

42(1)

STATUTES OF THE REPUBLIC OF SOUTH AFRICA — COURTS  
Magistrates' Courts Act, No. 32 of 1944

ss. 3-7

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(3) After the commencement of this Act no new district or sub-district and no regional division shall be created until a report upon the proposal to create such district or sub-district or division has been obtained from the Public Service Commission.

[Sub-s. (3) amended by s. 4 of Act No. 40 of 1952.]

**4. Nature of the courts and force of process.**—(1) Every court shall be a court of record.

(2) . . . . .

[Sub-s. (2) deleted by s. 5 (a) of Act No. 40 of 1952.]

(3) Every process issued out of any court shall be of force throughout the Republic.

[Sub-s. (3) amended by s. 5 (b) of Act No. 40 of 1952 and by s. 3 of Act No. 53 of 1970.]

(4) Any process issued out of any court may be served or executed by the messenger of the court appointed for the area within which such process is to be served or executed.

[Sub-s. (4) substituted by s. 26 of Act No. 70 of 1968.]

**5. Courts to be open to the public, with exceptions.**—(1) Except where otherwise provided by law, the proceedings in every court in all criminal cases and the trial of all defended civil actions shall be carried on in open court, and recorded by the presiding officer or other officer appointed to record such proceedings.

(2) The court may in any case, in the interests of good order or public morals, direct that a civil trial shall be held with closed doors, or that (with such exceptions as the court may direct) females or minors or the public generally shall not be permitted to be present thereat.

[Sub-s. (2) substituted by s. 1 (a) of Act No. 91 of 1977.]

(3) If any person present at any civil proceedings in any court disturbs the peace or order of the court, the court may order that person to be removed and detained in custody until the rising of the court, or, if in the opinion of the court peace cannot be otherwise secured, may order the court room to be cleared and the doors thereof to be closed to the public.

[Sub-s. (3) substituted by s. 1 (a) of Act No. 91 of 1977.]

(4) . . . . .

[Sub-s. (4) amended by s. 6 of Act No. 40 of 1952 and deleted by s. 1 (b) of Act No. 91 of 1977.]

**6. Medium to be employed in proceedings.**—(1) Either of the official languages may be used at any stage of the proceedings in any court and the evidence shall be recorded in the language so used.

[Sub-s. (1) amended by s. 7 of Act No. 40 of 1952.]

(2) If, in a criminal case, evidence is given in a language with which the accused is not in the opinion of the court sufficiently conversant, a competent interpreter shall be called by the court in order to translate such evidence into a language with which the accused professes or appears to the court to be sufficiently conversant, irrespective of whether the language in which the evidence is given, is one of the official languages or of whether the representative of the accused is conversant with the language used in the evidence or not.

**7. Public access to records and custody thereof.**—(1) Subject to the provisions of section 7A and the rules the records of the court, other than a record with reference to which a direction has been issued under section 153 (2) or 154 (1) of the Criminal Procedure Act, 1977, or with reference to which the provisions of section 154 (2) (a) or 154 (3) of that Act apply, shall be accessible to the public under supervision of the clerk of the court at convenient times and upon payment of the fees prescribed from time to time by the Minister in consultation with the Minister of Finance, and for this purpose and for all other purposes the records of any magistrate's court which has at any time existed within the Republic, shall be deemed to be the records of the court of the district in which the place where

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- (c) the weekly wage of an employee, other than an employee referred to in subsection (2), who receives his wage monthly, shall be calculated by dividing the wage ordinarily received by him during a month, by four and one-third; or
- (d) the monthly wage of an employee, other than an employee referred to in subsection (2), who receives his wage weekly, shall be calculated by multiplying the wage ordinarily received by him during a week by four and one-third.

(2) For the purposes of this Act—

- (a) the weekly wage of an employee who is paid on a basis other than in accordance with the time actually worked by him shall be deemed to be the average weekly income received by him in respect of his employment with his employer for the preceding 13 weeks, or, if he has worked for a shorter period, for the number of completed weeks so worked;
- (b) the wage of such employee for one hour shall be calculated by dividing the weekly wage, as calculated in terms of paragraph (a), by 46; and
- (c) the daily wage of such employee shall be calculated—
  - (i) in the case of an employee who works five days a week, by multiplying the hourly wage, as calculated in terms of paragraph (b), by nine and one-fifth; and
  - (ii) in the case of an employee who works six days a week, by multiplying the hourly wage, as calculated in terms of paragraph (b), by seven and two-thirds.

