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GOVERNMENT NOTICE GOEWERMENTSKENNISGEWING

DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT DEPARTEMENT VAN JUSTISIE EN STAATKUNDIGE ONTWIKKELING

No. R. 1339

26 September 2003

MAGISTRATES ACT, 1993 (ACT NO. 90 OF 1993) REGULATIONS

The Minister for Justice and Constitutional Development has, under section 16 of the Magistrates Act, 1993 (Act No. 90 of 1993), on the recommendation of the Magistrates Commission, made the regulations in the Schedule.

SCHEDULE

Definitions

1. In this Schedule "the Regulations" means the regulations published by Government Notice No. R. 361 of 11 March 1994, as amended by Government Notices Nos. R. 644 of 1 April 1994, R. 1407 of 11 August 1994, R. 1808 of 17 October 1994, R. 1707 of 27 October 1994, R. 1791 of 17 November 1995, R. 72 of 26 January 1996, R. 331 of 1 March 1996, R. 957 of 7 June 1996, R. 1178 of 19 July 1996, R. 1242 of 2 August 1996, R. 1340 of 12 August 1996, R. 1567 of 27 September 1996, R. 1627 of 1 October 1996, R. 178 of 7 February 1997, R. 421 of 20 March 1997, R. 1081 of 8 August 1997, R. 274 of 20 February 1998, R. 997 of 7 August 1998, R. 56 of 15 January 1999 and R. 1498 of 17 December 1999.

Amendment of Classification of the Regulations

2. The Classification of the Regulations is hereby amended by the deletion of the expressions:

(a) "PART III: PROMOTION

16. General promotion measures

17. Seniority date

18. Promotion periods

19. Evaluation procedure

20. Priority lists

21. Promotion date"; and

(b) "SCHEDULE B

Form

No.

1. Evaluation questionnaire: Magistrates other than Senior Magistrates

2. Evaluation questionnaire: Senior Magistrates".

Amendment of regulation 1 of the Regulations

3. Regulation 1 of the Regulations is hereby amended by -

(a) the deletion of the expression "or region" in the definition of "abroad";

(b) the substitution for the definition of "Department" of the following definition:

" 'Department' means the Department of Justice and Constitutional Development;";

(c) the substitution for the definition of "Director-General" of the following definition:

"'Director-General' means the Director-General: Justice and Constitutional Development or a person delegated by him or her;";

- (d) the substitution for the definition of "headquarters" of the following definition:
" 'headquarters' means the city, town or place which has been designated by the Commission or a person designated by the Commission;";
- (e) the substitution for paragraph (b)(i) of the definition of "household" of the following paragraph:
"(b)(i) if he or she did not, after leaving school, take up any permanent full-time employment (including any type of vocational training to which remuneration is attached), excluding work during vacations or temporary full-time employment which he or she had taken up between leaving school and commencing his or her studies at an educational institution at the commencement of the academic year following the completion of his or her schooling; and";
- (f) the deletion of the definition of "Republic"; and
- (g) the substitution for paragraph (i) of the definition of "transfer" of the following paragraph:
"(i) the moving of a magistrate and his or her household from one headquarters to another in the Republic or to or from abroad;".

Repeal of Part III of the Regulations

- 4. Part III of the Regulations is hereby repealed.

Amendment of regulation 22 of the Regulations

- 5. Regulation 22 of the Regulations is hereby amended by -

- (a) the substitution for subregulation (1) of the following subregulation:
"(1) A magistrate may -
 - (a) upon due application;
 - (b) with his or her consent; or
 - (c) without his or her consent, but for good reasons and without favour or prejudice, if necessary in the interest of the administration of justice,

- be transferred upon the recommendation and direction of the Commission.";
- (b) the substitution for subregulation (2) of the following subregulation:
- "(2) The Director-General shall, upon direction of the Commission, effect the transfer of a magistrate."; and
- (c) the deletion of subregulations (3) and (4).

Amendment of regulations 26, 27, 28 and 29 of the Regulations

6. The Regulations are hereby amended by the substitution for regulations 26, 27, 28 and 29 of the following regulations:

"Procedure for preliminary investigation and misconduct hearing

26.(1) If a magistrate is accused of misconduct, the Commission may appoint a magistrate or an appropriately qualified person (hereinafter called the investigating officer) to conduct a preliminary investigation and to obtain evidence in order to determine whether there are any grounds for a charge of misconduct against the magistrate: Provided that, if the Commission is of the opinion that there is *prima facie* evidence to support the charge, the Commission may charge the magistrate concerned in writing with misconduct without the said preliminary investigation.

(2) The investigating officer appointed in terms of subregulation (1) may, for the purposes of the preliminary investigation -

- (a) summon any person who, in his or her opinion may be able to give material information concerning the subject of the investigation, or who he or she suspects or believes has in his or her possession or custody or under his or her control any book, document or object which has any bearing on the subject of the investigation, to appear before the investigating officer at the time and place specified in the summons, to be questioned or to produce the book, document or object; and

- (b) retain a book, document or object referred to in paragraph (a) for the duration of the investigation.

(3) After the conclusion of the preliminary investigation contemplated in subregulation (1), the investigating officer shall recommend to the Commission whether or not the magistrate concerned should be charged, and if so, what the contents of the charge in question should be.

(4) If, after the conclusion of the preliminary investigation, the Commission is of the opinion that -

- (a) there are sufficient grounds for a charge of misconduct against the magistrate concerned and the allegations are of such a serious nature that they may justify the removal from office of the magistrate, the Commission may, in writing, charge the magistrate with misconduct;
- (b) the allegations are not of such a serious nature, the Commission shall issue directions, excluding the institution of misconduct proceedings, as to the manner in which the matter is to be dealt with.

(5) A charge contemplated in subregulation (1) or (4)(a) shall be accompanied by an invitation to the magistrate charged to send or deliver within a reasonable period specified in the invitation to a person likewise specified, a written explanation regarding the misconduct with which he or she is charged in order to establish which allegations are admitted and which allegations are disputed.

(6) If the Commission decides that a magistrate should be subjected to a misconduct hearing, the Commission shall appoint -

- (a) a magistrate (hereinafter called the presiding officer) to preside at that hearing; and
- (b) a magistrate or an appropriately qualified person to lead evidence at that hearing.

