

# D11 Statutory Limitations on Civil Proceedings

RS 21, 2023, D11-1

The position in regard to debt prescription periods and notice requirements in respect of causes of action against certain organs of state has been harmonized and is now regulated by the Institution of Legal Proceedings against certain Organs of State [Act 40 of 2002](#). <sup>1</sup> The text of the Act is reproduced in Schedule A below. The Act amended/repealed certain sections of various Acts <sup>2</sup> but provides for transitional arrangements relating to prescription of debts. <sup>3</sup> Various other statutory measures which create statutory limitations on civil proceedings are still in existence. <sup>4</sup> Those statutory measures, which include statutory time limits and limitations in respect of execution against State organs, are reproduced in Schedule B below.

<sup>1</sup> The Act came into operation on 28 November 2002. See also, in general, 2009 (April) *De Rebus* 47.

<sup>2</sup> [Section 2\(1\)](#) of [Act 40 of 2002](#).

<sup>3</sup> [Section 2\(4\)](#) of [Act 40 of 2002](#).

<sup>4</sup> [Act 40 of 2002](#) did not amend or repeal those statutory measures. See, however, [s 2\(3\)](#) of [Act 40 of 2002](#). In *Brümmer v Minister for Social Development* [2009 \(6\) SA 323 \(CC\)](#) at 342D–343A, the Constitutional Court made the following observation:

‘The principles that emerge from these cases are these: time-bars limit the right to seek judicial redress. However, they serve an important purpose in that they prevent inordinate delays which may be detrimental to the interests of justice. But not all time limits are consistent with the Constitution. There is no hard-and-fast rule for determining the degree of limitation that is consistent with the Constitution. The “enquiry turns wholly on estimations of degree”. Whether a time-bar is consistent with the right of access to court depends upon the availability of the opportunity to exercise the right to judicial redress. To pass constitutional muster, a time-bar provision must afford a potential litigant an adequate and fair opportunity to seek judicial redress for a wrong allegedly committed. It must allow sufficient or adequate time between the cause of action coming to the knowledge of the claimant and the time during which litigation may be launched. And finally, the existence of the power to condone non-compliance with the time-bar is not necessarily decisive.’

In terms of [s 173](#) of the Constitution of the Republic of South Africa, [1996](#), the Constitutional Court, the Supreme Court of Appeal and the High Court of South Africa each has the inherent power to protect and regulate its own process, and to develop the common law, taking into account the interests of justice. This power does not include the power to simply ignore an Act of Parliament, nor entails that it is permissible to side-step an Act of Parliament by resorting to the common law (*Phillips v National Director of Public Prosecutions* [2006 \(1\) SA 505 \(CC\)](#) at 522A–B). The superior courts do not possess a free-floating power to condone non-compliance with statutory time periods. In order to determine whether a superior court has the power to condone non-compliance with a statutory time period, the relevant statutory provision must be interpreted in accordance with the prevailing principles of statutory interpretation (*Vlok NO v Sun International South Africa Ltd* [2014 \(1\) SA 487 \(GSJ\)](#) at 497C–D and 498A–H).

## SCHEDULE A

### Institution of Legal Proceedings against certain Organs of State Act 40 of 2002

RS 21, 2023, D11-2

[ASSENTED TO 24 NOVEMBER 2002]

[DATE OF COMMENCEMENT: 28 NOVEMBER 2002]

(English text signed by the President)

#### As amended by

National Ports [Act 12 of 2012](#)  
General Intelligence Laws Amendment [Act 11 of 2013](#)  
Judicial Matters Amendment [Act 8 of 2017](#)

#### ACT

**To regulate the prescription and to harmonise the periods of prescription of debts for which certain organs of state are liable; to make provision for notice requirements in connection with the institution of legal proceedings against certain organs of state in respect of the recovery of debt; to repeal or amend certain laws; and to provide for matters connected therewith.**

#### PREAMBLE

RECOGNISING THAT certain provisions of existing laws provide for —

- \* different notice periods for the institution of legal proceedings against certain organs of state in respect of the recovery of debts;
- \* different periods of prescription in respect of such debts;

AND RECOGNISING THAT —

- \* the Prescription Act, 1969 ([Act 68 of 1969](#)), being the cornerstone of the laws regulating the extinction of debts by prescription, consolidated and amended the laws relating to prescription;
- \* some of the provisions of existing laws which provide for different periods of prescription in respect of certain debts are inconsistent with the periods of prescription prescribed by the Prescription Act, 1969;

AND BEARING IN MIND THAT —

- \* South Africa has moved from a parliamentary sovereign state to a democratic constitutional sovereign state;
- \* the Bill of Rights is the cornerstone of democracy in South Africa and that the State must respect, protect, promote and fulfil the rights in the Bill of Rights;
- \* [section 34](#) of the [Constitution](#) provides that everyone has the right to have any dispute that can be resolved by the application of law decided in a fair public hearing before a court or, where appropriate, another independent and impartial tribunal or forum;
- \* the right of access to courts may be limited to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom as contemplated in [section 36](#) of the [Constitution](#);

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AND RECOGNISING the need to harmonise and create uniformity in respect of the provisions of existing laws which provide for —

- \* different notice periods for the institution of legal proceedings against certain organs of state for the recovery of a debt, by substituting those notice periods with a uniform notice period which will apply in respect of the institution of legal proceedings against certain organs of state for the recovery of a debt;
- \* different periods of prescription, by making the provisions of Chapter III of the Prescription Act, 1969, applicable to all debts;

AND RECOGNISING the need to provide for transitional arrangements to ensure a smooth transition between the various existing statutory provisions regulating notice periods for the institution of legal proceedings against certain organs of state in respect of the recovery of debts and the periods of prescription of such debts, and the provisions of this Act;

AND BEARING IN MIND the limited need, for legal or practical purposes, to retain certain provisions of existing laws which provide for —

- \* notice periods that differ from the envisaged uniform notice period;

\* periods of prescription that differ from the periods of prescription prescribed by Chapter III of the Prescription Act, 1969;  
BE IT THEREFORE ENACTED by the Parliament of the Republic of South Africa, as follows —

## 1 Definitions

(1) In this Act, unless the context indicates otherwise —

‘**creditor**’ means a person who intends to institute legal proceedings against an organ of state for the recovery of a debt or who has instituted such proceedings, and includes such person’s tutor <sup>1</sup> or curator if such person is a minor or mentally ill or under curatorship, as the case may be;

‘**Constitution**’ means the Constitution of the Republic of South Africa, 1996 ([Act No. 108 of 1996](#));

‘**debt**’ <sup>2</sup> means any debt arising from any cause of action —

- (a) which arises from delictual, contractual or any other liability, including a cause of action which relates to or arises from any —
  - (i) act performed under or in terms of any law; or

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- (ii) omission to do anything which should have been done under or in terms of any law; and

- (b) for which an organ of state is liable for payment of damages, <sup>3</sup>

whether such debt became due before or after the fixed date;

‘**fixed date**’ means the date of commencement of this Act;

‘**national department**’ means —

- (a) a department mentioned in the first column of [Schedule 1](#) to the Public Service Act, 1994 ([Proclamation 103 of 1994](#)), but excludes a provincial administration; or
- (b) an organisational component mentioned in the first column of Schedule 3 to that Act;

‘**notice of state**’ <sup>4</sup> means —

- (a) any national or provincial department;
- (b) a municipality contemplated in [section 151](#) of the [Constitution](#);
- (c) any functionary or institution exercising a power or performing a function in terms of the Constitution, or a provincial constitution referred to in [section 142](#) of the [Constitution](#);
- (d) the South African Maritime Safety Authority established by [section 2](#) of the South African Maritime Safety Authority Act, 1998 ([Act No. 5 of 1998](#));
- (e) The South African National Roads Agency Limited contemplated in [section 3](#) of The South African National Roads Agency Limited and National Roads Act, 1998 ([Act No. 7 of 1998](#));
- (f) National Ports Authority Limited, contemplated in section 4 of the National Ports Act, 2005, and any entity deemed to be the National Ports Authority in terms of section 3 of that Act;  
[Paragraph (f) substituted by s 88 of Act 12 of 2005.]
- (g) any person for whose debt an organ of state contemplated in paragraphs (a) to (e) is liable.  
[Paragraph (g) added by s 88 of Act 12 of 2005.]

‘**provincial department**’ means —

- (a) a provincial administration mentioned in the first column of [Schedule 1](#) to the Public Service Act, 1994 ([Proclamation No. 103 of 1994](#)); or
  - (b) a department within a provincial administration and mentioned in the first column of Schedule 2 to that Act.
- (2) This Act does not apply to any debt —
- (a) which has been extinguished by prescription before the fixed date; or

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- (b) which has not been extinguished by prescription before the fixed date and in respect of which any legal proceedings were instituted before the fixed date.

(3) Any legal proceedings referred to in subsection (2)(b) must be continued and concluded as if this Act had not been passed.

(4) For purposes of this Act, legal proceedings are instituted by service of any process, excluding a notice, on an organ of state in which a creditor claims payment of a debt.

<sup>1</sup> The word ‘tutor’ includes a natural guardian (*Premier, Western Cape v Lakay* [2012 \(2\) SA 1 \(SCA\)](#) at 9E and 10A).

<sup>2</sup> Paragraph (b) of this definition qualifies paragraph (a) thereof and, consequently, the word ‘debt’ is confined to a claim for damages, howsoever arising (*Nicor IT Consulting (Pty) Ltd v North West Housing Corporation* [2010 \(3\) SA 90 \(NWM\)](#) at 103B–C; *Thabani Zulu & Co (Pty) Ltd v Minister of Water Affairs* [2012 \(4\) SA 91 \(KZD\)](#) at 96H–97D and 103A–B; *Vhembe District Municipality v Stewarts & Lloyds Trading (Booysens) (Pty) Ltd* [2014] 3 All SA 675 (SCA) at paragraphs [10]–[16]; *Compensation Solutions (Pty) Ltd v Compensation Commissioner* (unreported, GP case number 89689/14 dated 27 March 2015) at paragraph [2]; *Compensation Solutions (Pty) Ltd v Compensation Commissioner* (unreported, GP case number 90457/2018 dated 30 July 2019) at paragraphs [15]–[16]; *Compensation Solutions (Pty) Ltd v Compensation Commissioner* (unreported, GP case no 80277/2018 dated 22 October 2019) at paragraphs [22]–[25]). There are therefore two legs to the enquiry whether a claim is a debt in terms of s 1(1) of the Act. First, it must arise from a contract, a delict or ‘any other liability’. Secondly, it must render the organ of state liable for damages (*Director-General, Department of Public Works v Kovacs Investments 289 (Pty) Ltd* [2010 \(6\) SA 646 \(GNP\)](#) at 648E–F; *Thabani Zulu & Co (Pty) Ltd v Minister of Water Affairs* [2012 \(4\) SA 91 \(KZD\)](#) at 96H–97D and 103A–B; *Vhembe District Municipality v Stewarts & Lloyds Trading (Booysens) (Pty) Ltd* [2014] 3 All SA 675 (SCA) at paragraphs [10]–[16]). See also the footnote to ‘debt’ in s 3(1) below.

<sup>3</sup> This includes, on the face of it, constitutional damages (*Cele v South African Social Security Agency and 22 related cases* [2009 \(5\) SA 105 \(D\)](#) at 129D–F).

<sup>4</sup> The North West Housing Corporation, which derives its powers and functions from the North West Housing Corporation Act 24 of 1982, is not an organ of state within the meaning of this definition (*Nicor IT Consulting (Pty) Ltd v North West Housing Corporation* [2010 \(3\) SA 90 \(NWM\)](#) at 97E–F). So too Transnet Ltd (*Haigh v Transnet Ltd* [2012 \(1\) SA 623 \(NCK\)](#) at 636A–D) and Eskom Holdings SOC Ltd (*Botha v Eskom Holdings SOC Ltd*; *Van Zyl v Eskom Holdings SOC Ltd* (unreported, FB case no 3878/2021 dated 15 February 2023) at paragraph [25]).

### Part 1

## 2 Prescription of debts, and amendment or repeal of laws and transitional arrangements relating to prescription of debts

(1) The laws referred to in the Schedule are, as from the fixed date, amended or repealed to the extent set out in the third column of the Schedule.

(2) Subject to section 3 and subsections (3) and (4), a debt which became due —

- (a) before the fixed date, which has not been extinguished by prescription and in respect of which legal proceedings were not instituted before that date; or
- (b) after the fixed date,

will be extinguished by prescription as contemplated in [Chapter III](#) of the Prescription Act, 1969 ([Act No. 68 of 1969](#)), read with the provisions of

that Act relating thereto.

(3) Subject to subsection (4), any period of prescription which was applicable to any debt referred to in subsection (2)(a), before the fixed date, will no longer be applicable to such debt after the fixed date.

(4) (a) The expired portion of any period of prescription applicable to a debt referred to in subsection (2)(a), must be deducted from the said period of prescription contemplated in Chapter III of the Prescription Act, 1969, read with the provisions of that Act relating thereto, and the balance of the period of prescription so arrived at will constitute the new unexpired portion of prescription for such debt, applicable as from the fixed date.

(b) If the unexpired portion of the period of prescription of a debt referred to in paragraph (a) will be completed within 12 months after the fixed date, that period of prescription must only be regarded as having been completed 12 months after the fixed date.

## Part 2

### 3 Notice of intended legal proceedings to be given to organ of state <sup>1</sup>

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(1) No legal proceedings for the recovery of a debt <sup>2</sup> may be instituted against an organ of state unless —

- (a) the creditor has given the organ of state in question notice in writing of his or her or its intention to institute the legal proceedings in question; or
- (b) the organ of state in question has consented in writing to the institution of that legal proceedings —
  - (i) without such notice; or
  - (ii) upon receipt of a notice which does not comply with all the requirements set out in subsection (2).

(2) A notice must —

- (a) within six months from the date on which the debt became due, <sup>3</sup> be served on the organ of state in accordance with section 4(1); and
- (b) briefly set out —
  - (i) the facts giving rise to the debt; <sup>4</sup> and
  - (ii) such particulars of such debt as are within the knowledge of the creditor.

(3) For purposes of subsection (2)(a) —

- (a) a debt may not be regarded as being due until the creditor has knowledge of the identity of the organ of state and of the facts giving rise to the debt, but a creditor must be regarded as having acquired such knowledge as soon as he or she or it could have acquired it by exercising reasonable care, unless the organ of state wilfully prevented him or her or it from acquiring such knowledge; and
- (b) a debt referred to in section 2(2)(a), must be regarded as having become due on the fixed date.

