

lb010110
January 2010

REPUBLIC OF SOUTH AFRICA

JUDICIAL MATTERS AMENDMENT BILL

(As submitted to Minister)

(MINISTER OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT)

[B —2010]

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 Criminal Procedure Act, 1977, so as to make provision for the giving of handwriting specimens by accused persons; and to further regulate the expungement of criminal records; to amend the Attorneys Act, 1979, so as to address disparities in relation to attorneys and candidate attorneys in the territories comprising the former Republics of Transkei, Bophuthatswana, Ciskei and Venda; to enable actions against the Attorneys Fidelity Fund to be instituted in other courts than a High Court; to restructure the areas of jurisdiction of law societies as an interim measure, pending the rationalisation of legislation relating to the legal profession; to provide for transitional arrangements; and to amend or delete certain obsolete provisions and expressions; to amend the Divorce Act, 1979, so as to further regulate the publication of information regarding divorce proceedings; to amend the Admiralty Jurisdiction Regulation Act, 1983, so as to adjust the ranking of claims against the fund constituted by the sale of property; to amend the Small Claims Courts Act, 1984, so as to further regulate the appointment of commissioners; to amend the Sheriffs Act, 1986, so as to further regulate the appointment of acting sheriffs; and to empower the Minister of Justice and Constitutional Development to designate persons to serve process of court in certain circumstances and to designate sheriffs to perform functions in areas where no sheriff has been appointed in certain circumstances; to amend the Special Investigating Units and Special Tribunals Act, 1996, so as to further regulate the litigation functions of a Special Investigating Unit; and to provide for the secondment of a member of a Special Investigating Unit to another State institution; to amend the Criminal Law Amendment Act, 1997, so as to exclude persons under the age of 18 years from

the operation of that Act; to amend the Maintenance Act, 1998, so as to further regulate the area of jurisdiction of a maintenance court; to further regulate the circumstances under which maintenance orders may be granted by default; to clarify the legal position relating to the amendment of a maintenance order made by a High Court by a subsequent order made by a maintenance court; to further regulate the transfer of maintenance orders; to increase the penalties for certain offences; to create certain new offences; and to further regulate the conversion of criminal proceedings into maintenance enquiries; to amend the Debt Collectors Act, 1998, so as to make provision for the registration of trainee debt collectors; to provide for the payment of admission of guilt fines by debt collectors in respect of certain cases of improper conduct; to provide for the appointment of inspectors to assist the Council with investigations of complaints against debt collectors; to further regulate the administration of trust accounts of debt collectors; and to extend the matters in respect of which regulations can be made; to amend the Prevention of Organised Crime Act, 1998, so as to make it clear that the Administration of Estates Act, 1965, applies to a *curator bonis* appointed under Chapter 6 of that Act; to amend the Promotion of Access to Information Act, 2000, so as to extend the time periods within which to bring court applications; and to further regulate the period within which the Rules Board for Courts of Law must make rules of procedure in terms of the Act; to amend the Promotion of Administrative Justice Act, 2000, so as to further regulate the period within which the Rules Board for Courts of Law must make rules of procedure for judicial review in terms of the Act; and to extend the period within which the code of good administrative conduct must be made; to amend the Promotion of Equality and Prevention of Unfair Discrimination Act, 2000, so as to include HIV/AIDS status in the definition of "prohibited grounds"; to amend the Regulation of Interception of Communications and Provision of Communication-related Information Act, 2002, so as to amend the definition of "activate"; to provide that the designated judge may consider applications for the issuing of archived communication-related directions; to provide that electronic communication service providers, other than mobile cellular electronic communication service providers, must electronically record and store information relating to customers; and to further criminalise the non-compliance with this obligation; to amend the National

Credit Act, 2005, so as to determine the jurisdiction of magistrates' courts for purposes of debt review proceedings; to amend the Children's Act, 2005, so as to further regulate the expungement of criminal records; to amend the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, so as to extend certain statutory deadlines; to provide access to the National Register for Sex Offenders for purposes of considering expungement applications; and to further regulate the issuing of directives by the National Director of Public Prosecutions; to amend the Child Justice Act, 2008, so as to effect certain textual corrections; and to repeal provisions that make the Criminal Law Amendment Act, 1997, applicable to persons under the age of 18 years; to amend the Reform of Customary Law of Succession and Regulation of Related Matters Act, 2009, so as to effect certain textual corrections; to establish the Limpopo High Court, Polokwane; and to provide for matters connected therewith.

PARLIAMENT of the Republic of South Africa, enacts as follows:—

Insertion of Chapter 3A in Act 51 of 1977

1. The following chapter is hereby inserted after section 37 of the Criminal Procedure Act, 1977:

"CHAPTER 3A

Ascertainment of Handwriting of Accused

Powers in respect of handwriting specimens of accused

37A. (1) Any police official may take handwriting specimens or may cause handwriting specimens to be taken—

- (a) of any person arrested upon any charge;
- (b) of any such person released on bail or on warning under section 72;
- (c) of any person arrested in respect of any matter referred to in paragraph (n), (o) or (p) of section 40(1); or

(d) of any person upon whom a summons has been served in respect of any offence referred to in Schedule 1 or any offence with reference to which the suspension, cancellation or endorsement of any licence or permit or the disqualification in respect of any licence or permit is permissible or prescribed.

(2) Any court before which criminal proceedings are pending may in any case in which a police official is not empowered under subsection (1) to take handwriting specimens, order that those handwriting specimens be taken of any accused at those proceedings."

Insertion of section 225A in Act 51 of 1977

2. The following section is hereby inserted in the Criminal Procedure Act, 1977, after section 225:

"Evidence of handwriting of accused

225A. (1) Whenever it is relevant at criminal proceedings to ascertain whether the handwriting of an accused at those proceedings corresponds with any other handwriting, evidence of the handwriting, including evidence of the result of any analysis of handwriting specimens, of the accused, is admissible at those proceedings.

(2) Evidence referred to in subsection (1) is not inadmissible by reason only thereof that the handwriting specimens in question were not obtained in accordance with the provisions of section 37A or that they were obtained against the wish or the will of the accused."

Insertion of section 271DA in Act 51 of 1977

3. The following section is hereby inserted in the Criminal Procedure Act, 1977, after section 271D:

"Revoking of certificate of expungement erroneously granted

271DA. Where the Director-General: Justice and Constitutional Development, in terms of section 271B(2) or 271C(3), or the Minister, in terms of section 271C(5)(b), has issued a certificate of expungement and it subsequently appears that—

- (a) the information supplied by the applicant was incorrect;
- (b) the name of the applicant appears in the National Register for Sex Offenders or the National Child Protection Register referred to in section 271B(1)(b);
- (c) the offence was not an offence provided for in section 271C(1) or (2) of the Act; or
- (d) the applicant was convicted of an offence during the period of 10 years and has been sentenced to a period of imprisonment without the option of a fine.

the Director-General must—

- (i) inform the applicant of the information that has come to his or her attention and that he or she intends to revoke the certificate of expungement;
- (ii) afford the applicant an opportunity to furnish written reasons why the certificate of expungement should not be revoked;
- (iii) issue a certificate whereby the certificate of expungement is revoked if no sufficient reasons to the contrary are provided; and
- (iv) inform the head of the Criminal Record Centre of the South African Police Service to reinstate the convictions and sentences in question."

Amendment of section 271E of Act 51 of 1977, as inserted by section 3 of Act 65 of 2008

4. Section 271E of the Criminal Procedure Act, 1977, is hereby amended by the insertion of the following subparagraphs after subparagraph (iii) of paragraph (a):

- "(iv) the manner in which the Director-General must inform the applicant of his or her intention to revoke the certificate of expungement;
- (v) the form and the manner in which the applicant must submit reasons to the Director-General not to revoke the certificate of expungement;

- (vi) the form of the certificate to be issued by the Director-General to revoke the certificate of expungement issued in terms of section 271B(2), 271C (3) or 271C (5)(b); and
- (vii) the manner in which the Director-General must inform the head of the Criminal Record Centre of the South African Police Service that the certificate of expungement of an applicant has been revoked."

Amendment of section 1 of Act 53 of 1979, as amended by section 1 of Act 87 of 1989, section 1 of Act 102 of 1991, section 1 of Act 115 of 1993, and section 17 of Act 62 of 2000

5. Section 1 of the Attorneys Act, 1979, is hereby amended –

- (a) “ ‘**advocate**’ means an advocate of **[the Supreme Court]** a High Court;”;
- (b) by the substitution for the definition of “**attorney**” of the following definition:
 - “ ‘**attorney**’ means any person **[duly]** admitted to practise as an attorney in any part of the Republic, whether in terms of this Act or any law repealed in Part 2 of the Schedule;”;
- (c) by the deletion of the definition of “**building society**”;
- (d) “ ‘**community service**’ means full-time service related to the application of the law and performed –
 - (a) at a law clinic in respect of which the council **[of the province]** having jurisdiction in the area in which that law clinic is operated, certifies that the law clinic concerned complies with the requirements prescribed by such council for the operation of such clinic; or
 - (b) on behalf of and under the control of the Legal Aid Board established under section 2 of the Legal Aid Act, 1969 (Act 22 of 1969), and which is approved for this purpose by the Minister;”;
- (e) by the substitution for the definition of “**court**” of the following definition:
 - “ ‘**court**’ means any **[court of a provincial division of the]** High Court;
- (f) by the insertion after the definition of “**fund**” of the following definition:
 - “ ‘**High Court**’ means any High Court referred to in section 1 of the Renaming of High Courts Act, 2008 (Act 30 of 2008);”;
- (g) by the substitution for the definition of “**practitioner**” of the following definition:
 - “ ‘**practitioner**’ means any attorney, notary or conveyancer and includes a

- juristic person referred to in section 23;”;
- (h) by the substitution for the definition of “**profession**” of the following definition:
 “ ‘**profession**’ means the profession of attorney, notary or conveyancer and, in relation to a society, means such profession within the **[province]** area of jurisdiction of that society;”;
- (i) by the substitution for the definition of “**secretary**” of the following definition:
 “ ‘**secretary**’, in relation to a society, includes an assistant secretary, a director or an assistant director of that society;”;
- (j) by the deletion of the definition of “**Supreme Court**”;
- (k) by the insertion after the definition of “**Supreme Court**” of the following definition:
 “ ‘**this Act**’ includes the regulations made under section 81;”;
- (l) by the substitution for the definition of “**unprofessional or dishonourable or unworthy**” of the following definition:
 “ ‘**unprofessional or dishonourable or unworthy**’, in relation to conduct, includes any conduct **[prescribed]** determined as such.”.

Amendment of section 2 of Act 53 of 1979, as amended by section 1 of Act 108 of 1984, section 2 of Act 115 of 1993 and section 2 of Act 78 of 1997

6. Section 2 of the Attorneys Act, 1979, is hereby amended by the substitution for paragraph (d) of subsection (1) of the following paragraph:

- “(d) three years after he or she has passed the matriculation examination conducted and controlled by the joint matriculation board referred to in section 15 of the Universities Act, 1955, or an examination certified by that matriculation board to be equivalent or superior thereto, and thereafter has served continuously for a period of at least two years as a clerk to any judge of **[the Supreme]** a High Court, the Supreme Court of Appeal or the Constitutional Court, provided he or she enters into articles of clerkship within a period of one year after he or she has ceased to serve in such manner; or”.

Amendment of section 3 of Act 53 of 1979, as substituted by section 2 of Act 87 of 1989 and amended by section 2 of Act 102 of 1991 and section 18 of Act 66 of

2008

7. Section 3 of the Attorneys Act, 1979 is hereby amended by the substitution for paragraph (f) of subsection (1) of the following paragraph:

“(f) in the full-time employment of a law clinic, and if the council **[of the province]** having jurisdiction in the area in which that law clinic is operated, certifies that the law clinic concerned complies with the requirements prescribed by the council for the operation of the clinic;”.

Amendment of section 4 of Act 53 of 1979, as amended by section 3 of Act 108 of 1984 and section 4 of Act 78 of 1997

8. Section 4 of the Attorneys Act, 1979, is hereby amended by the substitution for the words preceding paragraph (a) of the following words:

“Any person intending to serve any attorney under articles of clerkship shall submit to the secretary of the society **[of the province]** having jurisdiction in the area in which the service under such articles is to be performed, the following, namely –“

Amendment of section 4A of Act 53 of 1979, inserted by section 4 of Act 115 of 1993 and amended by section 5 of Act 78 of 1997

9. Section 4A of the Attorneys Act, 1979, is hereby amended by the substitution for the words preceding paragraph (a) of the following words:

“A candidate attorney intending to perform community service shall submit to the secretary of the society **[of the province]** having jurisdiction in the area in which the community service is to be performed, the following, namely –“.

Amendment of section 5 of Act 53 of 1979, as substituted by section 5 of Act 115 of 1993

10. Section 5 of the Attorneys Act, 1979, is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) The original of any articles of clerkship or contract of service shall within two months of the date thereof be lodged by the principal concerned with the secretary of the society **[of the province]** having jurisdiction in the area in which the service under such articles or contract of service is to be performed.”.

Amendment of section 8 of Act 53 of 1979, as substituted by section 6 of Act 87 of 1989 and amended by section 8 of Act 115 of 1993, section 6 of Act 78 of 1997 and section 10 of Act 31 of 2008

11. Section 8 of the Attorneys Act, 1979, is hereby amended –

(a) by the substitution for subsection (1) of the following subsection:

“(1) Any candidate attorney who has satisfied all the requirements for the degree referred to in paragraph (a) of section 2(1), or for the degrees referred to in paragraph (aA) of that section in respect of which a certification in accordance with that paragraph has been done, shall be entitled to appear in any court, other than any High Court, Supreme Court of Appeal or the Constitutional Court, and before any board, tribunal or similar institution in or before which his or her principal is entitled to appear, instead of and on behalf of such principal, who shall be entitled to charge the fees for such appearance as if he or she himself or herself had appeared: Provided that such a candidate attorney shall not be entitled to appear in a court of a regional division established under section 2 of the Magistrates’ Courts Act, 1944 (Act 32 of 1944), unless he or she –

- (a) has previously practised as an advocate for at least half a year; or
- (b) has served for at least one year under his or her articles or contract of service; or
- (c) has at least one year’s experience as a state advocate, state prosecutor or magistrate.”;

(b) by the insertion after subsection (1) of the following subsections:

“(2) Any candidate attorney who –

- (a) is entitled to appear under any law repealed by Part 2 of the

Schedule may, notwithstanding that repeal, continue to so appear, subject to subsection (2A); and

(b) may so continue to appear, may apply to the society having jurisdiction for a certificate referred to in subsection (3), which the society may or may not issue.

(2A) The right referred to in subsection (2) lapses after five years after the commencement of section 11 of the Judicial Matters Amendment Act, 2010.”; and

(c) by the substitution for subsections (3), (4) and (5) of the following subsections:

(3) The secretary of the society concerned shall, upon the written application of the principal of any candidate attorney referred to in subsection (1) or (2) and upon the payment of the fees prescribed under section 80(bA), issue to such candidate attorney a certificate that he or she complies with the relevant provisions of subsection (1).

(4) (a) Any candidate attorney who is entitled to appear as contemplated in subsection (1) or (2), shall at the expiry of his or her articles or contract of service, and provided he or she remains in the employ of the attorney who was his or her principal immediately before such expiry, or provided he or she remains in the service of the law clinic or the Legal Aid Board concerned, as the case may be, remain so entitled until he or she is admitted as an attorney, but not for longer than six months.

(b) The provisions of section 6 shall apply *mutatis mutandis* in respect of a former candidate attorney referred to in paragraph (a).

(5) In the event of the death, mental illness, insolvency, conviction for crime, imprisonment for debt, suspension, striking off the roll or discontinuance of practice of the attorney who was the principal of a former candidate attorney referred to in subsection (4) immediately before the expiry of his or her articles, such former candidate attorney shall with the written permission of the secretary of the society [**of the province**] having jurisdiction in the area in which the candidate attorney served under articles, be entitled to take service with

any other attorney and to appear as contemplated in subsection (4) under the supervision of that attorney.”.

Amendment of section 9 of Act 53 of 1979, as substituted by section 7 of Act 87 of 1989 and amended by section 9 of Act 115 of 1993

12. Section 9 of the Attorneys Act, 1979, is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) A candidate attorney shall not have any pecuniary interest in the practice and service of an attorney, or in the organisation or institution where he or she performs community service, and shall not, without the prior written consent of the council of the society **[of the province]** having jurisdiction in the area in which he or she performs service under the articles or contract of service, hold or occupy any office or engage in any other business other than that of candidate attorney.”.

Amendment of section 10 of Act 53 of 1979, as substituted by section 11 of Act 104 of 1996

13. Section 10 of the Attorneys Act, 1979, is hereby amended by the substitution for the words preceding paragraph (a) of subsection (4) of the following words:

“An agreement whereby articles or a contract of service is ceded shall within two months of the date on which the services of the candidate attorney concerned have been terminated with the cedent, or within such further period as the court may for good cause allow, be lodged with the society **[of the province wherein]** having jurisdiction in the area where service under the said articles or the said contract of service so ceded is to be performed, by the cessionary together with the affidavits –“.

