

REPUBLIC OF SOUTH AFRICA

JUDICIAL MATTERS AMENDMENT BILL

*(As amended by the Portfolio Committee on Justice and Constitutional Development
(National Assembly) (The English text is the official text of the Bill)*

(MINISTER FOR JUSTICE AND CONSTITUTIONAL DEVELOPMENT)

[B 43B—2001]

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[] Words in bold type in square brackets indicate omissions from existing enactments.

To amend the Administration Amendment Act, 1929, so as to further regulate the jurisdiction of the Divorce Courts; to amend the Insolvency Act, 1936, so as to further regulate the jurisdiction of the High Court; to amend the Extradition Act, 1962, so as to provide that the law of speciality applies in cases of surrender in terms of a designation; to amend the South African Law Commission Act, 1973, so as to bring the appointment of a member of the judiciary as chairperson of the South African Law Commission into line with the court structure as provided for in the Constitution; to amend the Criminal Procedure Act, 1977, so as to provide for the release or amendment of bail conditions of an accused on account of prison conditions; to further regulate the referral of an accused in order to inquire into his or her capacity to understand criminal proceedings or regarding the criminal responsibility of an accused concerning the offence with which he or she is charged; to amend the Rules Board for Courts of Law Act, 1985, so as to bring the designation of a member of the judiciary as chairperson or vice-chairperson of the Rules Board for Courts of Law into line with the court structure as provided for in the Constitution; to amend the Sheriffs Act, 1986, so as to further regulate the constitution of the Board for Sheriffs; to amend the General Law Third Amendment Act, 1993, so as to repeal an obsolete provision; to amend the General Law Fourth Amendment Act, 1993, so as to repeal obsolete provisions; to amend the General Law Sixth Amendment Act, 1993, so as to repeal an obsolete provision; to amend the Hague Convention on the Civil Aspects of International Child Abduction Act, 1996, so as to effect a textual correction; to amend the Criminal Law Amendment Act, 1997, in order to regulate the period of operation of sections 52A and 52B; to amend the National Prosecuting Authority Act, 1998, in order to regulate certain executive functions of the Minister; to amend the Maintenance Act, 1998, so as to provide that any maintenance or related order may be enforced by a maintenance court other than the court where such order was made; to amend the Recognition of Customary Marriages Act, 1998, so as to substitute a definition; to amend the Promotion of Access to Information Act, 2000, so as to effect certain textual corrections; to amend the Promotion of Administrative Justice Act, 2000, so as to effect a textual correction; to amend the Cross-Border Insolvency Act, 2000, so as to repeal a provision; and to provide for matters connected therewith.

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

Amendment of section 10 of Act 9 of 1929, as amended by section 5 of Act 42 of 1942, section 27 of Act 56 of 1949, section 26 of Act 54 of 1952, section 2 of Act 34 of 1986, section 1 of Act 51 of 1991 and section 1 of Act 65 of 1997

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1. Section 10 of the Administration Amendment Act, 1929, is amended by the substitution for paragraph (a) of subsection (1) of the following paragraph:

- “(a) Notwithstanding anything to the contrary in any other law contained, the President may by proclamation in the *Gazette* establish Divorce Courts which shall have jurisdiction to hear and determine suits relating to the nullity of a marriage and relating to divorce between persons and to decide upon any question arising therefrom, and to hear any matter and grant any order provided for in terms of the Recognition of Customary Marriages Act, 1998 (Act No. 120 of 1998), if the parties are or if either of the parties is—
- (i) domiciled in the area of jurisdiction of the court on the date on which the [action is] proceedings are instituted; or
 - (ii) ordinarily resident in the area of jurisdiction of the court on the said date and has or have been ordinarily resident in the Republic for a period of not less than one year immediately prior to that date.”.

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Amendment of section 149 of Act 24 of 1936, as amended by section 33 of Act 42 of 2000

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2. Section 149 of the Insolvency Act, 1936, is amended by the substitution for the proviso to subsection (1) of the following proviso:

- “Provided that when it appears to the court equitable or convenient that the estate of a person [not domiciled in the Republic be sequestrated elsewhere,] domiciled in a State which has not been designated in terms of section 2 of the Cross-Border Insolvency Act, 2000 (Act No. 42 of 2000), should be sequestrated by a court outside the Republic, or that the estate of a person over whom it has jurisdiction be sequestrated by another court within the Republic, the court may refuse or postpone the acceptance of the surrender or the sequestration.”.

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Amendment of section 19 of Act 67 of 1962, as amended by section 8 of Act 77 of 1996

3. The following section is substituted for section 19 of the Extradition Act, 1962:

“Persons surrendered to Republic not to be detained or tried for certain offences in certain circumstances

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19. No person surrendered to the Republic by any foreign State in terms of an extradition agreement or by any designated State shall, until he or she has been returned or had an opportunity of returning to such foreign or designated State, be detained or tried in the Republic for any offence committed prior to his or her surrender other than the offence in respect of which extradition was sought or an offence of which he or she may lawfully be convicted on a charge of the offence in respect of which extradition was sought, unless such foreign or designated State or such person consents thereto: Provided that any such person may at the request of another foreign or designated State and with a view to his or her surrender to such State, be detained in the Republic for an extraditable offence which was so committed [and to which that agreement relates], provided such detention is not contrary to the laws of [or the extradition agreement with] the State which surrendered him or her to the Republic.”.