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(4)(a) If an organ of state relies on a creditor's failure to serve a notice in terms of subsection (2)(a), <sup>5</sup> the creditor may apply to a court having jurisdiction for condonation of such failure. <sup>6</sup>

(b) The court may grant an application referred to in paragraph (a) if it is satisfied that <sup>7</sup> —

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- (i) the debt has not been extinguished by prescription; <sup>8</sup>
- (ii) good cause exists for the failure by the creditor; <sup>9</sup> and
- (iii) the organ of state was not unreasonably prejudiced by the failure. <sup>10</sup>

(c) If an application is granted in terms of paragraph (b), the court may grant leave to institute the legal proceedings in question, on such conditions regarding notice to the organ of state as the court may deem appropriate.

<sup>1</sup> This section does not find application in a case where the defendants wish to join a third party under rule 13 (*Lamont v Rocklands Poultry* 2010 (2) SA 236 (SE) at 245G–I and 246C–D). In *Mabaso v National Commissioner of Police* 2020 (2) SA 375 (SCA) it was held (at paragraph [15]) that the underlying purpose for the giving of notice in terms of s 3 of the Act is one of convenience: to assist the particular organ of state to conduct proper investigations into the claim and then to decide whether to make payment or defend the intended action. There is no express provision in s 3 placing an obligation on an organ of state to make a decision concerning the contemplated legal proceedings prior to their being instituted; such an obligation could also not be found by reading such a provision into the section by implication (at paragraphs [21] and [43]–[50]). See also *NMZ obo SFZ v MEC for Health and Social Development of the Mpumalanga Provincial Government* (unreported, SCA case no 1149/2020 dated 24 December 2021) at paragraph [15].

<sup>2</sup> A claim for unjust enrichment is not a 'debt' as defined in s 1 of the Act and/or at least because it is not a claim for damages. The Act is therefore not applicable to an enrichment claim and no notice as contemplated in s 3 thereof is required (*Greater Tzaneen Municipality v Bravospaan 252 CC* (unreported, SCA case no 428/2021 dated 7 November 2022) at paragraphs [10]–[11]). A claim based on the principle of *negotiorum gestio* is also not a 'debt' as defined in s 1 of the Act (*Goldfields Logistics (Pty) Ltd v MEC: Free State Department of Police, Roads and Transport* (unreported, FB case no A72/2022 10 February 2023 — a decision of the full court) at paragraphs [14]–[32]).

<sup>3</sup> In an action for damages arising from unlawful arrest and detention the debt became due on the release of the plaintiff from detention (*Makhwelo v Minister of Safety and Security* 2017 (1) SA 274 (GSJ) at 283C–291C).

<sup>4</sup> The purpose of this provision is to inform the organ of state of sufficient particulars to enable the matter to be investigated and consideration to be given to whether to resist the claim (*HAL obo MML v MEC for Health, Free State* 2022 (3) SA 571 (SCA) at paragraph [183], referring to *Mohlomi v Minister of Defence* 1997 (1) SA 124 (CC) at paragraph [11]).

<sup>5</sup> An organ of state such as a municipality should not proceed in terms of rule 30 of the Uniform Rules of Court, with a view to objecting to the validity of a plaintiff's notice given to it in terms of s 3 of the Act. The appropriate course to adopt is either to object to the notice in terms of the Act or to deliver a special plea after summons is served. The delivery of a special plea will allow the plaintiff to file a replication in terms of rule 25 of the Uniform Rules of Court, and will allow a proper ventilation of the issues relating to condonation (*Cochrane v City of Johannesburg* 2011 (1) SA 553 (GSJ) at 559E–G).

<sup>6</sup> Non-compliance with s 3(1) and (2) is a jurisdictional fact which cannot be waived by agreement between the parties. An application for condonation is therefore mandatory. The aforesaid position differs from non-compliance with a rule of court and condonation in that regard (*Chauke v Minister of Police* (unreported, GJ case no 15017/2017 dated 29 August 2022). Condonation must be applied for as soon as the party concerned realizes that it is required (*Minister of Agriculture and Land Affairs v CJ Rance (Pty) Ltd* 2010 (4) SA 109 (SCA) at 118B). An application for condonation may be made by the creditor even after proceedings have been instituted, provided the three criteria in s 3(4)(b) are met (*Minister of Safety and Security v De Witt* 2009 (1) SA 457 (SCA) at 460D–F, 462B–C and 462F; *Dauth v Minister of Safety and Security* 2009 (1) SA 189 (NC) at 194E–195E; *Minister of Public Works v Roux Property Fund (Pty) Ltd* (unreported, SCA case no 779/2019 dated 1 October 2020) at paragraph [16]; *NMZ obo SFZ v MEC for Health and Social Development of the Mpumalanga Provincial Government* (unreported, SCA case no 1149/2020 dated 24 December 2021) at paragraph [19]). It has been held that the subsection requires a formal application which would come before the motion court to be made, and that mere submissions from the bar would not suffice (*Labuschagne v Minister of Safety and Security* (unreported, GSJ case no 18769/2009 dated 11 April 2011), referred to in *Makhwelo v Minister of Safety and Security* 2017 (1) SA 274 (GSJ) at 279D–H). In the *Makhwelo* case Spilg J held (at 281C–D) that in appropriate circumstances an applicant seeking condonation is entitled to rely on Uniform Rule of Court 6(12) to contend that the ordinary forms and time limits for motion proceedings be abridged.

See further, in general, *Madinda v Minister of Safety and Security* 2008 (4) SA 312 (SCA) at 323J–324A (a matter in which the respondent was, on appeal, ordered to pay the costs of the application in the court below following the unwarranted and unreasonable refusal by the National Commissioner of the South African Police Service and the State Attorney to forego reliance on s 3(2)(a) of the Act) and *De Wet NO v Minister van Veiligheid en Sekuriteit* 2008 (5) SA 418 (C) at 425C–E (a matter in which, due to the extraordinary circumstances and the applicant's precarious position, the respondent was ordered to pay the costs of the application). See also *Premier, Western Cape v Lakay* 2012 (2) SA 1 (SCA) at 15A–D and *MEC for Education, KwaZulu-Natal v Shange* 2012 (5) SA 313 (SCA) at 322C–G; *Minister of Public Works v Roux Property Fund (Pty) Ltd* (unreported, SCA case no 779/2019 dated 1 October 2020).

Condonation cannot be granted if the debt has been extinguished by prescription (*Legal Aid Board v Singh* 2009 (1) SA 184 (N) at 188D–F;

*Minister of Public Works v Roux Property Fund (Pty) Ltd* (unreported, SCA case no 779/2019 dated 1 October 2020)).

7 In *Minister of Agriculture and Land Affairs v CJ Rance (Pty) Ltd* [2010 \(4\) SA 109 \(SCA\)](#) it was, *inter alia*, held that:

(a) the requirements of this subsection are conjunctive and must be established by the applicant for condonation (at 113A);  
(b) the applicant is required to set out fully the explanation for the delay, which must cover the entire period of the delay and be reasonable (at 117B);

(c) the court must be 'satisfied' that the requirements laid down in this subsection have been met—in practical terms this means the 'overall impression' made on a court by the facts set out by the parties (at 116G);

(d) in general terms the interests of justice play an important role in condonation applications (at 117B).

See also *Minister of Public Works v Roux Property Fund (Pty) Ltd* (unreported, SCA case no 779/2019 dated 1 October 2020) at paragraph [13]; *M v MEC for Health: Mpumalanga* (unreported, MM case no 1674/2018 dated 28 June 2021) at paragraph [18]; *Mehlwana v Minister of Police* (unreported, ECPE case no 414/2020 dated 9 November 2021) at paragraph [18]; *NMZ obo SFZ v MEC for Health and Social Development of the Mpumalanga Provincial Government* (unreported, SCA case no 1149/2020 dated 24 December 2021) at paragraph [21]; *Phasani v City of Tshwane Metropolitan Municipality* (unreported, GP case no 54411/2021 dated 28 November 2022) at paragraphs [9]–[10]; *Segodi v MEC for the Mpumalanga Department of Health* (unreported, MM case case no 1779/2020 dated 28 December 2023) at paragraph [23].

In *Premier, Western Cape v Lakay* [2012 \(2\) SA 1 \(SCA\)](#) it was held (at 10F–11B) that the discretion afforded to the court under s 3(4)(b) was not a narrow one, and that a court of appeal was at liberty to decide the question whether the section's requirements had been fulfilled according to its own view, and to substitute its decision simply because it considered its decision preferable.

The phrase 'if [the court] is satisfied' in s 3(4)(b) has long been recognized as setting a standard which is not proof on a balance of probability. Rather it is the overall impression made on a court which brings a fair mind to the facts set up by the parties (*Madinda v Minister of Safety and Security* [2008 \(4\) SA 312 \(SCA\)](#) at paragraph [8], referring to *Die Afrikaanse Pers Beperk v Neser* [1948 \(2\) SA 295 \(C\)](#) at 297 and *Minister of Agriculture and Land Affairs v CJ Rance (Pty) Ltd* [2010 \(4\) SA 109 \(SCA\)](#) at 116G; *Minister of Public Works v Roux Property Fund (Pty) Ltd* (unreported, SCA case no 779/2019 dated 1 October 2020) at paragraph [17]; *Joubert v City of Tshwane* (unreported, GP case no 94370/16 dated 14 January 2021) at paragraphs [6]–[7]; *Roets v MEC for Education Gauteng* (unreported, GP case no 223/2019 dated 19 May 2022) at paragraph [16]).

If all the requirements of this subsection are not established, the court is bound to dismiss the application (*Ntlanjeni v Minister of Police* (unreported, ECMk case no 3372/2018 dated 23 March 2023) at paragraph [15]).

8 See, for example, *NM obo IM v MEC for Health, Eastern Cape* [2021 \(6\) SA 490 \(ECM\)](#) at paragraphs [22]–[41]. Condonation cannot be granted if the debt has been extinguished by prescription (*Legal Aid Board v Singh* [2009 \(1\) SA 184 \(N\)](#) at 188D–F; *Minister of Public Works v Roux Property Fund (Pty) Ltd* (unreported, SCA case no 779/2019 dated 1 October 2020)).

9 The determination of 'good cause' entails a consideration of all of those factors which have a bearing on the fairness of granting condonation and affecting the proper administration of justice. Such factors may include (a) the prospects of success in the proposed action, (b) the reasons for the delay, (c) the sufficiency of the explanation offered, (d) the *bona fides* of the applicant and (e) any contribution by other persons or parties to the delay and the applicant's responsibility therefor (*Madinda v Minister of Safety and Security* [2008 \(4\) SA 312 \(SCA\)](#) at 316E–F; *Minister of Agriculture and Land Affairs v CJ Rance (Pty) Ltd* [2010 \(4\) SA 109 \(SCA\)](#) at 117C–G; and see *De Wet NO v Minister van Veiligheid en Sekuriteit* [2008 \(5\) SA 418 \(C\)](#) at 424G–I; *Joubert v City of Tshwane* (unreported, GP case no 94370/16 dated 14 January 2021) at paragraph [6]; *NM obo IM v MEC for Health, Eastern Cape* [2021 \(6\) SA 490 \(ECM\)](#) at paragraphs [42]–[52]; *NMZ obo SFZ v MEC for Health and Social Development of the Mpumalanga Provincial Government* (unreported, SCA case no 1149/2020 dated 24 December 2021) at paragraphs [23], [28]–[29] and [38]; *Roets v MEC for Education Gauteng* (unreported, GP case no 223/2019 dated 19 May 2022) at paragraphs [8]–[18]; *Prinsloo v MEC of the Department of Education, Mpumalanga Province* [\(2022\) 43 ILJ 2118 \(MM\)](#) (where the prospects of success in the proposed action was the main issue)). In addition, the importance of the case to the applicant is a factor that the court has to take into account in an application under s 3(4)(b) (*De Wet NO v Minister van Veiligheid en Sekuriteit* [2008 \(5\) SA 418 \(C\)](#) at 424G–I). Subsequent delay by the applicant, for example in bringing the application for condonation, does not fall within the terms of 'good cause' but relates to condonation (*Madinda v Minister of Safety and Security* [2008 \(4\) SA 312 \(SCA\)](#) at 317H–J and 320F–G). In *Premier, Western Cape v Lakay* [2012 \(2\) SA 1 \(SCA\)](#) it was held (at 10G–H and 12C–D) that the phrase 'good cause' was usually encountered in applications for failure to comply with a court procedure, but that the principles set out in those cases should not be applied uncritically to the requirement of good cause in s 3(4)(b)(ii). It was held, further, that the minimum requirement of an applicant for condonation was for the applicant to furnish an explanation for the default that was sufficiently full to enable the court to understand how it really came about, and to assess the applicant's conduct and motives. Beyond that each case had to depend on its own facts.

10 The approach to the existence of *unreasonable* prejudice requires a common-sense analysis of the facts, bearing in mind that the answer to whether the grounds of prejudice exist often lies peculiarly within the knowledge of the respondent. Therefore, although the onus is on the applicant to bring the application within the terms of section 3(4), a court should be slow to assume prejudice for which the respondent itself did not lay a basis (*Madinda v Minister of Safety and Security* [2008 \(4\) SA 312 \(SCA\)](#) at 320I–J; *NM obo IM v MEC for Health, Eastern Cape* [2021 \(6\) SA 490 \(ECM\)](#) at paragraphs [53]–[55]). See also *Minister of Agriculture and Land Affairs v CJ Rance (Pty) Ltd* [2010 \(4\) SA 109 \(SCA\)](#) at 117G–118A and 118B (where it was held that 'a court would be hesitant "to assume prejudice for which [a] respondent itself does not lay a basis"').

## 4 Service of notice

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(1) A notice must be served on an organ of state by delivering it by hand or by sending it by certified mail or, subject to subsection (2), by sending it by electronic mail or by transmitting it by facsimile, in the case where the organ of state is —

- (a) a national or provincial department mentioned in the first column of [Schedule 1, 2 or 3](#) to the Public Service Act, 1994 ([Proclamation No. 103 of 1994](#)), to the officer who is the incumbent of the post bearing the designation mentioned in the second column of the said Schedule 1, 2 or 3 opposite the name of the relevant national or provincial department: Provided that in the case of the Department of Police, the notice must be sent to the National Commissioner and the Provincial Commissioner of the province in which the cause of action arose, as defined in section 1 of the South African Police Service Act, 1995;  
[Paragraph (a) substituted by s 32 of the Judicial Matters Amendment Act 8 of 2017.]
- (b) a municipality, to the municipal manager appointed in terms of [section 82](#) of the Local Government: Municipal Structures Act, 1998 ([Act No. 117 of 1998](#));
- (c) a functionary or institution referred to in paragraph (c) of the definition of 'organ of state', to the chairperson, head, chief executive officer, or equivalent officer, of that functionary or institution, or where such functionary is a natural person, to that natural person;
- (d) the South African Maritime Safety Authority, to the chief executive officer of that Authority appointed under [section 22](#) of the South African Maritime Safety Authority Act, 1998 ([Act No. 5 of 1998](#));
- (e) The South African National Roads Agency Limited, to the chief executive officer of that Agency appointed under [section 19](#) of The South African National Roads Agency Limited and National Roads Act, 1998 ([Act No. 7 of 1998](#)); or
- (f) a person referred to in paragraph (f) of the definition of 'organ of state', to that person.

