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THE PRESIDENCY

No. 166

17 February 2009

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

No. 66 of 2008: Judicial Matters Amendment Act, 2008.



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

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 General Law Amendment Act, 1935, so as to further regulate the concealment of birth of a newly born child; to amend the Administration of Estates Act, 1965, so as to regulate the calculation of interest payable in respect of certain moneys paid into the Guardian's Fund and substitute obsolete terminology; to amend the Medicines and Related Substances Act, 1965, so as to effect a technical correction in the Afrikaans text; to amend the Criminal Procedure Act, 1977, so as to substitute obsolete references; to further regulate the payment of admission of guilt fines; to further regulate the release of an accused person on bail; to further regulate the appointment of psychiatrists in cases involving the mental capacity of an accused person; to provide for the prosecution of persons who commit offences while doing diplomatic duty outside of the Republic; to further regulate the imposition of periodical imprisonment; and to further regulate appeals in criminal proceedings from a magistrate's court to a High Court and from a High Court to the Supreme Court of Appeal; to amend the Attorneys Act, 1979, so as to extend the category of persons entitled to engage candidate attorneys; and to increase the fines that may be imposed on attorneys and candidate attorneys for improper conduct; to amend the Admiralty Jurisdiction Act, 1983, so as to further regulate the form of proceedings relating to maritime claims; to amend the Matrimonial Property Act, 1984, so as to remove a discriminatory provision; to amend the Criminal Law Amendment Act, 1997, so as insert certain serious offences in Part I of Schedule 2; to amend the Debt Collectors Act, 1998, so as to further regulate the appointment of members of the Council for Debt Collectors; to further regulate the number of the members of the executive committee of the Council for Debt Collectors; to further regulate the trust accounts of debt collectors; and to regulate the recusal of members of committees appointed to deal with disciplinary matters; to amend the Promotion of Access to Information Act, 2000, so as to extend the period within which rules of procedure must be made; and to further regulate the liability of persons exercising powers or performing duties in terms of the Act; to amend the Promotion of Administrative Justice Act, 2000, so as to extend the period within which to make rules of procedure for judicial review; to extend the period within which the code of good administrative conduct must be made; and to effect a technical correction in the IsiXhosa text; to amend the Promotion of Equality and Prevention of Unfair Discrimination Act, 2000, so as further regulate the remuneration and allowances payable to members of the Equality Review Committee; to amend the Judges' Remuneration and Conditions of Employment Act, 2001, so as to further regulate the service of judges after discharge from active service; to amend the Prevention and Combating of Corrupt Activities Act, 2004, so as to further regulate penalties; to amend the Criminal Law (Sexual Offences

and Related Matters) Amendment Act, 2007, so as to extend the period within which the National Register for Sex Offenders must be established; to extend the period within which the National Commissioner of Correctional Services, the National Commissioner of the South African Police Service and the Director-General: Health must forward particulars in their possession to the Registrar of the National Register for Sex Offenders; to extend the period within which the Minister for Justice and Constitutional Development must adopt and table the policy framework relating to sexual offences, in Parliament; and to provide for matters connected therewith.

Parliament of the Republic of South Africa enacts as follows:-

Substitution of section 113 of Act 46 of 1935

1. The following section is hereby substituted for section 113 of the General Law Amendment Act, 1935: 5

“Concealment of birth of newly born child

113. (1) Any person who, without a lawful burial order, disposes of the body of any newly born child with intent to conceal the fact of its birth, whether the child died before, during or after birth, shall be guilty of an offence and liable on conviction to a fine [**not exceeding one hundred pounds**] or to imprisonment for a period not exceeding three years. 10

[(2) Whenever a person disposes of the body of any such child which was recently born, otherwise than under a lawful burial order, he shall be deemed to have disposed of such body with intent to conceal the fact of the child’s birth, unless it is proved that he had no such intent.] 15

[(3)] (2) A person may be convicted under subsection (1) although it has not been proved that the child in question died before its body was disposed of.

(3) The institution of a prosecution under this section must be authorised in writing by the Director of Public Prosecutions having jurisdiction.” 20

Amendment of section 88 of Act 66 of 1965

2. Section 88 of the Administration of Estates Act, 1965, is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) Subject to the provisions of subsections (2) and (3), compounded interest calculated on a monthly basis at the rate per annum determined from time to time by the Minister [**of Finance**] for Justice and Constitutional Development, in consultation with the Minister of Finance, [**and compounded annually at the thirty-first of March,**] shall be allowed on each rand of the principal of every sum of money received by the Master for account of any minor, [**lunatic**] mentally ill person or person with severe or profound intellectual disability, unborn heir or any person having an interest therein of a usufructuary, fiduciary or fideicommissary nature.” 25 30

Amendment of section 1 of Act 101 of 1965, as substituted by section 1 of Act 65 of 1974 and amended by section 1 of Act 17 of 1979, section 1 of Act 20 of 1981, section 1 of Act 94 of 1991, section 1 of Act 49 of 1996, section 1 of Act 90 of 1997 and section 1 of Act 59 of 2002

3. Section 1 of the Medicines and Related Substances Act, 1965, is hereby amended 5
by the substitution, in the Afrikaans text, for the definition of “landdros” of the
following definition:

“**‘landdros’** ’n landdros soos omskryf in artikel 1 van die Wet op Landdroste,
1993 (Wet No. 90 van 1993), en ook ’n **[bykomende] addisionele** landdros en ’n
assistent-landdros;”.

Amendment of section 51 of Act 51 of 1977

4. Section 51 of the Criminal Procedure Act, 1977, is hereby amended by the
substitution for subsections (1) and (2) of the following subsections, respectively:

“(1) Any person who escapes or attempts to escape from custody after he or she
has been lawfully arrested and before he or she has been lodged in any **[prison]** 15
correctional facility, police-cell or lock-up, shall be guilty of an offence and liable
on conviction to the penalties prescribed in section **[48 of the Prisons Act, 1959**
(Act 8 of 1959)] 117 of the Correctional Services Act, 1998 (Act No. 111 of 1998).

