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Kaaipstad,

THE PRESIDENCY

No. 1235 22 November 2001

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

No. 47 of 2001: Judges' Remuneration and Conditions of Employment Act, 2001.

DIE PRESIDENSIE

No. 1235 22 November 2001

Hierby word bekend gemaak dat die President sy goedkeuring geheg het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

No. 47 van 2001: Wet op Besoldiging en Diensvoorwaardes van Regters, 2001.



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(English text signed by the President.)
(Assented to 20 November 2001.)

ACT

To provide for the remuneration and conditions of employment of judges of the Constitutional Court, the Supreme Court of Appeal and the High Courts; and for matters connected therewith.

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

CHAPTER 1

DEFINITIONS

(s 1)

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Definitions and application of Act

1. (1) In this Act, unless the context indicates otherwise—
- “active service” means any service performed as a Constitutional Court judge or judge in a permanent capacity, irrespective of whether or not such service was performed prior to or after the date of commencement of this Act, and includes any continuous period—
- (a) of longer than 29 days of such service in an acting capacity prior to assuming office as a Constitutional Court judge or judge in a permanent capacity if such service was performed before the date of commencement of this Act; and
- (b) of such service in an acting capacity prior to assuming office as a Constitutional Court judge or judge in a permanent capacity if such service was performed after the date of commencement of this Act;
- “annual salary” means the annual salary and the allowance payable to a Constitutional Court judge or judge in terms of section 2;
- “Constitution” means the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996);
- “Constitutional Court judge” means any person holding the office of—
- (a) Chief Justice of South Africa;
- (b) Deputy Chief Justice; or
- (c) judge of the Constitutional Court,
- and includes any person who, since 7 June 1994, held, the office of—
- (i) President of the Constitutional Court;
- (ii) Deputy President of the Constitutional Court; or
- (iii) judge of the Constitutional Court;
- “fixed date” is 1 April 1989;
- “judge” means any person holding the office of—
- (a) President or Deputy President of the Supreme Court of Appeal;
- (b) judge of the Supreme Court of Appeal;
- (c) Judge President or Deputy Judge President of any High Court; or
- (d) judge of any High Court,
- and includes any person who, at or since the fixed date, held the office of—
- (i) Chief Justice of South Africa or Deputy Chief Justice;
- (ii) judge of the Appellate Division of the Supreme Court of South Africa or of the Supreme Court of Appeal;

(Engelse teks deur die President geteken.)
(Goedgekeur op 20 November 2001.)

WET

Om voorsiening te maak vir die besoldiging en diensvoorwaardes van regters van die Konstitusionele Hof, die Hoogste Hof van Appèl en die Hoë Howe; en vir aangeleenthede wat daarmee in verband staan.

DAAR WORD BEPAAL deur die Parlement van die Republiek van Suid-Afrika, soos volg:—

HOOFSTUK 1

WOORDOMSKRYWING (artikel 1)

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Woordoms krywing en toepassing van Wet

1. (1) In hierdie Wet, tensy uit die samehang anders blyk, beteken—
- “aktiewe diens” enige diens as ’n Konstitusionele Hof regter of regter in ’n permanente hoedanigheid verrig, ongeag of sodanige diens voor of na die datum van inwerkingtreding van hierdie Wet verrig is, en ook enige ononderbroke tydperk—
- (a) van langer as 29 dae van sodanige diens in ’n waarnemende hoedanigheid voor diensaanvaarding as ’n Konstitusionele Hof regter of regter in ’n permanente hoedanigheid indien sodanige diens voor die datum van inwerkingtreding van hierdie Wet verrig is; en
- (b) van sodanige diens in ’n waarnemende hoedanigheid voor diensaanvaarding as ’n Konstitusionele Hof regter of regter in ’n permanente hoedanigheid indien sodanige diens na die datum van inwerkingtreding van hierdie Wet verrig is;
- “diens”—
- (a) diens as ’n regter van die Hoogste Hof van Appèl of ’n Hoë Hof soos beoog in die Wet op die Hooggeregshof, 1959 (Wet No. 59 van 1959), in dieselfde of ’n hoër amp deur die betrokke regter beklee by ontheffing van aktiewe diens, of, met die toestemming van die betrokke regter, diens in ’n laer amp;
- (b) diens as ’n voorsitter of ’n lid van ’n kommissie soos beoog in die Kommissiewet, 1947 (Wet No. 8 van 1947);
- (c) diens as ’n voorsitter of ’n lid van ’n liggaam of instelling ingestel by of kragtens ’n wet; of
- (d) enige ander diens wat die Minister hom of haar versoek om te verrig; “Grondwet” die Grondwet van die Republiek van Suid-Afrika, 1996 (Wet No. 108 van 1996);
- “Konstitusionele Hof regter” enige persoon wat die amp beklee van—
- (a) Hoofregter van Suid-Afrika;
- (b) Adjunkhoofregter; of
- (c) regter van die Konstitusionele Hof;
- en ook enige persoon wat, sedert 7 Junie 1994, die amp beklee het van—
- (i) President van die Konstitusionele Hof;
- (ii) Adjunkpresident van die Konstitusionele Hof; of
- (iii) regter van die Konstitusionele Hof;
- “jaarlikse salaris” die jaarlikse salaris en die toelae wat ingevolge artikel 2 aan ’n Konstitusionele Hof regter of regter betaalbaar is;

- (iii) Judge President or Deputy Judge President of any provincial or local division of the Supreme Court of South Africa or of any High Court;
- (iv) judge of any provincial or local division of the Supreme Court of South Africa or of any High Court; or
- (v) judge of any court of a homeland referred to in Item 16 of Schedule 6 to the Constitution, read with Item 1 thereof; 5
- “Minister” means the Cabinet member responsible for the administration of justice;
- “salary” means the salary payable to a Constitutional Court judge or judge in terms of section 5; 10
- “service” means—
- (a) service as a judge of the Supreme Court of Appeal or a High Court as contemplated in the Supreme Court Act, 1959 (Act No. 59 of 1959), in the same or a higher office held by the judge concerned on discharge from active service, or, with the approval of the judge concerned, service in a lower office; 15
- (b) service as a chairperson or a member of a commission as contemplated in the Commissions Act, 1947 (Act No. 8 of 1947);
- (c) service as a chairperson or a member of a body or institution established by or under any law; or
- (d) any other service which the Minister may request him or her to perform. 20
- (2) This Act applies to all Constitutional Court judges and judges—
- (a) to whom the Judges' Remuneration and Conditions of Employment Act, 1989 (Act No. 88 of 1989) applied; and
- (b) to whom corresponding legislation in any homeland, as defined in Item 1 of Schedule 6 to the Constitution, which, immediately before the date of commencement of this Act, had not been repealed, applied. 25

CHAPTER 2

REMUNERATION AND CONDITIONS OF EMPLOYMENT OF CONSTITUTIONAL COURT JUDGES AND JUDGES (ss 2-11) 30

Annual salary of Constitutional Court judges and judges

2. (1) Any person who holds office as a Constitutional Court judge or as a judge, whether in an acting or permanent capacity, shall in respect thereof, in addition to the amounts referred to in section 13 and an allowance at the rate of R3 500 per annum, be paid an annual salary at a rate determined by the President by proclamation in the *Gazette*. 35
- (2) A proclamation in terms of subsection (1) may be issued with effect from a date which may not be earlier than one year prior to the date of the proclamation.
- (3) (a) A copy of a proclamation issued under subsection (1) shall be submitted to Parliament within 14 days after publication thereof. 40
- (b) If Parliament rejects such proclamation or any provision thereof, such proclamation or provision shall thereafter cease to be of force and effect to the extent to which it was so rejected but without prejudice to the validity of anything done in terms of such proclamation up to the date upon which it so ceased to be of force and effect, or to any right, privilege, obligation or liability acquired, accrued or incurred as at the said date under and by virtue of such proclamation. 45
- (4) The allowance payable in terms of subsection (1) shall not be taxable, unless Parliament expressly provides otherwise.
- (5) The amount of the annual salary and allowance payable in terms of subsection (1), shall be paid as a direct charge against the National Revenue Fund. 50
- (6) No Constitutional Court judge may, without the consent of the Minister, accept, hold or perform any other office of profit or receive in respect of any service any fees, emoluments or other remuneration apart from his or her salary and any amount which may be payable to him or her in his or her capacity as a Constitutional Court judge.