(7)(a) The magistrate or person appointed in terms of subregulation (6)(b) must in writing notify the magistrate charged of the date, time and venue of his or her hearing.

(b) The magistrate or person appointed in terms of subregulation (6)(b) or a person designated by him or her, must personally hand the notice contemplated in paragraph (a) to the magistrate charged.

(c) The magistrate charged must immediately acknowledge receipt of the notice contemplated in paragraph (a).

(d) If a magistrate charged refuses to sign receipt of a notice contemplated in paragraph (a), the notice must be handed to that magistrate charged in the presence of any witness, who must sign in confirmation that the notice was handed to the magistrate charged in his or her presence.

(8) The presiding officer shall, at the commencement of a misconduct hearing -
(a) inform the magistrate charged about his or her right to remain silent; and
(b) ascertain from the magistrate charged, which allegations are disputed and which allegations are admitted.

(9) A presiding officer may, if the magistrate charged admits at any time that he or she is guilty of the charge, question the magistrate, and if the presiding officer is satisfied that the magistrate is guilty as charged, and after confirming that the version deposed to by the magistrate charged is in accordance with the facts held by the person referred to in subregulation (6)(b), the presiding officer shall make a finding to the effect that the magistrate charged is guilty.

(10) A magistrate or person appointed in terms of subregulation (6)(b) may, for the purposes of a misconduct hearing -

- (a) summon any person who, in his or her opinion, may be able to give material information concerning the subject of the hearing, or who he or she suspects or believes has in his or her possession or custody or under his or her control any book, document or object which has any bearing on the subject of the hearing, to appear before the presiding officer at the time and place specified in the summons, to be questioned or to produce such book, document or object;
 - (b) retain a book, document or object referred to in paragraph (a) for the duration of the hearing;
 - (c) lead evidence and arguments in support of the charge and cross-examine witnesses; and
 - (d) call upon and administer an oath to or accept an affirmation from any person present at the hearing who was or might have been summoned in terms of paragraph (a), and question him or her and order him or her to produce any book, document or object in his or her possession or custody or under his or her control that he or she suspects or believes to have a bearing on the subject of the hearing.
- (11) The law relating to privilege, as applicable to a witness summoned to give evidence in a civil trial before a court of law or to produce a book, document or object, shall, *mutatis mutandis*, apply in relation to the examination of, or the production of any book, document or object to the presiding officer by, any person called as a witness in terms of this regulation.
- (12) At a misconduct hearing the magistrate charged shall -
- (a) have the right -
 - (i) to be personally present and to be assisted or represented by another person;
 - (ii) to remain silent;
 - (iii) to give evidence; and

(iv) either personally or through a representative –

- (aa) to be heard;
- (bb) to call witnesses;
- (cc) to cross-examine any person called as a witness in support of the charge; and
- (dd) to have access to documents produced in evidence; and

(b) show cause why he or she is not guilty of misconduct, if the misconduct with which he or she is charged amounts to an offence of which he or she was convicted by a court of law.

(13) The presiding officer may, at any stage of the hearing, on own accord or on request of the magistrate charged, summon or cause to be summoned any person who, in his or her opinion, may be able to give material information concerning the subject of the hearing, or who he or she suspects or believes has in his or her possession or custody or under his or her control any book, document or object which has any bearing on the subject of the hearing, to appear before the presiding officer at the time and place specified in the summons, to be questioned or to produce such book, document or object.

(14) (a) A presiding officer may order that a misconduct hearing be proceeded with even if the magistrate charged is absent from the proceedings or any part thereof, subject thereto that the presiding officer must be satisfied that proper notice of the hearing has been handed to the magistrate charged as contemplated in subregulation (7).

(b) A magistrate contemplated in paragraph (a), may –

- (i) at any stage, prior to a finding, inspect the record of proceeding of a hearing; and

- (ii) if he or she was not assisted or represented at the hearing, with the permission of the presiding officer examine any witness who testified during his or her absence.

(15) After the conclusion of the evidence and the arguments or address at a misconduct hearing, the presiding officer shall on a balance of probabilities make a finding as to whether the magistrate charged is guilty or not guilty of the misconduct as charged.

(16)(a) A presiding officer shall provide his or her reasons for any finding.

(b) The presiding officer shall give the magistrate charged and the magistrate or person who led the evidence at a misconduct hearing an opportunity to present any aggravating or mitigating factors.

(17) The presiding officer at a misconduct hearing may if a finding of guilty has been made –

(a) impose one of the following sanctions or any combination thereof on the magistrate charged:

- (i) Caution or reprimand the magistrate;
- (ii) specify the manner in which he or she should be cautioned or reprimanded;
- (iii) direct the magistrate to tender an apology in a manner specified by the presiding officer; or
- (iv) postpone the imposition of a sanction for a period not exceeding 12 months with or without conditions which may include counselling, treatment or attendance of a training programme, or

(b) recommend to the Commission that the magistrate concerned be removed from office as contemplated in section 13 of the Act.

(18) After the conclusion of a misconduct hearing the presiding officer shall inform or notify the magistrate concerned of his or her right to lodge representations in terms of subregulation (20).

(19) After the conclusion of a misconduct hearing the presiding officer shall –

- (a) inform or notify the Commission and the magistrate concerned of –
 - (i) his or her finding in relation to the charge and the reasons therefor;
 - (ii) his or her finding in relation to the aggravating or mitigating factors presented at the hearing;
 - (iii) the sanction imposed and the reasons therefor or his or her recommendation in terms of subregulation (17)(b) and the reasons therefor, and
- (b) furnish the Commission with a copy of the record of proceedings.

(20) (a) If a recommendation is made in terms of subregulation (17)(b), the magistrate concerned may lodge representations with the Commission.

(b) The representations contemplated in paragraph (a) must –

- (i) be in writing;
- (ii) be lodged with the Commission within 21 working days after the findings of the presiding officer has come to the notice of the magistrate concerned; and
- (iii) set out the grounds for his or her representations.

(c) The magistrate concerned shall forward a copy of the notice of the representations, together with the grounds for his or her representations to the presiding officer.

(21) Within 21 working days after receipt of the notice of representations contemplated in subregulation (20), the presiding officer may forward any additional reasons for his or her recommendation to the Commission and the magistrate concerned.