Amendment of section 13B of Act 53 of 1979, as inserted by section 8 of Act 55 of 2003 and substituted by section 6 of Act 22 of 2005

14. Section 13 B of the Attorneys Act, 1979, is hereby amended by the

substitution for subsection (1) of the following subsection:

“(1) After the commencement of section 6 of the Judicial Matters Amendment Act, 2005, and subject to subsection (2), every attorney who, for the first time, is required to apply for a fidelity fund certificate in terms of section 42 must –

- (a) within the period contemplated in section 74(1)(dA); and
 - (b) after payment of the fee prescribed in terms of section 80(i),
- complete a legal practice management course approved by and to the satisfaction of the council **[of the province]** having jurisdiction in the area in which he or she intends to practise.

Amendment of section 14 of Act 53 of 1979, as amended by section 1 of Act 80 of 1985 and section 13 of Act 115 of 1993

15. Section 14 of the Attorneys Act, 1979, is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) The judge president of a **[provincial division]** High Court may after consultation with the president of the society concerned appoint two or more examiners for the purpose of arranging, controlling and conducting examinations in respect of –

- (a) the practice and procedure in the **[Supreme Court]** High Courts, Supreme Court of Appeal and Constitutional Court and in magistrates' courts established under the Magistrates' Courts Act, 1944 (Act 32 of 1944);
- (b) the practical bookkeeping necessary for the keeping of the accounting records referred to in section 78(4);
- (c) the practice, functions and duties of an attorney;
- (d) the practice, functions and duties of a notary;
- (e) the law, practice and procedure of conveyancing.”.

Amendment of section 15 of Act 53 of 1979, as substituted by section 7 of Act 108 of 1984 and amended by section 11 of Act 87 of 1989, section 14 of Act 115 of 1993, section 3 of Act 33 of 1995 and section 9 of Act 78 of 1997

16. Section 15 of the Attorneys Act, 1979, is hereby amended by the substitution for subparagraph (ivA) of paragraph (b) of subsection (1) of the following subparagraph:

“(ivA) (aa) during his or her term of service under articles or contract of service, or after the expiry of his or her articles or contract of service; or

(bb) after he or she has been exempted in terms of this Act from service under articles of clerkship,

has attended a training course approved by the society **[of the province]** having jurisdiction in the area in which he or she completed his or her service under articles or contract of service, or, in the case of section 2A(c), has attended a training course approved by the society **[of the province]** having jurisdiction in the area in which the candidate attorney intends to practise, and has completed such training course to the satisfaction of that society: Provided that this subparagraph shall not apply to a person who attended a training course referred to in section 2(1A)(a) or 2A(a)(i) and who has completed such course to the satisfaction of the society concerned; and”.

Amendment of section 16 of Act 53 of 1979, as amended by section 52 of Act 129 of 1993

17. Section 16 of the Attorneys Act, 1979, is hereby amended by the substitution for the words preceding paragraph (a) of the following words:

“Any person who applies to the court to be admitted or readmitted and enrolled as an attorney, shall satisfy the society **[of the province]** having jurisdiction where he or she so applies –“.

Amendment of section 19 of Act 53 of 1979

18. Section 19 of the Attorneys Act, 1979, is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) Any person who applies to a court to be admitted or readmitted as a practitioner shall at least one month before the date of his or

her application deliver to the secretary of the society **[of the province]** having jurisdiction in the area in which the court to which such application is made, is situated, together with his or her notice of application, a copy of his or her application for admission or readmission and copies of all affidavits, certificates and other documents or papers which are referred to therein or connected therewith.”.

Amendment of section 20 of Act 53 of 1979

19. Section 20 of the Attorneys Act, 1979, is hereby amended –

(a) by the substitution for subsection (1) of the following subsection:

“(1) Any person admitted and enrolled as an attorney, or a notary or conveyancer **[under this Act]** by any court in the Republic or in the former Republics of Transkei, Bophuthatswana, Venda and Ciskei may in the manner prescribed by subsection (2), apply to the registrar of any court other than the court by which he or she was so admitted and enrolled to have his or her name placed on the roll of attorneys or of notaries or of conveyancers, as the case may be, of the court for which such registrar has been appointed.”; and

(b) by the substitution for paragraphs (c) and (d) of subsection (2) of the following paragraphs:

“(c) a certificate signed by the secretary of **[the] every** society **[of each province]** in which the applicant is so enrolled that no proceedings are pending or contemplated to strike his or her name off the roll or to suspend him or her from practice;

(d) proof to the satisfaction of the registrar that a copy of the application and copies of the documents referred to in paragraphs (a), (b) and (c) have been served on the secretary of the society **[of the province]** in which such other court is situated; and”.

Amendment of section 23 of Act 53 of 1979

20. Section 23 of the Attorneys Act, 1979, is hereby amended by the substitution for subsection (3) of the following subsection:

“(3) If a shareholder of the company or a person having any interest in the shares of the company, dies or ceases to conform to any requirement of subsection (1)(b), he or she or his or her estate, as the case may be, may, as from the date on which he or she dies or ceases so to conform, continue to hold the relevant shares or interest in the shares in the company for a period of six months or for such longer period as the council of the society **[of the province]** having jurisdiction in the area in which the company’s registered office is situate, may approve.”.

Substitution of section 24 of Act 53 of 1979

21. The following section is hereby substituted for section 24 of the Attorneys Act, 1979:

“Applications in terms of this Chapter to be delivered to secretary of society concerned

24. Subject to provisions to the contrary in this Chapter contained, any person who makes an application to a court in terms of this Chapter, shall, at least one month before the date of his or her application, deliver to the secretary of the society **[of the province]** having jurisdiction in the area in which the court to which such application is made is situated, a copy of the application, together with copies of the other documents and papers referred to therein or connected therewith.”.

Amendment of section 43 of Act 53 of 1979, as substituted by section 15 of Act 55 of 2002

22. Section 43 of the Attorneys Act, 1979, is hereby amended by the substitution for subsection (6) of the following subsection:

“(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]** having

jurisdiction in the area 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 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] High Court** 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.”.

Amendment of section 49 of Act 53 of 1979, as amended by section 21 of Act 87 of 1989

23. Section 49 of the Attorneys Act, 1979, is hereby amended by the substitution for subsection (4) of the following subsection:

“(4) Any action against the fund may, subject to the provisions of this Act **[and the regulations made thereunder]**, be brought in any **[provincial or local division of the Supreme Court]** court of law having jurisdiction within the area of jurisdiction of which the cause of action arose.”.

Substitution of section 56 of Act 53 of 1979, as amended by section 15 of Act 115 of 1993

24. The following section is hereby substituted for section 56 of the Attorneys Act, 1979:

“Continued existence of certain law societies

- (1) The law societies known as –
- (a) in the case of the law society of the province of the Cape of Good Hope, The Law Society of the Cape of Good Hope;
 - (b) in the case of the law society of the province of the Orange Free State, The Law Society of the Orange Free State;
 - (c) in the case of the law society of the province of the Transvaal, The Law Society of the Transvaal;

(d) in the case of the law society of the province of Natal, The Natal Law Society,

shall, notwithstanding the provisions of section 86, continue to exist as juristic persons.

(2) Any society referred to in subsection (1) may, by resolution by its members, as determined in its rules, change the name of the society.

(3) The societies referred to in subsection (1) have jurisdiction over all attorneys practising in their areas of jurisdiction as follows:

(a) The Law Society of the Cape of Good Hope has jurisdiction over all attorneys practising in the Western Cape, the Eastern Cape and the Northern Cape;

(b) The Law Society of the Orange Free State has jurisdiction over all attorneys practising in the Free State;

(c) The Law Society of the Transvaal has jurisdiction over all attorneys practising in Gauteng, Mpumalanga, the North West and Limpopo; and

(d) The Natal Law Society has jurisdiction over all attorneys practising in the KwaZulu-Natal.

(4) Any law society not mentioned in subsection (3) and which still exists or operates in terms of any other law shall dissolve in accordance with the regulations made under section 81(1)(i).

(5) All the rights and obligations of any society which dissolves in terms of subsection (4) shall, on dissolution, transfer as follows:

(a) The rights and obligations of any society in the former Republic of Bophuthatswana or Venda transfer to the Law Society of the Transvaal referred to in subsection (3)(c); and

(b) rights and obligations of any society in the former Republic of Transkei or Ciskei transfer to the Law Society of the Cape of Good Hope referred to in subsection (3)(a).

(6) (a) Any pending actions by or against a law society referred to in subsection (4) may, after its dissolution, be continued by or against the society to which the rights and obligations have been transferred in terms of subsection (5).

(b) Any pending disciplinary enquiries or steps taken

or those enquiries or steps which may have been taken by a law society referred to in subsection (4) before its dissolution, may be continued or taken by the society to which those rights and obligations have been transferred in terms of subsection (5), as if the former society had not been dissolved.”.

Amendment of section 57 of Act 53 of 1979

- 25.** Section 57 of the Attorneys Act, 1979, is hereby amended –
- (a) by the substitution for subsections (1) and (2) of the following subsections:
- “(1) Every practitioner who practises **[in any province]**, whether for his or her own account or otherwise, shall be a member of the society **[of that province]** as provided for in section 56(3).
- (2) A society may by notice in writing addressed to any person who has been admitted and enrolled as an attorney or a notary or conveyancer in any court **[in the province of its]** within the area of jurisdiction of that society, or whose name has been placed on the roll of such court, but who does not practise in that **[province]** area of jurisdiction, declare such person to be a member of such society with effect from a date fixed in that notice.”; and
- (b) by the addition of the following subsection:
- “(6) Every practitioner who becomes a member of any society for the first time must, within 30 days after the practitioner becomes a member, provide the society with any information as may be determined by the rules of the society in question.”.

Amendment of section 69 of Act 53 of 1979, as amended by section 23 of Act 87 of 1989, section 5 of Act 102 of 1991 and section 54 of Act 129 of 1993,

- 26.** Section 69 of the Attorneys Act, 1979, is hereby amended –
- (a) by the substitution for paragraph (e) of the following paragraph:
- “(e) prescribe the information to be furnished to the secretary of its society by any person who –
- (i) commences or discontinues to practise in the **[province]**

- area of jurisdiction of its society;
- (ii) takes up employment in that **[province]** area of jurisdiction or ceases to be employed therein as a practitioner;
 - (iii) enters into or withdraws from a partnership with any person practising in that **[province]** area of jurisdiction;
 - (iv) practises in that **[province]** area of jurisdiction and who changes his or her business or residential address;”;
- and
- (b) by the substitution for paragraph (j) of the following paragraph:
- “(j) subject to such conditions as it may deem fit to impose, permit members of its society to form associations of such members, to be known as circles, in respect of such areas **[of the province]** within the area of jurisdiction of the society concerned as the council may determine from time to time; determine the duties, functions and powers of such circles; designate places as the headquarters of such circles; and determine the constitution of bodies responsible for the management of the affairs of such circles;”.

Amendment of section 71 of Act 53 of 1979, as amended by section 24 of Act 87 of 1989 and section 16 of Act 115 of 1993

27. Section 71 of the Attorneys Act, 1979, is hereby amended –
- (a) by the substitution for subsection (1) of the following subsection:
- “(1) A council may in the prescribed manner inquire into cases of alleged unprofessional or dishonourable or unworthy conduct or contravention of any law repealed in Part 2 of the Schedule on the part of or by any attorney, notary or conveyancer whose name has been placed on the roll of any court within the **[province]** area of jurisdiction of its society, whether or not he or she is a member of such society, or of any person serving articles of clerkship or a contract of service with a member of its society, or of any former candidate attorney referred to in section 8(4).”; and
- (b) by the addition of the following subsection:

“(5) A council may take any of the steps as provided for in this section and section 72, irrespective of when or where the alleged unprofessional or dishonourable or unworthy conduct or contravention took place or whether it occurred before or after a person became a member of its society or not.

Amendment of section 74 of Act 53 of 1979, as amended by section 26 of Act 87 of 1989, section 18 of Act 115 of 1993 and section 9 of Act 55 of 2003

28. Section 74 of the Attorneys Act, 1979, is hereby amended –

- (a) by the substitution for the words preceding paragraph (a) of subsection (1) of the following words:

“A council may subject to the provisions of subsections (2) and (3) make rules, which shall be binding within the **[province]** area of jurisdiction of its society, as to –“;

- (b) by the substitution for subsection (3) of the following subsection:

“(3) A council shall not submit any draft rule to the Chief Justice unless –

- (a) if the draft rule is submitted by the council of –
- (i) the Law Society of the Cape of Good Hope;
 - (ii) the Law Society of the Orange Free State;
 - (iii) the Natal Law Society; or
 - (iv) the Law Society of the Transvaal,

such draft rule has been approved by the majority of the members of the society concerned present or represented at a general meeting of that society; and

- (b) the council has consulted with the judge president of every **[provincial division in the province]** High Court in the area of jurisdiction of its society **[and with the chief justice of every high court in such province].”.**;

- (c) by the substitution for subsection (5) of the following subsection:

“(5) Any assessment of fees in terms of a rule contemplated in section 69(h) shall be subject to review in all respects as if it were a determination by such officer of a **[provincial division or**

high court] High Court as is charged with the taxation of fees and charges.”; and

(d) by the deletion of subsection (6).

Amendment of section 75 of Act 53 of 1979

29. Section 75 of the Attorneys Act, 1979, is hereby amended by the addition of the following subsection, the existing section becoming subsection (1):

“(2) The provisions of subsection (1) apply with the necessary changes required by the context, in respect of any law society, council, member of a council, official or employee of any such law society or any person with whom or which such council has concluded any agreement referred to in section 59(g)(ii) which originated from any law repealed in Part 2 of the Schedule.”.

Amendment of section 78 of Act 53 of 1979, as substituted by section 28 of Act 87 of 1989

30. Section 78 of the Attorneys Act, 1979, is hereby amended –

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

“(5) The council of the society **[of the province]** which has jurisdiction in the area in which a practitioner practises may by itself or through its nominee, and at its own cost, inspect the accounting records of any practitioner in order to satisfy itself that the provisions of subsections (1), (2), (2A), (3) and (4) are being observed, and, if on such inspection it is found that such practitioner has not complied with such provisions, the council may write up the accounting records of such practitioner and recover the costs of the inspection or of such writing up, as the case may be, from that practitioner.”;

(b) by the substitution for subsection (8) of the following subsection:

“(8) The court may on application made by the society **[of the province]** concerned, and on good cause shown, prohibit any practitioner from operating in any way on his or her trust account, and may appoint a *curator bonis* to control and administer such trust

account, with such rights, duties and powers in relation thereto as the court may deem fit.”;

- (c) by the substitution for paragraph (a) of subsection (9) of the following paragraph:

“(9) (a) If any practitioner –

- (i) dies;
- (ii) becomes insolvent;
- (iii) in the case of a professional company, is liquidated or placed under judicial management, whether provisionally or finally;
- (iv) is struck off the roll or suspended from practice;
- (v) is declared by a competent court to be incapable of managing his or her own affairs; or
- (vi) abandons his or her practice or ceases to practise,

the Master of the **[Supreme] High** Court may, on application made by the society **[of the province]** concerned or by any person having an interest in the trust account of that practitioner, appoint a *curator bonis* to control and administer such account, with such of the prescribed rights, duties and powers as the Master may deem fit.”; and

- (d) by the substitution for subsection (13) of the following subsection:

“(13) Any banking institution **[or building society]** at which a practitioner keeps his or her trust account or any separate account forming part of his or her trust account, shall, if so directed by the council of the society **[of the province]** having jurisdiction in the area in which such practitioner is practising, furnish the council with a signed certificate which indicates the balance of such account at the date or dates stated by the council.”.

Amendment of section 81 of Act 53 of 1979, as amended by section 5 of Act 76 of 1980, section 4 of Act 60 of 1982, section 4 of Act 56 of 1983, section 7 of Act 80 of 1985, section 29 of Act 87 of 1989, section 20 of Act 115 of 1993 and section 4 of Act 33 of 1995

31. Section 81 of the Attorneys Act, 1979, is hereby amended –

- (a) by the substitution for the words preceding paragraph (a) of subsection (1) of

the following words:

“The Minister may after consultation with, except in the case of regulations made under paragraph (f), **[or]** (g) or (i), the Chief Justice of South Africa and after consultation with the presidents of the various societies make regulations determining the following.”; and

- (b) by the insertion after paragraph (h) of subsection (1) of the following paragraph:
“(i) the date on which any law society not mentioned in section 56(3) shall dissolve, as well as the necessary arrangements in relation to the dissolution, including, subject to section 56(5), the transfer or disposal of assets and liabilities, the payment of costs and the manner in which surplus staff members of such society are to be dealt with;”.

