikel (6) deur die volgende paragraaf te vervang:

- “(a) Indien die hof wat regsbevoegdheid ingevolge artikel 75 het om die saak te verhoor, bevind dat die beskuldigde nie oor die vermoë beskik om die verrigtinge dermate te begryp dat hy of sy sy of haar verdedeging na behore kan voer nie, kan die hof indien hy van oordeel is dat dit in die belang van die beskuldigde is, met inagneming van die aard van die beskuldigde se onbevoegdheid soos beoog in subartikel (1), en tensy dit op ’n oorwig van waarskynlikheid bewys kan word dat op die beperkte getuienis beskikbaar, die beskuldigde die gewraakte handeling gepleeg het, gelas dat die inligting of getuienis voor die hof geplaas word wat hy goeddink ten einde vas te stel of die beskuldigde die gewraakte handeling gepleeg het en gelas dat die beskuldigde—
- (i) in die geval van ’n aanklag van moord of strafbare manslag of verkragting of ’n aanklag waarby ernstige geweld betrokke is of waar dit na die hof se oordeel in die openbare belang nodig is, indien die hof bevind dat die beskuldigde die gewraakte handeling of enige ander misdryf waarby ernstige geweld betrokke is, gepleeg het, in ’n psigiatryse hospitaal of ’n gevangenis aangehou word hangende die beslissing van ’n regter in kamers ingevolge artikel [29(1)(a)] 47 van die [Wet op Geestesgesondheid, 1973 (Wet No. 18 van 1973)] ‘Mental Health Care Act, 2002’; of
- (ii) waar die hof bevind dat die beskuldigde ’n ander misdryf as die een bedoel in subparagraaf (i) gepleeg het of dat hy of sy geen misdryf gepleeg het nie—
- (aa) opgeneem[, en aangehou [en behandel] word by ’n in die bevel vermelde inrigting [ingevolge Hoofstuk 3] asof hy of sy ’n ‘involuntary mental health care user’ beoog in artikel 37 van die [Wet op Geestesgesondheid, 1973 (Wet No. 18 van 1973)] ‘Mental Health Care Act, 2002’, is; of
- (bb) as ’n buitepasiënt ingevolge artikel 7 van daardie Wet behandel word,
- hangende die ontslag deur die hospitaalraad ingevolge artikel 29(4A)(a) van daardie Wet of ’n bevel dat hy of sy nie langer as ’n buitepasiënt behandel word nie],
- en indien die hof aldus gelas nadat die beskuldigde op die aanklag gepleit het, is die beskuldigde nie kragtens artikel 106(4) geregtig om ten opsigte van die betrokke aanklag vrygespreek of skuldig bevind te word nie.”.

Wysiging van artikel 78 van Wet 51 van 1977, soos gewysig deur artikel 11 van Wet 33 van 1986, artikel 9 van Wet 51 van 1991, artikel 43 van Wet 129 van 1993 en artikel 5 van Wet 68 van 1998

13. Artikel 78 van die Strafproseswet, 1977, word hierby gewysig deur subartikel (6) deur die volgende subartikel te vervang:

- “(6) Indien die hof bevind dat die beskuldigde die betrokke handeling verrig het en dat hy of sy ten tyde van so ’n verrigting vanweë geestesongesteldheid of [geestesgebrek] intellektuele gebrek nie vir daardie handeling strafregtelik toerekenbaar was nie—
- (a) vind die hof die beskuldigde onskuldig; of
- (b) indien die hof aldus bevind nadat die beskuldigde aan die ten laste gelegde misdryf skuldig bevind is maar voordat vonnis opgelê word, stel die hof die skuldigbevinding tersyde en vind hy die beskuldigde onskuldig,
- vanweë geestesongesteldheid of [geestesgebrek] intellektuele gebrek, na gelang van die geval, en gelas hy—

