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STATE PRESIDENT'S OFFICE

KANTOOR VAN DIE STAATSPRESIDENT

No. 1162.

7 July 1993

No. 1162.

7 Julie 1993

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

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

No. 90 of 1993: Magistrates Act, 1993.

No. 90 van 1993: Wet op Landdroste, 1993.

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.
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ACT

To provide for the establishment, constitution, objects and functions of a Magistrates Commission; to further regulate the appointment and remuneration of, and vacation of office by, magistrates; to provide that certain conditions of service of magistrates and other judicial officers may be determined by regulation; and to provide for matters in connection therewith.

(Afrikaans text signed by the State President.)
(Assented to 23 June 1993.)

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

Definitions

1. In this Act, unless the context otherwise indicates—
- (i) “chairman” means the chairman of the Commission appointed in terms of section 3(1)(a)(i); (x) 5
 - (ii) “Commission” means the Magistrates Commission established by section 2; (iii)
 - (iii) “committee” means a committee established by the Commission under section 6; (ii) 10
 - (iv) “lower court” means a court established under section 2 of the Magistrates’ Courts Act; (iv)
 - (v) “magistrate” means a judicial officer appointed under section 9 of the Magistrates’ Courts Act read with section 10 of this Act, excluding any person occupying that office in an acting or temporary capacity and any assistant magistrate; (v) 15
 - (vi) “Magistrates’ Courts Act” means the Magistrates’ Courts Act, 1944 (Act No. 32 of 1944); (xi)
 - (vii) “Minister” means the Minister of Justice; (vi)
 - (viii) “salary” means basic salary, including an annual service bonus, legal allowance, home owner’s allowance (if any) and motor car financing benefit (if any); (vii) 20
 - (ix) “salary scale” means a minimum and maximum salary limit attached to a specific level of work; (viii)
 - (x) “scale”, in relation to salary, includes a salary at a fixed amount; (ix) 25
 - (xi) “this Act” includes the regulations under section 16. (i)

Establishment of Magistrates Commission

2. There is hereby established a commission, to be known as the Magistrates Commission, with the powers and duties conferred on or assigned to it by or under this Act or any other law.

Constitution of Commission and period of office of members

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3. (1) (a) The members of the Commission to be appointed by the State President shall consist of—

- (i) a judge of the Supreme Court of South Africa, as chairman, designated by the Chief Justice;
- (ii) an officer of the Department of Justice designated by the Minister; 10
- (iii) two regional court presidents designated by the regional court presidents of the respective regional divisions established under section 2 of the Magistrates' Courts Act;
- (iv) two magistrates with the rank of chief magistrate designated by the respective magistrates with that rank; 15
- (v) the Chief Director: Justice College;
- (vi) one magistrate designated by the Magistrates' Association of South Africa;
- (vii) one advocate and one attorney designated by the General Council of the Bar of South Africa and the Association of Law Societies of the Republic of South Africa, respectively; and 20
- (viii) one legal academic designated by the Society of University Teachers of Law.

(b) The chairman shall designate one of the persons referred to in paragraph (a)(iii) to (v), inclusive, as vice-chairman of the Commission, and when the chairman is not available, the vice-chairman shall perform the functions assigned to the chairman by or under this Act. 25

(2) A member of the Commission shall be appointed for a period not exceeding five years, and any such appointment may be withdrawn by the State President at any time after consultation with the Commission if in his opinion there are sound reasons for doing so. 30

(3) Any person whose period of office as a member of the Commission has expired, may be reappointed.