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Amendment of section 3 of Act 19 of 1973, as amended by section 1 of Act 85 of 1984 and section 4 of Act 18 of 1996

4. Section 3 of the South African Law Commission Act, 1973, is amended by the substitution for subparagraph (i) of paragraph (a) of subsection (1) of the following subparagraph:

“(i) A judge of the **[Supreme Court of South Africa]** Constitutional Court, the Supreme Court of Appeal or a High Court, as **[chairman]** chairperson;”.

Amendment of section 9 of Act 19 of 1973, as substituted by section 6 of Act 85 of 1984 and amended by section 4 of Act 18 of 1996

5. Section 9 of the South African Law Commission Act, 1973, is amended by the substitution for paragraph (a) of subsection (1) of the following paragraph:

“(a) is a judge of the **[Supreme Court of South Africa]** Constitutional Court, the Supreme Court of Appeal or a High Court shall, notwithstanding anything to the contrary contained in any other law, in addition to his or her salary and any allowance, including any allowance for reimbursement of travelling and subsistence expenses, which may be payable to him or her in his or her capacity as such a judge, be entitled to such allowance (if any) in respect of the performance of his or her functions as such a member as the President may determine;”.

Insertion of section 63A in Act 51 of 1977

6. The following section is inserted after section 63 of the Criminal Procedure Act, 1977:

“Release or amendment of bail conditions of accused on account of prison conditions

63A. (1) If a Head of Prison contemplated in the Correctional Services Act, 1998 (Act No. 111 of 1998), is satisfied that the prison population of a particular prison is reaching such proportions that it constitutes a material and imminent threat to the human dignity, physical health or safety of an accused—

(a) who is charged with an offence falling within the category of offences—

(i) for which a police official may grant bail in terms of section 59; or

(ii) referred to in Schedule 7;

(b) who has been granted bail by any lower court in respect of that offence, but is unable to pay the amount of bail concerned; and

(c) who is not also in detention in respect of any other offence falling outside the category of offences referred to in paragraph (a),

that Head of Prison may apply to the said court for the—

(aa) release of the accused on warning in lieu of bail; or

(bb) amendment of the bail conditions imposed by that court on the accused.

(2) (a) An application contemplated in subsection (1) must be lodged in writing with the clerk of the court, and must—

(i) contain an affidavit or affirmation by the Head of Prison to the effect that he or she is satisfied that the prison population of the prison concerned is reaching such proportions that it constitutes a material and imminent threat to the human dignity, physical health or safety of the accused concerned; and

(ii) contain a written certificate by the Director of Public Prosecutions concerned, or a prosecutor authorised thereto by him or her in writing, to the effect that the prosecuting authority does not oppose the application.

(b) The accused and his or her legal representative, if any, must be notified of an application referred to in subsection (1).

(c) The clerk of the court must, without delay, cause the application to be placed before any magistrate or regional magistrate, as the case may be, who may consider the application in chambers.

(d) The application may be considered in the presence of the accused if the magistrate or regional magistrate deems it necessary.

(3) (a) If the magistrate or regional magistrate is satisfied that the application complies with the requirements set out in subsection (2)(a), he or she may—

- (i) order the release of the accused from custody and, if the accused is present, warn him or her to appear before a specified court at a specified time on a specified date in connection with such offence or, as the case may be, to remain in attendance at the proceedings relating to the offence in question, and the court may, at the time of such order or at any time thereafter, impose any condition referred to in section 62 in connection with such release; or
- (ii) reduce the amount of bail determined under section 60 and, if deemed appropriate, amend or supplement any condition imposed under section 60 or 62.

(b) If the accused is absent when an order referred to in paragraph (a)(i) is made or when bail conditions are amended in terms of paragraph (a)(ii), a correctional official duly authorised by the Head of the prison where the accused is in custody must—

- (i) hand to the accused a certified copy of the said order or of the bail conditions as amended and explain to the accused the import thereof; and
 - (ii) return to the clerk of the court a certificate under the hand of that official and signed by the accused, that he or she has handed the certified copy of such order or conditions to the accused and that he or she has explained to the accused the import thereof,
- and the mere production to the court of the said certificate shall be *prima facie* proof that the said certified copy was handed and explained to the accused.

(c) The provisions of section 72(2)(a) apply, with the necessary changes, in respect of an accused released in terms of paragraph (a)(i).

(4) (a) The National Director of Public Prosecutions may, in consultation with the Commissioner of Correctional Services, issue directives regarding—

- (i) the establishment of monitoring and consultative mechanisms for bringing an application contemplated in subsection (1); and
- (ii) the procedure to be followed by a Head of Prison and a Director of Public Prosecutions whenever it appears that it is necessary to bring an application contemplated in subsection (1).

(b) Any directives issued in terms of paragraph (a) must be submitted to Parliament before they take effect.”.