WET OP BESOLDIGING EN DIENSVORWAARDES
VAN REGTERS, 2001

Wet No. 47, 2001

- “Minister” die Kabinetslid wat vir die regspleging verantwoordelik is;
- “regter” enige persoon wat die amp beklee van—
- (a) President of Adjunkpresident van die Hoogste Hof van Appèl;
- (b) regter van die Hoogste Hof van Appèl;
- (c) Regter-president of Adjunk-regter-president van ’n Hoë Hof; of 5
- (d) regter van ’n Hoë Hof,
- en ook enige persoon wat, op of sedert die vasgestelde datum, die amp beklee het van—
- (i) Hoofregter van Suid-Afrika of Adjunkhoofregter;
- (ii) regter van die Appèlafdeling van die Hooggeregshof van Suid-Afrika of van 10
- die Hoogste Hof van Appèl;
- (iii) Regter-president of Adjunk-regter-president van ’n provinsiale of plaaslike afdeling van die Hooggeregshof van Suid-Afrika of van ’n Hoë Hof;
- (iv) regter van ’n provinsiale of plaaslike afdeling van die Hooggeregshof van 15
- Suid-Afrika of van ’n Hoë Hof; of
- (v) regter van ’n hof van ’n tuisland bedoel in Item 16 van Bylae 6 by die Grondwet, saamgelees met Item 1 daarvan;
- “salaris” die salaris wat ingevolge artikel 5 aan ’n Konstitusionele Hof regter of regter betaalbaar is;
- “vasgestelde datum” 1 April 1989. 20
- (2) Hierdie Wet is van toepassing op alle Konstitusionele Hof regters en regters—
- (a) op wie die Wet op Besoldiging en Diensvoorwaardes van Regters, 1989 (Wet No. 88 van 1989), van toepassing was; en
- (b) op wie ooreenstemmende wetgewing in enige tuisland, soos omskryf in Item 1 van Bylae 6 by die Grondwet, wat, onmiddellik voor die datum van 25
- inwerkingtreding van hierdie Wet, nie herroep is nie, van toepassing was.

HOOFSTUK 2

BESOLDIGING EN DIENSVORWAARDES VAN KONSTITUSIONELE HOF
REGTERS EN REGTERS
(artikels 2-11) 30

Jaarlikse salaris van Konstitusionele Hof regters en regters

2. (1) Aan iemand wat die amp van Konstitusionele Hof regter of van regter beklee, hetsy in ’n waarnemende of permanente hoedanigheid, word ten opsigte daarvan benewens die in artikel 13 bedoelde bedrae en ’n toelae teen die skaal van R3 500 per jaar, ’n jaarlikse salaris betaal teen ’n skaal wat deur die President by proklamasie in die 35
- Staatskoerant* bepaal word.
- (2) ’n Proklamasie ingevolge subartikel (1) kan uitgevaardig word met ingang van ’n datum wat hoogstens een jaar vroeër as die datum van die proklamasie kan wees.
- (3) (a) ’n Eksemplaar van ’n proklamasie kragtens subartikel (1) uitgevaardig, moet binne 14 dae na publikasie daarvan aan die Parlement voorgelê word. 40
- (b) Indien die Parlement so ’n proklamasie of ’n bepaling daarvan afkeur, hou sodanige proklamasie of bepaling daarna op om van krag te wees vir sover dit aldus afgekeur is, maar sonder om afbreuk te doen aan die geldigheid van enigiets wat ingevolge sodanige proklamasie gedoen is tot en met die datum waarop dit aldus opgehou het om van krag te wees, of aan enige reg, voorreg, verpligting of 45
- aanspreeklikheid verkry, opgeloopt of aangegaan soos op genoemde datum kragtens en uit hoofde van sodanige proklamasie.
- (4) Die toelae ingevolge subartikel (1) betaalbaar, is nie belasbaar nie, tensy die Parlement uitdruklik anders bepaal.
- (5) Die bedrag van die jaarlikse salaris en toelae ingevolge subartikel (1) betaalbaar, 50
- word betaal as ’n regstreekse las teen die Nasionale Inkomstefonds.
- (6) Geen Konstitusionele Hof regter mag, sonder toestemming van die Minister, ’n ander winsbetrekking aanvaar of beklee of daarin dien of ten opsigte van enige diens enige gelde, emolumente of ander besoldiging benewens sy of haar salaris en enige 55
- bedrag wat in sy of haar hoedanigheid as ’n Konstitusionele Hof regter aan hom of haar betaalbaar is, ontvang nie.

Discharge of Constitutional Court judges and judges from active service

3. (1) A Constitutional Court judge who holds office in terms of section 176(1) of the Constitution—

- (a) must, subject to the provisions of section 4(1) or (2), be discharged from active service as a Constitutional Court judge, on the date on which he or she—
 - (i) attains the age of 70 years; or
 - (ii) has completed a 12-year term of office as a Constitutional Court judge, whichever occurs first;
- (b) may at any time be discharged by the President from active service as a Constitutional Court judge if he or she becomes afflicted with a permanent infirmity of mind or body which renders him or her incapable of performing his or her official duties; or
- (c) may at any time on his or her request and with the approval of the President be discharged from active service as a Constitutional Court judge if there is any reason which the President deems sufficient.

(2) A judge who holds office in a permanent capacity—

- (a) shall, subject to the provisions of section 4(4), be discharged from active service as a judge on the date on which he or she attains the age of 70 years, if he or she has on that date completed a period of active service of not less than 10 years, or, if he or she has on that date not yet completed a period of 10 years' active service, on the date immediately following the day on which he or she completes a period of 10 years' active service;
- (b) who has already attained the age of 65 years and has performed active service for a period of 15 years, and who informs the Minister in writing that he or she no longer wishes to perform active service, shall be discharged by the President from active service as a judge;
- (c) may at any time be discharged by the President from active service as a judge if he or she becomes afflicted with a permanent infirmity of mind or body which renders him or her incapable of performing his or her official duties; or
- (d) may at any time on his or her request and with the approval of the President be discharged from active service as a judge if there is any reason which the President deems sufficient.

Continuation of active service by Constitutional Court judges and judges

4. (1) A Constitutional Court judge whose 12-year term of office as a Constitutional Court judge expires before he or she has completed 15 years' active service must, subject to subsection (2), continue to perform active service as a Constitutional Court judge to the date on which he or she completes a period of 15 years' active service, whereupon he or she must be discharged from active service as a Constitutional Court judge.

(2) A Constitutional Court judge who, on attaining the age of 70 years, has not yet completed 15 years' active service, must continue to perform active service as a Constitutional Court judge to the date on which he or she completes a period of 15 years' active service or attains the age of 75 years, whichever occurs first, whereupon he or she must be discharged from active service as a Constitutional Court judge.

(3) (a) A Constitutional Court judge who is discharged from active service in terms of section 3(1) or subsection (1) or (2) and who is also a judge contemplated in section 174(5) of the Constitution, may continue to perform active service as a judge in the court in which he or she held office as such immediately before he or she was appointed as a Constitutional Court judge if—

- (i) he or she indicates his or her willingness to do so in writing to the President three months before he or she is so discharged from active service; and
 - (ii) he or she still qualifies to hold office as such a judge in a permanent capacity in terms of section 3(2) or subsection (4).
- (b) Nothing in this Act precludes a Constitutional Court judge—
- (i) who is discharged from active service in terms of section 3(1) or subsection (1) or (2); and
 - (ii) who is not a judge contemplated in section 174(5) of the Constitution, from being appointed to the office of judge in a court other than the Constitutional Court by the President on the advice of the Judicial Service Commission as contemplated in

Ontheffing van Konstitusionele Hof regters en regters van aktiewe diens

3. (1) 'n Konstitusionele Hof regter wat sy of haar amp ingevolge artikel 176 (1) van die Grondwet beklee—
- (a) moet, behoudens die bepalings van artikel 4(1) of (2), van aktiewe diens as Konstitusionele Hof regter onthef word op die datum waarop hy of sy— 5
 - (i) die ouderdom van 70 jaar bereik; of
 - (ii) 'n ampstermyn van 12 jaar as 'n Konstitusionele Hof regter voltooi het, watter ook al die eerste plaasvind;
 - (b) kan te eniger tyd deur die President as Konstitusionele Hof regter van aktiewe diens onthef word indien hy of sy aangetas raak deur 'n permanente geestes- of liggaamswakheid wat hom of haar ongeskik maak om sy of haar ampspligte te vervul; of 10
 - (c) kan te eniger tyd op sy of haar versoek en met die toestemming van die President as Konstitusionele Hof regter van aktiewe diens onthef word indien daar 'n rede bestaan wat die President voldoende ag. 15
- (2) 'n Regter wat sy of haar amp in 'n permanente hoedanigheid beklee—
- (a) word, behoudens die bepalings van artikel 4(4), as regter van aktiewe diens onthef op die datum waarop hy of sy die ouderdom van 70 jaar bereik, indien hy of sy op daardie datum 'n tydperk van minstens 10 jaar aktiewe diens voltooi het, of, indien hy of sy op daardie datum nog nie 'n tydperk van 10 jaar aktiewe diens voltooi het nie, op die datum wat onmiddellik volg op die dag waarop hy of sy 'n tydperk van 10 jaar aktiewe diens voltooi; 20
 - (b) wat reeds die ouderdom van 65 jaar bereik het en aktiewe diens vir 'n tydperk van 15 jaar verrig het, en wat die Minister skriftelik meedeel dat hy of sy nie langer aktiewe diens wil verrig nie, word deur die President as regter van aktiewe diens onthef; 25
 - (c) kan te eniger tyd deur die President as regter van aktiewe diens onthef word indien hy of sy aangetas raak deur 'n permanente geestes- of liggaamswakheid wat hom of haar ongeskik maak om sy of haar ampspligte te vervul; of
 - (d) kan te eniger tyd op sy of haar versoek en met die toestemming van die President as regter van aktiewe diens onthef word indien daar 'n rede bestaan wat die President voldoende ag. 30

