

REPUBLIC OF SOUTH AFRICA

**JUDICIAL MATTERS
AMENDMENT BILL**

(As introduced)

(MINISTER OF JUSTICE)

[B 95—97]

REPUBLIEK VAN SUID-AFRIKA

**WYSIGINGSWETSONTWERP OP
GEREGTELIKE
AANGELEENTHEDE**

(Soos ingedien)

(MINISTER VAN JUSTISIE)

[W 95—97]

ISBN 0 621 27421 6

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.

BILL

To amend the Insolvency Act, 1936, so as to further regulate the obtaining of legal assistance by the trustee of an insolvent estate; and to make other provision in connection with the salaries or wages of former employees of an insolvent; to amend the Magistrates' Courts Act, 1944, so as to further regulate the appointment of magistrates of regional divisions; and to increase the penal jurisdiction of lower courts; to amend the Prevention of Counterfeiting of Currency Act, 1965, so as to make the possession of counterfeit coins or forged or altered bank notes punishable in law; to amend the Criminal Procedure Act, 1977, so as to make other provision in connection with the use of force in effecting arrests; to further regulate the proof of certain facts by means of affidavits or certificates; and to provide that an accused may in certain circumstances be sentenced by a judge other than the judge who convicted him or her; to amend the Criminal Law Second Amendment Act, 1992, so as to prohibit certain acts connected with military, paramilitary or similar operations and weapons, ammunition, explosives or other explosive devices; to amend the Interception and Monitoring Prohibition Act, 1992, so as to make further provision in connection with the issue and execution of directions; to amend the Promotion of National Unity and Reconciliation Act, 1995, so as to effect a textual adjustment; to amend the Justice Laws Rationalisation Act, 1996, so as to effect certain textual improvements; and to amend the Proceeds of Crime Act, 1996, so as to effect a textual improvement; and to provide for matters connected therewith.

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

Substitution of section 73 of Act 24 of 1936, as amended by section 20 of Act 16 of 1943, section 24 of Act 99 of 1965 and section 1 of Act 78 of 1980

1. The following section is hereby substituted for section 73 of the Insolvency Act, 1936: 5

“Trustee may obtain legal assistance

73. (1) A trustee may obtain the services of a legal representative to execute legal services including interrogations or enquiries in terms of section 65 or 152 on behalf of the estate, and all costs incurred by the trustee in this regard as well as costs awarded against the estate in legal proceedings, in so far as such costs result from any action taken by the trustee in terms of this subsection, shall be included in the costs of the sequestration of the estate: Provided that, subject to the provisions of section 53(4), the trustee shall not act as aforesaid, unless he or she has been authorised thereto by the creditors or by the Master. 5

(2) The costs incurred under this section, excluding costs awarded against the estate in legal proceedings as contemplated in subsection (1), shall not be subject to taxation, provided that the trustee, authorised thereto by the creditors or by the Master, entered into a written agreement with the legal representative in respect of a scale of remuneration. 10

(3) Where the trustee has not entered into a written agreement with the legal representative or in the case of a dispute between the trustee and the legal representative in respect of costs, the cost shall be taxed by the Taxing Master of the High Court, or where costs are not subject to taxation by the Taxing Master such costs shall be assessed or taxed by the appropriate law society or bar council, as the case may be, or, where the services of a legal representative have been obtained and he or she is not subject to the authority of a law society or a bar council, by the Master. 15

(4) The Master may disallow any costs, including any costs taxed by the Taxing Master of the High Court, incurred in terms of this section if in his or her opinion the trustee acted *mala fide*, negligently or unreasonably, in incurring such costs. 20

(5) In this section ‘legal representative’ means—
 (a) any person duly admitted and enrolled—
 (i) as an advocate in terms of the Admission of Advocates Act, 1964 (Act No. 74 of 1964); or
 (ii) as an attorney in terms of the Attorneys Act, 1979 (Act No. 53 of 1979); or
 (b) any agent as defined in section 22 of the Magistrates’ Courts Act, 1944 (Act No. 32 of 1944).” 25

Amendment of section 96 of Act 24 of 1936, as amended by section 29 of Act 99 of 1965 and section 12 of Act 101 of 1983

2. Section 96 of the Insolvency Act, 1936, is hereby amended by the substitution for subsection (3) of the following subsection:

“(3) In subsection (2) ‘death-bed expenses’ means expenses incurred for medical attendance, nursing [**otherwise than by a nurse referred to in section one hundred**], medicines and medical necessities, and claims for those expenses shall rank *pari passu* and abate in equal proportion, if necessary.” 30

Insertion of section 98A in Act 24 of 1936

3. The following section is hereby inserted after section 98 of the Insolvency Act, 1936: 35

“Salaries or wages of former employees of insolvent

98A. (1) Thereafter any balance of the free residue shall be applied in paying—
 (a) to any employee who was employed by the insolvent—
 (i) any salary or wages, for a period not exceeding three months, due to an employee; 40

- (ii) any payment in respect of any period of leave or holiday due to the employee which has accrued as a result of his or her employment by the insolvent in the year of insolvency or the previous year, whether or not payment thereof is due at the date of sequestration; 5
- (iii) any payment due in respect of any other form of paid absence for a period not exceeding three months prior to the date of the sequestration of the estate; and
- (iv) any severance or retrenchment pay due to the employee in terms of any law, agreement, contract or wage-regulating measure; and 10
- (b) any other contributions payable by the insolvent (including any such contributions payable in respect of any of his or her employees) which, immediately prior to the sequestration of the estate, were due by the insolvent, in his or her capacity as an employer, to any pension or medical scheme, or any sick, medical, unemployment, holiday, provident or other similar fund. 15
- (2) (a) The Minister of Justice shall from time to time by notice in the *Gazette* determine the maximum amounts that may be paid out in terms of any provision of subsection (1) and shall from time to time review and, if necessary, revise such amounts. 20
- (b) Before the Minister of Justice determines the amounts referred to in paragraph (a), he or she shall publish a draft notice in the *Gazette* for comment and recommendations by interested parties within 60 days of the publication of the said notice.
- (3) An employee shall be entitled to salary, wages, leave or other payments in terms of subsection (1)(a) even though he or she has not proved his or her claim therefor in terms of section 44, but the trustee may require such employee to submit an affidavit in support of his or her claim for such salary, wages, leave or payment. 25
- (4) (a) The claim referred to in subsection (1)(a)(i) shall be preferred to the claims referred to in subsections (1)(a)(ii), (iii) and (iv) and (1)(b). 30
- (b) The claims referred to in subsection (1)(a)(ii), (iii) and (iv) shall be preferred to the claims referred to in subsection (1)(b) and shall rank equally and abate in equal proportions, if necessary.
- (c) The claims referred to in subsection (1)(b) shall rank equally and abate in equal proportions, if necessary. 35
- (5) For the purposes of this section—
- (a) ‘employee’ means—
- (i) any person, excluding an independent contractor, who works for another person and who receives, or is entitled to receive, any salary or wages; and 40
- (ii) any other person who in any manner assists in carrying on or conducting the business of an employer;
- (b) ‘salary or wages’ shall include all cash earnings received by the employee from the employer; and 45
- (c) ‘unemployment fund’ does not include the unemployment insurance fund established in terms of the Unemployment Insurance Act, 1966 (Act No. 30 of 1966).
- (6) The Minister of Justice may, after consultation with the National Economic, Development and Labour Council established in terms of section 2 of the National Economic, Development and Labour Council Act, 1994 (Act No. 35 of 1994), by notice in the *Gazette* exclude from the provisions of this section specific categories of employees by reason of the particular nature of their employment relationship or if other types of guarantee affording them protection equivalent to that provided by this section exist.”. 50 55

Amendment of section 99 of Act 24 of 1936, as substituted by section 5 of Act 6 of 1972 and amended by section 30 of Act 90 of 1972, section 6 of Act 62 of 1973, section 9 of Act 29 of 1974, section 69 of Act 85 of 1974, section 50 of Act 103 of 1978 and section 3 of Act 139 of 1992

4. Section 99 of the Insolvency Act, 1936, is hereby amended by the deletion of paragraph (f) of subsection (1). 5

Repeal of section 100 of Act 24 of 1936, as amended by section 13 of Act 32 of 1952, section 31 of Act 99 of 1965, section 14 of Act 101 of 1983 and section 4 of Act 139 of 1992