(4) A vacancy in the Commission shall not affect the validity of the proceedings or decisions of the Commission. 35

Objects of Commission

4. The objects of the Commission shall be—

- (a) to ensure that the appointment, promotion, transfer or discharge of, or disciplinary steps against, judicial officers in the lower courts take place without favour or prejudice, and that the applicable laws and administrative directions in connection with such action are applied uniformly and correctly; 40
- (b) to ensure that no influencing or victimization of judicial officers in the lower courts takes place;
- (c) to endeavour to promote the continuous training of judicial officers in the respective lower courts and to make recommendations in regard thereto to the Minister; 45
- (d) to compile a code of conduct for judicial officers in the lower courts;
- (e) to advise the Minister and to make recommendations to him regarding the administrative matters applicable to magistrates, including proposals regarding legislation purporting to regulate the conditions of service and relevant matters regarding magistrates, separately; 50
- (f) to carry out investigations and make recommendations to the Minister regarding the matters mentioned in section 13(3)(a);
- (g) to advise the Minister or to make recommendations to him regarding the requirements for appointment and the appointment of judicial officers in the respective lower courts; and 55

- (h) to advise the Minister or to make recommendations to him or to report to the Minister for the information of Parliament regarding any matter which, in the opinion of the Commission, is of interest for—
- (i) the independence of the dispensing of justice; and
 - (ii) the efficiency of the administration of justice, in the lower courts.

Meetings of Commission

5. (1) Meetings of the Commission shall be held at the times and places determined—
- (a) by the chairman or, if he is not available, by the vice-chairman of the Commission; or
 - (b) if both the chairman and the vice-chairman of the Commission are not available, by the majority of the members of the Commission.
- (2) The majority of the members of the Commission shall constitute a quorum for a meeting of the Commission.
- (3) If both the chairman and the vice-chairman of the Commission are absent from a meeting of the Commission, the members present shall elect one of their number to preside at that meeting.
- (4) The person presiding at a meeting of the Commission may regulate the proceedings and procedure thereat, including the quorum for a decision of the Commission, and shall cause minutes to be kept of the proceedings.
- (5) The proceedings of the Commission shall take place *in camera* unless the person presiding at a meeting directs otherwise.

Committees of Commission

6. (1) The Commission may establish one or more committees consisting of one or more members of the Commission designated by the Commission and one or more other persons, if any, whom the Commission may appoint for that purpose and for the period determined by it.
- (2) The Commission may extend the period of an appointment made by it under subsection (1) or withdraw such appointment during the period referred to in that subsection.
- (3) The Commission shall designate a chairman for every committee and, if it deems it necessary, a vice-chairman.
- (4) A committee shall, subject to the directions of the Commission, perform such functions of the Commission as the Commission may assign to it.
- (5) On completion of the functions assigned to it in terms of subsection (4), a committee shall submit a written report thereon to the Commission, whereupon the committee shall automatically dissolve.
- (6) The Commission may at any time dissolve any committee.
- (7) The provisions of section 5 shall *mutatis mutandis* apply to a meeting of a committee.

Functions of Commission

7. (1) The Commission may, in order to achieve its objects mentioned in section 4—
- (a) carry out or cause to be carried out any investigation that it deems necessary;
 - (b) obtain access to official information or documents;
 - (c) hear any person or summon any person to appear before it for questioning, or require from any person a written explanation in respect of any matter falling within the ambit of its objects;
 - (d) advise the Minister with regard to any matter or provide him with a recommendation;
 - (e) make known any finding, point of view or recommendation of the Commission in the manner which and to whom it deems fit; and
 - (f) subject to the provisions of subsection (2), report to the Minister for the information of Parliament on any matter it deems fit.

(2) A report regarding a matter contemplated in subsection (1)(f), shall be tabled in Parliament by the Minister within 14 days after it was presented to him, if Parliament is then in session, or, if Parliament is not then in session, within 14 days after the commencement of its next ensuing session.