Voortsetting van aktiewe diens deur Konstitusionele Hof regters en regters

4. (1) 'n Konstitusionele Hof regter wie se ampstermyn van 12 jaar as Konstitusionele Hof regter verstryk voordat hy of sy 15 jaar aktiewe diens voltooi het, moet, behoudens subartikel (2), voortgaan om aktiewe diens as Konstitusionele Hof regter te verrig tot die datum waarop hy of sy 'n tydperk van 15 jaar aktiewe diens voltooi, waarna hy of sy as Konstitusionele Hof regter van aktiewe diens onthef moet word. 35
- (2) 'n Konstitusionele Hof regter wat, by bereiking van die ouderdom van 70 jaar, nog nie 15 jaar aktiewe diens voltooi het nie, moet voortgaan om aktiewe diens as Konstitusionele Hof regter te verrig tot die datum waarop hy of sy 'n tydperk van 15 jaar aktiewe diens voltooi of die ouderdom van 75 jaar bereik, watter ook al die eerste plaasvind, waarna hy of sy as Konstitusionele Hof regter van aktiewe diens onthef moet word. 40
- (3) (a) 'n Konstitusionele Hof regter wat ingevolge artikel 3(1) of subartikel (1) of (2) van aktiewe diens onthef is en wat ook 'n regter beoog in artikel 174(5) van die Grondwet is, kan voortgaan om aktiewe diens as 'n regter te verrig in die hof waarin hy of sy 'n amp as sodanig beklee het onmiddellik voordat hy of sy as Konstitusionele Hof regter aangestel is, indien— 45
- (i) hy of sy skriftelik sy of haar bereidwilligheid daartoe aan die President aangedui het drie maande voor hy of sy aldus van aktiewe diens onthef is; en 50
 - (ii) hy of sy steeds kwalifiseer om die amp van so 'n regter in 'n permanente hoedanigheid ingevolge artikel 3(2) of subartikel (4) te beklee.
- (b) Niks in hierdie Wet verhinder 'n Konstitusionele Hof regter—
- (i) wat ingevolge artikel 3(1) of subartikel (1) of (2) van aktiewe diens onthef is; 55
 - en
 - (ii) wat nie 'n regter soos beoog in artikel 174(5) van die Grondwet is nie, om, deur die President op advies van die Regterlike Dienskommissie soos beoog in die Grondwet, aangestel te word in die amp van regter in 'n ander hof as die Konstitusionele

the Constitution, if he or she still qualifies to hold office as such a judge in a permanent capacity in terms of section 3(2) or subsection (4).

(c) The holding of office by a judge referred to in paragraph (a) or (b)—

- (i) interrupts that judge's discharge from active service in terms of section 3(1) or subsection (1) or (2); and
- (ii) suspends any salary payable in terms of section 5 to that judge pursuant to such discharge from active service.

(d) The holding of office by a judge referred to in paragraph (a) or (b), entitles such a judge to an annual salary which—

- (i) is payable in terms of section 2; and
- (ii) may not be less than the annual salary applicable to the highest office held as a Constitutional Court judge or a judge.

(4) A judge who on attaining the age of 70 years has not yet completed 15 years' active service, may continue to perform active service to the date on which he or she completes a period of 15 years' active service or attains the age of 75 years, whichever occurs first, whereupon he or she must be discharged from active service as a judge.

Salary payable to Constitutional Court judges and judges after discharge from active service

5. (1) Subject to subsection (2), a Constitutional Court judge or a judge who on or after the fixed date was or is discharged from active service in terms of section 3 or 4 shall be paid a salary in accordance with the formula—

$$\frac{A}{B} \times C$$

in which formula the factor—

- (a) A represents the annual salary applicable to the highest office held by the Constitutional Court judge or judge concerned in a permanent capacity during the period of his or her active service: Provided that, subject to section 11(3)(a) and (5)(a), the factor 'A' in the said formula must be adjusted whenever the annual salary applicable to the highest office held by the Constitutional Court judge or judge concerned during the period of his or her active service, is increased;
- (b) B represents 15; and
- (c) C represents the period in years of active service of such Constitutional Court judge or judge.

(2) The aggregate of the salary payable in terms of subsection (1) to a Constitutional Court judge or judge who was or is discharged from active service—

- (a) in terms of section 3(1), 3(2)(a), (c) or (d) or 4(1), (2) or (4) shall not be less than 40 per cent of his or her highest annual salary during the period of his or her active service and shall not exceed such salary;
- (b) in terms of section 3(1) or 3(2) and has performed active service for a period of not less than 20 years, shall be equivalent to the annual salary applicable to the highest office held by him or her in a permanent capacity during his or her period of active service;
- (c) in terms of section 3(2)(b), shall, subject to paragraph (b), be 80 per cent of his or her highest annual salary during the period of his or her active service, plus two per cent of that salary for every year of active service which he or she performs after attaining the age of 65 years;
- (d) in terms of section 3(1)(b) or (c) or 3(2)(c) or (d) before he or she attains the age of 65 years, shall, subject to paragraph (b), be not more than 80 per cent of his or her highest annual salary during the period of his or her active service.

(3) For the purposes of subsection (1) the period of active service in any particular office shall be calculated by the year and the month, and fractions of a month shall—

- (a) in respect of any active service performed before the date of commencement of this Act, be disregarded; and
- (b) in respect of any active service performed after the date of commencement of this Act be taken into account.

(4) If a Constitutional Court judge or a judge to whom a salary is payable in terms of this section dies, the payment of the salary shall cease with effect from the first day of the month following the month in which he or she died.

Hof nie indien hy of sy steeds kwalifiseer om die amp van so 'n regter in 'n permanente hoedanigheid ingevolge artikel 3(2) of subartikel (4) te beklee.

(c) Die ampsbekleding deur 'n regter bedoel in paragraaf (a) of (b)—

(i) onderbreek daardie regter se ontheffing van aktiewe diens ingevolge artikel 3(1) of subartikel (1) of (2); en

(ii) skort enige salaris op wat ingevolge artikel 5 aan daardie regter betaalbaar is na aanleiding van sodanige ontheffing van aktiewe diens.

(d) Die ampsbekleding deur 'n regter bedoel in paragraaf (a) of (b), maak sodanige regter geregtig op 'n jaarlikse salaris wat—

(i) ingevolge artikel 2 betaalbaar is; en

(ii) nie minder is nie as die jaarlikse salaris wat verbonde is aan die hoogste amp beklee as Konstitusionele Hof regter of regter.

(4) 'n Regter wat by bereiking van die ouderdom van 70 jaar nog nie 15 jaar aktiewe diens voltooi het nie, kan voortgaan om aktiewe diens te verrig tot die datum waarop hy of sy 'n tydperk van 15 jaar aktiewe diens voltooi of die ouderdom van 75 jaar bereik, watter ook al die eerste plaasvind, waarna hy of sy as regter van aktiewe diens onthef moet word.

Salaris betaalbaar aan Konstitusionele Hof regters en regters na ontheffing van aktiewe diens

5. (1) Behoudens subartikel (2) word aan 'n Konstitusionele Hof regter of 'n regter wat op of na die vasgestelde datum ingevolge artikel 3 of 4 van aktiewe diens onthef is of onthef word, 'n salaris betaal ooreenkomstig die formule—

$$\frac{A}{B} \times C$$

in watter formule die faktor—

(a) A die jaarlikse salaris voorstel wat verbonde is aan die hoogste amp wat die betrokke Konstitusionele Hof regter of regter in 'n permanente hoedanigheid gedurende die tydperk van sy of haar aktiewe diens beklee het: Met dien verstande dat, behoudens artikel 11(3)(a) en (5)(a), die faktor 'A' in vermelde formule aangepas moet word telkens wanneer die jaarlikse salaris verbonde aan die hoogste amp wat die betrokke Konstitusionele Hof regter of regter gedurende die tydperk van sy of haar aktiewe diens beklee het, verhoog word;

(b) B 15 voorstel; en

(c) C die tydperk in jare van aktiewe diens van sodanige Konstitusionele Hof regter of regter voorstel.