(2) Any person who rescues or attempts to rescue from custody any person after
he or she has been lawfully arrested and before he or she has been lodged in any 20
[prison] correctional facility, police-cell or lock-up, or who aids **[such]** the person
to escape or to attempt to escape from **[such]** custody, or who harbours or conceals
or assists in harbouring or concealing any person who escapes from custody after
he or she has been lawfully arrested and before he or she has been lodged in any
[prison] correctional facility, police-cell or lock-up, shall be guilty of an offence 25
and liable on conviction to the penalties prescribed in section **[43 of the said**
Prisons Act, 1959] 117 of the said Correctional Services Act, 1998.”.

Amendment of section 55 of Act 51 of 1977, as amended by section 14 of Act 59 of 1983, section 5 of Act 33 of 1986 and section 3 of Act 4 of 1992

5. Section 55 of the Criminal Procedure Act, 1977, is hereby amended by the 30
substitution for paragraph (a) of subsection (2A) of the following paragraph:

“(a) If the court issues a warrant of arrest in terms of subsection (2) in respect of
a summons which is endorsed in accordance with section 57[(1)(3)(a)]—

- (i) an endorsement to the same effect shall be made on the warrant in question;
- (ii) the court may make a further endorsement on the warrant to the effect that 35
the accused may admit his or her guilt in respect of the failure to appear in answer
to the summons or to remain in attendance at the criminal proceedings, and
that he or she may upon arrest pay to a clerk of the court or at a police station
a fine stipulated on the warrant in respect of **[such]** that failure, which fine 40
shall not exceed the amount to be imposed in terms of subsection (2), without
appearing in court.”.

Amendment of section 56 of Act 51 of 1977, as amended by section 2 of Act 109 of 1984 and section 5 of Act 5 of 1991

6. (1) Section 56 of the Criminal Procedure Act, 1977, is hereby amended by the
substitution for subsections (1) and (2) of the following subsections: 45

“(1) If an accused is alleged to have committed an offence referred to in section
57(2)(a), **[and] a peace officer [on reasonable grounds believes that a**
magistrate’s court, on convicting such accused of that offence, will not impose
a fine exceeding the amount determined by the Minister from time to time by
notice in the Gazette, such peace officer] may, whether or not the accused is in 50
custody, hand to the accused a written notice which shall—

- (a) specify the name, residential address and the occupation or status of the accused;
 - (b) call upon the accused to appear at a place and on a date at a time specified in the written notice to answer a charge of having committed the offence in question; 5
 - (c) contain an endorsement in terms of section 57 that the accused may admit his or her guilt in respect of the offence in question and that he or she may pay [a] the stipulated fine as determined by the Minister in terms of section 57(2)(b) in respect thereof without appearing in court; and
 - (d) contain a certificate under the hand of the peace officer that he or she has handed the original of [such] that written notice to the accused and that he or she has explained to the accused the import thereof. 10
- (2) If the accused is in custody, the effect of a written notice handed to him or her under subsection (1) shall be that he or she be released forthwith from custody.”.

Substitution of section 57 of Act 51 of 1977, as substituted by section 3 of Act 109 of 1984, section 6 of Act 33 of 1986, section 2 of Act 26 of 1987 and section 6 of Act 5 of 1991 15

7. The following section is hereby substituted for section 57 of the Criminal Procedure Act, 1977:

“Admission of guilt and payment of fine without appearance in court 20

57. (1) An admission of guilt fine referred to in this section may only be imposed and paid in respect of an offence which the Minister determines, as provided for in subsection (2).

(2) For purposes of this section, the Minister may, from time to time, by notice in the *Gazette*, and after consultation with the Chief Justice, the National Director of Public Prosecutions and the Minister for Safety and Security, determine— 25

- (a) the offences in respect of which an admission of guilt fine may be imposed and paid; and
- (b) the amount of an admission of guilt fine which can be stipulated in a summons under section 54 (in this section referred to as the summons) or a written notice under section 56 (in this section referred to as the written notice), in respect of each offence. 30

[(1)] (3) Where—

- (a) a summons is issued against an accused under section 54 [(in this section referred to as the summons)] and the public prosecutor [or the clerk] of the court concerned [on reasonable grounds believes that a magistrate’s court, on convicting the accused of the offence in question, will not impose a fine exceeding the amount determined by the Minister from time to time by notice in the *Gazette*, and such public prosecutor or the clerk of the court], in accordance with the directives issued by the National Director of Public Prosecutions provided for in subsection (1), endorses the summons to the effect that the accused may admit his or her guilt in respect of the offence in question and that he or she may pay a fine stipulated on the summons in respect of [such] that offence without appearing in court; or 35 40 45
- (b) a written notice under section 56 [(in this section referred to as the written notice)] is handed to the accused and the endorsement in terms of [paragraph (c) of] subsection (1)(c) of that section purports to have been made by a peace officer, 50

the accused may, without appearing in court, admit his or her guilt in respect of the offence in question by paying the fine stipulated (in this section referred to as the admission of guilt fine) either to the clerk of the

magistrate's court which has jurisdiction or at any police station within the area of jurisdiction of that court or, if the summons or written notice in question is endorsed to the effect that the fine may be paid at a specified local authority, at **[such] that** local authority.

[(2)] (4) (a) The summons or the written notice may stipulate that the admission of guilt fine shall be paid before a date specified in the summons or written notice, as the case may be. 5

(b) An admission of guilt fine may be accepted by the clerk of the court concerned notwithstanding that the date referred to in paragraph *(a)* or the date on which the accused should have appeared in court has expired. 10

[(3)] (5) (a) (i) Subject to the provisions of subparagraphs (ii) and (iii), an accused who intends to pay an admission of guilt fine in terms of subsection (1), shall surrender the summons or the written notice, as the case may be, at the time of the payment of the fine.