(3) A committee may, subject to the directions of the Commission, exercise any of the powers referred to in subsection (1)(a), (b) or (c). 5

(4) Any person who intentionally obstructs the Commission or a committee in the exercising of its powers under subsection (1)(a), (b) or (c), shall be guilty of an offence and liable upon conviction to a fine or to imprisonment for a period not exceeding three months. 10

Remuneration and expenses of members of Commission and committees

8. (1) The chairman of the Commission or a member of a committee who is a judge of the Supreme Court, may be paid such allowances for travelling and subsistence expenses incurred by him in the performance of his functions in terms of this Act as the Minister may determine with the concurrence of the Minister of State Expenditure. 15

(2) A member of the Commission or a committee who is not a judge or magistrate and who is not subject to the laws governing the public service, may be paid such remuneration, including allowances for travelling and subsistence expenses incurred by him in the performance of his functions in terms of this Act, as the Minister may determine with the concurrence of the Minister of State Expenditure. 20

Secretary and staff of Commission

9. The work incidental to the performance by the Commission of its functions shall be performed by officers of the Department of Justice designated by the Director-General: Justice, of whom one shall be designated by him as secretary of the Commission. 25

Appointment of magistrates

10. The Minister shall, after consultation with the Commission, appoint magistrates in respect of lower courts under and subject to the Magistrates' Courts Act. 30

Conditions of service of magistrates, except salary and vacation of office

11. Subject to the provisions of this Act, the conditions of service of a magistrate shall be determined in accordance with the regulations under section 16.

Salaries of magistrates 35

12. (1) (a) Subject to the provisions of this section, any person occupying the office of magistrate shall, in respect of that office, be paid a salary in accordance with the scale determined from time to time for his rank and grade by the Minister by notice in the *Gazette* in consultation with the Commission and after consultation with the Commission for Administration and with the concurrence of the Minister of State Expenditure. 40

(b) Different categories of salaries and salary scales may be so determined in respect of different categories of magistrates.

(2) A notice in terms of subsection (1) or any provision thereof may commence with effect from a date which may not be more than one year before the date of publication thereof. 45

(3) The first notice in terms of subsection (1) shall be issued as soon as possible after the commencement of this Act, and thereafter such a notice shall be issued if circumstances, including any revision and adjustment of salaries and allowances of public servants since the latest revision and adjustment of salaries of magistrates, so justify. 50

(4) (a) A notice issued in terms of subsection (1) shall be tabled in Parliament within 14 days after publication thereof, if Parliament is then in session, or, if Parliament is not then in session, within 14 days after the commencement of its next ensuing session. 55

(b) If Parliament by resolution disapproves such a notice or any provision thereof, that notice or that provision, as the case may be, shall lapse to the extent to which it is so disapproved with effect from the date on which it is so disapproved.

(c) The lapsing of such a notice or provision shall not affect— 5

(i) the validity of anything done under the notice or provision up to the date on which it so lapsed;

(ii) any right, privilege, obligation or liability acquired, accrued or incurred as at that date under or by virtue of the notice or provision.

(5) The amount of any salary payable in terms of subsection (1), shall be paid 10 from moneys appropriated by Parliament for that purpose.

(6) The salary payable to a magistrate shall not be reduced except by Act of Parliament: Provided that a disapproval contemplated in subsection (4)(b) shall, for the purposes of this subsection, not be deemed to result in a reduction of such salary. 15

(7) If an officer or employee in the public service is appointed as a magistrate, the period of his service as a magistrate shall be reckoned as part of and continuous with his service in the public service for the purposes of leave, pension and any other condition of service.

Vacation of office and discharge of magistrates 20

13. (1) A magistrate shall vacate his office on attaining the age of 65 years: Provided that if he attains the said age after the first day of any month, he shall be deemed to attain that age on the first day of the next ensuing month.

(2) A magistrate shall not be suspended or removed from office except in accordance with the provisions of subsections (1), (3), (4) and (5). 25

(3) (a) The Minister may suspend a magistrate on the recommendation of the Commission and, subject to the provisions of this subsection, remove him from office—

(i) for misconduct;

(ii) on account of continued ill-health; or 30

(iii) on account of incapacity to carry out his duties of office efficiently.

(b) A magistrate so suspended from office shall receive, for the duration of such suspension, no salary or such salary as may be determined by the Minister on the recommendation of the Commission.

