

REPUBLIC OF SOUTH AFRICA

JUDICIAL MATTERS AMENDMENT BILL

(As introduced in the National Assembly (proposed section 75); explanatory summary of Bill published in Government Gazette No. of 2013) (The English text is the official text of the Bill)

(MINISTER OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT)

[B—2013]

GENERAL EXPLANATORY NOTE:

- [] Words in bold type in square brackets indicate omissions from existing enactments
- _____ Words underlined with a solid line indicate insertions in existing enactments
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BILL**To amend—**

- **the Magistrates' Courts Act, 1944, so as to bring the Afrikaans text relating to causes of action over which magistrates' courts have jurisdiction in line with that of the English text; and to further regulate the jurisdiction of magistrates' courts in line with a decision of the Constitutional Court;**
- **the Criminal Procedure Act, 1977, so as to effect certain textual corrections; and to further regulate the provisions relating to the expungement of certain criminal records;**
- **the Attorneys Act, 1979, so as to further regulate the constitution and the powers of the board of control of the Attorneys Fidelity Fund;**
- **the Small Claims Courts Act, 1984, so as to further regulate the appointment of commissioners;**
- **the Judicial Service Commission Act, 1994, so as to allow the Chairperson of the Judicial Conduct Committee to delegate certain powers or functions to an acting Chairperson; to further regulate the election of an acting Chairperson of the Judicial Conduct Committee; to provide for the referral of a complaint to the Deputy Chief Justice; to provide that the Minister may**

make regulations regarding witness fees; and to effect certain textual corrections;

- the Criminal Law Amendment Act, 1997, so as to exclude persons under the age of 18 years from the operation of that Act;
- the Promotion of Access to Information Act, 2000, so as to extend the time periods within which to bring court applications;
- the Children's Act, 2005, so as to allow for information in the National Child Protection Register to be made available in the case of applications for the expungement of certain criminal records;
- the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, so as to effect certain textual corrections; to allow for information in the National Register for Sex Offenders to be made available in the case of applications for the expungement of certain criminal records; and to further regulate the issuing of directives by the National Director of Public Prosecutions;
- the Child Justice Act, 2008, so as to further regulate the evaluation of the criminal capacity of a child; to further regulate the reporting of any injury sustained or severe psychological trauma suffered by a child while in police custody; to further regulate the holding of preliminary inquiries; to provide for the delegation of certain powers and assignment of certain duties by the Cabinet member responsible for social development in respect of the accreditation of diversion programmes and diversion service providers; to effect certain textual corrections; to repeal provisions that make the Criminal Law Amendment Act, 1997, applicable to persons under the age of 18 years; to further regulate the automatic review of children in

certain cases; and to further regulate the expungement of records of certain convictions of children; and

- **the Reform of Customary Law of Succession and Regulation of Related Matters Act, 2009, so as to effect certain textual corrections;**
- and to provide for matters connected therewith.

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

Amendment of section 29 of Act 32 of 1944, as substituted by section 7 of Act 31 of 2008

1. Section 29 of the Magistrates' Courts Act, 1944, is hereby amended—

- (a) by the substitution in subsection (1) for paragraph (e) of the Afrikaans text of the following paragraph:

"(e) aksies gebaseer op of wat ontstaan uit 'n kredietooreenkoms soos omskryf in artikel 1 van die 'National Credit Act, 2005' (Wet No. 34 van 2005)[, **waar die vordering of die waarde van die goed in geskil nie die bedrag wat die Minister van tyd tot tyd by kennisgewing in die *Staatskoerant* bepaal, te bowe gaan nie**];";

and

- (b) by the substitution for subsection (1A) of the following subsection:

"(1A) The Minister may determine different amounts contemplated in subsection (1)(a), (b), (d), **[(e),]** (f) and (g) in respect of courts for districts and courts for regional divisions."

Amendment of section 30 of Act 32 of 1944, as amended by section 4 of Act 19 of 1963 and section 11 of Act 53 of 1970

2. Section 30 of the Magistrates' Courts Act, 1944, is hereby amended—

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

"(1) Subject to the limits of jurisdiction prescribed by this Act, the court may grant against persons and things orders for **[arrest *tanquam suspectus de fuga,*]** attachments, interdicts and *mandamenten van spolie.*"; and

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

Substitution of section 30bis of Act 32 of 1944, as inserted by section 8 of Act 80 of 1964

3. The following section is hereby substituted for section 30bis of the Magistrates' Courts Act, 1944:

"Attachment to found or confirm jurisdiction

30bis. The court may order attachment of **[person or]** property to found or confirm jurisdiction against any person who does not reside in the Republic, in respect of an action within its jurisdiction, where the claim or the value of the matter in dispute amounts to at least **[forty rand] R2500**, exclusive of any costs in respect of the recovery thereof, and may grant an order allowing

service of any process in such action to be effected in such manner as may be stated in such order."