17. Prohibition of certain employment.—No employer shall—

- (a) employ any person under the age of 15 years;
- (b) require or permit any female employee to work during the period commencing four weeks prior to the expected date of her confinement and ending eight weeks after the date of her confinement.

18. Victimization forbidden.—No employer shall dismiss an employee, or reduce the rate of his remuneration, or alter the terms or conditions of his employment to terms or conditions less favourable to him, or alter his position relatively to other employees employed by that employer to his disadvantage, by reason of the fact, or because he suspects or believes, whether or not the suspicion or belief is justified or correct, that that employee—

- (a) has given information to the Minister or to any other person charged with the administration of a provision of this Act which in terms of this Act he is required to give or which relates to the terms or conditions of his employment or to those of any other employees of his employer, or has complied with a lawful requirement of an inspector, or has given evidence before a court of law;
- (b) has refused or omitted to do any act which the employer required or permitted him to do contrary to a provision of section 19; or
- (c) belongs or has belonged to any trade union or any other organization of employees the object of which is or was to protect or further the interests of employees in relation to their employers, or takes or has taken part outside his working hours, or, with the consent of the employer, during his working hours, in the formation or lawful activities of any such union or organization.

19. Prohibition of certain acts relating to payment of remuneration.—(1) No employer shall—

- (a) require or permit an employee to pay or repay to him any remuneration payable or paid to that employee in accordance with this Act, or in accordance

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- (c) any other act or omission which the commissioner, having regard to all the circumstances, considers to be serious and wilful misconduct;

“ship” means a vessel of any description used in navigation, other than an aircraft; and “South African ship” means a ship which—

- (a) is registered in the Republic under any law relating to merchant shipping and is not registered in any other country under a similar law; or
- (b) is owned or chartered by a person whose principal office or place of business is in the Republic, or by a person who resides in the Republic;

“silicosis” means a pathological condition of the lungs due to the inhalation of silicon dioxide;

“temporary partial disablement” in relation to a workman means the temporary inability of such workman as the result of an accident in respect of which compensation is payable to perform the whole of the work at which he was employed at the time of such accident or to resume work at a rate of earnings not less than that which he was receiving at the time of such accident;

“temporary total disablement” in relation to a workman means the temporary inability of such workman as the result of an accident in respect of which compensation is payable, to perform the work at which he was employed at the time of such accident, or work similar thereto;

“territory” . . . . .

[Definition of “territory” inserted by s. 1 (i) of Act No. 51 of 1956 and deleted by Proclamation No. 45 of 1990.]

“this Act” includes the schedules thereto and any regulation;

“trade union” means a trade union as defined in section 1 of the Labour Relations Act, 1956 (Act No. 28 of 1956), and which has complied with the provisions of section 4 A (1), section 8 (5) read with section 8 (8), and section 11 of that Act, or the Wage and Industrial Conciliation Ordinance, 1952 (Ordinance No. 35 of 1952 of the territory);

[Definition of “trade union” amended by s. 1 (j) of Act No. 51 of 1956 and substituted by s. 1 (i) of Act No. 29 of 1984.]

“Republic” . . . . .

[Definition of “Republic”, previously definition of “Union”, inserted by s. 1 (k) of Act No. 51 of 1956 and deleted by Proclamation No. 45 of 1990.]

“South African aircraft” means any aircraft registered or licensed in the Republic, the owner of which has a place of business in the Republic.

3. **Definition of workman.**—(1) Subject to the provisions of sub-section (2) and unless inconsistent with the context, “workman” in this Act means any person who has entered into or works under a contract of service or of apprenticeship or learnership, with an employer, whether the contract is express or implied, is oral or in writing, and whether the remuneration is calculated by time or by work done, or is in cash or in kind, and includes—

- (a) any person whose occupation is conveying for gain, persons or goods by means of any vehicle, ship or aircraft, the use of which he has obtained under any contract other than a purchase or hire-purchase agreement, whether or not the remuneration of such person under such contract be partly an agreed sum and partly a share in takings, but does not include any such person whose remuneration is fixed solely by a share in takings;
- (b) any person or class of persons excluded from the scope of this Act by the provisions of subsection (2) (b), (f) (ii) or (g), if the employer of such person or class of persons has made special arrangements with the commissioner to that effect and complied with the conditions prescribed by the commissioner in regard thereto;

[Para. (b) substituted by s. 1 (a) of Act No. 58 of 1967.]