(2) If a notice has been sent by electronic mail or transmitted by facsimile as contemplated in subsection (1), the creditor must —

- (a) take all reasonable steps to ensure that the notice has been received by the officer or person to whom it was so sent or transmitted; and
- (b) within seven days after the date upon which that notice was so sent or transmitted, deliver by hand or send by certified mail a certified copy of that notice to the relevant officer or person referred to in subsection (1), which must be accompanied by an affidavit by the creditor or the person who sent or transmitted the notice —
  - (i) indicating the date on which and the time at which, and the electronic mail address or facsimile number to which, the notice was so sent or transmitted;
  - (ii) containing any proof that it was sent or transmitted;
  - (iii) setting out the steps taken in terms of paragraph (a); and
  - (iv) indicating whether confirmation of the receipt of the notice has been obtained and, if applicable, the name of the officer or person who has given that confirmation.

## 5 Service of process

(1) (a) Any process by which any legal proceedings contemplated in section 3(1) are instituted must be served in accordance with the provisions of [section 2](#) of the State Liability Act, 1957 ([Act No. 20 of 1957](#)).

(b) Despite paragraph (a), any process by which any legal proceedings contemplated in section 3(1) are instituted and in which the —

(i) Minister of State Security is the defendant or respondent, must be served on the Director-General: State Security Agency, at the head office of the department;

(ii) Minister of Police is the defendant or respondent, must be served on —

(aa) the National Commissioner as defined in [section 1](#) of the South African Police Service Act, 1995 ([Act No. 68 of 1995](#)), at the head office of the department; and

(bb) the Provincial Commissioner as defined in section 1 of the South African Police Service Act, 1995, of the province in which the cause of action arose; or

(iii) Minister of Correctional Services <sup>1</sup> is the defendant or respondent, must be served on —

(aa) the Commissioner of Correctional Services as defined in [section 1](#) of the Correctional Services Act, 1998 ([Act No. 111 of 1998](#)), at the head office of the department; and

(bb) the Provincial Commissioner of Correctional Services as defined in section 1 of the Correctional Services Act, 1998, of the province in which the cause of action arose.

[Subsection (1) substituted by s 33 of the Judicial Matters Amendment Act 8 of 2017.]

(2) No process referred to in subsection (1) may be served as contemplated in that subsection before the expiry of a period of 60 days after the notice, where applicable, has been served on the organ of state in terms of section 3(2)(a): Provided that if the organ of state repudiates in writing liability for the debt before the expiry of the said period, the creditor may at any time after such repudiation serve the process on the organ of state concerned.

[Subsection (2) substituted by s 33 of the Judicial Matters Amendment Act 8 of 2017.]

(3) If any process referred to in subsection (1) has been served as contemplated in that subsection before the expiry of the period referred to in subsection (2), such process must be regarded as having been served on the first day after the expiry of the said period.

(4) Any process by which legal proceedings contemplated in section 3(1) are instituted must be issued by the court in whose area of jurisdiction the cause of action arose, unless the organ of state in writing consents to the institution of legal proceedings in a different jurisdiction.

[Subsection (4) added by s 33 of the Judicial Matters Amendment Act 8 of 2017.]

<sup>1</sup> Now the Minister of Justice and Correctional Services.

## 6 Short title

This is the Institution of Legal Proceedings against certain Organs of State Act, 2002.

### SCHEDULE (Laws amended or repealed by section 2(1))

RS 21, 2023, D11-11

No. and year of law	Short title	Extent of amendment or repeal
<a href="#">Act No. 38 of 1927</a>	Black Administration Act, 1927	The repeal of section 32A.
<a href="#">Act No. 57 of 1951</a>	Merchant Shipping Act, 1951	1 The repeal of section 343. 2 The amendment of section 344 by the deletion of subsection (4).
<a href="#">Act No. 44 of 1957</a>	Defence Act, 1957	The repeal of section 113.
Act No. 94 of 1970	Limitation of Legal Proceedings (Provincial and Local Authorities) Act, 1970	The repeal of the whole.
Act No. 18 of 1973	Mental Health Act, 1973	The amendment of section 68 by the deletion of subsection (4).
<a href="#">Act No. 90 of 1979</a>	Education and Training Act, 1979	The repeal of section 42A.
<a href="#">Act No. 70 of 1988</a>	Education Affairs Act (House of Assembly), 1988	The repeal of section 108.
Act No. 122 of 1992	Audit Arrangements Act, 1992	The repeal of section 52.
Act No. 38 of 1994	Intelligence Services Act, 1994	The repeal of section 26.
<a href="#">Proclamation No. 103 of 1994</a>	Public Service Act, 1994	The repeal of section 39.



<a href="#">Act No. 68 of 1995</a>	South African Police Service Act, 1995	<p>1 The repeal of section 57.</p> <p>2 The amendment of section 64I —</p> <p>(a) by the substitution for subsection (1) of the following subsection:</p> <p>“(1) Any legal proceedings against a municipal police service or member of a municipal police service for the recovery of a debt as defined in the Institution of Legal Proceedings against certain Organs of State Act, 2002, shall be instituted against the municipal council in question.”</p> <p>(b) by the deletion of subsection (2).</p>
<a href="#">Act No. 7 of 1998</a>	The South African National Roads Agency Limited and National Roads Act, 1998	<p>The amendment of section 59 —</p> <p>(a) by the deletion of subsections (1) and (2); and</p> <p>(b) by the substitution for subsection (3) of the following subsection:</p> <p>“(3) Neither the Agency nor —</p> <p>(a) any of the members of the Board;</p> <p>(b) the Chief Executive Officer;</p> <p>(c) any of the other employees of the Agency acting in the performance of their duties;</p> <p>(d) any person acting on behalf of the Agency on the authority of the Board; or</p>

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		<p>(e) any person who operates or has constructed a national road, will be liable for any damage or loss suffered by any person through the use of any part of the national road other than the roadway or as a result of the closure or deviation of a national road under this Act.”</p>
<a href="#">Act No. 111 of 1998</a>	Correctional Services Act, 1998	The repeal of section 130.
<a href="#">Act No. 32 of 2000</a>	Local Government: Municipal Systems Act, 2000	The amendment of section 109 by the deletion of subsection (1).

## SCHEDULE B

### Other statutory limitations on civil proceedings

RS 21, 2023, D11-13

### Agricultural Credit Act 28 of 1966, section 21(1) <sup>1</sup>

**21** (1) Any proceedings instituted in any court against any person for the recovery of any debt due by him, or for the attachment or sale of any assets belonging to him in execution of a judgment of such court, shall be stayed by the filing in such court of a certificate signed by the chairman or a vice-chairman of the board, to the effect that the said person (in this Part referred to as the applicant) has applied for assistance and that in the opinion of such chairman or vice-chairman there is a reasonable prospect of the board's rendering assistance to the applicant or of a proposal for a compromise as contemplated in section 24 being made.

[Subsection (1) substituted by s 9 of Act 66 of 1970 and by s 2(a) of Act 53 of 1993.]

### Apportionment of Damages Act 34 of 1956, section 2(2) and 2(6)(b)

**2** (2) Notice of any action may at any time before the close of pleadings in that action be given —

- (a) by the plaintiff;
- (b) by any joint wrongdoer who is sued in that action,

to any joint wrongdoer who is not sued in that action, and such joint wrongdoer may thereupon intervene as a defendant in that action.

**2** (6) (b) The period of extinctive prescription in respect of a claim for a contribution shall be twelve months calculated from the date of the judgment in respect of which a contribution is claimed or, where an appeal is made against such judgment, the date of the final judgment on appeal: Provided that if, in the case of any joint wrongdoer, the period of extinctive prescription in relation to any action which may be instituted against him by the plaintiff, is governed by a law which prescribes a period of less than twelve months as the period within which legal proceedings shall be instituted against him or within which notice shall be given that proceedings will be instituted against him, the provisions of such law shall apply *mutatis mutandis* in relation to any action for a contribution by a joint wrongdoer, the period or periods concerned being calculated from the date of the judgment as aforesaid instead of from the date of the original cause of action.

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### Attorneys Act 53 of 1979, section 48

**48** (1) No person shall have a claim against the fund in respect of any theft contemplated in section 26 unless —

- (a) written notice of such claim is given to the council of the society concerned and to the board of control within three months after the claimant became aware of the theft or by the exercise of reasonable care should have become aware of the theft; and
- (b) within six months after a written demand has been sent to him by the board of control, the claimant furnishes the board with such proof as the board may reasonably require.

(2) If the board of control is satisfied that, having regard to all the circumstances, a claim or the proof required by the board has been lodged or furnished as soon as practicable, it may in its discretion extend any of the periods referred to in subsection (1).

## Legal Practice Act 28 of 2014, section 78

### 78 Procedure for instituting claims against Fund

(1) No person has a claim against the Fund in respect of any theft contemplated in section 55, unless —

- (a) written notice of the claim is given to the Council and to the Board within three months after the claimant became aware of the theft or, by the exercise of reasonable care, should have become aware of the theft; and
- (b) within six months after a written demand has been sent to him or her by the Board, the claimant furnishes the Board with proof as the Board may reasonably require.

(2) If the Board is satisfied that, having regard to all the circumstances, a claim or the proof required by it has been lodged or furnished within a reasonable period, it may in its discretion extend any of the periods referred to in subsection (1).

## Carriage by Air Act 17 of 1946, section 3(1) and Schedule, articles 31 and 35

### 3 Provisions of Convention to have force of law

(1) The provisions of the Convention <sup>2</sup> shall, so far as they relate to the rights and liabilities of carriers, passengers, consignors, consignees and other persons, and subject to the provisions of this Act, have the force of law in the Republic in relation to any carriage by air to which the Convention applies, irrespective of the nationality of the aircraft performing the carriage.

### Article 31 — Timely Notice of Complaints

1. Receipt by the person entitled to delivery of checked baggage of cargo without complaint is *prima facie* evidence that the same has been delivered in good condition and in accordance with the document of carriage or with the record preserved by the other means referred to in paragraph 2 of Article 3 and paragraph 2 of Article 4.

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2. In the case of damage, the person entitled to delivery must complain to the carrier forthwith after the discovery of the damage, and, at the latest, within seven days from the date of receipt in the case of checked baggage and fourteen days from the date of receipt in the case of cargo. In the case of delay, the complaint must be made at the latest within twenty-one days from the date on which the baggage or cargo have been placed at his or her disposal.

3. Every complaint must be made in writing and given or dispatched within the times aforesaid,

4. If no complaint is made within the times aforesaid, no action shall lie against the carrier, save in the case of fraud on its part.

### Article 35 — Limitation of Actions

1. The right to damages shall be extinguished if an action is not brought within two years, reckoned from the date of arrival at the destination, or from the date on which the aircraft ought to have arrived, or from the date on which the carriage stopped.

2. The method of calculating that period shall be determined by the law of the court seized of the case.

## Carriage of Goods by Sea Act 1 of 1986, Schedule, articles III (6) and (6bis)

6. Unless notice of loss or damage and the general nature of such loss or damage be given in writing to the carrier or his agent at the port of discharge before or at the time of the removal of the goods into the custody of the person entitled to delivery thereof under the contract of carriage, or, if the loss or damage be not apparent, within three days, such removal shall be *prima facie* evidence of the delivery by the carrier of the goods as described in the bill of lading.

The notice in writing need not be given if the state of the goods has, at the time of their receipt, been the subject of joint survey or inspection.

Subject to paragraph 6bis the carrier and the ship shall in any event be discharged from all liability whatsoever in respect of the goods, unless suit is brought within one year of their delivery or of the date when they should have been delivered. This period may, however, be extended if the parties so agree after the cause of action has arisen.

In the case of any actual or apprehended loss or damage the carrier and the receiver shall give all reasonable facilities to each other for inspecting and tallying the goods.

6bis. An action for indemnity against a third person may be brought even after the expiration of the year provided for in the preceding paragraph if brought within the time allowed by the law of the Court seized of the case. However, the time allowed shall be not less than three months, commencing from the day when the person bringing such action for indemnity has settled the claim or has been served with process in the action against himself.

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## Compensation for Occupational Injuries and Diseases Act 130 of 1993, section 44

44. A right to benefits in terms of this Act shall lapse if the accident in question is not brought to the attention of the commissioner or of the employer or mutual association concerned, as the case may be, within 12 months after the date of such accident.

## Criminal Procedure Act 51 of 1977, section 35(4)(a)

35 (4) (a) The court in question or, if the judge or judicial officer concerned is not available, any judge or judicial officer of the court in question, may at any time within a period of three years with effect from the date of declaration of forfeiture, upon the application of any person, other than the accused, who claims that any right referred to in subparagraph (i) or (ii) of this paragraph is vested in him, inquire into and determine any such right, and if the court finds that the weapon, instrument, vehicle, container or other article in question —

- (i) is the property of any such person, the court shall set aside the declaration of forfeiture and direct that the weapon, instrument, vehicle, container or other article, as the case may be, be returned to such person, or, if the State has disposed of the weapon, instrument, vehicle, container or other article in question, direct that such person be compensated by the State to the extent to which the State has been enriched by such disposal;
- (ii) was sold to the accused in pursuance of a contract under which he becomes the owner of such weapon, instrument, vehicle, container or other article, as the case may be, upon the payment of a stipulated price, whether by instalments or otherwise, and under which the seller becomes entitled to the return of such weapon, instrument, vehicle, container or other article upon default of payment of the stipulated price or any part thereof —
  - (aa) the court shall direct that the weapon, instrument, vehicle, container or other article in question be sold by public auction and that the said seller be paid out of the proceeds of the sale an amount equal to the value of his rights under the contract to the weapon, instrument, vehicle, container or other article, but not exceeding the proceeds of the sale; or
  - (bb) if the State has disposed of the weapon, instrument, vehicle, container or other article in question, the court shall direct that the said seller be likewise compensated.