(ii) If the summons or written notice, as the case may be, is lost or is not available and the copy thereof known as the control document— 15

(aa) is not available at the place of payment referred to in subsection **[(1)] (3)**, the accused shall surrender a copy of the summons or written notice, as the case may be, at the time of the payment of the fine; or

(bb) is available at the place of payment referred to in subsection **[(1)] (3)**, the admission of guilt fine may be accepted without the surrender of a copy of the summons or written notice, as the case may be. 20

(iii) If an accused in respect of whom a warrant has been endorsed in terms of section 55(2A) intends to pay the relevant admission of guilt fine, the clerk of the court may, after he or she has satisfied himself or herself that the warrant is so endorsed, accept the admission of guilt fine without the surrender of the summons, written notice or copy thereof, as the case may be. 25

(b) A copy referred to in paragraph *(a)*(ii) may be obtained by the accused at the magistrate's court, police station or local authority where the copy of the summons or written notice in question known as the control document is filed. 30

(c) Notwithstanding the provisions of subsection **[(1)] (3)**, an accused referred to in paragraph *(a)*(iii) may pay the admission of guilt fine in question to the clerk of the court where he or she appears in consequence of **[such] that** warrant, and if **[the said] that** clerk of the court is not the clerk of the magistrate's court referred to in subsection **[(1)] (3)**, he or she shall transfer **[such] that** admission of guilt fine to the latter clerk of the magistrate's court. 35

[(4)] (6) No provision of this section shall be construed as preventing a public prosecutor attached to the court concerned from reducing an admission of guilt fine on good cause shown in writing. 40

[(5) (a) An admission of guilt fine stipulated in respect of a summons or a written notice shall be in accordance with a determination which the magistrate of the district or area in question may from time to time make in respect of any offence or, if the magistrate has not made such a determination, in accordance with an amount determined in respect of any particular summons or any particular written notice by either a public prosecutor attached to the court of such magistrate or a police official of or above the rank of non-commissioned officer attached to a police station within the magisterial district or area in question or, in the absence of such a police official at any such police station, by the senior police official then in charge at such police station. 45

(b) An admission of guilt fine determined under paragraph *(a)* shall not exceed the maximum of the fine prescribed in respect of the offence in question or the amount determined by the Minister from time to time by notice in the *Gazette*, whichever is the lesser.] 50

(7) An admission of guilt fine stipulated in respect of a summons or a written notice shall be in accordance with the determination made by the Minister from time to time in respect of the offence in question, as provided for in subsection (2).

~~[(6)] (8)~~ An admission of guilt fine paid at a police station or a local authority in terms of subsection ~~[(1)] (3)~~ and the summons or, as the case may be, the written notice surrendered under subsection ~~[(3)] (5)~~, shall, as soon as is expedient, be forwarded to the clerk of the magistrate's court which has jurisdiction, and ~~[such] that~~ clerk of the court shall thereafter, as soon as is expedient, enter the essential particulars of ~~[such] that~~ summons or, as the case may be, ~~[such] that~~ written notice and of any summons or written notice surrendered to the clerk of the court under subsection ~~[(3)] (5)~~, in the criminal record book for admissions of guilt, whereupon the accused concerned shall, subject to the provisions of subsection ~~[(7)] (9)~~, be deemed to have been convicted and sentenced by the court in respect of the offence in question.

~~[(7)] (9)~~ The judicial officer presiding at the court in question shall examine the documents and if it appears to him or her that a conviction or sentence under subsection ~~[(6)] (8)~~ is not in accordance with justice or ~~[that any such sentence]~~, except as provided in subsection ~~[(4)] (6)~~, is not in accordance with a determination made by the ~~[magistrate] Minister~~ under subsection ~~[(5)] (2)~~ or ~~[, where the determination under that subsection has not been made by the magistrate, that the sentence is not adequate]~~ does not comply with a directive issued by the National Director of Public Prosecutions as provided for in subsection (11) ~~[such] that~~ judicial officer may set aside the conviction and sentence and direct that the accused be prosecuted in the ordinary course, whereupon the accused may be summoned to answer ~~[such] that~~ charge as the public prosecutor may deem fit to prefer: Provided that where the admission of guilt fine which has been paid exceeds the amount determined by the ~~[magistrate] Minister~~ under subsection ~~[(5)] (2)~~, the ~~[said]~~ judicial officer may, in lieu of setting aside the conviction and sentence in question, direct that the amount by which the ~~[said]~~ admission of guilt fine exceeds the said determination be refunded to the accused concerned.

(10) Any determination made by the Minister under this section must be tabled in Parliament for approval.

(11) (a) The National Director of Public Prosecutions must issue directives regarding the cases and circumstances in which a prosecutor may issue a summons referred to in subsection (3)(a) or a written notice referred to in section 57A(1) in which an admission of guilt fine may be imposed in respect of the offences which the Minister determines under subsection (2) and any directive so issued must be observed in the application of this section.

(b) The directives referred to in paragraph (a) must ensure that adequate disciplinary steps will be taken against a prosecutor who fails to comply with any directive.

(c) The Minister must submit any directives issued under this subsection to Parliament before those directives take effect, and the first directives so issued, must be submitted to Parliament within four months of the commencement of this section.

(d) Any directive issued under this subsection may be amended or withdrawn in like manner.”.

