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THE PRESIDENCY

No. 1235 22 November 2001

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

No. 47 of 2001: Judges' Remuneration and conditions of Employment Act, 2001



AIDS HELPLINE: 0800-123-22 Prevention is the cure

(English text signed by the President.)
(Assented to 20 November 2001.)

ACT

To provide for the remuneration and conditions of employment of judges of the Constitutional Court, the Supreme Court of Appeal and the High Courts; and for matters connected therewith.

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

CHAPTER 1

DEFINITIONS

(s 1)

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Definitions and application of Act

1. (1) In this Act, unless the context indicates otherwise—
- “active service” means any service performed as a Constitutional Court judge or judge in a permanent capacity, irrespective of whether or not such service was performed prior to or after the date of commencement of this Act, and includes any continuous period—
- (a) of longer than 29 days of such service in an acting capacity prior to assuming office as a Constitutional Court judge or judge in a permanent capacity if such service was performed before the date of commencement of this Act; and
- (b) of such service in an acting capacity prior to assuming office as a Constitutional Court judge or judge in a permanent capacity if such service was performed after the date of commencement of this Act;
- “annual salary” means the annual salary and the allowance payable to a Constitutional Court judge or judge in terms of section 2;
- “Constitution” means the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996);
- “Constitutional Court judge” means any person holding the office of—
- (a) Chief Justice of South Africa;
- (b) Deputy Chief Justice; or
- (c) judge of the Constitutional Court,
- and includes any person who, since 7 June 1994, held, the office of—
- (i) President of the Constitutional Court;
- (ii) Deputy President of the Constitutional Court; or
- (iii) judge of the Constitutional Court;
- “fixed date” is 1 April 1989;
- “judge” means any person holding the office of—
- (a) President or Deputy President of the Supreme Court of Appeal;
- (b) judge of the Supreme Court of Appeal;
- (c) Judge President or Deputy Judge President of any High Court; or
- (d) judge of any High Court,
- and includes any person who, at or since the fixed date, held the office of—
- (i) Chief Justice of South Africa or Deputy Chief Justice;
- (ii) judge of the Appellate Division of the Supreme Court of South Africa or of the Supreme Court of Appeal;

- (iii) Judge President or Deputy Judge President of any provincial or local division of the Supreme Court of South Africa or of any High Court;
- (iv) judge of any provincial or local division of the Supreme Court of South Africa or of any High Court; or
- (v) judge of any court of a homeland referred to in Item 16 of Schedule 6 to the Constitution, read with Item 1 thereof; 5
- “Minister” means the Cabinet member responsible for the administration of justice;
- “salary” means the salary payable to a Constitutional Court judge or judge in terms of section 5; 10
- “service” means—
- (a) service as a judge of the Supreme Court of Appeal or a High Court as contemplated in the Supreme Court Act, 1959 (Act No. 59 of 1959), in the same or a higher office held by the judge concerned on discharge from active service, or, with the approval of the judge concerned, service in a lower office; 15
- (b) service as a chairperson or a member of a commission as contemplated in the Commissions Act, 1947 (Act No. 8 of 1947);
- (c) service as a chairperson or a member of a body or institution established by or under any law; or
- (d) any other service which the Minister may request him or her to perform. 20
- (2) This Act applies to all Constitutional Court judges and judges—
- (a) to whom the Judges' Remuneration and Conditions of Employment Act, 1989 (Act No. 88 of 1989) applied; and
- (b) to whom corresponding legislation in any homeland, as defined in Item 1 of Schedule 6 to the Constitution, which, immediately before the date of commencement of this Act, had not been repealed, applied. 25