- (c) when a workman is dead or under disability, his representative, his dependants and any other person to whom or for whose benefit compensation is payable:

(d) . . . . . [Para. (d) deleted by s. 2 (a) of Act No. 29 of 1984.]

Provided that if in any claim for compensation under this Act it appears to the commissioner that the contract of service or apprenticeship or learnership under which the injured workman was working at the time when the accident causing the injury happened was invalid for any reason whatever, the commissioner may in his discretion deal with the matter as if such contract had at the time aforesaid been valid.

(2) The following persons shall not be regarded for the purposes of this Act as workmen—

- (a) (i) persons in military service or undergoing training within the meaning of the Defence Act, 1957 (Act No. 44 of 1957), who are not members of the Permanent Force of the South African Defence Force;
- (ii) members of the Permanent Force of the South African Defence Force while on "service in the defence of the Republic" as defined in section one of the said Act; and
- (iii) members of the South African Police Force while employed in terms of section seven of the Police Act, 1958 (Act No. 7 of 1958), on service which is "service in defence of the Republic" as so defined;
- (b) persons whose annual earnings calculated in the manner set forth in section 41 exceed R42 000 or, from a date determined by the Minister by notice in the *Gazette*, such higher amount as he may so determine;

[Para. (b) substituted by s. 1 (b) of Act No. 58 of 1967, by s. 2 of Act No. 11 of 1974, by s. 1 of Act No. 28 of 1977, by s. 1 of Act No. 24 of 1981 and by s. 2 (b) of Act No. 29 of 1984, amended by Proclamation No. R.24 of 28 February, 1986 and by ss. 46 and 47 of Act No. 97 of 1986, substituted by s. 1 of Act No. 35 of 1987 and amended by Government Notices No. 222 of 19 February, 1988 and No. 234 of 15 February, 1991.]

- (c) persons employed casually and not for the purpose of the employer's business;
- (d) outworkers, that is to say, persons to whom articles or materials are given out by employers to be made up, cleaned, washed, ornamented, finished, repaired, adapted for sale, altered or otherwise worked with on premises not under the control of the employer;
- (e) persons who contract for the carrying out of work and themselves engage other persons to perform such work unless they are included in the statement of annual wages referred to in section *sixty-eight* and are regarded as workmen by the commissioner in terms of paragraph (d) of sub-section (1) of this section;
- (f) domestic servants employed as such—
- (i) in a private household; or
- (ii) in a boarding house or institution in which are ordinarily employed not more than five such servants;
- (g) persons employed as seamen or airmen, excluding such persons employed in circumstances referred to in section 10 (1A) and save as provided in section 11;
- [Para. (g) substituted by s. 2 of Act No. 9 of 1970.]
- (h) persons employed outside the Republic, save as provided in sections *ten* and *eleven*; or
- (i) . . . . . [Para. (i) deleted by s. 1 (c) of Act No. 58 of 1967.]

(3) An employer who has made any special arrangement contemplated in paragraph (b) of sub-section (1) shall not be entitled to withdraw or depart therefrom unless he has

not later than the first day of July in any year, given notice to the commissioner of his intention to terminate such arrangement.

(4) Any notice under sub-section (3) shall operate from the first day of January following the date of the notice and from that date the person or class of persons in respect of whom or which the arrangement was made and in respect of whom or which such notice was given shall, unless otherwise included in the definition of "workman", cease to be workmen for the purposes of this Act.

[S. 3 amended by s. 2 of Act No. 27 of 1945, by s. 28 of Act No. 48 of 1947, by s. 2 of Act No. 36 of 1949, by s. 2 of Act No. 51 of 1956 and by s. 1 of Act No. 7 of 1961 and substituted by s. 1 of Act No. 21 of 1964.]

