



Government Gazette

REPUBLIC OF SOUTH AFRICA

Vol. 679

Cape Town
Kaapstad

28 January 2022

No. 45822

THE PRESIDENCY

No. 786 **28 January 2022**

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

Act No. 12 of 2021: Criminal and Related Matters Amendment Act, 2021

DIE PRESIDENSIE

No. 786 **28 Januarie 2022**

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

Wet No. 12 van 2021: Wysigingswet op die Strafwet en Verwante Aangeleenthede, 2021

ISSN 1682-5845



9 771682 584003



4 5 8 2 2



AIDS HELPLINE: 0800-0123-22 Prevention is the cure

GENERAL EXPLANATORY NOTE:

- [] Words in bold type in square brackets indicate omissions from existing enactments.
- _____ Words underlined with a solid line indicate insertions in existing enactments.
-
-

(English text signed by the President)
(Assented to 25 January 2022)

ACT

To amend—

- the Magistrates' Courts Act, 1944, so as to provide for the appointment of intermediaries and the giving of evidence through intermediaries in proceedings other than criminal proceedings; the oath and competency of intermediaries; and the giving of evidence through audiovisual link in proceedings other than criminal proceedings;
- the Criminal Procedure Act, 1977, so as to further regulate the granting and cancellation of bail; the giving of evidence by means of closed circuit television or similar electronic media; the giving of evidence by a witness with physical, psychological or mental disability; the appointment, oath and competency of intermediaries; and the right of a complainant in a domestic related offence to participate in parole proceedings;
- the Criminal Law Amendment Act, 1997, so as to further regulate sentences in respect of offences that have been committed against vulnerable persons; and
- the Superior Courts Act, 2013, so as to provide for the appointment of intermediaries and the giving of evidence through intermediaries in proceedings other than criminal proceedings; the oath and competency of intermediaries; and the giving of evidence through audiovisual link in proceedings other than criminal proceedings, and to provide for matters connected therewith.

PARLIAMENT of the Republic of South Africa enacts, as follows:—

Insertion of sections 51A, 51B and 51C in Act 32 of 1944

1. The following sections are hereby inserted after section 51 of the Magistrates' Courts Act, 1944:

“Evidence through intermediaries in proceedings other than criminal proceedings

51A. (1) A court may, on application by any party to proceedings in terms of Part II of this Act before the court, or of its own accord and subject to subsection (4), appoint a competent person as an intermediary in order to enable a witness— 5

- (a) under the biological or mental age of 18 years;
- (b) who suffers from a physical, psychological, mental or emotional condition; or
- (c) who is an older person as defined in section 1 of the Older Persons Act, 2006 (Act No. 13 of 2006), 10

to give his or her evidence through that intermediary, if it appears to that court that the proceedings would expose such a witness to undue psychological, mental or emotional stress, trauma or suffering if he or she testifies at such proceedings. 15

(2) (a) No examination, cross-examination or re-examination of any witness in respect of whom a court has appointed an intermediary, except examination by the court, may take place in any manner other than through that intermediary.

(b) The intermediary may, unless the court directs otherwise, convey the general purport of any question to the relevant witness. 20

(3) If a court appoints an intermediary in terms of subsection (1), the court may direct that the relevant witness gives his or her evidence at any place—

- (a) which is informally arranged to set that witness at ease; 25
- (b) which is so situated that any person whose presence may upset that witness, is outside the sight and hearing of that witness; and
- (c) which enables the court and any person whose presence is necessary at the relevant proceedings to see and hear, either directly or through the medium of any electronic or other devices, the intermediary, as well as the witness, during his or her testimony. 30

(4) (a) The Minister may, by notice in the *Gazette*, determine the persons or the category or class of persons who are competent to be appointed as intermediaries.

(b) An intermediary appearing at proceedings in terms of this section who is not in the full-time employment of the State must be paid such travelling and subsistence and other allowances in respect of the services rendered by him or her as prescribed by the rules made by the Rules Board for Courts of Law under the Rules Board for Courts of Law Act, 1985. 35

(5) (a) A court must provide reasons for refusing any application for the appointment of an intermediary, immediately upon refusal, which reasons must be entered into the record of the proceedings. 40

(b) A court may, on application by a party affected by the refusal contemplated in paragraph (a), and if it is satisfied that there is a material change in respect of any fact or circumstance that influenced that refusal, review its decision. 45

(6) An intermediary referred to in subsection (1) may be summoned to appear in court on a specified date and at a specified place and time to act as an intermediary.

(7) If, at the commencement of or at any stage before the completion of the proceedings concerned, an intermediary appointed by the court, is absent for any reason, becomes unable, in the opinion of the court, to act as an intermediary or dies, the court may, in the interests of justice and after due consideration of the arguments put forward by the parties— 50

- (a) postpone the proceedings in order to obtain the intermediary’s presence; 55
- (b) summons the intermediary to appear before the court to advance reasons for being absent;
- (c) direct that the appointment of the intermediary be revoked and appoint another intermediary; or 60

(d) direct that the appointment of the intermediary be revoked and that the proceedings continue in the absence of an intermediary.

(8) The court must immediately give reasons for any direction or order referred to in subsection (7)(c) or (d), which reasons must be entered into the record of the proceedings.

5

Oath and competency of intermediaries

51B. (1) Subject to subsection (3), any person who is competent to be appointed as an intermediary in terms of section 51A(4)(a) must, before commencing with his or her functions in terms of section 51A, take an oath or make an affirmation subscribed by him or her, in the form set out below, before the magistrate presiding over the proceedings:

10

‘I,, do hereby swear/truly affirm that, whenever I may be called upon to perform the functions of an intermediary, I shall truly and correctly, to the best of my knowledge and ability—

(a) perform my functions as an intermediary; and

15

(b) convey, properly and accurately, all questions put to witnesses and, where necessary, convey the general purport of any question to the witness, unless directed otherwise by the court’.

(2) (a) Subject to subsection (3), before a person is appointed to perform the functions of an intermediary in a magistrate’s court for any district or for any regional division, the magistrate presiding over the proceedings must enquire into the competence of the person to be appointed as an intermediary.

20

(b) The enquiry contemplated in paragraph (a) must include, but is not limited to, the person’s—

25

(i) fitness as a person to be an intermediary;

(ii) experience, which has a bearing on the role and functions of an intermediary;

(iii) qualifications;

(iv) knowledge, which has a bearing on the role and functions of an intermediary;

30

(v) language and communication proficiency; and

(vi) ability to interact with a witness under the biological or mental age of 18 years or a witness who suffers from a physical, psychological, mental or emotional condition, or a witness who is an older person as defined in section 1 of the Older Persons Act, 2006 (Act No. 13 of 2006).