(2) Die totaal van die salaris ingevolge subartikel (1) betaalbaar aan 'n Konstitusionele Hof regter of regter wat van aktiewe diens onthef is of onthef word—

(a) ingevolge artikel 3(1), 3(2)(a), (c) of (d) of 4(1), (2) of (4) is minstens 40 persent van sy of haar hoogste jaarlikse salaris gedurende die tydperk van sy of haar aktiewe diens en nie meer as sodanige salaris nie;

(b) ingevolge artikel 3(1) of 3(2) en wat aktiewe diens vir 'n tydperk van minstens 20 jaar verrig het, is gelyk aan die jaarlikse salaris wat verbonde is aan die hoogste amp wat deur hom of haar in 'n permanente hoedanigheid gedurende sy of haar tydperk van aktiewe diens beklee is;

(c) ingevolge artikel 3(2)(b), is, behoudens paragraaf (b), 80 persent van sy of haar hoogste jaarlikse salaris gedurende die tydperk van sy of haar aktiewe diens, plus 2 persent van daardie salaris vir elke jaar van aktiewe diens wat hy of sy verrig na bereiking van die ouderdom van 65 jaar;

(d) ingevolge artikel 3 (1)(b) of (c) of (d) of 3(2)(c) of (d) voordat hy of sy die ouderdom van 65 jaar bereik, is, behoudens paragraaf (b), hoogstens 80 persent van sy of haar hoogste jaarlikse salaris gedurende die tydperk van sy of haar aktiewe diens.

(3) By die toepassing van subartikel (1) word die tydperk van aktiewe diens in 'n bepaalde amp by die jaar en die maand bereken en word breukdele van 'n maand—

(a) ten opsigte van enige aktiewe diens wat voor die datum van inwerkingtreding van hierdie Wet verrig is, buite rekening gelaat; en

(b) ten opsigte van enige aktiewe diens wat na die datum van inwerkingtreding van hierdie Wet verrig is, in berekening gebring.

(4) Indien 'n Konstitusionele Hof regter of 'n regter aan wie 'n salaris ingevolge hierdie artikel betaalbaar is, te sterwe kom, word die betaling van die salaris gestaak met

Gratuity payable to Constitutional Court judges and judges after discharge from active service

6. (1) Subject to the provisions of subsections (2), (3) and (4), any Constitutional Court judge or judge who on or after the fixed date was or is discharged from active service in terms of section 3 or 4, shall, in addition to any salary payable to him or her in terms of section 5, be paid a gratuity which shall in respect of every office held by him or her in a permanent capacity during his or her active service be calculated in accordance with the formula—

$$D \times 2 \times \frac{E}{15}$$

in which formula the factor-

- (a) D represents the annual salary which at the time of the discharge of such Constitutional Court judge or judge from active service was applicable to the office concerned;
- (b) E represents the period in years of active service, but not exceeding 20 years, of such a Constitutional Court judge or judge in the office concerned.

(2) After the completion of 15 years' active service a Constitutional Court judge or judge shall once be entitled, if he or she so requests, to be paid the gratuity (or any part thereof) which has until the date of the request accrued in accordance with the formula in subsection (1).

(3) After the completion of 20 years' active service a Constitutional Court judge or judge shall once be entitled, if he or she so requests, to be paid the gratuity (or any portion thereof) which has until that date accrued in accordance with the formula in subsection (1), or the balance available after the exercise of the power in terms of subsection (2).

(4) A judge referred to in section 4(4) shall once be entitled, when he or she attains the age of 70 years and has completed not less than 10 years' active service, to be paid, if he or she so requests, the gratuity (or any portion thereof) which has until the date of that request accrued in accordance with the formula in subsection (1).

(5) The total amount of any gratuity payable in terms of this section to a Constitutional Court judge or judge shall not exceed three times his or her highest annual salary during the period of his or her active service.

(6) For the purposes of this section the period of active service shall be calculated by the year and the month, and fractions of a month shall be taken into account.

(7) Notwithstanding anything to the contrary contained in any other law, the gratuity payable to Constitutional Court judges or judges under this section shall not be taxable.

Performance of service by Constitutional Court judges and judges discharged from active service

7. (1) (a) A Constitutional Court judge or judge who has been discharged from active service, except a Constitutional Court judge or judge who has been discharged in terms of section 3(1)(b) or (c) or (2)(b), (c) or (d), who—

- (i) has not attained the age of 75 years must, subject to paragraph (c), be available to perform service until he or she attains the age of 75 years, for a period or periods which, in the aggregate, amount to three months a year: Provided that such a Constitutional Court judge or judge may voluntarily perform more than three months' service a year, if his or her services are so requested; or
- (ii) has already attained the age of 75 years, may voluntarily perform further service, if his or her services are so requested,

if that Constitutional Court judge's or judge's mental and physical health enable him or her to perform such service.

(b) Service contemplated in paragraph (a) of the definition of "service" in section 1 may only be performed if—

- (i) after consultation with the Judicial Service Commission, such service is requested by the Chief Justice, President of the Supreme Court of Appeal or the judge president in whose area of jurisdiction the Constitutional Court

ingang van die eerste dag van die maand wat volg op die maand waarin hy of sy te sterwe kom.

Gratifikasie betaalbaar aan Konstitusionele Hof regters en regters na ontheffing van aktiewe diens

6. (1) Behoudens die bepalings van subartikels (2), (3) en (4) word aan 'n Konstitusionele Hof regter of regter wat op of na die vasgestelde datum ingevolge artikel 3 of 4 van aktiewe diens onthef is of onthef word, benewens 'n salaris wat ingevolge artikel 5 aan hom of haar betaalbaar is, 'n gratifikasie betaal wat ten opsigte van elke amp deur hom of haar in 'n permanente hoedanigheid tydens sy of haar aktiewe diens beklee ooreenkomstig die formule—

$$D \times 2 \times \frac{E}{15}$$

bereken word, in watter formule die faktor—

- (a) D die jaarlikse salaris voorstel wat ten tyde van so 'n Konstitusionele Hof regter of regter se ontheffing van aktiewe diens aan die betrokke amp verbonde was;
- (b) E die tydperk in jare aktiewe diens, maar hoogstens 20 jaar, van so 'n Konstitusionele Hof regter of regter in die betrokke amp voorstel.
- (2) Na voltooiing van 15 jaar aktiewe diens is 'n Konstitusionele Hof regter of regter een maal daarop geregtig dat, indien hy of sy dit versoek, die gratifikasie (of 'n gedeelte daarvan) wat tot op die datum van die versoek ooreenkomstig die formule in subartikel (1) aangegroei het, aan hom of haar betaal word.
- (3) Na voltooiing van 20 jaar aktiewe diens is 'n Konstitusionele Hof regter of regter een maal daarop geregtig dat, indien hy of sy dit versoek, die gratifikasie (of 'n gedeelte daarvan) wat tot op daardie datum ooreenkomstig die formule in subartikel (1) aangegroei het, of die balans wat na die uitoefening van die bevoegdheid ingevolge subartikel (2) beskikbaar is, aan hom of haar betaal word.
- (4) 'n Regter bedoel in artikel 4(4) is, wanneer hy of sy die ouderdom van 70 jaar bereik en minstens 10 jaar aktiewe diens voltooi het, een maal daarop geregtig dat, indien hy of sy dit versoek, die gratifikasie (of 'n gedeelte daarvan) wat tot op die datum van daardie versoek ooreenkomstig die formule in subartikel (1) aangegroei het, aan hom of haar betaal word.
- (5) Die totale bedrag van 'n gratifikasie ingevolge hierdie artikel aan 'n Konstitusionele Hof regter of regter betaalbaar, bedra nie meer as drie maal sy of haar hoogste jaarlikse salaris gedurende die tydperk van sy of haar aktiewe diens.
- (6) By die toepassing van hierdie artikel word die tydperk van aktiewe diens by die jaar en die maand bereken en word breukdele van 'n maand in berekening gebring.
- (7) Ondanks enige andersluidende wetsbepalings is die gratifikasie kragtens hierdie artikel betaalbaar aan Konstitusionele Hof regters of regters nie belasbaar nie.

Verrigting van diens deur Konstitusionele Hof regters en regters wat van aktiewe diens onthef is

7. (1) (a) 'n Konstitusionele Hof regter of regter wat van aktiewe diens onthef is, uitgesonderd 'n Konstitusionele Hof regter of regter wat ingevolge artikel 3(1)(b) of (c) of (2)(b), (c) of (d) onthef is, wat—
- (i) nie die ouderdom van 75 jaar bereik het nie moet, behoudens paragraaf (c), beskikbaar wees om diens te verrig totdat hy of sy die ouderdom van 75 jaar bereik, vir 'n tydperk of tydperke wat, in totaal, jaarliks drie maande beloop: Met dien verstande dat so 'n Konstitusionele Hof regter of regter vrywillig meer as drie maande diens jaarliks kan verrig, indien sy of haar dienste aldus versoek word; of
- (ii) reeds die ouderdom van 75 jaar bereik het, kan vrywillig verdere diens verrig indien sy of haar dienste aldus versoek word,
- indien daardie Konstitusionele Hof regter of regter se geestes- en liggaamsgesondheid hom of haar in staat stel om sodanige diens te verrig.
- (b) Diens beoog in paragraaf (a) van die omskrywing van “diens” in artikel 1 kan slegs verrig word indien—
- (i) na oorleg met die Regterlike Dienskommissie, sodanige diens versoek word deur die Hoofregter, President van die Hoogste Hof van Appèl of die regter-president binne wie se regsgebied die Konstitusionele Hof regter of

judge or judge resides or of the court to which he or she was attached when discharged from active service, or with his or her consent, any other judge president, in consultation with the Chief Justice or the said judge president, as the case may be; and

(ii) the Minister so approves. 5

(c) Service as mentioned in paragraph (b), (c) or (d) of the definition of "service" in section 1 may be performed only with the consent of the Constitutional Court judge or judge concerned.