5. Section 100 of the Insolvency Act, 1936, is hereby repealed. 10

Amendment of section 9 of Act 32 of 1944, as substituted by section 2 of Act 8 of 1967 and amended by section 4 of Act 53 of 1970, section 8 of Act 102 of 1972, section 11 of Act 29 of 1974, section 24 of Act 94 of 1974, section 1 of Act 28 of 1981, section 2 of Act 34 of 1986, section 17 of Act 90 of 1993 and section 3 of Act 104 of 1996 15

6. Section 9 of the Magistrates' Courts Act, 1944, is hereby amended by the substitution for paragraph (b) of subsection (1) of the following paragraph:

“(b) No person shall be appointed as a magistrate of a regional division unless he or she [is a magistrate who] has satisfied all the requirements for the degree of *baccalaureus legum* of a university in the Republic or has passed the Public Service Senior Law Examination or an examination deemed by the [Public Service Commission] Minister for the Public Service and Administration to be equivalent or superior to the said examination, and the [board referred to in section 9bis] Magistrates Commission established by section 2 of the Magistrates Act, 1993 (Act No. 90 of 1993), has informed the Minister that he or she is suitable for appointment as a magistrate of a regional division.”. 20 25

Amendment of section 92 of Act 32 of 1944, as substituted by section 30 of Act 94 of 1974 and amended by section 9 of Act 91 of 1977, section 1 of Act 109 of 1984, section 9 of Act 25 of 1987 and section 2 of Act 129 of 1993

7. Section 92 of the Magistrates' Courts Act, 1944, is hereby amended by the substitution for paragraph (a) of subsection (1) of the following paragraph: 30

“(a) by imprisonment, may impose a sentence of imprisonment for a period not exceeding [twelve months] three years, where the court is not the court of a regional division, or not exceeding [ten] 15 years, where the court is the court of a regional division;”. 35

Amendment of section 2 of Act 16 of 1965

8. Section 2 of the Prevention of Counterfeiting of Currency Act, 1965, is hereby amended by the substitution for paragraph (d) of the following paragraph:

“(d) without lawful authority or excuse—
 (i) has in his or her possession any counterfeit coin or any forged or altered bank note; 40
 [(i)](ii) imports or receives into the Republic any counterfeit coin or any forged or altered bank note; or
 [(ii)](iii) exports from the Republic or puts or takes or causes to be put or taken on board any ship, vessel, boat, aircraft or vehicle for the purpose of being so exported, any counterfeit coin or any forged or altered bank note 45
 [any counterfeit coin or any forged or altered bank note];”.

Substitution of section 49 of Act 51 of 1977

9. The following section is hereby substituted for section 49 of the Criminal Procedure Act, 1977: 50

“Use of force in effecting arrest

49. If any person authorized under this Act to arrest or to assist in arresting another, attempts to arrest such person and such person—

(a) resists the attempt; or

(b) flees when it is clear that an attempt to arrest him or her is being made, or resists such attempt and flees,

and cannot be arrested without the use of force, the person so authorized may, in order to effect the arrest, use such force as may in the circumstances be reasonably necessary to overcome the resistance or to prevent the person concerned from fleeing: Provided that the force so used must be proportional to the seriousness of the offence which the person to be arrested has committed or is reasonably suspected of having committed: Provided further that the use of force which is likely to cause death will be justified in terms of the provisions of this section, only where the person concerned is to be arrested for an offence referred to in Schedule 7.”

Amendment of section 212 of Act 51 of 1977, as amended by section 12 of Act 56 of 1979, sections 46 and 47 of Act 97 of 1986, section 11 of Act 5 of 1991 and section 40 of Act 122 of 1991

10. Section 212 of the Criminal Procedure Act, 1977, is hereby amended by the substitution for paragraph (a) of subsection (4) of the following paragraph:

“(a) Whenever any fact established by any examination or process requiring any skill—

- (i) in biology, chemistry, physics, astronomy, geography or geology;
- (ii) in mathematics, applied mathematics or mathematical statistics or in the analysis of statistics;
- (iii) in computer science or in any discipline of engineering;
- (iv) in anatomy or in human behavioural sciences;
- (v) in biochemistry, in metallurgy, in microscopy, in any branch of pathology or in toxicology; or
- (vi) in ballistics, in the identification of **[finger-prints]** finger prints or palm-prints or in the examination of disputed documents,

is or may become relevant to the issue at criminal proceedings, a document purporting to be an affidavit made by a person who in that affidavit alleges that he or she is in the service of the State or of a provincial administration or is in the service of or is attached to the South African Institute for Medical Research or any university in the Republic or any other body designated by the Minister for the purposes of this subsection by notice in the *Gazette*, and that he or she has established such fact by means of such an examination or process, shall, upon its mere production at such proceedings be *prima facie* proof of such fact: Provided that the person who may make such affidavit may, in any case in which skill is required in chemistry, anatomy or pathology, issue a certificate in lieu of such affidavit, in which event the provisions of this paragraph shall *mutatis mutandis* apply with reference to such certificate.”