35

(3) (a) The head of a court may, at his or her discretion and after holding an enquiry contemplated in subsection (2), issue a certificate in the form prescribed by the Minister by notice in the *Gazette*, to a person whom he or she has found to be competent to appear as an intermediary in a magistrate’s court for a district or for a regional division.

40

(b) Before the head of a court issues a certificate referred to in paragraph (a), he or she must cause the person who has been found competent to be appointed as an intermediary, to take the oath or make the affirmation referred to in subsection (1) and must endorse the certificate with a statement of the fact that it was taken or made before him or her and of the date on which it was so taken or made and append his or her signature thereto.

45

(c) A certificate contemplated in paragraph (a) may be accepted as proof of the—

50

(i) competency of a person to be appointed as an intermediary; and

(ii) fact that the person has taken the oath or made the affirmation contemplated in subsection (1),

for purposes of this section, in any subsequent proceedings in terms of this Act, before a magistrate’s court for a district or for a regional division and it is not necessary for the magistrate presiding over the proceedings in question to administer the oath or affirmation or to hold an enquiry into the competence of the person to be appointed as an intermediary.

55

(d) Paragraph (c) must not be construed as prohibiting a magistrate from holding an enquiry, at any stage of proceedings, regarding the competence of a person to act as an intermediary.

(e) For the purposes of this section, 'head of a court' means the most senior judicial officer of that court.

5

Evidence through audiovisual link in proceedings other than criminal proceedings

51C. (1) A court may, on application by any party to proceedings in terms of Part II of this Act before that court or of its own accord, order that a witness, irrespective of whether the witness is in or outside the Republic, if the witness consents thereto, may give evidence by means of audiovisual link.

10

(2) A court may make an order contemplated in subsection (1) only if—

(a) it appears to the court that to do so would—

15

(i) (aa) prevent unreasonable delay;

(bb) save costs;

(cc) be convenient; or

(dd) prevent the likelihood that any person might be prejudiced or harmed if he or she testifies or is present at such proceedings; and

20

(ii) otherwise be in the interests of justice;

(b) facilities thereof are readily available or obtainable at the court; and

(c) the audiovisual link that is used by the witness or at the court enables—

25

(i) persons at the courtroom to see, hear and interact with the witness giving evidence; and

(ii) the witness who gives evidence to see, hear and interact with the persons at the courtroom.

(3) The court may make the giving of evidence in terms of subsection (1) subject to such conditions as it may deem necessary in the interests of justice.

30

(4) The court must provide reasons for—

(a) allowing or refusing an application by any of the parties; or

(b) its order and any objection raised by the parties against the order, as contemplated in subsection (1).

35

(5) For purposes of this Act, a witness who gives evidence by means of audiovisual link is regarded as a witness who was subpoenaed to give evidence in the court in question.

(6) For purposes of this section 'audiovisual link' means facilities that enable both audio and visual communications between a witness and persons at a courtroom in real-time as they take place."

40

Amendment of section 59 of Act 51 of 1977, as substituted by section 3 of Act 26 of 1987, section 1 of Act 126 of 1992 and section 2 of Act 75 of 1995

2. Section 59 of the Criminal Procedure Act, 1977, is hereby amended by the substitution in subsection (1) for paragraph (a) of the following paragraph:

45

“(a) An accused who is in custody in respect of any offence, other than an offence—

(i) referred to in Part II or Part III of Schedule 2;

(ii) against a person in a domestic relationship, as defined in section 1 of the Domestic Violence Act, 1998 (Act No. 116 of 1998); or

50

(iii) referred to in—

(aa) section 17(1)(a) of the Domestic Violence Act, 1998;

(bb) section 18(1)(a) of the Protection from Harassment Act, 2011 (Act No. 17 of 2011); or

(cc) any law that criminalises a contravention of any prohibition, condition, obligation or order, which was issued by a court to protect the person against whom the offence in question was allegedly committed, from the accused,

55

may, before his or her first appearance in a lower court, be released on bail in respect of such offence by any police official of or above the rank of non-commissioned officer, in consultation with the police official charged with the investigation, if the accused deposits at the police station the sum of money determined by such police official.”. 5

Amendment of section 59A of Act 51 of 1977, as inserted by section 3 of Act 85 of 1997

3. Section 59A of the Criminal Procedure Act, 1977, is hereby amended—

(a) by the substitution for the heading of the following heading:

“**[Attorney-general] Director of Public Prosecutions may authorise release on bail**”; and 10

(b) by the substitution for subsections (1), (2), (3) and (4) of the following subsections respectively:

“(1) **[An attorney-general] A Director of Public Prosecutions having jurisdiction**, or a prosecutor authorised thereto in writing by the **[attorney-general] Director of Public Prosecutions** concerned, may, in respect of the offences referred to in Schedule 7 and in consultation with the police official charged with the investigation, authorise the release of an accused on bail: Provided that a person accused of any offence contemplated in section 59(1)(a)(ii) or (iii) may not be released on bail in accordance with the provisions of this section. 15 20

(2) For the purposes of exercising the functions contemplated in subsections (1) and (3) **[an attorney-general] the National Director of Public Prosecutions** may, after consultation with the Minister, issue directives. 25

(3) The effect of bail granted in terms of this section is that the person who is in custody shall be released from custody—

(a) upon payment of, or the furnishing of a guarantee to pay, the sum of money determined for his or her bail at his or her place of detention contemplated in section 50(1)(a); 30

(b) subject to reasonable conditions imposed by the **[attorney-general] Director of Public Prosecutions** or prosecutor concerned; or

(c) the payment of such sum of money or the furnishing of such guarantee to pay and the imposition of such conditions.

(4) An accused released in terms of subsection (3) shall appear on the first court day at the court and at the time determined by the **[attorney-general] Director of Public Prosecutions** or prosecutor concerned and the release shall endure until he or she appears before the court on the first court day.”. 35

Amendment of section 60 of Act 51 of 1977, as amended by section 2 of Act 56 of 1979, section 2 of Act 64 of 1982, section 3 of Act 75 of 1995, section 4 of Act 85 of 1997, section 5 of Act 34 of 1998, section 9 of Act 62 of 2000, section 4 of Act 55 of 2003 and section 9 of Act 66 of 2008 40

4. Section 60 of the Criminal Procedure Act, 1977, is hereby amended—

(a) by the substitution in subsection (2) for paragraph (d) of the following paragraph: 45

“(d) shall, where the prosecutor does not oppose bail in respect of matters referred to in subsection (11)(a) **[and]**, (b) and (c), require of the prosecutor to place on record the reasons for not opposing the bail application.”; 50

(b) by the substitution for subsection (2A) of the following subsection:

“(2A) The court must, before reaching a decision on the bail application, take into consideration—

(a) any pre-trial services report regarding the desirability of releasing an accused on bail, if such a report is available; and 55

(b) the view of any person against whom the offence in question was allegedly committed, regarding his or her safety.”; 55

- (c) by the substitution in subsection (4) for paragraph (a) of the following paragraph:
- “(a) Where there is the likelihood that the accused, if he or she were released on bail, will endanger the safety of the public, any person against whom the offence in question was allegedly committed, or any other particular person or will commit a Schedule 1 offence.”; 5
- (d) by the substitution for subsection (5) of the following subsection:
- “(5) In considering whether the grounds in subsection (4)(a) have been established, the court may, where applicable, take into account the following factors, namely— 10
- (a) the degree of violence towards others implicit in the charge against the accused; 10
- (b) any threat of violence which the accused may have made to a person against whom the offence in question was allegedly committed or any other person; 15
- (c) any resentment the accused is alleged to harbour against a person against whom the offence in question was allegedly committed or any other person; 15
- (d) any disposition to violence on the part of the accused, as is evident from his or her past conduct; 20
- (e) any disposition of the accused to commit— 20
- (i) offences referred to in Schedule 1; 25
- (ii) an offence against any person in a domestic relationship, as defined in section 1 of the Domestic Violence Act, 1998; or 25
- (iii) an offence referred to in— 25
- (aa) section 17(1)(a) of the Domestic Violence Act, 1998; 30
- (bb) section 18(1)(a) of the Protection from Harassment Act, 2011; or 30
- (cc) any law that criminalises a contravention of any prohibition, condition, obligation or order, which was issued by a court to protect the person against whom the offence in question was allegedly committed, from the accused, 35
- as is evident from his or her past conduct; 35
- (f) the prevalence of a particular type of offence; 35
- (g) any evidence that the accused previously committed an offence— 40
- (i) referred to in Schedule 1; 40
- (ii) against any person in a domestic relationship, as defined in section 1 of the Domestic Violence Act, 1998; or 40
- (iii) referred to in— 45
- (aa) section 17(1)(a) of the Domestic Violence Act, 1998; 45
- (bb) section 18(1)(a) of the Protection from Harassment Act, 2011; or 45
- (cc) any law that criminalises a contravention of any prohibition, condition, obligation or order, which was issued by a court to protect the person against whom the offence in question was allegedly committed, from the accused, 50
- while released on bail or placed under correctional supervision, day parole, parole or medical parole as contemplated in section 73 of the Correctional Services Act, 1998; or 50
- (h) any other factor which in the opinion of the court should be taken into account.”; 55
- (e) by the substitution for subsection (10) of the following subsection:
- “(10) Notwithstanding the fact that the prosecution does not oppose the granting of bail, the court has the duty, contemplated in subsection (9), to weigh up the personal interests of the accused against the interests of justice: Provided that the interests of justice should be interpreted to include, but not be limited to, the safety of any person against whom the offence in question has allegedly been committed.”; 60

- (f) by the substitution for subsection (11) of the following subsection:
 “(11) Notwithstanding any provision of this Act, where an accused is charged with an offence **[referred to]**—
- (a) **referred to** in Schedule 6, the court shall order that the accused be detained in custody until he or she is dealt with in accordance with the law, unless the accused, having been given a reasonable opportunity to do so, adduces evidence which satisfies the court that exceptional circumstances exist which in the interests of justice permit his or her release;
 - (b) **referred to** in Schedule 5, but not in Schedule 6, the court shall order that the accused be detained in custody until he or she is dealt with in accordance with the law, unless the accused, having been given a reasonable opportunity to do so, adduces evidence which satisfies the court that the interests of justice permit his or her release; or
 - (c) contemplated in section 59(1)(a)(ii) or (iii), the court shall order that the accused be detained in custody until he or she is dealt with in accordance with the law, unless the accused, having been given a reasonable opportunity to do so, adduces evidence which satisfies the court that the interests of justice permit his or her release.”;
- (g) by the substitution for subsection (11A) of the following subsection:
 “(11A) (a) If the **[attorney-general]** Director of Public Prosecutions having jurisdiction intends charging any person with an offence referred to in Schedule 5 or 6, the **[attorney-general]** Director of Public Prosecutions may, irrespective of what charge is noted on the charge sheet, at any time before such person pleads to the charge, issue a written confirmation to the effect that he or she intends to charge the accused with an offence referred to in Schedule 5 or 6.
- (b) The written confirmation shall be handed in at the court in question by the prosecutor as soon as possible after the issuing thereof and forms part of the record of that court.
 - (c) Whenever the question arises in a bail application or during bail proceedings whether any person is charged or is to be charged with an offence referred to in Schedule 5 or 6, a written confirmation issued by **[an attorney-general]** a Director of Public Prosecutions under paragraph (a) shall, upon its mere production at such application or proceedings, be *prima facie* proof of the charge to be brought against that person.”;
- (h) by the substitution in subsection (11B) for paragraph (a) of the following paragraph:
 “(a) In bail proceedings, the accused, or his or her legal adviser, is compelled to inform the court whether—
- (i) the accused has previously been convicted of any offence; **[and]**
 - (ii) there are any charges pending against him or her and whether he or she has been released on bail in respect of those charges;
 - (iii) an order contemplated in section 5 or 6 of the Domestic Violence Act, 1998, section 3 or 9 of the Protection from Harassment Act, 2011, or any similar order in terms of any other law, was issued by a court to protect the person against whom the offence in question was allegedly committed, from the accused, and whether such an order is still of force; and
 - (iv) the accused is, or was at the time of the alleged commission of the offence, a sentenced offender who has been placed under correctional supervision, day parole, parole or medical parole as contemplated in section 73 of the Correctional Services Act, 1998.”; and
- (i) by the substitution for subsection (12) of the following subsection:
 “(12) (a) The court may make the release of an accused on bail subject to conditions which, in the court’s opinion, are in the interests of justice: Provided that the interests of justice should be interpreted to include, but not be limited to, the safety of any person against whom the offence in question has allegedly been committed.

(b) If the court is satisfied that the interests of justice permit the release of an accused on bail as provided for in subsection (1), in respect of an offence that was allegedly committed by the accused against any person in a domestic relationship, as defined in section 1 of the Domestic Violence Act, 1998, with the accused, and a protection order as contemplated in that Act has not been issued against the accused, the court must, after holding an enquiry, issue a protection order referred to in section 6 of that Act against the accused, where after the provisions of that Act shall apply.”.