Amendment of section 82 of Act 53 of 1979, as amended by section 13 of Act 104 of 1996

32. Section 82 of the Attorneys Act, 1979, is hereby amended by the substitution for the words preceding paragraph (a) of the following words:

“The Chief Justice may, after consultation with the judges-president of the **[several provincial divisions]** High Courts and with the presidents of the several societies make rules of court so as to provide for –“.

Amendment of section 83 of Act 53 of 1979, as amended by section 6 of Act 76 of 1980, section 5 of Act 60 of 1982, section 30 of Act 87 of 1989, section 1 of Act 49 of 1996 and section 9 of Act 122 of 1998

33. Section 83 of the Attorneys Act, 1979, is hereby amended by the substitution for paragraph (e) of subsection (11) of the following paragraph:

- “(e) to any practitioner who makes known in such manner as may be approved by the society **[of the province in which]** having jurisdiction in the area in which he or she practises, that he or she does such work;”.

Amendment of section 86 of Act 53 of 1979, as amended by section 31 of Act 87 of 1989

34. Section 86 of the Attorneys Act, 1979, is hereby amended –

(a) by the substitution for subsection (1) of the following subsection:

“(1) Subject to the provisions of subsections (2), **[and]** (3) and (4), the laws set out in the Schedule are hereby repealed to the extent set out in the third column thereof.”; and

(b) by the addition of the following subsection:

“(4) Any person who, immediately before the commencement of this section, was admitted and entitled to practise as a practitioner in terms of the laws repealed in Part 2 of the Schedule, continues to be so entitled under this Act, provided that the person complies with all the other requirements of this Act.”.

Insertion of section 86A in Act 53 of 1979

35. The following section is hereby inserted in the Attorneys Act, 1979, after section 86:

“Application of Act

86A. This Act applies throughout the Republic.

Amendment of Schedule to Act 53 of 1979

36. The Schedule to the Attorneys Act, 1979, is hereby amended by the addition of the following Part, the existing Schedule becoming Part 1:

“Part 2

| | | |
|----------------------------------|---|---|
| <u>Act 23 of 1934 (Transkei)</u> | <u>Attorneys, Notaries and Conveyancers Admission Act, 1934</u> | <u>The whole in so far as it is still applicable in the territory which comprised the former Republic of Transkei</u> |
| <u>Act 53 of 1979</u> | <u>Attorneys Act, 1979</u> | <u>Sections 55, 77, 84 and 84A</u> |
| <u>Act 53 of 1979</u> | <u>Attorneys Act, 1979</u> | <u>The whole in so far as it</u> |

| | | |
|--|---|---|
| <u>(Ciskei)</u> | | <u>is still applicable in the territory which comprised the former Republic of Ciskei</u> |
| <u>Act 29 of 1984 (Bophuthatswana)</u> | <u>Attorneys, Notaries and Conveyancers Act, 1984</u> | <u>The whole in so far as it is still applicable in the territory which comprised the former Republic of Bophuthatswana</u> |
| <u>Act 42 of 1987 (Venda)</u> | <u>Attorneys Act, 1987</u> | <u>The whole in so far as it is still applicable in the territory which comprised the former Republic of Venda</u> |

Amendment of section 11 of Act 70 of 1979

37. Section 11 of the Divorce Act, 1979, is hereby amended by the addition of the following subsection, the existing section becoming subsection (1):

"(2) If at any stage during proceedings in terms of this Act, it appears to the court that there is a likelihood that harm may result to a person under the age of 18 years as a result of the hearing of any evidence, the court may, of its own accord or on application by any interested party, order that the proceedings be held behind closed doors, and that no person be present unless his or her presence is necessary for the proceedings."

Substitution of section 12 of Act 70 of 1979, as amended by section 8 of Act 24 of 1987

38. The following section is hereby substituted for section 12 of the Divorce Act, 1979:

"Limitation on publication of court proceedings

12. (1) (a) [Except for making known or publishing the names of the parties to a divorce action, or that a divorce action between the parties is pending in a court of law, or the judgment or order of the court, no person shall make known in public or publish for the

information of the public or any section of the public any particulars of a divorce action or any information which comes to light in the course of such an action] No person shall publish in any manner, including in a newspaper or periodical publication, by radio or television broadcast, or by other means of electronic communications or otherwise make known to the public or a section of the public, the identity of, or any information that may reveal the identity of any party or child in any divorce action, unless authorised by the court in exceptional circumstances.

(b) For the purposes of subsection (1)(a), information that may identify or reveal the identity of any party or child in a divorce action must be construed as to include the following:

- (i) The name, title, pseudonym or alias of the person;
- (ii) the physical address or the locality at which the person resides or works;
- (iii) the relationship of the person to another identified relative or the association of the person with identified friends or identified businesses, or official or professional acquaintances of the person;
- (iv) the physical description or the style of dress of the person;
- (v) any employment or occupation engaged in, or profession practised or calling pursued by the person, or any official or honorary position held by the person;
- (vi) the recreational interests or the political, philosophical or religious beliefs or interests, of the person; or
- (vii) any real or personal property in which the person has an interest or with which the person is otherwise associated.

(2) The provisions of subsection (1) shall not apply to the publication of particulars or information –

- (a) for the purposes of the administration of justice, including publication by a particular court of its proceedings;
- (b) in a *bona fide* law report which does not form part of any other publication than a series of reports of the proceedings in courts of law; or
- (c) for the advancement of or use in a particular profession or science.

(3) The provisions of subsections (1) and (2) shall **[mutatis**

mutandis apply, with the necessary changes required by the context, with reference to proceedings relating to the enforcement or variation of any order made in terms of this Act as well as in relation to any inquiry instituted by a Family Advocate in terms of the Mediation in Certain Divorce Matters Act, 1987 (Act No. 24 of 1987).

(4) Any person who in contravention of this section publishes any particulars or information shall be guilty of an offence and liable on conviction to a fine **[not exceeding one thousand rand]** or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment."

Amendment of section 11 of Act 105 of 1983, as substituted by section 9 of Act 87 of 1992 and and amended by section 56 of Act 5 of 1998

39. Section 11 of the Admiralty Jurisdiction Regulation Act, 1983, is amended—

(a) by the substitution for paragraph (a) of subsection (1) of the following paragraph:

"(a) If property mentioned in section 3(5)(a) to (e) is sold in execution or constitutes a fund contemplated in section 3(11), the relevant maritime claims mentioned in subsection (2) shall be paid in **[the order prescribed by]** accordance with subsections (5) and (11).";

(b) by the substitution for subsections (4), (5) and (6) of the following subsections:

"(4) The claims mentioned in subsection (2) are the following, namely—

(a) a claim in respect of costs and expenses incurred to maintain, preserve or keep custody of the property in question or to procure its sale and in respect of the distribution of the proceeds of the sale;

(b) a claim which arose not earlier than one year before the commencement of proceedings to enforce it or before the submission of proof thereof and which is a claim—

(i) in respect of the salvage of the ship, the removal of any wreck of the ship, or any contribution in respect of a general average act or sacrifice in connection with the ship;

(ii) contemplated in paragraph (s) of the definition of 'maritime

claim':

- (iii) in respect of loss of life or personal injury, whether occurring on land or on water, directly resulting from the operation of the ship;
- (iv) in respect of port, canal or other waterway dues, pilotage dues, or any charge, levy or related penalty imposed under the South African Maritime Safety Authority Act, 1998 (Act No. 5 of 1998), or the South African Maritime Safety Authority Levies Act, 1998 (Act No. 6 of 1998); or
- (v) in respect of loss of or damage to property, whether occurring on land or on water, resulting from delict, and not giving rise to a cause of action based on contract, and directly resulting from the operation of the ship;
- (c) a claim in respect of any mortgage or hypothecation of, or any other charge on, the ship, effected or valid in accordance with the law of the flag of the ship;
- (d) a claim which arose not earlier than one year before the commencement of proceedings to enforce it or before the submission of proof thereof and which is a claim—
 - (i) in respect of the repair of the ship or the supply of goods or the rendering of services to or in relation to the ship for the employment, maintenance, protection or preservation thereof;
 - (ii) in respect of premiums owing under any policy of marine insurance with regard to the ship or the liability of any person arising from the operation of the ship; or
 - (iii) by any body of persons, whether corporate or not, in respect of contributions with regard to the protection and indemnity of its members against a liability mentioned in subparagraph (ii);
- (e) a claim in respect of any maritime lien on the ship not covered by any of the preceding paragraphs; and
- (f) any other maritime claim.

(5) The claims mentioned in subsection (4) shall rank in accordance with the following rules, namely—

- (a) claims shall rank in the order in which they are set forth in subsection (4), but a preferent claim by reason of a pledge or a right of retention,

under the law of insolvency shall rank before any other claim, except—

- (i) a claim mentioned in subsection (4)(a);
 - (ii) a claim in respect of the salvage of the ship which arose within the period referred to in subsection (4)(b); or
 - (iii) a claim in respect of any other maritime lien on the ship which—
 - (aa) arose before such preferent claim; and
 - (bb) would otherwise have ranked before the preferent claim;
- (b) a claim mentioned in any paragraph or subparagraph of subsection (4) shall rank equally with any other claim mentioned in the same paragraph or subparagraph, irrespective of when such claims arose: Provided that—
- (i) claims mentioned in subsection (4)(b)(i) shall, among themselves, rank in the inverse order in which they arose;
 - (ii) claims mentioned in subsection (4)(c) shall, amongst themselves, rank according to the law of the flag of the ship;
 - (iii) claims mentioned in subsection (4)(f) shall be paid in the order in which they would be paid and enjoy the same preference they would if they were claims in insolvency;
 - (iv) where, by reason of paragraph (a), the claim ranks equally in priority to certain claims mentioned in any paragraph or subparagraph of subsection (4) but not in priority to other claims mentioned in the same paragraph or subparagraph, the higher ranking claims shall rank equally amongst themselves and the lower ranking claims shall rank equally amongst themselves.
- (6) For the purposes of [subsection (5)] subsections (4)

and (5)—

- (a) a claim in connection with salvage or the removal of a wreck shall be deemed to have arisen when the salvage operation or the removal of the wreck, as the case may be, was terminated, and a claim in connection with contribution in respect of general average, when the general average act occurred; and
 - (b) any other claim shall be deemed to have arisen when it became enforceable.";
- (c) by the substitution for paragraphs (a) and (b) of subsection (11) of the following

paragraphs—

- "(a) all claims which fall under **[paragraphs (b) to (e) of]** subsection (4)(b) to (f) and which arose in respect of a ship in relation to which the ship giving rise to the fund is such an associated ship as is contemplated in section 3(7)(a)(i) shall rank immediately after claims which fall under the said paragraphs and which arose directly in respect of the ship giving rise to the fund concerned **[and after any claims which fall under paragraph (f) of subsection (4) and which arose from, or are related directly to, the operation of (including the carriage of goods in) the ship giving rise to the fund concerned];**
- (b) all claims which fall under **[the said paragraphs (b) to (e)]** subsection (4)(b) to (f) and which arose in respect of a ship in relation to which the ship giving rise to the fund is such an associated ship as is contemplated in section 3(7)(a)(ii) or (iii) shall rank immediately after any claims mentioned in paragraph (a) **[of this subsection or, if there are no such claims, immediately after claims which fall under the said paragraphs and which arose directly in respect of the ship giving rise to the fund concerned; and];"**
- (d) by the insertion after paragraph (b) of subsection (11) of the following paragraph:
- "(bA) any claims which fall under subsection (4)(f) and which are not covered by paragraph (a) or (b) shall rank immediately after the claims mentioned in paragraph (b); and"
- (e) by the substitution for paragraph (c) of subsection (11) of the following paragraph:
- "(c) the provisions of subsections (5) and (9) shall apply with regard to any claim mentioned in paragraph (a), **[or] (b) or (bA)."**; and
- (f) by the substitution for subsection (13) of the following subsection:
- "(13) Any balance remaining after the claims mentioned in **[paragraphs (a) to (e) of]** subsection (4) **[and the claims mentioned in subsection (11)]** have been paid shall be paid over to any trustee, liquidator or judicial manager who, but for the provisions of section 10, would have been entitled thereto, or otherwise to any other person entitled thereto."

Amendment of section 9 of Act 61 of 1984 as amended by section 5 of Act 92 of 1986, section 1 of Act 63 of 1989, section 4 of Act 18 of 1996 and section 4 of Act 26 of 1999

40. Section 9 of the Small Claims Courts Act, 1984, is hereby amended by the insertion after paragraph (b) of subsection (1) of the following paragraph:

"(c) A commissioner appointed in terms of paragraph (a) in respect of a specific court will be deemed to be appointed for any court established under section 2 in that province."

Amendment of section 5 of Act 90 of 1986 as amended by section 1 of Act 3 of 1991

41. Section 5 of the Sheriffs Act, 1986, is hereby amended by—
(a) the substitution for subsection (1) of the following subsection:

"(1) When a sheriff—
(a) is unable to perform his or her functions;
(b) is prohibited by any court of law from performing any particular function in connection with a case; **[or]**
(c) ceases to hold office; or
(d) has not been appointed for a specific area of jurisdiction of a lower or superior court,

the Minister may appoint a person to act, subject to the provisions of section 30, as sheriff—

- (i) in the circumstances referred to in paragraph (a), until the sheriff is able to resume his or her functions;
 - (ii) in the circumstances referred to in paragraph (b), in order to perform the particular function; or
 - (iii) in the circumstances referred to in **[paragraph] paragraphs (c) and (d)**, until a successor, or a sheriff is appointed."; and
- (b) the substitution for subsection (1A) of the following subsection:

"(1A) The Minister may for the purposes of a particular suit appoint a person to act as sheriff—

- (a) if objection is made against the service or execution of any process by

the sheriff on the grounds that he or she has an interest in the suit or that he or she is related to a party to the suit;

(b) if the Minister for any other reason considers it necessary; or

(c) if a sheriff has not been appointed in a vacancy in the office of sheriff within a specific area of jurisdiction of a lower or superior court.".

Insertion of sections 6A and 6B in Act 90 of 1986

42. The following sections are hereby inserted in the Sheriffs Act, 1986, after section 6:

"Minister may designate person to serve process

6A. (1) Whenever process of any court in a civil or criminal case is to be served within any area for which no sheriff or acting sheriff has been appointed, the Minister may, notwithstanding any other law, in writing designate any official in the employ of the Department of Justice—

(a) for the period specified in the designation;

(b) in respect of the court specified in the designation; and

(c) on the conditions, if any, specified in the designation,

to serve any process of that court or any other document as if he or she had been appointed as a sheriff or acting sheriff of that court.

(2) The fees payable to a sheriff or acting sheriff in respect of or in connection with any service effected by an official referred to in subsection(1), shall be chargeable but shall be paid into the Consolidated Revenue Fund in the prescribed manner.

Minister may designate sheriff to perform functions in another area

6B. Whenever any functions of a sheriff, other than the service of process of any court or any other document, are to be performed within any area for which no sheriff or acting sheriff has been appointed, the Minister may, after consultation with the Board, in writing designate any sheriff or acting

sheriff to perform those functions as if he or she had been appointed as a sheriff of that area, for the period and on the conditions that the Minister determines. "

Substitution of long title to Act 74 of 1996

43. The following long title is hereby substituted for the long title to the Special Investigating Units and Special Tribunals Act, 1996:

"To provide for the establishment of Special Investigating Units for the purpose of investigating serious malpractices or maladministration in connection with the administration of State institutions, State assets and public money as well as any conduct which may seriously harm the interests of the public and for the purpose of instituting civil proceedings on behalf of State institutions for the recovery of any damages or losses, which have been suffered and the prevention of potential damages or losses which may be suffered by such State institutions and for the establishment of Special Tribunals so as to adjudicate upon civil matters emanating from investigations by Special Investigating Units; and to provide for matters incidental thereto."

Amendment of section 2 of Act 74 of 1996 as amended by section 36 of Act 12 of 2004

44. Section 2 of the Special Investigating Units and Special Tribunals Act, 1996, is hereby amended by the substitution for paragraph (b) of subsection (1) of the following paragraph:

"(b) establish one or more Special Tribunals to adjudicate upon **[justiciable]** civil **[disputes]** proceedings emanating from any investigation of any particular Special Investigating Unit:".

Amendment of section 3 of Act of Act 74 of 1996, as amended by section 1 of Act 2 of 2001

45. Section 3 of the Special Investigating Units and Special Tribunals Act, 1996, is hereby amended by the addition of the following subsection:

"(6) The Head of a Special Investigating Unit may, on such conditions as he or she may deem fit and if the member consents, second a member, either for a particular task or for a specified period, to the service of a State institution on condition that the rights, privileges and service benefits and conditions of the member are not adversely affected by such secondment." .

Amendment of section 4 of Act 74 of 1996

46. Section 4 of the Special Investigating Units and Special Tribunals Act, 1996, is hereby amended—

(a) by the substitution for paragraphs (b) and (c) of subsection (1) of the following paragraphs:

"(b) to collect evidence regarding acts or omissions which are relevant to its investigation **[and, if applicable, to institute proceedings in a Special Tribunal against the parties concerned];**";

(c) if applicable, to [present evidence in] institute and conduct civil proceedings [brought before] in a Special Tribunal for the recovery or prevention of losses or any other relief to which the State institution concerned is entitled;; and

(b) by the insertion after subsection (1) of the following subsection:

"(1A) Where it is relevant to its investigations, a Special Investigating Unit may, of its own accord, institute and conduct any civil proceedings in a Special Tribunal for the protection of any interests relating to its functions referred to in this Act."