Amendment of section 38 of Act 51 of 1977, as substituted by section 99 of Act 75 of 2008

4. Section 38 of the Criminal Procedure Act, 1977, is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) Subject to section 4(2) of the Child Justice Act, 2008 (Act No. 75 of 2008), the methods of securing the attendance of an accused who is eighteen years or older in court for the purposes of his or her trial shall be arrest, summons, written notice and indictment in accordance with the relevant provisions of this Act."

Amendment of section 73 of Act 51 of 1977, as amended by section 2 of Act 86 of 1996 and section 99 of Act 75 of 2008

5. Section 73 of the Criminal Procedure Act, 1977, is hereby amended by the substitution for subsection (3) of the following subsection:

"(3) In addition to the provisions of sections 3(g), 38(2), 44(1)(b) and 65 of the Child Justice Act, 2008 (Act No. 75 of 2008), relating to the assistance of an accused who is under the age of eighteen years by his or her parent **[or]**, an appropriate adult or a guardian at criminal proceedings, any accused who, in the opinion of the court, requires the assistance of another

person at criminal proceedings, may, with the permission of the court, be so assisted at such proceedings."

Amendment of section 271B of Act 51 of 1977, as inserted by section 3 of Act 65 of 2008

6. Section 271B of the Criminal Procedure Act, 1977, is hereby amended—
- (a) by the substitution in subsection (1) (a) for the words preceding subparagraph (i) of the following words:

"Where a court has imposed any of the following sentences or has made any of the following orders in respect of a person convicted of an offence, the criminal record of that person, containing the conviction and sentence or order in question, must, subject to paragraph (b) and subsection (2) and section 271D, on the person's written application, be expunged after a period of 10 years has elapsed after the date of conviction for that offence, unless during that period the person in question has been convicted of an offence and has been sentenced to a period of imprisonment without the option of a fine:"

- (b) by the insertion in subsection (1)(a) after subparagraph (vi) of the following subparagraph:

"(viA) an order in terms of section 290(1)(a) or (b) as that section was before it was repealed by section 99 of the Child Justice Act, 2008 (Act No. 75 of 2008);" and

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

"(vii) a sentence of correctional supervision, referred to in section 276(1)(h) or a sentence referred to in section 276(1)(i); or".

Amendment of section 271C of Act 51 of 1977, as inserted by section 3 of Act 65 of 2008

7. Section 271C of the Criminal Procedure Act, 1977, is hereby amended—
- (a) by the substitution in subsection (1) for paragraph (c) of the following paragraph:
- "(c) a contravention of section 5(1), read with section 5(2), **[or]** section 6(1), read with section 6(2), section 9(3), section 9(3)bis(a), read with section 9(3)(c), section 10(1), read with section 10(4), section 11(1), read with section 11(2)(a), section 12(1), read with section 12(2), section 12(3), section 15(1), read with section 15(3), section 29(1), read with section 29(9) and section 29(12), section 31(1), read with section 31(2), section 35(1), read with section 35(4), section 35(5), section 35(6), section 40(3), section 43bis or section 44, of the Blacks (Urban Areas) Consolidation Act, 1945 (Act No. 25 of 1945);"; and
- (b) by the insertion in subsection (1) after paragraph (k) of the following paragraph:
- "(kA) a contravention of section 14, section 20(2), section 20A(4) or section 26(2) of the Black Labour Act, 1964 (Act No. 67 of 1964)";".