Substitution of section 64 of Act 51 of 1977, as substituted by section 6 of Act 75 of 1995 and amended by section 5 of Act 85 of 1997

7. The following section is substituted for section 64 of the Criminal Procedure Act, 1977:

“Proceedings with regard to bail and conditions to be recorded in full

64. The court dealing with bail proceedings as contemplated in section 50(6) or which considers bail under section 60 or which imposes any further condition under section 62 or which, under section 63 or 63A, amends the amount of bail or amends or supplements any condition or refuses to do so, shall record the relevant proceedings in full, including the conditions imposed and any amendment or supplementation thereof, or shall cause such proceedings to be recorded in full, and where such court is a magistrate’s court or a regional court, any document purporting to be an extract from the record of proceedings of that court and purporting to be certified as correct by the clerk of the court, and which sets out the

conditions of bail and any amendment or supplementation thereof, shall, on its mere production in any court in which the relevant charge is pending, be prima facie proof of such conditions or any amendment or supplementation thereof.”.

Amendment of section 79 of Act 51 of 1977, as amended by section 4 of Act 4 of 1992, section 17 of Act 116 of 1993, section 44 of Act 129 of 1993, section 28 of Act 105 of 1997 and section 6 of Act 68 of 1998 5

8. Section 79 of the Criminal Procedure Act, 1977, is amended by—

- (a) the substitution for subsection (8) of the following subsection: 10

“(8) A psychiatrist and a clinical psychologist appointed under subsection (1), other than a psychiatrist and a clinical psychologist appointed **[by an]** for the accused, shall, subject to the provisions of subsection (10), be appointed from the list of psychiatrists and clinical psychologists referred to in subsection (9)(a).”;
- (b) the substitution for subsection (9) of the following subsection: 15

“(9) The Director-General: **[National] Health [and Population Development]** shall compile and keep a list of—

 - (a) psychiatrists and clinical psychologists who are prepared to conduct any enquiry under this section; and
 - (b) **[and section 286A(3)]** psychiatrists who are prepared to conduct 20

any enquiry under section 286A (3),

and shall provide the registrars of the **[several divisions of the supreme court] High Courts** and all clerks of magistrates’ courts with a copy thereof.”;
- (c) the substitution for subsection (10) of the following subsection: 25

“(10) Where the list compiled and kept under subsection (9)(a) does not include a sufficient number of psychiatrists and clinical psychologists who may conveniently be appointed for any enquiry under this section, a psychiatrist and clinical psychologist may be appointed for the purposes of such enquiry notwithstanding that his or her name does not appear on 30 such list.”;
- (d) the substitution for subsection (11) of the following subsection:

“(11) (a) A psychiatrist or clinical psychologist designated or appointed under subsection (1) by or at the request of the court to enquire into the mental condition of an accused and who is not in the full-time 35 service of the State, shall be compensated for his or her services in connection with the enquiry from public funds in accordance with a tariff determined by the Minister in consultation with the Minister of Finance.

(b) A psychiatrist appointed under subsection (1)(b)(iii) **[by an]** for the accused to enquire into the mental condition of the accused and who is 40 not in the full-time service of the State, shall be compensated for his or her services from public funds in the circumstances and in accordance with a tariff determined by the Minister in consultation with the Minister of Finance.”; and
- (e) the substitution for subsection (12) of the following subsection: 45

“(12) For the purposes of this section a psychiatrist or a clinical psychologist means a person registered as a psychiatrist or a clinical psychologist under the **[Medical, Dental and Supplementary] Health [Service] Professions Act, 1974 (Act No. 56 of 1974).**”.

Amendment of section 3 of Act 107 of 1985, as amended by section 2 of Act 77 of 1989 and section 22 of Act 62 of 2000 50

9. Section 3 of the Rules Board for Courts of Law Act, 1985, is amended by the substitution for paragraphs (a) and (b) of subsection (1) of the following paragraphs, respectively:

- “(a) a judge of the Constitutional Court, the Supreme Court of Appeal or a High 55 Court, whom the Minister designates as the chairperson;

- (b) a judge or retired judge of the Constitutional Court, the Supreme Court of Appeal or a High Court, whom the Minister designates as the vice-chairperson;”.

Amendment of section 8 of Act 107 of 1985, as amended by section 4 of Act 18 of 1996 and section 24 of Act 62 of 2000

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10. Section 8 of the Rules Board for Courts of Law Act, 1985, is amended by the substitution for subsection (1) of the following subsection:

- “(1) A member of the Board who is a judge of the Constitutional Court, the Supreme Court of Appeal or a High Court shall be entitled to such allowance for travelling and subsistence expenses incurred by him or her in the performance of his or her functions in terms of this Act as the Minister with the concurrence of the Minister of Finance may determine.”.

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Amendment of section 9 of Act 90 of 1986, as amended by section 4 of Act 74 of 1998

11. (1) Section 9 of the Sheriffs Act, 1986, is amended by—

- (a) the substitution for paragraph (a) of subsection (2) of the following paragraph: 15

“(a) not fewer than six and not more than nine sheriffs, each from a different province of the Republic, chosen by the Minister from among at least [twelve] ~~eighteen~~ sheriffs[, whose names have been submitted for that purpose by the South African Institute for Sheriffs] nominated from within the Sheriff’s profession, of whom at least two must be nominated from each province, to represent the profession as a whole;”;

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- (b) the deletion of subsection (3).