- (i) in a case where the accused is charged with murder or culpable homicide or rape or another charge involving serious violence, or if the court considers it to be necessary in the public interest that the accused be—
 - (aa) detained in a psychiatric hospital or a prison pending the decision of a judge in chambers in terms of section [29(1)(a)] 47 of the Mental Health Care Act, [1973 (Act No. 18 of 1973)] 2002; 5
 - (bb) admitted to [,] and detained **[and treated]** in an institution stated in the order **[in terms of Chapter 3]** and treated as if he or she were an involuntary mental care health user contemplated in section 37 of the Mental Health Care Act, [1973 (Act No. 18 of 1973), pending discharge by a hospital board in terms of section 29(4A)(a) of that Act; 10
 - (cc) **treated as an outpatient in terms of section 7 of that Act pending the certification by the superintendent of that institution stating that he or she need no longer be treated as such;]** 2002;
 - (dd) released subject to such conditions as the court considers appropriate; or 15
 - (ee) released unconditionally;
- (ii) in any other case than a case contemplated in subparagraph (i), that the accused—
 - (aa) be admitted to [,] and detained **[and treated]** in an institution stated in the order **[in terms of Chapter 3]** and treated as if he or she were an involuntary mental health care user contemplated in section 37 of the Mental Health Care Act, [1973 (Act No. 18 of 1973), pending discharge by a hospital board in terms of section 29(4A)(a) of that Act; 20
 - (bb) **be treated as an outpatient in terms of section 7 of that Act pending the certification by the superintendent of that institution stating that he or she need no longer be treated as such;]** 2002; 25
 - (cc) be released subject to such conditions as the court considers appropriate; or
 - (dd) be released unconditionally.”.

Insertion of section 40B in Act 53 of 1979

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14. The following section is hereby inserted in the Attorneys Act, 1979, after section 40A:

“Insurance contracts for purpose of professional indemnity to practitioners

40B. The board of control may enter into a contract with a company or scheme contemplated in section 40A(a) or any company carrying on professional indemnity insurance business in the Republic for the provision of group professional indemnity insurance to practitioners to the extent and in the manner provided for in such contract.”. 35

Substitution of section 43 of Act 53 of 1979

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15. The following section is hereby substituted for section 43 of the Attorneys Act, 1979:

“Contributions to fund by practitioners

43. (1) (a) Subject to the provisions of this section, every practitioner, practising on his or her own account or in partnership, shall, annually when he or she applies for a fidelity fund certificate, pay **[the amount of R20, or such greater amount as may be fixed by the board of control from time to time,]** to the fund— 45

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- (i) in die geval waar die beskuldigde aangekla word van moord of strafbare manslag of verkragting of 'n ander aanklag waarby ernstige geweld betrokke is, of indien dit na die hof se oordeel in die openbare belang nodig is dat die beskuldigde—
- (aa) in 'n psigiatriese hospitaal of 'n gevangenis aangehou word hangende die beslissing van 'n regter in kamers ingevolge artikel [29(1)(a)] 47 van die [Wet op Geestesgesondheid, 1973 (Wet No. 18 van 1973)] 'Mental Health Care Act, 2002'; 5
- (bb) opgeneem[,] en aangehou [en behandel] word by 'n in die bevel vermelde inrigting [ingevolge Hoofstuk 3] en behandel word asof hy of sy 'n 'involuntary mental health care user' beoog in artikel 37 van die [Wet op Geestesgesondheid, 1973 (Wet No. 18 van 1973)] 'Mental Health Care Act, 2002', is [hangende ontslag deur 'n hospitaalraad ingevolge artikel 29(4A)(a) van daardie Wet]; 10
- [(cc) as 'n buitepatiënt ingevolge artikel 7 van daardie Wet behandel word hangende sertifisering deur die superintendent van daardie inrigting waarin vermeld word dat hy of sy nie langer as sulks behandel hoef te word nie;] 15
- (dd) ontslaan word onderworpe aan sodanige voorwaardes wat die hof nodig ag; of 20
- (ee) onvoorwaardelik ontslaan word;
- (ii) in enige ander geval as 'n geval beoog in subparagraaf (i), dat die beskuldigde—
- (aa) opgeneem[,] en aangehou [en behandel] word by 'n in die bevel vermelde inrigting [ingevolge Hoofstuk 3] en behandel asof hy of sy 'n 'involuntary mental health care user' beoog in artikel 37 van die [Wet op Geestesgesondheid, 1973 (Wet No. 18 van 1973)], hangende ontslag deur 'n hospitaalraad ingevolge artikel 29(4A)(a) van daardie Wet] 'Mental Health Care Act, 2002', is; 25
- [(bb) behandel word as 'n buitepatiënt ingevolge artikel 7 van daardie Wet hangende die sertifisering deur die superintendent van daardie inrigting waarin vermeld word dat hy of sy nie langer as sulks behandel hoef te word nie;] 30
- (cc) ontslaan word onderworpe aan sulke voorwaardes as wat die hof nodig ag; of 35
- (dd) onvoorwaardelik ontslaan word.”.