Amendment of section 57A of Act 51 of 1977, as inserted by section 1 of Act 86 of 1996

8. Section 57A of the Criminal Procedure Act, 1977, is hereby amended by—

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

“(1) If an accused who is alleged to have committed an offence, as provided for in section 57(2)(a), has appeared in court and is—

- (a) in custody awaiting trial on that charge and not on another more serious charge;
- (b) released on bail under section 59 or 60; or
- (c) released on warning under section 72,

the public prosecutor may, before the accused has entered a plea and **[if he or she on reasonable grounds believes that a magistrate's court, on convicting such accused of that offence, will not impose a fine exceeding the amount determined by the Minister from time to time by notice in the Gazette,]** in accordance with the directives issued by the National Director of Public Prosecutions under section 57(11), hand to the accused a written notice, or cause **[such]** the notice to be delivered to the accused by a peace officer, containing an endorsement in terms of section 57 that the accused may admit his or her guilt in respect of the offence in question and that he or she may pay **[a]** the stipulated fine in respect **[thereof]** of that offence, as determined by the Minister in terms of section 57(2)(b), without appearing in court again.”; and

- (b) the substitution for subsection (4) of the following subsection:

“(4) The provisions of sections 55, 56(2) and (4) and 57(2) (1), (2), (4) to (7) (9), inclusive, shall apply *mutatis mutandis* to the relevant written notice handed or delivered to an accused under subsection (1) as if, in respect of section 57, **[such]** the notice were the written notice **[contemplated]** referred to in that section and as if the fine stipulated in **[such]** the written notice were also the admission of guilt fine **[contemplated]** referred to in that section.”.

Amendment of section 60 of Act 51 of 1977, as substituted by section 3 of Act 75 of 1995 and amended by section 4 of Act 85 of 1997, section 5 of Act 34 of 1998, section 9 of Act 62 of 2000 and section 4 of Act 55 of 2003

9. Section 60 of the Criminal Procedure Act, 1977, is hereby amended by—

- (a) the insertion after subsection (2A) of the following subsection:

“(2B) (a) If the court is satisfied that the interests of justice permit the release of an accused on bail as provided for in subsection (1), and if the payment of a sum of money is to be considered as a condition of bail, the court must hold a separate inquiry into the ability of the accused to pay the sum of money being considered or any other appropriate sum.

(b) If, after an inquiry referred to in paragraph (a), it is found that the accused is—

- (i) unable to pay any sum of money, the court must consider setting appropriate conditions that do not include an amount of money for the release of the accused on bail or must consider the release of the accused in terms of a guarantee as provided for in subsection (13)(b); or

- (ii) able to pay a sum of money, the court must consider setting conditions for the release of the accused on bail and a sum of money which is appropriate in the circumstances.”; and

- (b) the substitution for subsection (13) of the following subsection:

“(13) The court releasing an accused on bail in terms of this section may order that the accused—

- (a) deposit with the clerk of **[the]** any magistrate's court or the registrar of **[the]** any High Court, as the case may be, or with a correctional official at the correctional facility where the accused is in custody or with a police official at the place where the accused is in custody, the sum of money determined by the court in question; or

- (b) shall furnish a guarantee, with or without sureties, that he or she will pay and forfeit to the State the amount that has been set as bail, or that has been increased or reduced in terms of section 63(1), in circumstances in which the amount would, had it been deposited, have been forfeited to the State.”.

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, section 6 of Act 68 of 1998, section 8 of Act 42 of 2001 and section 68 of Act 32 of 2007

10. Section 79 of the Criminal Procedure Act, 1977, is hereby amended— 5
- (a) by the substitution for subsection (1) of the following subsection:
- “(1) Where a court issues a direction under section 77(1) or 78(2), the relevant enquiry shall be conducted and be reported on—
- (a) where the accused is charged with an offence other than one referred to in paragraph (b), by the medical superintendent of a psychiatric hospital designated by the court, or by a psychiatrist appointed by [such] the medical superintendent at the request of the court; or 10
- (b) where the accused is charged with murder or culpable homicide or rape or compelled rape as [contemplated] provided for in sections 3 or 4 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, respectively, or another charge involving serious violence, or if the court considers it to be necessary in the public interest, or where the court in any particular case so directs— 15
- (i) by the medical superintendent of a psychiatric hospital designated by the court, or by a psychiatrist appointed by [such] the medical superintendent at the request of the court; 20
- (ii) by a psychiatrist appointed by the court and who is not in the full-time service of the State unless the court directs otherwise, upon application of the prosecutor, in accordance with directives issued under subsection (13) by the National Director of Public Prosecutions; 25
- (iii) by a psychiatrist appointed for the accused by the court; and
- (iv) by a clinical psychologist where the court so directs.”; and
- (b) by the addition after subsection (12) of the following subsection: 30
- “(13) (a) The National Director of Public Prosecutions must, in consultation with the Minister, issue directives regarding the cases and circumstances in which a prosecutor must apply to the court for the appointment of a psychiatrist as provided for in subsection (1)(b)(ii) and any directive so issued must be observed in the application of this section. 35
- (b) The directives referred to in paragraph (a) must ensure that adequate disciplinary steps will be taken against a prosecutor who fails to comply with any directive.
- (c) The Minister must submit any directives issued under this subsection to Parliament before those directives take effect, and the first directives so issued, must be submitted to Parliament within four months of the commencement of this subsection. 40
- (d) Any directive issued under this subsection may be amended or withdrawn in like manner.”. 45

Insertion of section 110A in Act 51 of 1977 45

11. The following section is hereby inserted in the Criminal Procedure Act, 1977, after section 110:

“Jurisdiction in respect of offences committed by certain persons outside Republic

110A. (1) Notwithstanding any other law, any South African citizen who commits an offence outside the area of jurisdiction of the courts of the Republic and who cannot be prosecuted by the courts of the country in which the offence was committed, due to the fact that the person is immune from prosecution as a result of the operation of the provisions of— 50

- (a) the Convention on the Privileges and Immunities of the United Nations, 1946;
- (b) the Convention on the Privileges and Immunities of the Specialised Agencies, 1947;
- (c) the Vienna Convention on Diplomatic Relations, 1961;
- (d) the Vienna Convention on Consular Relations, 1963; or
- (e) any other international convention, treaty or any agreement between the Republic and any other country or international organisation, and that person is found within the area of jurisdiction of any court in the Republic which would have had jurisdiction to try the offence if it had been committed within its area of jurisdiction, that court shall, subject to subsection (2), have jurisdiction to try that offence.
- (2) No prosecution may be instituted against a person under subsection (1), unless—
- (a) the offence is an offence under the laws of the Republic; and
- (b) the National Director of Public Prosecutions instructs that a prosecution be instituted against the person.
- (3) At the conclusion of the trial against a person under this section, a copy of the proceedings, certified by the clerk of the court or registrar, together with any remarks as the prosecutor may wish to append thereto, must be submitted to the Minister of Foreign Affairs.”