(2) (a) A Constitutional Court judge or judge who performs service in terms of subsection (1), as contemplated in paragraph (a) of the definition of "service" in section 1, shall, subject to paragraph (b)(ii), monthly be paid an additional amount in remuneration which is equal to the amount which at that time is payable to the holder of the office which he or she holds for that period. 10

(b) A Constitutional Court judge or judge who performs service in terms of subsection (1) as contemplated in— 15

(i) paragraphs (b) to (d) of the definition of "service" in section 1 ; and

(ii) the proviso to subsection(1)(a)(i) or in subsection(1)(a)(ii), read with paragraph (a) of the definition of "service" in section 1,

shall monthly be paid such remuneration as the President may determine.

(3) The salary of a Constitutional Court judge or judge who contrary to subsection (1)(a)(i) fails to perform the minimum period of service referred to in that subsection if so requested, shall, for every full year during which he or she so fails, be reduced by two per cent: Provided that such reduction shall, in the aggregate, not amount to more than 10 per cent of such salary. 20

(4) The registrar of the Supreme Court of Appeal or a High Court where a Constitutional Court judge or judge performs service in terms of subsection (1), shall notify the Director-General: Justice and Constitutional Development immediately of the commencement and duration of the service. 25

(5) The Director-General: Justice and Constitutional Development shall keep a register of all service performed by Constitutional Court judges or judges in terms of subsection (1). 30

Performance of service as Chief Justice by Chief Justice or as President of Supreme Court of Appeal by President of Supreme Court of Appeal in certain circumstances

8. (a) A Chief Justice who becomes eligible for discharge from active service in terms of section 3(1)(a) or 4(1) or (2), may, at the request of the President, from the date on which he or she becomes so eligible for discharge from active service, continue to perform active service as Chief Justice of South Africa for a period determined by the President, which shall not extend beyond the date on which such Chief Justice attains the age of 75 years. 35

(b) A President of the Supreme Court of Appeal who becomes eligible for discharge from active service in terms of section 3(2)(a) or 4(4), may, at the request of the President, from the date on which he or she becomes so eligible for discharge from active service, continue to perform active service as President of the Supreme Court of Appeal for a period determined by the President, which may not extend beyond the date on which such President of the Supreme Court of Appeal attains the age of 75 years. 40 45

Amount payable to surviving spouse of Constitutional Court judge and judge

9. (1) The surviving spouse of a Constitutional Court judge or judge who on or after the fixed date was or is discharged from active service in terms of section 3 or 4 or who died or dies while performing active service, shall be paid with effect from the first day of the month immediately succeeding the month in which he or she dies an amount— 50

(a) in the case of a surviving spouse of a Constitutional Court judge or judge who was so discharged from active service, equal to two thirds of the salary which was in terms of section 5 payable to that Constitutional Court judge or judge; or

(b) in the case of a surviving spouse of a Constitutional Court judge or judge who died while performing active service as a Constitutional Court judge or judge, equal to two thirds of the amount to which that Constitutional Court judge or 55

regter woonagtig is of die hof waaraan hy of sy verbonde was toe hy of sy van aktiewe diens onthef is, of, met sy of haar instemming, enige ander regter-president, in oorleg met die Hoofregter of die genoemde regter-president, na gelang van die geval; en

(ii) die Minister aldus goedkeur.

(c) Diens soos genoem in paragraaf (b), (c) of (d) van die omskrywing van “diens” in artikel 1 kan slegs met die instemming van die betrokke Konstitusionele Hof regter of regter verrig word.

(2) (a) ’n Konstitusionele Hof regter of regter wat diens ingevolge subartikel (1) verrig, soos beoog in paragraaf (a) van die omskrywing van “diens” in artikel 1, word, behoudens paragraaf (b)(ii), maandeliks ’n bykomende bedrag besoldiging betaal wat gelyk is aan die bedrag wat op daardie tydperk betaalbaar is aan die bekleër van die amp wat hy of sy vir daardie tydperk beklee.

(b) ’n Konstitusionele Hof regter of regter wat diens ingevolge subartikel (1) verrig, soos beoog in—

(i) paragrawe (b) tot (d) van die omskrywing van “diens” in artikel 1; en

(ii) die voorbehoudsbepaling tot subartikel (1)(a)(i) of in subartikel (1)(a)(ii), saamgelees met paragraaf (a) van die omskrywing van “diens” in artikel 1, word maandeliks die besoldiging betaal wat die President bepaal.

(3) Die salaris van ’n Konstitusionele Hof regter of regter wat strydig met subartikel (1)(a)(i) versuim om die minimum tydperk diens in daardie subartikel bedoel, te verrig, indien aldus versoek, word vir elke volle jaar waartydens hy of sy aldus versuim, met twee persent verminder: Met dien verstande dat sodanige vermindering nie meer as 10 persent in totaal van sodanige salaris beloop nie.

(4) Die griffier van die Hoogste Hof van Appèl of ’n Hoë Hof waar ’n Konstitusionele Hof regter of regter ingevolge subartikel (1) diens verrig, moet die Direkteur-generaal: Justisie en Staatkundige Ontwikkeling onverwyld van die aanvang en duur van die diens in kennis stel.

(5) Die Direkteur-generaal: Justisie en Staatkundige Ontwikkeling moet ’n register hou van alle diens deur Konstitusionele Hof regters of regters ingevolge subartikel (1) verrig.

Verrigting van diens as Hoofregter deur Hoofregter of as President van Hoogste Hof van Appèl deur President van Hoogste Hof van Appèl in sekere omstandighede

8. (a) ’n Hoofregter wat in aanmerking kom om van aktiewe diens ingevolge artikel 3(1)(a) of 4(1) of (2) onthef te word, kan, op versoek van die President, vanaf die datum waarop hy of sy aldus in aanmerking kom om van aktiewe diens onthef te word, voortgaan om aktiewe diens as Hoofregter van Suid-Afrika te verrig vir ’n tydperk deur die President bepaal, wat hoogstens sal strek tot die datum waarop sodanige Hoofregter die ouderdom van 75 jaar bereik.

(b) ’n President van die Hoogste Hof van Appèl wat in aanmerking kom om van aktiewe diens ingevolge artikel 3(2)(a) of 4(4) onthef te word, kan, op versoek van die President, vanaf die datum waarop hy of sy aldus in aanmerking kom om van aktiewe diens onthef te word, voortgaan om aktiewe diens as President van die Hoogste Hof van Appèl te verrig vir ’n tydperk deur die President bepaal, wat hoogstens sal strek tot die datum waarop sodanige President van die Hoogste Hof van Appèl die ouderdom van 75 jaar bereik.

Bedrag betaalbaar aan oorlewende gade van Konstitusionele Hof regter en regter

9. (1) Die oorlewende gade van ’n Konstitusionele Hof regter of regter wat op of na die vasgestelde datum ingevolge artikel 3 of 4 van aktiewe diens onthef is of onthef word of te sterwe gekom het of te sterwe kom terwyl hy of sy aktiewe diens verrig, word, met ingang van die eerste dag van die maand wat onmiddellik volg op die maand waarin hy of sy te sterwe kom, ’n bedrag betaal wat—

(a) in die geval van ’n oorlewende gade van ’n Konstitusionele Hof regter of regter wat aldus van aktiewe diens onthef is, gelyk is aan twee derdes van die salaris wat ingevolge artikel 5 aan daardie Konstitusionele Hof regter of regter betaalbaar was; of

(b) in die geval van ’n oorlewende gade van ’n Konstitusionele Hof regter of regter wat te sterwe gekom het terwyl hy of sy aktiewe diens as Konstitusionele Hof regter of regter verrig het, gelyk is aan twee derdes van

judge would have been entitled in terms of section 5 if he or she was discharged from active service in terms of section 3 (1)(a) or (2)(a) on the date of his or her death.