(2) Any person holding office as a member of the Board for Sheriffs in terms of section 9(2)(a) of the Sheriffs Act, 1986, at the commencement of this Act, shall continue in that office for the remainder of his or her term of office.

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Repeal of section 70 of Act 129 of 1993

12. Section 70 of the General Law Third Amendment Act, 1993, is repealed.

Repeal of sections 25 and 36 of Act 132 of 1993

13. Sections 25 and 36 of the General Law Fourth Amendment Act, 1993, are repealed.

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Repeal of section 24 of Act 204 of 1993

14. Section 24 of the General Law Sixth Amendment Act, 1993, is repealed.

Amendment of the Schedule to Act 72 of 1996

15. The Schedule to the Hague Convention on the Civil Aspects of International Child Abduction Act, 1996, is amended by the substitution for Article 44 of the following Article:

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“Article 44

The Convention shall remain in force for five years from the date of its entry into force in accordance with the first paragraph of Article 43 even for States which subsequently have ratified, accepted, approved it or acceded to it.

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If there has been no denunciation, it shall be renewed tacitly every five years.

Any denunciation shall be notified to the Ministry of Foreign Affairs of the Kingdom of the Netherlands at least six months before the expiry of the five year period. It may be limited to certain of the territories or territorial units to which the Convention applies.

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The denunciation shall have effect only as regards the State which has notified it. The Convention shall remain in force for the other Contracting States.”.

Amendment of section 53 of Act 105 of 1997, as substituted by section 36 of Act 62 of 2000

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16. Section 53 of the Criminal Law Amendment Act, 1997, is amended by—

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

“(1) Sections 51 and 52 [, **52A and 52B**] shall, subject to subsections (2) and (3), cease to have effect after the expiry of two years from the commencement of this Act.”; and

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(b) the insertion after subsection (2) of the following subsection:

“(2A) Sections 52A and 52B shall lapse on the date when sections 51 and 52 cease to have effect.”.

Amendment of section 40 of Act 32 of 1998, as amended by section 17 of Act 61 of 2000

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17. Section 40 of the National Prosecuting Authority Act, 1998, is amended by the substitution for the words preceding paragraph (a) of subsection (2) of the following words:

“(2) The *Minister* may, [in] after consultation with the *National Director*, make regulations regarding the *Directorate of Special Operations*, prescribing—”.

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Amendment of section 26 of Act 99 of 1998

18. Section 26 of the Maintenance Act, 1998, is amended by the substitution for paragraph (a) of subsection (2) of the following paragraph:

“(a) If any maintenance order made under this Act or any order made under section 16(1)(a)(ii), 20 or 21(4) has remained unsatisfied for a period of ten days from the day on which the relevant amount became payable or any such order was made, as the case may be, the person in whose favour any such order was made may apply to the maintenance court where [any such order was made] where that person is resident—

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(i) for the authorisation of the issue of a warrant of execution referred to in section 27(1);

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(ii) for an order for the attachment of emoluments referred to in section 28(1); or

(iii) for an order for the attachment of any debt referred to in section 30(1).”.

Amendment of section 1 of Act 120 of 1998

19. Section 1 of the Recognition of Customary Marriages Act, 1998, is amended by the substitution for the definition of “court” of the following definition:

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“ ‘court’ means a High Court of South Africa, [or] a family court established under any law[, and for purposes of section 8,] or a Divorce Court established in terms of section 10 of the Administration Amendment Act, 1929 (Act No. 9 of 1929);”.

Amendment of index to Act 2 of 2000

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20. The index to the Promotion of Access to Information Act, 2000 (hereinafter referred to as the Access to Information Act), is amended by the substitution under Chapter 2 of Part 1 for item 7 of the following item:

“7. Act not applying to records [required] requested for criminal or civil proceedings after commencement of proceedings”.

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Amendment of section 1 of Act 2 of 2000

21. Section 1 of the Access to Information Act is amended by the substitution for subparagraph (ii) of paragraph (a) of the definition of “information officer” of the following subparagraph:

- “(ii) not so mentioned, means the Director-General, head, executive director or equivalent officer, respectively, of that national department, provincial administration or organisational component, respectively, or the person who is acting as such.”.

Amendment of section 2 of Act 2 of 2000

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22. Section 2 of the Access to Information Act is amended by the substitution for subsection (2) of the following subsection:

“(2) Section 12 must not be construed as excluding—

- (a) the Cabinet and its committees; or
- (b) an individual member of Parliament or of a provincial legislature, 10
from the operation of the definition of ‘requester’ in relation to a private body in section 1, section [49] 50 and all other provisions of this Act related thereto.”.

Substitution of heading of section 7 of Act 2 of 2000

23. The following heading is substituted for the heading to section 7 of the Access to Information Act: 15

“Act not applying to records **[required]** requested for criminal or civil proceedings after commencement of proceedings”.