Amendment of section 285 of Act 51 of 1977, as amended by section 16 of Act 33 of 1986

12. Section 285 of the Criminal Procedure Act, 1977, is hereby amended—
- (a) by the substitution for subsection (5) of the following subsection:
- “(5) If, before the expiration of any sentence of periodical imprisonment imposed upon any person for any offence that person—
- (a) **[such person]** is undergoing a punishment of any other form of detention imposed by any court; or
- (b) after having surrendered himself or herself pursuant to the notice issued under subsection (2), without lawful excuse, the proof whereof shall be on that person, thereafter fails to surrender himself or herself for the purpose of undergoing periodical imprisonment, as required, any magistrate before whom **[such]** that person is brought, **[shall] may** set aside the unexpired portion of the sentence of periodical imprisonment and, after considering the evidence recorded in respect of **[such]** the offence in question, may impose in lieu of **[such]** any unexpired portion any punishment within the limits of his or her jurisdiction and of any punishment prescribed by any law as a punishment for **[such]** the offence in question.”; and
- (b) by the addition of the following subsection:
- “(6) Any magistrate may, if it appears from information on oath that a person who has been sentenced in terms of subsection (1) has failed to surrender himself or herself to undergo imprisonment as provided for in this section, issue a warrant for the arrest of that person in order to deal with him or her in terms of subsection (5)(b).”

Amendment of section 309 of Act 51 of 1977, as amended by section 2 of Act 76 of 1977, section 17 of Act 105 of 1982, section 8 of Act 107 of 1990, section 51 of Act 129 of 1993, section 13 of Act 75 of 1995, section 2 of Act 33 of 1997, section 2 of Act 76 of 1997, section 38 of Act 105 of 1997, section 2 of Act 42 of 2003 and section 6 of Act 38 of 2007

13. Section 309 of the Criminal Procedure Act, 1977, is hereby amended by the deletion of subsection (3A).

Amendment of section 309C of Act 51 of 1977, as inserted by section 3 of Act 76 of 1997 and substituted by section 3 of Act 42 of 2003

14. Section 309C of the Criminal Procedure Act, 1977, is hereby amended by the substitution for subsections (4), (5) and (6) of the following subsections:

- “(4) When receiving the notice referred to in subsection (3), the clerk of the court must without delay submit to the registrar of the High Court concerned copies of— 5
- (a) the application that was refused;
 - (b) the magistrate’s reasons for refusal of the application; and
 - (c) the record of the proceedings in the magistrate’s court in respect of which the application was refused[: **Provided that—** 10
 - (i) **if the accused was tried in a regional court and was legally represented at the trial; or**
 - (ii) **if the accused and the Director of Public Prosecutions agree thereto; or** 15
 - (iii) **if the prospective appeal is against the sentence only; or**
 - (iv) **if the petition relates solely to an application for condonation, a copy of the judgment, which includes the reasons for conviction and sentence, shall, subject to subsection (6)(a), suffice for the purposes of the petition].** 20
- (5) (a) A petition [**contemplated**] as provided for in this section must be considered in chambers by [**a judge**] two judges designated by the Judge President[: **Provided that the Judge President may, in exceptional circumstances, at any stage designate two judges to consider such petition**]. 25
- (b) If the judges referred to in [**the proviso to**] paragraph (a) differ in opinion, the petition must also be considered in chambers by the Judge President or by any other judge designated by the Judge President. 25
- (c) For the purposes of paragraph (b) any decision of the majority of the judges considering the petition, shall be deemed to be the decision of all three judges. 30
- (6) Judges considering a petition may— 30
- (a) call for any further information[, **including a copy of the record of any proceedings that was not submitted in terms of the proviso to subsection (4)(c),**] from the magistrate who refused the application in question, or from the magistrate who presided at the trial to which [**any such**] the application relates, as the case may be; or 35
 - (b) in exceptional circumstances, order that the petition or any part thereof be argued before them at a time and place determined by them.”. 35

Amendment of section 315 of Act 51 of 1977, as substituted by section 20 of Act 105 of 1982 and amended by section 10 of Act 107 of 1990, section 39 of Act 105 of 1997, section 11 of Act 62 of 2000 and section 4 of Act 42 of 2003 40

15. Section 315 of the Criminal Procedure Act, 1977, is hereby amended by the deletion of paragraphs (b) and (c) of subsection (1).

Amendment of section 316 of Act 51 of 1977, as substituted by section 5 of Act 42 of 2003

16. Section 316 of the Criminal Procedure Act, 1977, is hereby amended— 45
- (a) by the substitution for subsection (10) for the following subsection:
 - “(10) When receiving notice of a petition as [**contemplated**] provided for in subsection (9), the registrar shall forward to the registrar of the Supreme Court of Appeal copies of the—
 - (a) application or applications that were refused; 50
 - (b) the reasons for refusing [**such**] the application or applications; and
 - (c) the record of the proceedings in the High Court in respect of which the application was refused[: **Provided that—**
 - (i) **if the accused was legally represented at the trial; or**

- (ii) if the accused and the prosecuting authority agree thereto;
or
- (iii) if the prospective appeal is against the sentence only; or
- (iv) if the petition relates solely to an application for condonation,

a copy of the judgment, which includes the reasons for conviction and sentence, shall, subject to subsection (12)(a), suffice for the purposes of the petition.”; and

- (b) by the substitution for subsection (12) of the following subsection:

“(12) The judges considering a petition may—

- (a) call for any further information[, including a copy of the record of the proceedings that was not submitted in terms of the proviso to subsection (10)(c),] from the judge who refused the application in question, or from the judge who presided at the trial to which [any such] the application relates, as the case may be; or
- (b) in exceptional circumstances, order that the application or applications in question or any of them be argued before them at a time and place determined by them.”.