Substitution of section 68 of Act 51 of 1977, as substituted by section 10 of Act 75 of 1995 and section 6 of Act 85 of 1997

5. The following section is hereby substituted for section 68 of the Criminal Procedure Act, 1977:

“Cancellation of bail

68. (1) Any court before which a charge is pending in respect of which bail has been granted may, whether the accused has been released or not, upon information on oath that—

- (a) the accused is about to evade justice or is about to abscond in order to evade justice;
- (b) the accused has interfered or threatened or attempted to interfere with witnesses;
- (c) the accused has defeated or attempted to defeat the ends of justice;
- (cA) the accused has contravened any prohibition, condition, obligation or order imposed in terms of—
 - (i) section 7 of the Domestic Violence Act, 1998;
 - (ii) section 10(1) and (2) of the Protection from Harassment Act, 2011; or
 - (iii) an order in terms of any other law, that was issued by a court to protect the person against whom the offence in question was allegedly committed, from the accused;
- (d) the accused poses a threat to the safety of the public, a person against whom the offence in question was allegedly committed, or [of a] any other particular person;
- (e) the accused has not disclosed or has not correctly disclosed all his or her previous convictions in the bail proceedings or where his or her true list of previous convictions has come to light after his or her release on bail;
- (eA) the accused has not disclosed that—
 - (i) a protection order as contemplated in section 5 or 6 of the Domestic Violence Act, 1998;
 - (ii) a protection order as contemplated in section 3 or 9 of the Protection from Harassment Act, 2011; or
 - (iii) an order in terms of any other law, was issued by a court to protect the person against whom the offence in question was allegedly committed, from the accused and whether such an order is still of force;
- (eB) the accused has not disclosed or correctly disclosed that he or she is or was, at the time of the alleged commission of the offence, a sentenced offender who has been placed under correctional supervision, day parole, parole or medical parole as contemplated in section 73 of the Correctional Services Act, 1998;
- (f) further evidence has since become available or factors have arisen, including the fact that the accused has furnished false information in the bail proceedings, which might have affected the decision to grant bail; or
- (g) it is in the interests of justice to do so, issue a warrant for the arrest of the accused and make such order as it may deem proper, including an order that the bail be cancelled and that the

accused be committed to prison until the conclusion of the relevant criminal proceedings.

(2) Any magistrate may, in circumstances in which it is not practicable to obtain a warrant of arrest under subsection (1), upon the application of any peace officer and upon a written statement on oath by such officer that— 5

(a) he or she has reason to believe that—

(i) an accused who has been released on bail is about to evade justice or is about to abscond in order to evade justice;

(ii) the accused has interfered or threatened or attempted to interfere with witnesses; 10

(iii) the accused has defeated or attempted to defeat the ends of justice; or

(iv) the accused poses a threat to the safety of the public, any person against whom the offence in question was allegedly committed, or [of a] any other particular person; 15

(b) the accused has not disclosed or has not correctly disclosed all his or her previous convictions in the bail proceedings or where his or her true list of previous convictions has come to light after his or her release on bail;

(c) further evidence has since become available or factors have arisen, including the fact that the accused has furnished false information in the bail proceedings, which might have affected the decision to release the accused on bail; **[or]** 20

(d) the accused has contravened any prohibition, condition, obligation or order imposed in terms of— 25

(i) section 7 of the Domestic Violence Act, 1998;

(ii) section 10(1) and (2) of the Protection from Harassment Act, 2011; or

(iii) an order in terms of any other law, that was issued by a court to protect the person against whom the offence in question was allegedly committed, from the accused; 30

(e) the accused has not disclosed or correctly disclosed that he or she is or was at the time of the alleged commission of the offence, a sentenced offender who has been placed under correctional supervision, day parole, parole or medical parole as contemplated in section 73 of the Correctional Services Act, 1998; 35

(f) the accused has not disclosed that—

(i) a protection order as contemplated in section 5 or 6 of the Domestic Violence Act, 1998;

(ii) a protection order as contemplated in section 3 or 9 of the Protection from Harassment Act, 2011; or 40

(iii) an order in terms of any other law, was issued by a court to protect the person against whom the offence in question was allegedly committed, from the accused and whether such an order is still of force; or 45

~~[(d)]~~(g) it is in the interests of justice to do so, issue a warrant for the arrest of the accused, and may, if satisfied that the ends of justice may be defeated if the accused is not placed in custody, cancel the bail and commit the accused to prison, which committal shall remain of force until the conclusion of the relevant criminal proceedings unless the court before which the proceedings are pending sooner reinstates the bail.”. 50

Amendment of section 158 of Act 51 of 1977, as substituted by section 7 of Act 86 of 1996 and amended by section 68 of Act 32 of 2007

6. Section 158 of the Criminal Procedure Act, 1977, is hereby amended—
- (a) by the substitution in subsection (2) for paragraph (a) of the following paragraph:
 - “(a) A court may, subject to section 153, on its own initiative or on application by the public prosecutor, order that a witness, irrespective of whether the witness is in or outside the Republic, or an accused, if the witness or accused consents thereto, may give evidence by means of closed circuit television or similar electronic media.”; and
 - (b) by the addition after subsection (5) of the following subsection:
 - “(6) For purposes of this section, a witness who is outside the Republic and who gives evidence by means of closed circuit television or similar electronic media, is regarded as a witness who was subpoenaed to give evidence in the court in question.”.

Amendment of section 161 of Act 51 of 1977, as substituted by section 1 of Act 135 of 1991

7. Section 161 of the Criminal Procedure Act, 1977, is hereby amended by the substitution for subsection (2) of the following subsection:
- “(2) In this section the expression ‘*viva voce*’ shall[,—
- (a) in the case of a **[deaf and dumb]** witness lacking the sense of hearing or the ability to speak, be deemed to include gesture-language **[and,];** and
 - (b) in the case of a witness under the age of eighteen years or a witness who suffers from a physical, psychological, mental or emotional condition, which inhibits the ability of that witness to give his or her evidence *viva voce*, be deemed to include demonstrations, gestures or any other form of non-verbal expression.”.