(22) After consideration of the relevant documents referred to in subregulation (19), the Commission may –

- (a) recommend to Parliament that the magistrate concerned be removed from office as contemplated in section 13 of the Act in which case the Commission shall submit to Parliament all the relevant documents with regard to that misconduct hearing: Provided that if the magistrate charged lodges representations in terms of subregulation (20) any recommendation or documentation shall not be submitted to Parliament until the Commission has made a finding regarding the representations; or
- (b) if the Commission is of the opinion that the magistrate concerned should not be removed from office, impose any of the sanctions contemplated in subregulation (17)(a).

(23) A person summoned as a witness to appear before an investigating officer or a presiding officer for the purposes of a preliminary investigation, or a misconduct hearing shall receive allowances in accordance with the tariff of allowances prescribed under section 191 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), by notice in the *Gazette*.

(24) A summons in respect of a preliminary investigation or a misconduct hearing shall be issued on a form prescribed by the Commission and shall be served in a manner determined by the Commission.

(25) A misconduct hearing shall be in public unless the presiding officer determines otherwise.

(26) Evidentiary material obtained during a preliminary investigation which is not disputed by the magistrate concerned may, upon mere production thereof, be admitted at a misconduct hearing.

PART VI: INCAPACITY TO CARRY OUT DUTIES EFFICIENTLY

Procedure for investigation into magistrate's incapacity

27. (1) The Commission may order that an investigation be held into the capacity of a magistrate to carry out his or her duties of office efficiently.

(2) An incapacity investigation shall be held as soon as possible by a magistrate or any person designated by the Commission and such magistrate or person shall have the powers referred to in regulation 26(10).

(3) The magistrate with regard to whom an incapacity investigation is to be held -

(a) shall in writing be informed by the person who is to conduct the investigation of the date, time and place of the investigation; and

(b) shall have the right -

(i) to a written exposition of the grounds upon which it is alleged that he does not have the capacity to carry out his or her duties of office in an efficient manner;

(ii) to be present at the investigation;

(iii) to be assisted or represented by another person;

(iv) to testify; and

(v) either personally or through a representative, to -

(aa) be heard;

(bb) call witnesses;

(cc) cross-examine any person who is called as a witness in support of the said allegations; and

(dd) have access to documents which were produced as evidence.

(4) The magistrate in respect of whom the investigation is held, shall answer relevant questions of the person who conducts the investigation.

(5) After completion of an incapacity investigation the person who conducted the investigation shall make a finding and inform the magistrate concerned and the chairperson of the Commission of the finding.

Procedure after a finding of incapacity

28. (1) If the person who conducts an incapacity investigation finds that the magistrate concerned does not have the capacity to carry out his or her duties of office in an efficient manner -

(a) he or she shall furnish the magistrate concerned with a written exposition, of his or her finding and the reasons therefor; and

(b) he or she shall forward without delay to the chairperson of the Commission the record of the proceedings of the investigation and all documentary evidence or certified copies thereof admitted at the investigation, as well as a written exposition of his or her reasons for the finding and any observations on the case which he or she may desire to make.

(2) The magistrate concerned may, within 10 working days after the date on which the finding of an incapacity hearing has come to his or her notice, submit to the chairperson of the Commission written comment regarding the finding and the reasons therefor.

(3)(a) The Commission shall consider the relevant documents regarding an incapacity investigation, together with the comments of the magistrate contemplated in subregulation (2), if any.

(b) The Commission shall, if it is as a result of an incapacity investigation, of the opinion that a magistrate should be removed from office due to incapacity, recommend to Parliament that the magistrate be removed from office as contemplated in section 13 of the Act.

PART VII: REMOVAL FROM OFFICE ON ACCOUNT OF CONTINUED ILL-HEALTH

Procedure of investigation

29. (1) The Commission may order that an investigation be held regarding the removal of a magistrate from office on account of continued ill-health.
- (2) The Commission shall before the commencement of a health investigation inform the magistrate of that investigation.
- (3) The magistrate in respect of whom a health investigation is conducted, shall without delay after receipt of the notice of the investigation submit a medical report from a medical practitioner of his or her own choice to the Commission.
- (4) In addition to subregulation (3), the Commission may order that a magistrate subject himself or herself to a medical examination by a medical practitioner designated by the Commission, whereafter that medical practitioner shall submit a medical report to the Commission.
- (5) The costs of the medical examinations contemplated in subregulations (3) and (4) shall be paid by the State.
- (6) (a) If the Commission, after considering a medical report in terms of this regulation, together with any relevant information, is of the opinion that the magistrate concerned does not have the capacity to carry out his or her duties of office in an efficient manner due to continued ill-health, the Commission shall -

- (i) furnish the magistrate concerned with a written exposition, of its opinion and the reasons therefor; and
- (ii) forward without delay to the magistrate concerned, the medical reports and any other relevant documents or certified copies thereof which are not in the possession of the magistrate concerned.

(b) The magistrate concerned may, within 10 working days after the date on which the opinion of the Commission has come to his or her notice, submit to the chairperson of the Commission written comment regarding the opinion.

(7)(a) The Commission shall consider the medical reports, together with the comments of the magistrate contemplated in subregulation (6)(b), if any.

(b) The Commission shall, if it is of the opinion that the magistrate concerned should be removed from office due to continued ill-health, recommend to Parliament that the magistrate concerned be removed from office as contemplated in section 13 of the Act."

Amendment of regulation 54 of the Regulations

7. Regulation 54 of the Regulations is hereby amended by the substitution for the regulation of the following regulation:

"Creation of posts

54. The Minister, in consultation with the Commission, shall create posts for all magistrates and determine the number, grading, regrading, naming, renaming or transformation of such posts."

General

8. The Regulations are hereby amended by the insertion of the word "or" and the feminine pronoun after the masculine pronoun, wherever it appears in the Regulations.

Repeal of Schedule B to the Regulations

9. Schedule B to the Regulations is hereby repealed.

No. R. 1339

26 September 2003

WET OP LANDDROSTE, 1993 (WET NO. 90 VAN 1993)**REGULASIES**

Die Minister van Justisie en Staatkundige Ontwikkeling het kragtens artikel 16 van die Wet op Landdroste, 1993 (Wet No. 90 van 1993), op aanbeveling van die Landdrostekommissie, die regulasies in die Bylae uitgevaardig.