CHAPTER 2

REMUNERATION AND CONDITIONS OF EMPLOYMENT OF CONSTITUTIONAL COURT JUDGES AND JUDGES (ss 2-11) 30

Annual salary of Constitutional Court judges and judges

2. (1) Any person who holds office as a Constitutional Court judge or as a judge, whether in an acting or permanent capacity, shall in respect thereof, in addition to the amounts referred to in section 13 and an allowance at the rate of R3 500 per annum, be paid an annual salary at a rate determined by the President by proclamation in the *Gazette*. 35
- (2) A proclamation in terms of subsection (1) may be issued with effect from a date which may not be earlier than one year prior to the date of the proclamation.
- (3) (a) A copy of a proclamation issued under subsection (1) shall be submitted to Parliament within 14 days after publication thereof. 40
- (b) If Parliament rejects such proclamation or any provision thereof, such proclamation or provision shall thereafter cease to be of force and effect to the extent to which it was so rejected but without prejudice to the validity of anything done in terms of such proclamation up to the date upon which it so ceased to be of force and effect, or to any right, privilege, obligation or liability acquired, accrued or incurred as at the said date under and by virtue of such proclamation. 45
- (4) The allowance payable in terms of subsection (1) shall not be taxable, unless Parliament expressly provides otherwise.
- (5) The amount of the annual salary and allowance payable in terms of subsection (1), shall be paid as a direct charge against the National Revenue Fund. 50
- (6) No Constitutional Court judge may, without the consent of the Minister, accept, hold or perform any other office of profit or receive in respect of any service any fees, emoluments or other remuneration apart from his or her salary and any amount which may be payable to him or her in his or her capacity as a Constitutional Court judge.

Discharge of Constitutional Court judges and judges from active service

3. (1) A Constitutional Court judge who holds office in terms of section 176(1) of the Constitution—

- (a) must, subject to the provisions of section 4(1) or (2), be discharged from active service as a Constitutional Court judge, on the date on which he or she—
 - (i) attains the age of 70 years; or
 - (ii) has completed a 12-year term of office as a Constitutional Court judge, whichever occurs first;
- (b) may at any time be discharged by the President from active service as a Constitutional Court judge if he or she becomes afflicted with a permanent infirmity of mind or body which renders him or her incapable of performing his or her official duties; or
- (c) may at any time on his or her request and with the approval of the President be discharged from active service as a Constitutional Court judge if there is any reason which the President deems sufficient.

(2) A judge who holds office in a permanent capacity—

- (a) shall, subject to the provisions of section 4(4), be discharged from active service as a judge on the date on which he or she attains the age of 70 years, if he or she has on that date completed a period of active service of not less than 10 years, or, if he or she has on that date not yet completed a period of 10 years' active service, on the date immediately following the day on which he or she completes a period of 10 years' active service;
- (b) who has already attained the age of 65 years and has performed active service for a period of 15 years, and who informs the Minister in writing that he or she no longer wishes to perform active service, shall be discharged by the President from active service as a judge;
- (c) may at any time be discharged by the President from active service as a judge if he or she becomes afflicted with a permanent infirmity of mind or body which renders him or her incapable of performing his or her official duties; or
- (d) may at any time on his or her request and with the approval of the President be discharged from active service as a judge if there is any reason which the President deems sufficient.

Continuation of active service by Constitutional Court judges and judges

4. (1) A Constitutional Court judge whose 12-year term of office as a Constitutional Court judge expires before he or she has completed 15 years' active service must, subject to subsection (2), continue to perform active service as a Constitutional Court judge to the date on which he or she completes a period of 15 years' active service, whereupon he or she must be discharged from active service as a Constitutional Court judge.

(2) A Constitutional Court judge who, on attaining the age of 70 years, has not yet completed 15 years' active service, must continue to perform active service as a Constitutional Court judge to the date on which he or she completes a period of 15 years' active service or attains the age of 75 years, whichever occurs first, whereupon he or she must be discharged from active service as a Constitutional Court judge.

(3) (a) A Constitutional Court judge who is discharged from active service in terms of section 3(1) or subsection (1) or (2) and who is also a judge contemplated in section 174(5) of the Constitution, may continue to perform active service as a judge in the court in which he or she held office as such immediately before he or she was appointed as a Constitutional Court judge if—

- (i) he or she indicates his or her willingness to do so in writing to the President three months before he or she is so discharged from active service; and
- (ii) he or she still qualifies to hold office as such a judge in a permanent capacity in terms of section 3(2) or subsection (4).

(b) Nothing in this Act precludes a Constitutional Court judge—

- (i) who is discharged from active service in terms of section 3(1) or subsection (1) or (2); and
- (ii) who is not a judge contemplated in section 174(5) of the Constitution, from being appointed to the office of judge in a court other than the Constitutional Court by the President on the advice of the Judicial Service Commission as contemplated in

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the Constitution, if he or she still qualifies to hold office as such a judge in a permanent capacity in terms of section 3(2) or subsection (4).