Amendment of section 341 of Act 51 of 1977, as amended by section 9 of Act 64 of 1982, section 25 of Act 33 of 1986, section 16 of Act 26 of 1987 and section 4 of Act 18 of 1996

17. Section 341 of the Criminal Procedure Act, 1977, is hereby amended by the substitution for subsection (5) of the following subsection:

“(5) (a) The amount to be specified in any notification issued under this section as the amount of the fine which a court would probably impose in respect of any offence, shall be determined from time to time [for any particular area by the magistrate of the district or area in which such area is situated,] by the Minister by notice in the *Gazette*, after consultation with the Chief Justice, the National Director of Public Prosecutions and the Minister of Safety and Security, and may differ from the admission of guilt fine determined under section 57[(5)(a)] (2)(b) for the offence in question.

(b) Any determination made by the Minister under paragraph (a) must be tabled in Parliament for approval.”.

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

18. Section 3 of the Attorneys Act, 1979, is hereby amended—

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

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

- (b) by the insertion in subsection (1) after paragraph (f) of the following paragraph:

“(fA) as an employee of the Legal Aid Board at an office of the Legal Aid Board; and”;

- (c) by the substitution in subsection (1)(i) for subparagraph (i) of the following subparagraph:

“(i) if he or she is an attorney so practising on his or her own account or as a partner in a firm of attorneys or as a member of a professional company, or is employed full-time at a law clinic, or is employed full-time at an office of the Legal Aid Board, so practised or been so employed for a period of three years or periods of three years in the aggregate during the preceding four years;”.

Amendment of section 72 of Act 53 of 1979, as amended by section 5 of Act 80 of 1985, section 25 of Act 87 of 1989, section 17 of Act 115 of 1993 and section 13 of Act 204 of 1993

19. Section 72 of the Attorneys Act, 1979, is hereby amended by the substitution for subsection (1) of the following subsection: 5

- “(1) A council conducting an enquiry in terms of section 71 may find the person concerned guilty of unprofessional or dishonorable or unworthy conduct and may—
- (a) in the case of a practitioner—
 - (i) impose upon him or her a fine not exceeding [R10 000] R100 000; or 10
 - (ii) reprimand him or her; or
 - (iii) for a specified period or until otherwise decided by the council, debar him or her from engaging or continuing to engage a candidate attorney; and
 - (iv) recover from him or her the costs incurred by the council in connection with [such] the enquiry; 15
 - (b) in the case of a candidate attorney—
 - (i) cancel or suspend his or her articles of clerkship or contract of service;
 - (ii) impose upon him or her a fine not exceeding [R2 000] R20 000; or
 - (iii) reprimand him or her; 20
 - (c) in the case of a former candidate attorney referred to in section 8(4)—
 - (i) debar him or her from remaining in the employ of the attorney referred to in section 8(4) or 8(5), as the case may be; or
 - (ii) impose upon him or her a fine not exceeding [R2 000] R20 000; or
 - (iv) reprimand him or her.” 25

Amendment of section 3 of Act 105 of 1983, as amended by section 2 of Act 87 of 1992 and section 21 of Act 139 of 1992

20. Section 3 of the Admiralty Jurisdiction Regulation Act, 1983, is hereby amended—

- (a) by the substitution for subsection (6) of the following subsection: 30

“(6) [Subject to the provisions of subsection (9), an] An action *in rem*, other than [such] an action in respect of a maritime claim [contemplated] referred to in paragraph (d) of the definition of ‘maritime claim’, may be brought by the arrest of an associated ship instead of the ship in respect of which the maritime claim arose.”; and 35
- (b) by the deletion of subsection (9).

Substitution of section 18 of Act 88 of 1984

21. Section 18 of the Matrimonial Property Act, 1984, is hereby substituted for the following section:

“Certain damages excluded from community and recoverable from other spouse 40

18. Notwithstanding the fact that a spouse is married in community of property—

- (a) any amount recovered by him or her by way of damages, other than damages for patrimonial loss, by reason of a delict committed against him or her, does not fall into the joint estate but becomes his or her separate property; 45
- (b) he or she may recover from the other spouse damages[, **other than damages for patrimonial loss,**] in respect of bodily injuries suffered by him or her and attributable either wholly or in part to the fault of that spouse and these damages do not fall into the joint estate but become the separate property of the injured spouse.” 50

Amendment of Part 1 of Schedule 2 to Act 105 of 1997, as amended by section 37 of Act 62 of 2000, section 36 of Act 12 of 2004, section 27 of Act 33 of 2004, section 68 of Act 32 of 2007 and section 5 of Act 38 of 2007

22. Part I of Schedule 2 to the Criminal Law Amendment Act, 1997, is hereby amended by the addition of the following offences: 5

“Any offence referred to in Part I or Part II of Schedule 1 to the Implementation of the Rome Statute of the International Criminal Court Act, 2002 (Act No. 27 of 2002).”.

Amendment of section 3 of Act 114 of 1998

23. Section 3 of the Debt Collectors Act, 1998, is hereby amended by the substitution for subsection (4) of the following subsection: 10

“(4) [A member of the Council shall hold office for a term, not exceeding three years, determined by the Minister at the time of the member’s appointment: Provided that the Minister may withdraw an appointment of a member at any time and, provided further, that a member may be reappointed at the expiration of his or her term of office.] 15

(a) A member of the Council, subject to paragraphs (b), (c), (d) and (e), holds office for a term, not exceeding three years, determined by the Minister at the time of the member’s appointment.

(b) The Minister may, on good cause shown, withdraw an appointment of a member at any time. 20

(c) A member of the Council may be re-appointed at the expiry of his or her term of office.