Insertion of sections 271DA and 271DB in Act 51 of 1977

8. The following sections are hereby inserted in the Criminal Procedure Act, 1977, after section 271D:

"Revoking of certificate of expungement erroneously issued

- 271DA.** (1) Where the Director-General: Justice and Constitutional Development, in terms of section 271B(2) or 271C(3), or the Minister, in terms of section 271C(5)(b), has issued a certificate of expungement and it subsequently appears that the applicant did not qualify for the expungement of his or her record, the Director-General must—
- (a) inform the applicant of the information that has come to his or her attention and that he or she or the Minister intends to revoke the certificate of expungement;
 - (b) afford the applicant an opportunity to furnish compelling written reasons to him or her or the Minister, within 90 working days after the applicant has been informed of the intention to revoke, why his or her record should be expunged;
 - (c) inform the applicant within 30 working days after a decision is made of—
 - (i) his or her or the Minister's decision; and
 - (ii) the reasons for revoking the certificate of expungement; and
 - (d) inform the head of the Criminal Record Centre of the South African Police Service, within 14 working days after the decision was made, to revoke the

certificate of expungement and to reinstate the convictions and sentences in question.

(2) If the applicant fails to furnish compelling written reasons contemplated in subsection (1)(b), the Director-General or the Minister, as the case may be, subject to the Promotion of Administrative Justice Act, 2000 (Act No. 2 of 2000) revoke the certificate of expungement.

Delegation of powers and assignment of duties by Director-General

271DB. (1) The Director-General: Justice and Constitutional Development may delegate any power or assign any duty conferred on or assigned to him or her in terms of section 271B(2) or (3) or 271C(3) or (4) to an appropriately qualified official in the employ of the Department of Justice and Constitutional Development at the rank of Deputy Director-General.

(2) A delegation or assignment in terms of subsection (1)—

(a) is subject to any limitation, condition and direction which the Director-General may impose;

(b) must be in writing; and

(c) does not divest the Director-General of the responsibility concerning the exercise of the power or the performance of the duty.

(3) The Director-General may—

(a) confirm, vary or revoke any decision taken in consequence of a delegation or assignment in terms of this section, subject to any rights that may have accrued to a person as a result of the decision; and

(b) at any time, in writing, withdraw a delegation or assignment."

Amendment of section 276A of Act 51 of 1977, as inserted by section 42 of Act 122 of 1991 and amended by section 46 of Act 129 of 1993, section 21 of Act 87 of 1997, section 68 of Act 32 of 2007 and section 99 of Act 75 of 2008

9. Section 276A of the Criminal Procedure Act, 1977, is hereby amended—

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

"(b) for a fixed period not exceeding three years, or in the case of a conviction for any offence referred to in the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act No. 32 of 2007), for a fixed period not exceeding five years."; and

(b) by the substitution in subsection (2) for the words preceding paragraph (a) of the following words:

"Punishment shall, subject to the provisions of section **[75] 77** of the Child Justice Act, 2008, only be imposed under section 276(1)(i)—".

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, section 6 of Act 38 of 2007, section 13 of Act 66 of 2008 and section 99 of Act 75 of 2008

10. Section 309 of the Criminal Procedure Act, 1977, is hereby amended by the substitution in subsection (1) of paragraph (a) of the following paragraph:

"(a) Subject to section 84 of the Child Justice Act, 2008 (Act No. 75 of 2008), any person convicted of any offence by any lower court (including a person discharged after conviction) may, subject to leave to appeal being granted in terms of section 309B or 309C, appeal against such conviction and against any resultant sentence or order to the High Court having jurisdiction: Provided that if that person was sentenced to imprisonment for life by a regional court under section 51(1) of the Criminal Law Amendment Act, 1997 (Act No. 105 of 1997), he or she may note such an appeal without having to apply for leave in terms of section 309B: Provided further that the provisions of section 302(1)(b) shall apply in respect of a person who duly notes an appeal against a conviction, sentence or order as contemplated in section 302(1)(a)."

Amendment of section 309B of Act 51 of 1977, as inserted by section 3 of Act 76 of 1997, substituted by section 3 of Act 42 of 2003 and amended by section 99 of Act 75 of 2008

11. Section 309B of the Criminal Procedure Act, 1977, is hereby amended by the substitution in subsection (1) for paragraph (a) of the following paragraph:

"(a) Subject to section 84 of the Child Justice Act, 2008 (Act No. 75 of 2008), any accused, other than a person referred to in the first proviso to section 309(1)(a), who wishes to note an appeal against any conviction or against any resultant sentence or order of a lower court, must apply to that court for leave to appeal against that conviction, sentence or order."