**4. Dependants of a workman.**—(1) Subject to the further provisions of this section and unless inconsistent with the context, "dependant" in this Act means—

- (a) the widow or invalid widower, if married to the workman at the time of the accident;
- (b) if there is no widow who, at the time of the accident, was wholly or partly dependent upon the workman for the necessaries of life any woman with whom the workman was in the opinion of the commissioner living as man and wife at the time of the accident;  
[Para. (b) amended by s. 3 of Act No. 27 of 1945.]
- (c) any child: Provided that in the case of an adopted child the commissioner is satisfied that the child was adopted prior to the accident;
- (d) a parent or step-parent or an adoptive parent who adopted such workman if the commissioner is satisfied that the workman was in fact adopted and in either case that the workman was adopted prior to the accident;
- (e) a son or daughter (other than a child as defined): a brother, sister, half-brother, or half-sister: a sister or brother of a parent: a grand-parent or grand-child; or
- (f) any other person who, in the opinion of the commissioner, was at the time of the accident wholly or partly dependent upon the workman for the necessaries of life:

[Para. (f) substituted by s. 2 of Act No. 28 of 1977.]

Provided that—

- (i) a dependant other than one referred to in paragraph (f) shall not be entitled to compensation unless, at the time of the accident, he was wholly or partly dependent upon the workman for the necessaries of life;
- (ii) any right to compensation shall *ipso facto* cease upon the death of the dependant to whom such compensation was payable; and
- (iii) unless the contrary is proved, the widow or child of a workman or a person referred to in the second proviso to section 40 (1) (c) who would, if under eighteen years of age, be the child of the workman, shall be deemed to be dependent for the necessaries of life upon such workman.

[Para. (iii) amended by s. 3 of Act No. 51 of 1956 and substituted by s. 3 of Act No. 11 of 1974.]

(2) . . . . .

[Sub-s. (2) deleted by s. 1 (2) of Act No. 114 of 1991.]

(3) For the purposes of this Act "widow" includes a woman who was a participant in a customary union according to indigenous law and custom, where neither the man nor the woman was a party to a subsisting marriage.

[Sub-s. (3) substituted by s. 1 (2) of Act No. 114 of 1991.]

**5. Definition of "employer".**—(1) Subject to the further provisions of this section and unless inconsistent with the context, "employer" in this Act means a person who employs a workman and includes the State and any person controlling the business of an employer.

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(2) The Government Mining Engineer may, on application to an inspector of mines, grant special permission for carrying on temporarily any necessary work, in addition to work described in sub-section (1), at a mine or works on the days mentioned in that sub-section.

10. ....

[S. 10 amended by s. 9 of Act No. 46 of 1964, substituted by s. 4 of Act No. 42 of 1968 and by s. 4 of Act No. 40 of 1971 and repealed by s. 3 of Act No. 38 of 1987.]

**11. Restriction upon employment of juveniles and females.**—(1) No male person under the age of sixteen years and no female shall work, and no person shall cause or permit any male person apparently under the age of sixteen years or any female to work, underground in any mine.

This is not contained in my report, but it may be seen as another example of discrimination in the work place

(2) and (3) .....

[Sub-ss. (2) and (3) deleted by s. 5 of Act No. 42 of 1968.]

(4) (a) Subject to the provisions of paragraph (c) of this sub-section, no female shall work at night, and no person shall cause or permit any female to work at night, at any mine or works, in connection with the operation of such mine or works.

(b) For the purpose of this sub-section "night" means that period of time from half-an-hour after sunset to half-an-hour before sunrise.

(c) The provisions of paragraph (a) of this sub-section shall not apply to—

- (i) females holding responsible positions of a managerial or technical character; and
- (ii) females employed in medical, health, welfare or social services;
- (iii) females performing any work at a mine or works in accordance with the provisions of an exemption granted under subsection (5).

[Sub-s. (4) added by s. 10 of Act No. 46 of 1964. Sub-para. (iii) added by s. 19 (b) of Act No. 80 of 1971.]

(5) If the Minister is satisfied that special circumstances, justifying the granting of relief, exist with regard to any mine or works, he may in writing grant exemption from the provisions of subsection (4) (a), subject to such restrictions or conditions (if any) as he may deem fit, to the owner of such mine or works.

[Sub-s. (5) added by s. 19 (c) of Act No. 80 of 1971.]