Amendment of section 10 of Act 2 of 2000

24. Section 10 of the Access to Information Act is amended by the substitution for subparagraph (ii) of paragraph (b) of subsection (2) of the following subparagraph: 20

- “(ii) every deputy information officer of every public body **[appointed]** designated in terms of section 17(1);”.

Substitution of section 12 of Act 2 of 2000

25. The following section is substituted for section 12 of the Access to Information Act: 25

“Act not applying to certain public bodies or officials thereof

12. This Act does not apply to a record **[of]**—

- (a) of the Cabinet and its committees;
- (b) relating to the judicial functions of— 30
 - (i) a court referred to in section 166 of the Constitution;
 - (ii) a Special Tribunal established in terms of section 2 of the Special Investigating Units and Special Tribunals Act, 1996 (Act No. 74 of 1996); or
 - (iii) a judicial officer of such court or Special Tribunal; or
- (c) of an individual member of Parliament or of a provincial legislature in 35
that capacity.”.

Amendment of section 13 of Act 2 of 2000

26. Section 13 of the Access to Information Act is amended by the substitution for the words preceding paragraph (a) of the following words:

“For the purposes of this Act, the Minister may, on his or her own accord or on the 40
request of the relevant public body or bodies or a body referred to in paragraph (c), **[in the prescribed manner and]** by notice in the *Gazette*—”.

Amendment of section 14 of Act 2 of 2000

27. Section 14 of the Access to Information Act is amended by the substitution for paragraph (b) of subsection (1) of the following paragraph: 45

- “(b) the postal and street address, phone and fax number and, if available, electronic mail address of the information officer of the body and of every deputy information officer of the body **[appointed]** designated in terms of section 17(1);”.

Amendment of section 25 of Act 2 of 2000

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28. Section 25 of the Access to Information Act is amended by the substitution for the words preceding paragraph (a) of subsection (1) of the following words:

“Except if the provisions regarding third party notification and intervention contemplated in Chapter 5 of this Part apply, [The] the information officer to whom [a] the request [for access] is made or transferred, must, [subject to section 26 and Chapter 5 of this Part,] as soon as reasonably possible, but in any event within 30 days, after the request is received—”.

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Amendment of section 28 of Act 2 of 2000

29. Section 28 of the Access to Information Act is amended by the substitution for subsection (2) of the following subsection:

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“(2) If a request for access to—
 (a) a part of a record is granted; and
 (b) the other part of the record is refused,
 as contemplated in subsection (1), the provisions of section 25(2) apply to paragraph (a) of this **[section]** subsection and the provisions of section 25(3) apply to paragraph (b) of this **[section]** subsection.”.

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Amendment of section 32 of Act 2 of 2000

30. Section 32 of the Access to Information Act is amended by the renumbering of paragraphs (g), (h), (i) and (j) to paragraphs (f), (g), (h) and (i), consecutively.

Amendment of section 34 of Act 2 of 2000

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31. Section 34 of the Access to Information Act is amended by the substitution for subparagraph (iii) of paragraph (f) of subsection (2) of the following subparagraph:

“(iii) the classification, salary scale **[or]**, remuneration and responsibilities of the position held or services performed by the individual; and”.

Amendment of section 36 of Act 2 of 2000

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32. Section 36 of the Access to Information Act is amended by the substitution for paragraph (c) of subsection (2) of the following paragraph:

“(c) about the results of any product or environmental testing or other investigation supplied by[, a third party or the result of any such testing or investigation carried out by or on behalf of a third party and its disclosure would reveal a serious public safety or environmental risk.”.

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Amendment of section 39 of Act 2 of 2000

33. Section 39 of the Access to Information Act is amended by the substitution for subparagraph (iii) of paragraph (b) of subsection (3) of the following subparagraph:

“(iii) state adequate reasons for the refusal, as required by section 25(3), in so far as they can be given without causing the harm contemplated in **[any provision of]** subsection (1)(a) or (b); and”.

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Amendment of section 41 of Act 2 of 2000

34. Section 41 of the Access to Information Act is amended by the substitution for paragraph (a) of subsection (4) of the following paragraph:

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“(a) If a request for access to a record of a public body may be refused in terms of subsection (1), or could, if it existed, be so refused, and the disclosure of the existence or non-existence of the record would be likely to cause the harm contemplated in **[any provision of]** subsection (1), the information officer

concerned may refuse to confirm or deny the existence or non-existence of the record.”.

Amendment of section 42 of Act 2 of 2000

35. Section 42 of the Access to Information Act is amended by—

- (a) the substitution for subsection (4) of the following subsection: 5
 “(4) The information referred to in subsection (2)(c)(i) includes, without limiting the generality of that subsection, information about an agreement, or contemplated agreement, to transfer any interest in or right to shares in the capital of a public body to any person which is not a public body referred to in paragraph (a) or (b)(i) of the definition of ‘public body’ in section 1.”; and 10
- (b) the substitution for paragraph (c) of subsection (5) of the following paragraph: 15
 “(c) about the results of any product or environmental testing or other investigation supplied by[, a public body or the results of any such testing or investigation] carried out by or on behalf of a public body, and its disclosure would reveal a serious public safety or environmental risk.”.