(c) The holding of office by a judge referred to in paragraph (a) or (b)—

(i) interrupts that judge's discharge from active service in terms of section 3(1) or subsection (1) or (2); and 5

(ii) suspends any salary payable in terms of section 5 to that judge pursuant to such discharge from active service.

(d) The holding of office by a judge referred to in paragraph (a) or (b), entitles such a judge to an annual salary which—

(i) is payable in terms of section 2; and 10

(ii) may not be less than the annual salary applicable to the highest office held as a Constitutional Court judge or a judge.

(4) A judge who on attaining the age of 70 years has not yet completed 15 years' active service, may continue to perform active service to the date on which he or she completes a period of 15 years' active service or attains the age of 75 years, whichever occurs first, 15 whereupon he or she must be discharged from active service as a judge.

Salary payable to Constitutional Court judges and judges after discharge from active service

5. (1) Subject to subsection (2), a Constitutional Court judge or a judge who on or after the fixed date was or is discharged from active service in terms of section 3 or 4 20 shall be paid a salary in accordance with the formula—

$$\frac{A}{B} \times C$$

in which formula the factor—

(a) A represents the annual salary applicable to the highest office held by the 25 Constitutional Court judge or judge concerned in a permanent capacity during the period of his or her active service: Provided that, subject to section 11(3)(a) and (5)(a), the factor 'A' in the said formula must be adjusted whenever the annual salary applicable to the highest office held by the 30 Constitutional Court judge or judge concerned during the period of his or her active service, is increased;

(b) B represents 15; and

(c) C represents the period in years of active service of such Constitutional Court judge or judge.

(2) The aggregate of the salary payable in terms of subsection (1) to a Constitutional 35 Court judge or judge who was or is discharged from active service—

(a) in terms of section 3(1), 3(2)(a), (c) or (d) or 4(1), (2) or (4) shall not be less than 40 per cent of his or her highest annual salary during the period of his or her active service and shall not exceed such salary;

(b) in terms of section 3(1) or 3(2) and has performed active service for a period 40 of not less than 20 years, shall be equivalent to the annual salary applicable to the highest office held by him or her in a permanent capacity during his or her period of active service;

(c) in terms of section 3(2)(b), shall, subject to paragraph (b), be 80 per cent of his 45 or her highest annual salary during the period of his or her active service, plus two per cent of that salary for every year of active service which he or she performs after attaining the age of 65 years;

(d) in terms of section 3(1)(b) or (c) or 3(2)(c) or (d) before he or she attains the 50 age of 65 years, shall, subject to paragraph (b), be not more than 80 per cent of his or her highest annual salary during the period of his or her active service.

(3) For the purposes of subsection (1) the period of active service in any particular office shall be calculated by the year and the month, and fractions of a month shall—

(a) in respect of any active service performed before the date of commencement 55 of this Act, be disregarded; and

(b) in respect of any active service performed after the date of commencement of this Act be taken into account.

(4) If a Constitutional Court judge or a judge to whom a salary is payable in terms of this section dies, the payment of the salary shall cease with effect from the first day of 60 the month following the month in which he or she died.

Gratuity payable to Constitutional Court judges and judges after discharge from active service

6. (1) Subject to the provisions of subsections (2), (3) and (4), any Constitutional Court judge or judge who on or after the fixed date was or is discharged from active service in terms of section 3 or 4, shall, in addition to any salary payable to him or her in terms of section 5, be paid a gratuity which shall in respect of every office held by him or her in a permanent capacity during his or her active service be calculated in accordance with the formula—

$$D \times 2 \times \frac{E}{15} \quad 10$$

in which formula the factor-

- (a) D represents the annual salary which at the time of the discharge of such Constitutional Court judge or judge from active service was applicable to the office concerned;
- (b) E represents the period in years of active service, but not exceeding 20 years, of such a Constitutional Court judge or judge in the office concerned. 15

(2) After the completion of 15 years' active service a Constitutional Court judge or judge shall once be entitled, if he or she so requests, to be paid the gratuity (or any part thereof) which has until the date of the request accrued in accordance with the formula in subsection (1). 20