Amendment of section 170A of Act 51 of 1977, as inserted by section 3 of Act 135 of 1991, substituted by section 1 of Act 17 of 2001 and amended by section 68 of Act 32 of 2007

8. Section 170A of the Criminal Procedure Act, 1977, is hereby amended—
- (a) by the substitution for subsection (1) of the following subsection:
 - “(1) Whenever criminal proceedings are pending before any court and it appears to such court that it would expose any witness—
 - (a) under the biological or mental age of eighteen years;
 - (b) who suffers from a physical, psychological, mental or emotional condition; or
 - (c) who is an older person as defined in section 1 of the Older Persons Act, 2006 (Act No. 13 of 2006),
 to undue psychological, mental or emotional stress, trauma or suffering if he or she testifies at such proceedings, the court may, subject to subsection (4), appoint a competent person as an intermediary in order to enable such witness to give his or her evidence through that intermediary.”;
 - (b) by the substitution in subsection (2) for paragraph (a) of the following paragraph:
 - “(a) No examination, cross-examination or re-examination of any witness in respect of whom a court has appointed an intermediary **[under subsection (1)],** except examination by the court, **[shall] may** take place in any manner other than through that intermediary.”;
 - (c) by the substitution for subsection (7) of the following subsection:
 - “(7) (a) The court **[shall] must** provide reasons for refusing any application or request by the public prosecutor or a witness referred to in subsection (1), for the appointment of an intermediary, **[in respect of a child below the age of 14 years,]** immediately upon refusal, **[and such] which** reasons **[shall] must** be entered into the record of the proceedings.

(b) A court may, on application by the public prosecutor and if it is satisfied that there is a material change in respect of any fact or circumstance that influenced the refusal contemplated in paragraph (a), review its decision.”; and

(d) by the addition after subsection (10) of the following subsections: 5

“(11) Subject to subsection (13), any person who is competent to be appointed as an intermediary in terms of subsection (4)(a) must, before commencing with his or her functions in terms of this section, take an oath or make an affirmation subscribed by him or her, in the form set out below before the judicial officer presiding over the proceedings: 10

‘I, do hereby swear/truly affirm that, whenever I may be called upon to perform the functions of an intermediary, I shall, truly and correctly to the best of my knowledge and ability—

- (a) perform my functions as an intermediary; and
- (b) convey properly and accurately all questions put to witnesses and, where necessary, convey the general purport of any question to the witness, unless directed otherwise by the court’.

(12) (a) Subject to subsection (13), before a person is appointed to perform the functions of an intermediary—

- (i) in a magistrate’s court for any district or for any regional division, the magistrate presiding over the proceedings; or
- (ii) in a Superior Court, the judicial officer presiding over the proceedings,

must enquire into the competence of the person to be appointed as an intermediary. 25

(b) The enquiry contemplated in paragraph (a) must include, but is not limited to, the person’s—

- (i) fitness as a person to be an intermediary;
- (ii) experience which has a bearing on the role and functions of an intermediary;
- (iii) qualifications;
- (iv) knowledge which has a bearing on the role and functions of an intermediary;
- (v) language and communication proficiency; and
- (vi) ability to interact with a witness under the biological or mental age of eighteen years or a witness who suffers from a physical, psychological, mental or emotional condition, or a witness who is an older person as defined in section 1 of the Older Persons Act, 2006.

(13) (a) The head of a court may, at his or her discretion and after holding an enquiry contemplated in subsection (12), issue a certificate in the form prescribed by the Minister by notice in the *Gazette*, to a person whom he or she has found to be competent to appear as an intermediary in the court concerned. 40

(b) Before the head of a court issues the certificate referred to in paragraph (a), he or she must cause the person who has been found competent to be appointed as an intermediary to take the oath or make the affirmation referred to in subsection (11) and must endorse the certificate with a statement of the fact that it was taken or made before him or her and of the date on which it was so taken or made and append his or her signature thereto. 45

(c) A certificate contemplated in paragraph (a) may be accepted as proof—

- (i) of the competency of a person to be appointed as an intermediary in the court concerned; and
- (ii) of the fact that the person has taken the oath or made the affirmation contemplated in subsection (11),

for purposes of this section, in any subsequent proceedings in terms of this Act, before the court concerned in respect of which a certificate contemplated in paragraph (a) was issued by the head of a court and it is not necessary for the magistrate or the judicial officer presiding over the 60

proceedings of the court in question to administer the oath or affirmation or to hold an enquiry into the competence of the person to be appointed as an intermediary.

(d) Paragraph (c) must not be construed as prohibiting a magistrate or a judicial officer presiding over proceedings from holding an enquiry, at any stage of the proceedings, regarding the competence of a person to act as an intermediary.

(e) For the purposes of this section, 'head of a court' means the most senior judicial officer of that court."

Amendment of section 299A of Act 51 of 1977, as inserted by section 6 of Act 55 of 2003 and substituted by section 68 of Act 32 of 2007 and section 48 of Act 7 of 2013

9. Section 299A of the Criminal Procedure Act, 1977, is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) When a court sentences a person to imprisonment for—

- (a) murder or any other offence which involves the [intentional] killing of a person;
- (b) rape or compelled rape as contemplated in [sections] section 3 or 4 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, respectively;
- (c) robbery, where the wielding of a fire-arm or any other dangerous weapon or the infliction of grievous bodily harm or the robbery of a motor vehicle is involved;
- (d) sexual assault, compelled sexual assault or compelled self-sexual assault as contemplated in section 5, 6 or 7 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, respectively;
- (e) kidnapping;
- (f) any conspiracy, incitement or attempt to commit any offence contemplated in paragraphs (a) to (e); [or]
- (g) offences as provided for in sections 4, 5 and 7 and involvement in these offences as provided for in section 10 of the Prevention and Combating of Trafficking in Persons Act, 2013; or
- (h) a period exceeding seven years for any offence, which that person committed against any person in a domestic relationship, as defined in section 1 of the Domestic Violence Act, 1998, with that person,

it shall inform—

- (i) the complainant; or
- (ii) in the case of murder or any other offence contemplated in paragraph (a), any immediate relative of the deceased,

if he or she is present that he or she has a right, subject to the directives issued by the Commissioner of Correctional Services under subsection (4), to make representations when placement of the prisoner on parole, on day parole or under correctional supervision is considered or to attend any relevant meeting of the parole board.”.

Amendment of section 316B of Act 51 of 1977, as inserted by section 11 of Act 107 of 1990

10. The following section is hereby substituted for section 316B of the Criminal Procedure Act, 1977:

“Appeal by [attorney-general] National Director against sentence of superior court

316B (1) Subject to subsection (2), the [attorney-general] National Director of Public Prosecutions may, in circumstances, where a grave failure of justice would otherwise result or the administration of justice may be brought into disrepute, appeal to the [Appellate Division] Supreme Court of Appeal against a sentence imposed upon an accused [in a criminal case] by a [superior court] High Court sitting as a court of appeal in terms of section 310A or as a trial court.

(2) The provisions of section 316 in respect of an application or appeal referred to in that section by an accused, shall apply *mutatis mutandis* with reference to a case in which the **[attorney-general]** National Director of Public Prosecutions appeals in terms of subsection (1) of this section.