BYLAE**Woordomskrywing**

1. In hierdie Bylae beteken "die Regulasies" die regulasies afgekondig by Goewermentskennisgewing No. R. 361 van 11 Maart 1994, soos gewysig by Goewermentskennisgewing Nos. R. 644 van 1 April 1994, R. 1407 van 11 Augustus 1994, R. 1808 van 17 Oktober 1994, R. 1707 van 27 Oktober 1994, R. 1791 van 17 November 1995, R. 72 van 26 Januarie 1996, R. 331 van 1 Maart 1996, R. 957 van 7 Junie 1996, R. 1178 van 19 Julie 1996, R. 1242 van 2 Augustus 1996, R. 1340 van 12 Augustus 1996, R. 1567 van 27 September 1996, R. 1627 van 1 Oktober 1996, R. 178 van 7 Februarie 1997, R. 421 van 20 Maart 1997, R. 1081 van 8 Augustus 1997, R. 274 van 20 Februarie 1998, R. 997 van 7 Augustus 1998, R. 56 van 15 Januarie 1999 en R. 1498 van 17 Desember 1999.

Wysiging van Indeling van die Regulasies

2. Die Indeling van die Regulasies word hierby gewysig deur die volgende uitdrukkings te skrap:

(a) "DEEL III: BEVORDERING

16. Algemene bevorderingsmaatreëls

17. Senioriteitsdatum

18. Bevorderingstydperke

19. Evalueringsprosedure

20. Voorkeurlyste

21. Bevorderingsdatum"; en

(b) "BYLAE B

Vorm

No.

1. Evalueringsvraelys: Ander landdroste as Senior landdroste

2. Evalueringsvraelys: Senior landdroste".

Wysiging van regulasie 1 van die Regulasies

3. Regulasie 1 van die Regulasies word hierby gewysig deur -

(a) die uitdrukking "of landstreek" in die woordoms krywing van "buiteland" te skrap;

(b) die woordoms krywing "Departement" deur die volgende woordoms krywing te vervang:

"Departement" die Departement van Justisie en Staatkundige Ontwikkeling;;

(c) die woordoms krywing "Direkteur-generaal" deur die volgende woordoms krywing te vervang:

"Direkteur-generaal" die Direkteur-generaal: Justisie en Staatkundige Ontwikkeling of sy of haar gedelegeerde;;

(d) die woordoms krywing "hoofkwartier" deur die volgende woordoms krywing te vervang:

- “hoofkwartier’ die stad, dorp of plek wat aangewys is deur die Kommissie of ‘n persoon deur die Kommissie aangewys;”;
- (e) paragraaf (b)(i) van die woordoms krywing van “huishouding” deur die volgende paragraaf te vervang:
- “(b)(i) indien hy of sy na skoolverlating geen permanente voltydse betrekking (met inbegrip van enige vorm van beroepsopleiding waaraan besoldiging verbonde is) aanvaar het nie, uitgesonderd vakansiewerk of ‘n tydelike voltydse betrekking wat hy of sy aanvaar het tussen skoolverlating en die aanvang van sy of haar studies aan ‘n onderwysinrigting by die aanvang van die akademiese jaar wat volg op die voltooiing van sy of haar skoolopleiding; en”;
- (f) die woordoms krywing “Republiek” te skrap; en
- (g) die vervanging van paragraaf (i) van die woordoms krywing “verplasing” deur die volgende paragraaf:
- “(i) die verhuising van ‘n landdros en sy of haar huishouding van een hoofkwartier na ‘n ander in die Republiek of na of van die buiteland;”.

Heroeping van Deel III van die Regulasies

4. Deel III van die Regulasies word hierby herroep.

Wysiging van regulasie 22 van die Regulasies

5. Regulasie 22 van die Regulasies word hierby gewysig deur –
- (a) subregulasie (1) deur die volgende subregulasie te vervang:
- “(1) ‘n Landdros mag –
- (a) op behoorlike aansoek ;
- (b) met sy of haar goedkeuring; of
- (c) sonder sy of haar toestemming, maar vir goeie rede en sonder voordeel of benadeling, indien nodig in die belang van die administrasie van die regspleging,

op aanbeveling en aanwysing van die Kommissie verplaas word.”;

- (b) subregulasie (2) deur die volgende subregulasie te vervang:
“(2) Die Direkteur-generaal verplaas ‘n landdros in opdrag van die Kommissie.”; en
- (c) subregulasies (3) en (4) te skrap.

Wysiging van regulasies 26, 27, 28 en 29 van die Regulasies

6. Die Regulasies word hiermee gewysig deur regulasies 26, 27, 28 en 29 deur die volgende regulasies te vervang:

“Prosedure vir voorlopige ondersoek en wangedragverhoor

26.(1) Wanneer ‘n landdros van wangedrag beskuldig word, kan die Kommissie ‘n landdros of ‘n toepaslik gekwalifiseerde persoon (hierna die ondersoekbeampte genoem) aanstel om ‘n voorlopige ondersoek te doen en getuienis in te win ten einde vas te stel of daar gronde vir ‘n aanklag van wangedrag teen die landdros is: Met dien verstande dat, indien die Kommissie van mening is dat daar *prima facie*-getuienis is om die aanklag te staaf, die Kommissie die betrokke landdros sonder bedoelde voorlopige ondersoek skriftelik van wangedrag kan aankla.

(2) Die ondersoekbeampte aangestel ingevolge subregulasie (1) kan, vir doeleindes van die voorlopige ondersoek -

- (a) iemand wat na sy of haar mening in staat is om wesenlike inligting oor die onderwerp van die ondersoek te verstrek, of wat, na hy of sy vermoed of oortuig is, ‘n boek, stuk of voorwerp in sy of haar besit of bewaring of onder sy of haar beheer het wat betrekking het op die onderwerp van die ondersoek, dagvaar om op die tyd en plek in die dagvaarding vermeld, voor die ondersoekbeampte te verskyn om ondervra te word of om daardie boek, stuk of voorwerp voor te lê; en
- (b) ‘n boek, stuk of voorwerp ingevolge paragraaf (a) voorgelê, vir die duur van die ondersoek behou.

(3) Na afloop van die voorlopige ondersoek in subregulasie (1) beoog, moet die ondersoekbeampte by die Kommissie aanbeveel of die betrokke landdros aangekla moet word al dan nie en indien wel, wat die inhoud van die betrokke aanklag moet wees.