(3) After the completion of 20 years' active service a Constitutional Court judge or judge shall once be entitled, if he or she so requests, to be paid the gratuity (or any portion thereof) which has until that date accrued in accordance with the formula in subsection (1), or the balance available after the exercise of the power in terms of subsection (2). 25

(4) A judge referred to in section 4(4) shall once be entitled, when he or she attains the age of 70 years and has completed not less than 10 years' active service, to be paid, if he or she so requests, the gratuity (or any portion thereof) which has until the date of that request accrued in accordance with the formula in subsection (1).

(5) The total amount of any gratuity payable in terms of this section to a Constitutional Court judge or judge shall not exceed three times his or her highest annual salary during the period of his or her active service. 30

(6) For the purposes of this section the period of active service shall be calculated by the year and the month, and fractions of a month shall be taken into account.

(7) Notwithstanding anything to the contrary contained in any other law, the gratuity payable to Constitutional Court judges or judges under this section shall not be taxable. 35

Performance of service by Constitutional Court judges and judges discharged from active service

7. (1) (a) A Constitutional Court judge or judge who has been discharged from active service, except a Constitutional Court judge or judge who has been discharged in terms of section 3(1)(b) or (c) or (2)(b), (c) or (d), who— 40

- (i) has not attained the age of 75 years must, subject to paragraph (c), be available to perform service until he or she attains the age of 75 years, for a period or periods which, in the aggregate, amount to three months a year: Provided that such a Constitutional Court judge or judge may voluntarily perform more than three months' service a year, if his or her services are so requested; or 45
- (ii) has already attained the age of 75 years, may voluntarily perform further service, if his or her services are so requested,

if that Constitutional Court judge's or judge's mental and physical health enable him or her to perform such service. 50

(b) Service contemplated in paragraph (a) of the definition of "service" in section 1 may only be performed if—

- (i) after consultation with the Judicial Service Commission, such service is requested by the Chief Justice, President of the Supreme Court of Appeal or the judge president in whose area of jurisdiction the Constitutional Court 55

judge or judge resides or of the court to which he or she was attached when discharged from active service, or with his or her consent, any other judge president, in consultation with the Chief Justice or the said judge president, as the case may be; and

(ii) the Minister so approves. 5

(c) Service as mentioned in paragraph (b), (c) or (d) of the definition of "service" in section 1 may be performed only with the consent of the Constitutional Court judge or judge concerned.

(2) (a) A Constitutional Court judge or judge who performs service in terms of subsection (1), as contemplated in paragraph (a) of the definition of "service" in section 1, shall, subject to paragraph (b)(ii), monthly be paid an additional amount in remuneration which is equal to the amount which at that time is payable to the holder of the office which he or she holds for that period. 10

(b) A Constitutional Court judge or judge who performs service in terms of subsection (1) as contemplated in— 15

(i) paragraphs (b) to (d) of the definition of "service" in section 1 ; and

(ii) the proviso to subsection(1)(a)(i) or in subsection(1)(a)(ii), read with paragraph (a) of the definition of "service" in section 1,

shall monthly be paid such remuneration as the President may determine.

(3) The salary of a Constitutional Court judge or judge who contrary to subsection (1)(a)(i) fails to perform the minimum period of service referred to in that subsection if so requested, shall, for every full year during which he or she so fails, be reduced by two per cent: Provided that such reduction shall, in the aggregate, not amount to more than 10 per cent of such salary. 20

(4) The registrar of the Supreme Court of Appeal or a High Court where a Constitutional Court judge or judge performs service in terms of subsection (1), shall notify the Director-General: Justice and Constitutional Development immediately of the commencement and duration of the service. 25

(5) The Director-General: Justice and Constitutional Development shall keep a register of all service performed by Constitutional Court judges or judges in terms of subsection (1). 30

Performance of service as Chief Justice by Chief Justice or as President of Supreme Court of Appeal by President of Supreme Court of Appeal in certain circumstances