Substitution of section 275 of Act 51 of 1977

11. The following section is hereby substituted for section 275 of the Criminal Procedure Act, 1977:

“Sentence by judicial officer or judge other than judicial officer or judge who convicted accused

275. (1) If sentence is not passed upon an accused forthwith upon

conviction in a lower court, or if, by reason of any decision or order of a superior court on appeal, review or otherwise, it is necessary to add to or vary any sentence passed in a lower court or to pass sentence afresh in such court, any judicial officer of that court may, in the absence of the judicial officer who convicted the accused or passed the sentence, as the case may be, and after consideration of the evidence recorded and in the presence of the accused, pass sentence on the accused or take such other steps as the judicial officer who is absent, could lawfully have taken in the proceedings in question if he or she had not been absent.

(2) Whenever—

- (a) a judge is required to sentence an accused convicted by him or her of any offence; or
- (b) any matter is remitted on appeal or otherwise to the judge who presided at the trial of an accused, and that judge is for any reason not available, any other judge of the provincial or local division concerned may, after consideration of the evidence recorded and in the presence of the accused, sentence the accused or, as the case may be, take such other steps as the former judge could lawfully have taken in the proceedings in question if he or she had been available.”.

Amendment of Schedule 1 to Act 51 of 1977, as substituted by section 17 of Act 26 of 1987

12. Schedule 1 to the Criminal Procedure Act, 1977, is hereby amended by the substitution for the heading thereto of the following heading:

“Schedule 1

(Sections 40 and 42 [49])”.

Addition of Schedule 7 to Act 51 of 1977

13. The Criminal Procedure Act, 1977, is hereby amended by the addition of the following schedule:

“Schedule 7

(Section 49)

- Treason.
- Sedition.
- Public violence.
- Murder.
- Rape.
- Robbery, including robbery of a motor vehicle.
- Theft of livestock, excluding poultry.
- Theft of a motor vehicle.
- Kidnapping.
- Childstealing.
- Assault, when a dangerous wound is inflicted.
- Arson.
- Housebreaking, whether under common law or a statutory provision, with intent to commit an offence.
- Any offence under any law relating to intimidation or terrorism or control over armaments, arms, ammunition, explosives, drugs or radio active material and in respect of which punishment of imprisonment for a period of five years (or longer) may be imposed.
- Any offence involving serious violence which is lifethreatening or the use of a firearm or explosives or the threat thereof.
- Escaping from lawful custody, where the person concerned is in such custody in respect of any offence referred to in this Schedule or is in such custody in respect of the offence of escaping from lawful custody.

Any conspiracy, incitement or attempt to commit any offence referred to in this Schedule, or complicity in the commission of any such offence.”.

Insertion of Chapter 4A and sections 16A, 16B and 16C in Act 126 of 1992

14. The following chapter is hereby inserted after Chapter 4 of the Criminal Law Second Amendment Act, 1992:

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“CHAPTER 4A

**OFFENCES RELATING TO MILITARY, PARAMILITARY OR
SIMILAR OPERATIONS AND WEAPONS, AMMUNITION,
EXPLOSIVES OR OTHER EXPLOSIVE DEVICES**

Certain acts connected with military, paramilitary or similar operations and weapons, ammunition, explosives or other explosive devices prohibited 10

