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THE PRESIDENCY

No. 166

17 February 2009

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

No. 66 of 2008: Judicial Matters Amendment Act, 2008.



AIDS HELPLINE: 0800-123-22 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.

ACT

To amend the General Law Amendment Act, 1935, so as to further regulate the concealment of birth of a newly born child; to amend the Administration of Estates Act, 1965, so as to regulate the calculation of interest payable in respect of certain moneys paid into the Guardian's Fund and substitute obsolete terminology; to amend the Medicines and Related Substances Act, 1965, so as to effect a technical correction in the Afrikaans text; to amend the Criminal Procedure Act, 1977, so as to substitute obsolete references; to further regulate the payment of admission of guilt fines; to further regulate the release of an accused person on bail; to further regulate the appointment of psychiatrists in cases involving the mental capacity of an accused person; to provide for the prosecution of persons who commit offences while doing diplomatic duty outside of the Republic; to further regulate the imposition of periodical imprisonment; and to further regulate appeals in criminal proceedings from a magistrate's court to a High Court and from a High Court to the Supreme Court of Appeal; to amend the Attorneys Act, 1979, so as to extend the category of persons entitled to engage candidate attorneys; and to increase the fines that may be imposed on attorneys and candidate attorneys for improper conduct; to amend the Admiralty Jurisdiction Act, 1983, so as to further regulate the form of proceedings relating to maritime claims; to amend the Matrimonial Property Act, 1984, so as to remove a discriminatory provision; to amend the Criminal Law Amendment Act, 1997, so as to insert certain serious offences in Part I of Schedule 2; to amend the Debt Collectors Act, 1998, so as to further regulate the appointment of members of the Council for Debt Collectors; to further regulate the number of the members of the executive committee of the Council for Debt Collectors; to further regulate the trust accounts of debt collectors; and to regulate the recusal of members of committees appointed to deal with disciplinary matters; to amend the Promotion of Access to Information Act, 2000, so as to extend the period within which rules of procedure must be made; and to further regulate the liability of persons exercising powers or performing duties in terms of the Act; to amend the Promotion of Administrative Justice Act, 2000, so as to extend the period within which to make rules of procedure for judicial review; to extend the period within which the code of good administrative conduct must be made; and to effect a technical correction in the IsiXhosa text; to amend the Promotion of Equality and Prevention of Unfair Discrimination Act, 2000, so as to further regulate the remuneration and allowances payable to members of the Equality Review Committee; to amend the Judges' Remuneration and Conditions of Employment Act, 2001, so as to further regulate the service of judges after discharge from active service; to amend the Prevention and Combating of Corrupt Activities Act, 2004, so as to further regulate penalties; to amend the Criminal Law (Sexual Offences

and Related Matters) Amendment Act, 2007, so as to extend the period within which the National Register for Sex Offenders must be established; to extend the period within which the National Commissioner of Correctional Services, the National Commissioner of the South African Police Service and the Director-General: Health must forward particulars in their possession to the Registrar of the National Register for Sex Offenders; to extend the period within which the Minister for Justice and Constitutional Development must adopt and table the policy framework relating to sexual offences, in Parliament; and to provide for matters connected therewith.

Parliament of the Republic of South Africa enacts as follows:-

Substitution of section 113 of Act 46 of 1935

1. The following section is hereby substituted for section 113 of the General Law Amendment Act, 1935:

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“Concealment of birth of newly born child

113. (1) Any person who, without a lawful burial order, disposes of the body of any newly born child with intent to conceal the fact of its birth, whether the child died before, during or after birth, shall be guilty of an offence and liable on conviction to a fine **[not exceeding one hundred pounds]** or to imprisonment for a period not exceeding three years. 10

[(2) Whenever a person disposes of the body of any such child which was recently born, otherwise than under a lawful burial order, he shall be deemed to have disposed of such body with intent to conceal the fact of the child’s birth, unless it is proved that he had no such intent.] 15

[(3)] (2) A person may be convicted under subsection (1) although it has not been proved that the child in question died before its body was disposed of.

(3) The institution of a prosecution under this section must be authorised in writing by the Director of Public Prosecutions having jurisdiction.”. 20

Amendment of section 88 of Act 66 of 1965

2. Section 88 of the Administration of Estates Act, 1965, is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) Subject to the provisions of subsections (2) and (3), compounded interest calculated on a monthly basis at the rate per annum determined from time to time by the Minister **[of Finance]** for Justice and Constitutional Development, in consultation with the Minister of Finance, **[and compounded annually at the thirty-first of March,]** shall be allowed on each rand of the principal of every sum of money received by the Master for account of any minor, **[lunatic]** mentally ill person or person with severe or profound intellectual disability, unborn heir or any person having an interest therein of a usufructuary, fiduciary or fideicommissary nature.”. 25 30

Amendment of section 1 of Act 101 of 1965, as substituted by section 1 of Act 65 of 1974 and amended by section 1 of Act 17 of 1979, section 1 of Act 20 of 1981, section 1 of Act 94 of 1991, section 1 of Act 49 of 1996, section 1 of Act 90 of 1997 and section 1 of Act 59 of 2002

3. Section 1 of the Medicines and Related Substances Act, 1965, is hereby amended by the substitution, in the Afrikaans text, for the definition of “landdros” of the following definition:

“**‘landdros’** ’n landdros soos omskryf in artikel 1 van die Wet op Landdroste, 1993 (Wet No. 90 van 1993), en ook ’n **[bykomende]** addisionele landdros en ’n assistent-landdros;”.