(c) A report in which the suspension of a magistrate and the reason therefor are 35 made known, shall be tabled in Parliament by the Minister within 14 days after such suspension, if Parliament is then in session, or, if Parliament is not then in session, within 14 days after the commencement of its next ensuing session.

(d) If Parliament, within 21 days after the report referred to in paragraph (c) was tabled in Parliament, passes a resolution in which the restoration to his office of 40 a magistrate so suspended is recommended, such magistrate shall be restored to his office accordingly.

(e) If Parliament does not pass a resolution in accordance with paragraph (d), the Minister shall confirm the suspension and remove the magistrate concerned 45 from his office.

(4) The Minister shall remove a magistrate from his office if Parliament passes a resolution recommending such removal on the ground of misconduct of the magistrate or on account of his continued ill-health or his incapacity to carry out his duties of office efficiently.

(5) (a) The Minister may, at the request of a magistrate, allow such magistrate 50 to vacate his office—

(i) on account of continued ill-health; or

(ii) for any other reason which the Minister deems sufficient.

(b) Any request of a magistrate contemplated in paragraph (a)(ii) shall be addressed to the Minister so that he receives it at least six calendar months before 55 the date on which the magistrate wishes so to vacate his office, unless the Minister approves a shorter period in a specific case.

(c) If a magistrate—

- (i) is allowed to vacate his office in terms of paragraph (a)(i), he shall be entitled to such pension benefits as he would have been entitled to under the pensions Act applicable to him if his services had been terminated on the ground of continued ill-health occasioned without his being instrumental thereto; or 5
- (ii) is allowed to vacate his office in terms of paragraph (a)(ii), he shall be deemed—
 - (aa) to have been removed from office to promote efficiency for reasons other than his own unfitness or incapacity; or
 - (bb) to have been retired in accordance with section 15(4) of the Public Service Act, 1984 (Act No. 111 of 1984), 10
 - as the Minister may direct, and he shall be entitled to such pension benefits as he would have been entitled to under the pensions Act applicable to him if he had been so removed from office or had been so retired, according to the direction of the Minister. 15

Powers and duties of magistrates

14. A magistrate shall possess the powers and perform the duties conferred on or assigned to him by or under the laws of the Republic or, in any specific case, by the Minister after consultation with the Commission.

Magistrates shall not perform other paid work 20

15. No magistrate shall, without the consent of the Minister, perform any paid work outside his duties of office.

Regulations

16. (1) The Minister may, after the Commission has made a recommendation, make regulations regarding the following matters in relation to judicial officers in the lower courts: 25

- (a) (i) The requirements for appointment and the appointment, promotion, transfer, discharge and disciplinary steps;
- (ii) the recognition of appropriate qualifications and experience for the purposes of the determination of salary; 30
- (iii) the procedure and manner of and criteria for evaluation and the conditions or requirements for the purposes of promotion;
- (iv) transfer and resettlement costs;
- (b) the duties, powers, conduct, discipline, hours of attendance, leave of absence, including leave gratuity, and pension, including contributions to a pension fund, and any other condition of service, including the occupation of official quarters; 35
- (c) the creation of posts on the fixed establishment, and the number, grading, regrading, designation, redesignation or conversion of posts on the fixed establishment of any magistrate's office; 40
- (d) the training of judicial officers in the various lower courts, including financial assistance for such training;
- (e) a code of conduct to be complied with by judicial officers;
- (f) the provision of official transport;
- (g) the conditions on which and the circumstances under which remuneration for overtime duty, and travel, subsistence, climatic, local and other allowances, may be paid; 45
- (h) the circumstances under which a medical examination shall be required for the purposes of any provision of this Act or any other law, and the form of medical reports and certificates; 50
- (i) the legal liability of any judicial officer in respect of any act done in terms of this Act or any other law and the legal liability emanating from the use of official transport;
- (j) the circumstances under which and the conditions and manner in which a judicial officer may be found guilty of misconduct, or to be suffering 55

