

REPUBLIC OF SOUTH AFRICA

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# **DIVORCE COURTS AMENDMENT BILL**

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*(As amended by the Portfolio Committee on Justice (National Assembly))*

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(MINISTER OF JUSTICE)

**[B 24B—97]**

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REPUBLIEK VAN SUID-AFRIKA

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# **WYSIGINGSWETSONTWERP OP EGSKEIDINGSHOWE**

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*(Soos gewysig deur die Portefeuljekomitee oor Justisie (Nasionale Vergadering))*

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(MINISTER VAN JUSTISIE)

**[W 24B—97]**

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**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 Black Administration Act, 1927, Amendment Act, 1929, so as to make courts established in terms of section 10 of that Act accessible to all; to extend the operation of that Act to the entire national territory of the Republic; and to substitute the short title of that Act; and to provide for matters connected therewith.**

## PREAMBLE

The divorce courts established in terms of section 10 of the Black Administration Act, 1927, Amendment Act, 1929, are competent to hear and adjudicate upon lawsuits relating to divorce and the nullity of marriages which involve persons belonging to one particular population group.

The Bill of Rights contained in Chapter 2 of the Constitution of the Republic of South Africa, 1996, enshrines the rights of all persons in the country, and confirms the democratic values of human dignity, equality and freedom. The law as so enshrined binds the legislature, the executive authority, the judiciary and all organs of State.

The recognition of the said rights and the application of the said democratic values require that all people in the country should be dealt with on an equal basis in relation to the status, standard and accessibility of judicial institutions which have been established in the country.

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**I**n order to give effect to the said principles in respect of the matters dealt with by the said Act, the Parliament of the Republic enacts as follows:—

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

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1. Section 10 of the Black Administration Act, 1927, Amendment Act, 1929 (hereinafter referred to as the principal Act), is hereby amended—

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

“(1) (a) Notwithstanding anything to the contrary in any other law contained, the [Governor-General] President may by proclamation in 10

the *Gazette* establish Divorce Courts which shall **[be empowered to]** have jurisdiction to hear and determine suits **[of]** relating to the nullity of a marriage and relating to divorce **[and separation]** between **[Blacks domiciled within their respective areas of jurisdiction in respect of marriage]** persons and to decide upon any question arising therefrom **[:** 5  
**Provided that the Matrimonial Causes Jurisdiction Act, 1939 (Act No. 22 of 1939), shall *mutatis mutandis* apply with reference to the powers and jurisdiction of such courts],** if the parties are or if either of the parties is—

- (i) domiciled in the area of jurisdiction of the court on the date on which the action is instituted; or 10
- (ii) ordinarily resident in the area of jurisdiction of the court on the said date and has or have been ordinarily resident in the Republic for a period of not less than one year immediately prior to that date. 15

(b) A Divorce Court hearing a matter referred to in paragraph (a), shall have the same jurisdiction as any High Court in relation to such a matter. 15

(c) A Divorce Court hearing a matter referred to in paragraph (a), may exercise the jurisdiction referred to in that paragraph if all the parties to such a matter are domiciled within its area of jurisdiction, or if one of such parties is so domiciled and the other party or parties are joined to that matter in the manner provided in the rules of that Court.”; 20

- (b) by the substitution for paragraph (b) of subsection (3) of the following paragraph:

“(b) A division of the court shall consist of a president who shall be a fit and proper person appointed by the Minister of Justice **[at which appointment the provisions of Chapter II of the Magistrates’ Courts Act, 1944 (Act No. 32 of 1944), are *mutatis mutandis* applicable in so far as those provisions relate to a magistrate of a regional division, and sittings of two or more divisions may be held simultaneously]** after consultation with the Magistrates Commission, and such a president shall for the purposes of the Magistrates Act, 1993 (Act No. 90 of 1993), be deemed to be a magistrate of a regional division as contemplated in the Magistrates’ Courts Act, 1944 (Act No. 32 of 1944).”; 25

- (c) by the substitution in paragraph (a) of subsection (4) for the expression “State President” of the expression “President”; 30

- (d) by the substitution for paragraph (b) of subsection (4) of the following paragraphs: 35