Amendment of section 44 of Act 2 of 2000

36. Section 44 of the Access to Information Act is amended by the substitution for subsection (4) of the following subsection: 20

- “(4) A record may not be refused in terms of subsection (1) or (2) insofar as it consists of an account [~~of,~~] or a statement of reasons required to be given in accordance with section 5 of the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000).”.

Amendment of section 49 of Act 2 of 2000

37. Section 49 of the Access to Information Act is amended by the substitution for subsection (1) of the following subsection:

- “(1) The information officer of a public body must, as soon as reasonably possible, but in any event within 30 days after every third party is informed as required by section 47— 30
- (a) decide, after giving due regard to any representations made by a third party in terms of section 48, whether to grant the request for access; [~~and~~] 35
- (b) notify the third party so informed and a third party not informed in terms of section 47 (1), but that made representations in terms of section 48 or is located before the decision is taken, of the decision; and
- (c) notify the requester of the decision and, if the requester stated, as contemplated in section 18(2)(e), that he or she wishes to be informed of the decision in any other manner, inform him or her in that manner if it is reasonably possible, and if the request is— 40
- (i) granted, notify the requester in accordance with section 25(2); or
- (ii) refused, notify the requester in accordance with section 25(3).”.

Amendment of section 52 of Act 2 of 2000

38. Section 52 of the Access to Information Act is amended by—

- (a) the substitution for subparagraph (ii) of paragraph (a) of subsection (1) of the following subparagraph: 45
 “(ii) for purchase or copying from the private body; and”; and
- (b) the substitution for subsection (3) of the following subsection: 50
 “(3) The only fee payable (if any) for access to a record [~~described in a list so published~~] included in a notice in terms of subsection (2) is a prescribed fee for reproduction.”.

Amendment of section 56 of Act 2 of 2000

39. Section 56 of the Access to Information Act is amended by—

- (a) the substitution for the words preceding paragraph (a) of subsection (1) of the following words:
 “[**Subject to**] Except if the provisions regarding third party notification and intervention contemplated in Chapter 5 of this Part apply, the head of the private body to whom the request is made must, as soon as reasonably possible, but in any event within 30 days, after the request has been received or after the particulars required in terms of section 53(2) have been received—; and
- (b) the substitution for paragraph (c) of subsection (2) of the following paragraph:
 “(c) that the requester may lodge an application with a court against the access fee to be paid or the form of access granted, and the procedure, including the period allowed, for lodging the application.”.

Amendment of section 59 of Act 2 of 2000

40. Section 59 of the Access to Information Act is amended by the substitution for subsection (2) of the following subsection:

- “(2) If a request for access to—
 (a) a part of a record is granted; and
 (b) the other part of the record is refused,
 as contemplated in subsection (1), the provisions of section 56(2) apply to paragraph (a) of this [section] subsection and the provisions of section 56(3) apply to paragraph (b) of this [section] subsection.”.

Amendment of section 61 of Act 2 of 2000

41. Section 61 of the Access to Information Act is amended by the substitution for subsection (1) of the following subsection:

- “(1) If the head of a private body who grants, in terms of section 50, a request for access to a record provided by a health practitioner in his or her capacity as such about the physical or mental health, or well-being—
 (a) of the requester; or
 (b) if the request has been made on behalf of the person to whom the record relates, of that person,
 (in this section, the requester and person referred to in paragraphs (a) and (b), respectively, are referred to as the ‘the relevant person’), is of the opinion that the disclosure of the record to the relevant person might cause serious harm to his or her physical or mental health, or well-being, the [information officer] head may, before giving access in terms of section 60, consult with a health practitioner who, subject to subsection (2), has been nominated by the relevant person.”.

Amendment of section 64 of Act 2 of 2000

42. Section 64 of the Access to Information Act is amended by the substitution for paragraph (b) of subsection (2) of the following paragraph:

- “(b) the results of any product or environmental testing or other investigation supplied by[,] a third party or the results of any such testing or investigation carried out by or on behalf of a third party and its disclosure would reveal a serious public safety or environmental risk.”.

Amendment of section 68 of Act 2 of 2000

43. Section 68 of the Access to Information Act is amended by the substitution for subsection (2) of the following subsection:

- “(2) A record may not be refused in terms of subsection (1) insofar as it consists of information about the results of any product or environmental testing or other investigation supplied [,] by the private body or the results of any such testing or investigation carried out by or on behalf of the private body and its disclosure would reveal a serious public safety or environmental risk.”.

Amendment of section 73 of Act 2 of 2000

44. Section 73 of the Access to Information Act is amended by the substitution for subsection (1) of the following subsection:

- “(1) The head of a private body must, as soon as reasonably possible, but in any event within 30 days after every third party is informed as required by section 71— 5
- (a) decide, after giving due regard to any representations made by a third party in terms of section 72, whether to grant the request for access; [and]
 - (b) notify the third party so informed and a third party not informed in terms of section 71, but that made representations in terms of section 72 or is located before the decision is taken, of the decision; and 10
 - (c) notify the requester of the decision and, if the requester stated, as contemplated in section 53(2)(e), that he or she wishes to be informed of the decision in any other manner, inform him or her in that manner if it is reasonably possible, and if the request is— 15
 - (i) granted, notify the requester in accordance with section 56(2); or
 - (ii) refused, notify the requester in accordance with section 56(3).”. 15

Amendment of section 83 of Act 2 of 2000

45. Section 83 of the Access to Information Act is amended by the substitution for paragraph (e) of subsection (3) of the following paragraph: 20

“(e) train information officers and deputy information officers of public bodies;”.