(d) A member of the Council appointed in terms of this section who is a member of a committee referred to in section 15(2), must, notwithstanding his or her subsequent vacation of office as a member of the Council, dispose of the matters he or she is seized with and, for that purpose only, is deemed to hold office as a member of the Council in respect of any period during which he or she is necessarily engaged in connection with the disposal of the matters which were not disposed of when he or she vacated office as a member of the Council. 25 30

(e) A member of the Council referred to in paragraph (d) who, in the opinion of the Council, is—

(i) unfit to dispose of the matters in question; or
(ii) incapacitated and is not able to dispose of the matters in question due to that incapacity, 35

may be exempted by the Council from the provisions of paragraph (d).”.

Amendment of section 5 of Act 114 of 1998

24. Section 5 of the Debt Collectors Act, 1998, is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) The Council may appoint not less than three and not more than five of its members as an executive committee of the Council which shall, subject to the provisions of subsection (2) and the directions of the Council, be competent during the periods between meetings of the Council to perform or exercise all the powers and functions of the Council: Provided that the majority of the members of the executive committee shall be members of the Council other than those appointed in terms of section 3(2)(b)(iii).”.

Amendment of section 20 of Act 114 of 1998, as amended by section 14 of Act 22 of 2005

25. Section 20 of the Debt Collectors Act, 1998, is hereby amended—
(a) by the substitution for subsection (8) of the following subsection: 50

“(8) If any debt collector—
(a) dies;
(b) becomes insolvent;
(c) in the case of a company or close corporation, is liquidated or placed under judicial management, whether provisionally or finally; 55

- (d) has his or her registration withdrawn, or is on reasonable grounds likely to have his or her registration withdrawn;
- (e) is declared by a competent court to be incapable of managing his or her own affairs; or
- (f) abandons his or her practice or ceases to practise, 5
the Council—
- (i) must [, where necessary], take control [and] over, administer [his or her] and finalise that trust account [until]; or
- (ii) may, in the circumstances the Council deems fit, make an application to the Master of the High Court having jurisdiction [has, on application made by the Council, or by a person having an interest in the trust account of that debt collector, appointed] to appoint a *curator bonis* with [such] the rights, duties and powers [as the Master may deem fit] as prescribed to control, [and] administer and finalise [such] that account.”; and 10 15
- (b) by the addition of the following subsection:
- “(9) The Master of the High Court—
- (a) may, before an appointment of a *curator bonis* is made as provided for in subsection (8), require from the person who is to be appointed as *curator bonis*, security to the satisfaction of the Master in an amount determined by the Master for the proper performance of his or her functions; 20
- (b) shall have the powers and duties as prescribed; and
- (c) is entitled to the fees as provided for in Schedule 2 of the regulations made in terms of section 103 of the Administration of Estates Act, 1965 (Act No. 66 of 1965).” 25

Amendment of section 23 of Act 114 of 1998

26. Section 23 of the Debt Collectors Act, 1998, is hereby amended by the substitution for subsection (2) of the following subsection:

- “(2) Without prejudice to the generality of the provisions of subsection (1), the Minister may, after consultation with the Council, make regulations— 30
- (a) prescribing the fees payable by a debt collector to the Council in terms of section 13(1), and the periods within which [such] those fees are payable;
- (b) prescribing the circumstances under which a debt collector shall not be bound to pay an amount referred to in section 13 (1); [and] 35
- (c) regarding the training of debt collectors[.] ;
- (d) regarding the recusal of members of committees referred to in section 15(2);
- (e) regarding the remuneration, rights, duties and powers of a *curator bonis* appointed under section 20(8); and
- (f) regarding the powers and duties of the Master of the High Court when appointing a *curator bonis* in terms of section 20(8).” 40

Amendment of section 79 of Act 2 of 2000, as amended by section 23 of Act 55 of 2003

27. Section 79 of the Promotion of Access to Information Act, 2000, is hereby amended by the substitution for the words preceding paragraph (a) of subsection (1) of the following words: 45

“The Rules Board for Courts of Law, established by section 2 of the Rules Board for Courts of Law Act, 1985 (Act 107 of 1985), must [within four years after the commencement of this section], before 28 February 2009, subject to the approval of the Minister, make rules of procedure for—” 50

Substitution of section 89 of Act 2 of 2000

28. The following section is hereby substituted for section 89 of the Promotion of Access to Information Act, 2000:

“Liability

89. No person is criminally or civilly liable for anything done in good faith in the exercise or performance or purported exercise or performance of any power or duty in terms of this Act or the rules made under section 79.” 5

Amendment of section 7 of Act 3 of 2000, as amended by section 27 of Act 55 of 2003

29. Section 7 of the Promotion of Administrative Justice Act, 2000, is hereby amended by the substitution for subsection (3) of the following subsection: 10

“(3) The Rules Board for Courts of Law established by section 2 of the Rules Board for Courts of Law Act, 1985 (Act 107 of 1985), must **[within three years after the date of commencement of section 10 of this Act]**, before 28 February 2009, subject to the approval of the Minister, make rules of procedure for judicial review.”. 15

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

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

“(6) The code of good administrative conduct **[contemplated]** referred to in subsection (5A) must, before publication in the *Gazette*, be approved by Cabinet and Parliament and must be made **[within 42 months after the commencement of this section]** before 28 February 2009.”. 20

Insertion of section 10A in Act 3 of 2000

31. The following section is hereby inserted in the Promotion of Administrative Justice Act, 2000, after section 10: 25

“Liability

10A. No person is criminally or civilly liable for anything done in good faith in the exercise or performance or purported exercise or performance of any power or duty in terms of this Act or the rules made under section 7(3).” 30

Amendment of section 11 of Act 3 of 2000

32. Section 11 of the Promotion of Administrative Justice Act, 2000, is hereby substituted, in the IsiXhosa text, for the following section:

“Igama elifutshane noqaliso 35

11. LoMthetho ubizwa ngokuba nguMthetho weNkuthazo wokuPhatha ngobuLungisa, [1999] 2000, yaye uyakuqula ukusebenza ngomhla oyakutyunjwa nguPrezidanti ngukubhengeza isiHlomelo kwi*Gazethi*.”.