## Customs and Excise Act 91 of 1964, sections 89 and 96

89 (1) Whenever any proceedings are instituted to claim any ship, vehicle, container or other transport equipment, plant, material or goods (in this section, section 43 and section 90 referred to as 'goods'), which have been seized under this Act, such claim must be instituted by the person from whom they were seized or the owner or the owner's authorised agent (in this section referred to as 'the litigant').

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(2) Any litigant must give notice to the Commissioner in writing before serving any process for instituting any proceedings as contemplated in section 96(1)(a) within 90 days after the date of seizure.

[Subsection (2) substituted by s 149(1)(a) of Act 45 of 2003.]

[NB: Subsection (2) has been substituted by s 149(1)(c) of the Revenue Laws Amendment Act 45 of 2003, a provision which will come into operation on the date of commencement of Parts A and B of Chapter XA.]

(3) Any proceedings must be instituted within 90 days of such notice.

(4) Whenever goods are seized and in consequence of the seizure —

- (a) delivery thereof under section 93 is refused or the terms of delivery thereunder are not accepted; or
- (b) no proceedings are instituted as contemplated in this section or have been instituted and have been dismissed in a final judgment of the High Court or a judgment by the Supreme Court of Appeal,  
the goods concerned shall, subject to the provisions of section 90, be deemed to be condemned and forfeited.

[Subsection (4) substituted by s 149(1)(b) of Act 45 of 2003.]

[NB: Subsection (4) has been substituted by s 149(1)(d) of the Revenue Laws Amendment Act 45 of 2003, a provision which will come into operation on the date of commencement of Parts A and B of Chapter XA.]

- (5) The provisions of section 96(1)(c) shall apply *mutatis mutandis* to any period contemplated in subsections (2) and (3).

[Section 89 amended by s 13 of Act 85 of 1968 and substituted by s 131 of Act 60 of 2001.]

**96** (1) (a) (i) No process by which any legal proceedings are instituted against the State, the Minister, the Commissioner or an officer for anything done in pursuance of this Act may be served before the expiry of a period of one month after delivery of a notice in writing setting forth clearly and explicitly the cause of action, the name and place of abode of the person who is to institute such proceedings (in this section referred to as the 'litigant') and the name and address of his or her attorney or agent, if any.

(ii) Such notice shall be in such form and shall be delivered in such manner and at such places as may be prescribed by rule.

(iii) No such notice shall be valid unless it complies with the requirements prescribed in this section and such rules.

[Paragraph (a) substituted by s 26(1)(a) of Act 32 of 2005.]

(b) Subject to the provisions of section 89, the period of extinctive prescription in respect of legal proceedings against the State, the Minister, the Commissioner or an officer on a cause of action arising out of the provisions of this Act shall be one year and shall begin to run on the date when the right of action first arose: Provided that where any proceedings are instituted concerning any decision defined in section 77A(1), such date shall begin to run on the date —

- (i) of a final decision as contemplated in the rules for Part A of Chapter XA;

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- (ii) when the Commissioner advises the person who made use of the alternative dispute resolution procedures contemplated in the rules for Part B of Chapter XA that agreement has not been achieved at the conclusion or termination of such procedures; or

- (iii) on the date a dispute is not settled and the Commissioner advises the person concerned as contemplated in section 77O(5) of Part C of Chapter XA.

[Paragraph (b) substituted by s 30(1)(a) of Act 34 of 2004 and by s 26(1)(b) of Act 32 of 2005.]

(c) (i) The State, the Minister, the Commissioner or an officer may on good cause shown reduce the period specified in paragraph (a) or extend the period specified in paragraph (b) by agreement with the litigant.

(ii) If the State, the Minister, the Commissioner or an officer refuses to reduce or to extend any period as contemplated in subparagraph (i), a High Court <sup>3</sup> having jurisdiction may, upon application of the litigant, reduce or extend any such period where the interest of justice so requires.

(2) This section does not apply to the recovery of a debt contemplated in any law providing for the recovery from an organ of state of a debt described in such law.

[Section 96 substituted by s 136 of Act 60 of 2001.]

## Deeds Registries Act 47 of 1937, section 97

### Notice to registrar of application to court

**97** (1) Before any application is made to the court for authority or an order involving the performance of any act in a deeds registry, the applicant shall give the registrar concerned at least seven days' notice before the hearing of such application and such registrar may submit to the court such report thereon as he may deem desirable to make.

(2) Subject to notice in terms of sub-section (1) being given to the registrar concerned, any order made by a court having jurisdiction over a person in respect of that person's property or rights to property situate in another province shall be given effect to by the registrar of such other province without the necessity of having such order confirmed by the court of the province in which the property is situate.

[Subsection (2) added by s 39 of Act 43 of 1957.]

## Drugs and Drug Trafficking Act 140 of 1992, section 26(2)

**26** (2) (a) Subject to the provisions of subsection (1), the court concerned or, if the judge or judicial officer concerned is not available, any judge or judicial officer of that court may at any time within a period of three years from the date of the declaration of forfeiture, on the application of any person other than the convicted person who claims that he has any interest in the property, animal, vehicle, vessel, aircraft, container, article or immovable property in question, inquire into and determine any such interest.

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- (b) If a court referred to in paragraph (a) finds —

- (i) that the property, animal, vehicle, vessel, aircraft, container, article or immovable property is wholly owned by the applicant, the court shall set aside the declaration of forfeiture in question and direct that the property, animal, vehicle, vessel, aircraft, container, article or immovable property, as the case may be, be returned to the applicant or, if the State has disposed of it, direct that the applicant be compensated by the State to the extent to which the State has been enriched by the disposal;

- (ii) that the applicant has an interest in the property, animal, vehicle, vessel, aircraft, container, article or immovable property —

(aa) the court shall direct that the property, animal, vehicle, vessel, aircraft, container, article or immovable property, as the case may be, be sold by public auction and that the applicant be paid out of the proceeds of the sale an amount equal to the value of his interest therein, but not exceeding the proceeds of the sale; or

(bb) if the State has disposed of the property, animal, vehicle, vessel, aircraft, container, article or immovable property in question, the court shall direct that the applicant be compensated by the State in an amount equal to the value of his interest therein, but not exceeding the enrichment of the State by the disposal.

## Electoral Commission Act 51 of 1996, section 22(1) (read with section 3 <sup>4</sup> of the State Liability Act 20 of 1957)

**22** (1) The State Liability Act, 1957 ([Act 20 of 1957](#)), applies with the necessary changes in respect of the Commission.

## Expropriation (Establishment of Undertakings) Act 39 of 1951, section 7(2) and (3)

**7** (2) If any person has suffered any damage as a result of the exercise of any power conferred in terms of subsection (1), the person concerned referred to in section 2 shall be liable to pay damages or to repair such damage.

(3) Any proceedings by virtue of the provisions of subsection (2) shall be instituted within six months after the damage in question has been caused or within six months after the completion of the acts contemplated in subsection (1), whichever period is the longer, and may only be instituted if the plaintiff has given the said person not less than one month's notice thereof and of the cause of the alleged damage.

[Section 7 substituted by s 1 of Act 85 of 1977.]

## Expropriation Act 63 of 1975, section 6(2) and (3)

**6** (2) If any person has suffered any damage as a result of the exercise of any power conferred in terms of subsection (1), the State shall be liable to pay damages or to repair such damage.

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(3) Any proceedings by virtue of the provisions of subsection (2) shall be instituted within six months after the damage in question has been caused or within six months after completion of the acts contemplated in subsection (1), whichever period is the longer, and may only be instituted if the plaintiff has given the Minister not less than one month's notice thereof and of the cause of the alleged damage.

## Extension of Security of Tenure Act 62 of 1997, sections 8 to 15 and 17 to 19

**8** (1) Subject to the provisions of this section, an occupier's right of residence may be terminated on any lawful ground, provided that such



termination is just and equitable, having regard to all relevant factors and in particular to —

- (a) the fairness of any agreement, provision in an agreement, or provision of law on which the owner or person in charge relies;
  - (b) the conduct of the parties giving rise to the termination;
  - (c) the interests of the parties, including the comparative hardship to the owner or person in charge, the occupier concerned, and any other occupier if the right of residence is or is not terminated;
  - (d) the existence of a reasonable expectation of the renewal of the agreement from which the right of residence arises, after the effluxion of its time; and
  - (e) the fairness of the procedure followed by the owner or person in charge, including whether or not the occupier had or should have been granted an effective opportunity to make representations before the decision was made to terminate the right of residence.
- (2) The right of residence of an occupier who is an employee and whose right of residence arises solely from an employment agreement, may be terminated if the occupier resigns from employment or is dismissed in accordance with the provisions of the Labour Relations Act.
- (3) Any dispute over whether an occupier's employment has terminated as contemplated in subsection (2), shall be dealt with in accordance with the provisions of the Labour Relations Act, and the termination shall take effect when any dispute over the termination has been determined in accordance with that Act.
- (4) The right of residence of an occupier who has resided on the land in question or any other land belonging to the owner for 10 years and —
- (a) has reached the age of 60 years; or
  - (b) is an employee or former employee of the owner or person in charge, and as a result of ill health, injury or disability is unable to supply labour to the owner or person in charge,

may not be terminated unless that occupier has committed a breach contemplated in section 10(1)(a), (b) or (c): Provided that for the purposes of this subsection, the mere refusal or failure to provide labour shall not constitute such a breach.

(5) On the death of an occupier contemplated in subsection (4), the right of residence of an occupier who was his or her spouse or dependant may be terminated only on 12 calendar months' written notice to leave the land, unless such a spouse or dependant has committed a breach contemplated in section 10(1).

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(6) Any termination of the right of residence of an occupier to prevent the occupier from acquiring rights in terms of this section, shall be void.

(7) If an occupier's right to residence has been terminated in terms of this section, or the occupier is a person who has a right of residence in terms of subsection (5) —

- (a) the occupier and the owner or person in charge may agree that the terms and conditions under which the occupier resided on the land prior to such termination shall apply to any period between the date of termination and the date of the eviction of the occupier; or
- (b) the owner or person in charge may institute proceedings in a court for a determination of reasonable terms and conditions of further residence, having regard to the income of all the occupiers in the household.

[Subsection (7) substituted by s 23 of Act 61 of 1998.]

9 (1) Notwithstanding the provisions of any other law, an occupier may be evicted only in terms of an order of court issued under this Act.

(2) A court may make an order for the eviction of an occupier if —

- (a) the occupier's right of residence has been terminated in terms of section 8;
- (b) the occupier has not vacated the land within the period of notice given by the owner or person in charge;
- (c) the conditions for an order for eviction in terms of section 10 or 11 have been complied with; and
- (d) the owner or person in charge has, after the termination of the right of residence, given —
  - (i) the occupier;
  - (ii) the municipality in whose area of jurisdiction the land in question is situated; and
  - (iii) the head of the relevant provincial office of the Department of Rural Development and Land Reform, for information purposes,

[Subparagraph (iii) substituted by s 36(a) of Act 4 of 2011.]

not less than two calendar months' written notice of the intention to obtain an order for eviction, which notice shall contain the prescribed particulars and set out the grounds on which the eviction is based: Provided that if a notice of application to a court has, after the termination of the right of residence, been given to the occupier, the municipality and the head of the relevant provincial office of the Department of Rural Development and Land Reform not less than two months before the date of the commencement of the hearing of the application, this paragraph shall be deemed to have been complied with.

[Subsection (2) amended by s 36(b) of Act 4 of 2011.]

(3) For the purposes of subsection (2)(c), the Court must request a probation officer contemplated in [section 1](#) of the Probation Services Act, 1991 ([Act 116 of 1991](#)), or an officer of the department or any other officer in the employment of the State, as may be determined by the Minister, to submit a report within a reasonable period —

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- (a) on the availability of suitable alternative accommodation to the occupier;
- (b) indicating how an eviction will affect the constitutional rights of any affected person, including the rights of the children, if any, to education;
- (c) pointing out any undue hardships which an eviction would cause the occupier; and
- (d) on any other matter as may be prescribed.

[Subsection (3) added by s 10 of Act 11 of 2000.]

10 (1) An order for the eviction of a person who was an occupier on 4 February 1997 may be granted if —

- (a) the occupier has breached section 6(3) and the court is satisfied that the breach is material and that the occupier has not remedied such breach;
- (b) the owner or person in charge has complied with the terms of any agreement pertaining to the occupier's right to reside on the land and has fulfilled his or her duties in terms of the law, while the occupier has breached a material and fair term of the agreement, although reasonably able to comply with such term, and has not remedied the breach despite being given one calendar month's notice in writing to do so;
- (c) the occupier has committed such a fundamental breach of the relationship between him or her and the owner or person in charge, that it is not practically possible to remedy it, either at all or in a manner which could reasonably restore the relationship; or
- (d) the occupier —
  - (i) is or was an employee whose right of residence arises solely from that employment; and
  - (ii) has voluntarily resigned in circumstances that do not amount to a constructive dismissal in terms of the Labour Relations Act.

(2) Subject to the provisions of subsection (3), if none of the circumstances referred to in subsection (1) applies, a court may grant an order for eviction if it is satisfied that suitable alternative accommodation is available to the occupier concerned.

(3) If —

- (a) suitable alternative accommodation is not available to the occupier within a period of nine months after the date of termination of his or her right of residence in terms of section 8;
- (b) the owner or person in charge provided the dwelling occupied by the occupier; and
- (c) the efficient carrying on of any operation of the owner or person in charge will be seriously prejudiced unless the dwelling is available for occupation by another person employed or to be employed by the owner or person in charge,

a court may grant an order for eviction of the occupier and of any other occupier who lives in the same dwelling as him or her, and whose permission to reside there was wholly dependent on his or her right of residence if it is just and equitable to do so, having regard to —

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- (i) the efforts which the owner or person in charge and the occupier have respectively made in order to secure suitable alternative accommodation for the occupier; and

- (ii) the interests of the respective parties, including the comparative hardship to which the owner or person in charge, the occupier and the remaining occupiers shall be exposed if an order for eviction is or is not granted.

**11 (1)** If it was an express, material and fair term of the consent granted to an occupier to reside on the land in question, that the consent would terminate upon a fixed or determinable date, a court may on termination of such consent by effluxion of time grant an order for eviction of any person who became an occupier of the land in question after 4 February 1997, if it is just and equitable to do so.

[Subsection (1) substituted by s 25(a) of Act 61 of 1998.]

(2) In circumstances other than those contemplated in subsection (1), a court may grant an order for eviction in respect of any person who became an occupier after 4 February 1997 if it is of the opinion that it is just and equitable to do so.