- from continued ill-health, or of incapacity to carry out his duties of office efficiently;
- (k) the procedure for dealing with complaints and grievances of judicial officers, and the manner in which and time when or period wherein and person to whom documents in connection with requests and communications of such judicial officers shall be submitted; 5
- (l) the recognition of any professional society;
- (m) the membership or conditions of membership of a particular medical aid scheme or medical aid society and the manner in and the conditions on which membership fees and other moneys which are payable or owing by or in respect of judicial officers or their dependants, to a medical aid scheme or medical aid society, may be recovered from the salaries of such judicial officers and paid to such medical aid scheme or medical aid society; 10
- (n) the contributions to and the rights, privileges and obligations of judicial officers or their dependants with regard to such a medical aid scheme or medical aid society; 15
- (o) in general, any matter, which is not in conflict with this Act, which is reasonably necessary for the regulation of the conditions of service of judicial officers or any matter in connection with the rights, powers, functions and duties of a judicial officer. 20
- (2) (a) A regulation made under this section shall be in force unless and until Parliament during the session in which the list referred to in section 17 of the Interpretation Act, 1957 (Act No. 33 of 1957), which relates to that regulation, has been laid upon the Table in Parliament, by resolution disapproves the regulation, in which event the regulation shall lapse with effect from a date to be specified in the resolution. 25
- (b) The lapsing of a regulation in terms of this subsection shall not affect the validity of anything done under the regulation prior to the date mentioned in the resolution. 30
- (c) The provisions of this subsection shall not affect the power of the Minister to make a new regulation regarding the matter dealt with by a regulation that has lapsed in terms of paragraph (a).
- (3) Any regulation under this section which results in State expenditure, shall be made with the concurrence of the Minister of State Expenditure. 35
- (4) No regulation made under subsection (1), shall contain any provision which affects the service benefits of any magistrate as they existed prior to the date of commencement of this section to his detriment.
- (5) Different regulations may be made under subsection (1) in respect of magistrates and other judicial officers. 40

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

17. Section 9 of the Magistrates' Courts Act is hereby amended by the substitution for paragraph (a) of subsection (1) of the following paragraph: 45

“(a) Subject to the [provisions of the law governing the public service] Magistrates Act, 1993, and the provisions of paragraph (b) of this subsection and of section 10, the Minister may appoint for any district or subdistrict a magistrate, one or more additional magistrates or one or more assistant magistrates and for every regional division a magistrate or magistrates.”. 50

Transitional provisions and saving

18. (1) Any person who immediately before the date of commencement of section 10 occupied the office of magistrate or held the substantive rank of magistrate or regional magistrate, shall as from the said date be deemed to have been duly appointed in terms of the provisions of section 9 of the Magistrates' Courts Act read with section 10 of this Act, and the provisions of this Act shall be applicable to such person. 55

(2) The salary paid to a magistrate immediately before the date of commencement of the first notice contemplated in section 12(1), or any provision thereof 60

which may be applicable to him, shall be deemed to have been determined in terms of that section.

(3) The conditions of service applicable to a person referred to in subsection (1) immediately before the date of commencement of section 12, shall not be affected to his detriment, and no such condition of service shall, after such date, be construed or applied in a manner which is less favourable to the person concerned than the manner in which it was construed or applied immediately before the said date. 5

(4) Subject to the provisions of this Act, any—

(a) law regarding any condition of service; 10

(b) measure regarding the duties, functions and powers; or

(c) arrangement regarding any administrative function,

which applied to a magistrate or other judicial officer immediately before the date of commencement of any regulation under section 16 relating to such matter, shall remain in force until the date on which such regulation commences. 15

Short title and commencement

19. (1) This Act shall be called the Magistrates Act, 1993, and shall come into operation on a date to be fixed by the State President by proclamation in the *Gazette*.

(2) Different dates may be so fixed in respect of different provisions of this Act. 20