Amendment of section 33 of Act 4 of 2000

33. Section 33 of the Promotion of Equality and Prevention of Unfair Discrimination Act, 2000, is hereby amended by the substitution for subsection (6) of the following subsection: 40

“(6) The members of the Equality Review Committee referred to in—

- (a) section 32(d) and (e) are entitled to [such] the remuneration, allowances and other benefits; and
 (b) section 32(a), (b), (c), (f) and (g) are entitled to the allowances, as may be determined by the Minister in consultation with the Minister of Finance.”.

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Amendment of section 7 of Act 47 of 2001

34. Section 7 of the Judges’ Remuneration and Conditions of Employment Act, 2001, is hereby amended—

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

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“(b) Service referred to in paragraph (a) of the definition of ‘service’ in section 1, in a permanent post on the establishment of a particular court, may, subject to paragraph (bA), only be performed if that 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 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 the judge president in question, as the case may be, and the Minister so approves, after consultation with the Judicial Service Commission.”. and

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

“(bA) Service referred to in paragraph (a) of the definition of ‘service’ in section 1 which becomes necessary as a result of the creation of an additional temporary post on the establishment of a particular court, to deal with additional workload or backlogs which have developed, may be performed if that service is approved by the Minister after consultation with the head of the court in question, and for the period decided by the Minister, which period may not exceed three months at a time.”.

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Amendment of section 26 of Act 12 of 2004

35. Section 26 of the Prevention and Combating of Corrupt Activities Act, 2004, is hereby amended by the addition of the following subsection:

- “(4) Notwithstanding anything to the contrary in any law, a magistrate’s court shall be competent to impose the penalty provided for in subsection (1)(a)(iii), (1)(c), or (3).”.

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Amendment of section 42 of Act 32 of 2007

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

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

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Amendment of section 50 of Act 32 of 2007

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37. Section 50 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, is hereby amended by the substitution for subsections (5), (6) and (7) of the following subsections:

- “(5) (a) The National Commissioner of Correctional Services must, in the prescribed manner and [within] at least three months [after the commencement of

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this Chapter] before the establishment of the Register referred to in section 42, forward to the Registrar the particulars referred to in section 49 of every prisoner or former prisoner which he or she has on record, who, at the commencement of this Chapter, is serving a sentence of imprisonment or who has served a sentence of imprisonment as the result of a conviction for a sexual offence against a child, including an offence **[contemplated]** referred to in section 14 of the Sexual Offences Act, 1957 (Act 23 of 1957), and must, where possible, forward the available particulars of every prisoner or former prisoner which he or she has on record, who at the commencement of this Chapter, is serving a sentence of imprisonment or has served a sentence of imprisonment as a result of a conviction for a sexual offence against a person who is mentally disabled, including an offence **[contemplated]** referred to in section 15 of the Sexual Offences Act, 1957, and the Registrar must forthwith enter those particulars in the Register.

(b) The National Commissioner of Correctional Services must, in the prescribed manner and period, inform each serving prisoner whose particulars have been forwarded to the Registrar of the implications thereof.

(6) The National Commissioner of the South African Police Service must, in the prescribed manner and **[within]** at least three months **[after the commencement of this Chapter]** before the establishment of the Register referred to in section 42, forward to the Registrar all the available particulars in his or her possession referred to in section 49 of every person, who, at the commencement of this Chapter, has a previous conviction for a sexual offence against a child, including, as far as is possible, an offence **[contemplated]** referred to in section 14 of the Sexual Offences Act, 1957, and who has a previous conviction for a sexual offence against a person who is mentally disabled, including, as far as is possible, an offence **[contemplated]** referred to in section 15 of the Sexual Offences Act, 1957, and the Registrar must forthwith enter those particulars in the Register.

(7) (a) The Director-General: Health must, in the prescribed manner and **[within]** at least three months **[after the commencement of this Chapter]** before the establishment of the Register referred to in section 42, forward to the Registrar the particulars referred to in section 49 of every person, who, at the commencement of this Chapter, is subject to a direction in terms of section 77(6) or 78(6) of the Criminal Procedure Act, 1977, as the result of an act which constituted a sexual offence against a child or a person who is mentally disabled and the Registrar must forthwith enter those particulars in the Register.

(b) The Director-General: Health must, in the prescribed manner and period, inform each person referred to in paragraph (a) whose particulars have been forwarded to the Registrar of the implications thereof.”.

Amendment of section 62 of Act 32 of 2007

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

“(2) The Minister must—

- (a) **[within one year after the implementation of this Act]** before 31 March 2009, adopt and table the policy framework in Parliament;
- (b) publish the policy framework in the *Gazette* within one month after it has been tabled in Parliament;
- (c) review the policy framework within five years after its publication in the *Gazette* and at least once every five years thereafter; and
- (d) amend the policy framework when required, in which case **[such]** the amendments must be tabled in Parliament and published in the *Gazette*, as **[contemplated]** provided for in paragraph (b).”.

Transitional provisions

39. Any admission of guilt fine which, before the commencement of sections 5 to 8 and 17 of this Act—

(a) was imposed in terms of section 57(1) of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), before its amendment by section 7 of this Act; and 5

(b) has not been dealt with in terms of section 57(7) of the Criminal Procedure Act, 1977, before its amendment by section 7 of this Act, must be dealt with as if section 7 of this Act had not been passed.

Short title and commencement

40. (1) This Act is called the Judicial Matters Amendment Act, 2008. 10

(2) Sections 5, 6, 7, 8, 10, 13, 14, 15, 16, 17, 25, 26 and 39 come into operation on a date fixed by the President by proclamation in the *Gazette*.