(3) In deciding whether it is just and equitable to grant an order for eviction in terms of this section, the court shall have regard to —

- (a) the period that the occupier has resided on the land in question;
- (b) the fairness of the terms of any agreement between the parties;
- (c) whether suitable alternative accommodation is available to the occupier;
- (d) the reason for the proposed eviction; and

[Paragraph (d) substituted by s 25(c) of Act 61 of 1998.]

- (e) the balance of the interests of the owner or person in charge, the occupier and the remaining occupiers on the land.

**12 (1)** A court that orders the eviction of an occupier shall —

- (a) determine a just and equitable date on which the occupier shall vacate the land; and
- (b) determine the date on which an eviction order may be carried out if the occupier has not vacated the land on the date contemplated in paragraph (a).

(2) In determining a just and equitable date the court shall have regard to all relevant factors, including —

- (a) the fairness of the terms of any agreement between the parties;
- (b) the balance of the interests of the owner or person in charge, the occupier and the remaining occupiers on the land; and
- (c) the period that the occupier has resided on the land in question.

(3) A court may, at the request of the sheriff in question, authorise any person to assist the sheriff to carry out an order for eviction, demolition or removal, subject to the conditions determined by the court as to the execution thereof: Provided that the sheriff shall at all times be present during such eviction, demolition or removal.

(4) Any order for the eviction of an occupier in terms of section 10 or 11 shall be subject to reasonable terms and conditions for further residence which may be

determined by the court, having regard to the income of all of the occupiers in the household.

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(5) A court may, on good cause shown, vary any term or condition of an order for eviction made by it.

(6) Notwithstanding the provisions of sections 10 and 11, the court shall not order the eviction of an occupier if it is of the opinion that one of the purposes of such intended eviction is to prevent the occupier from acquiring rights in terms of section 8(4).

**13 (1)** If a court makes an order for eviction in terms of this Act —

- (a) the court shall order the owner or person in charge to pay compensation for structures erected and improvements made by the occupier and any standing crops planted by the occupier, to the extent that it is just and equitable with due regard to all relevant factors, including whether —
  - (i) the improvements were made or the crops planted with the consent of the owner or person in charge;
  - (ii) the improvements were necessary or useful to the occupier; and
  - (iii) a written agreement between the occupier and the owner or person in charge, entered into prior to the making of improvements, provides that the occupier shall not be entitled to compensation for improvements identified in that agreement;
- (b) the court shall order the owner or person in charge to pay any outstanding wages and related amounts that are due in terms of the Basic Conditions of Employment Act, 1983 (Act 3 of 1983) [sic] the Labour Relations Act or a determination made in terms of the Wage Act, 1957 (Act 5 of 1957) [sic]; and
- (c) the court may order the owner or person in charge to grant the occupier a fair opportunity to —
  - (i) demolish any structures and improvements erected or made by the occupier and his or her predecessors, and to remove materials so salvaged; and
  - (ii) tend standing crops to which he or she is entitled until they are ready for harvesting, and then to harvest and remove them.

(2) The compensation contemplated in subsection (1) shall be determined by the court as being just and equitable, taking into account —

- (a) the cost to the occupier of replacing such structures and improvements in the condition in which they were before the eviction;
- (b) the value of materials which the occupier may remove;
- (c) whether any materials referred to in paragraph (b) or contributions by the owner or person in charge were provided as part of the benefits provided to the occupier or his or her predecessors in return for any consideration; and
- (d) if the occupier has not been given the opportunity to remove a crop, the value of the crop less the value of any contribution by the owner or person in charge to the planting and maintenance of the crop.

(3) No order for eviction made in terms of section 10 or 11 may be executed before the owner or person in charge has paid the compensation which is due in terms of subsection (1): Provided that a court may grant leave for eviction subject to satisfactory guarantees for such payment.

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**14 (1)** A person who has been evicted contrary to the provisions of this Act may institute proceedings in a court for an order in terms of subsection (3).

(2) A person who —

- (a) would have had a right to reside on land in terms of section 6 if the provisions of this Act had been in force on 4 February 1997; and
  - (b) was evicted for any reason or by any process between 4 February 1997 and the commencement of this Act,
- may institute proceedings in a court for an order in terms of subsection (3).

(3) In proceedings in terms of subsection (1) or (2) the court may, subject to the conditions that it may impose, make an order —

- (a) for the restoration of residence on and use of land by the person concerned, on such terms as it deems just;
- (b) for the repair, reconstruction or replacement of any building, structure, installation or thing that was peacefully occupied or used by the person immediately prior to his or her eviction, in so far as it was damaged, demolished or destroyed during or after such eviction;
- (c) for the restoration of any services to which the person had a right in terms of section 6;
- (d) for the payment of compensation contemplated in section 13;
- (e) for the payment of damages, including but not limited to damages for suffering or inconvenience caused by the eviction; and
- (f) for costs.

(4) Where the person contemplated in subsection (2) was evicted in terms of an order of a court —

- (a) the proceedings contemplated in subsection (1) shall be instituted within one year of the commencement of this Act; and
- (b) the court shall in addition to any other factor which it deems just and equitable, take into account —
  - (i) whether the order of eviction would have been granted if the proceedings had been instituted after the commencement of this Act; and
  - (ii) whether the person ordered to be evicted was effectively represented in those proceedings, either by himself or herself or by another person.

**15 (1)** Notwithstanding any other provision of this Act, the owner or person in charge may make urgent application for the removal of any occupier from land pending the outcome of proceedings for a final order, and the court may grant an order for the removal of that occupier if it is satisfied that —

- (a) there is a real and imminent danger of substantial injury or damage to any person or property if the occupier is not forthwith removed from the land;
- (b) there is no other effective remedy available;
- (c) the likely hardship to the owner or any other affected person if an order for removal is not granted, exceeds the likely hardship to the occupier against whom the order is sought, if an order for removal is granted; and
- (d) adequate arrangements have been made for the reinstatement of any person evicted if the final order is not granted.

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(2) The owner or person in charge shall beforehand give reasonable notice of any application in terms of this section to the municipality in whose area of jurisdiction the land in question is situated, and to the head of the relevant provincial office of the Department of Rural Development and Land Reform for his or her information.

[Subsection (2) added by s 26 of Act 61 of 1998 and substituted by s 37 of Act 4 of 2011.]

**17** (1) A party may, subject to the provisions of sections 19 and 20, institute proceedings in the magistrate's court within whose area of jurisdiction the land in question is situate, or the Land Claims Court.

(2) If all the parties to proceedings consent thereto, proceedings may be instituted in any division of the High Court <sup>5</sup> within whose area of jurisdiction the land in question is situate.

(2A) A Special Tribunal established under [section 2](#) of the Special Investigating Units and Special Tribunals Act, 1996 ([Act 74 of 1996](#)), may, in proceedings arising out of that Act —

- (a) decide whether a person is an occupier as defined in section 1;
- (b) make an order for eviction under this Act and shall have all powers necessary or reasonably incidental thereto;
- (c) where it finds that a person has unlawfully obtained consent to reside on land under any of the circumstances mentioned in section 2(2)(a) to (g) of the Special Investigating Units and Special Tribunals Act, 1996, exclude such person from the application of the provisions of this Act.

[Subsection (2A) added by s 27 of Act 61 of 1998.]

(2B) A Special Investigating Unit established under section 2 of the Special Investigating Units and Special Tribunals Act, 1996 ([Act 74 of 1996](#)), may investigate any matter relevant to the exercise by a Special Tribunal of the powers mentioned in subsection (2A).

[Subsection (2B) added by s 27 of Act 61 of 1998.]

(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](#)), may make rules to govern the procedure in the High Court <sup>6</sup> and the magistrates' courts in terms of this Act.

(4) Until such time as rules of court for the magistrates' courts are made in terms of subsection (3), the rules of procedure applicable in civil actions and applications in a High Court <sup>7</sup> shall apply *mutatis mutandis* in respect of any proceedings in a magistrate's court in terms of this Act.

**18** A court may, in addition to other powers set out in this Act —

- (a) direct how the order of the court shall be executed, including the setting of time limits for the implementation of such orders; and
- (b) make such orders for costs as it deems just.

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**19** (1) A magistrate's court —

- (a) shall have jurisdiction in respect of —
  - (i) proceedings for eviction or reinstatement; and
  - (ii) criminal proceedings in terms of this Act; and

(b) shall be competent —

- (i) to grant interdicts in terms of this Act; and
- (ii) to issue declaratory orders as to the rights of a party in terms of this Act.

(2) Civil appeals from magistrates' courts in terms of this Act shall lie to the Land Claims Court.

(3) Any order for eviction by a magistrate's court in terms of this Act, in respect of proceedings instituted on or before a date to be determined by the Minister and published in the *Gazette*, shall be subject to automatic review by the Land Claims Court, which may —

- (a) confirm such order in whole or in part;
- (b) set aside such order in whole or in part;
- (c) substitute such order in whole or in part; or
- (d) remit the case to the magistrate's court with directions to deal with any matter in such manner as the Land Claims Court may think fit.

[Subsection (3) amended by s 28 of Act 61 of 1998 and by s 11(a) of Act 11 of 2000.]

(4) The provisions of subsection (3) shall not apply to a case in which an appeal has been noted by an occupier.

(5) Any order for eviction contemplated in subsection (3) shall be suspended pending the review thereof by the Land Claims Court.

[Subsection (5) added by s 11(b) of Act 11 of 2000.]

## Financial and Fiscal Commission Act 99 of 1997, section 28(1) (read with section 3 <sup>8</sup> of the State Liability Act 20 of 1957)

**28** (1) The State Liability Act, 1957 ([Act 20 of 1957](#)), applies with the necessary changes, in respect of the Commission, and in such application a reference in that Act to the Minister of a department concerned must be construed as a reference to the Chairperson of the Commission.

## General Law Amendment Act 62 of 1955, section 35

### Interim interdicts against the State

**35** Notwithstanding anything to the contrary contained in any law, no court shall issue any rule *nisi* operating as an interim interdict against the Government of the Union including the South African Railways and Harbours Administration or the Administration of any Province, or any Minister, Premier or other officer of the said Government or Administration in his capacity as such, unless notice of the intention to apply for such a rule, accompanied by copies of the petition <sup>9</sup> and of the

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affidavits which are intended to be used in support of the application, was served upon the said Government, Administration, Minister, Premier or officer at least seventy-two hours, or such lesser period as the court may in all the circumstances of the case consider reasonable, before the time mentioned in the notice for the hearing of the application.

[Section 35 amended by s 4 of Act 18 of 1996.]

## Independent Electoral Commission Act 150 of 1993, section 40(1) (read with section 3 <sup>10</sup> of the State Liability Act 20 of 1957)

**40** (1) The State Liability Act, 1957 ([Act 20 of 1957](#)), shall apply *mutatis mutandis* in respect of the Commission.

## Land Reform (Labour Tenants) Act 3 of 1996, section 11

**11** (1) An owner who intends to evict a person in terms of the provisions of this Chapter, shall give the labour tenant and the Director-General not less than two calendar months' written notice of his or her intention to obtain an order for eviction.

(2) The notice referred to in subsection (1) shall, in addition to any prescribed particulars, also contain the grounds on which such intended eviction is based.

(3) The Director-General shall during the period referred to in subsection (1) convene a meeting between the labour tenant and the owner in order to attempt to mediate a settlement of the dispute between the labour tenant and owner.

## Local Government: Municipal Demarcation Act 27 of 1998, section 40(1) (read with section 3 <sup>11</sup> of the

## State Liability Act 20 of 1957)

**40** (1) The State Liability Act, 1957 ([Act 20 of 1957](#)), applies, with the necessary changes, in respect of the Board, and in such application a reference in that Act to the Minister of the department concerned must be construed as a reference to the chairperson of the Board.

## Long-term Insurance Act 52 of 1998, section 61

**61** Debt consisting of interest on an unpaid premium, or on a loan granted by a long-term insurer on sole security of a long-term policy, or on an advance granted by a long-term insurer in respect of an amount which is to be payable under a long-term policy, shall, in the case of a long-term policy entered into after 31 December 1973, not prescribe before the liability of the long-term insurer under the long-term policy prescribes.

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## Merchant Shipping Act 57 of 1951, section 336(3) and (4)

**336** (3) The owner or any other person interested in any ship, share in a ship or goods in respect of which a notice of forfeiture has been issued, who objects to the forfeiture thereof, shall, within the period of thirty days from the date upon which the notice of forfeiture was served, or within such further period as may be fixed by the court under subsection (7), give notice in writing to the Authority or to the proper officer which issued the notice, that he claims the release of the ship, share or goods, as the case may be.

[Subsection (3) amended by s 2(2) of Act 5 of 1998.]

(4) If notice is not given by the owner or interested person in terms of subsection (3), no legal proceedings shall thereafter be instituted by him against the State, the Minister, the Authority, the Director-General or any other officer for the release of the ship, share or goods or based merely upon the detention, seizure or forfeiture thereof.

[Subsection (4) substituted by s 2(2) of Act 5 of 1998.]

## Moratorium Act 25 of 1963, section 2(1)(a) and (b)

**2** (1) Save as is provided in subsections (2) and (3) of this section —

- (a) the obligation of a citizen rendering service to pay contractual debts incurred by him before his service commenced and which become payable after he has commenced to render service shall be suspended for a period equal to the period during which he is rendering service plus one month;
- (b) all civil legal remedies whatsoever against any citizen —
  - (i) rendering service on which he is employed in terms of section 92 of the Defence Act, 1957 ([Act 44 of 1957](#)); or
  - (ii) rendering other service, in respect of contractual debts incurred by him,shall be suspended during the whole period during which he is rendering service: Provided that the civil legal remedies referred to shall be suspended for a further period of one month in so far as they relate to subparagraph (i).

[Subsection (1) substituted by s 1(a) of Act 48 of 1978.]

## National Credit Act 34 of 2005, sections 129 and 130

### 129 Required procedures before debt enforcement

(1) If the consumer is in default under a credit agreement, the credit provider —

- (a) may draw the default to the notice of the consumer in writing and propose that the consumer refer the credit agreement to a debt counsellor, alternative dispute resolution agent, consumer court or ombud with jurisdiction, with the intent that the parties resolve any dispute under the agreement or develop and agree on a plan to bring the payments under the agreement up to date; and
- (b) subject to section 130(2), may not commence any legal proceedings to enforce the agreement before —
  - (i) first providing notice to the consumer, as contemplated in paragraph (a), or in section 86(10), as the case may be; and
  - (ii) meeting any further requirements set out in section 130.

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(2) Subsection (1) does not apply to a credit agreement that is subject to a debt restructuring order, or to proceedings in a court that could result in such an order.