(2) The amount payable to the surviving spouse of a Constitutional Court judge or judge in terms of subsection (1) shall be payable with effect from the first day of the month immediately succeeding the day on which he or she died, and shall be payable until the death of such spouse. 5

Gratuity payable to surviving spouse of Constitutional Court judge and judge

10. If a gratuity referred to in section 6 would have been payable to a Constitutional Court judge or judge who died or dies on or after the fixed date had he or she not died but, on the date of his or her death, was discharged from active service in terms of section 3 or 4, there shall— 10

(a) if such Constitutional Court judge or judge is survived by a surviving spouse, be payable to such surviving spouse, in addition to any amount payable to that spouse in terms of section 9; or 15

(b) if such Constitutional Court judge or judge is not survived by a spouse, be payable to the estate of such Constitutional Court judge or judge, a gratuity which shall be equal to the amount of the gratuity which would have been so payable to such Constitutional Court judge or judge had he or she not died but was, on the date of his or her death, discharged from active service as aforesaid. 20

Resignation of Constitutional Court judges and judges from office in certain circumstances

11. (1) Any resignation by a Constitutional Court judge or judge which is not contemplated in this Act precludes the payment of any benefits to such person in terms of this Act to which a Constitutional Court judge or judge would otherwise be entitled on discharge from active service. 25

(2) A Constitutional Court judge who is a judge contemplated in section 174(5) of the Constitution or a judge who holds office in a permanent capacity, who already has attained the age of 65 years and has performed 15 years' active service may resign from office by notice in writing to the President that he or she no longer wishes to serve in the office of such judge, and shall vacate his or her office upon acceptance of such resignation. 30

(3) A Constitutional Court judge or a judge referred to in subsection (2) shall be paid—

(a) a salary in accordance with the provisions of section 5: Provided that the proviso in section 5(1)(a) shall not apply in respect of him or her; 35

(b) a gratuity in accordance with the formula set out in section 6(1).

(4) A Constitutional Court judge who is not a judge contemplated in section 174(5) of the Constitution who has completed a 12 year term of office as a Constitutional Court judge or who has attained the age of 70 years, whichever occurs first, may resign from office by notice in writing to the President and must vacate his or her office upon acceptance by the President of such resignation. 40

(5) A Constitutional Court judge referred to in subsection (4) must be paid—

(a) a salary in accordance with the provisions of section 5: Provided that the proviso in section 5(1)(a) does not apply in respect of him or her; 45

(b) a gratuity in accordance with the formula set out in section 6(1).

(6) The provisions of section 6(7) apply with the necessary changes in respect of any gratuity payable in terms of this section.

(7) The surviving spouse of a Constitutional Court judge or judge referred to in subsection (2) or (4) must, with effect from the first day of the month immediately succeeding the month in which he or she dies, be paid an amount equal to two thirds of the salary which was payable to that Constitutional Court judge or judge in terms of subsection (3)(a) or (5)(a), which amount shall be payable until the death of such spouse. 50

die bedrag waarop daardie Konstitusionele Hof regter of regter ingevolge artikel 5 geregtig sou gewees het indien hy of sy op die datum van sy of haar afsterwe ingevolge artikel 3(1)(a) of (2)(a) van aktiewe diens onthef is.

(2) Die bedrag betaalbaar aan die oorlewende gade van 'n Konstitusionele Hof regter of regter ingevolge subartikel (1) is betaalbaar met ingang van die eerste dag van die maand wat onmiddellik volg op die dag waarop hy of sy te sterwe kom, en bly betaalbaar tot by so 'n gade se dood. 5

Gratifikasie betaalbaar aan oorlewende gade van Konstitusionele Hof regter en regter

10. Indien 'n gratifikasie in artikel 6 bedoel aan 'n Konstitusionele Hof regter of regter wat op of na die vasgestelde datum te sterwe gekom het of te sterwe kom, betaalbaar sou gewees het indien hy of sy nie te sterwe gekom het nie maar, op die datum van sy of haar afsterwe, ingevolge artikel 3 of 4 van aktiewe diens onthef is, word daar—

(a) indien so 'n Konstitusionele Hof regter of regter deur 'n oorlewende gade oorleef word, aan sodanige oorlewende gade, benewens enige bedrag wat ingevolge artikel 9 aan daardie gade betaalbaar is; of 15

(b) indien so 'n Konstitusionele Hof regter of regter nie deur 'n gade oorleef word nie, aan die boedel van sodanige Konstitusionele Hof regter of regter, 'n gratifikasie betaal wat gelyk is aan die bedrag van die gratifikasie wat aldus aan sodanige Konstitusionele Hof regter of regter betaalbaar sou gewees het indien hy of sy nie te sterwe gekom het nie maar, op die datum van sy of haar afsterwe, van aktiewe diens onthef is soos voormeld. 20

Bedanking van Konstitusionele Hof regters en regters uit amp in sekere omstandighede

11. (1) Enige bedanking deur 'n Konstitusionele Hof regter of regter wat nie in hierdie Wet beoog word nie, belet die betaling van enige voordele aan sodanige persoon ingevolge hierdie Wet waarop 'n Konstitusionele Hof regter of regter andersins by die ontheffing van aktiewe diens geregtig sou gewees het. 25

(2) 'n Konstitusionele Hof regter wat 'n regter beoog in artikel 174(5) van die Grondwet is of 'n regter wat sy of haar amp in 'n permanente hoedanigheid beklee, wat reeds die ouderdom van 65 jaar bereik het en 15 jaar aktiewe diens verrig het, kan uit sy of haar amp bedank deur die President skriftelik mee te deel dat hy of sy nie langer in die amp van sodanige regter wil dien nie, en ontruim sy of haar amp by aanvaarding van sodanige bedanking. 30

(3) Aan 'n Konstitusionele Hof regter of 'n regter in subartikel (2) bedoel, word— 35

(a) 'n salaris betaal ooreenkomstig die bepalings van artikel 5: Met dien verstande dat die voorbehoudsbepaling in artikel 5(1)(a) nie ten opsigte van hom of haar van toepassing is nie;

(b) 'n gratifikasie betaal ooreenkomstig die formule in artikel 6(1) uiteengesit.

(4) 'n Konstitusionele Hof regter wat nie 'n regter beoog in artikel 174(5) van die Grondwet is nie en wat 'n ampstermyn van 12 jaar as Konstitusionele Hof regter voltooi het of wat die ouderdom van 70 jaar bereik het, watter ook al die eerste plaasvind, kan uit sy of haar amp bedank by skriftelike kennisgewing aan die President en moet sy of haar amp ontruim by aanvaarding deur die President van sodanige bedanking. 40

(5) Aan 'n Konstitusionele Hof regter in subartikel (4) bedoel, moet— 45

(a) 'n salaris betaal word ooreenkomstig die bepalings van artikel 5: Met dien verstande dat die voorbehoudsbepaling in artikel 5(1)(a) nie ten opsigte van hom of haar van toepassing is nie;

(b) 'n gratifikasie betaal word ooreenkomstig die formule in artikel 6(1) uiteengesit. 50

(6) Die bepalings van artikel 6(7) is met die nodige veranderinge van toepassing op enige gratifikasie wat ingevolge hierdie artikel betaalbaar is.

(7) Aan die oorlewende gade van 'n Konstitusionele Hof regter of regter in subartikel (2) of (4) bedoel, word, met ingang van die eerste dag van die maand wat onmiddellik volg op die maand waarin hy of sy te sterwe kom, 'n bedrag betaal wat gelyk is aan twee derdes van die salaris wat ingevolge subartikel (3)(a) of (5)(a) aan daardie Konstitusionele Hof regter of regter betaalbaar was, welke bedrag tot by sodanige gade se dood betaalbaar is. 55

CHAPTER 3**GENERAL PROVISIONS**
(ss 12-18)**Making available of motor vehicles to Constitutional Court judges and judges**

12. A motor vehicle owned by the State may, on such conditions as the Minister may determine with the concurrence of the Minister of Transport, be made available to any person who holds office as a Constitutional Court judge or judge in a permanent or acting capacity, whether he or she performs active service or service, for use, in accordance with the conditions so determined, in the course of his or her official functions as well as for his or her private purposes. 5
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Regulations

13. (1) The President may, after consultation by the Minister with the Chief Justice, the President of the Supreme Court of Appeal and the judges president of the respective High Courts, make regulations as to—

- (a) arrangements regarding administrative recesses; 15
- (b) the periods for which and the circumstances under which and conditions upon which leave of absence may be granted to Constitutional Court judges or acting Constitutional Court judges, judges or acting judges;
- (c) the method of transport of such Constitutional Court judges or judges, and of Constitutional Court judges or judges on their discharge from active service or their vacation of office and of Constitutional Court judges or judges in the performance of service in terms of section 7, and of the members of their families and of the effects of Constitutional Court judges or judges or Constitutional Court judges or judges who have been discharged from active service or who have vacated their offices or Constitutional Court judges or judges who perform service in terms of section 7 or deceased Constitutional Court judges or judges, the amounts to be paid to Constitutional Court judges or judges or acting Constitutional Court judges or judges in connection with transport and subsistence, and the circumstances in which any such transport may be provided and any such amounts may be paid; 20
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30
- (d) the amounts which may be paid to acting Constitutional Court judges or acting judges in connection with the maintenance by them of their practices as advocates or attorneys; or
- (e) the amounts payable to Constitutional Court judges or judges of the Supreme Court of Appeal in connection with their accommodation. 35

(2) A regulation under subsection (1) may provide that an amount referred to in paragraph (c) or (d) of that subsection shall be calculated either in accordance with a scale or having regard to the expenses actually incurred in connection with the matter concerned. 40

Administration of Act

14. The Director-General: Justice and Constitutional Development shall, subject to the directions of the Minister, be charged with the general administration of this Act.