(4) Indien die Kommissie na afhandeling van die voorlopige ondersoek van mening is dat -

(a) daar voldoende gronde vir 'n aanklag van wangedrag teen die betrokke landdros is en die bewerings van so 'n ernstige aard is dat dit die ontheffing uit die amp van landdros mag regverdig, kan die Kommissie die landdros skriftelik van wangedrag aankla;

(b) die bewerings nie van so 'n ernstige aard is nie, moet die Kommissie opdrag gee op welke wyse die aangeleentheid hanteer moet word, uitgesonderd die instelling van wangedragprosedures.

(5) 'n Aanklag bedoel in subregulasie (1) of (4)(a) moet vergesel gaan van 'n uitnodiging waarby die aangeklaagde landdros uitgenooi word om binne 'n redelike tydperk, wat in die uitnodiging vermeld word, aan 'n persoon wat ook daarin vermeld word, 'n skriftelike verduideliking rakende die wangedrag waarvan hy of sy aangekla word, te stuur of af te lewer ten einde vas te stel watter bewerings erken word en watter bewerings betwis word.

(6) Indien die Kommissie besluit dat 'n landdros aan 'n wangedragverhoor onderwerp moet word, moet die Kommissie -

(a) 'n landdros (hierna die voorsittende beampte genoem) om by daardie verhoor voor te sit; en

(b) 'n landdros of 'n toepaslik gekwalifiseerde persoon om die getuienis by daardie verhoor te lei, aanstel.

(7)(a) Die landdros of persoon ingevolge subregulasie (6)(b) aangestel, moet die aangeklaagde landdros skriftelik van die datum, tyd en plek van sy of haar verhoor in kennis stel.

(b) Die landdros of persoon ingevolge subregulasie (6)(b) aangestel, of 'n persoon deur hom of haar aangewys, moet die kennisgewing bedoel in paragraaf (a) persoonlik aan die aangeklaagde landdros oorhandig.

(c) Die aangeklaagde landdros moet onmiddellik ontvangs erken van die kennisgewing in paragraaf (a) bedoel.

(d) Indien 'n aangeklaagde landdros weier om ontvangs te teken van die kennisgewing in paragraaf (a) bedoel, moet die kennisgewing in die teenwoordigheid van enige getuie aan daardie aangeklaagde landdros oorhandig word, wat in bevestiging moet teken dat die kennisgewing aan die aangeklaagde landdros in sy of haar teenwoordigheid oorhandig is.

(8) Die voorsittende beampte moet by die aanvang van die wangedragverhoor -

- (a) die aangeklaagde landdros inlig oor sy of haar reg op swye; en
- (b) by die aangeklaagde landdros seker maak welke bewerings betwis word en welke bewerings erken word.

(9) 'n Voorsittende beampte kan, indien die aangeklaagde landdros te eniger tyd erken dat hy of sy skuldig is aan die aanklag, die landdros ondervra en, indien die voorsittende beampte tevrede is dat die landdros skuldig is, soos aangekla, en na bevestiging dat die weergawe soos deur die aangeklaagde landdros verklaar ooreenkomstig die feite is waaroor die persoon in subregulasie (6)(b) beskik, moet die voorsittende beampte 'n bevinding maak te dien effekte dat die aangeklaagde landdros skuldig is.

(10) 'n Landdros of persoon aangestel ingevolge subregulasie (6)(b) kan vir doeleindes van 'n wangedragverhoor -

- (a) iemand wat na sy of haar mening wesenlike inligting oor die onderwerp van die ondersoek kan verstrek, of wat hy of sy vermoed of oortuig is, 'n boek, stuk of voorwerp in sy of haar besit of bewaring of onder sy of haar beheer het wat betrekking het op die onderwerp van die ondersoek, dagvaar om op die tyd en plek in die dagvaarding vermeld, voor die voorsittende beampte te verskyn om ondervra te word of om daardie boek, stuk of voorwerp voor te lê;
- (b) 'n boek, stuk of voorwerp ingevolge paragraaf (a) voorgelê, vir die duur van die ondersoek behou;
- (c) getuienis en argumente ter staving van die aanklag aanvoer en getuies in kruisondervraging neem; en
- (d) iemand wat by die ondersoek teenwoordig is en wat ingevolge paragraaf (a) gedagvaar is of gedagvaar kon gewees het, oproep en hom of haar 'n eed oplê of van hom of haar 'n bevestiging aanneem, en hom of haar ondervra en beveel om 'n boek, stuk of voorwerp in sy of haar besit of bewaring of onder sy of haar beheer wat hy of sy vermoed of oortuig is, betrekking het op die onderwerp van die ondersoek, voor te lê.

(11) Die regsbepalings met betrekking tot privilegie, soos van toepassing op 'n getuie wat gedagvaar is om in 'n siviele verhoor in 'n geregshof getuienis af te lê, of om 'n boek, stuk of voorwerp voor te lê, is *mutatis mutandis* van toepassing ten opsigte van die ondervraging van, of voorlegging van 'n boek, stuk of voorwerp aan die voorsittende beampte, deur iemand wat ingevolge hierdie regulasie as getuie opgeroep is.

(12) By 'n wangedragverhoor het 'n aangeklaagde landdros -

(a) die reg om -

- (i) persoonlik teenwoordig te wees en deur 'n ander persoon bygestaan of verteenwoordig te word;

- (ii) te swyg;
- (iii) getuienis af te lê; en
- (iv) hetsy persoonlik of deur 'n verteenwoordiger -
 - (aa) aangehoor te word;
 - (bb) getuies op te roep;
 - (cc) iemand wat as getuie opgeroep is ter staving van die aanklag, in kruisondervraging te neem; en
 - (dd) toegang te hê tot stukke wat as bewyse voorgelê is; en
- (b) indien die wangedrag waarvan hy of sy aangekla word, op 'n misdryf neerkom waaraan hy of sy deur 'n geregshof skuldig bevind is, redes aan te voer waarom hy of sy na sy of haar mening nie aan wangedrag skuldig is nie.