Amendment of section 51 of Act 51 of 1977

4. Section 51 of the Criminal Procedure Act, 1977, is hereby amended by the substitution for subsections (1) and (2) of the following subsections, respectively:

“(1) Any person who escapes or attempts to escape from custody after he or she has been lawfully arrested and before he or she has been lodged in any **[prison]** correctional facility, police-cell or lock-up, shall be guilty of an offence and liable on conviction to the penalties prescribed in section **[48 of the Prisons Act, 1959 (Act 8 of 1959)]** 117 of the Correctional Services Act, 1998 (Act No. 111 of 1998).

(2) Any person who rescues or attempts to rescue from custody any person after he or she has been lawfully arrested and before he or she has been lodged in any **[prison]** correctional facility, police-cell or lock-up, or who aids **[such]** the person to escape or to attempt to escape from **[such]** custody, or who harbours or conceals or assists in harbouring or concealing any person who escapes from custody after he or she has been lawfully arrested and before he or she has been lodged in any **[prison]** correctional facility, police-cell or lock-up, shall be guilty of an offence and liable on conviction to the penalties prescribed in section **[43 of the said Prisons Act, 1959]** 117 of the said Correctional Services Act, 1998.”.

Amendment of section 55 of Act 51 of 1977, as amended by section 14 of Act 59 of 1983, section 5 of Act 33 of 1986 and section 3 of Act 4 of 1992

5. Section 55 of the Criminal Procedure Act, 1977, is hereby amended by the substitution for paragraph (a) of subsection (2A) of the following paragraph:

“(a) If the court issues a warrant of arrest in terms of subsection (2) in respect of a summons which is endorsed in accordance with section 57[(1)](3)(a)—

- (i) an endorsement to the same effect shall be made on the warrant in question;
- (ii) the court may make a further endorsement on the warrant to the effect that the accused may admit his or her guilt in respect of the failure to appear in answer to the summons or to remain in attendance at the criminal proceedings, and that he or she may upon arrest pay to a clerk of the court or at a police station a fine stipulated on the warrant in respect of **[such]** that failure, which fine shall not exceed the amount to be imposed in terms of subsection (2), without appearing in court.”.

Amendment of section 56 of Act 51 of 1977, as amended by section 2 of Act 109 of 1984 and section 5 of Act 5 of 1991

6. (1) Section 56 of the Criminal Procedure Act, 1977, is hereby amended by the substitution for subsections (1) and (2) of the following subsections:

“(1) If an accused is alleged to have committed an offence referred to in section 57(2)(a), **[and] a peace officer [on reasonable grounds believes that a magistrate’s court, on convicting such accused of that offence, will not impose a fine exceeding the amount determined by the Minister from time to time by notice in the Gazette, such peace officer]** may, whether or not the accused is in custody, hand to the accused a written notice which shall—

- (a) specify the name, residential address and the occupation or status of the accused;
 - (b) call upon the accused to appear at a place and on a date at a time specified in the written notice to answer a charge of having committed the offence in question; 5
 - (c) contain an endorsement in terms of section 57 that the accused may admit his or her guilt in respect of the offence in question and that he or she may pay [a] the stipulated fine as determined by the Minister in terms of section 57(2)(b) in respect thereof without appearing in court; and
 - (d) contain a certificate under the hand of the peace officer that he or she has handed the original of [such] that written notice to the accused and that he or she has explained to the accused the import thereof. 10
- (2) If the accused is in custody, the effect of a written notice handed to him or her under subsection (1) shall be that he or she be released forthwith from custody.”.

Substitution of section 57 of Act 51 of 1977, as substituted by section 3 of Act 109 of 1984, section 6 of Act 33 of 1986, section 2 of Act 26 of 1987 and section 6 of Act 5 of 1991 15

7. The following section is hereby substituted for section 57 of the Criminal Procedure Act, 1977:

“Admission of guilt and payment of fine without appearance in court 20

57. (1) An admission of guilt fine referred to in this section may only be imposed and paid in respect of an offence which the Minister determines, as provided for in subsection (2).

(2) For purposes of this section, the Minister may, from time to time, by notice in the *Gazette*, and after consultation with the Chief Justice, the National Director of Public Prosecutions and the Minister for Safety and Security, determine— 25

- (a) the offences in respect of which an admission of guilt fine may be imposed and paid; and
- (b) the amount of an admission of guilt fine which can be stipulated in a summons under section 54 (in this section referred to as the summons) or a written notice under section 56 (in this section referred to as the written notice), in respect of each offence. 30

[(1)] (3) Where—

- (a) a summons is issued against an accused under section 54 **[(in this section referred to as the summons)]** and the public prosecutor **[or the clerk]** of the court concerned **[on reasonable grounds believes that a magistrate’s court, on convicting the accused of the offence in question, will not impose a fine exceeding the amount determined by the Minister from time to time by notice in the Gazette, and such public prosecutor or the clerk of the court], in accordance with the directives issued by the National Director of Public Prosecutions provided for in subsection (11), endorses the summons to the effect that the accused may admit his or her guilt in respect of the offence in question and that he or she may pay a fine stipulated on the summons in respect of [such] that offence without appearing in court; or** 35 40 45
- (b) a written notice under section 56 **[(in this section referred to as the written notice)]** is handed to the accused and the endorsement in terms of **[paragraph (c) of]** subsection (1)**(c)** of that section purports to have been made by a peace officer, 50

the accused may, without appearing in court, admit his or her guilt in respect of the offence in question by paying the fine stipulated (in this section referred to as the admission of guilt fine) either to the clerk of the