Amendment of section 5 of Act of Act 74 of 1996, as amended by section 31 of Act 62 of 2000 and section 2 of Act 2 of 2001

47. Section 5 of the Special Investigating Units and Special Tribunals Act, 1996, is hereby amended—

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

"(5) Notwithstanding the provisions of any other law and for purposes of performing its functions referred to in this Act, a Special Investigating Unit represented by any duly qualified and admitted advocates or attorneys in its employ, may institute and conduct civil proceedings in a Special Tribunal [if, arising from its investigation, it has obtained evidence substantiating any allegation contemplated in section 2 (2)]—

(a) of its own accord and in its own name to protect any interests relating to its functions referred to in this Act; or

(b) at the request and on behalf of the State institution concerned for the recovery or prevention of losses or any other relief to which that State institution is entitled.";

(b) by the substitution for subsection (7) of the following subsection:

"(7) If, during the course of an investigation, any matter comes to the attention of the Head of the Special Investigating Unit which, in his or her opinion, justifies the institution of **[legal]** civil proceedings by a State institution against any person and notwithstanding anything to the contrary in this Act, he or she may bring such matter to the attention of the state attorney or the State institution concerned, as the case may be."; and

(c) by the substitution for subsection (9) of the following subsection:

"(9) (a) Any member of a Special Investigating Unit who is qualified and admitted as an advocate or an attorney, may perform such work in a Special Tribunal or in any court of law in any part of the Republic on behalf of a Special Investigating Unit or a State institution as is by law, custom or practice performed by advocates and attorneys.

(b) The rights, privileges and duties of an advocate or attorney lawfully performing his or her duties in terms of this Act shall, except as is specially provided by this Act, include any of the rights, privileges and duties of an advocate or attorney practising in a High Court where such duties are being performed."

Amendment of section 8 of Act 74 of 1996, as amended by section 32 of Act 62 of 2000

48. Section 8 of the Special Investigating Units and Special Tribunals Act,

1996, is hereby amended by the substitution for the words preceding paragraph (a) of subsection (2) of the following words:

"A Special Tribunal shall have jurisdiction to adjudicate upon any civil **[dispute]** proceedings brought before it by a Special Investigating Unit or any interested party as defined by the regulations, emanating from the investigation by such Special Investigating Unit, including the power to—".

Amendment of section 51 of Act 105 of 1997, as substituted by section 1 of Act 38 of 2007

49. Section 51 of the Criminal Law Amendment Act, 1997, is hereby amended by the substitution for subsections (5) and (6) of the following subsections:

"(5) **[(a) Subject to paragraph (b), the]** The operation of a minimum sentence imposed in terms of this section shall not be suspended as contemplated in section 297(4) of the Criminal Procedure Act, 1977 (Act 51 of 1977).

[(b) Not more than half of a minimum sentence imposed in terms of subsection (2) may be suspended as contemplated in section 297(4) of the Criminal Procedure Act, 1977, if the accused person was 16 years of age or older, but under the age of 18 years, at the time of the commission of the offence in question.]

(6) This section does not apply in respect of an accused person who was under the age of **[16]** 18 years at the time of the commission of an offence contemplated in subsection (1) or (2).".

Amendment of section 6 of Act 99 of 1998

50. Section 6 of the Maintenance Act, 1998, is hereby amended by the substitution for subsection (2) of the following subsection:

"(2) After investigating the complaint, the maintenance officer may institute an enquiry in the maintenance court within the area of jurisdiction in which the person to be maintained, or the person in whose care the person to be maintained is, resides, ordinarily carries on business or is employed, with a view to enquiring into the provision of maintenance for the person so to be

maintained."

Amendment of section 18 of Act 99 of 1998

51. Section 18 of the Maintenance Act, 1998, is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) If a maintenance court is satisfied on the grounds of sufficient proof or otherwise—

(a) that any person against whom an order may be made under section 16 (1)(a) or (b)—

(i) has knowledge of a subpoena issued under section 9; or

(ii) has appeared before the court and was warned by the court to appear at a later date, time and place before the court; and

(b) that he or she has failed to appear before the maintenance court on the date and at the time and place—

(i) specified in such subpoena; or

(ii) in accordance with a warning referred to in paragraph (a)(ii),

the maintenance court may, on the application of the maintenance officer for an order by default, call upon the person who has lodged the complaint to adduce such evidence, either in writing or orally, in support of his or her complaint as the maintenance court may consider necessary."

Substitution of section 22 of Act 99 of 1998

52. The following section is hereby substituted for section 22 of the Maintenance Act, 1998:

"Notice of substitution or discharge of maintenance orders

22. Whenever a maintenance court—

(a) makes an order under section 16(1)(b) in substitution of a maintenance order; or

(b) discharges a maintenance order under section 16(1)(b),

the maintenance order shall cease to be of force and effect but only insofar as

the court expressly, or by necessary implication, replaced such order or part thereof, and the maintenance officer shall forthwith give notice of the decision to the registrar or clerk of the court in the Republic where the maintenance order was issued or where the sentence concerned was imposed, as the case may be, who shall deal with the relevant records or registers in the prescribed manner."

Amendment of section 23 of Act 99 of 1998

53. Section 23 of the Maintenance Act, 1998, is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) Subject to the directions prescribed in connection with the transfer of maintenance orders, the maintenance officer **[may] must**, in writing, direct the clerk of the court where a maintenance order was made to transmit the maintenance order, together with the prescribed records, to the clerk of the maintenance court within the area of jurisdiction of which the person in whose favour the maintenance order was made, or the person in whose care that person is, resides, ordinarily carries on business or is employed."

Amendment of section 31 of Act 99 of 1998

54. Section 31 of the Maintenance Act, 1998, is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) Subject to the provisions of subsection (2), any person who fails to make any particular payment in accordance with a maintenance order shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding **[one year] three years** or to such imprisonment without the option of a fine."

Substitution of section 35 of Act 99 of 1998

55. The following section is hereby substituted for section 35 of the Maintenance Act, 1998:

"Offences relating to maintenance enquiries

35. Any person who wilfully interrupts the proceedings at a maintenance enquiry or who wilfully hinders or obstructs the maintenance court in the performance of the maintenance court's functions at the enquiry shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding **[six months]** one year or to both such fine and such imprisonment."

Substitution of section 38 of Act 99 of 1998

56. The following section is hereby substituted for section 38 of the Maintenance Act, 1998:

"Offences relating to certain notices

38. Any person who—

- (a) without sufficient cause, refuses or fails to make any payment in accordance with a notice under section 16(3)(a), 29(1) or 30(1); or
- (b) refuses or fails to give notice to a maintenance officer as required by section 16(3)(b) or 29(2),

shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding **[six months]** two years."

Substitution of section 39 of Act 99 of 1998

57. The following section is hereby substituted for section 39 of the Maintenance Act, 1998:

"Offences relating to notice of change of address

39. Any person who refuses or fails to give notice of any change of his or her place of residence or employment as required by section 16 (4) shall

be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding **[six months]** one year."

Insertion of section 39A in Act 99 of 1998

58. The following section is hereby inserted in the Maintenance Act, 1998, after section 39:

"Offences relating to maintenance investigators

39A. (1) Any person who wilfully hinders or obstructs a maintenance investigator in the exercise of his or her powers or the performance of his or her duties shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding one year.

(2) Any person who pretends to be a maintenance investigator shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding two years."

Substitution of section 41 of Act 99 of 1998

59. The following section is hereby substituted for section 41 of the Maintenance Act, 1998:

"Conversion of criminal proceedings into maintenance enquiry

41. If during the course of any proceedings in a magistrate's court in respect of—

- (a) an offence referred to in section 31(1); or
- (b) the enforcement of any sentence suspended on condition that the convicted person make periodical payments of sums of money towards the maintenance of any other person,

it appears **[to the court]** , on good cause shown, that it is desirable that a maintenance enquiry be held, **[or when the public prosecutor so requests]** the court may, of its own accord or at the request of the public prosecutor, [the

court shall] convert the proceedings into such enquiry."

Amendment of section 1 of Act 114 of 1998, as amended by section 10 of Act 22 of 2005

60. Section 1 of the Debt Collectors Act, 1998, is hereby amended by the addition of the following definition:

“ ‘trainee debt collector’ means a trainee debt collector referred to in section 9A.”.

Insertion of section 9A in Act 114 of 1998

61. The following section is hereby inserted in the Debt Collectors Act, 1998, after section 9:

‘Trainee debt collectors

9A. (1) A person who intends to carry on business as a debt collector may, before registering as a debt collector, apply to be registered as a trainee debt collector under the direct supervision and control of a registered debt collector, as provided for in this section, whereafter the provisions of this Act, with the changes required by the context, are applicable to the trainee debt collector in question.

(2) (a) An application for registration as a trainee debt collector must be lodged in the prescribed manner by the registered debt collector who is to supervise and control the trainee debt collector, with the Council on the prescribed form and must be accompanied by the prescribed application fee.

(b) A person who applies for registration as a trainee debt collector in terms of this section must furnish any additional particulars in respect of the application as may be determined by the Council.

(3) (a) If the Council is of the opinion that the provisions of this Act have been complied with in respect of an application referred to in subsection (1), it must, subject to the provisions of section 10, grant the

application and register the applicant as a trainee debt collector on any conditions as may be prescribed.

(b) On registering a person as a trainee debt collector, the Council must issue to that person a prescribed certificate of registration which is valid for a period of three months from the date of registration.

(4) (a) The Council must keep a register of the names and prescribed particulars of every trainee debt collector to whom the Council has issued a certificate of registration in terms of subsection (3)(b).

(b) Section 12(2), (3), (4) and (5) applies with the changes required by the context to the register referred to in paragraph (a).

(5) (a) A person may not be registered as a trainee debt collector more than two times.

(b) A registered debt collector may, at any given time, only have one trainee debt collector under his or her supervision and control, unless the Council, on the written application of the debt collector, in writing approves the registration of more than one trainee debt collector."

Insertion of sections 15A and 15B in Act 114 of 1998

62. The following sections are hereby inserted in the Debt Collectors Act, 1998, after section 15:

"Admission of guilt fine

15A. (1) Where a debt collector is charged with improper conduct, the debt collector may, in the prescribed manner and without appearing at the investigation referred to in section 15(2), admit his or her guilt in respect of the conduct referred to in section 15(1).

(2) The Council may, if it believes that on finding the debt collector guilty of improper conduct a fine not exceeding the prescribed amount will be imposed upon him or her, afford the debt collector an opportunity to pay the fine determined by the Council in the prescribed written notice stating the charges against the debt collector, to the Council, on or before a date specified

in the notice.

(3) A debt collector who pays a fine in terms of subsection (2) is deemed to have been found guilty of the improper conduct in question by the Council.

Inspectors

15B. (1) The Council may appoint a person as an inspector to investigate the activities of a debt collector against whom a complaint has been lodged in respect of an alleged contravention of any provision of this Act, or whom the Council reasonably suspects is contravening any provision of this Act.

(2) The Council must provide each inspector appointed in terms of subsection (1) with a certificate signed on behalf of the Council and stating that the inspector has been appointed under this Act.

(3) An inspector conducting an investigation in terms of this section shall—

- (a) show his or her certificate of appointment to any affected debt collector or person who demands to see it; and
- (b) hand a written document, stating the nature and purpose of the investigation to the affected debt collector or person.

(4) If an inspector, in the course of his or her investigation, has reason to suspect that the debt collector concerned has contravened or is contravening any other provision of this Act, not specifically mentioned in the written document referred to in subsection (3)(b), he or she may also investigate this contravention.

(5) An inspector may, for the purposes of an investigation referred to in subsection (1), during office hours and without prior notice—

- (a) enter the premises of the debt collector concerned or company or close corporation carrying on business as a debt collector;
- (b) require from any person on those premises the particulars and information as may be reasonably necessary;
- (c) have access to the books, documents or objects relevant to his or her inspection, in the possession or custody or under the control of the—

- (i) debt collector concerned or a person in his or her employ; or
 - (ii) company or close corporation in whose employ the debt collector concerned is; and
- (d) require copies of the books, documents or objects relevant to his or her investigation in the possession or custody or under the control of the —
- (i) debt collector concerned or a person in his or her employ; or
 - (ii) company or close corporation carrying on business as a debt collector in whose employ the debt collector concerned is.
- (6) A debt collector who, or company or close corporation carrying on business as a debt collector which, does not comply with any directive by, or request of an inspector, relevant to his or her investigation as referred to in subsection (5), may be found guilty of improper conduct."

Amendment of section 20 of Act 114 of 1998, as amended by section 14 of Act 22 of 2005 and section 25 of Act 66 of 2008

- 63.** Section 20 of the Debt Collectors Act, 1998, is hereby amended—
- (a) by the substitution for subsection (8) of the following subsection:
- “(8) If any debt collector—
- (a) dies;
 - (b) **[becomes insolvent]** is sequestrated or placed under judicial management, whether provisionally or finally;
 - (c) in the case of a company or close corporation, is liquidated or placed under judicial management, whether provisionally or finally;
 - (d) has his or her registration withdrawn or suspended **[or is on reasonable grounds likely to have his or her registration withdrawn]** ;
 - (e) is declared by a competent court to be incapable of managing his or her own affairs; or
 - (f) abandons his or her practice or ceases to practise,
- the Council~~—~~
- (i) must without delay take control over~~],~~ **administer and finalise that]** the trust account of that debt collector: Provided that the Council may designate any person, body or institution, in writing,

on the conditions the Council deems fit, to take control over the trust account of that debt collector. ";

- [(ii) may, in the circumstances the Council deems fit, make an application to the Master of the High Court having jurisdiction to appoint a *curator bonis* with the rights, duties and powers as prescribed to control, administer and finalise that account.]**

- (b) by the substitution for subsection (9) of the following subsection:

"(9) **[The Master of the High Court—**

- (a) may, before an appointment of a *curator bonis* is made as provided for in subsection (8), require from the person who is to be appointed as *curator bonis*, security to the satisfaction of the Master in an amount determined by the Master for the proper performance of his or her functions;**

- (b) shall have the powers and duties as prescribed; and**

- (c) is entitled to the fees as provided for in Schedule 2 of the regulations made in terms of section 103 of the Administration of Estates Act, 1965 (Act No. 66 of 1965).]** After the Council, or any person, body or institution designated by the Council as provided for in subsection (8), has taken control over the trust account of a debt collector—

- (a) the Council, or the person, body or institution in question may—

- (i) control and administer the trust account of the debt collector, on behalf of that debt collector; or

- (ii) control, administer and finalise the trust account of the debt collector,

in the manner the Council deems fit; or

- (b) the Council may make an application—

- (i) to any court having jurisdiction; or

- (ii) in the prescribed manner, to the Master of the High Court having jurisdiction.

to appoint a provisional *curator bonis*, to control and administer the trust account of the debt collector on behalf of that debt collector, or a *curator bonis* to control, administer and finalise the trust account of the debt collector.":

(c) by the addition of the following subsections:

"(10) A provisional *curator bonis* or a *curator bonis* may—

- (a) on good cause shown by the Council, be appointed by a court on the conditions and with such rights, duties and powers in relation thereto as the court may deem fit; or
- (b) in the prescribed manner, be appointed by the Master of the High Court having jurisdiction, on the conditions and with such rights, duties and powers in relation thereto as may be prescribed.

(11) (a) A provisional *curator bonis*, may be appointed to control and administer the trust account on behalf of a debt collector—

- (i) who is provisionally sequestrated or placed under provisional judicial management;
- (ii) who in the case of a company or close corporation, is provisionally liquidated or placed under provisional judicial management; or
- (iii) whose registration is suspended,

until the provisional sequestration, liquidation or judicial management order, as the case may be, is set aside, or the registration is no longer suspended.

(b) A *curator bonis* may be appointed to control, administer and finalise the trust account where a debt collector has—

- (i) died;
- (ii) been sequestrated or placed under final judicial management;
- (iii) in the case of a company or close corporation, been liquidated or placed under final judicial management;
- (iv) had his or her registration withdrawn;

- (v) been declared by a competent court to be incapable of managing his or her own affairs; or
- (vi) abandoned his or her practice or ceased to practise as a debt collector.

(12) The Council shall, after a court or the Master of the High Court has appointed a provisional *curator bonis* or a *curator bonis*, hand over its control over the trust account of the debt collector to the appointed provisional *curator bonis* for administration or to the *curator bonis* for administration and finalisation.