Invoeging van artikel 40B in Wet 53 van 1979

14. Die volgende artikel word hierby na artikel 40A van die Wet op Prokureurs, 1979, ingevoeg:

“Versekeringskontrakte met die oog op professionele skadeloosstelling vir praktisyns 40

40B. Die beheerraad kan 'n kontrak sluit met 'n maatskappy of skema beoog in artikel 40A(a) of enige maatskappy wat versekeringsbesigheid vir professionele skadeloosstelling in die Republiek doen vir die verskaffing van groepsversekering vir professionele skadeloosstelling aan praktisyns, in die mate en op die wyse in sodanige kontrak bepaal.”. 45

Vervanging van artikel 43 van Wet 53 van 1979

15. Artikel 43 van die Wet op Prokureurs, 1979, word hierby deur die volgende artikel vervang:

“Bydraes aan fonds deur praktisyns 50

43. (1) (a) Behoudens die bepalinge van hierdie artikel, betaal elke praktisyn wat vir sy of haar eie rekening of in vennootskap praktiseer, jaarliks wanneer hy of sy om 'n getrouheidsfondssertifikaat aansoek doen, [die bedrag van R20, of die groter bedrag wat van tyd tot tyd deur die beheerraad vasgestel word,] aan die fonds— 55

- (i) such amount as may be fixed by the board of control from time to time in respect of the cost of group professional indemnity insurance arranged by the board of control pursuant to the provisions of section 40B; and
- (ii) such other non-refundable amount as may be fixed by the board of control from time to time.

(b) Any practitioner referred to in paragraph (a) who commences to practise on or after 1 July in any year shall in respect of that year pay half of the contribution which is payable in terms of that paragraph for that year.

[(2) When the board of control or a society on behalf of the board of control gives notice in writing to any practitioner who is liable to pay a contribution referred to in subsection (1), that the amount of the fund, including the investments thereof, and after deduction of the amount of all unpaid claims and other liabilities outstanding against the fund, is R1 000 000, or exceeds that amount, such practitioner shall, subject to the provisions of subsection (3), as from a date determined by the board of control and specified in such notice, no longer be required to pay the annual contribution referred to in subsection (1).

(3) When the board of control or a society on behalf of the board of control gives notice in writing to a practitioner referred to in subsection (2) that the amount of the fund, including the investments thereof, and after deduction of the amount of all unpaid claims and other liabilities outstanding against the fund, is less than R1 000 000, the provisions of subsection (1) shall, as from a date determined by the board of control and specified in such notice, again apply in respect of such practitioner, and any notice referred to in subsection (2) shall lapse.]

(4) A practitioner who applies under section 42 for the first time for a fidelity fund certificate [while the provisions of subsection (1) do not apply to a practitioner referred in subsection (2) by virtue of the provisions of the latter subsection,] shall pay [a single contribution of R50] to the fund[: **Provided that the provisions of subsection (3) shall apply *mutatis mutandis* in respect of such practitioner], in addition to any contributions payable in terms of subsection (1), such single non-refundable contribution as the board of control may determine.**

(5) [Notwithstanding the provisions of subsection (2), the] The board of control may require a practitioner in respect of whom the fund has been applied as a result of any of the circumstances referred to in section 26, to pay [the] an additional annual contribution [referred to in subsection (1)] to the fund of such amount and for such period as the board of control may determine.

(6) (a) A practitioner who is not in possession of a fidelity fund certificate and who intends to commence to practise on his or her own account or in partnership, shall, before commencing so to practise, give notice of such intention to the secretary of the society of the province in which he or she intends to practise, and he or she shall thereupon become liable to pay to the fund the amount of the contribution referred to in [subsection (1) or (4), as the case may be] subsections (1) and (4).

(b) Any practitioner who is in possession of a fidelity fund certificate but who intends to commence to practise for his or her own account or in partnership in the area of jurisdiction of any provincial division other than that in which he or she usually practises for his or her own account or in partnership, shall give notice of such intention to the secretary of the other society concerned.

(7) All contributions payable under this section shall be paid to the society, and every society shall remit the contributions to the board of control within seven days of receipt thereof."