(13) Die voorsittende beampte kan te eniger tyd gedurende die verhoor uit eie beweging of op versoek van die aangeklaagde landdros enige persoon wat na sy of haar mening wesenlike inligting rakende die onderwerp van die verhoor kan gee, of wat hy of sy vermoed of oortuig is, enige boek, dokument of voorwerp in sy of haar besit of onder sy of haar beheer het wat enige verband hou met die onderwerp van die verhoor dagvaar of laat dagvaar om voor die voorsittende beampte te verskyn op die tyd en plek in die dagvaarding gespesifiseer, om ondervra te word of om sodanige boek, dokument of voorwerp voor te lê.

(14)(a) 'n Voorsittende beampte kan gelas dat met 'n wangedragverhoor voortgegaan word indien die aangeklaagde landdros van die verrigtinge of enige gedeelte daarvan afwesig is onderhewig daaraan dat die voorsittende beampte tevrede moet wees dat voldoende kennis van die verhoor aan die aangeklaagde landdros, soos bedoel in subregulasie (7), gegee is.

(b) 'n Landdros in paragraaf (a) bedoel, kan-

- (i) te eniger tyd voor 'n bevinding die rekord van verrigtinge van 'n verhoor nagaan, en
- (ii) indien hy of sy nie bygestaan of verteenwoordig is by die verhoor nie, enige getuie ondervra wat gedurende sy of haar afwesigheid getuig het.

(15) Na afsluiting van die getuienis en die argumente of betoog by 'n wangedragverhoor, moet die voorsittende beampte op 'n oorwig van waarskynlikhede 'n bevinding maak of die aangeklaagde landdros skuldig of onskuldig is aan die wangedrag soos aangekla.

(16)(a) 'n Voorsittende beampte moet sy of haar redes vir enige bevinding gee.

(b) Die voorsittende beampte moet die aangeklaagde landdros en die landdros of persoon wat die getuienis by 'n wangedragverhoor gelei het, die geleentheid bied om enige verswarende of versagende faktore aan te bied.

(17) Die voorsittende beampte by 'n wangedragverhoor kan, indien 'n skuldigbevinding gemaak is -

(a) een van die volgende sanksies of enige kombinasie daarvan op die aangeklaagde landdros ople:

- (i) Die landdros waarsku en berispe;
- (ii) die wyse spesifiseer waarop hy of sy gewaarsku of berispe moet word;
- (iii) die landdros opdrag gee om 'n verskoning aan te bied op 'n wyse deur die voorsittende beampte bepaal; of
- (iv) die oplegging van die sanksie met of sonder voorwaardes uitstel vir 'n tydperk wat nie 12 maande oorskry nie wat berading, behandeling of bywoning van 'n opleidingsprogram kan insluit, of

(b) by die Kommissie aanbeveel dat die betrokke landdros uit die amp, soos bedoel in artikel 13 van die Wet, onthef moet word.

(18) Na afloop van 'n wangedragverhoor moet die voorsittende beampte die betrokke landdros verwittig of in kennis stel van sy of haar reg om vertoë ingevolge subregulasie (20) te rig.

(19) Na afloop van 'n wangedragverhoor moet die voorsittende beampte -

(a) die Kommissie en die betrokke landdros inlig of in kennis stel van -

(i) sy of haar bevinding ten opsigte van die aanklag en die redes daarvoor;

(ii) sy of haar bevinding ten opsigte van die verswarende of versagende faktore wat by die verhoor aangebied was;

(iii) die sanksie opgelê en die redes daarvoor of sy of haar aanbeveling ingevolge subregulasie (17)(b) en die redes daarvoor, en

(b) die Kommissie van 'n afskrif van die oorkonde van verrigtinge voorsien.

(20)(a) Indien 'n aanbeveling ingevolge subregulasie (17)(b) gemaak word, kan die betrokke landdros vertoë aan die Kommissie rig.

(b) Die vertoë in paragraaf (a) bedoel, moet -

(i) skriftelik wees;

(ii) binne 21 werksdae nadat die bevindings van die voorsittende beampte tot die kennis van die betrokke landdros gekom het, by die Kommissie ingedien word; en

(iii) die gronde vir sy of haar vertoë uiteensit.

(c) Die betrokke landdros moet 'n afskrif van die kennisgewing van die vertoë, saam met die gronde vir sy of haar vertoë aan die voorsittende beampte stuur.

(21) Binne 21 werksdae na ontvangs van die kennisgewing van vertoë in subregulasie (20) bedoel, kan die voorsittende beampte enige bykomende redes vir sy of haar aanbeveling aan die Kommissie en die betrokke landdros stuur.

(22) Na oorweging van die tersaaklike stukke bedoel in subregulasie (19), kan die Kommissie -

- (a) by die Parlement aanbeveel dat die betrokke landdros uit die amp onthef word soos bedoel in artikel 13 van die Wet, in welke geval die Kommissie alle betrokke dokumente wat op daardie wangedragverhoor betrekking het aan die Parlement moet voorlê: Met dien verstande dat, indien die aangeklaagde landdros vertoë ingevolge subregulasie (20) rig, geen aanbeveling of dokumentasie aan die Parlement voorgelê mag word totdat die Kommissie 'n bevinding rakende die vertoë gemaak het nie; of
- (b) indien die Kommissie van mening is dat die aangeklaagde landdros nie uit die amp onthef moet word nie, enige straf in subregulasie (17)(a) bedoel oplê.

(23) 'n Persoon wat as 'n getuie gedagvaar is om voor 'n voorsittende beampte te verskyn vir doeleindes van 'n voorlopige ondersoek of 'n wangedragverhoor ontvang die toelaës ooreenkomstig die tarief kragtens artikel 191 van die Strafproseswet, 1977 (Wet No. 51 van 1977), by kennisgewing in die Staatskoerant voorgeskryf.

(24) 'n Dagvaarding ten opsigte van 'n voorlopige ondersoek of 'n wangedragverhoor word uitgereik in die vorm deur die Kommissie voorgeskryf en word beteken op 'n wyse deur die Kommissie bepaal.

(25) 'n Wangedragverhoor geskied in die openbaar, tensy die voorsittende beampte anders gelas.

(26) Getuienis ingewin tydens 'n voorlopige ondersoek wat nie deur die betrokke landdros betwis word nie, kan by 'n wangedragverhoor toegelaat word deur blote inhandiging daarvan.