(3) Subject to subsection (4), a consumer may at any time before the credit provider has cancelled the agreement, remedy a default in such credit agreement by paying to the credit provider all amounts that are overdue, together with the credit provider's prescribed default administration charges and reasonable costs of enforcing the agreement up to the time the default was remedied.

[Subsection (3) substituted by s 32(a) of Act 19 of 2014.]

(4) A credit provider may not reinstate or revive a credit agreement after —

- (a) the sale of any property pursuant to —
  - (i) an attachment order; or
  - (ii) surrender of property in terms of section 127;
- (b) the execution of any other court order enforcing that agreement; or
- (c) the termination thereof in accordance with section 123.

[Subsection (4) amended by s 32 (b) of Act 19 of 2014.]

(5) The notice contemplated in subsection (1)(a) must be delivered to the consumer —

- (a) by registered mail; or
- (b) to an adult person at the location designated by the consumer.

[Subsection (5) added by s 32(c) of Act 19 of 2014.]

(6) The consumer must in writing indicate the preferred manner of delivery contemplated in subsection (5).

[Subsection (6) added by s 32 (c) of Act 19 of 2014.]

(7) Proof of delivery contemplated in subsection (5) is satisfied by —

- (a) written confirmation by the postal service or its authorised agent, of delivery to the relevant post office or postal agency; or
- (b) the signature or identifying mark of the recipient contemplated in subsection (5)(b).

[Subsection (7) added by s 32(c) of Act 19 of 2014.]

[Date of commencement of s 129: 1 June 2007.]

### 130 Debt procedures in a Court

(1) Subject to subsection (2), a credit provider may approach the court for an order to enforce a credit agreement only if, at that time, the consumer is in default and has been in default under that credit agreement for at least 20 business days and —

- (a) at least 10 business days have elapsed since the credit provider delivered a notice to the consumer as contemplated in section 86(10), or section 129(1), as the case may be;

[Paragraph (a) substituted by s 33 of Act 19 of 2014.]

- (b) in the case of a notice contemplated in section 129(1), the consumer has —

- (i) not responded to that notice; or
- (ii) responded to the notice by rejecting the credit provider's proposals; and

- (c) in the case of an instalment agreement, secured loan, or lease, the consumer has not surrendered the relevant property to the credit provider as contemplated in section 127.

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(2) In addition to the circumstances contemplated in subsection (1), in the case of an instalment agreement, secured loan, or lease, a credit provider may approach the court for an order enforcing the remaining obligations of a consumer under a credit agreement at any time if —

- (a) all relevant property has been sold pursuant to —
  - (i) an attachment order; or

- (ii) surrender of property in terms of section 127; and
  - (b) the net proceeds of sale were insufficient to discharge all the consumer's financial obligations under the agreement.
- (3) Despite any provision of law or contract to the contrary, in any proceedings commenced in a court in respect of a credit agreement to which this Act applies, the court may determine the matter only if the court is satisfied that —
- (a) in the case of proceedings to which sections 127, 129 or 131 apply, the procedures required by those sections have been complied with;
  - (b) there is no matter arising under that credit agreement, and pending before the Tribunal, that could result in an order affecting the issues to be determined by the court; and
  - (c) that the credit provider has not approached the court —
    - (i) during the time that the matter was before a debt counsellor, alternative dispute resolution agent, consumer court or the ombud with jurisdiction; or
    - (ii) despite the consumer having —
      - (aa) surrendered property to the credit provider, and before that property has been sold;
      - (bb) agreed to a proposal made in terms of section 129(1)(a) and acted in good faith in fulfilment of that agreement;
      - (cc) complied with an agreed plan as contemplated in section 129(1)(a); or
      - (dd) brought the payments under the credit agreement up to date, as contemplated in section 129(1)(a).
- (4) In any proceedings contemplated in this section, if the court determines that —
- (a) the credit agreement was reckless as described in section 80, the court must make an order contemplated in section 83;
  - (b) the credit provider has not complied with the relevant provisions of this Act, as contemplated in subsection (3)(a), or has approached the court in circumstances contemplated in subsection (3)(c) the court must —
    - (i) adjourn the matter before it; and
    - (ii) make an appropriate order setting out the steps the credit provider must complete before the matter may be resumed;
  - (c) the credit agreement is subject to a pending debt review in terms of Part D of Chapter 4, the court may —
    - (i) adjourn the matter, pending a final determination of the debt review proceedings;
    - (ii) order the debt counsellor to report directly to the court, and thereafter make an order contemplated in section 85(b); or
    - (iii) if the credit agreement is the only credit agreement to which the consumer is a party, order the debt counsellor to discontinue the debt review proceedings, and make an order contemplated in section 85(b);

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- (d) there is a matter pending before the Tribunal, as contemplated in subsection (3)(b), the court may —
  - (i) adjourn the matter before it, pending a determination of the proceedings before the Tribunal; or
  - (ii) order the Tribunal to adjourn the proceedings before it, and refer the matter to the court for determination; or
- (e) the credit agreement is either suspended or subject to a debt re-arrangement order or agreement, and the consumer has complied with that order or agreement, the court must dismiss the matter.

[Date of commencement of s 130: 1 June 2007.]

## **National Water Act 36 of 1998, sections 64, 65, 157 and 162 (read with s 6(2) and (3) of Expropriation Act 63 of 1975)**

**64** (1) The Minister, or a water management institution authorised by the Minister in writing, may expropriate any property for any purpose contemplated in this Act, if that purpose is a public purpose or is in the public interest.

(2) Subject to this Act, the Expropriation Act, 1975 ([Act 63 of 1975](#)), applies to all expropriations in terms of this Act.

(3) Where the Minister expropriates any property under this Act, any reference to 'Minister' in the Expropriation Act, 1975, must be construed as being a reference to the Minister.

(4) Where any water management institution expropriates property under this Act, any reference to 'Minister' and 'State' in the Expropriation Act, 1975, must be regarded as being a reference to that water management institution.

**65** (1) If a person who is required under this Act to undertake rehabilitation or other remedial work on the land of another, reasonably requires access to that land in order to effect the rehabilitation or remedial work, but is unable to acquire access on reasonable terms, the Minister may —

- (a) expropriate the necessary rights in respect of that land for the benefit of the person undertaking the rehabilitation or remedial work, who will then be vested with the expropriated rights; and
- (b) recover all costs incurred in connection with the expropriation, including any compensation payable, from the person for whose benefit the expropriation was effected.

(2) Where a servitude of abutment, aqueduct or submersion is expropriated under this section, the Minister or water management institution responsible for the expropriation has the same rights as those vesting in the holder of a servitude under section 128.

**157** Neither the State nor any other person is liable for any damage or loss caused by —

- (a) the exercise of any power or the performance of any duty in terms of this Act; or
- (b) the failure to exercise any power, or perform any duty in terms of this Act, unless the exercise of or failure to exercise the power, or performance or failure to perform the duty was unlawful, negligent or in bad faith.

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**162** (1) Any notice, directive or other document in terms of this Act, must be served —

- (a) if it is to be served on a natural person —
  - (i) by hand delivery to that person;
  - (ii) by hand delivery to a responsible individual at that person's business or residential address;
  - (iii) by sending it by registered mail to that person's business or residential address; or
  - (iv) where that person's business and residential address is unknown, despite reasonable enquiry, by publishing it once in the *Gazette* and once in a local newspaper circulating in the area of that person's last known residential or business address; or
- (b) if it is intended for a juristic person —
  - (i) by hand delivery to a responsible individual at the registered address or principal place of business of that juristic person;
  - (ii) by sending it by facsimile to the registered address or principal place of business of that juristic person;
  - (iii) by sending it by registered mail to the registered address or principal place of business of that juristic person;
  - (iv) by conspicuously attaching it to the main entrance of the registered address or the principal place of business of that juristic person; or
  - (v) by hand delivery to any member of that juristic person's board of directors or governing body.

(2) Any notice, directive or other document served according to subsection (1) is considered to have come to the notice of the person, unless the contrary is proved.

## **Nonprofit Organisations Act 71 of 1997, section 32(1) (read with section 3 [12](#) of the State Liability Act 20 of 1957)**

**32** (1) The State Liability Act, 1957 ([Act 20 of 1957](#)), applies with the necessary changes, to each body established by or in terms of this Act, but a reference in that Act to 'the Minister of the Department concerned' must be interpreted as referring to the chairperson or head of the relevant body.

## **Nuclear Energy Act 131 of 1993, section 64 [13](#)**

**64** Notwithstanding anything to the contrary in any other law contained —



- (a) no action for compensation by virtue of the provisions of section 61 may be commenced after the expiration of a period of 30 years from —
- (i) the date of the occurrence which gave rise to the right to claim such compensation; or

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- (ii) in a case where a continuing occurrence or a succession of occurrences all attributable to a particular event or the carrying out of a particular operation gave rise to such right, the date of the last event in the course of that occurrence or succession of occurrences,

unless the claimant concerned during that period became aware, or by exercising reasonable care could have become aware, of the identity of the licensee concerned and of the facts from which the right to claim compensation arose, in which case no such action shall be commenced after the expiration of a period of two years from the date on which he so became aware or could have become aware, or after the expiration of such period of 30 years, whichever occurs first; and

- (b) the running of the said period of prescription of two years shall be suspended during any period in which negotiations in connection with a settlement are being conducted by or on behalf of the claimant and the licensee concerned, which period shall commence on the date on which such negotiations commenced in writing, and shall end on the date on which any of the parties concerned notifies the other that he is not proceeding with the negotiations: Provided that, subject to the provisions of paragraph (a), the said suspension shall not be longer than five years: Provided further that a claimant may only once claim such suspension during such period of prescription of two years.

## **Pan South African Language Board Act 59 of 1995, section 14(1) (read with section 3 [14](#) of the State Liability Act 20 of 1957)**

**14** (1) The State Liability Act, 1957 ([Act 20 of 1957](#)), shall apply *mutatis mutandis* in respect of the Board and any reference in the Act to the 'Minister of the department concerned' shall be construed as a reference to the Board.

## **Pension Funds Act 24 of 1956, section 30I**

**30I** (1) The Adjudicator shall not investigate a complaint if the act or omission to which it relates occurred more than three years before the date on which the complaint is received by him or her in writing.

(2) The provisions of the Prescription Act, 1969 ([Act No. 68 of 1969](#)), relating to a debt apply in respect of the calculation of the three year period referred to in subsection (1).

[Subsection (2) substituted by s 21(a) of Act 11 of 2007.]

(3) . . .

[Section 30I inserted by s 3 of Act 22 of 1996. Subsection (3) deleted by s 21(b) of Act 11 of 2007.]

## **Prescription Act 68 of 1969, sections 5, 11, 12, 15 and 17**

**5** A prescription which has not been completed at the commencement of this Act, shall be governed by the provisions of this Chapter in respect of the course of the unexpired portion of the period of prescription.

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**11** The periods of prescription of debts shall be the following:

- (a) thirty years in respect of —
- (i) any debt secured by mortgage bond;
- (ii) any judgment debt; [15](#)
- (iii) any debt in respect of any taxation imposed or levied by or under any law;
- (iv) any debt owed to the State in respect of any share of the profits, royalties or any similar consideration payable in respect of the right to mine minerals or other substances;
- (b) fifteen years in respect of any debt owed to the State and arising out of an advance or loan of money or a sale or lease of land by the State to the debtor, unless a longer period applies in respect of the debt in question in terms of paragraph (a);
- (c) six years in respect of a debt arising from a bill of exchange or other negotiable instrument or from a notarial contract, unless a longer period applies in respect of the debt in question in terms of paragraph (a) or (b);
- (d) save where an Act of Parliament provides otherwise, three years in respect of any other debt.

**12** (1) Subject to the provisions of subsections (2) and (3), prescription shall commence to run as soon as the debt is due.

(2) If the debtor wilfully prevents the creditor from coming to know of the existence of the debt, prescription shall not commence to run until the creditor becomes aware of the existence of the debt.

(3) A debt shall not be deemed to be due until the creditor has knowledge of the identity of the debtor and of the facts from which the debt arises: Provided that a creditor shall be deemed to have such knowledge if he could have acquired it by exercising reasonable care.

**15** (1) The running of prescription shall, subject to the provisions of subsection (2), be interrupted by the service on the debtor of any process whereby the creditor claims payment of the debt.

(2) Unless the debtor acknowledges liability, the interruption of prescription in terms of subsection (1) shall lapse, and the running of prescription shall not be deemed to have been interrupted, if the creditor does not successfully prosecute his claim under the process in question to final judgment or if he does so prosecute his claim but abandons the judgment or the judgment is set aside.

(3) If the running of the prescription is interrupted as contemplated in subsection (1) and the debtor acknowledges liability, and the creditor does not prosecute his claim to final judgment, prescription shall commence to run afresh from the day on which the debtor acknowledges liability or, if at the time when the debtor acknowledges liability or at any time thereafter the parties postpone the due date of the debt, from the day upon which the debt again becomes due.

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(4) If the running of prescription is interrupted as contemplated in subsection (1) and the creditor successfully prosecutes his claim under the process in question to final judgment and the interruption does not lapse in terms of subsection (2), prescription shall commence to run afresh on the day on which the judgment of the court becomes executable.

(5) If any person is joined as a defendant on his own application, the process whereby the creditor claims payment of the debt shall be deemed to have been served on such person on the date of such joinder.

(6) For the purposes of this section, 'process' includes a petition, a notice of motion, a rule *nisi*, a pleading in reconvention, a third party notice referred to in any rule of court, and any document whereby legal proceedings are commenced.

**17** (1) A court shall not of its own motion take notice of prescription.

(2) A party to litigation who invokes prescription, shall do so in the relevant document filed of record in the proceedings: Provided that a court may allow prescription to be raised at any stage of the proceedings.

## **Promotion of Administrative Justice Act 3 of 2000, sections 7(1) and 9**

**7** (1) Any proceedings for judicial review in terms of section 6(1) must be instituted without unreasonable delay and not later than 180 days after the date —

- (a) subject to subsection (2)(c), on which any proceedings instituted in terms of internal remedies as contemplated in subsection (2)(a) have been concluded; or
- (b) where no such remedies exist, on which the person concerned was informed of the administrative action, became aware of the action and the reasons for it or might reasonably have been expected to have become aware of the action and the reasons.

**9** Variation of time

(1) The period of —

- (a) 90 days referred to in section 5 may be reduced; or
- (b) 90 days or 180 days referred to in sections 5 and 7 may be extended for a fixed period,

by agreement between the parties or, failing such agreement, by a court or tribunal on application by the person or administrator concerned.

(2) The court or tribunal may grant an application in terms of subsection (1) where the interests of justice so require.