(13) The Master of the High Court—

- (a) may, before an appointment of a provisional *curator bonis* or a *curator bonis* is made as provided for in subsection (10)(b), require from the person who is to be appointed as a provisional *curator bonis*, or a *curator bonis*, security to the satisfaction of the Master in an amount determined by the Master for the proper performance of his or her functions;
- (b) shall have the powers and duties as prescribed;
- (c) may delegate any power or duty as may be prescribed to the Council, in the prescribed manner and on the conditions the Master of the High Court may determine; and
- (d) is entitled to the fees as provided for in Schedule 2 of the regulations made in terms of section 103 of the Administration of Estates Act, 1965 (Act No. 66 of 1965).

(14) A provisional *curator bonis*, or a *curator bonis* appointed by the Master of the High Court, is entitled to the remuneration as prescribed.

(15) Notwithstanding any provision to the contrary in any other law—

- (a) any prescribed administration cost and fee resulting from the administration or the administration and finalisation of the trust account of the debt collector by a provisional *curator bonis*, or a *curator bonis* appointed by the Master of the High Court having jurisdiction; and
- (b) the remuneration as contemplated in subsection (14),
shall be paid from funds in the trust account of the debt collector, including all

income accrued to that account, but excluding interest accrued to that account.".

Amendment of section 23 of Act 114 of 1998, as amended by section 26 of Act 66 of 2008

64. Section 23 of the Debt Collectors Act, 1998, is hereby amended by the substitution for paragraphs (e) and (f) of subsection (2) of the following paragraphs:

- "(e) regarding the—
- (i) manner of application contemplated in section 20(9)(b)(ii);
 - (ii) appointment of a provisional *curator bonis* or *curator bonis* contemplated in section 20(10)(b);
 - (iii) remuneration, rights, duties and powers of a provisional *curator bonis* or a *curator bonis* appointed under section 20[(8)] (10)(b);
- and
- (f) regarding the powers and duties of the Master of the High Court **[when appointing a *curator bonis* in terms of section 20(8)]**, the powers and duties the Master of the High Court may delegate to the Council and the manner in which the powers and duties shall be delegated.".

Amendment of section 42 of Act 121 of 1998, as amended by section 7 of Act 38 of 1999

65. Section 42 of the Prevention of Organised Crime Act, 1998, is hereby amended by the addition of the following subsection:

"(3) Subject to the provisions of this Chapter, the provisions of the Administration of Estates Act, 1965 (Act No. 66 of 1965), shall apply in respect of a *curator bonis* appointed under this Chapter."

Amendment of section 77 of Act 121 of 1998, as amended by section 79 of Act 38 of 2001

66. Section 77(1) of the Prevention of Organised Crime Act, 1998, is hereby amended by the substitution for paragraph (a) of subsection (1) of the following

paragraph:

"(a) with regard to the fees referred to in **[section]** sections 28(3)(c) and 42(2);"

Amendment of section 77 of Act 2 of 2000

67. Section 77 of the Promotion of Access to Information Act, 2000, is hereby amended by the substitution for paragraph (c) of subsection (5) of the following paragraph:

"(c) state that the appellant, third party or requester, as the case may be, may lodge an application with a court against the decision on internal appeal –

- (i) within **[60]** 180 days; or
- (ii) if notice to a third party is required by subsection (4)(a)(ii), within **[30]** 180 days,

after notice is given, and the procedure for lodging the application; and"

Amendment of section 78 of Act 2 of 2000

68. Section 78 of the Promotion of Access to Information Act, 2000, is hereby amended by the substitution for subsections (2) and (3) of the following subsections:

"(2) A requester –

- (a) that has been unsuccessful in an internal appeal to the relevant authority or a public body;
- (b) aggrieved by a decision of the relevant authority of a public body to disallow the late lodging of an internal appeal in terms of section 75(2);
- (c) aggrieved by a decision of the information officer of a public body referred to in paragraph (b) of the definition of 'public body' in section 1 –
 - (i) to refuse a request for access; or
 - (ii) taken in terms of section 22, 26(1) or 29(3); or
- (d) aggrieved by a decision of the head of a private body –
 - (i) to refuse a request for access; or

(ii) taken in terms of section 54, 57(1) or 60, may, by way of an application, within **[30]** 180 days apply to a court for appropriate relief in terms of section 82.

(3) A third party –

(a) that has been unsuccessful in an internal appeal to the relevant authority of a public body;

(b) aggrieved by a decision of the information officer of a public body referred to in paragraph (b) of the definition of ‘public body’ in section 1 to grant a request for access; or

(c) aggrieved by a decision of the head of a private body in relation to a request for access to a record of that body,

may, by way of an application, within **[30]** 180 days apply to a court for appropriate relief in terms of section 82.”.

Amendment of section 79 of Act 2 of 2000, as amended by section 23 of Act 55 of 2003 and section 27 of Act 66 of 2008

69. Section 79 of the Promotion of Access to Information Act, 2000, is hereby amended by the substitution for the words preceding paragraph (a) of subsection (1) of the following words:

"The Rules Board for Courts of Law, established by section 2 of the Rules Board for Courts of Law Act, 1985 (Act No. 107 of 1985), must **[before 28 February 2009]**, subject to the approval of the Minister, make rules of procedure for—".

Substitution of section 82 of Act 2 of 2000

70. The following section is hereby substituted for section 82 of the Promotion of Access to Information Act, 2000:

“Decision on application

82. The court hearing an application may grant any order that is just and equitable, including orders –

- (a) confirming, amending or setting aside the decision which is the subject of the application concerned;
- (b) requiring from the information officer or relevant authority of a public body or the head of a private body to take such action or to refrain from taking such action as the court considers necessary within a period mentioned in the order;
- (c) granting an interdict, interim or specific relief, a declaratory order or compensation; **[or]**
- (d) as to costs; or
- (e) condoning non-compliance with the 180 day period within which to bring an application, where the interests of justice so require.".

Amendment of section 7 of Act 3 of 2000, as amended by section 27 of Act 55 of 2003 and section 29 of Act 66 of 2008

71. Section 7 of the Promotion of Administrative Justice Act, 2000 is hereby amended by the substitution for subsection (3) of the following subsection:

"(3) The Rules Board for Courts of Law, established by section 2 of the Rules Board for Courts of Law Act, 1985 (Act No. 107 of 1985), must **[before 28 February 2009]**, subject to the approval of the Minister, make rules of procedure for judicial review."

Amendment of section 10 of Act 3 of 2000, as substituted by section 15 of Act 22 of 2005, and amended by section 42 of Act 30 of 2007 and section 30 of Act 66 of 2008

72. Section 10 of the Promotion of Administrative Justice Act, 2000, is hereby amended by the substitution for subsection (6) of the following subsection:

"(6) The code of good administrative conduct referred to in subsection (5A) must, before publication in the *Gazette*, be approved by Cabinet and Parliament **[and must be made before 28 February 2009]**."

Amendment of section 1 of Act 4 of 2000, as amended by section 16 of Act 22 of 2005

73. Section 1 of the Promotion of Equality and Prevention of Unfair Discrimination Act, 2000, is hereby amended by the substitution in subsection (1) for paragraph (a) of the definition of "prohibited grounds" of the following paragraph:

"(a) race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language, **[and]** birth and HIV/AIDS status; or".

Amendment of section 1 of Act 70 of 2002 as amended by section 97 of Act 36 of 2005 and section 1 of Act 48 of 2008

74. Section 1 of the Regulation of Interception of Communications and Provision of Communication-related Information Act, 2002, is hereby amended by the substitution for the definition of "activate" of the following definition:

"**'activate'** means to allow access to the electronic communication system of **[the] an** electronic communication service provider **[who provides a mobile cellular electronic communications service]** and "activated" has a corresponding meaning;".

Amendment of section 19 of Act 70 of 2002

75. Section 19 of the Regulation of Interception of Communications and Provision of Communication-related Information Act, 2002, is hereby amended—

(a) by the substitution for subsection (1) of the following subsection:

"(1) If only archived communication-related information is required, an applicant may apply to the designated judge, a judge of a High Court, a regional court magistrate or a magistrate for the issuing of an archived communication-related direction.";

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

"(3) Notwithstanding section 12 or anything to the contrary in any other law contained, the designated judge, a judge of a High Court, a regional court magistrate or a magistrate may, upon an application made to him or her in terms of subsection (1), issue an archived communication-related direction.";

- (c) by the substitution for the words preceding paragraph (a) of subsection (4) of the following words:

"An archived communication-related direction may only be issued if it appears to the designated judge, a judge of a High Court, regional court magistrate or magistrate concerned, on the facts alleged in the application concerned, that there are reasonable grounds to believe that—"; and

- (d) by the substitution for subsection (8) of the following subsection:

"(8) A designated judge must keep all copies of applications and archived communication-related directions issued by him or her or submitted to him or her in terms of subsection (7), or cause it to be kept, for a period of at least five years."

Substitution of section 39 of Act 70 of 2002

76. Section 39 of the Regulation of Interception of Communications and Provision of Communication-related Information Act, 2002, is hereby substituted for the following section:

"Information to be obtained and kept by certain electronic communication service providers

39. (1) From the date of commencement of section 76 of the Judicial Matter Amendment Act, 2010, an electronic communication service provider, other than an electronic communication service provider who provides a mobile cellular electronic communications service, shall not activate the electronic communications service of a customer who enters into a contract with an electronic communication service provider for the provision of such service unless subsection (2) has been complied with.

(2) From the date of commencement of section 76 of the Judicial Matters Amendment Act, 2010, an electronic communication service provider referred to in subsection (1) must, subject to subsection (4), at own cost implement a process to record and store, and must record and store—
 (a) the logical or virtual electronic communications identity number

assigned to a customer;

- (b) in the case of a natural person, the full names and surname, identity number and at least one address of such person; or
- (c) in the case of a juristic person—
 - (i) the full names, surname, identity number and an address of the authorised representative of the juristic person; and
 - (ii) the name and address of the juristic person and, where applicable, the registration number of the juristic person.

(3) (a) For the purposes of subsection (2), an electronic communication service provider referred to in subsection (1) must, in the manner provided for in paragraph (b), verify—

- (i) the full names, surname, identity number and identity of the person referred to in subsection (2)(b) and (c)(i);
- (ii) the name and, where applicable, the registration number of the juristic person;
- (iii) the address of the person referred to in subsection (2)(b) and (c) and
- (iv) the authority of the representative of a juristic person.

(b) An electronic communication service provider referred to in subsection (1) must verify—

- (i) the information referred to in paragraph (a)(i) by means of an identification document;
- (ii) the information referred to in paragraph (a)(ii) by means of documentation, including a registration document, founding statement, document issued by the South African Revenue Service or any other similar document;
- (iii) the address referred to in paragraph (a)(iii) by means of documentation, including a bank statement, a municipal rates and taxes invoice, telephone or cellular phone account of not older than three months, or any other utility bill or an account of a retailer of not older than three months, or an existing lease, rental or credit sale agreement, insurance policy, a current television licence or a new motor vehicle license document; and
- (iv) the authority of the representative of the juristic person by means of a letter of authority or an affidavit.

(4) (a) An electronic communication service provider referred to in subsection (1) must ensure that—

- (i) the process referred to in subsection (2);
 - (ii) the information recorded and stored in terms of that subsection; and
 - (iii) the facility in or on which the information is recorded and stored,
- are secure and only accessible to persons specifically designated by that electronic communication service provider.

(b) The Minister may, in consultation with the Cabinet member responsible for communications, by notice in the *Gazette*, determine security standards relating to the matters contemplated in paragraph (a).

(5) (a) An applicant may, for the purposes of making an application for the issuing of a direction, in writing, request an electronic communication service provider referred to in subsection (1) to—

- (i) confirm that the person specified in the request is or was a customer of that electronic communication service provider; and
- (ii) provide the applicant with the information recorded and stored in terms of subsection (2).

(b) An electronic communication service provider referred to in subsection (1) who receives a request referred to in paragraph (a) must immediately comply with that request if the person specified in the request is or was a customer of the electronic communication service provider concerned.

(6) If an employee or agent of an electronic communication service provider referred to in subsection (1) knows or suspects that an identification document submitted for verification as referred to in subsection (3) is false, he or she must, within 24 hours, report the matter to a police official at any police station.

(7) The information recorded and stored in terms of subsection (2) must be stored by an electronic communication service provider referred to in subsection (1) for a period of 5 years after—

- (a) a customer has cancelled his or her contract with the electronic communication service provider; or
- (b) the electronic communication service provider has ended the electronic communications service provided to the customer."

Amendment of section 51 of Act 70 of 2002 as amended by section 97 of Act 36 of 2005 and section 3 of Act 48 of 2008

77. Section 51 of the Regulation of Interception of Communications and Provision of Communication-related Information Act, 2002, is hereby amended—

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

"(a) Any electronic communication service provider or employee of an electronic communication service provider who—

(i) contravenes or fails to comply with section 7(2), 8(3), 28(1)(b) or (2)[,] or 30(1) [or 39(4)];

(ii) contravenes or fails to comply with section 30(4);

(iii) contravenes or fails to comply with section 7(5), 8(5)[, 39(1) or (2)] or 42(2); or

(iv) performs an act contemplated in subsection (1)(a)(iii), (v) or (vii), is guilty of an offence.";

(b) by the substitution for paragraph (b) of subsection (3A) of the following paragraph:

"(b) section 39(1), (2), (3), (4) or any determination made thereunder, or (5) or section 40(1), (2), (3), (4) or any determination made thereunder, (6), (7), (9) or (10); or"; and

(c) by the substitution for subsection (3C) of the following subsection:

"(3C) An employee or agent of an electronic communication service provider who fails to comply with section 39(6) or 40(8), is guilty of an offence and liable on conviction to a fine or imprisonment for a period not exceeding 12 months."

Amendment of section 86 of Act 34 of 2005

78. Section 86 of the National Credit Act, 2005, is hereby amended by the addition of the following subsection:

"(12) A Magistrate's Court has jurisdiction to consider a referral made to it in terms of subsection (8)(b) or an application made to it in

terms of subsection (9), if the consumer is ordinarily resident, carries on a business or is employed in the magisterial district of that Court, irrespective of the monetary value of the over-indebtedness of the consumer."

Amendment of section 138 of Act 34 of 2005

79. Section 138 of the National Credit Act, 2005, is hereby amended by the addition of the following subsection:

"(3) A consent order in terms of section 86(8)(a) must, in the manner prescribed, after consultation with the Cabinet member responsible for the administration of justice, be filed at the Magistrate's Court in the magisterial district where the consumer is ordinarily resident, carries on business or is employed."

Amendment of Index to Act 38 of 2005

80. The Index to the Children's Act, 2005, is hereby amended by the insertion after the heading of section 126 of the following heading:

"126A. Enquiries for purposes of expungement applications in terms of Criminal Procedure Act, 1977".

Insertion of section 126A in Act 38 of 2005

81. The Children's Act, 2005, is hereby amended by the insertion after section 126 of the following section:

"Enquiries for purposes of expungement applications in terms of Criminal Procedure Act, 1977

126A. (1) The Director-General: Justice and Constitutional Development or an official of his or her Department who is assigned to deal with the expungement of criminal records, may enquire in writing from the Director-General whether the particulars of a person, referred to in section

271B(1)(b)(ii) of the Criminal Procedure Act, 1977, are recorded in the Register or not or whether that person's particulars have been removed from the Register in terms of section 128.

(2) The Director-General must, upon receipt of the enquiry referred to in subsection (1), confirm in writing whether the particulars of the person concerned are recorded in the Register or not or whether that person's particulars have been removed from the Register in terms of section 128."

Amendment of Index to Act 32 of 2007

82. The Index to the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, is hereby amended by the insertion after the heading of section 44 of the following heading:

"44A. Enquiries for purposes of expungement applications in terms of Criminal Procedure Act, 1977".

Amendment of section 42 of Act 32 of 2007, as amended by section 36 of Act 66 of 2008

83. Section 42 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) A National Register for Sex Offenders containing particulars of persons convicted of any sexual offence against a child or a person who is mentally disabled or are alleged to have committed a sexual offence against a child or a person who is mentally disabled and who have been dealt with in terms of section 77(6) **[of]** or 78(6) of the Criminal Procedure Act, 1977, whether committed before or after the commencement of this Chapter and whether committed in or outside the Republic, must, **[before 30 June 2009]** within two years after the commencement of section 83 of the Judicial Matters Amendment Act, 2010, and, in accordance with the provisions of this Chapter and the regulations made thereunder, be established and maintained by the Minister."

Insertion of section 44A in Act 32 of 2007

84. The following section is hereby inserted in the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, after section 44:

"Enquiries for purposes of expungement applications in terms of Criminal Procedure Act, 1977

44A. (1) The Director-General: Justice and Constitutional Development or an official of his or her Department who is assigned to deal with the expungement of criminal records, may enquire in writing from the Registrar whether the particulars of a person referred to in section 271B(a) or (b)(i) of the Criminal Procedure Act, 1977, are recorded in the Register or not or whether that person's particulars have been removed from the Register in terms of section 51(1) or (3)(c), as the case may be.

(2) The Registrar must, upon receipt of the enquiry referred to in subsection (1), confirm in writing whether the particulars of the person concerned are recorded in the Register or not or whether that person's particulars have been removed from the Register in terms of section 51(1) or (3)(c), as the case may be."