8. (a) A Chief Justice who becomes eligible for discharge from active service in terms of section 3(1)(a) or 4(1) or (2), may, at the request of the President, from the date on which he or she becomes so eligible for discharge from active service, continue to perform active service as Chief Justice of South Africa for a period determined by the President, which shall not extend beyond the date on which such Chief Justice attains the age of 75 years. 35

(b) A President of the Supreme Court of Appeal who becomes eligible for discharge from active service in terms of section 3(2)(a) or 4(4), may, at the request of the President, from the date on which he or she becomes so eligible for discharge from active service, continue to perform active service as President of the Supreme Court of Appeal for a period determined by the President, which may not extend beyond the date on which such President of the Supreme Court of Appeal attains the age of 75 years. 45

Amount payable to surviving spouse of Constitutional Court judge and judge

9. (1) The surviving spouse of a Constitutional Court judge or judge who on or after the fixed date was or is discharged from active service in terms of section 3 or 4 or who died or dies while performing active service, shall be paid with effect from the first day of the month immediately succeeding the month in which he or she dies an amount— 50

(a) in the case of a surviving spouse of a Constitutional Court judge or judge who was so discharged from active service, equal to two thirds of the salary which was in terms of section 5 payable to that Constitutional Court judge or judge; or

(b) in the case of a surviving spouse of a Constitutional Court judge or judge who died while performing active service as a Constitutional Court judge or judge, equal to two thirds of the amount to which that Constitutional Court judge or 55

judge would have been entitled in terms of section 5 if he or she was discharged from active service in terms of section 3 (1)(a) or (2)(a) on the date of his or her death.

(2) The amount payable to the surviving spouse of a Constitutional Court judge or judge in terms of subsection (1) shall be payable with effect from the first day of the month immediately succeeding the day on which he or she died, and shall be payable until the death of such spouse. 5

Gratuity payable to surviving spouse of Constitutional Court judge and judge

10. If a gratuity referred to in section 6 would have been payable to a Constitutional Court judge or judge who died or dies on or after the fixed date had he or she not died but, on the date of his or her death, was discharged from active service in terms of section 3 or 4, there shall— 10

(a) if such Constitutional Court judge or judge is survived by a surviving spouse, be payable to such surviving spouse, in addition to any amount payable to that spouse in terms of section 9; or 15

(b) if such Constitutional Court judge or judge is not survived by a spouse, be payable to the estate of such Constitutional Court judge or judge, a gratuity which shall be equal to the amount of the gratuity which would have been so payable to such Constitutional Court judge or judge had he or she not died but was, on the date of his or her death, discharged from active service as aforesaid. 20

Resignation of Constitutional Court judges and judges from office in certain circumstances

11. (1) Any resignation by a Constitutional Court judge or judge which is not contemplated in this Act precludes the payment of any benefits to such person in terms of this Act to which a Constitutional Court judge or judge would otherwise be entitled on discharge from active service. 25

(2) A Constitutional Court judge who is a judge contemplated in section 174(5) of the Constitution or a judge who holds office in a permanent capacity, who already has attained the age of 65 years and has performed 15 years' active service may resign from office by notice in writing to the President that he or she no longer wishes to serve in the office of such judge, and shall vacate his or her office upon acceptance of such resignation. 30

(3) A Constitutional Court judge or a judge referred to in subsection (2) shall be paid—

(a) a salary in accordance with the provisions of section 5: Provided that the proviso in section 5(1)(a) shall not apply in respect of him or her; 35

(b) a gratuity in accordance with the formula set out in section 6(1).

(4) A Constitutional Court judge who is not a judge contemplated in section 174(5) of the Constitution who has completed a 12 year term of office as a Constitutional Court judge or who has attained the age of 70 years, whichever occurs first, may resign from office by notice in writing to the President and must vacate his or her office upon acceptance by the President of such resignation. 40

(5) A Constitutional Court judge referred to in subsection (4) must be paid—

(a) a salary in accordance with the provisions of section 5: Provided that the proviso in section 5(1)(a) does not apply in respect of him or her; 45

(b) a gratuity in accordance with the formula set out in section 6(1).

(6) The provisions of section 6(7) apply with the necessary changes in respect of any gratuity payable in terms of this section.