“(b) The rules **[which the State President has made under the repealed section 13(5) of the Black Administration Act, 1927 (Act No. 38 of 1927), and the substituted section 10(4) of the Black Administration Act, 1927, Amendment Act, 1929 (Act No. 9 of 1929),]** for Divorce Courts which are in force on the date of the commencement of the Divorce Courts Amendment Act, 1997, shall remain in force until they are repealed or amended under this subsection: 40  
**Provided that any rule purporting to restrict access to the Courts on the grounds of a person’s race, shall be invalid and of no force.** 45

(bA) Sittings of two or more divisions of the court may be held simultaneously.”;

- (e) by the substitution for subsection (5) of the following subsection: 50

“(5) An appeal from the judgment of a Divorce Court shall lie to the **[provincial or local division of the Supreme Court] High Court** having jurisdiction.”; 50

- (f) by the substitution for subsection (6) of the following subsection: 55

“(6) **[Such]** An appeal referred to in subsection (5) shall be noted and **[prosecuted]** continued as if it were an appeal **[from]** against a judgment of a magistrate’s court in a civil matter, and all rules applicable to such lastmentioned appeal, whether in respect of the hearing, **[thereof or of]** the confirmation or setting aside of the proceedings appealed against, or 55

otherwise, shall *mutatis mutandis* apply to an appeal [**under**] in terms of this section."; and

(g) by the substitution for subsection (7) of the following subsection:

“(7)(a) [**Nothing in this**] This section [**shall be construed as in any manner divesting the Supreme Court**] does not divest a High Court of jurisdiction in respect of any matter [**specified**] referred to in subsection (1). 5

(b) Any person who has been appointed as a Family Advocate or Family Counsellor under the Mediation in Certain Divorce Matters Act, 1987 (Act No. 24 of 1987), shall be deemed to have also been appointed in respect of any Divorce Court having jurisdiction in the area for which he or she had been so appointed.”. 10

#### **Substitution of section 11 of Act 9 of 1929**

2. The following section is hereby substituted for section 11 of the principal Act:

“**Short title** 15

**11.** This Act [**may be cited**] shall be called the [**Black Administration Act, 1927, Amendment Act, 1929**] Administration Amendment Act, 1929.”.

#### **Extension of Act 9 of 1929**

3. The application of the principal Act is hereby extended to the entire national territory of the Republic. 20

#### **Amendment of section 1 of Act 70 of 1979, as amended by section 1 of Act 7 of 1989**

4. Section 1 of the Divorce Act, 1979, is hereby amended by the substitution for the definition of “court” of the following definition:

“ ‘**court**’ means [**the provincial or local division of the Supreme Court of South Africa**] any High Court as contemplated in section 166 of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996), or a divorce court established under section 10 of the [**Black Administration Act, 1927, Amendment Act, 1929 (Act No. 9 of 1929)**] Administration Amendment Act, 1929 (Act No. 9 of 1929), which has jurisdiction with respect to a divorce action;” 25 30

#### **Short title**

5. This Act shall be called the Divorce Courts Amendment Act, 1997, and shall come into operation on a date fixed by the President by proclamation in the *Gazette*.

**MEMORANDUM ON THE OBJECTS OF DIVORCE COURTS  
AMENDMENT BILL, 1997**

The courts established in terms of section 10 of the Black Administration Act, 1927, Amendment Act, 1929 (Act No. 9 of 1929), are not accessible to members of all population groups.

The racially based exclusivity of the said courts runs contrary to the present constitutional dispensation, and in particular section 9 of the Constitution (equality before the law). The Bill accordingly makes the courts accessible to the members of all population groups.

In the opinion of the State Law Advisers and the Department the Bill should be dealt with in accordance with section 75 of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996).

**PERSONS AND ORGANISATIONS CONSULTED:**

Magistrates Commission  
General Council of the Bar of South Africa  
The Chief Justice and the various judges president  
Lawyers for Human Rights  
Black Advocates Forum  
Black Lawyers Association  
The Presidents of the various Divorce Courts  
The Society of University Teachers of Law  
National Association of Democratic Lawyers  
Association of Law Societies of the RSA  
Commission of Inquiry into the Rationalisation of the Provincial and Local Divisions of the Supreme Court (Hoexter Commission)