(3) Upon an appeal in terms of subsection (1) or an application referred to in subsection (2), brought by the **[attorney-general]** National Director of Public Prosecutions, the court may order that the State pay the accused concerned the whole or any part of the costs to which the accused may have been put in opposing the appeal or application, taxed according to the scale in civil cases of that court.”.

Amendment of Schedule 1 to Act 51 of 1977, as amended by section 17 of Act 26 of 1987, section 8 of Act 122 of 1998, section 68 of Act 32 of 2007, section 48 of Act 7 of 2013 and section 11 of Act 13 of 2013

11. Schedule 1 to the Criminal Procedure Act, 1977, is hereby amended by the substitution for the offence “Assault, when a dangerous wound is inflicted” of the following offence:

- “Assault—
- (a) when a dangerous wound is inflicted;
 - (b) involving the infliction of grievous bodily harm; or
 - (c) where a person is threatened—
 - (i) with grievous bodily harm; or
 - (ii) with a fire-arm or dangerous weapon, as defined in section 1 of the Dangerous Weapons Act, 2013 (Act No. 15 of 2013).”.

Amendment of Part II of Schedule 2 to Act 51 of 1977, as substituted by section 68 of Act 32 of 2007 and amended by section 48 of Act 7 of 2013 and section 11 of Act 13 of 2013

12. Part II of Schedule 2 to the Criminal Procedure Act, 1977, is hereby amended by the substitution for the offence “Assault, when a dangerous wound is inflicted” of the following offence:

- “Assault—
- (a) when a dangerous wound is inflicted;
 - (b) involving the infliction of grievous bodily harm; or
 - (c) where a person is threatened—
 - (i) with grievous bodily harm; or
 - (ii) with a firearm or dangerous weapon, as defined in section 1 of the Dangerous Weapons Act, 2013 (Act No. 15 of 2013).”.

Amendment of Schedule 7 to Act 51 of 1977, as inserted by section 10 of Act 85 of 1997, amended by section 10 of Act 34 of 1998 and section 16 of Act 62 of 2000 and substituted by section 68 of Act 32 of 2007

13. Schedule 7 to the Criminal Procedure Act, 1977, is hereby amended by the substitution for the offence “Assault, involving the infliction of grievous bodily harm” of the following offence:

- “Assault—
- (a) when a dangerous wound is inflicted;
 - (b) involving the infliction of grievous bodily harm; or
 - (c) where a person is threatened—
 - (i) with grievous bodily harm; or
 - (ii) with a firearm or dangerous weapon, as defined in section 1 of the Dangerous Weapons Act, 2013 (Act No. 15 of 2013).”.

Amendment of Schedule 8 to Act 51 of 1977, as inserted by section 5 of Act 37 of 2013

14. Schedule 8 to the Criminal Procedure Act, 1977, is hereby amended by the substitution for the offence “Assault, when a dangerous wound is inflicted” of the following offence: 5

- “Assault—
- (a) when a dangerous wound is inflicted;
 - (b) involving the infliction of grievous bodily harm; or
 - (c) where a person is threatened—
 - (i) with grievous bodily harm; or
 - (ii) with a fire-arm or dangerous weapon, as defined in section 1 of the Dangerous Weapons Act, 2013 (Act No. 15 of 2013).” 10

Amendment of Part I of Schedule 2 to Act 105 of 1997, as amended by section 37 of Act 62 of 2000 and section 27 of Act 33 of 2004, section 68 of Act 32 of 2007, section 5 of Act 38 of 2007, section 22 of Act 66 of 2008, section 48 of Act 7 of 2013 and section 25 of Act 8 of 2017 15

15. Part I of Schedule 2 to the Criminal Law Amendment Act, 1997, is hereby amended—

- (a) by the substitution for the offence “Murder” of the following offence: 20
 - “Murder, when—
 - (a) it was planned or premeditated;
 - (b) the victim was—
 - (i) a law enforcement officer performing his or her functions as such, whether on duty or not; [or]
 - (ii) a person who has given or was likely to give material evidence with reference to any offence referred to in Schedule 1 to the Criminal Procedure Act, 1977 (Act No. 51 of 1977), at criminal proceedings in any court; or
 - (iii) a person under the age of eighteen years;
 - (c) the death of the victim was caused by the accused in committing or attempting to commit or after having committed or attempted to commit one of the following offences: 30
 - (i) rape or compelled rape as contemplated in section 3 or 4 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, respectively; or 35
 - (ii) robbery with aggravating circumstances as defined in section 1 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977);
 - (d) the offence was committed by a person, group of persons or syndicate acting in the execution or furtherance of a common purpose or conspiracy; 40
 - (e) the victim was killed in order to unlawfully remove any body part of the victim, or as a result of such unlawful removal of a body part of the victim; [or]
 - (f) the death of the victim resulted from, or is directly related to, any offence contemplated in section 1(a) to (e) of the Witchcraft Suppression Act, 1957 (Act No. 3.3 of 1957)[.]; or 45
 - (g) the death of the victim resulted from physical abuse or sexual abuse, as contemplated in paragraphs (a) and (b) of the definition of “domestic violence” in section 1 of the Domestic Violence Act, 1998 (Act No. 116 of 1998), by the accused who is or was in a domestic relationship, as defined in section 1 of that Act, with the victim.”; 50
- (b) by the insertion of the following offence: 55
 - “Attempted murder, in circumstances referred to in paragraphs (a) to (g) of the offence of ‘murder’.”

(c) by the substitution for paragraphs (a), (b) and (c) of the offence “Rape as contemplated in section 3 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007” of the following paragraphs:

“(a) when committed—

- | | |
|---|--|
| <ul style="list-style-type: none"> (i) in the circumstances where the accused is convicted of the offence of rape and evidence adduced at the trial of the accused proves that the victim was also raped by— <ul style="list-style-type: none"> (aa) any co-perpetrator or accomplice; or (bb) a person, who was compelled by any co-perpetrator or accomplice, to rape the victim, as contemplated in section 4 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, irrespective of whether or not the co-perpetrator or accomplice has been convicted of, or has been charged with, or is standing trial in respect of, the offence in question; (ii) in the circumstances where the accused is convicted of the offence of rape on the basis that the accused acted in the execution or furtherance of a common purpose or conspiracy and evidence adduced at the trial of the accused proves that the victim was raped by more than one person who acted in the execution or furtherance of a common purpose or conspiracy to rape the victim, irrespective of whether or not any other person who so acted in the execution or furtherance of a common purpose or conspiracy has been convicted of, or has been charged with, or is standing trial in respect of, the offence in question; (iii) by the accused who— <ul style="list-style-type: none"> (aa) has previously been convicted of the offence of rape or compelled rape; or (bb) has been convicted by the trial court of two or more offences of rape or the offences of rape and compelled rape, irrespective of— <ul style="list-style-type: none"> (aaa) whether the rape of which the accused has so been convicted constitutes a common law or statutory offence; (bbb) the date of the commission of any such offence of which the accused has so been convicted; (ccc) whether the accused has been sentenced in respect of any such offence of which the accused has so been convicted; (ddd) whether any such offence of which the accused has so been convicted was committed in respect of the same victim or any other victim; or (eee) whether any such offence of which the accused has so been convicted was committed as part of the same chain of events, on a single occasion or on different occasions; or (iv) by a person, knowing that he has the acquired immune deficiency syndrome or the human immunodeficiency virus; | <p>5</p> <p>10</p> <p>15</p> <p>20</p> <p>25</p> <p>30</p> <p>35</p> <p>40</p> <p>45</p> |
| <p>(b) where the victim—</p> <ul style="list-style-type: none"> (i) is a person under the age of [16] 18 years; (iA) is an older person as defined in section 1 of the Older Persons Act, 2006 (Act No. 13 of 2006); (ii) is a [physically disabled] person with a disability who, due to his or her [physical] disability, is rendered [particularly] vulnerable; [or] (iii) is a person who is mentally disabled as contemplated in section 1 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007; or (iv) is or was in a domestic relationship, as defined in section 1 of the Domestic Violence Act, 1998, with the accused; or | <p>50</p> <p>55</p> |

- (c) involving the infliction of grievous bodily harm.”; and
- (d) by the substitution for paragraphs (a), (b) and (c) of the offence “Compelled rape as contemplated in section 4 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007” of the following paragraphs:
 - “*(a)* when committed—
 - (i) in the circumstances where the accused is convicted of the offence of compelled rape and evidence adduced at the trial of the accused proves that the victim was also raped—
 - (aa)* as contemplated in section 3 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, by any co-perpetrator or accomplice; or
 - (bb)* by a person, who was compelled by any co-perpetrator or accomplice, to rape the victim, irrespective of whether or not the co-perpetrator or accomplice has been convicted of, or has been charged with, or is standing trial in respect of, the offence in question;
 - (ii) in the circumstances where the accused is convicted of the offence of compelled rape on the basis that the accused acted in the execution or furtherance of a common purpose or conspiracy and evidence adduced at the trial proves that the victim was raped by more than one person who acted in the execution or furtherance of a common purpose or conspiracy to rape the victim, irrespective of whether or not any other person who so acted in the execution or furtherance of a common purpose or conspiracy has been convicted of, or has been charged with, or is standing trial in respect of, the offence in question;
 - (iii) by the accused who—
 - (aa)* has previously been convicted of the offence of compelled rape or rape; or
 - (bb)* has been convicted by the trial court of two or more offences of compelled rape or the offences of compelled rape and rape, irrespective of—
 - (aaa)* whether the rape of which the accused has so been convicted constitutes a common law or statutory offence;
 - (bbb)* the date of the commission of any such offence of which the accused has so been convicted;
 - (ccc)* whether the accused has been sentenced in respect of any such offence of which the accused has so been convicted;
 - (ddd)* whether any such offence of which the accused has so been convicted was committed in respect of the same victim or any other victim; or
 - (eee)* whether any such offence of which the accused has so been convicted was committed as part of the same chain of events, on a single occasion or on different occasions; or
 - (iv) under circumstances where the accused knows that the person who is compelled to rape the victim has the acquired immune deficiency syndrome or the human immunodeficiency virus;
 - (b) where the victim—
 - (i) is a person under the age of **[16] 18** years;
 - (iA) is an older person as defined in section 1 of the Older Persons Act, 2006 (Act No. 13 of 2006);

- (ii) is a **[physically disabled]** person with a disability who, due to his or her **[physical]** disability, is rendered **[particularly]** vulnerable; **[or]**
 - (iii) is a person who is mentally disabled as contemplated in section 1 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007; **or**
 - (iv) is or was in a domestic relationship, as defined in section 1 of the Domestic Violence Act, 1998, with the accused; **or**
- (c) involving the infliction of grievous bodily harm.”

Amendment of Part II of Schedule 2 to Act 105 of 1997, as amended by section 36 of Act 12 of 2004, section 27 of Act 33 of 2004 and section 6 of Act 18 of 2015

16. Part II of Schedule 2 to the Criminal Law Amendment Act, 1997, is hereby amended by the addition of the following offences:

- “Attempted murder in circumstances other than those referred to in Part I.
- Rape or compelled rape as contemplated in section 3 or 4 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, respectively, in circumstances other than those referred to in Part I.
- Sexual exploitation of a child or sexual exploitation of a person who is mentally disabled as contemplated in section 17 or 23, or using a child for child pornography or using a person who is mentally disabled for pornographic purposes, as contemplated in section 20(1) or 26(1) of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, respectively.”

Amendment of Part III of Schedule 2 to Act 105 of 1997, as substituted by section 68 of Act 32 of 2007 and amended by section 48 of Act 7 of 2013

17. Part III of Schedule 2 to the Criminal Law Amendment Act, 1997, is hereby amended—

- (a) by the deletion of the following offences:
 - “**[Rape or compelled rape as contemplated in section 3 or 4 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, respectively in circumstances other than those referred to in Part I.**
 - Sexual exploitation of a child or sexual exploitation of a person who is mentally disabled as contemplated in section 17 or 23 or using a child for child pornography or using a person who is mentally disabled for pornographic purposes, as contemplated in section 20 (1) or 26 (1) of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, respectively.]”;**
- (b) by the insertion of the following offence:
 - “Assault with intent to do grievous bodily harm—
 - (a) on a child—
 - (i) under the age of 16 years; or
 - (ii) either 16 or 17 years of age and the age difference between the child and the person who has been convicted of the offence is more than four years; or
 - (b) where the victim is or was in a domestic relationship, as defined in section 1 of the Domestic Violence Act, 1998, with the accused.”