Substitution of section 44 of Act 53 of 1979

16. The following section is hereby substituted for section 44 of the Attorneys Act, 1979:

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- (i) sodanige bedrag wat van tyd tot tyd deur die beheerraad vasgestel word ten opsigte van die kostes van groepsversekering vir professionele skadeloosstelling wat die beheerraad tot uitvoering van die bepalings van artikel 40B reël; en
- (ii) sodanige ander nie-terugbetaalbare bedrag wat deur die beheerraad van tyd tot tyd bepaal word.
- (b) 'n In paragraaf (a) bedoelde praktisyn wat op of na 1 Julie in enige jaar begin praktiseer, betaal ten opsigte van daardie jaar die helfte van die bydrae wat vir daardie jaar ingevolge daardie paragraaf betaalbaar is.
- [(2) Wanneer die beheerraad of 'n orde namens die beheerraad aan 'n praktisyn wat verplig is om 'n in subartikel (1) bedoelde bydrae te betaal, skriftelik kennis gee dat die bedrag van die fonds, met inbegrip van die beleggings daarvan, en na aftrekking van die som van alle onbetaalde eise en ander uitstaande laste teen die fonds, R1 000 000 beloop, of daardie bedrag oorskry, word van so 'n praktisyn, behoudens die bepalings van subartikel (3), vanaf 'n datum deur die beheerraad vasgestel en in so 'n kennisgewing vermeld, nie langer vereis om die in subartikel (1) bedoelde jaarlikse bydrae te betaal nie.
- (3) Wanneer die beheerraad of 'n orde namens die beheerraad aan 'n in subartikel (2) bedoelde praktisyn skriftelik kennis gee dat die bedrag van die fonds, met inbegrip van die beleggings daarvan, en na aftrekking van die bedrag van alle onbetaalde eise en ander uitstaande laste teen die fonds, minder as R1 000 000 beloop, is die bepalings van subartikel (1) weer vanaf 'n datum deur die beheerraad vasgestel en in so 'n kennisgewing vermeld, ten opsigte van so 'n praktisyn van toepassing en verval die in subartikel (2) bedoelde kennisgewing aan so 'n praktisyn.]
- (4) 'n Praktisyn wat vir die eerste keer kragtens artikel 42 aansoek doen om 'n getrouheidsfondssertifikaat [terwyl die bepalings van subartikel (1) uit hoofde van die bepalings van subartikel (2) nie op 'n praktisyn in laasgenoemde subartikel bedoel van toepassing is nie,] betaal ['n enkele bydrae van R50] aan die fonds[: Met dien verstande dat die bepalings van subartikel (3) *mutatis mutandis* ten opsigte van so 'n praktisyn van toepassing is], bykomend tot enige bydrae betaalbaar kragtens subartikel (1), sodanige enkel nie-terugbetaalbare bydrae as wat die beheerraad bepaal.
- (5) [Ondanks die bepalings van subartikel (2), kan die] Die beheerraad kan van 'n praktisyn ten opsigte van wie die fondse aangewend is as gevolg van die een of ander van die in artikel 26 bedoelde omstandighede, vereis om [die in subartikel (1) bedoelde] 'n bykomende jaarlikse bydrae aan die fonds te betaal van die bedrag en vir die tydperk wat die beheerraad bepaal.
- (6) (a) 'n Praktisyn wat nie in besit van 'n getrouheidsfondssertifikaat is nie en voornemens is om vir eie rekening of in vennootskap te begin praktiseer, gee, alvorens hy of sy aldus begin praktiseer, aan die sekretaris van die orde van die provinsie waarin hy of sy voornemens is om te praktiseer, kennis van daardie voorneme, en daarna is hy of sy aanspreeklik om die bedrag van die in [subartikel (1) of (4)] subartikels (1) en (4) bedoelde bydrae[, na gelang van die geval,] aan die fonds te betaal.
- (b) 'n Praktisyn wat in besit is van 'n getrouheidsfondssertifikaat, maar wat voornemens is om vir eie rekening of in vennootskap te begin praktiseer in die regsgebied van 'n ander provinsiale afdeling as dié waarin hy of sy gewoonlik vir eie rekening of in vennootskap praktiseer, gee aan die sekretaris van die betrokke ander orde kennis van daardie voorneme.
- (7) Alle bydraes kragtens hierdie artikel betaalbaar, word aan die orde betaal, en die orde stuur die bydraes binne sewe dae na die ontvangs daarvan aan die beheerraad."