## **Promotion of National Unity and Reconciliation Act 34 of 1995, section 41(1) (read with section 3 [16](#) of the State Liability Act 20 of 1957)**

**41** (1) Subject to the provisions of subsection (2), the State Liability Act, 1957 ([Act 20 of 1957](#)), shall apply, with the necessary changes, in respect of the Commission, a member of its staff and a commissioner, and in such application a reference in that Act to 'the State' shall be construed as a reference to 'the Commission',

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and a reference to 'the Minister of the department concerned' shall be construed as a reference to the Chairperson of the Commission.

## **Road Accident Fund Act 56 of 1996, section 23 [17](#)**

**23** (1) Notwithstanding anything to the contrary in any law contained, but subject to subsections (2) and (3), the right to claim compensation under section 17 from the Fund or an agent in respect of loss or damage arising from the driving of a motor vehicle in the case where the identity of either the driver or the owner thereof has been established, shall become prescribed upon the expiry of a period of three years from the date upon which the cause of action arose.

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(2) Prescription of a claim for compensation referred to in subsection (1) shall not run against —

- (a) a minor;
- (b) any person detained as a patient in terms of any mental health legislation; or
- (c) a person under curatorship.

(3) Notwithstanding subsection (1), no claim which has been lodged in terms of section 24 shall prescribe before the expiry of a period of five years from the date on which the cause of action arose.

(4) Notwithstanding [section 36](#) of the Compensation for Occupational Injuries and Diseases Act, 1993 ([Act 130 of 1993](#)), any right under subsection (1)(b) of that section to recover an amount which under the said Act is required to be paid to a third party in circumstances other than those mentioned in section 18(2) of this Act shall for the purposes of subsections (1) and (3) be deemed to be a right to claim compensation under section 17 of this Act arising on the same date as the cause of action of such third party under the said section 17: Provided that if the recovery of any such amount has been debarrd by virtue of this subsection, any compensation thereafter awarded to the third party under this Act shall be reduced by the amount concerned.

(5) Notwithstanding section 149*ter* of the Defence Act, 1957 ([Act 44 of 1957](#)), or of a similarly worded section of another Act of Parliament governing the South African National Defence Force, any right under the said sections to recover an amount which under the said legislation is required to be paid to a third party in circumstances other than those mentioned in section 18(3), shall for the purposes of subsections (1) and (3) be deemed to be a right to claim compensation under section 17 of this Act arising on the same date as the cause of action of such third party under the said section 17: Provided that if the recovery of any such amount has been debarrd by virtue of this subsection, any compensation thereafter awarded to the third party under this Act shall be reduced by the amount concerned.

## **Road Accident Fund (Transitional Provisions) Act 15 of 2012, section 2**

**2** (1) Unless the third party expressly and unconditionally indicates to the Fund on the prescribed form, within one year of this Act taking effect, to have his or her claim remain subject to the old Act, the claim of such third party is subject to the new Act under the following transitional regime:

- (a) Subject to the remaining provisions of this Act, the cause of action of the third party is deemed to have arisen on 1 August 2008 for purposes of [section 12](#) of the Road Accident Fund Amendment Act, 2005 ([Act 19 of 2005](#)), and section 17(4A)(b) of the new Act.
- (b) The right of the third party to claim compensation for non-pecuniary loss is limited to a maximum amount of R25 000, unless —
  - (i) the third party submits a serious injury assessment report as contemplated in Regulation 3 of the Road Accident Fund Regulations, 2008, indicating a serious injury, within two years of this Act taking effect; and

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- (ii) it is determined in accordance with Regulation 3 of the Road Accident Fund Regulations, 2008, that the third party suffered a serious injury.

(c) The claim of the third party must be reduced by the following amounts:

- (i) All amounts recovered by the third party from the owner, driver or employer of the driver of the motor vehicle involved in the motor vehicle accident concerned;
  - (ii) all amounts paid or accrued to the suppliers contemplated in section 17(5) of the old Act in respect of costs incurred by the third party;
  - (iii) all interim payments made to the third party in terms of section 17(6) of the old Act; or
  - (iv) all amounts that the third party may have received in compensation in terms of the Compensation for Occupational Injuries and Diseases Act, 1993 ([Act 130 of 1993](#)), the Defence Act, 2002 ([Act 42 of 2002](#)), or any other Act of Parliament governing the South African National Defence Force.

(d) The third party must make a written declaration under oath on the prescribed form to the Fund regarding any compensation he or she may have received as indicated in paragraph (c).

(e) A third party who has, prior to this Act coming into operation —

- (i) lodged a claim with the Fund on the prescribed claim form in terms of the old Act, shall not be required to lodge an RAF1 form in terms of the new Act; and
  - (ii) instituted an action against the Fund in a Magistrate's Court, may withdraw the action and, within 60 days of such withdrawal, institute an action in a High Court with appropriate jurisdiction over the matter: Provided that no special plea in respect of prescription may be raised during that period.

(f) Notwithstanding the transitional regime contemplated in this Act, section 17 (4B) of the new Act and the tariffs thereunder shall have no effect on the claims of the suppliers of goods and services in terms of section 17(5) of the old Act in respect of costs incurred by the third party prior to this Act taking effect.

(g) The owner, driver and employer of the driver of the motor vehicle involved in the motor vehicle accident concerned are absolved, with effect from the date on which this Act comes into operation, from any liability to the third party.

(2) If the third party is subject to an impediment contemplated in section 23(2) of the new Act or [section 13\(1\)\(a\)](#) of the Prescription Act, 1969 ([Act 68 of 1969](#)), the period of one year referred to in subsection (1) and the period of two years referred in subsection (1)(b)(i) shall commence running when the impediment ceases to exist.

## **Sheriffs Act 90 of 1986, section 36(2) and (3)**

**36** (2) Subject to the provisions of subsection (3), no person shall have a claim against the Fund in respect of a contingency referred to in section 35 unless —

- (a) the claimant lodges his claim with the Board in terms of subsection (1) within three months after he became aware of the contingency; or
- (b) the claimant furnishes the Board, within six months after a written demand was sent to him by the Board, with such proof in verification of his claim as the Board may reasonably require.

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(3) If the Board is satisfied that, having regard to the circumstances, a claim or the proof required by it was lodged or furnished as soon as possible, it may at its discretion extend the period mentioned in paragraph (a) or (b) of subsection (2), as the case may be.

## **South African Human Rights Commission Act 40 of 2013, section 21(2) (read with section 3 [18](#) of the**

## State Liability Act 20 of 1957)

**21** (2) The State Liability Act, 1957 ([Act 20 of 1957](#)), applies with the necessary changes, in respect of the Commission, and in such application a reference in that Act to 'the Minister of the department concerned' must be construed as a reference to the Chairperson.

## South African Schools Act 84 of 1996, section 60(2), (4) and (5) (read with section 3 [19](#) of the State Liability Act 20 of 1957)

**60** (2) The provisions of the State Liability Act, 1957 ([Act 20 of 1957](#)), apply to any claim under subsection (1).

(4) Despite the provisions of subsection (1), the State is not liable for any damage or loss caused as a result of any act or omission in connection with any enterprise or business operated under the authority of a public school for purposes of supplementing the resources of the school as contemplated in section 36, including the offering of practical educational activities relating to that enterprise or business.

[Subsection (4) added by s 14 of Act 48 of 1999.]

(5) Any legal proceedings against a public school for any damage or loss contemplated in subsection (4), or in respect of any act or omission relating to its contractual responsibility as employer as contemplated in section 20(10), may only be instituted after written notice of the intention to institute proceedings against the school has been given to the Head of Department for his or her information.

[Subsection (5) added by s 14 of Act 48 of 1999.]

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## State Liability Act 20 of 1957, section 3 [20](#)

### 3 Satisfaction of final court orders sounding in money

(1) Subject to subsections (4) to (8), no execution, attachment or like process for the satisfaction of a final court order sounding in money may be issued against the defendant or respondent in any action or legal proceedings against the State or against any property of the State, but the amount, if any, which may be required to satisfy any final court order given or made against the nominal defendant or respondent in any such action or proceedings must be paid as contemplated in this section.

(2) The State Attorney or attorney of record appearing on behalf of the department concerned, as the case may be, must, within seven days after a court order sounding in money against a department becomes final, in writing, inform the executive authority and accounting officer of that department and the relevant treasury of the final court order.

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(3) (a) A final court order against a department for the payment of money must be satisfied —

(i) within 30 days of the date of the order becoming final; or

(ii) within the time period agreed upon by the judgment creditor and the accounting officer of the department concerned.

(b) (i) The accounting officer of the department concerned must make payment in terms of such order within the time period specified in paragraph (a)(i) or (ii).

(ii) Such payment must be charged against the appropriated budget of the department concerned.

(4) If a final court order against a department for the payment of money is not satisfied within 30 days of the date of the order becoming final as provided for in subsection (3)(a)(i) or the time period agreed upon as provided for in subsection (3)(a)(ii), the judgement creditor may serve the court order in terms of the applicable Rules of Court on the executive authority and accounting officer of the department concerned, the State Attorney or attorney of record appearing on behalf of the department concerned and the relevant treasury.

(5) The relevant treasury must, within 14 days of service of the final court order as provided for in subsection (4), ensure that —

(a) the judgment debt is satisfied; or

(b) acceptable arrangements have been made with the judgment creditor for the satisfaction of the judgment debt, should there be inadequate funds available in the vote of the department concerned.

(6) If the relevant treasury fails to ensure that —

(a) the judgment debt is satisfied; or

(b) acceptable arrangements have been made with the judgment creditor for the satisfaction of the judgment debt, should there be inadequate funds available in the vote of the department concerned,

within the time period specified in subsection (5), the registrar or clerk of the court concerned, as the case may be, must, upon the written request of the judgement creditor or his or her legal representative, issue a writ of execution or a warrant of execution in terms of the applicable Rules of Court against movable property owned by the State and used by the department concerned: Provided that a writ of execution or a warrant of execution, where a judgment by default was granted against a department, can only be issued by the registrar or clerk of the court if he or she is satisfied that the requirements of subsection (4) have been complied with.

[Subsection (6) substituted by s 4 of the Judicial Matters Amendment Act 8 of 2017.]

(7) (a) Subject to paragraph (b), the sheriff of the court concerned must, pursuant to the writ of execution or the warrant of execution, as the case may be, attach, but not remove, movable property owned by the State and used by the department concerned. [21](#)

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(b) The sheriff and the accounting officer of the department concerned, or an official of his or her department designated in writing by him or her, may, in writing, agree on the movable property owned by the State and used by the department concerned that may not be attached, removed and sold in execution of the judgment debt because it will severely disrupt service delivery, threaten life or put the security of the public at risk.

(c) If no agreement referred to in paragraph (b) is reached, the sheriff may attach any movable property owned by the State and used by the department concerned, the proceeds of the sale of which, in his or her opinion, will be sufficient to satisfy the judgment debt against the department concerned.

(8) In the absence of any application contemplated in subsection (10), the sheriff of the court concerned may, after the expiration of 30 days from the date of attachment, remove and sell the attached movable property in execution of the judgment debt.

(9) Subject to this Act, the Rules of Court, where applicable, apply to the issuing of a writ of execution or a warrant of execution, as the case may be, and the attachment, removal and sale of movable property in execution of a judgment debt against the State.

(10) (a) A party having a direct and material interest may, before the attached movable property is sold in execution of the judgment debt, apply to the court which granted the order, for a stay on grounds that the execution of the attached movable property —

(i) would severely disrupt service delivery, threaten life or put the security of the public at risk; or

(ii) is not in the interests of justice.

(b) If an application referred to in paragraph (a) is brought by the department concerned, the application must contain a list of movable property and the location thereof, compiled by the department concerned, that may be attached and sold in execution of the judgment debt.

(c) Notice of an application in terms of paragraph (a) must be given to the judgment creditor and sheriff concerned.

(11) In order to comply with its obligations in terms of subsection (5), and in general to ensure that final court orders are satisfied by departments without any delay, the relevant treasury may —

(a) make or issue appropriate regulations, instructions, circulars, guidelines and reporting rules;

(b) issue a direction to a department to make a payment in order to satisfy any outstanding final court order;

(c) conduct an investigation, inspection or review into any failure by a department to pay any outstanding final court orders;

(d) issue an instruction to take remedial action or to obtain specified support, where —

(i) there has been non-compliance by a department with the provisions of this section, or regulations, instructions, circulars, guidelines or directions made or issued by the relevant treasury; or

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(ii) there is a need for intervention in view of the financial, governance or management situation, condition or failure of a department;

- (e) withhold from a department's voted funds sufficient funds to provide for the satisfaction of any outstanding final court order against a department, which funds may only be released to the department upon the submission of proof acceptable to the relevant treasury that the court order in question has been satisfied;
- (f) satisfy any outstanding final court order on behalf of a department, which satisfaction must be recorded and debited against the appropriated budget of the department concerned; or
- (g) debit the costs associated with the satisfaction of a final court order provided for in paragraph (f), an administration charge and a penalty from the appropriated budget of the department concerned.

(12) Should there be insufficient funds available in the appropriated budget of the department concerned for the current financial year, the withholding of funds in terms of subsection (11)(e) or the satisfaction of the final court order in terms of subsection (11)(f) may extend to the appropriated budget of the department concerned for more than one financial year in terms of an arrangement provided for in subsection (5)(b).

(13) (a) Satisfaction of an outstanding final court order on behalf of a department by the relevant treasury in terms of subsection (11)(f) is regarded as the satisfaction thereof by the department concerned, and not by the relevant treasury, for which the accounting officer of the department concerned is responsible, accountable and liable in terms of the Public Finance Management Act.

(b) Satisfaction of an outstanding final court order in terms of subsection (11)(f) does not absolve the accounting officer of liability for financial misconduct in terms of subsection (16).

(14) (a) Satisfaction of a final court order by an accounting officer must be made in accordance with the Public Finance Management Act, and all applicable regulations, instructions, circulars, guidelines and reporting rules which may be made or issued by the relevant treasury.

(b) An accounting officer must classify and process the settlement of a final court order, including a final court order satisfied by the relevant treasury in terms of subsection (11)(f).

(c) The classification in terms of paragraph (b) must indicate the type of expenditure and whether it is unauthorised, irregular, or fruitless or wasteful expenditure.

(d) The accounting officer of the department concerned must comply with the requirements relating to the applicable type of expenditure as set out in the Public Finance Management Act, and all applicable regulations, instructions, circulars, guidelines and reporting rules which may be made or issued by the relevant treasury.

(15) (a) The accounting officer of a department must put in place appropriate budgeting procedures in accordance with all regulations, instructions, circulars, guidelines and reporting rules which may be made or issued by the relevant treasury, to ensure the timeous satisfaction of final court orders.