Amendment of section 62 of Act 32 of 2007, as amended by section 38 of Act 66 of 2008

85. Section 62 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, is hereby amended by the substitution for paragraph (a) of subsection (2) of the following paragraph:

"(a) **[before 31 March 2009]** within 18 months after the commencement of section 85 of the Judicial Matters Amendment Act, 2010, adopt and table the policy framework in Parliament;"

Amendment of section 66 of Act 32 of 2007

86. Section 66 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, is hereby amended by the deletion of item (ix) of paragraph (a) of subsection (2).

Amendment of section 65 of Act 75 of 2008

87. Section 65 of the Child Justice Act, 2008, is hereby amended by the substitution for subsection (3) of the following subsection:

"(3) The parent of a child, an appropriate adult or a guardian who has been warned by an inquiry **[or a guardian]** magistrate to attend proceedings in terms of section 49(2), must attend the proceedings, unless he or she has been exempted in terms of subsection (5)."

Substitution of section 75 of Act 75 of 2008

88. The followings section is hereby substituted for section 75 of the Child Justice Act, 2008:

"Sentences involving correctional supervision

75. A child justice court that convicts a child of an offence may impose a sentence involving correctional supervision [—

- (a) in the case of a child who is 14 years or older, in terms of section 276 (1) (h) or (i) of the Criminal Procedure Act; or**
- (b) in the case of a child who is under the age of 14 years,] in terms of section 276(1)(h) of the Criminal Procedure Act."**

Amendment of section 77 of Act 75 of 2008

89. Section 77 of the Child Justice Act, 2008, is hereby amended—

- (a)** by the deletion of subsection (2); and
- (b)** by the substitution for subsection (3) of the following subsection:

"(3) A child who is 14 years or older at the time of being sentenced for the offence, **[and in respect of whom subsection (2) does not**

apply,] may only be sentenced to imprisonment, if the child is convicted of an offence referred to in –

- (a) Schedule 3;
- (b) Schedule 2, if substantial and compelling reasons exist for imposing a sentence of imprisonment; or
- (c) Schedule 1, if the child has a record of relevant previous convictions and substantial and compelling reasons exist for imposing a sentence of imprisonment."

Amendment of section 78 of Act 75 of 2008

90. Section 78 of the Child Justice Act, 2008, is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) **[Subject to section 77 (2), the]** The provisions of section 297 of the Criminal Procedure Act apply in relation to the postponement or suspension of passing of sentence by a child justice court in terms of this Act."

Amendment of section 100 of Act 75 of 2008

91. The following section is hereby substituted in the Setswana text for section 100 of the Child Justice Act, 2008:

"Setlhogo se se khutshwane le tshimilogo

100. Molao ono, o bidiwa **[Child Justice Act]** Molao wa Bosiamisi wa Nqwana, 2008, mme o simolola go tsengwa tirisong ka kgwedi ya Moranang ngwaga wa 2010, kgotsa letlha lengwe le lengwe pele ga foo, le le beilweng ke Moporesidente ka go itsise batho semmuso mo Kuranteng ya Molao."

Amendment of the third Column of Schedule 4 to Act 75 of 2008

92. The following amendments are hereby effected to the third Column of

Schedule 4 to the Child Justice Act, 2008:

- (a) Item (b), which substitutes section 38 of the Criminal Procedure Act, 1977, is amended by the insertion of the expression “, 2008” after the phrase “Child Justice Act” where it appears in section 38(1).
- (b) Item (d), in the Setswana text, which amends section 55 of the Criminal Procedure Act, 1977, is amended by the insertion of the expression “, 2008” after the phrase “Child Justice Act” where it appears in section 55(1).
- (c) Item (g), which amends section 73(3) of the Criminal Procedure Act, 1977, is amended by the insertion of the words “or a guardian” after the expression “appropriate adult”.
- (d) Item (l), which amends section 276A of the Criminal Procedure Act, 1977, is substituted for the following item:
- “(l) Amendment of section 276A by the substitution for subsections (1) and (2) of the following subsections:
- “(1) Punishment shall, subject to the provisions of section 75 of the Child Justice Act, 2008, only be imposed under section 276(1)(h)-
- (a) after a report of a probation officer or a correctional official has been placed before the court; and
- (b) for a fixed period not exceeding three years, or in the case of a conviction for any offence referred to in the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, for a fixed period not exceeding five years.
- (2) Punishment shall [subject to the provisions of section 75 of the Child Justice Act, 2008,] only be imposed under section 276(1)(i) –
- (a) if the court is of the opinion that the offence justifies the imposing of imprisonment, with or without the option of a fine, for a period not exceeding five years; and
- (b) for a fixed period not exceeding five years.”.
- (e) The substitution for the expression “Act No. 32 of 2005” of the expression “Act No. 38 of 2005”, wherever it appears in the third column of Schedule 4.
- (f) The amendment in respect of the Social Assistance Act, 2004, is substituted as follows:

“Amendment of the definition of “foster child” in section 1 by the substitution for the expression “section 290 of the Criminal Procedure Act, 1977” of the expression “section 72 or 76 of the Child Justice Act”.

- (g) Item (a), which amends section 167(1)(b) of the Children’s Act, 2005 is amended by the substitution for the expression “section 29 or” of the expression “section 29 or”.
- (h) Item (b), which amends section 191(2)(j) of the Children’s Act, 2005 is amended by the substitution for the expression “section 29 or” of the expression “section 29 or”.

Amendment of section 3 of Act 11 of 2009

93. Section 3 of the Reform of Customary Law of Succession and Regulation of Related Matters Act, 2009, is hereby amended by the substitution for subsections (2) and (3) of the following subsections:

“(2) For the purposes of this Act and in the application of section 1(1)(c) of the Intestate Succession Act, the following subparagraph must be regarded as having been added to that section:

‘(iii) where the intestate estate is not sufficient to provide each surviving spouse and woman referred to in paragraphs (a), (b) and (c) of section 2(2) of the Reform of Customary Law of Succession and Regulation of Related Matters Act, **[2008]** 2009, with the amount fixed by the Minister, the estate shall be divided equally between such spouses;’.

(3) In the determination of a child’s portion for the purposes of dividing the estate of a deceased in terms of the Intestate Succession Act, paragraph (f) of section 1(4) of that Act must be regarded to read as follows:

‘(f) a child’s portion, in relation to the intestate estate of the deceased, shall be calculated by dividing the monetary value of the estate by a number equal to the number of children of the deceased who have either survived the deceased or have died before the deceased but are survived by their descendants, plus the number of spouses and women referred to in paragraphs (a), (b) and (c) of section 2(2) of the Reform of Customary Law of Succession and Regulation of Related Matters Act, **[2008]** 2009.’.

Limpopo High Court, Polokwane

94. (1) The Limpopo High Court, Polokwane, is hereby established.

(2) The Limpopo High Court, Polokwane is seated at Polokwane, and its area of jurisdiction is the Province of Limpopo, excluding the area of jurisdiction of the Limpopo High Court, Thohoyandou.

(3) The Limpopo High Court, Polokwane functions in terms of, and is subject to, all laws governing the composition, functioning and powers of those High Courts falling within the ambit of the Supreme Court Act, 1959 (Act No. 59 of 1959), of the Republic of South Africa.

(4) All proceedings pending in the North Gauteng High Court, Pretoria, at the time of the commencement of this section, must be continued as if this section had not been enacted, but that Court may, if it is in the interests of justice, order that any such proceedings must be transferred to and disposed of by the Limpopo High Court, Polokwane.

Short title and commencement

95. (1) This Act is called the Judicial Matters Amendment Act, 2010.

(2) Sections 1, 2, 3, 4, 5 to 36, 60, 61, 62, 63, 64, 65, 66, 74, 76, 77, 78, 79, 80, 81, 82 and 84 come into operation on a date fixed by the President by proclamation in the *Gazette*.

INVITATION TO COMMENT ON THE JUDICIAL MATTERS AMENDMENT BILL, 2010

1. The purpose of the Judicial Matters Amendment Bill, 2010 ("the Bill") is to effect amendments to various Acts, most of which are administered by the Department and which do not require individual amendment Acts. Amendments to Acts not administered by the Department have been prepared in consultation with the relevant Departments. This Memorandum provides the reasons for these amendments.

2. Any person wishing to comment on the Bill is invited to submit written comments to the Minister of Justice and Constitutional Development on or before 19 March 2010. Comments should be directed for the attention of **S J Robbertse** and -

(a) if forwarded by post, to be addressed to:

The Department of Justice and Constitutional Development

Private Bag X81

PRETORIA

0001

(b) if delivered by hand, be delivered at -

Momentum Building

329 Pretorius Street

PRETORIA

(c) if sent by E-mail, be sent to **srobbertse@justice.gov.za**

(d) if faxed, be faxed to **086 648 3326**

3. OBJECTS OF BILL

3.1 Clauses 1 and 2 amend the Criminal Procedure Act, 1977 (Act 51 of 1977), by inserting two new sections providing, firstly, for the obtaining of handwriting specimens from accused persons by the police and, secondly, for the admissibility of evidence regarding such handwriting specimens. In the case of *S v Fraser and others* (2005) 2 All SA 209 (N), an application was brought in terms of section 37(1)(c), read with section 37(3) of the Criminal Procedure Act, 1977, for an order that the accused must comply with a request to provide the police with specimens of his handwriting. Section 37 deals with the ascertainment of bodily features of a person. The Court held that handwriting is the creation of a learned ability and could therefore not be classified as a "bodily" feature or characteristic falling within the scope of section 37. The effect of the judgment is that there is currently no provision in the Criminal Procedure Act, 1977, that specifically allows for the obtaining of handwriting specimens by the police or by order of the court. Research has shown that

several other jurisdictions have legislation providing for the collection of handwriting specimens by the police or by order of the court. These clauses emanate from a request by the South African Police Service.

3.2 Clause 3 inserts section 271DA in the Criminal Procedure Act, 1977, in order to allow the Director-General: Justice and Constitutional Development to revoke a certificate of expungement which has been issued. The Director-General is empowered to request the head of the Criminal Record Centre to rectify the information on the person's criminal record. The amendment is required for the following reasons:

- (a) The National Register for Sex Offenders in terms of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act No. 32 of 2007), and the National Child Protection Register in terms of the Children's Act, 2005 (Act No. 38 of 2005), have not been implemented yet. It might occur that a certificate of expungement is issued in respect of a person whose name is entered in one of those Registers at a later stage.
- (b) At the time an applicant applies for a certificate of expungement of a criminal record, his or her criminal record might not have been updated by the Criminal Record Centre, or the applicant may have withheld information on a pending criminal case against him or her.
- (c) A certificate of expungement might have been issued due to incorrect information or advice or the offence was not an offence as provided for in section 271C(1) or (2) of the Act.

3.3 Clause 4 amends section 271E of the Criminal Procedure Act, 1977, by providing that the Minister must make regulations regarding the manner and form in which the Director-General must conduct the revocation process provided for in section 271DA, as discussed above.

3.4 Clauses 5 to 36 of the Bill propose amendments to the Attorneys Act, 1979 Act No.53 of 1979), which, in essence, relate to addressing anomalies that exist in some of the former homelands as a result of different statutes which still operate in the former Republic of South Africa and some of the former TBVC states, with particular reference to the former Republic of Bophuthatswana. It has been argued that these amendments should, in the interests of the legal profession and the public interest (clients of attorneys), be promoted as soon as possible as an interim measure and should not be held in abeyance until the enactment and implementation of the Legal Practice Bill, which will certainly address the problems in question in the long term. While there are 31 clauses which are required to address the

challenges in question, virtually all these clauses are similar in purport and have the same objective in mind, namely to terminate the continued existence of any law societies which still operate in some of the former independent homelands and to incorporate them into the “mainstream” law societies. To do this, numerous provisions of the Attorneys Act, 1979, require amendments, some of a technical nature and others of a more substantive nature. Clauses 5 to 36 are summarised below:

3.4.1 Clause 24 amends section 56 of the Attorneys Act, 1979, which deals with the existing four law societies. It provides for the continued existence of the four societies under their present names, namely the Law Society of the Cape of Good Hope, the Law Society of the Orange Free State, the Law Society of the Transvaal and the Natal Law Society. Clause 24, however, provides that these societies may, by resolution of their members, change the names of the societies (if this has not already been done). It then provides unambiguously that these societies have jurisdiction over all attorneys practising in their areas of jurisdiction as follows:

- (i) The Law Society of the Cape of Good Hope has jurisdiction over all attorneys practising in the Western Cape, the Eastern Cape (including Transkei and Ciskei) and the Northern Cape.
- (ii) The Law Society of the Orange Free State has jurisdiction over all attorneys practising in the Free State.
- (iii) The Law Society of the Transvaal has jurisdiction over all attorneys practising in Gauteng, Mpumalanga, the North West (including Bophuthatswana) and Limpopo (including Venda).
- (iv) The Natal Law Society has jurisdiction over all attorneys practising in KwaZulu-Natal.

Clause 24 then goes on to provide that any law society not mentioned above will dissolve in accordance with regulations made under section 81 of the Act. (Clause 31 adds an enabling provision of this nature, allowing the Minister to make regulations in this regard.) Clause 24 also contains further transitional arrangements, for instance by providing that any rights and obligations of any society which is dissolved will transfer to the Law Society of the Transvaal, in the case of Bophuthatswana and Venda, and to the Law Society of the Cape of Good Hope in the case of Transkei and Ciskei. Similar transitional provisions are suggested in the case of pending actions and disciplinary inquiries. Linked to this provision is clause 36 which amends the Schedule to the Attorneys Act, 1979. In terms of this Schedule the remaining former homeland legislation is repealed as well as sections 55, 77, 84 and 84A of the Attorneys Act, 1979, which will become obsolete because they contain interim measures relating to the former homelands. Also linked to this provision is clause 35 which extends the “RSA” Attorneys Act, 1979, to the entire country.

3.4.2 Clause 19(a) gives effect to the Constitutional Court judgment in the case of *Mabaso vs the Law Society of the Northern Provinces and the Minister of Justice and Constitutional Development*. Clause 19 amends section 20 of the Attorneys Act, 1979, which provides that a person who was admitted and enrolled as an attorney, notary or conveyancer **under this Act** may apply to the registrar of any court other than where he or she was so admitted, to have his or her name placed on the roll of that court for purposes of appearing there as well. The highlighted wording above had the effect that attorneys admitted under homeland legislation could not appear in courts other than where they had been admitted. The Constitutional Court found that this wording discriminated unfairly against attorneys admitted in the former homelands and read in the wording which is suggested in clause 19(a).

3.4.3 Clause 23 amends section 49 of the Attorneys Act, 1979, by allowing actions against the Fidelity Fund to be brought in any court having jurisdiction and not necessarily in a High Court, as is currently the position. Litigating in the High Court is expensive and if a matter can be brought in a lower court, which is less expensive than in a High Court, the question is raised why litigants should be forced to approach a High Court.

3.4.4 The remainder of the clauses related to the Attorneys Act, 1979, are more of a consequential nature. Many of the clauses give effect to the notion that law societies do not necessarily have to be bound to specific provinces. Provisions of the Attorneys Act, 1979, which still refer to concepts such as the "Supreme Court", "provincial divisions and local divisions" and the like are amended to bring them in line with current realities, as far as this is possible. (In this regard see the proposed changes to some of the definitions in clause 5, as well as clauses 6, 11, 15, 28 and 32).

3.5 Clauses 37 and 38 amend sections 11 and 12 of the Divorce Act, 1979 (Act No. 70 of 1979), respectively. These amendments emanate from the Constitutional Court Judgment in *Johncom Media Investment Limited v Claire Liza Mandel, Paul Difford and the Minister of Justice and Constitutional Development*, that was delivered on 17 March 2009 (Case CCT 08/08), where a High Court order declaring section 12 of the Divorce Act, 1979, unconstitutional, was confirmed by the Constitutional Court. The Constitutional Court found that -

- (a) the prohibition contained in section 12 prohibits publication of any information which comes to light during a divorce action or any related proceedings, regardless of whether the publication will infringe the rights of the divorcing parties and the interests of their children;

- (b) section 12 infringes section 16 of the Constitution, which confers upon everyone the right to freedom of expression; and
- (c) the purpose of protecting the rights of divorcing parties and their children could be achieved by less restrictive means.

The remedy proposed by the Constitutional Court is that the identity of, and any information that may reveal the identity of any party or child to divorce proceedings, should be prohibited, unless the court in exceptional circumstances grants authorization for the publication thereof. Clauses 37 and 38 give effect to this judgment -

- (a) by amending section 11 to provide that, if it appears that there is a likelihood that harm may result to a child as a result of the hearing of any evidence, the court may order that the proceedings be held behind closed doors, and that no person be present unless his or her presence is necessary for the proceedings; and
- (b) by amending the provisions of section 12 that were found to be unconstitutional and by aligning the wording with the judgment of the Constitutional Court.