Amendment of section 309D of Act 51 of 1977, as inserted by section 3 of Act 76 of 1997, substituted by section 3 of Act 42 of 2003 and amended by section 99 of Act 75 of 2008

12. Section 309D of the Criminal Procedure Act, 1977, is hereby amended by the substitution in subsection (1) for paragraph (a) of the following paragraph:

"(a) **[An accused, other]** Other than a child contemplated in the Child Justice Act, 2008 (Act No. 75 of 2008), an accused—

(i) referred to in the first proviso to section 309(1)(a); or

(ii) who is unrepresented at the time he or she is convicted and sentenced,

must be informed by the presiding officer of his or her rights in respect of appeal and legal representation and of the correct procedures to give effect to these rights."

Amendment of section 28 of Act 53 of 1979, as amended by section 18 of Act 62 of 2000

13. Section 28 of the Attorneys Act, 1979, is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) The board of control consists of four members of each society, elected by the council of that society."

Substitution of section 29 of Act 53 of 1979

14. The following section is hereby substituted for section 29 of the Attorneys Act, 1979:

"Period of office of members of board of control

29. A member of the board of control holds office for a term of three years and, at the end of his or her term of office, is eligible for re-election for one additional term of office only."

Insertion of section 46A in Act 53 of 1979

15. The following section is hereby inserted in the Attorneys Act, 1979, after section 46:

"Board of control may institute private prosecution

46A. Notwithstanding the provisions of section 76, the board of control may, by any person authorized thereto in writing by the chairperson, institute a private prosecution for the misappropriation or theft of property or trust money, and the provisions of section 8 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), and any other law relating to private prosecutions shall apply to such prosecution as if the board of control is a public body."

Amendment of section 48 of Act 53 of 1979

16. Section 48 of the Attorneys Act, 1979, is hereby amended by the addition of the following subsection:

"(3) The board of control may delegate to any of its employees the duty to consider any claim against the fund, subject to any conditions that may be imposed by the board of control."

Amendment of section 78 of Act 53 of 1979, as substituted by section 28 of Act 87 of 1989

17. Section 78 of the Attorneys Act, 1979, is hereby amended by the substitution for subsection (8) of the following subsection:

"(8) The court may on application made by the society of the province concerned or by the board of control, and on good cause shown, prohibit any practitioner from operating in any way on his or her trust account, and may appoint a *curator bonis* to control and administer such trust account, with such rights, duties and powers in relation thereto as the court may deem fit."

Substitution of certain words in Act 53 of 1979

18. The Attorneys Act, 1979, is hereby amended—

- (a) by the substitution for the words "chairman", "vice-chairman" and "chairman's", wherever they occur, of the words "chairperson", "vice-chairperson" and "chairperson's", respectively; and
- (b) by the substitution for the words "he", "him", "his", "himself" and "he or his" wherever they occur, of the words "he or she", "him or her", "his or her", "himself or herself" and "he or his or she or her", respectively, except where "he or she", "him or her", "his or her", "himself or herself" and "he or his or she or her" occur.

Amendment of section 9 of Act 61 of 1984, as amended by section 5 of Act 92 of 1986, section 1 of Act 63 of 1989, section 4 of Act 18 of 1996 and section 4 of Act 26 of 1999

19. Section 9 of the Small Claims Courts Act, 1984, is hereby amended by the insertion in subsection (1) after paragraph (b) of the following paragraph:

"(c) A commissioner appointed in terms of paragraph (a) in respect of a specific court shall be deemed to be appointed for any court established under section 2 in that province."

Amendment of section 8 of Act 9 of 1994, as inserted by section 9 of Act 20 of 2008

20. Section 8 of the Judicial Service Commission Act, 1994, is hereby amended by the substitution for subsection (3) of the following subsection:

"(3) The Chairperson may, either generally or in a specific case, delegate any of his or her powers or functions as Chairperson of the Committee to **[the Deputy Chief Justice]** an acting Chairperson as provided for in section 9(4)."

Amendment of section 9 of Act 9 of 1994, as inserted by section 9 of Act 20 of 2008

21. Section 9 of the Judicial Service Commission Act, 1994, is hereby amended by the addition of the following subsection:

"(4) The Deputy Chief Justice must act as Chairperson in the absence of the Chief Justice: Provided that in the absence of both the Chief Justice and the Deputy Chief Justice, the Chief Justice must nominate one of the members of the Committee as acting Chairperson: Provided further that if the Chief Justice does not nominate an acting Chairperson and the Deputy Chief Justice is also absent from the meeting, the members must elect a Chairperson from their number."