12. **Regulations.**—(1) The Minister may make regulations as to—

(a) the protection and preservation of the surface of mines, works and adjoining land, of buildings, roads, railways and other structures and enclosures on or above the surface of such land, and of water resources, the conditions under which any such surface, buildings, roads, railways, structures or enclosures may be undermined, and the conditions under which mining may be carried on under and in the vicinity of such water resources;

(b) the prohibition or restriction in relation to the making or use of roads or railways or the erecting or use of buildings or other structures or objects over or in the vicinity of workings of mines;

[Para. (b) substituted by s. 11 (a) of Act No. 46 of 1964.]

(c) the making and keeping of mine plans and the filing of copies thereof with the Department of Mineral and Energy Affairs;

[Para. (c) substituted by s. 4 (a) of Act No. 38 of 1987.]

(d) the making of statistical and other reports relating to minerals, mines, works and machinery;

*Disqualifications of Directors*

**218. Disqualifications of directors.**—(1) Any of the following persons shall be disqualified from being appointed or acting as a director of a company:

- (a) A body corporate;
- (b) a minor or any other person under legal disability, save a married woman subject to the marital power of her husband whose written consent to her appointment as a director has, on the form referred to in section 211 (1) (a), been lodged with the company;
 

[Para. (b) substituted by s. 17 (1) of Act No. 59 of 1978.]
- (c) any person who is the subject of any order under this Act or the repealed Act disqualifying him from being a director;
- (d) save under authority of the Court—
  - (i) an unrehabilitated insolvent;
  - (ii) any person removed from an office of trust on account of misconduct;
  - (iii) any person who has at any time been convicted (whether in the Republic or elsewhere) of theft, fraud, forgery or uttering a forged document, perjury, an offence under the Prevention of Corruption Act, 1958 (Act No. 6 of 1958), or any offence involving dishonesty or in connection with the promotion, formation or management of a company, and has been sentenced therefor to imprisonment without the option of a fine or to a fine exceeding one hundred rand.

(2) Any person disqualified from being appointed or acting as a director of a company and who purports to act as a director or directly or indirectly takes part in or is concerned in the management of any company, shall be guilty of an offence.

(3) Nothing in this section shall be construed as preventing a company from providing in its articles for any further disqualifications for the appointment of or the retention of office by any person as a director of such company.

**219. Disqualification of directors, officers and others by the Court.**—(1) The Court may make an order directing that, for such period as may be specified in the order, a person, director or officer shall not without the leave of the Court be a director of or in any way, whether directly or indirectly, be concerned or take part in the management of any company when—

- (a) such person, director or officer, has been convicted of an offence in connection with the promotion, formation or management of a company; or
- (b) the Court has made an order for the winding-up of a company and the Master has made a report under this Act stating that in his opinion a fraud has been committed—
  - (i) by such person in connection with the promotion or formation of the company; or
  - (ii) by any director or officer of the company in relation to the company since its formation; or
- (c) in the course of the winding-up or judicial management of a company it appears that any such person—
  - (i) has been guilty of an offence referred to in section 424, whether or not he has been convicted of that offence; or
  - (ii) has otherwise been guilty while an officer of the company of any fraud in relation to the company or of any breach of his duty to the company; or
- (d) a declaration has been made in respect of any person under section 424 (1).

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medical practitioner who is to conduct the examination concerned or cause that examination to be conducted, certifies that he is satisfied that the removal of that tissue will in no way affect the outcome of that examination and that he has no objection to the removal of that tissue.

(4) If a person who has died has in his will or in a document donated tissue of his body or given his consent to the post-mortem examination of his body, a magistrate or medical practitioner who is competent to grant authority under subsection (1), may act upon that will or document if on the face of it it appears to be legally valid and notwithstanding the fact that, in the case of that will, it has not yet been lodged with or accepted by the Master of the Supreme Court.

15. . . . . [S. 15 repealed by s. 11 of Act No. 51 of 1989.]

16. **Prohibition of use of gonads for certain purposes.**—A gonad removed from the body of a deceased person shall not be transplanted into the body of a living person if the result of such transplantation may be procreation.

17. . . . . [S. 17 repealed by s. 12 of Act No. 51 of 1989.]