Method of payment of salaries, allowances and benefits

15. Salaries, allowances and benefits payable in terms of sections 2, 5, 6, 7, 9, 10 and 11 of this Act shall be paid as a direct charge against the National Revenue Fund and on such dates and in such manner as the Minister may from time to time determine. 45

Transitional provisions

16. (1) Notwithstanding the repeal of—

- (a) the Judges' Remuneration and Conditions of Employment Act, 1989 (Act No. 88 of 1989); 50

HOOFSTUK 3**ALGEMENE BEPALINGS****(artikels 12-18)****Beskikbaarstelling van motorvoertuie aan Konstitusionele Hof regters en regters**

12. 'n Motorvoertuig waarvan die Staat die eienaar is, kan, op die voorwaardes wat die Minister met die instemming van die Minister van Vervoer bepaal, aan iemand wat die amp van Konstitusionele Hof regter of regter in 'n permanente of waarnemende hoedanigheid beklee, hetsy hy of sy aktiewe diens of diens verrig, beskikbaar gestel word vir gebruik, ooreenkomstig die voorwaardes aldus bepaal, in die loop van sy of haar amptelike werksaamhede sowel as vir sy of haar private doeleindes. 5 10

Regulasies

13. (1) Die President kan, na oorlegpleging deur die Minister met die Hoofregter, die President van die Hoogste Hof van Appèl en die regters-president van die onderskeie Hoë Howe, regulasies uitvaardig betreffende—

- (a) reëlings rakende administratiewe resesse; 15
- (b) die tydperke waarvoor, die omstandighede waaronder en die voorwaardes waarop verlof van afwesigheid aan Konstitusionele Hof regters of waarnemende Konstitusionele Hof regters, regters of waarnemende regters verleen kan word;
- (c) die wyse van vervoer van sodanige Konstitusionele Hof regters of regters, en van Konstitusionele Hof regters of regters by hul ontheffing van aktiewe diens of ontruiming van hul amp, en van Konstitusionele Hof regters of regters by die verrigting van diens ingevolge artikel 7, en van die gesinslede en besittings van Konstitusionele Hof regters of regters of Konstitusionele Hof regters of regters wat van aktiewe diens onthef is of hul ampte ontruim het of Konstitusionele Hof regters of regters wat diens ingevolge artikel 7 verrig of afgestorwe Konstitusionele Hof regters of regters, die bedrae wat aan Konstitusionele Hof regters of regters of waarnemende Konstitusionele Hof regters of regters betaal moet word in verband met vervoer en verblyf, en die omstandighede waaronder sodanige vervoer verskaf en sodanige bedrae betaal kan word; 20 25 30
- (d) die bedrae wat aan waarnemende Konstitusionele Hof regters of waarnemende regters betaal kan word in verband met die instandhouding deur hulle van hul praktyke as advokate of prokureurs; en
- (e) die bedrae wat aan Konstitusionele Hof regters of regters van die Hoogste Hof van Appèl in verband met hul huisvesting betaalbaar is. 35

(2) 'n Regulasie kragtens subartikel (1) kan bepaal dat 'n bedrag in paragraaf (c) of (d) van daardie subartikel bedoel, bereken moet word óf ooreenkomstig 'n skaal óf met inagneming van die uitgewes werklik in verband met die betrokke aangeleentheid aangegaan. 40

Uitvoering van Wet

14. Die Direkteur-generaal: Justisie en Staatkundige Ontwikkeling word, behoudens die voorskrifte van die Minister, met die algemene uitvoering van hierdie Wet belas.

Wyse van betaling van salarisse, toelaes en voordele

15. Salarisse, toelaes en voordele wat ingevolge artikels 2, 5, 6, 7, 9, 10 en 11 van hierdie Wet betaalbaar is, word as 'n regstreekse las teen die Nasionale Inkomstefonds betaal op die datums en wyse wat die Minister van tyd tot tyd bepaal. 45

Oorgangsbepalings

16. (1) Ondanks die herroeping van—

- (a) die Wet op Besoldiging en Diensvoorwaardes van Regters, 1989 (Wet No. 88 van 1989); 50

(b) the Judges' Remuneration and Conditions of Employment Act, 1989 (Act No. 27 of 1989)(Bophuthatswana); and

(c) Decree No. 19 (Judges' Remuneration and Conditions of Service) of 1990 (Decree No. 19 of 1990) (Transkei),

by section 17 of this Act, the regulations which were made under the said Acts and were in force immediately before the date of commencement of this Act and which are not inconsistent with this Act, continue in force in respect of those judges to which the regulations applied immediately prior to the commencement of this Act until they are repealed, withdrawn or amended by regulations made under section 13 of this Act.

(2) (a) Any active service or service referred to in—

(i) section 1 of the Judges' Remuneration and Conditions of Employment Act, 1989 (Act No. 27 of 1989) (Bophuthatswana); or

(ii) section 1 of Decree No. 19 (Judges' Remuneration and Conditions of Service) of 1990 (Decree No. 19 of 1990) (Transkei),

performed by a judge referred to in section 1 prior to the commencement of this Act is, for the purposes of this Act, deemed to be active service or service as contemplated in section 1(1) of this Act.

(b) For the purposes of section 1(1) of this Act the word "service" in the definition of "active service" in section 1(1), preceding paragraph (a) thereof, is construed to include service performed by—

(i) a judge of the Republic of South Africa, prior to the commencement of the Interim Constitution, who was seconded to serve as a judge in any court of a homeland referred to in Item 16 of Schedule 6 to the Constitution, read with Item 1 thereof, while he or she was so seconded and so served; or

(ii) a judge in the former South West Africa prior to its independence and who, at the commencement of this Act, holds office as a judge of a High Court.

(c) If a judge who has been seconded for active service or service as a judge of a High Court or Supreme Court of a homeland as defined in Item 1 of Schedule 6 to the Constitution, dies or is discharged from active service while holding the office of chief justice of such a High Court or Supreme Court of such a homeland in a permanent capacity, his or her salary shall for the purposes of this Act be deemed to be that of a judge president of a High Court.

(d) If a judge who has been seconded for service as a judge of a High Court or Supreme Court of a homeland as defined in Item 1 of Schedule 6 to the Constitution, holds the office of chief justice of such a High Court or Supreme Court in a permanent or acting capacity, and if the amount of the salary and allowance payable to him or her in terms of section 2(1) is less than the amount of the salary and allowance payable in terms of that subsection to a judge president of a High Court, he or she shall, in addition to the salary and allowance payable to him or her as aforesaid, be paid an allowance equal to the difference between the amount of the salary and allowance payable to him or her as aforesaid and the amount of the salary and allowance payable as aforesaid to such a judge president.

(3) Section 4 of Decree No. 19 (Judges' Remuneration and Conditions of Service) of 1990 (Decree No. 19 of 1990) (Transkei) continues to apply to any person to whom it applied at the date of commencement of this Act as if it had not been repealed.

(4) (a) Any person who retired as a judge in terms of the Judges' Pensions Act, 1978 (Act No. 90 of 1978), and who, at the commencement of this section, receives a pension in terms of the said Judges' Pensions Act, 1978, is, from the date of commencement of this section, entitled to an amount equal to two thirds of the salary payable to a judge contemplated in section 5(1) of this Act who held the same or a similar office to that of the retired judge on the date of the latter's retirement from office and who has the same number of years' service in an acting or permanent capacity.

(b) After the commencement of this section, any surviving spouse of a judge referred to in paragraph (a) shall be paid with effect from the first day of the month immediately succeeding the day on which the judge died, an amount equal to one half of the amount to which his or her deceased spouse would have been entitled under paragraph (a).