(7) The surviving spouse of a Constitutional Court judge or judge referred to in subsection (2) or (4) must, with effect from the first day of the month immediately succeeding the month in which he or she dies, be paid an amount equal to two thirds of the salary which was payable to that Constitutional Court judge or judge in terms of subsection (3)(a) or (5)(a), which amount shall be payable until the death of such spouse. 50

CHAPTER 3**GENERAL PROVISIONS**
(ss 12-18)**Making available of motor vehicles to Constitutional Court judges and judges**

12. A motor vehicle owned by the State may, on such conditions as the Minister may determine with the concurrence of the Minister of Transport, be made available to any person who holds office as a Constitutional Court judge or judge in a permanent or acting capacity, whether he or she performs active service or service, for use, in accordance with the conditions so determined, in the course of his or her official functions as well as for his or her private purposes. 5
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Regulations

13. (1) The President may, after consultation by the Minister with the Chief Justice, the President of the Supreme Court of Appeal and the judges president of the respective High Courts, make regulations as to—

- (a) arrangements regarding administrative recesses; 15
- (b) the periods for which and the circumstances under which and conditions upon which leave of absence may be granted to Constitutional Court judges or acting Constitutional Court judges, judges or acting judges; 20
- (c) the method of transport of such Constitutional Court judges or judges, and of Constitutional Court judges or judges on their discharge from active service or their vacation of office and of Constitutional Court judges or judges in the performance of service in terms of section 7, and of the members of their families and of the effects of Constitutional Court judges or judges or Constitutional Court judges or judges who have been discharged from active service or who have vacated their offices or Constitutional Court judges or judges who perform service in terms of section 7 or deceased Constitutional Court judges or judges, the amounts to be paid to Constitutional Court judges or judges or acting Constitutional Court judges or judges in connection with transport and subsistence, and the circumstances in which any such transport may be provided and any such amounts may be paid; 25
30
- (d) the amounts which may be paid to acting Constitutional Court judges or acting judges in connection with the maintenance by them of their practices as advocates or attorneys; or
- (e) the amounts payable to Constitutional Court judges or judges of the Supreme Court of Appeal in connection with their accommodation. 35

(2) A regulation under subsection (1) may provide that an amount referred to in paragraph (c) or (d) of that subsection shall be calculated either in accordance with a scale or having regard to the expenses actually incurred in connection with the matter concerned. 40

Administration of Act

14. The Director-General: Justice and Constitutional Development shall, subject to the directions of the Minister, be charged with the general administration of this Act. 40

Method of payment of salaries, allowances and benefits

15. Salaries, allowances and benefits payable in terms of sections 2, 5, 6, 7, 9, 10 and 11 of this Act shall be paid as a direct charge against the National Revenue Fund and on such dates and in such manner as the Minister may from time to time determine. 45

Transitional provisions

16. (1) Notwithstanding the repeal of—

- (a) the Judges' Remuneration and Conditions of Employment Act, 1989 (Act No. 88 of 1989); 50

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(b) the Judges' Remuneration and Conditions of Employment Act, 1989 (Act No. 27 of 1989)(Bophuthatswana); and

(c) Decree No. 19 (Judges' Remuneration and Conditions of Service) of 1990 (Decree No. 19 of 1990) (Transkei),

by section 17 of this Act, the regulations which were made under the said Acts and were in force immediately before the date of commencement of this Act and which are not inconsistent with this Act, continue in force in respect of those judges to which the regulations applied immediately prior to the commencement of this Act until they are repealed, withdrawn or amended by regulations made under section 13 of this Act.

(2) (a) Any active service or service referred to in—

(i) section 1 of the Judges' Remuneration and Conditions of Employment Act, 1989 (Act No. 27 of 1989) (Bophuthatswana); or

(ii) section 1 of Decree No. 19 (Judges' Remuneration and Conditions of Service) of 1990 (Decree No. 19 of 1990) (Transkei),

performed by a judge referred to in section 1 prior to the commencement of this Act is, for the purposes of this Act, deemed to be active service or service as contemplated in section 1(1) of this Act.