Amendment of section 14 of Act 9 of 1994, as inserted by section 9 of Act 20 of 2008

22. Section 14 of the Judicial Service Commission Act, 1994, is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) Any person may lodge a complaint about a judge with the Chairperson of the Committee: Provided that the Chairperson may refer the complaint to the Deputy Chief Justice to deal with in terms of the provisions of the Act, and the Deputy Chief Justice assumes the role of the chairperson in respect of that complaint."

Amendment of section 18 of Act 9 of 1994, as inserted by section 9 of Act 20 of 2008

23. Section 18 of the Judicial Service Commission Act, 1994, is hereby amended by the deletion in subsection (2) of paragraph (b).

Amendment of section 19 of Act 9 of 1994, as inserted by section 9 of Act 20 of 2008

24. Section 19 of the Judicial Service Commission Act, 1994, is hereby amended by the substitution for subsection (3) of the following subsection:

"(3) The Commission must, unless it is acting on a recommendation referred to in section **[16(4)(c)]** 16(4)(b) or 18(4)(a)(iii), (b)(iii) or (c)(iii), before it requests the appointment of a Tribunal, inform the respondent, and, if applicable, the complainant, that it is considering to make that request and invite the respondent, and, if applicable, the complainant, to comment in writing on the fact that the Commission is considering to so request."

Amendment of section 34 of Act 9 of 1994, as inserted by section 9 of Act 20 of 2008

25. Section 34 of the Judicial Service Commission Act, 1994, is hereby amended by the substitution in subsection (1)(a) for the words preceding subparagraph (i) of the following words:

"having been subpoenaed in terms of section **[29]** 30 to appear before a Tribunal, fails without reasonable excuse to—".

Amendment of section 35 of Act 9 of 1994, as inserted by section 9 of Act 20 of 2008

26. Section 35 of the Judicial Service Commission Act, 1994, is hereby amended by the substitution for subsection (1) of the following subsection:

- "(1) The Minister—
- (a) must make the regulations required to be made in terms **[sections]** of section 13 of this Act; **[and]**
 - (b) may make regulations regarding any matter that may be necessary or expedient to prescribe regarding—
 - (i) the finances and financial management and accountability of the Commission and Office of the Registrar of Judges Registrable Interests;
 - (ii) the manner in which a judge may apply for written consent of the Minister as contemplated in section 11(1) and (2); and
 - (iii) the administration and functioning of the Commission or Conduct Committee, the Secretariat of the Commission, or any other aspect of this Act; and
 - (c) may, in consultation with the Cabinet member responsible for finance, make regulations regarding travelling, subsistence and other expenses and allowances payable to a person who was subpoenaed as a witness and attends a hearing of the Conduct Committee or a Tribunal."

Amendment of section 51 of Act 105 of 1997, as substituted by section 1 of Act 38 of 2007

27. Section 51 of the Criminal Law Amendment Act, 1997, is hereby amended by the substitution for subsections (5) and (6) of the following subsections, respectively:

"(5) **[(a) Subject to paragraph (b), the]** The operation of a minimum sentence imposed in terms of this section shall not be suspended as contemplated in section 297(4) of the Criminal Procedure Act, 1977 (Act No. 51 of 1977).

[(b) Not more than half of a minimum sentence imposed in terms of subsection (2) may be suspended as contemplated in section 297(4) of the Criminal Procedure Act, 1977, if the accused person was 16 years of age or older, but under the age of 18 years, at the time of the commission of the offence in question.]

(6) This section does not apply in respect of an accused person who was under the age of **[16] 18** years at the time of the commission of an offence contemplated in subsection (1) or (2).".

Amendment of section 77 of Act 2 of 2000

28. Section 77 of the Promotion of Access to Information Act, 2000, is hereby amended by the substitution in subsection (5)(c) for subparagraphs (i) and (ii) of the following subparagraphs, respectively:

- "(i) within **[60] 180** days; or
- (ii) if notice to a third party is required by subsection (4)(a)(ii), within **[30] 180** days,".

Amendment of section 78 of Act 2 of 2000

29. Section 78 of the Promotion of Access to Information Act, 2000, is hereby amended—

(a) by the substitution in subsection (2) for the words following paragraph (d) of the following words:

"may, by way of an application, within **[30]** 180 days apply to a court for appropriate relief in terms of section 82."; and

(b) by the substitution in subsection (3) for the words following paragraph (c) of the following words:

"may, by way of an application, within **[30]** 180 days apply to a court for appropriate relief in terms of section 82.".