3.6 Clause 39 amends section 11 of the Admiralty Jurisdiction Regulation Act, 1983 (Act No. 105 of 1983), in order to complement reform measures already adopted in the Ship Registration Act, 1998 (Act No. 58 of 1998), and currently proposed under the tonnage tax initiative. Together, these measures seek to promote the development of the South African ships' register. The proposed amendments adjust the ranking of claims against a fund referred to in section 3(11) of this Act constituted by the sale of property mentioned in section 3(5)(a) to (e) of the Act and they also effect consequential amendments to related provisions. In particular, the amendments seek to raise the ranking of mortgages, hypothecs and similar charges so as to enhance the security of such rights. It is believed that these amendments will remove a major obstacle to the financing and registration of ships on the South African ships' register and bring South African law in line with widespread state practice, while taking account of developments in international law, particularly the United Nations 1993 Convention on Maritime Liens and Mortgages. In this regard the following changes to present ranking arrangements under section 11 of the Admiralty Jurisdiction Regulation Act, 1983, are proposed:

- (a) Claims in respect of costs and expenses to preserve the property, are extended to also cover costs and expenses incurred to maintain and keep custody of the property;
- (b) claims in respect of salvage, wreck removal and general average are subjected to the "one year rule", and rank after the claims mentioned in paragraph (a);
- (c) one-year claims in respect of loss of life and personal injury are ranked after crew claims and ahead of claims covering port, canal and other waterways dues;

- (d) claims in respect of mortgages, hypothecs and like charges are ranked before claims in respect of repairs and supplies, marine insurance premiums, mutual protection and indemnity contributions, and other maritime liens and claims; and
- (e) claims in respect of which claimants would, under the law of insolvency, be entitled to a preference by reason of a pledge or a right of retention, are treated as an exception to the general rule that claims rank in the order in which they are set forth and are ranked before all other claims, except claims mentioned in paragraph (a), one-year salvage claims, and other prior and otherwise higher-ranking maritime liens.

The amendments also aim to simplify the ranking of claims by abolishing the exceptional treatment of "any other maritime claim", being the category of unspecified maritime claims mentioned in section 11(4)(f) of the Act. The proposal is that -

- (a) all section 11(4)(f) claims are to be paid out of the fund, along with the other claims mentioned in subsection (4), before any balance is handed over in accordance with section 11(13); and
- (b) the distinction between direct section 11(4)(f) claims and other direct claims is removed in cases where the fund is constituted by the sale of an associated ship, the resultant queues being direct section 11(4)(a) to (f) claims, ownership-associated section 11(4)(b) to (f) claims, control-associated section 11(4)(b) to (f) claims and, lastly, section 11(4)(f) claims not covered by the previous queues.

The amendment was prepared in conjunction with the Department of Transport and the Maritime Law Association of South Africa.

3.7 Clause 40 amends section 9 of the Small Claims Courts Act, 1984 (Act No. 61 of 1984), to enable a commissioner, who was appointed for a specific small claims court, to also preside over cases in other small claims courts within the province. In some districts no persons are willing to serve as commissioners, especially in the rural areas. The only option is to then appoint a commissioner on an *ad hoc* basis, which is time consuming and delays the process. The proposed amendment will greatly improve access to justice.

3.8 Clause 41 amends section 5 of the Sheriffs Act, 1986 (Act No. 90 of 1986), by providing that an acting sheriff may also be appointed in the circumstances where a sheriff has not been appointed in a vacancy in the office of sheriff within a specific area of jurisdiction of a lower or superior court. This provision expands the circumstances in which an acting sheriff could be appointed.

3.9 Clause 42 inserts sections 6A and 6B in the Sheriffs Act, 1986 (Act No. 90 of 1986). Both amendments are aimed at addressing problems relating to the performance of duties

and functions of sheriffs in areas for which no sheriff has been appointed. In some jurisdictions, especially the smaller ones, it is not economically viable for a person to practice as a sheriff. In order to ensure effective service delivery it is deemed advisable to extend the category of persons who are competent to serve process in the absence of a sheriff. The proposed section 6A provides that any official in the employ of the Department of Justice and Constitutional Development, who is designated in writing by the Minister, may serve process of the court within an area for which no sheriff or acting sheriff has been appointed. The proposed section 6B makes provision for the performance of other functions of a sheriff, in an area for which no sheriff or acting sheriff has been appointed, by a sheriff of another area. Such a sheriff must be designated by the Minister after consultation with the South African Board for Sheriffs. These amendments were prepared in conjunction with the Board for Sheriffs.

3.10 Clauses 43 to 48 amend various provisions of the Special Investigating Units and Special Tribunals Act, 1996 (Act No. 74 of 1996) (the SIU Act) and have been requested by the Head of the Special Investigating Unit. These amendments relate mainly to the litigation functions of a Special Investigating Unit.

3.10.1 Clause 43 amends the long title of the SIU Act, so as to provide that a Special Investigating Unit (SIU) also has the power to institute civil proceedings on behalf of the State or State institutions for the recovery of any damages or losses that were suffered by the State or State institution, as well as the prevention of potential damages or losses that may be suffered by the State or State institutions. This amendment is necessary as a result of judgments of the Special Tribunal and the High Courts. The effect of these judgments is that the SIU only has the power to investigate a matter and no authority or *locus standi* to litigate on behalf of a State institution which is subjected to an investigation by the SIU. This amendment is also necessary as a result of the amendments to the SIU Act proposed in clauses 44, 45 and 47.

3.10.2 Clauses 44, 47 and 48 amend sections 2(1)(b), 5(5), (7) and (9) and 8(2)(a) of the Act, respectively, to do away with the phrases "justiciable civil dispute" and "legal proceedings", respectively, and to substitute it with the phrase "civil proceedings". The reason for this amendment stems from an interpretation of the Act, by the Special Tribunal, that the Special Tribunal only has jurisdiction to adjudicate upon civil disputes and, if no dispute exists in regard to conflicting views or contentions, the Special Tribunal does not have jurisdiction. This interpretation gives rise to the situation that if a debtor of the State does not dispute any allegations regarding his or her liability, or does not enter an

appearance to defend an action, there would not be a "justiciable civil dispute" and the Special Tribunal would consequently not have jurisdiction to hear the matter. The effect of this is that a defendant's best response to an action or application by a SIU would be not to defend the proceedings before the Special Tribunal.

3.10.3 Clause 45 amends section 3 of the Act by giving the Head of a SIU the authority to second a member of that SIU, on certain conditions and for a specific period of time, to the service of a State institution, on condition that such a member's employment benefits will not be adversely affected. The reasons for the secondment of members of a SIU to State institutions would include, *inter alia* -

- (i) to assist the State institutions with the establishment and enhancing of in-house anti-corruption capacities and procedures within those State institutions;
- (ii) to assist other law enforcement agencies, including the Asset Forfeiture Unit, in joint operational projects;
- (iii) to enhance the skills of the members of the SIU through practical exposure to the operational methods of other law enforcement agencies or State institutions; and
- (iv) to assist State institutions with the planning, directing and conducting of internal forensic investigations.

3.10.4 The present wording of the Act does not make it clear that a SIU has the necessary *locus standi* to litigate on behalf of State institutions for any losses suffered as a result of corrupt conduct or maladministration. The Special Tribunal and High Courts, after interpreting the Act, have come to the conclusion that the SIU does not have *locus standi* to litigate on behalf of State institutions. Although barred from instituting civil proceedings on behalf of State institutions, the existing SIU has resorted to other avenue to regain losses suffered by State institutions and in various instances has recovered huge amounts of money despite this handicap. Clause 46 amends section 4 of the Act to specifically empower the SIU to institute and conduct civil proceedings in the Special Tribunal for the recovery or prevention of losses or any other relief to which the particular State institution would be entitled. It also inserts a new subsection (1A) to provide that the SIU may, of its own accord, institute and conduct civil proceedings in a Special Tribunal for the protection of any interest relating to its functions referred to in that Act. The effect of the proposed amendment is that the SIU will be able to litigate in its own name relating to matters that are relevant to its investigation, among others, to secure and protect evidence or to prevent further losses or potential prejudice to a State institution.

3.10.5 These amendments will improve the SIU's effectiveness in dealing with

maladministration and corruption.

3.11 Clauses 49, 89 and 90 give effect to the Constitutional Court's order in *Centre for Child Law v Minister of Justice and Constitutional Development and Others* (Case CCT 98/08). In this case the Constitutional Court declared that section 51(1) and (2) of the Criminal Law Amendment Act, 1997, (minimum sentences) are inconsistent with the Constitution and invalid, to the extent that they apply to persons who were under 18 years of age at the time of the commission of the offence. Clause 49 amends section 51 of the Criminal Law Amendment Act, 1997, to exclude an accused person who was under the age of 18 years at the time of the commission of an offence, from its operation. Clauses 89 and 90 effect consequential amendments to sections 77 and 78 of the Child Justice Act, 2008 (Act No. 75 of 2008).

3.12 Clause 50 amends section 6 of the Maintenance Act, 1998 (Act No. 99 of 1998), in order to extend the court's jurisdiction in maintenance matters. The current provision bases jurisdiction on the fact whether a person who applies for maintenance resides in the area of the court's jurisdiction. This provision is brought in line with section 28(1)(a) of the Magistrates' Courts Act, 1944, which bases jurisdiction, *inter alia*, on place of employment. The amendment is as a result of representations to the Department where persons complained that they are inconvenienced by the current state of affairs and no logical reason exists why jurisdiction should not be similar to that provided for in section 28(1)(a) of the Magistrates' Courts Act, 1944. A similar amendment is required in section 23 of this Act (clause 53).

3.13 Clause 51 amends section 18 of the Maintenance Act, 1998, to put it beyond doubt that maintenance orders may also be granted by default if a person fails to appear before a court after he or she was warned to do so. Currently, section 18 only provides that a maintenance court may grant an order by default where the court is satisfied that the respondent ignored a subpoena.

3.14 In *Purnell v Purnell* 1993 (2) SA 662 (A), a case that was decided in terms of the repealed Maintenance Act of 1963, the Court held that a subsequent order by a maintenance court replaces the former order. The effect thereof is that an order made by the High Court ceases to operate and is deemed to be replaced in its entirety by an order by a maintenance court. However, in *Cohen v Cohen* 2003 (3) SA 337 (SCA), it was held that a High Court order ceases to be of force and effect, but only insofar as the order of the maintenance court expressly, or by necessary implication, replaces such an order. Clause

52 amends section 22 of the Maintenance Act, 1998, to bring it into line with the *Cohen* judgment.

3.15 Clause 53 amends section 23(1) of the Maintenance Act, 1998, in order to establish a uniform manner in which maintenance orders must be transferred. The current discretionary power of maintenance officers to give a direction to the clerk of the maintenance court to transfer a maintenance order is abolished as it is confusing, leads to different interpretations and often causes delays.

3.16 Clauses 54 to 57 increase the maximum penalties prescribed in sections 31(1), 35, 38 and 39 of the Maintenance Act, 1998, in order to lend more weight to the seriousness of the offences in question.

3.17 Clause 58 inserts section 39A in the Maintenance Act, 1998, in order to make it an offence for a person to willfully hinder or obstruct a maintenance investigator in the exercise of his or her powers or performance of his or her duties, or to pretend that he or she is a maintenance investigator.

3.18 Clause 59 amends section 41 of the Maintenance Act, 1998, to bring it in line with the judgment in *S v Magagula* 2001 (2) SACR 123 (T). In this case the Court held that section 41 empowers the trial court, on its own initiative, to order that criminal proceedings be converted into a maintenance enquiry, if it appears to the court "desirable" that a maintenance enquiry should be held. The Court furthermore held that the question whether a court should convert a criminal trial into a maintenance enquiry or not should be in the form of a discretion and not be peremptory.

3.19 Clause 61 inserts a new section 9A in the Debt Collectors Act, 1998 (Act No. 114 of 1998). It provides for the possibility of trainee debt collectors. Clause 60 amends section 1 of this Act by inserting a definition of "trainee debt collector". It must, however, be pointed out that a person wishing to carry on business as a debt collector is not obliged to first be a trainee debt collector. The insertion merely creates the possibility of a person working under the direct supervision and control of a registered debt collector for a period of three months before registering in terms of the Act as a full blown debt collector. The Council for Debt Collectors points out that practical experience has indicated that there is a need to allow registered debt collectors to employ trainee debt collectors. The Council's argument for this provision can be summarised as follows:

Section 8 of the Act prohibits anyone who is not registered in terms of the Act from acting as a debt collector. There are a number of unintended consequences as a result of this, partly as a result of widely prevailing employment practices and the costs related to the registration of a person as a debt collector. It is a widespread practice to make a new employee in a debt collection business subject to a probationary period of three months during which period the new employee's general suitability for the job is assessed by the employer and during which the new employee is given an opportunity to decide whether his or her intended career as a debt collector is suitable. The Act, as far as this aspect is concerned –

- (a) creates a barrier to entry into the debt collection industry, particularly in relation to (previously disadvantaged individuals) PDI's;
- (b) gives rise to employers failing to notify the Council of newly appointed employees in order to avoid the cost of registration and accompanying administrative responsibilities while the new employee is on "probation";
- (c) sometimes gives rise to the situation where employers deduct money from the salaries of new employees in order to meet the registration fees; and
- (d) gives rise to employers being reluctant to take on new staff because each new employee must be registered immediately at an initial outlay of R912-00 with the risk that the new employee may prove to be unsuited for the job or that the new employee may even come to the conclusion that he or she has made the wrong career choice.

If the employer / employee does not have to pay the initial registration fee and a reduced fee is prescribed for registration as a trainee debt collector, the above barriers and challenges will be addressed to the benefit of both the employer and employee as well as to the industry as a whole. In order to avoid abuse of the proposed trainee procedure in the form of repeated registrations of individuals as trainees, it is necessary for the proposed amendment to restrict the number of times a person can be registered as a trainee debt collector and to restrict the number of trainee debt collectors a registered debt collector may have under his or her supervision and control at any given time. In conclusion, the proposed trainee procedure will, by its very nature, better equip entrants into the debt collection industry in carrying out their responsibilities and duties in a professional manner.

3.20 Numerous cases of alleged misconduct by debt collectors can be dealt with quickly and cost-effectively if the Debt Collectors Act, 1998, made provision for the payment of admission of guilt fines. These cases often relate to minor or less serious transgressions of the Act which do not warrant a full investigation and disciplinary hearing. Clause 62 inserts section 15A in the Debt Collectors Act, 1998, in order to provide that the Council for Debt Collectors may impose an admission of guilt fine if it believes that, on finding a debt collector

guilty of improper conduct, a fine not exceeding a prescribed amount will be imposed upon that debt collector. If a debt collector pays an admission of guilt fine he or she will be regarded as having been found guilty of the improper conduct in question. Clause 62 also inserts a new section 15B in the Act. This new section provides for the appointment of inspectors to assist the Council in investigations of alleged misconduct by debt collectors. The appointment of inspectors will enable the Council to perform on site visits to business premises of debt collectors, in appropriate cases, in the course of an investigation. It is also necessary to provide for limited powers for investigators to enable them to perform their functions effectively. In order to ensure the effectiveness of inspectors, provision is also made that a debt collector who does not comply with a directive or request of an inspector may be found guilty of improper conduct.

3.21 Clause 63 amends section 20 of the Debt Collectors Act, 1998, which deals with trust accounts of debt collectors:

3.21.1 Section 20(8) and (9) was inserted in the Debt Collectors Act, 1998, by the Judicial Matters Amendment Act, 2008 (Act No. of 2008), but has not been implemented because of technical problems identified which require further amendments. These provisions are intended to regulate the situation where a debt collector dies, becomes insolvent, has his or her registration as a debt collector withdrawn, is declared by a court to be incapable of managing his or her own affairs or abandons his or her practice or ceases to practise as a debt collector. In these circumstances, the Council for Debt Collectors argues correctly that there should be provisions in place on how to deal with the trust account of the debt collector in question in order to protect the interests of the public. They provide that the Council for Debt Collectors must either take control over, administer and finalise the trust account or apply to the Master of the High Court to appoint a *curator bonis*, with the rights, duties and powers as may be prescribed by regulation, to control, administer and finalise the trust account. These provisions were based on similar provisions in the Attorneys Act, 1979, dealing with trust accounts of attorneys (section 78(9) of the Attorneys Act, 1979). It has come to light that the attorneys' profession does not rely on section 78(9), which have proved to be impractical. If a law society is confronted with a situation as sketched above, it applies to court in terms of section 78(8) of the Attorneys Act, 1979, for an order prohibiting the attorney from operating his or her trust account and for the appointment of a *curator bonis* to control and administer the trust account, with such rights, duties and powers as the court deems fit, including the remuneration of the *curator bonis*. It is understood that *curators bonis* appointed in the case of attorneys are remunerated from the funds of the law societies. The Council for Debt Collectors is, however, not in a financial position to bring court

applications in the first place for orders prohibiting debt collectors from operating their trust accounts or to stand in for the remuneration of *curators bonis*, as is the case with the attorneys' profession.