16A. (1) No person shall—

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| <p>(a) in any manner train any other person or undergo any training—</p> <p style="padding-left: 20px;">(i) in the conducting of any military, paramilitary or similar operation; or</p> <p style="padding-left: 20px;">(ii) in any tactical or other procedure applicable to, or required in, the preparation for any such operation or the execution thereof;</p> <p>(b) instruct or train any other person or undergo any instruction or training in the construction, manufacture or use of any weapon, ammunition, explosive or other explosive device—</p> <p style="padding-left: 20px;">(i) for the purpose of endangering life or causing serious damage to property;</p> <p style="padding-left: 20px;">(ii) for the purpose of promoting any political objective; or</p> <p style="padding-left: 20px;">(iii) for military, paramilitary or similar purposes;</p> <p>(c) assist in any instruction or training contemplated in this subsection, or equip any other person who is so instructed or trained or intended to be so instructed or trained with any such weapon, ammunition, explosive or explosive device or organise or employ two or more such other persons, whether they are so equipped by him or her or not—</p> <p style="padding-left: 20px;">(i) for the purpose of endangering life or causing serious damage to property;</p> <p style="padding-left: 20px;">(ii) for the purpose of promoting any political objective; or</p> <p style="padding-left: 20px;">(iii) for military, paramilitary or similar purposes.</p> <p>(2) The provisions of subsection (1) shall not apply in respect of—</p> <p>(a) any member of the South African National Defence Force or of any reserve, corps or service established by or under the Defence Act, 1957 (Act No. 44 of 1957), who—</p> <p style="padding-left: 20px;">(i) acts in the course and within the scope of his or her duties as such a member and in accordance with the requirements of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996), the said Act or any order, command, instruction or regulation issued or made under the said Act; or</p> <p style="padding-left: 20px;">(ii) undergoes training in terms of the said Act or any order, command, instruction or regulation issued or made under the said Act;</p> <p>(b) any member of the South African Police Service, of the City Police Force of Durban or of any municipal or metropolitan police service established under the South African Police Service Act, 1995 (Act No. 68 of 1995), who—</p> | <p>15</p> <p>20</p> <p>25</p> <p>30</p> <p>35</p> <p>40</p> <p>45</p> <p>50</p> |
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| (i) | acts in the course and within the scope of his or her duties as such a member and in accordance with the requirements of the said Act, any other law or any order, instruction, determination or regulation issued or made under the said Act; or | |
| (ii) | in the case of any member of the City Police Force of Durban, undergoes training at any recognised or approved training centre in accordance with the conditions of any approved training course or, in the case of any other member, undergoes training in terms of any determination or regulation issued or made under the said Act; | 5
10 |
| (c) | any correctional official of the Department of Correctional Services or any person authorised under the Correctional Services Act, 1959 (Act No. 8 of 1959), who— | |
| (i) | in the case of any such official, acts in the course and within the scope of his or her duties as such an official and in accordance with the requirements of the said Act, any other law or any order, authorization or regulation issued or made under the said Act or, in the case of any person so authorised, acts within the scope of and in accordance with such authorization; or | 15 |
| (ii) | undergoes training in terms of any order or authorization issued under the said Act; | 20 |
| (d) | in the case of any act relating to weapons, ammunition or explosives, any employee of the Armaments Development and Production Corporation of South Africa, Limited, of Denel (Pty) Ltd, of any factory manufacturing armaments or arms in accordance with a permit issued under the Armaments Development and Production Act, 1968 (Act No. 57 of 1968), or the Arms and Ammunition Act, 1969 (Act No. 75 of 1969), or of any factory licensed under the Explosives Act, 1956 (Act No. 26 of 1956), to manufacture explosives, who— | 25 |
| (i) | acts in the course and within the scope of his or her employment as such an employee and with a view to the promotion of the sale of armaments, arms, ammunition or explosives or the instruction or training— | 30 |
| (aa) | of co-employees in the manufacture, maintenance or development of armaments, arms, ammunition or explosives; or | 35 |
| (bb) | of persons employed by employers who are permitted to purchase armaments, arms, ammunition or explosives, in the construction, manufacture, use or maintenance thereof; or | 40 |
| (ii) | undergoes instruction or training in the manufacture, maintenance or development of armaments, arms, ammunition or explosives; | |
| (e) | in the case of any act relating to weapons or ammunition, any person who is appointed as a traffic officer or traffic warden under the Road Traffic Act, 1989 (Act No. 29 of 1989), and who— | 45 |
| (i) | acts in the course and within the scope of his or her duties as such an officer or warden and in furtherance of the objects of the said Act or in accordance with the requirements of any other law or the conditions of any approved training course; or | 50 |
| (ii) | undergoes training at any recognised or approved training centre in accordance with the conditions of any approved training course; | |
| (f) | in the case of any act relating to weapons or ammunition, any person who is registered as a security officer in terms of the Security Officers Act, 1987 (Act No. 92 of 1987), and who— | 55 |