Amendment of section 82 of Act 2 of 2000

30. Section 82 of the Promotion of Access to Information Act, 2000, is hereby amended by the deletion of the word "or" at the end of paragraph (c), the insertion of the expression "; or" after the word "costs" in paragraph (d) and the addition of the following paragraph:

"(e) condoning non-compliance with the 180 day period within which to bring an application, where the interests of justice so require.".

Insertion of section 128A in Act 38 of 2005

31. The following section is hereby inserted in the Children's Act, 2005, after section 128:

**"Enquiries for purposes of expungement applications in terms of Criminal
Procedure Act**

128A. (1) For the purposes of section 271B of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), the Director-General: Justice and Constitutional Development may enquire from the Director-General whether or not the particulars of a person have been included or recorded in the Register or whether or not that person's particulars and any information relating to that person have been removed from the Register in terms of section 128.

(2) Subject to section 127, the Director-General must respond to the enquiry contemplated in subsection (1) in writing within 21 working days and indicate whether or not the particulars of the person concerned have been included or recorded in the Register or whether or not that person's particulars and any information relating to that person have been removed from the Register in terms of section 128."

Amendment of Table of Contents of Act 38 of 2005

32. The Table of Contents of the Children's Act, 2005, is hereby amended by the insertion after item 128 of the following item:

"128A. Enquiries for purposes of expungement applications in terms of Criminal Procedure Act".

Insertion of section 44A in Act 32 of 2007

33. The following section is hereby inserted in the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, after section 44:

"Enquiries for purposes of expungement applications in terms of Criminal Procedure Act

44A. (1) For the purposes of section 271B of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), the Director-General: Justice and Constitutional Development may enquire from the Registrar whether or not the particulars of a person are contained in the Register and whether or not that person's particulars have been removed from the Register in terms of section 51(1) or (3)(c), as the case may be.

(2) Subject to section 52, the Registrar must respond to the enquiry contemplated in subsection (1) in writing within 21 working days and must indicate whether or not the particulars of the person concerned are contained in the Register or whether or not that person's particulars have been removed from the Register in terms of section 51(1) or (3)(c), as the case may be."

Amendment of section 66 of Act 32 of 2007

34. Section 66 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, is hereby amended by the deletion in subsection (2)(a) of subparagraph (ix).

Amendment of Index to Act 32 of 2007

35. The Index to the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, is hereby amended by the insertion after item 44 of the following item:

"44A. Enquiries for purposes of expungement applications in terms of Criminal Procedure Act".

Amendment of section 11 of Act 75 of 2008

36. Section 11 of the Child Justice Act, 2008, is hereby amended—
(a) by the substitution for subsections (2) and (3) of the following subsections, respectively:

"(2) In making a decision regarding the criminal capacity of the child in question—
(a) (i) the inquiry magistrate, for purposes of diversion; or
[(b)] (ii) if the matter has not been diverted, the child justice court, for purposes of plea and trial,

must consider the assessment report of the probation officer referred to in section 40 and all evidence placed before the inquiry magistrate or child justice court prior to diversion or conviction, as the case may be, which evidence may include a report of an evaluation referred to in subsection (3); and

(b) the inquiry magistrate or the child justice court must consider the cognitive, moral, emotional, psychological and social development of the child.

(3) An inquiry magistrate or child justice court may, on own accord, or on the request of the prosecutor or the child's legal representative, order an evaluation of the criminal capacity of the child referred to in subsection (1), in the prescribed manner, by a suitably qualified person[, **which must include an assessment of the cognitive, moral, emotional, psychological and social development of the child**]."; and

(b) by the insertion after subsection (4) of the following subsection:

"(4A) The provisions of section 77(2), (3) and (4) of the Criminal Procedure Act apply with the changes required by the context to a report referred to in subsection (4)."

Amendment of section 28 of Act 75 of 2008

37. Section 28 of the Child Justice Act, 2008, is hereby amended by the substitution in subsection (2)(b) for the words preceding subparagraph (i) of the following words:

"In the event of a report being made as referred to in paragraph (a), that report must, in the prescribed manner, as soon as is reasonably possible, be submitted to the **[National]** Provincial Commissioner of Police concerned and a copy of the report must be submitted simultaneously to the National Commissioner of Police, indicating—".