DEEL VI : ONVERMOË OM PLIGTE BEKWAAM UIT TE VOER

Prosedure vir ondersoek na onvermoë van landdros

27.(1) Die Kommissie kan gelas dat ondersoek gedoen word na 'n landdros se vermoë om sy ampspligte op bekwame wyse uit te voer.

(2) 'n Ondersoek na onvermoë word so gou moontlik gedoen deur 'n landdros of enige persoon wat deur die Kommissie aangewys is en 'n aldus aangewese landdros of persoon het die bevoegdhede vermeld in regulasie 26(10).

(3) Die landdros ten opsigte van wie die ondersoek na onvermoë gehou gaan word -

(a) moet skriftelik deur die persoon wat die ondersoek moet hou, van die datum, tyd en plek van die ondersoek in kennis gestel word; en

(b) het die reg -

(i) op 'n skriftelike uiteensetting van die gronde waarop beweer word dat hy of sy nie oor die vermoë beskik om sy of haar ampspligte op bekwame wyse uit te voer nie;

(ii) om by die ondersoek teenwoordig te wees;

(iii) om deur 'n ander persoon bygestaan of verteenwoordig te word;

(iv) om getuienis af te lê; en

(v) om, hetsy persoonlik of deur 'n verteenwoordiger -

(aa) aangehoor te word;

(bb) getuies op te roep;

(cc) iemand wat as getuie opgeroep is ter staving van genoemde bewerings, in kruisondervraging te neem; en

(dd) insae te hê in stukke wat as getuienis voorgelê is.

(4) Die landdros ten opsigte van wie die ondersoek gehou word, moet tersaaklike vrae van die persoon wat die ondersoek hou, beantwoord.

(5) Na afloop van 'n ondersoek na onvermoë moet die persoon wat die ondersoek doen, 'n bevinding maak en die betrokke landdros en die voorsitter van die Kommissie van die bevinding in kennis stel.

Prosedure na bevinding van onvermoë

28.(1) Indien die persoon wat 'n ondersoek na onvermoë doen, bevind dat die betrokke landdros nie oor die vermoë beskik om sy of haar ampspligte op bekwame wyse uit te voer nie -

- (a) moet hy of sy aan die betrokke landdros 'n skriftelike uiteensetting verstrek van sy of haar bevinding en die redes daarvoor; en
- (b) moet hy of sy onverwyld die oorkonde van die verrigtinge van die ondersoek en alle dokumentêre getuienis of gesertifiseerde afskrifte daarvan wat by die ondersoek toegelaat is, asook 'n skriftelike uiteensetting van die redes vir sy bevinding en enige opmerkings oor die saak wat hy of sy wens te maak, stuur aan die voorsitter van die Kommissie.

(2) Die betrokke landdros kan binne 10 werksdae na die datum waarop die bevinding van 'n ondersoek na onvermoë tot sy of haar kennis kom, by die voorsitter van die Kommissie skriftelike kommentaar betreffende die bevinding en redes daarvoor indien.

(3)(a) Die Kommissie moet die betrokke dokumente rakende 'n ondersoek na onvermoë, tesame met die kommentaar van die landdros in subregualsie (2) bedoel, as daar is, oorweeg.

(b) Die Kommissie moet, indien hy as gevolg van 'n ondersoek na onvermoë van mening is dat 'n landdros uit die amp onthef moet word

as gevolg van onbevoegdheid, by die Parlement aanbeveel dat die landdros uit die amp onthef moet word soos bedoel in artikel 13 van die Wet.

DEEL VII: ONTHEFFING UIT AMP WEENS VOORTDURENDE SWAK GESONDHEID

Prosedure van ondersoek

29.(1) Die Kommissie kan gelas dat 'n ondersoek betreffende die ontheffing van 'n landdros uit die amp weens voortdurende swak gesondheid gedoen word.

(2) Die Kommissie moet voor die aanvang van 'n gesondheidsondersoek die landdros van daardie ondersoek in kennis stel.

(3) Die landdros ten opsigte van wie 'n gesondheidsondersoek gedoen word, moet onverwyld na ontvangs van die kennisgewing van die ondersoek 'n mediese verslag van 'n geneesheer van sy of haar keuse aan die Kommissie voorlê.

(4) Benewens subregulasie (3) kan die Kommissie gelas dat 'n landdros hom of haar onderwerp aan 'n mediese ondersoek deur 'n geneesheer aangewys deur die Kommissie, waarna daardie geneesheer 'n mediese verslag aan die Kommissie moet voorlê.

(5) Die koste verbonde aan die mediese ondersoek bedoel in subregulasies (3) en (4) word deur die Staat betaal.

(6)(a) Indien die Kommissie na oorweging van 'n mediese verslag ingevolge hierdie regulasie, saam met enige tersaaklike inligting, van mening is dat die betrokke landdros nie oor die vermoë beskik om sy of haar ampspligte as gevolg van voortdurende swak gesondheid op bekwame wyse uit te voer nie, moet die Kommissie -

- (i) aan die betrokke landdros 'n skriftelike uiteensetting van sy mening en die redes daarvoor gee; en
- (ii) onverwyld die mediese verslag en ander tersaaklike dokumente of gesertifiseerde afskrifte daarvan, wat nie in die betrokke landdros se besit is nie, aan die betrokke landdros stuur.

(b) Die betrokke landdros kan binne 10 werksdae na die datum waarop die mening van die Kommissie onder sy of haar aandag gekom het, by die voorsitter van die Kommissie skriftelike kommentaar betreffende die mening indien.

(7)(a) Die Kommissie moet die mediese verslae, saam met die kommentaar van die landdros bedoel in subregulasie (6)(b), as daar is, oorweeg.

(b) Die Kommissie moet, indien hy van mening is dat die betrokke landdros uit die amp onthef moet word as gevolg van voortdurende swak gesondheid, by die Parlement aanbeveel dat die landdros uit die amp onthef moet word soos bedoel in artikel 13 van die Wet.”

Wysiging van regulasie 54 van die Regulasies

7. Regulasie 54 van die Regulasies word hierby gewysig deur die regulasie deur die volgende regulasie te vervang:

“Skepping van poste

54. Die Minister moet, in oorleg met die Kommissie, poste vir alle landdroste skep en die aantal, graad, hergradering, benaming, herbenaming of omskakeling van sodanige poste bepaal.”