Amendment of section 3 of Act 3 of 2000

46. Section 3 of the Promotion of Administrative Justice Act, 2000, is amended by the renumbering of subparagraphs (a), (b), (c), (d) and (e) of paragraph (b) of subsection (2), to subparagraphs (i), (ii), (iii), (iv) and (v), consecutively. 25

Repeal of section 33 of Act 42 of 2000

47. Section 33 of the Cross-Border Insolvency Act, 2000, is repealed.

Short title and commencement

48. (1) This Act is called the Judicial Matters Amendment Act, 2001.

(2) Sections 4, 5, 9 and 10 are deemed to have come into operation on 4 February 1997. 30

(3) Section 8 shall come into operation on the date of commencement of the Criminal Matters Amendment Act, 1998 (Act No. 68 of 1998).

MEMORANDUM ON THE OBJECTS OF THE JUDICIAL MATTERS AMENDMENT BILL, 2001

1. PURPOSE OF BILL

The main object of the Bill is to encompass in a single Bill a variety of amendments which do not require individual Amendment Bills. These amendments, to a large extent, correct deficiencies in certain provisions and repeal certain redundant provisions.

2. OBJECTS OF BILL

2.1 **Clause 1** of the Bill amends section 10 of the Administration Amendment Act, 1929 (Act No. 9 of 1929), in order to provide that the Divorce Courts established in terms of the Administration Amendment Act, 1929, may hear any matter and grant any order provided for in terms of the Recognition of Customary Marriages Act, 1998 (Act No. 120 of 1998).

2.2 **Clause 2** of the Bill amends section 149 of the Insolvency Act, 1936 (Act No. 24 of 1936), in order to provide that a High Court may refuse a sequestration order when it appears equitable or convenient that the estate of a person domiciled in a State which has not been designated in terms of section 2 of the Cross-Border Insolvency Act, 2000 (Act No. 42 of 2000), should be sequestered elsewhere.

2.3 Section 19 of the Extradition Act, 1962 (Act No. 67 of 1962), only applies in cases of surrender in terms of an extradition agreement and not in cases of surrender in terms of a designation. **Clause 3** of the Bill amends section 19 of the Extradition Act, 1962, so as to broaden the ambit of the section to also include those cases where a person has been surrendered to the Republic by a designated country.

2.4 **Clauses 4 and 5** of the Bill amend sections 3 and 9 of the South African Law Commission Act, 1973 (Act No. 19 of 1973), respectively, so as to bring the appointment of a member of the judiciary as chairperson of the South African Law Commission into line with the court structure as provided for in the Constitution, by referring to a judge of the Constitutional Court, Supreme Court of Appeal or a High Court.

2.5 The number of unsentenced prisoners has, among others, been identified as a substantial contributing factor to the overcrowding of prisons. **Clause 6** of the Bill aims to amend Chapter 9 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), by inserting a new section 63A, in order to provide for the release of an accused person or amendment of the bail conditions of an accused person who—

- * is charged with certain less serious offences;
- * has been granted bail by any lower court in respect of the relevant offences, but who is unable to pay the amount of bail concerned; and
- * is in detention only in respect of the less serious offences concerned,

on account of prison conditions which constitute a material and imminent threat to the human dignity, physical health or safety of the accused person concerned. **Clause 7** of the Bill aims to amend section 64 of the Criminal Procedure Act, 1977, so as to require that the proceedings contemplated in section 63A be recorded in full.

2.6 Section 79 of the Criminal Procedure Act, 1977, deals with enquiries into an accused person's—

- * capacity to understand the criminal proceedings concerned; or
- * criminal responsibility for the offence concerned.

Section 6 of the Criminal Matters Amendment Act, 1998 (Act No. 68 of 1998), which has not yet been put into operation, amends section 79(1) of the Criminal Procedure Act, 1977, and provides that such an enquiry must be conducted and reported on by a psychiatrist and, where the court so directs, a clinical psychologist. Subsections (8) to (12) of section 79 contain a number of provisions related to the appointment of psychiatrists for the purposes of conducting such enquiries, but similar provisions have not been made in respect of clinical psychologists. **Clause 8** of the Bill aims to amend the provisions of section 79(8) to (12) by inserting appropriate references to clinical psychologists. This amendment will facilitate the implementation of the Criminal Matters Amendment Act, 1998.

2.7 **Clauses 9 and 10** of the Bill amend sections 3 and 8 of the Rules Board for Courts of Law Act, 1985 (Act No. 107 of 1985), respectively, so as to bring the designation of a member of the judiciary as chairperson or vice-chairperson of the Rules Board for

Courts of Law into line with the court structure as provided for in the Constitution by referring to a judge of the Constitutional Court as well.

