



REPUBLIC OF SOUTH AFRICA

# GOVERNMENT GAZETTE

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# STAATSKOERANT

VAN DIE REPUBLIEK VAN SUID-AFRIKA

*Registered at the Post Office as a Newspaper*

*As 'n Nuusblad by die Poskantoor Geregistreer*

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VOL. 390

CAPE TOWN, 5 DECEMBER 1997

**No. 18492**

KAAPSTAD, 5 DESEMBER 1997

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OFFICE OF THE PRESIDENT

KANTOOR VAN DIE PRESIDENT

No. 1632.

5 December 1997

No. 1632.

5 Desember 1997

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

Hierby word bekend gemaak dat die President sy goedkeuring geheg het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

No. 76 of 1997: Criminal Procedure Amendment Act, 1997.

No. 76 van 1997: Strafproseswysigingswet, 1997.

**GENERAL EXPLANATORY NOTE:**

- [                      ] Words in bold type in square brackets indicate omissions from existing enactments.
- \_\_\_\_\_ Words underlined with a solid line indicate insertions in existing enactments.

# ACT

To amend the Criminal Procedure Act, 1977, so as to further regulate appeals against decisions of lower courts; to regulate legal representation in respect of appeals; to repeal certain provisions; and to provide for matters connected therewith.

*(Afrikaans text signed by the President.)*  
*(Assented to 26 November 1997.)*

**B**E IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

**Repeal of section 305 of Act 51 of 1977, as amended by section 14 of Act 105 of 1982**

1. Section 305 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977) (hereinafter referred to as the principal Act), is hereby repealed. 5

**Amendment of section 309 of Act 51 of 1977, as amended by section 17 of Act 105 of 1982, section 8 of Act 107 of 1990, section 51 of Act 129 of 1993 and section 13 of Act 75 of 1995**

2. Section 309 of the principle Act is hereby amended—

(a) by the substitution for paragraph (a) of subsection ( 1 ) of the following 10 paragraph:

“(a) Any person convicted of any offence by any lower court (including a person discharged after conviction) may, subject to section 309B, appeal against such conviction and against any resultant sentence or order to the provincial or local division having jurisdiction,”; 15

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

“(2) An appeal under this section shall be noted and be prosecuted within the period and in the manner prescribed by the rules of court: Provided that the [provincial or local division having jurisdiction may in any case] magistrate against whose decision or order the appeal is to 20 be noted, or if he or she is unavailable any other magistrate of the court concerned, may on application and on good cause shown, extend such period.”;

(c) by inserting the following subsection after subsection (3):

“(3A) An appeal under this section may be disposed of by a High Court in chambers on the written argument of the parties or their legal representatives, if the parties agree thereto and the Judge President so directs in an appropriate case.”: and  
 (d) by deleting paragraph (a) of subsection (4).

### Insertion of sections 309B, 309C and 309D in Act 51 of 1977

3. The following sections are hereby inserted after section 309A in the principal Act:

#### <sup>b</sup>Application for leave to appeal

**309B. (1)** An accused who wishes to appeal against any decision or order of a lower court must, within 14 days or within such extended period as may be allowed on application and on good cause shown, apply to that court for leave to appeal against the decision or order. 10

(2)(a) The application must be heard by the magistrate whose decision or order is the subject of the prospective appeal: Provided that if that magistrate is unavailable, the application may be heard by any other magistrate of the court concerned, to whom it is assigned for hearing. 15

(b) Notice must be given to the attorney-general concerned and the accused of the date fixed for the hearing of the application.

(3) Every application for leave to appeal must set forth clearly and specifically the grounds upon which the accused desires to appeal: Provided that if the accused applies verbally for such leave immediately after the passing of the decision or order, he or she must state such grounds and they must be taken down in writing and form part of the record. 20

(4) When in any application under subsection (1) for leave to appeal it is shown by affidavit— 25

(a) that further evidence which would presumably be accepted as true, is available;

(b) that if accepted the evidence could reasonably lead to a different decision or order: and

(c) save in exceptional cases, that there is a reasonably acceptable explanation for the failure to produce the evidence before the close of the trial. 30

the court hearing the application may receive that evidence and further evidence rendered necessary thereby, including evidence in rebuttal called by the prosecutor and evidence called by the court. 35

(5) Any evidence received in pursuance of an application under subsection (1) for leave to appeal, must for the purposes of an appeal be deemed to be evidence taken or admitted at the trial.