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(b) The budgeting procedures referred to in paragraph (a) must include measures for the appropriate identification and recording of potential contingent liabilities which may arise as a result of claims which have been initiated against the department concerned.

(16) (a) An accounting officer of a department who fails to comply with any provision of this section, or any applicable regulation, instruction, circular, guideline, reporting rule or directive made or issued by the relevant treasury in order to ensure the satisfaction of final court orders and adherence to this section, constitutes financial misconduct as referred to in the Public Finance Management Act, and is guilty of an offence provided for in that Act.

(b) The duty to ensure the timeous satisfaction of final court orders in accordance with the requirements of this section, may not be assigned by the accounting officer to another official of the department in terms of the Public Finance Management Act.

[Section 3 amended by s 36(6) of Act 9 of 1989 and substituted by s 2 of Act 201 of 1993 and by s 2 of Act 14 of 2011.]

## Transitional Executive Council Act 151 of 1993, section 27(1) (read with section 3 [22](#) of the State Liability Act 20 of 1957)

27 (1) The State Liability Act, 1957 ([Act 20 of 1957](#)), shall apply *mutatis mutandis* in respect of the Council.

## Upgrading of Land Tenure Rights Act 112 of 1991, section 8(1)

8 (1) Any person who has suffered any damage as a result of the cancellation of a servitude or restrictive condition under section 7(1) or (6) may, within a period of three years after such cancellation has taken effect, claim compensation for his damage from the Minister.

[Section 8 amended by s 12(a)(i) of Act 11 of 1995.]

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[1](#) The Agricultural Credit Act 28 of 1966, although repealed by the Agricultural Debt Management [Act 45 of 2001](#), is still considered to be valid for purposes of s 7 of the latter Act. The Agricultural Debt Management Act was, in turn, repealed by the Agricultural Debt Management Repeal [Act 15 of 2008](#), which provides in s 2(1) thereof that, despite such repeal, the provisions of, *inter alia*, s 7 of the Agricultural Debt Management Act remain in force until all agreements referred to in that Act have been terminated and the debts associated with those agreements have been recovered or otherwise extinguished.

[2](#) In [s 1](#) of the Carriage by Air [Act 17 of 1946](#), as amended by the Carriage by Air Amendment Act 150 of 2006, '[Convention](#)' is defined as 'the Convention for the Unification of Certain Rules for International Carriage by Air, signed at Montreal on 28 May 1999, as set out in the Schedule'.

[3](#) In terms of [s 53\(b\)](#) of the Superior Courts [Act 10 of 2013](#), any reference in any law to a High Court must now be construed as a reference to the High Court of South Africa or a division thereof, referred to in the Act, as the context may require.

[4](#) Section 3 was substituted by s 2 of the State Liability Amendment [Act 14 of 2011](#) with effect from 30 August 2011 (GG 34545 of 22 August 2011). Section 3(6) was substituted by [s 4](#) of the Judicial Matters Amendment [Act 8 of 2017](#) with effect from 2 August 2017 (GG 41018 of 2 August 2017).

[5](#) In terms of [s 53\(b\)](#) of the Superior Courts [Act 10 of 2013](#), any reference in any law to a High Court must now be construed as a reference to the High Court of South Africa.

[6](#) In terms of [s 53\(b\)](#) of the Superior Courts [Act 10 of 2013](#), any reference in any law to a High Court must now be construed as a reference to the High Court of South Africa.

[7](#) In terms of [s 53\(b\)](#) of the Superior Courts [Act 10 of 2013](#), any reference in any law to a High Court must now be construed as a reference to the High Court of South Africa.

[8](#) Section 3 was substituted by s 2 of the State Liability Amendment [Act 14 of 2011](#) with effect from 30 August 2011 (GG 34545 of 22 August 2011). Section 3(6) was substituted by [s 4](#) of the Judicial Matters Amendment [Act 8 of 2017](#) with effect from 2 August 2017 (GG 41018 of 2 August 2017).

[9](#) Proceedings by way of petition were abolished by the Petition Proceedings Replacement [Act 35 of 1976](#), which provides that any reference in any law to the institution of application proceedings in any court by petition, shall be construed as a reference to the institution of such proceedings by notice of motion in terms of the rules of court.

[10](#) Section 3 was substituted by s 2 of the State Liability Amendment [Act 14 of 2011](#) with effect from 30 August 2011 (GG 34545 of 22 August 2011). Section 3(6) was substituted by [s 4](#) of the Judicial Matters Amendment [Act 8 of 2017](#) with effect from 2 August 2017 (GG 41018 of 2 August 2017).

[11](#) Section 3 was substituted by s 2 of the State Liability Amendment [Act 14 of 2011](#) with effect from 30 August 2011 (GG 34545 of 22 August 2011). Section 3(6) was substituted by [s 4](#) of the Judicial Matters Amendment [Act 8 of 2017](#) with effect from 2 August 2017 (GG 41018 of 2 August 2017).

[12](#) Section 3 was substituted by s 2 of the State Liability Amendment [Act 14 of 2011](#) with effect from 30 August 2011 (GG 34545 of 22 August 2011). Section 3(6) was substituted by [s 4](#) of the Judicial Matters Amendment [Act 8 of 2017](#) with effect from 2 August 2017 (GG 41018 of 2 August 2017).

[13](#) The Nuclear Energy Act 131 of 1993 was, subject to certain savings, repealed by the Nuclear Energy [Act 46 of 1999](#) and the National Nuclear Regulator [Act 47 of 1999](#). See now, *inter alia*, [s 57](#) of [Act 46 of 1999](#) and [s 55](#) of [Act 47 of 1999](#).

[14](#) Section 3 was substituted by s 2 of the State Liability Amendment [Act 14 of 2011](#) with effect from 30 August 2011 (GG 34545 of 22 August 2011). Section 3(6) was substituted by [s 4](#) of the Judicial Matters Amendment [Act 8 of 2017](#) with effect from 2 August 2017 (GG 41018 of 2 August 2017).



41018 of 2 August 2017).

15 This includes maintenance obligations provided for in a consent paper which was incorporated in a divorce order (*SA v JHA* [2022 \(3\) SA 149 \(SCA\)](#)).

16 Section 3 was substituted by s 2 of the State Liability Amendment [Act 14 of 2011](#) with effect from 30 August 2011 (GG 34545 of 22 August 2011). Section 3(6) was substituted by [s 4](#) of the Judicial Matters Amendment [Act 8 of 2017](#) with effect from 2 August 2017 (GG 41018 of 2 August 2017).

17 In *Gabuza v Road Accident Fund* [2020 \(2\) SA 228 \(GP\)](#) the court, following the principle laid down in *Road Accident Fund v Masindi* [2018 \(6\) SA 481 \(SCA\)](#), held that when a claim against the Road Accident Fund under [s 23](#) of the Road Accident Fund [Act 56 of 1996](#) has to be lodged within three years and the last day of that period falls on a Saturday, the last day is extended to the next day on which the claim may be lodged (i.e. that when a statute prescribed a time for doing of an act, and the act could only be performed if a certain office, such as the Post Office, was open, and the last day for the doing of the act fell on a day the office was closed, then the time for performance of the act was extended to the next day on which the office was open).

In *Van Zyl NO v Road Accident Fund* [2022 \(3\) SA 45 \(CC\)](#) one KJ sustained serious brain injuries in a motor vehicle accident. The injuries reduced his mental capacity to the extent that he was unable to manage his own affairs. A compensation claim against the RAF, lodged on his behalf more than seven years after the accident, was repudiated on the ground that it had prescribed under [s 23](#) of the Road Accident Fund [Act 56 of 1996](#) ('the RAF Act'). Despite the debilitating effects of his injuries, KJ did not fall into the classes of persons expressly protected against prescription under [s 23\(2\)](#) of the [RAF Act](#), namely minors, persons detained under mental-health legislation and persons under curatorship. Also militating against the survival of the claim was that the preamble to s 23(1) explicitly excluded the operation of 'any law' that would allow for a prescription period different to that specified in s 23. The applicant, KJ's *curatrix ad litem*, argued in the Grahamstown High Court that KJ's claim had not prescribed because the Prescription [Act 68 of 1969](#) ('the Prescription Act') was applicable, so that the running of prescription was delayed, under s 13 of that Act, due to KJ's mental incapacity. The High Court nonetheless upheld the RAF's special plea of prescription, ruling that s 23 applied to the claim, to the exclusion of the Prescription Act. In an appeal to the Supreme Court of Appeal the applicant argued that the High Court judgment unjustly excluded mentally incapacitated persons not detained under mental-health legislation or under curatorship from the Prescription Act's protection. Apart from arguing that s 23 had to be read as incorporating s 13 of the Prescription Act, the applicant raised the point that the special plea should have been dismissed on the basis of impossibility (*lex non cogit ad impossibilia*: the law does not require impossibilities). She submitted that because KJ was mentally incapacitated by his injuries, it had been impossible for him to institute action for damages before the expiry of the three-year period prescribed by s 23, and Parliament could not have intended for him to do the impossible. The applicant also invoked the common-law incapacity principle, which states that prescription does not run against those who lacked capacity to institute action (*contra non valentem agere non currit praescriptio*). The Supreme Court of Appeal dismissed the appeal, ruling that prescription in RAF claims was regulated exclusively by s 23. The Supreme Court of Appeal declared itself bound by the Constitutional Court's judgment in *Road Accident Fund v Mdeyide* [2011 \(2\) SA 26 \(CC\)](#), which held in similar but not identical circumstances that s 12(3) of the Prescription Act did not apply to RAF claims. The SCA never addressed the applicant's impossibility argument. The applicant then turned to the Constitutional Court. The majority of the Constitutional Court, in granting leave to appeal and upholding the appeal, held that while KJ's claim had, on a literal interpretation of s 23, prescribed, the section was under-inclusive of those who truly needed its protection. Parliament could not have intended people like KJ to do the impossible. The exclusion amounted to an absurdity that could not have been contemplated by Parliament and that would, contrary to [s 9\(1\)](#) of the [Constitution](#), deny equal protection and benefit of the law. It also served no legitimate government purpose to require individuals to do the impossible. While it was true that s 23 superseded other laws on prescription, it did not exclude *lex non cogit ad impossibilia* because the maxim did not regulate prescription but relieved a person from complying with the requirements of a law in circumstances where it was impossible to comply. Therefore s 23(1) did not exclude the operation of the impossibility principle (at paragraphs [102], [108] and [111]–[117]). Since the maxim was part of the rule of law, one of the foundational values of the Constitution, it formed part of the Constitution. By parity of reasoning the maxim equally applied to the KJ's case, and for as long as the disability arising from KJ's mental condition persisted, prescription would not begin to run (at paragraphs [125]–[126]).

18 Section 3 was substituted by s 2 of the State Liability Amendment [Act 14 of 2011](#) with effect from 30 August 2011 (GG 34545 of 22 August 2011). Section 3(6) was substituted by [s 4](#) of the Judicial Matters Amendment [Act 8 of 2017](#) with effect from 2 August 2017 (GG 41018 of 2 August 2017).

19 Section 3 was substituted by s 2 of the State Liability Amendment [Act 14 of 2011](#) with effect from 30 August 2011 (GG 34545 of 22 August 2011). Section 3(6) was substituted by [s 4](#) of the Judicial Matters Amendment [Act 8 of 2017](#) with effect from 2 August 2017 (GG 41018 of 2 August 2017).

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In *MEC, Department of Public Works v Ikamva Architects* [2022 \(6\) SA 275 \(ECB\)](#) the full court held as follows:

'[36] To summarise, s 3 –

(a) regulates the manner of the enforcement or giving effect of a final money judgment or order granted by a court of law against the state;

(b) serves to identify the functionaries whose duty it is to pay the judgment debt;

(c) serves to authorise those functionaries to pay the judgment debt, and identifies the source of the moneys from which payment must be made;

(d) provides for specific time periods which are to expire, and the actions or the omission of the relevant functionaries to act as contemplated, before the judgment creditor may request the registrar to issue a writ of execution;

(e) identifies and pertinently limits the property that may be attached and sold in execution to movable property owned by the state and used by the department concerned;

(f) importantly, provides for mechanisms and procedures to prevent the attachment of, and the selling in execution of, state property that will disrupt service delivery, threaten life, or put the security of the public at risk. This is consistent with, and complementary to, the inherent jurisdiction of the court to generally regulate its own process, and to stay the execution of a judgment on such terms as it may deem fit, if the interests of justice so require. 43

[37] By enacting s 3, the legislature aimed at finding a balance between the right of a creditor to get satisfaction of a judgment debt, against the wider public interest in the delivery of services by state departments in compliance with their constitutional mandates. The objective of the prescripts and the mechanisms created by s 3 is clearly to make the attachment of state property a last resort. It obliges the department concerned to pay the judgment debt. When the department fails to do so, it obliges the relevant treasury to pay the debt on behalf of the department, or to make acceptable arrangements for its payment. It is only after there has been a total failure to pay the judgment debt that the judgment creditor may seek to attach the property of the department. The attachment is, however, subject to any written agreement between the sheriff and the departments concerned on the movable property that may not be attached, removed and sold in execution. The purpose of this is to prevent the attachment of assets which may result in a disruption of the department's constitutional mandate to deliver services to the public.'

Section 3 permits the attachment of incorporeal movables, such as the attachment of a bank account, belonging to the State. Such attachment is not inconsistent with [s 226](#) of the [Constitution](#) (*MEC, Department of Public Works v Ikamva Architects* [2022 \(6\) SA 275 \(ECB\)](#) (a decision of the full court) at paragraphs [30]–[54]). See also *MEC for Finance, Eastern Cape v Legal Practice Council* [2023 \(2\) SA 266 \(ECMk\)](#) (a decision of the full court) at paragraphs [30], [34] and [36]–[37].

For a case where the provisions of s 3 were not complied with, and the sheriff's conduct declared unconstitutional, unlawful and invalid, see *Minister of Police v Sheriff, Mthatha* [2022 \(1\) SA 229 \(ECM\)](#).

21 'Movable property' for purposes of attachment to satisfy a final court order sounding in money against the state includes corporeal and incorporeal movable property (as held by the full court in *MEC, Department of Public Works v Ikamva Architects* [2022 \(6\) SA 275 \(ECB\)](#) at paragraphs [39]–[46]).

22 Section 3 was substituted by s 2 of the State Liability Amendment [Act 14 of 2011](#) with effect from 30 August 2011 (GG 34545 of 22 August 2011). Section 3(6) was substituted by [s 4](#) of the Judicial Matters Amendment [Act 8 of 2017](#) with effect from 2 August 2017 (GG 41018 of 2 August 2017).