2.8 **Clause 11** of the Bill amends section 9 of the Sheriff's Act, 1986 (Act No. 90 of 1986), so as to further regulate the constitution of the Board for Sheriffs.

2.9 Section 70 of the General Law Third Amendment Act, 1993 (Act No. 120 of 1993), which has not yet been put into operation, amends section 122 of the Road Traffic Act, 1989 (Act No. 29 of 1989), by inserting a new subsection (7A). The whole of the Road Traffic Act, 1989, was repealed by section 93(1) of the National Road Traffic Act, 1996 (Act No. 93 of 1996), which came into operation on 1 August 2000. Section 70 of the General Law Third Amendment Act, 1993, has become redundant and is therefore repealed by **clause 12**.

2.10 Sections 25 and 36 of the General Law Fourth Amendment Act, 1993 (Act No. 132 of 1993), which have not yet been put into operation, amended section 14 of the Occupational Diseases in Mines and Works Act, 1973 (Act No. 78 of 1973), and section 32 of the Minerals Act, 1991 (Act No. 50 of 1991), respectively. Section 14 of the Occupational Diseases in Mines and Works Act, 1973, has been repealed by section 6 of the Occupational Diseases in Mines and Works Amendment Act, 1993 (Act No. 208 of 1993), and section 32 of the Minerals Act, 1991, has been repealed by section 99 of the Mine Health and Safety Act, 1996 (Act No. 29 of 1996). **Clause 13** therefore repeals sections 25 and 36 of the General Law Fourth Amendment Act, 1993.

2.11 **Clause 14** repeals section 24 of the General Law Sixth Amendment Act, 1993 (Act No. 204 of 1993), which was enacted to regulate the granting of vacation leave and the resignation of civil servants for purposes of an election in terms of the Electoral Act, 1993 (Act No. 202 of 1993). Section 115 of the Electoral Act, 1998 (Act No. 73 of 1998), repealed the Electoral Act, 1993, making section 24 of the General Law Sixth Amendment Act, 1993, redundant.

2.12 **Clause 15** of the Bill affects a textual amendment to the Schedule to the Hague Convention on the Civil Aspects of International Child Abduction Act, 1996 (Act No. 72 of 1996), so as to bring it line with Article 44 of the Hague Convention on the Civil Aspects of International Child Abduction.

2.13 Section 53 of the Criminal Law Amendment Act, 1997 (Act No. 105 of 1997), among others, provides that sections 51, 52, 52A and 52B will cease to have effect after the expiry of a period of two years from commencement of the Act. It is, however, not technically correct to link the period of operation of sections 52A and 52B, which have been inserted in the Act by way of amending legislation, to the date of commencement of the Act. **Clause 16** therefore amends section 53 of the Criminal Law Amendment Act, 1997, to provide that sections 52A and 52B will remain in force until sections 51 and 52 of the Act cease to have effect.

2.14 **Clause 17** amends section 40 of the National Prosecuting Authority Act, 1998 (Act No. 32 of 1998), in order to further regulate certain executive functions of the Minister.

2.15 Section 26(2)(a) of the Maintenance Act, 1998 (Act No. 99 of 1998), provides that the person in whose favour ("the applicant") a maintenance or related order was made, which has remained unsatisfied for a specified period, may apply to the maintenance court where the order was made for the enforcement of such order. This requirement might place an undue burden on an applicant who wishes to enforce a maintenance order but who does not reside anymore within the area of jurisdiction of the maintenance court where the order was made. **Clause 18** amends section 26(2)(a) of the Maintenance Act, 1998, to enable an applicant to approach the maintenance court within whose area of jurisdiction he or she is resident for the enforcement of a maintenance or related order.

2.16 **Clause 19** amends section 1 of the Recognition of Customary Marriages Act, 1998 (Act No. 120 of 1998), by the substitution of a definition in order to provide that the Divorce Courts established in terms of section 10 of the Administration Amendment Act, 1929 (Act No. 9 of 1929), may hear any matter and grant any order provided for in terms of the Recognition of Customary Marriages Act, 1998.

2.17 **Clauses 20 to 45** effect certain textual corrections to the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000). **Clause 46** similarly amends section 3 of the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000), so as to correct the paragraph numbering in section 3.

2.18 Section 33 of the Cross-Border Insolvency Act, 2000, which has not yet been put into operation, amends section 149 of the Insolvency Act, 1936, so as to regulate the jurisdiction of a High Court to refuse sequestration orders. Section 33 of the

Cross-Border Insolvency Act, 2000, has, in view of **clause 2**, become redundant and is therefore repealed by **clause 47**.

3. DEPARTMENTS/BODIES/PERSONS CONSULTED

The Department of Correctional Services and the Office of the Inspecting Judge for Prisons have been consulted in respect of **clause 6** and the Department of Health has been consulted in respect of **clause 8**.

4. IMPLICATIONS FOR PROVINCES

None

5. FINANCIAL IMPLICATIONS FOR STATE

None

6. PARLIAMENTARY PROCEDURE

The State Law Advisers and the Department of Justice and Constitutional Development are of the opinion that the Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution since it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.