- (b) die “Judges’ Remuneration and Conditions of Employment Act, 1989 (Act No. 27 of 1989) (Bophuthatswana)”;
 (c) “Decree No. 19 (Judges’ Remuneration and Conditions of Service) of 1990 (Decree No. 19 of 1990) (Transkei)”,
 deur artikel 17 van hierdie Wet, bly die regulasies wat kragtens vermeldde Wette uitgevaardig is en wat onmiddellik voor die datum van inwerkingtreding van hierdie Wet van krag was en wat nie met hierdie Wet onbestaanbaar is nie, van krag ten opsigte van die regters op wie die regulasies onmiddellik voor die inwerkingtreding van hierdie Wet van toepassing was, totdat dit herroep, teruggetrek of gewysig word deur regulasies wat kragtens artikel 13 van hierdie Wet uitgevaardig word. 5
- (2) (a) Enige aktiewe diens of diens bedoel in—
 (i) artikel 1 van die “Judges’ Remuneration and Conditions of Employment Act, 1989 (Act No. 27 of 1989) (Bophuthatswana)”;
 (ii) artikel 1 van “Decree No. 19 (Judges’ Remuneration and Conditions of Service) of 1990 (Decree No. 19 of 1990) (Transkei)”,
 wat deur ’n regter bedoel in artikel 1 voor die inwerkingtreding van hierdie Wet verrig is, word, by die toepassing van hierdie Wet, geag aktiewe diens of diens soos beoog in artikel 1(1) van hierdie Wet te wees. 10
- (b) By die toepassing van artikel 1(1) van hierdie Wet word die woord “diens” in die omskrywing van “aktiewe diens” in artikel 1(1), wat paragraaf (a) daarvan voorafgaan, 20
 uitgelê om diens in te sluit wat deur—
 (i) ’n regter van die Republiek van Suid-Afrika verrig is, voor die inwerkingtreding van die Interim Grondwet, wat gesecondeer is om te dien as regter in enige hof van ’n tuisland bedoel in Item 16 van Bylae 6 by die Grondwet, saamgelees met Item 1 daarvan, terwyl hy of sy aldus gesecondeer was en aldus diens verrig het; of 25
 (ii) ’n regter in die voormalige Suidwes-Afrika verrig is voor die onafhanklikwording daarvan en wat, by die inwerkingtreding van hierdie Wet, die amp van regter van ’n Hoë Hof beklee.
- (c) Indien ’n regter wat vir aktiewe diens of diens as regter van ’n Hoë Hof of Hooggeregshof van ’n tuisland soos omskryf in Item 1 van Bylae 6 by die Grondwet, te sterwe kom of van aktiewe diens onthef word terwyl hy of sy die amp van hoofregter van so ’n Hoë Hof of Hooggeregshof van so ’n tuisland in ’n permanente hoedanigheid beklee, word sy of haar salaris by die toepassing van hierdie Wet geag dié van ’n regter-president van ’n Hoë Hof te wees. 30
- (d) Indien ’n regter wat gesecondeer is vir diens as ’n regter van ’n Hoë Hof of Hooggeregshof van ’n tuisland soos omskryf in Item 1 van Bylae 6 by die Grondwet, die amp van hoofregter van so ’n Hoë Hof of Hooggeregshof in ’n permanente of waarnemende hoedanigheid beklee, en indien die bedrag van die salaris en toelae wat aan hom of haar ingevolge artikel 2(1) betaalbaar is, minder is as die bedrag van die salaris en toelae wat ingevolge daardie subartikel aan ’n regter-president van ’n Hoë Hof betaalbaar is, word daar, benewens die salaris en toelae wat soos vermeld aan hom of haar betaalbaar is, ’n toelae aan hom of haar betaal gelyk aan die verskil tussen die bedrag van die salaris en toelae wat soos voormeld aan hom of haar betaalbaar is en die bedrag van die salaris en toelae wat soos voormeld aan so ’n regter-president betaalbaar is. 35
- (3) Artikel 4 van “Decree No. 19 (Judges’ Remuneration and Conditions of Service) of 1990 (Decree No. 19 of 1990) (Transkei)” bly van toepassing op enige persoon op wie dit van toepassing was op die datum van inwerkingtreding van hierdie Wet asof dit nie herroep is nie. 40
- (4) (a) Enige persoon wat as ’n regter ingevolge die Wet op Pensioene van Regters, 1978 (Wet No. 90 van 1978), afgetree het, en wat by die inwerkingtreding van hierdie artikel ’n pensioen ingevolge vermeldde Wet op Pensioene van Regters, 1978, ontvang is, vanaf die datum van inwerkingtreding van hierdie artikel, geregtig op ’n bedrag wat gelyk is aan twee derdes van die salaris wat aan ’n regter beoog in artikel 5(1) van hierdie Wet betaalbaar is wat dieselfde of ’n soortgelyke amp as dié van die afgetrede regter beklee het op die datum van laasgenoemde se aftrede uit sy of haar amp en wat dieselfde getal jare diens in ’n waarnemende of permanente hoedanigheid het. 45
- (b) Na die inwerkingtreding van hierdie artikel, word aan enige oorlewende gade van ’n regter bedoel in paragraaf (a) met ingang van die eerste dag van die maand wat onmiddellik volg op die dag waarop die regter te sterwe gekom het, ’n bedrag betaal wat gelyk is aan die helfte van die bedrag waarop sy of haar oorlede gade kragtens paragraaf (a) geregtig sou gewees het. 50

Act No. 47, 2001

JUDGES' REMUNERATION AND CONDITIONS
OF EMPLOYMENT ACT, 2001

(c) Any surviving spouse of a judge who retired as a judge in terms of the Judges' Pensions Act, 1978, and who, at the commencement of this section, receives a pension in terms of the said Act, is, from the date of commencement of this section, entitled to an amount equal to one half of the amount to which his or her deceased spouse would have been entitled under paragraph (a).

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Repeal of laws

17. The laws mentioned in the Schedule are hereby repealed to the extent set out in the third column thereof.

Short title and commencement

18. (1) This Act shall be called the Judges' Remuneration and Conditions of 10
Employment Act, 2001.

(2) Section 16(4) comes into operation on a date fixed by the President by proclamation in the *Gazette*.

(c) Enige oorlewende gade van 'n regter wat as 'n regter ingevolge die Wet op Pensioene van Regters, 1978, afgetree het, en wat by die inwerkingtreding van hierdie artikel, 'n pensioen ingevolge vermelde Wet ontvang, is, vanaf die datum van inwerkingtreding van hierdie artikel, geregtig op 'n bedrag wat gelyk is aan die helfte van die bedrag waarop sy of haar oorlede gade kragtens paragraaf (a) geregtig sou gewees het. 5

Herroeping van wette

17. Die wette in die Bylae genoem, word hierby herroep in die mate in die derde kolom daarvan aangedui.

Kort titel en inwerkingtreding

10

18. (1) Hierdie Wet heet die Wet op Besoldiging en Diensvoorwaardes van Regters, 2001.

(2) Artikel 16(4) tree in werking op 'n datum deur die President by proklamasie in die *Staatskoerant* bepaal.

Act No. 47, 2001 JUDGES' REMUNERATION AND CONDITIONS
OF EMPLOYMENT ACT, 2001

SCHEDULE

No. and year of law	Title	Extent of repeal	
Act 27 of 1989	Judges' Remuneration and Conditions of Employment Act, 1989 (Bophuthatswana)	The whole	5
Act 88 of 1989	Judges' Remuneration and Conditions of Employment Act, 1989	The whole	
Decree 19 of 1990	Judges' Remuneration and Conditions of Service Decree, 1990 (Transkei)	The whole	10
Decree 43 of 1990	Supreme Court Decree, 1990 (Ciskei)	Section 5(1), (2) (3) and (4)	
Act 139 of 1992	General Law Amendment Act, 1992	Sections 27 and 28	15
Act 91 of 1993	Judges' Remuneration and Conditions of Employment Amendment Act, 1993	The whole	
Act 129 of 1993	General Law Third Amendment Act, 1993	Section 71	20
Act 157 of 1993	General Law Fifth Amendment Act, 1993	Section 8	
Act 204 of 1993	General Law Sixth Amendment Act, 1993	Section 15	25
Act 10 of 1994	Judges' Remuneration and Conditions of Employment Amendment Act, 1994	The whole	
Act 104 of 1996	Judicial Matters Amendment Act, 1996	Section 14	30
Act 77 of 1997	Judges' Remuneration and Conditions of Employment Amendment Act, 1997	The whole	

WET OP BESOLDIGING EN DIENSVORWAARDES
VAN REGTERS, 2001

Wet No. 47, 2001

Bylae

No. en jaar van wet	Titel	In hoeverre herroep
"Act 27 of 1989"	"Judges' Remuneration and Conditions of Employment Act, 1989 (Bophuthatswana)"	Die geheel
Wet 88 van 1989	Wet op Besoldiging en Diensvoorwaardes van Regters, 1989	Die geheel
"Decree 19 of 1990"	"Judges' Remuneration and Conditions of Service Decree, 1990 (Transkei)"	Die geheel
"Decree 43 of 1990"	"Supreme Court Decree, 1990 (Ciskei)"	Artikel 5(1), (2), (3) en (4)
Wet 139 of 1992	Algemene Regswysigingswet, 1992	Artikels 27 en 28
Wet 91 van 1993	Wysigingswet op Besoldiging en Diensvoorwaardes van Regters, 1993	Die geheel
Wet 129 van 1993	Derde Algemene Regswysigingswet, 1993	Artikel 71
Wet 157 van 1993	Vyfde Algemene Regswysigingswet, 1993	Artikel 8
Wet 204 van 1993	Sesde Algemene Regswysigingswet, 1993	Artikel 15
Wet 10 van 1994	Wysigingswet op Besoldiging en Diensvoorwaardes van Regters, 1994	Die geheel
Wet 104 van 1996	Wysigingswet op Geregtelike Aangeleenthede, 1996	Artikel 14
Wet 77 van 1997	Wysigingswet op Besoldiging en Diensvoorwaardes van Regters, 1997	Die geheel