## CHAPTER 2

### TISSUE, BLOOD AND GAMETES OF LIVING PERSONS, AND BLOOD PRODUCTS

18. **Consent to removal of tissue, blood or gametes from bodies of living persons.**—No tissue, blood or gamete shall be removed or withdrawn from the body of a living person for a purpose referred to in section 19—

- (a) except in accordance with the prescribed conditions; and
- (b) unless written consent thereto has been granted—
  - (i) where such a person is a major, by that person;
  - (ii) where such a person is a minor, by the parents or guardians of that person:

Provided that—

- (aa) in the case of the removal of tissue which is replaceable by natural processes, or the withdrawal of blood, from the body of a person who is a competent witness, the consent of that person to the removal of that tissue or blood shall be sufficient, whether it be granted in writing or orally;
- (bb) tissue removed in the interest of his health from the body of a living person with his consent or with the consent of any other person who may in law give consent on his behalf, maybe used for any of the purposes referred to in section 19.

19. **Purposes for which tissue, blood or gametes of bodies of living persons may be used.**—Any tissue, blood or gamete removed or withdrawn from the body of a living person shall, subject to the regulations, only be used for medical or dental purposes, including—

- (a) in the case of such tissue, the use of transplanting thereof in the body of another living person or for the production of a therapeutic, diagnostic or prophylactic substance;
- (b) in the case of such blood, the administering thereof to another living person or the production of a blood product; and
- (c) in the case of such gamete, the artificial fertilization of another person:



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Provided that—

- (i) any tissue, blood or gamete of a person who is mentally ill within the meaning of the Mental Health Act, 1973 (Act No. 18 of 1973); or
- (ii) any tissue of a person who is a minor and which is not replaceable by natural processes or any gamete of any such person; or  
[Para. (ii) substituted by s. 13 (a) of Act No. 51 of 1989.]
- (iii) any gamete of a person who has been declared a habitual criminal in terms of section 286 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977);
- (iv) placenta, foetal tissue and umbilical cord, except with the consent of the Minister and subject to any condition mentioned in the consent,  
[Para. (iv) inserted by s. 13 (b) of Act No. 51 of 1989.]

shall not be used for any of the purposes referred to in paragraph (a), (b) or (c) of this section.

**20. Requirements with regard to tissue transplants.**—The removal of tissue from the body of a living person for transplanting into the body of another living person and such transplantation shall not be effected—

- (a) in any place other than a hospital or authorized institution; or
- (b) without the written authority of the medical practitioner in charge of the hospital or authorized institution concerned, which medical practitioner shall not effect the transplantation concerned or take part therein.  
[S. 20 amended by s. 14 of Act No. 51 of 1989.]

**21. Use of gonads.**—A gonad removed from the body of a living person shall not be used in the body of another living person if the result of such use may be procreation, unless the Minister has in the case concerned granted previous written authority thereto.

22. . . . .

[S. 22 repealed by s. 15 of Act No. 51 of 1989.]

**23. Control of removal and use of tissue and blood.**—No person, except a medical practitioner or dentist or a person acting under his supervision, may for the purposes of this Chapter—

- (a) remove any tissue from the body of a living person or use or transplant tissue so removed in the body of another living person; or
- (b) withdraw any blood from the body of a living person or administer blood or a blood product to a living person.

[S. 23 substituted by s. 16 of Act No. 51 of 1989.]

### CHAPTER 3

#### AUTHORIZED INSTITUTIONS, IMPORT AND EXPORT OF TISSUE AND OF BLOOD, BLOOD PRODUCTS AND GAMETES, AND RELATED MATTERS

**24. Authorized institutions.**—The Minister may by notice in the *Gazette* authorize any institution which is not an institution referred to in section 3 (1) (a) or (b) and which complies with the prescribed conditions, subject to any further conditions (if any) which the Minister may determine in any particular case and which shall be stated in the said notice, to—

4.102  
**ABORTION AND STERILIZATION ACT**  
**NO. 2 OF 1975**

[ASSENTED TO 28 FEBRUARY, 1975]

[DATE OF COMMENCEMENT: 12 MARCH, 1975]

(English text signed by the State President)

as amended by

Abortion and Sterilization Amendment Act, No. 18 of 1976  
Abortion and Sterilization Amendment Act, No. 38 of 1980  
Abortion and Sterilization Amendment Act, No. 48 of 1982

**ACT**

To define the circumstances in which an abortion may be procured on a woman or in which a person who is incapable of consenting or incompetent to consent to sterilization, may be sterilized; and to provide for incidental matters.