Vervanging van artikel 44 van Wet 53 van 1979

16. Artikel 44 van die Wet op Prokureurs, 1979, word hierby deur die volgende artikel vervang:

“Board of control may refund contributions in certain cases

44. If any practitioner in respect of whom no claim has been made under this Act or in respect of whom such claim has not been sustained, dies or ceases to practise, the board of control may in its discretion, if it is satisfied that no claim is likely to be made, pay to him or her, or to his or her estate, a sum not exceeding the aggregate amount of his or her contributions to the fund made prior to the date of commencement of the Judicial Matters Amendment Act, 2002.” 5

Amendment of section 45 of Act 53 of 1979, as amended by section 3 of Act 80 of 1985 and section 20 of Act 87 of 1989 10

17. Section 45 of the Attorneys Act, 1979, is hereby amended—

- (a) by the substitution in subsection (1) for paragraph (d) of the following paragraph:
“(d) premiums payable in respect of contracts of insurance entered into by the board of control in terms of [section] sections 40 and 40B;”; and 15
- (b) by the substitution in subsection (1) for paragraph (h) of the following paragraph:
“(h) in the discretion of the board of control, the premium or any portion thereof payable in respect of [a professional indemnity] any group insurance policy of any kind taken out in favour of practitioners;”. 20

Amendment of section 81 of Act 111 of 1998, as amended by section 30 of Act 32 of 2001

18. Section 81 of the Correctional Services Act, 1998, is hereby amended by the deletion of subsection (4).

Amendment of section 1 of Act 17 of 2002 25

19. Section 1 of the Mental Health Care Act, 2002, is hereby amended by the substitution for the definition of “State patient” of the following definition:

“‘State patient’ means a person so classified by a court directive in terms of section 77(6)(a)(i) or 78(6)(i)(aa) of the Criminal Procedure Act;”. 30

Short title and commencement

20. (1) This Act is called the Judicial Matters Amendment Act, 2002.

(2) Sections 12, 13 and 19 take effect on a date set by the President by proclamation.

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“Beheerraad kan bydraes in sekere gevalle terugbetaal

44. Indien 'n praktisyn ten opsigte van wie geen eis ingevolge hierdie Wet ingestel is of ten opsigte van wie so 'n eis nie gehandhaaf is nie, sterf of ophou om te praktiseer, kan die beheerraad na goedvinde, indien hy oortuig is dat daar waarskynlik geen eise ingestel sal word nie, aan hom of haar of sy of haar boedel 'n bedrag van hoogstens die totale bedrag van sy of haar bydraes aan die fonds wat gemaak is voor die datum van inwerkingtreding van die Wysigingswet op Geregetelike Aangeleenthede, 2002, terugbetaal.” 5

Wysiging van artikel 45 van Wet 53 van 1979, soos gewysig deur artikel 3 van Wet 80 van 1985 en artikel 20 van Wet 87 van 1989 10

17. Artikel 45 van die Wet op Prokureurs, 1979, word hierby gewysig—
- (a) deur paragraaf (d) in subartikel (1) deur die volgende paragraaf te vervang:

“(d) premies betaalbaar ten opsigte van versekeringskontrakte deur die beheerraad ingevolge [artikel] artikels 40 en 40B gesluit;”;
 - (b) deur paragraaf (h) in subartikel (1) deur die volgende paragraaf te vervang:

“(h) na goedvinde van die beheerraad, die premie of 'n gedeelte daarvan betaalbaar ten opsigte van [’n professionele indenniteits-groepsversekeringspolis] enige groepsversekeringspolis van enige aard ten gunste van praktisyns uitgeneem;”.

Wysiging van artikel 81 van Wet 111 van 1998, soos gewysig deur artikel 30 van Wet 32 van 2001

18. Artikel 81 van die Wet op Korrektiewe Dienste, 1998, word hierby gewysig deur subartikel (4) te skrap.

Wysiging van artikel 1 van Wet 17 van 2002 25

19. Artikel 1 van die *isiXhosa* teks van die “Mental Health Care Act, 2002”, word hierby gewysig deur die woordomskeywing van “isigulane sikaRhulumente” deur die volgende woordomskeywing te vervang:

“‘isigulane sikaRhulumente’ sithetha umntu ochongwe ngolo hlobo ngumyalelo wenkundla ngokwecandelo le-77(6)(a)(i) okanye u-78(6)(i)(aa) lweNkqubo yoLwaphulo Mthetho;”.

Kort titel en inwerkingtreding

20. (1) Hierdie Wet heet die Wysigingswet op Geregetelike Aangeleenthede, 2002.
(2) Artikels 12, 13 en 19 tree in werking op 'n datum wat die President by proklamasie bepaal. 35