Algemeen

8. Die Regulasies word hierby gewysig deur die invoeging van die woord “of ” en die vroulike voornaamwoord na die manlike voornaamwoord, waar dit ook al voorkom.

Herroeping van Bylae B van die Regulasies

9. Bylae B van die Regulasies word hierby herroep.

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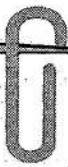
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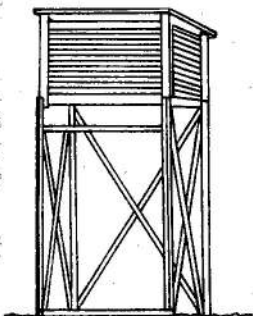
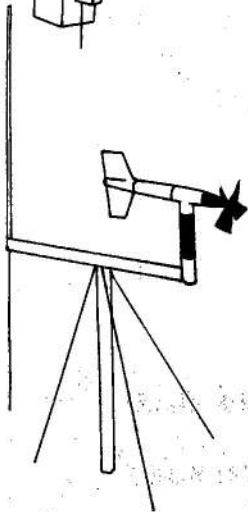
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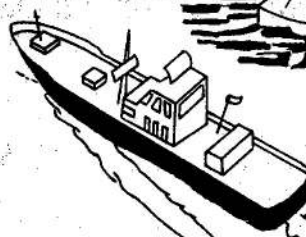
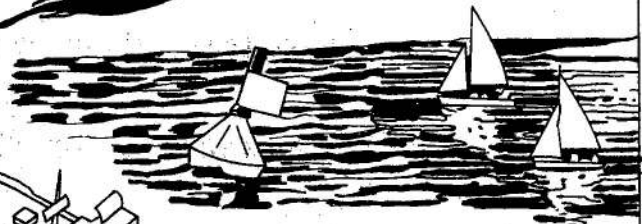
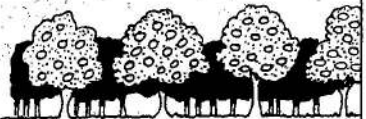
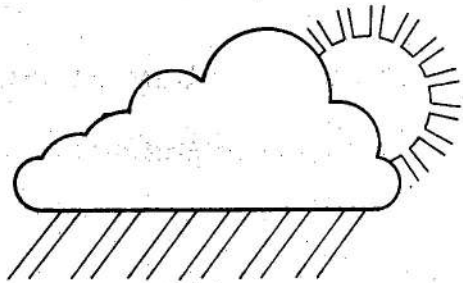
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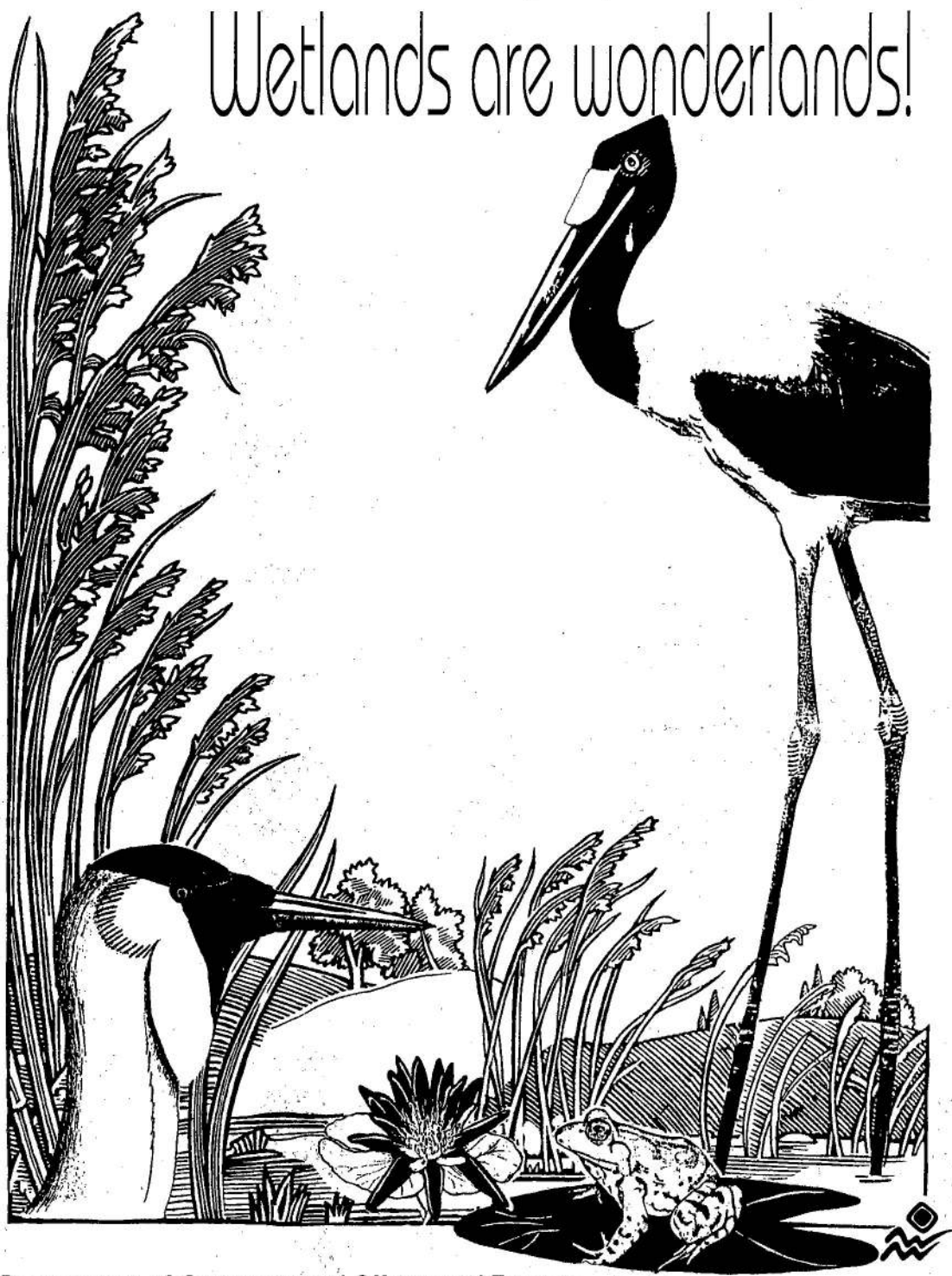
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