- (i) in the case of an employer, acts in good faith in rendering a security service for the protection or safeguarding of persons or property or, in the case of an employee, acts in the course and within the scope of his or her employment as such an officer and with a view to the protection or safeguarding of persons or property; or 5
- (ii) undergoes training in terms of the said Act or any regulation made under the said Act;
- (g) in the case of any act relating to explosives, any member of a service established by or under any law for the protection of persons or property, who— 10
 - (i) acts in the course and within the scope of his or her duties as such a member and with a view to the protection of persons or property; or
 - (ii) undergoes training at any recognised or approved training centre; or 15
- (h) any person who otherwise acts, or undergoes instruction or training, in a lawful manner.
- (3) For the purposes of subsection (1)—
- (a) ‘explosive device’ means any device which is capable of causing bodily injury, loss of life or damage to, or loss of, property by explosion or ignition and which is so used or intended to be so used; 20
- (b) ‘political objective’ includes— 25
 - (i) the bringing about of any constitutional, political, social, economic or industrial change in the Republic; or
 - (ii) the inducement of any person, including the national, provincial or local sphere of government, to do or to abstain from doing any act, or to support or to oppose any person, cause, action or failure to take action, 30
- whether it is coupled with the use or display of force or not;
- (c) ‘weapon’ includes any cannon, mortar, rocket launcher, grenade, machine gun, firearm or air rifle, or any imitation thereof.

Offences and penalties

16B. Any person who contravenes a provision of section 16A(1) shall be guilty of an offence and liable on conviction to such fine as the court may deem fit to impose, or to imprisonment for a period not exceeding five years, or to both such fine and such imprisonment. 35

Authority of attorney-general

16C. No prosecution in respect of an offence referred to in section 16B shall be instituted without the written authority of the attorney-general concerned.”. 40

Substitution of long title of Act 126 of 1992

15. The following long title is hereby substituted for the long title of the Criminal Law Second Amendment Act, 1992:

“ACT 45

To amend the Criminal Procedure Act, 1977, so as to delete certain obsolete expressions; and to extend Part III of Schedule 2; to amend the Intimidation Act, 1982, so as to provide that an act or conduct which inspires fear in the observer thereof constitutes the offence of intimidation if proved that fear was inspired; and to create an additional offence; to amend the Internal Security Act, 1982, so as to delete the attorney-general’s power to prohibit release on bail or on warning; to delete the detention of witnesses under warrant issued by 50

the attorney-general; and to further regulate a certain offence; to provide that the organizing, training, equipping or arming of members or supporters of organizations is prohibited in certain cases; to provide that certain acts connected with military, paramilitary or similar operations and weapons, ammunition, explosives or other explosive devices are prohibited; to provide that an attorney-general may issue a certificate in respect of certain offences to the effect that a special criminal procedure be followed in respect of the trial of such offences; to grant special powers to a court of law with regard to the hearing of such offences; to provide for a special plea procedure in respect of such offences; to provide that a person who has been arrested on account of the alleged commission of such an offence, may only on the written authorization of the attorney-general be released on bail or on warning; to provide for the imposition of a prescribed sentence for the unlawful possession of weaponry in specified instances; and to provide for the detention of persons in certain cases for interrogation in respect of certain weaponry; and to provide for matters connected therewith.”.

Amendment of section 3 of Act 127 of 1992, as amended by section 32 of Act 38 of 1994 and section 4 of Act 18 of 1996

16. Section 3 of the Interception and Monitoring Prohibition Act, 1992, is hereby amended by the substitution for paragraph (a) of subsection (2) of the following paragraph:

“(a) for the purposes referred to in subsection (1)(b)(i) or (ii) or subsection (4), be made by an officer referred to in section 33 of the South African Police Service Act, 1995 (Act No. 68 of 1995), provided [that] the officer concerned obtained in advance the approval of another officer in the South African Police Service with at least the rank of assistant-commissioner, or a member of the said Police Service occupying a post on at least the same level, and who [shall be] has been authorised in writing by the National Commissioner of the South African Police Service to grant such approval;”.