1. **Definitions.**—In this Act, unless the context otherwise indicates—

“**abortion**” means the abortion of a live foetus of a woman with intent to kill such foetus;

“**Director-General**” means the Director-General: Health and Welfare;  
[Definition of “Director-General” inserted by s. 1 (a) of Act No. 48 of 1982.]

“**incest**” means carnal intercourse between two persons who are related to each other and by reason of such relationship incompetent to marry each other;

“**magistrate**” includes an additional and an assistant magistrate;

“**medical practitioner**” means a person registered as such under the Medical, Dental and Supplementary Health Service Professions Act, 1974 (Act No. 56 of 1974);

“**Minister**” means the Minister of Health and Welfare;  
[Definition of “Minister” substituted by s. 1 (b) of Act No. 48 of 1982.]

“**prescribed**” means prescribed by regulation made under this Act;

“**psychiatrist**” means a person registered as such under the Medical, Dental and Supplementary Health Service Professions Act, 1974;

“**State-controlled institution**” means a hospital conducted by the State (including a provincial administration), and such part of any other institution, other than such a hospital, as may be hired and controlled by a provincial administration, and a hospital maintained out of moneys provided out of the South African Development Trust Fund mentioned in section 8 of the Development Trust and Land Act, 1936 (Act No. 18 of 1936);

“**sterilization**” means a surgical operation performed for the purpose of making the person on whom it is performed incapable of procreation, but does not include the removal of any gonad;

[Definition of “sterilization” substituted by s. 1 (c) of Act No. 48 of 1982.]

“**unlawful carnal intercourse**” means rape and incest.

[Definition of “unlawful carnal intercourse” substituted by s. 1 (d) of Act No. 48 of 1982.]

2. **Prohibition of abortion.**—No person shall procure an abortion otherwise than in accordance with the provisions of this Act.

3. **Circumstances in which abortion may be procured.**—(1) Abortion may be procured by a medical practitioner only, and then only—

(a) where the continued pregnancy endangers the life of the woman concerned or constitutes a serious threat to her physical health, and two other medical

practitioners have certified in writing that, in their opinion, the continued pregnancy so endangers the life of the woman concerned or so constitutes a serious threat to her physical health and abortion is necessary to ensure the life or physical health of the woman;

- (b) where the continued pregnancy constitutes a serious threat to the mental health of the woman concerned, and two other medical practitioners have certified in writing that, in their opinion, the continued pregnancy creates the danger of permanent damage to the woman's mental health and abortion is necessary to ensure the mental health of the woman;
- (c) where there exists a serious risk that the child to be born will suffer from a physical or mental defect of such a nature that he will be irreparably seriously handicapped, and two other medical practitioners have certified in writing that, in their opinion, there exists, on scientific grounds, such a risk; or
- (d) where the foetus is alleged to have been conceived in consequence of unlawful carnal intercourse, and two other medical practitioners have certified in writing after such interrogation of the woman concerned as they or any of them may have considered necessary, that in their opinion the pregnancy is due to the alleged unlawful carnal intercourse; or  
 [Para. (d) substituted by s. 2 (b) of Act No. 48 of 1982.]
- (e) where the foetus has been conceived in consequence of illegitimate carnal intercourse, and two other medical practitioners have certified in writing that the woman concerned is due to a permanent mental handicap or defect unable to comprehend the consequential implications of or bear the parental responsibility for the fruit of coitus.  
 [Para. (e) added by s. 2 (c) of Act No. 48 of 1982.]

(2) (a) A medical practitioner who has issued a certificate referred to in subsection (1) shall in no way participate in or assist with the abortion in question, and such a certificate, or such certificates issued for the same purpose, shall not be valid if issued by members of the same partnership or by persons in the employ of the same employer.

(b) The provisions of paragraph (a) shall not apply to the performance by any person of his functions in the service of the State.