Amendment of section 43 of Act 75 of 2008

38. Section 43 of the Child Justice Act, 2008, is hereby amended—

- (a) by the deletion in subsection (1) of the word "and" at the end of paragraph (a), the insertion of the expression "; and" after the word "place" in paragraph (b) and the addition of the following paragraph:

"(c) must be presided over by a magistrate of the district within which the child is alleged to have committed the offence."; and

- (b) by the addition of the following subsection:

"(4) Section 90 of the Magistrates' Court Act, 1944 (Act No. 32 of 1944), applies with the changes required by the context to subsection (1)(c)."

Amendment of section 56 of Act 75 of 2008

39. Section 56 of the Child Justice Act, 2008, is hereby amended by the addition of the following subsection:

"(4) (a) The Cabinet member responsible for social development may delegate any power or assign any duty conferred on or

imposed upon him or her by this section to any member of the Executive Council of a province responsible for welfare services, except the powers and duties referred to in subsection (2)(a).

- (b) A delegation or an assignment in terms of paragraph (a)—
- (i) is subject to any limitation, condition and direction that the Cabinet member responsible for social development may impose;
 - (ii) must be in writing; and
 - (iii) does not divest the Cabinet member responsible for social development of the responsibility concerning the exercise of the power or the performance of the duty.

- (c) The Cabinet member responsible for social development may—
- (i) confirm, vary or revoke any decision taken in consequence of a delegation or assignment in terms of this section, subject to any rights that may have accrued to a person as a result of the decision; and
 - (ii) at any time withdraw a delegation or assignment."

Amendment of section 65 of Act 75 of 2008

40. Section 65 of the Child Justice Act, 2008, is hereby amended by the substitution for subsection (3) of the following subsection:

"(3) The parent of a child, an appropriate adult or a guardian who has been warned by an inquiry **[or a guardian]** magistrate to attend proceedings

in terms of section 49(2), must attend the proceedings, unless he or she has been exempted in terms of subsection (5).".

Substitution of section 75 of Act 75 of 2008

41. The following section is hereby substituted for section 75 of the Child Justice Act, 2008:

"Sentences [involving] of correctional supervision

- 75.** A child justice court that convicts a child of an offence may impose a sentence **[involving] of** correctional supervision~~—~~
- (a) in the case of a child who is 14 years or older, in terms of section 276(1)(h) or (i) of the Criminal Procedure Act; or**
 - (b) in the case of a child who is under the age of 14 years, in terms of] envisaged in section 276(1)(h) of the Criminal Procedure Act."**

Amendment of section 77 of Act 75 of 2008

- 42.** Section 77 of the Child Justice Act, 2008, is hereby amended—
- (a)** by the deletion of subsection (2);
 - (b)** by the substitution for subsection (3) of the following subsection:

"(3) A child who is 14 years or older at the time of being sentenced for the offence **[, and in respect of whom subsection (2)**

does not apply,] may only be sentenced to imprisonment, if the child is convicted of an offence referred to in—

- (a) Schedule 3;
- (b) Schedule 2, if substantial and compelling reasons exist for imposing a sentence of imprisonment;
- (c) Schedule 1, if the child has a record of relevant previous convictions and substantial and compelling reasons exist for imposing a sentence of imprisonment.";

(c) by the substitution for subsection (4) of the following subsection:

"(4) A child referred to in subsection (3) may be sentenced to a sentence of imprisonment—

- (a) for a period not exceeding 25 years;
- (b) envisaged in section 276(1)(i) of the Criminal Procedure Act; or
- (c) together with a sentence of correctional supervision imposed in terms of section 75."; and

(d) by the substitution for subsection (5) of the following subsection:

"(5) A child justice court imposing a sentence of imprisonment must **[antedate the term of imprisonment by]** take into account the number of days that the child has spent in prison or a child and youth care centre prior to the sentence being imposed."

Amendment of section 78 of Act 75 of 2008

43. Section 78 of the Child Justice Act, 2008, is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) **[Subject to section 77(2), the]** The provisions of section 297 of the Criminal Procedure Act apply in relation to the postponement or suspension of passing of sentence by a child justice court in terms of this Act."

Amendment of section 85 of Act 75 of 2008

44. Section 85 of the Child Justice Act, 2008, is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) The provisions of Chapter 30 of the Criminal Procedure Act dealing with the review of criminal proceedings in the lower courts apply in respect of all children convicted in terms of this Act: Provided that if a child **[was, at the time of the commission of the alleged offence—**

(a) under the age of 16 years; or

(b) 16 years or older but under the age of 18 years, and] has been sentenced to any form of imprisonment that was not wholly suspended, or any sentence of compulsory residence in a child and youth care centre providing a programme provided for in section 191(2)(j) of the Children's Act,

the sentence is subject to review in terms of section 304 of the Criminal Procedure Act by a judge of the High Court having jurisdiction, irrespective of—

(a) the duration of the sentence;

(b) the period the judicial officer who sentenced the child in question has held the substantive rank of magistrate or regional magistrate;

or

- (c) whether the child in question was represented by a legal representative.”.