(b) For the purposes of section 1(1) of this Act the word "service" in the definition of "active service" in section 1(1), preceding paragraph (a) thereof, is construed to include service performed by—

(i) a judge of the Republic of South Africa, prior to the commencement of the Interim Constitution, who was seconded to serve as a judge in any court of a homeland referred to in Item 16 of Schedule 6 to the Constitution, read with Item 1 thereof, while he or she was so seconded and so served; or

(ii) a judge in the former South West Africa prior to its independence and who, at the commencement of this Act, holds office as a judge of a High Court.

(c) If a judge who has been seconded for active service or service as a judge of a High Court or Supreme Court of a homeland as defined in Item 1 of Schedule 6 to the Constitution, dies or is discharged from active service while holding the office of chief justice of such a High Court or Supreme Court of such a homeland in a permanent capacity, his or her salary shall for the purposes of this Act be deemed to be that of a judge president of a High Court.

(d) If a judge who has been seconded for service as a judge of a High Court or Supreme Court of a homeland as defined in Item 1 of Schedule 6 to the Constitution, holds the office of chief justice of such a High Court or Supreme Court in a permanent or acting capacity, and if the amount of the salary and allowance payable to him or her in terms of section 2(1) is less than the amount of the salary and allowance payable in terms of that subsection to a judge president of a High Court, he or she shall, in addition to the salary and allowance payable to him or her as aforesaid, be paid an allowance equal to the difference between the amount of the salary and allowance payable to him or her as aforesaid and the amount of the salary and allowance payable as aforesaid to such a judge president.

(3) Section 4 of Decree No. 19 (Judges' Remuneration and Conditions of Service) of 1990 (Decree No. 19 of 1990) (Transkei) continues to apply to any person to whom it applied at the date of commencement of this Act as if it had not been repealed.

(4) (a) Any person who retired as a judge in terms of the Judges' Pensions Act, 1978 (Act No. 90 of 1978), and who, at the commencement of this section, receives a pension in terms of the said Judges' Pensions Act, 1978, is, from the date of commencement of this section, entitled to an amount equal to two thirds of the salary payable to a judge contemplated in section 5(1) of this Act who held the same or a similar office to that of the retired judge on the date of the latter's retirement from office and who has the same number of years' service in an acting or permanent capacity.

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

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(c) Any surviving spouse of a judge who retired as a judge in terms of the Judges' Pensions Act, 1978, and who, at the commencement of this section, receives a pension in terms of the said Act, is, from the date of commencement of this section, entitled to an amount equal to one half of the amount to which his or her deceased spouse would have been entitled under paragraph (a).

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Repeal of laws

17. The laws mentioned in the Schedule are hereby repealed to the extent set out in the third column thereof.

Short title and commencement

18. (1) This Act shall be called the Judges' Remuneration and Conditions of 10
Employment Act, 2001.

(2) Section 16(4) comes into operation on a date fixed by the President by proclamation in the *Gazette*.

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SCHEDULE

| No. and year of law | Title | Extent of repeal | |
|---------------------|--|-------------------------------|----|
| Act 27 of 1989 | Judges' Remuneration and Conditions of Employment Act, 1989 (Bophuthatswana) | The whole | 5 |
| Act 88 of 1989 | Judges' Remuneration and Conditions of Employment Act, 1989 | The whole | |
| Decree 19 of 1990 | Judges' Remuneration and Conditions of Service Decree, 1990 (Transkei) | The whole | 10 |
| Decree 43 of 1990 | Supreme Court Decree, 1990 (Ciskei) | Section 5(1), (2) (3) and (4) | |
| Act 139 of 1992 | General Law Amendment Act, 1992 | Sections 27 and 28 | 15 |
| Act 91 of 1993 | Judges' Remuneration and Conditions of Employment Amendment Act, 1993 | The whole | |
| Act 129 of 1993 | General Law Third Amendment Act, 1993 | Section 71 | 20 |
| Act 157 of 1993 | General Law Fifth Amendment Act, 1993 | Section 8 | |
| Act 204 of 1993 | General Law Sixth Amendment Act, 1993 | Section 15 | 25 |
| Act 10 of 1994 | Judges' Remuneration and Conditions of Employment Amendment Act, 1994 | The whole | |
| Act 104 of 1996 | Judicial Matters Amendment Act, 1996 | Section 14 | 30 |
| Act 77 of 1997 | Judges' Remuneration and Conditions of Employment Amendment Act, 1997 | The whole | |