Amendment of section 4 of Act 127 of 1992, as amended by section 32 of Act 38 of 1994 and section 4 of Act 18 of 1996

17. Section 4 of the Interception and Monitoring Prohibition Act, 1992, is hereby amended by the substitution for subparagraph (iii) of paragraph (b) of subsection (2) of the following subparagraph:

“(iii) an officer of at least the rank of assistant-commissioner in the South African Police Service or a member of the said Police Service occupying a post on at least the same level.”.

Amendment of section 29 of Act 34 of 1995, as amended by section 24 of Act 104 of 1996

18. Section 29 of the Promotion of National Unity and Reconciliation Act, 1995, is hereby amended by the substitution for subsection (5) of the following subsection:

“(5) No person other than a commissioner, a member of the staff of the Commission or any person required to produce any article or to give evidence shall be entitled or be permitted to attend any investigation conducted in terms of this section, and the Commission may, having due regard to the principles of openness and transparency, declare that any article produced or information [submitted] furnished at such investigation shall not be made public until the Commission determines otherwise or, in the absence of such a determination, until the article is produced or the information is furnished at a hearing in terms of this Act, or at any proceedings in any court of law.”.

Amendment of Schedule II to Act 18 of 1996

- 19.** Schedule II to the Justice Laws Rationalisation Act, 1996, is hereby amended—
- (a) below the heading “LAWS OF THE FORMER REPUBLIC OF CISKEI”, by the substitution in the second column thereof for the expression “General Law Second Amendment Act, 1984” of the expression “General Law Amendment Act, 1984”; and 5
 - (b) below the heading “LAWS OF THE FORMER SELF-GOVERNING TERRITORY OF LEBOWA”, by the substitution in the third column thereof for the expression “Sections 14, 15, 18, 18A and 107” of the expression “The whole, except sections 14, 15, 18, 18A and 107”. 10

Amendment of section 34 of Act 76 of 1996

- 20.** Section 34 of the Proceeds of Crime Act, 1996, is hereby amended by the substitution for paragraph (a) of the following paragraph:
- “(a) to impose any penalty mentioned in section [31] 33, even though that penalty may exceed the punitive jurisdiction of that court; and”. 15

Short title and commencement

- 21.** (1) This Act shall be called the Judicial Matters Amendment Act, 1997.
- (2) The provisions of—
- (a) section 19 shall be deemed to have come into operation on 1 April 1997;
 - (b) section 20 shall be deemed to have come into operation on 16 May 1997; 20
 - (c) sections 2 to 5 shall come into operation on the date on which a notice contemplated in section 98A(2)(a) of the Insolvency Act, 1936 (Act No. 24 of 1936), as inserted by section 3, is published for the first time; and
 - (d) sections 1 and 6 to 18 shall come into operation on a date fixed by the President by proclamation in the *Gazette*. 25
- (3) Different dates may be fixed under subsection (2)(d) in respect of different provisions of this Act.

MEMORANDUM ON THE OBJECTS OF THE JUDICIAL MATTERS AMENDMENT BILL, 1997

A. LAWS AMENDED

The Bill amends the following laws:

1. The Insolvency Act, 1936:
 - (a) Section 73 of the said Act provides for the costs incurred by the trustee of an insolvent estate in respect of the stated legal assistance as well as any costs awarded against the estate in legal proceedings to be included in the cost of the sequestration of the estate. All costs which are not subject to taxation by the taxing master of the court must be taxed by the Master according to a tariff framed from time to time by him or her. However, the existing tariff was framed in 1981 and is regarded by the legal profession as wholly inadequate. Consequently, a practice came into existence whereby the trustee obtains the authorisation of the creditors to conclude agreements with attorneys and counsel for the payment of a more generous scale of remuneration. In Muller v The Master and others 1992(4)SA 277(TPD) the court decided that the Master is bound by those agreements. It is the object of the proposed section 73—
 - (i) to extend the legal assistance in respect of which the trustee may incur costs; and
 - (ii) to bring the provisions in question into line with the principles contained in Muller's case, *supra*.
 - (b) The failure of legal systems to address adequately the position of the employees of an insolvent is an international concern which led to the International Labour Organisation adopting the Protection of Workers' Claims (Employer's Insolvency) Convention, 1992 (Convention No. 173 of 1992). In outline, the said Convention provides that specified claims of workers should have a rank higher than most other preferent claims (and in particular those of the State and the social security system) and that workers' claims may be limited to a prescribed amount, provided the said amount is not set below a socially acceptable level and is adjusted regularly in order to maintain its value. A new section 98A is being proposed in order to bring the provisions of the said Act into line with the provisions of the said Convention.
2. The Magistrates' Courts Act, 1944:
 - (a) Obsolete references to the Public Service Commission and the Regional Divisions Appointments Advisory Board are being rectified.
 - (b) In order to ensure the effective operation of the South African courts, the penal jurisdiction of the lower courts is being increased.
3. The Prevention of Counterfeiting of Currency Act, 1965:

The possession of counterfeit coins or forged or altered bank notes is being made punishable in law.
4. The Criminal Procedure Act, 1977:
 - (a) In declaring capital punishment to be unconstitutional, the Constitutional Court in S v Makwanyane and another 1995(6) BCLR 665 (CC) in par. 140 made the following comments regarding section 49(2) of the said Act:

“Greater restriction on the use of lethal force may be one of the consequences of the establishment of a constitutional state which respects every person's right to life. Shooting at a fleeing criminal in the heat of the moment, is not necessarily to be equated with the execution of a captured criminal. But, if one of the consequences of this judgment might be to render the provisions of section 49(2) unconstitutional, the legislature will have to modify the provisions of the section in order to bring it into line with the Constitution.”

Despite the sanctity of life being enshrined in the Constitution, legal systems recognise world-wide that occasions will arise where a choice has to be made between the lives of two or more persons. According to

the said Court, on such an occasion presents itself in the case of self-defence, where, at common law, the law permits the use of lethal force by a person whose life, bodily integrity, property or other legitimate interests are threatened, provided the lethal force meets the requirements of the doctrine of proportionality (see Makwanyane's case, *supra*, in par. 138).

- (b) At the request of the Forensic Science Laboratory of the South African Police Service, the list of skills required to prove certain facts by means of affidavits is being extended.
 - (c) In order to rectify an omission in the law of criminal procedure, a judge other than the judge who convicted an accused is being empowered, in the absence of the latter judge, to sentence the accused and to dispose of any matter remitted to the court of first instance.
5. The Criminal Law Second Amendment Act, 1992:
Although section 199(2) of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996), expressly states that the defence force is the only lawful military force in the Republic, the military and paramilitary training of members of the public continues unabated. It appears that the existing section 13 of the said Act does not have the desired effect owing to the specific intent which needs to be proved. Consequently, it is being proposed that certain acts connected with military, paramilitary or similar operations and weapons, ammunition, explosives or other explosive devices be prohibited.
 6. The Interception and Monitoring Prohibition Act, 1992:
Due to the demilitarisation of the South African Police Service, the category of members of the said Police Service involved in the issue and execution of directions is being extended.
 7. The Promotion of National Unity and Reconciliation Act, 1995:
The relevant section is being amended in order to bring it into line with section 28(5) of the said Act.
 8. The Justice Laws Rationalisation Act, 1996:
Certain textual improvements are being effected.
 9. The Proceeds of Crime Act, 1996:
A textual improvement is being effected.

B. PROCEDURE TO BE FOLLOWED

In the opinion of the State Law Adviser, the Bill must be dealt with in accordance with the procedure prescribed by section 75 of the said Constitution.

C. PARTIES CONSULTED

The following interested parties were consulted:

- * The Chief Justice, Judiciary and Judicial Service Commission
- * The Attorneys-General
- * The Regional Court Presidents and Chief Magistrates
- * The Regional Representatives of the Department of Justice
- * The General Council of the Bar
- * The Black Lawyers Association
- * The National Association for Democratic Lawyers
- * The Association of Law Societies of the RSA
- * The Independent Association of Advocates of SA
- * The Black Advocates Forum
- * The Association of Advocates
- * Legal Resources Centre
- * Lawyers for Human Rights
- * The Magistrates Commission
- * The Magistrates' Association of South Africa
- * The Association for Regional Magistrates of South Africa

- * The Association of Insolvency Practitioners
- * The Truth and Reconciliation Commission
- * The Human Rights Committee of South Africa
- * The Chief Master of the Supreme Court
- * The National Economic, Development and Labour Council
- * Government Departments, namely:
 - the National Intelligence Agency
 - the South African Secret Service
 - the South African Police Service
 - the South African National Defence Force