(6) If the application is granted, the clerk of the court must, in accordance with the rules of the court, transmit copies of the record and of all relevant documents to the registrar of the court of appeal. 40

#### Petition procedure

**309C.(1)** If an application for leave to appeal under section 309B(1) or for an extension of the period referred to in that subsection or for the extension of the period within which an appeal must be noted in terms of section 309(2) (hereinafter referred to as an application for condonation), or an application to call further evidence as contemplated in section 309 B(4), is refused, the accused may, within 21 days of such refusal or within such extended period as may on good cause be allowed, by petition addressed to the Judge President of the division of the High Court having jurisdiction, submit an application for leave to appeal or for condonation or for leave to call further evidence, or all such applications, as the case may be. 45  
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(2) An accused who submits a petition as contemplated in subsection (1) must at the same time give notice thereof to the clerk of the magistrate's court where the application was refused.

(3) When receiving notice of a petition as contemplated in subsection (2), the clerk of the court must without delay submit copies of the application concerned together with the magistrate's reasons for refusal of the application, to the registrar of the court of appeal.

(4) (a) A petition contemplated in this section must be considered in chambers by two judges designated by the Judge President.

(b) If the judges referred to in paragraph (a) differ in opinion, the petition must also be considered by the Judge President or by any other judge designated by the Judge President.

(5) The judges considering the petition may—

(a) call for any further information from the magistrate who heard the application for condonation or the application for leave to appeal or the application for leave to call further evidence, or from the magistrate who presided at the trial to which any such application relates:

(b) order that the application or applications in question or any of them be argued before them at a time and place appointed by them:

(c) whether they have acted under paragraph (a) or (b) or not—

(i) in the case of an application for condonation, grant or refuse the application and, if the application is granted, direct that an application for leave to appeal must be made, within the period fixed by them, to the court referred to in section 309B(1) or, if they deem it expedient, that an application for leave to appeal must be submitted under subsection (1) within the period fixed by them as if it had been refused by the court referred to in section 309B(1);

(ii) in the case of an application for leave to appeal or an application for leave to call further evidence, grant or refuse the application or, if they are of the opinion that the application for leave to call further evidence should have been granted, they may, before deciding upon the application for leave to appeal, or, in the case where the court referred to in section 309B(1) has granted the application for leave to appeal but has refused leave to call further evidence, set aside the refusal of the said court to grant leave to call further evidence and remit the matter in order that further evidence may be received in accordance with the provisions of section 309 B(4); and

(d) refer the matter to the court of **appeal** for consideration, whether upon argument or otherwise, and that" court may thereupon deal with the matter in any manner referred to in paragraph (c).

(6) Notice must be given to the attorney-general concerned and the accused of the date fixed for the hearing of an application under this section, and of any place appointed under subsection (5) for any hearing.

#### **Explanation of certain rights to unrepresented accused**

**309D.** (1) An accused who is unrepresented at the time he or she is convicted and sentenced, must be informed by the presiding officer of his or her rights in respect of appeal and legal representation and of the correct procedures to give effect to these rights,

(2) An accused who is unrepresented and whose application in terms of section 309B is refused, must be informed by the presiding officer of his or her rights in respect of the proceedings contemplated in section 309C and legal representation and of the correct procedures involved to give effect to these rights."

**Savings**

4. (1) Pending the commencement of the Legal Aid Guide as contemplated in section 3A of the Legal Aid Act, 1969, and to the extent that the Legal Aid Guide, existing at the commencement of this Act, does not regulate the position of the granting of legal aid or legal representation in respect of the proceedings referred to in section 3 of this Act, the Legal Aid Board shall be competent to draft directives, in consultation with the Minister, in terms of which legal aid or legal representation is rendered or made available for purposes of section 3 of this Act.

(2)(a) The directives referred to in subsection (1) must be published in the *Gazette*.

(b) Before the directives are published in the *Gazette*, they must be submitted to Parliament and tabled as soon as possible.

**Short title and commencement**

5. (1) This Act shall be called the Criminal Procedure Amendment Act, 1997, and shall come into operation on a date fixed by the President by proclamation in the *Gazette*.

(2) Different dates may be so fixed in respect of different provisions of this Act.