Amendment of section 87 of Act 75 of 2008

45. Section 87 of the Child Justice Act, 2008, is hereby amended by the addition of the following subsections:

"(7) Where the Director-General: Justice and Constitutional Development, in terms of subsection (2), or the Minister, in terms of subsection (3), has issued a certificate of expungement and it subsequently appears that the applicant did not qualify for the expungement of his or her criminal record, the Director-General must—

- (a) inform the applicant of the information that has come to his or her attention and that he or she or the Minister intends to revoke the certificate of expungement;
- (b) afford the applicant an opportunity to furnish compelling written reasons to him or her or the Minister within 90 working days after he or she is informed of the intention to revoke, why his or her record should be expunged;
- (c) inform the applicant within 30 working days after a decision is made of—
- (i) his or her or the Minister’s decision; and
- (ii) the reasons for revoking the certificate of expungement; and
- (d) inform the head of the Criminal Record Centre of the South African Police Service, within 14 working days after the decision was made, to revoke the

certificate of expungement and to reinstate the convictions and sentences in question.

(8) If the applicant fails to furnish compelling reasons contemplated in subsection (1)(b), the Director-General or Minister, as the case may be, may, subject to the Promotion of Administrative Justice Act, 2000 (Act No. 2 of 2000), revoke the certificate of expungement.

(9) (a) The Director-General: Justice and Constitutional Development may delegate any power or assign any duty conferred upon or assigned to him or her in terms of subsection (2) to an appropriately qualified official in the employ of the Department of Justice and Constitutional Development at the rank of Deputy Director-General.

(b) A delegation or assignment in terms of paragraph (a)—

- (i) is subject to any limitation, condition and direction which the Director-General may impose;
- (ii) must be in writing; and
- (iii) does not divest the Director-General of the responsibility concerning the exercise of the power or the performance of the duty.

- (c) The Director-General may—
- (i) confirm, vary or revoke any decision taken in consequence of a delegation or assignment in terms of this subsection, subject to any rights that may have accrued to a person as a result of the decision; and
 - (ii) at any time, in writing, withdraw a delegation or assignment."

46. Section 97 of the Child Justice Act, 2008, is hereby amended by the substitution for subsection (3) of the following subsection:

"(3) (a) The Cabinet member responsible for the administration of justice must by notice in the *Gazette*—

[(a)](i) determine the persons or the category or class of persons who are competent to conduct the evaluation of the criminal capacity of a child referred to in section 11(3); and

[(b)](ii) in consultation with the Cabinet member responsible for finance, determine the allowances and remuneration of those persons.

(b) Different categories or classes of persons may be determined for the purposes of the different aspects of development of a child referred to in section 11(2)(b).

(c) Different allowances and tariffs of remuneration may be determined for the persons referred to in paragraph (a), according to their calling, occupation and stations in life."

Substitution of section 100 of Act 75 of 2008

47. The following section is hereby substituted for section 100 in the Setswana text of the Child Justice Act, 2008:

"Setlhogo se se khutshwane le tshimilogo

100. Molao ono, o bidiwa [**Child Justice Act**] Molao wa Bosiamisi wa Ngwana, 2008, mme o simolola go tsengwa tirisong ka kgwedi ya Moranang ngwaga wa 2010, kgotsa letlha lengwe le lengwe pele ga foo, le le beilweng ke Moporesidente ka go itsise batho semmuso mo Kuranteng ya Molao.".

Amendment of section 3 of Act 11 of 2009

48. Section 3 of the Reform of Customary Law of Succession and Regulation of Related Matters Act, 2009, is hereby amended by the substitution in subsections (2) and (3) for the expression "2008" wherever it occurs, of the expression "2009".

Short title and commencement

- 49.** (1) This Act is called the Judicial Matters Amendment Act, 2013.
- (2) Sections 10 and 11 are deemed to have come into operation on 1 April 2010 and section 48 is deemed to have come into operation on 20 September 2010.
- (3) Sections 35, 38 and 45 come into operation on a date fixed by the President by proclamation in the *Gazette*.