3.21.2 With the above as background, section 20(8) was intended to provide the Council for Debt Collectors with two inexpensive options, either to take over, administer and finalise the account itself or to approach the Master for the appointment of a *curator bonis*. The Board has, however, indicated that these provisions require further amendments. It points out that it will invariably not have the resources or expertise to administer trust accounts itself and, because it will not have the resources to pay the remuneration of *curators bonis*, *curators bonis* will have to be paid from the funds in the trust account, an aspect which will have to be regulated specifically in primary legislation because this will be changing a common law principle. Although this particular amendment allowing trust money to be used for the remuneration of a *curator bonis*, is not ideal, the view is held that the only other option is not to regulate this issue at all because, as already indicated, the Council for Debt Collectors simply does not have the resources for this purpose. To leave this issue unregulated, as is the case at present, is possibly worse than departing from the common law because at least the trust account and the trust monies belonging to third parties will be administered by a person (*curator bonis*) in the interests of the beneficiaries. To leave the matter unregulated may give rise to the situation where the debt collector squanders the money and depletes the trust account, to the detriment of the beneficiaries. Section 20(8), as it reads at present, moreover does not take into consideration the possibility of a provisional sequestration order of a debt collector not being made a final order which would then not require the Board to finalise the trust account, as presently suggested, but merely to administer it. Section 20(8) should also provide for the situation where a debt collector's registration is suspended.

3.21.3 Clause 63 is intended to make provision for the following:

- (i) The proposed new section 20(8) provides that if a debt collector dies, is sequestered or placed under judicial management, whether provisionally or finally, or in the case of a company or close corporation, is liquidated or placed under judicial management, whether provisionally or finally, has his or her registration withdrawn or suspended, is declared by a court to be incapable of managing his or her affairs or abandon his or her practice or ceases to practise, the Council must immediately take control over the trust account but may designate a person, body or institution to take control over the account on behalf of the Council.
- (ii) The proposed new section 20(9) provides that the Council, person, body or institution which has taken control over the account must either control and administer the

account on behalf of the debt collector or control, administer and finalise that account or apply to the court or to the Master to appoint a provisional *curator bonis* to control and administer the trust account on behalf of the debt collector or to appoint a *curator bonis* to control, administer and finalise the account, whichever is required in the circumstances.

- (iii) The proposed new section 20(10) confirms that a provisional *curator bonis* or a *curator bonis* may be appointed, either by a court, on good cause shown by the Council, or by the Master. In the case of a court application, the court will determine the conditions of appointment and the rights, duties and powers of the *curator bonis*. In the case of an application to the Master, regulations will determine these conditions, rights, duties and powers.
- (iv) The proposed new section 20(11) sets out the circumstances in which a provisional *curator bonis* will be appointed and the circumstances in which a (final) *curator bonis* will be appointed.
- (v) The proposed new section 20(12) provides that the Council must, after the appointment of a *curator bonis*, whether provisional or not, hand over its control over the trust account in question to the *curator bonis*.
- (vi) The proposed new section 20(13) provides, among others, that the Master may, in the case of a *curator bonis* appointed by him or her, require security to be lodged by the *curator bonis* to the Master's satisfaction for the proper performance of his or her functions.
- (vii) The proposed new section 20(14) provides that a *curator bonis*, whether provisional or not, is entitled to the fees as may be prescribed by the regulations. These fees, when they are prescribed, will be kept to the absolute minimum.
- (viii) The proposed new section 20(15) provides that fees payable to a *curator bonis* will be paid from funds in the trust account, but excluding accrued interest which is payable to the Board in terms of section 20(3).

3.22 Clause 64 amends section 23(2) of the Debt Collectors Act, 1998, to provide that the Minister may, after consultation with the Council, make regulations regarding the manner of application for the appointment of a provisional *curator bonis* or a *curator bonis*, the appointment of a provisional *curator bonis* or *curator bonis*, the remuneration, rights, duties and powers of a provisional *curator bonis* or a *curator bonis* appointed under section 20(10)(b) and the powers and duties of the Master of the High Court. All the amendments to the Debt Collectors Act, 1998, have been prepared in conjunction with the Council for Debt Collectors which requested them in the first place.

3.23 Chapter 5 of the Prevention of Organised Crime Act, 1998 (Act No. 121 of 1998)(POCA), deals with the proceeds of unlawful activities. Section 28 in this Chapter makes provision for the appointment of *curators bonis* in respect of property which is subject to a restraint order. The role of the *curator bonis* is, among others, to take care of the property in question, to administer the property and where the property is a business or undertaking, to carry on that business or undertaking. Section 32(1) of the Act which is also in Chapter 5, provides that immediately after letters of curatorship have been granted to a *curator bonis* appointed under this Chapter, the *curator bonis* must take the property into his or her custody. Section 32(2) provides that the Administration of Estates Act, 1965, applies in respect of such a *curator bonis* unless the POCA provides otherwise. The effect of section 32(2) is that the *curator bonis* is subject to the supervision of the Master and the Master has the power to tax the fees of the *curator bonis*. Chapter 6 of the POCA deals with the civil recovery of property. Section 42 in Chapter 6 makes provision for the appointment of *curators bonis* in respect of property which is subject to a preservation of property order. The role of the *curator bonis* as set out in section 42 is almost identical to that referred to in section 28. However, section 42 does not have an equivalent to section 32(2), providing that the Administration of Estates Act, 1965, applies in respect of such a *curator bonis* unless the POCA provides otherwise. This has given rise to the argument in some quarters that the Master has no authority to supervise *curators bonis* appointed under Chapter 6 and to tax their fees. The Head of the Asset Forfeiture Unit has requested that this inconsistency be addressed by means of the amendments proposed in clauses 65 and 66 which amend sections 42(3) and 77(1) of the POCA. These amendments make it clear that the Administration of Estates Act, 1965 (Act 66 of 1965), also applies to curators appointed under Chapter 6 of the POCA. Provision is also made for the Minister of Justice and Constitutional Development to determine tariffs applicable to curators acting under Chapter 6. Because of the current uncertainty and lack of a statutory mechanism that allows the Master to supervise curators or to tax their fees, these functions must be performed by the High Courts. This has been shown to be impractical.

3.24 Clauses 67, 68 and 70 give effect to the Constitutional Court judgment in the case of *Stefaans Conrad Brummer vs Minister of Social Development and Others* (CCT 25/09). The Constitutional Court came to the conclusion that the time periods prescribed in sections 77(5)(c) and 78(2) of the Promotion of Access to Information Act, 2000, are unconstitutional. The Court was of the view that before a litigant can launch an application to court, the litigant must go through a number of steps, including the consideration of the reasons given for the refusal of access to information and the need to seek legal advice on whether a court application will be successful, as well as the need to raise funds for litigation. In order to do

this meaningfully, litigants must be given an adequate and fair opportunity. The Court held that the 30 day period prescribed by section 78(2) and the 30 day and 60 day periods in section 77(5)(c) limit the right of access to court as well as the right of access to information which is not reasonable nor justifiable. In terms of this judgment –

- (a) Parliament must enact legislation that prescribes a time limit that is consistent with the Constitution, bearing in mind the right of access to information and the right of access to court; and
- (b) pending the enactment of this legislation, a person who wishes to challenge the refusal of a request for access to information must lodge an application to court within 180 days of being notified of a decision of an internal appeal refusing access to information.

The Court was also of the view that there should be flexibility so that courts can condone non-compliance with the 180 day time limit where the interests of justice so require.

3.25 Clause 69 amends section 79(1) of the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000), by the deletion of the date by which the Rules Board for Courts of Law must make rules of procedure. The said rules were made by the Rules Board before 28 February 2009, but have not yet been published in the *Gazette*. To ensure that the legality of the said rules is not influenced due to the fact that they were published outside the statutory time-period, it is deemed advisable to amend section 79 to that effect.

3.26 Clause 71 amends section 7(3) of the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000), for the same reasons as is set out in paragraph 3.25 above. The said rules were made by the Rules Board before 28 February 2009, and were published on 9 October 2009 but they have not yet been put into operation. Similarly, clause 72 amends section 10(6) of the Promotion of Administrative Justice Act, 2000, dealing with the code of good administrative conduct, which has already been submitted to Cabinet and Parliament as required by subsection (6).

3.27 Clause 73 amends section 1 of the Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 (Act No. 4 of 2000), by adding HIV/AIDS status to the definition of "prohibited grounds". Presently these grounds are listed as race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth, which correspond with the grounds listed in section 9(3) of the Constitution of the Republic of South Africa. The Equality Review Committee, established in terms of section 32 of this Act, recommended that HIV/AIDS be added as a prohibited ground. Evidence suggests that persons living with HIV/AIDS face

discrimination and stigmatisation and legal recourse is often not viable. The inclusion of HIV/AIDS as a prohibited ground would improve access to equality courts, as a claimant would only have to prove that there was discrimination on the basis of his or her HIV/AIDS status. The person accused of discriminating must then prove that the discrimination was fair.

3.28 Clause 74 substitutes the definition of "activate" in section 1 of the Regulation of Interception of Communications and Provision of Communication-related Information Act, 2002 (Act No. 70 of 2002), in order to also make this term applicable to other electronic communication service providers, consequential to the amendment effected by clause 76 to section 39 of this Act (see paragraph 3.30 below).

3.29 Clause 75 amends section 19 of the Regulation of Interception of Communications and Provision of Communication-related Information Act, 2002, in order to provide that the judge designated in terms of section 1 of the Act may also consider and grant applications for the issuing of archived communication-related directions. Presently such applications must be considered by a judge of the High Court, a regional court magistrate or a magistrate. Due to the fact that all other applications for interception directions in terms of the Act must be made to the designated judge, it appears to be an oversight in the Act not to afford the designated judge the authority to also consider and grant archived communication-related directions.

3.30 Clause 76 amends section 39 of the Regulation of Interception of Communications and Provision of Communication-related Information Act, 2002, to bring it into line with section 40 of the Act. This would oblige electronic communication service providers, other than mobile cellular electronic communication service providers, to electronically record and store information pertaining to a customer before providing an electronic communication service to any customer. To align the section with section 40, provision is made for -

- * the information relating to a customer that must be stored;
- * the verification of the identity of a customer;
- * the facilities in which the information must be stored;
- * the period for which the information must be stored; and
- * a duty to report false identification documents to the South African Police Service.

The electronic storage of information will assist the law enforcement agencies in tracing the required information quicker and easier than a paper-based system of registration and it will also have cost-saving implications for electronic communication service providers. This has been done at the request of the electronic communication service providers.

3.31 Clause 77 amends section 51 of the Regulation of Interception of Communications and Provision of Communication-related Information Act, 2002, in order to make the sanctions that are applicable to mobile cellular operators for contraventions of section 40, also applicable to electronic communication service providers that need to record and store information of their customers in terms of the amended section 39.

3.32 Clauses 78 and 79 amend sections 86 and 138 of the National Credit Act, 2005 (Act No. 34 of 2005), respectively, in order to clarify which magistrates' court has jurisdiction to conduct a debt review procedure referred to in section 86. Section 86, read with section 87, makes provision for a debt review procedure, in terms of which a magistrate's court must -

- (a) consider an application for debt review in terms of section 86(8)(b) or (9); or
- (b) confirm a consent order in terms of section 138.

The National Credit Act, 2005, however, does not specify which magistrate's court will have jurisdiction to entertain any of the aforementioned procedures. This omission resulted in an impasse where, although applications are made for debt review, magistrates' courts decline to entertain these procedures based on the fact that they do not have jurisdiction. The amendments aim to remedy this omission by conferring jurisdiction on the magistrate's court in whose district the consumer is ordinarily resident, carries on business or is employed. These amendments emanate from a request of the Department of Trade and Industry.

3.33 Clause 80 amends the Index to the Children's Act, 2005 (Act No. 38 of 2005), and clause 81 inserts section 126A in the Act. The amendments will enable the Director-General: Justice and Constitutional Development to establish whether there is compliance with section 271B of the Criminal Procedure Act, 1977, when considering an application for the expungement of criminal records. If the name of a person has been included in the National Child Protection Register as a result of a conviction for an offence provided for in the Children's Act, 2005, such person does not qualify for the expungement of his or her criminal record.

3.34 Clause 82 amends the Index to the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act No. 32 of 2007), and clause 84 inserts section 44A into the Act in order to give the Director-General: Justice and Constitutional Development the power to obtain particulars regarding a person from the National Register for Sex Offenders for the purpose of processing applications for the expungement of criminal records in terms of section 271B of the Criminal Procedure Act, 1977. Section 271B(1)(b), *inter alia*, provides that a person whose name has been included in the National Register for Sex Offenders or

in the National Child Protection Register cannot qualify for the expungement of his or her criminal record in terms of section 271B, unless his or her name has been removed from these registers. These amendments, as well as those in clauses 80 and 81, are effected so that the Director-General: Justice and Constitutional Development can establish whether the names of the persons so convicted have been removed from those registers in order to process applications for expungement.

3.35 Clause 83 amends section 42(1) of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007. This section requires the establishment of a National Register for Sex Offenders within six months after the commencement of Chapter 6 of the Act. This requirement was amended in 2008 by the Judicial Matters Amendment Act, 2008, in order to extend the period in question. However, since this amendment was effected, the Department of Justice and Constitutional Development and the South African Police Service have encountered a number of administrative challenges in respect of populating the National Register for Sex Offenders-database with the particulars of persons with previous convictions. This necessitates an amendment to section 42(1) of the Act in order to extend the time period within which to establish the National Register for Sex Offenders.

3.36 Section 62(2)(a) of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, *inter alia*, requires the Minister, within one year after the implementation of the Act, to adopt and table a national policy framework in Parliament. This requirement was amended during 2008 to provide for an additional time-period in this regard. The formulation of the national policy framework requires an extensive consultation process, to the extent that it was not possible to comply fully with section 62(2)(a) of the Act. In view of the fact that the national policy framework must be tabled in Parliament, clause 85 provides for a further time extension.

3.37 Clause 86 amends section 66(2)(a) of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, by repealing the obligation of a prosecutor to ensure that court orders that must be included in the National Register for Sex Offenders (the National Register) are forwarded to, and received by, the Registrar of the National Register. The current provision amounts to a duplication of duties since section 50(3) of the Act already places an obligation on the Registrar of the High Court or clerk of the magistrate's court to forward the court orders to the Registrar of the National Register. The National Register will form part of the electronic infrastructure of the Department in a manner which, among others, ensures the flow of information from the courts to the Register.

3.38 Clauses 87, 88 and 91 effect various amendments to the Child Justice Act, 2008 (Act 75 of 2008). These amendments all amount to textual corrections or improvements and are self-explanatory with the possible exception of clause 88. Clause 88 substitutes section 75 of the Child Justice Act, 2008. It currently provides that a child justice court may impose a sentence involving correctional supervision in terms of either –

- (i) section 276(1)(h) or (i) of the Criminal Procedure Act, 1977, in the case of a child who is 14 years or older; or
- (ii) section 276(1)(h) of the Criminal Procedure Act, 1977, in the case of a child who is under 14 years.

Section 276 sets out the types of sentences a court may impose on a convicted person, section 276(1)(h) referring to “correctional supervision” and section 276(1)(i) referring to “imprisonment from which such a person may be placed under correctional supervision in the discretion of the Commissioner or a parole board”. Because a sentence of correctional supervision can only be imposed in terms of section 276(1)(h) the reference to the two categories of correctional supervision in section 75 is incorrect. There was agreement in the Portfolio Committee when the Child Justice Bill was still being debated that paragraphs (a) and (b) in section 75 should be deleted. For some reason this never happened and clause 88 is intended to address this.

3.39 Clauses 89 and 90 are discussed in paragraph 3.11 above.

3.40 Clause 92 amends some of the consequential amendments to various Acts in Schedule 4 to the Child Justice Act, 2008, all of which are textual corrections or improvements and are self-explanatory with the possible exception of clause 92(d) which amends section 276A of the Criminal Procedure Act, 1977. The amendment of section 276A(1)(b) by the Child Justice Act should also have reflected an amendment to that paragraph which was effected by the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007. In the light of the explanation given in paragraph 3.38 above relating to section 276(1)(h) and (i) of the Criminal Procedure Act, 1977, there is no longer a need to subject section 276A(2) to section 75 of the Child Justice Act, 2008, hence the proposed deletion of the wording in clause 92(d) in so far as it relates to section 276A(2).

3.41 Clause 93 effects a textual correction to section 3 of the Reform of Customary Law of Succession and Regulation of Related Matters Act, 2009 (Act No. 11 of 2009).

3.42 Clause 94 establishes the Limpopo High Court, Polokwane. In terms of the current legislative framework, the existing High Court at Polokwane that was officially opened in

February 2009 is functioning as a Circuit Division of the North Gauteng High Court, Pretoria. However, since the necessary infrastructure has already been established for this Court, there is no sound reason for not converting the court into a fully fledged High Court.

4. An electronic copy of the Bill is obtainable at:
<http://www.justice.gov.za/legislation/bills/bills.htm>