(3) At least one of the two medical practitioners referred to in subsection (1)—

- (a) shall have practised as a medical practitioner for four years or more since the date of his registration as a medical practitioner in terms of the Medical, Dental and Supplementary Health Service Professions Act, 1974 (Act No. 56 of 1974);
- (b) shall be a psychiatrist employed by the State, if the abortion is to be procured by virtue of the provisions of subsection (1) (b);
- (c) shall be the district surgeon who examined the woman concerned if a complaint regarding the alleged unlawful carnal intercourse has been lodged with the Police, and the foetus is alleged to have been conceived in consequence of such unlawful carnal intercourse.

[Para. (c) substituted by s. 2 (d) of Act No. 48 of 1982.]

4. Sterilization of persons incapable of consenting thereto.—(1) A sterilization shall not be performed on any person who for any reason is incapable of consenting or incompetent to consent thereto, unless—

- (a) two medical practitioners, of whom one shall be a psychiatrist, have certified in writing that the person concerned—
  - (i) is suffering from a hereditary condition of such a nature that if he or she were to procreate a child, such child would suffer from a physical or mental defect of such a nature that it would be seriously handicapped; or
  - (ii) due to a permanent mental handicap or defect is unable to comprehend the consequential implications of or bear the parental responsibility for the fruit of coitus;

[Para. (a) amended by s. 3 of Act No. 48 of 1982.]

- (b) the person who may in law consent to an operation beneficial to that person has granted written consent to the sterilization or, if there is no such first-

mentioned person or such person cannot after reasonable inquiry be found, the magistrate of the district in which the person concerned finds himself or herself has, after such investigation as he may deem fit, granted written authority for the sterilization; and

[Para. (b) substituted by s. 1 (a) of Act No. 38 of 1980.]

- (c) the Minister, or a medical officer of the Department of Health authorized thereto by him in writing, has granted written authority for the sterilization.

[Para. (c) substituted by s. 1 (b) of Act No. 38 of 1980.]

- (2) The person who may consent to an operation as contemplated in subsection (b), is hereby authorized to grant the consent referred to therein.
- (3) The provisions of this section shall not be construed as affecting the position of any person capable of consenting or competent to consent to an operation on himself.

**5. Place where abortion or sterilization may take place.**—(1) An abortion may be procured and a sterilization contemplated in section 4 may be performed only at a State-controlled institution or an institution designated in writing for the purpose by the Minister in terms of subsection (2).

(2) The Minister may designate any institution for the purposes of subsection (1), and subject to such conditions and requirements as he may consider necessary or expedient for achieving the objects of this Act, and may, if in his opinion it is justified, at any time withdraw any such designation.

(3) A decision of the Minister in terms of subsection (2) shall be final.

**6. Approval by medical practitioner in charge of institution, and certificate by magistrate.**

(1) An abortion shall not be procured and a sterilization contemplated in section 4 shall not be performed without the written authority of—

- (a) in the case of a State-controlled institution, the medical practitioner in charge of such institution or a medical practitioner designated for the purpose by the first-mentioned medical practitioner; or
- (b) in the case of an institution designated in terms of section 5 (2), a medical practitioner designated for the purpose by the person managing such institution,

granted on application to such medical practitioner in accordance with subsection (2).

(2) An application for authority in terms of subsection (1) shall be made in the prescribed form by the medical practitioner who is to procure the abortion in question or perform the sterilization in question, and shall be accompanied—

- (a) in the case of an intended abortion—
- (i) in the circumstances contemplated in subsection (4), by the certificate referred to in that subsection;
- (ii) by the certificate or certificates referred to in section 3 issued by two medical practitioners;
- (b) in the case of an intended sterilization, by the certificate or certificates, consent and authority referred to in section 4.

(3) If a medical practitioner has issued a certificate for the purposes of section 3 (1) and he is at any time such a medical practitioner as is referred to in subsection (1) of this section, he shall not be precluded from granting any relevant authority for the purposes of the said subsection.

(4) Where the pregnancy is alleged to be the result of unlawful carnal intercourse, an abortion shall not be procured unless there is produced to the medical practitioner whose written authority is required in terms of subsection (1) a certificate, issued by a magistrate of the district in which the offence in question is alleged to have been committed, to the effect that—

- (a) he has satisfied himself—
- (i) that a complaint relating to the alleged unlawful carnal intercourse in question has been lodged with the Police or, if such a complaint has not been so lodged, that there is a good and acceptable reason why a complaint has not been so lodged;