Insertion of sections 37A, 37B and 37C in Act 10 of 2013

18. The following sections are hereby inserted in the Superior Courts Act, 2013, after section 37:

“Evidence through intermediaries in proceedings other than criminal proceedings 5

37A. (1) A Superior Court may, on application by any party to proceedings, other than criminal proceedings before the court, or of its own accord and subject to subsection (4), appoint a competent person as an intermediary in order to enable a witness—

- (a) under the biological or mental age of 18 years; 10
- (b) who suffers from a physical, psychological, mental or emotional condition; or
- (c) who is an older person as defined in section 1 of the Older Persons Act, 2006 (Act No. 13 of 2006),

to give his or her evidence through that intermediary, if it appears to that court that the proceedings would expose such a witness to undue psychological, mental or emotional stress, trauma or suffering if he or she testifies at such proceedings. 15

(2) (a) No examination, cross-examination or re-examination of any witness in respect of whom a court has appointed an intermediary, except examination by the court, may take place in any manner other than through that intermediary. 20

(b) The intermediary may, unless the court directs otherwise, convey the general purport of any question to the relevant witness. 25

(3) If a court appoints an intermediary in terms of subsection (1), the court may direct that the relevant witness gives his or her evidence at any place—

- (a) which is informally arranged to set that witness at ease; 25
- (b) which is so situated that any person whose presence may upset that witness, is outside the sight and hearing of that witness; and 30
- (c) which enables the court and any person whose presence is necessary at the relevant proceedings to see and hear, either directly or through the medium of any electronic or other devices, that intermediary, as well as that witness, during his or her testimony. 35

(4) (a) The Minister may, by notice in the *Gazette*, determine the persons or the category or class of persons who are competent to be appointed as intermediaries. 35

(b) An intermediary appearing at proceedings in terms of this section who is not in the full-time employment of the State must be paid such travelling and subsistence and other allowances in respect of the services rendered by him or her as is prescribed by the rules made— 40

- (i) by the Rules Board for Courts of Law under the Rules Board for Courts of Law Act, 1985, in respect of the High Court; or
- (ii) in terms of section 29 of this Act, in respect of the Constitutional Court. 45

(5) (a) A court must provide reasons for refusing any application for the appointment of an intermediary, immediately upon refusal, which reasons must be entered into the record of the proceedings. 45

(b) A court may, on application by a party affected by the refusal contemplated in paragraph (a), and if it is satisfied that there is a material change in respect of any fact or circumstance that influenced that refusal, review its decision. 50

(6) An intermediary referred to in subsection (1) may be summoned to appear in court on a specified date and at a specified place and time to act as an intermediary. 55

(7) If, at the commencement of or at any stage before the completion of the proceedings concerned, an intermediary appointed by the court is for any reason absent, becomes unable to act as an intermediary, in the opinion

of the court, or dies, the court may, in the interests of justice and after due consideration of the arguments put forward by the parties—

- (a) postpone the proceedings in order to obtain the intermediary's presence;
- (b) summons the intermediary to appear before the court to advance reasons for being absent; 5
- (c) direct that the appointment of the intermediary be revoked and appoint another intermediary; or
- (d) direct that the appointment of the intermediary be revoked and that the proceedings continue in the absence of an intermediary. 10

(8) The court must immediately give reasons for any direction or order referred to in subsection (7)(c) or (d), which reasons must be entered into the record of the proceedings.

Oath and competency of intermediaries

37B. (1) Subject to subsection (3), any person who is competent to be appointed as an intermediary in terms of section 37A(4) of this Act must, before commencing with his or her functions in terms of section 37A, take an oath or make an affirmation subscribed by him or her, in the form set out below, before the judicial officer presiding over the proceedings: 15

‘I, do hereby swear/truly affirm that, whenever I may be called upon to perform the functions of an intermediary, I shall truly and correctly, to the best of my knowledge and ability—

- (a) perform my functions as an intermediary; and
- (b) convey properly and accurately all questions put to witnesses and, where necessary, convey the general purport of any question to the witness, unless directed otherwise by the court’. 20 25

(2) (a) Subject to subsection (3), before a person is appointed to perform the functions of an intermediary in a Superior Court, the judicial officer presiding over the proceedings must enquire into the competence of the person to be appointed as an intermediary. 30

(b) The enquiry contemplated in paragraph (a) must include, but is not limited to, the person's—

- (i) fitness as a person to be an intermediary;
- (ii) experience, which has a bearing on the role and functions of an intermediary; 35
- (iii) qualifications;
- (iv) knowledge, which has a bearing on the role and functions of an intermediary;
- (v) language and communication proficiency; and 40
- (vi) ability to interact with a witness under the biological or mental age of 18 years or a witness who suffers from a physical, psychological, mental or emotional condition, or a witness who is an older person as defined in section 1 of the Older Persons Act, 2006.

(3) (a) The head of a court may, at his or her discretion and after holding an enquiry contemplated in subsection (2), issue a certificate in the form prescribed by the Minister by notice in the *Gazette*, to a person whom he or she has found to be competent to appear as an intermediary in a Superior Court. 45

(b) Before the head of a court issues a certificate referred to in paragraph (a), he or she must cause the person who has been found competent to be appointed as an intermediary, to take the oath or make the affirmation referred to in subsection (1) and must endorse the certificate with a statement of the fact that it was taken or made before him or her and of the date on which it was so taken or made and append his or her signature thereto. 50 55

(c) A certificate contemplated in paragraph (a) may be accepted as proof—

- (i) of the competency of a person to be appointed as an intermediary; and

(ii) of the fact that the person has taken the oath or made the affirmation contemplated in subsection (1), for purposes of this section, in any subsequent proceedings in terms of this Act, before a Superior Court and it is not necessary for the presiding judicial officer presiding over the proceedings in question to administer the oath or affirmation or to hold an enquiry into the competence of the person to be appointed as an intermediary. 5

(d) Paragraph (c) must not be construed as prohibiting a judicial officer who presides over proceedings in a Superior Court from holding an enquiry, at any stage of proceedings, regarding the competence of a person to act as an intermediary. 10

Evidence through remote audiovisual link in proceedings other than criminal proceedings

37C. (1) A Superior Court may, on application by any party to proceedings before that court or of its own accord, order that a witness, irrespective of whether the witness is in or outside the Republic, if the witness consents thereto, give evidence by means of audiovisual link. 15

(2) A court may make an order contemplated in subsection (1) only if—

(a) it appears to the court that to do so would— 20

- (i) (aa) prevent unreasonable delay; 20
- (bb) save costs;
- (cc) be convenient; or
- (dd) prevent the likelihood that any person might be prejudiced or harmed if he or she testifies or is present at such proceedings; and 25

(ii) otherwise be in the interests of justice;

(b) facilities therefor are readily available or obtainable at the court; and 30

(c) the audiovisual facilities that are used by the witness or at the court enable—

- (i) persons at the courtroom to see, hear and interact with the witness giving evidence; and
- (ii) the witness who gives evidence to see, hear and interact with the persons at the courtroom. 35

(3) The court may make the giving of evidence in terms of subsection (1) subject to such conditions as it may deem necessary in the interests of justice. 35

(4) The court must provide reasons for—

- (a) allowing or refusing an application by any of the parties; or
- (b) its order and any objection raised by the parties against the order, as contemplated in subsection (1). 40

(5) For purposes of this Act, a witness who gives evidence by means of audiovisual link, is regarded as a witness who was subpoenaed to give evidence in the court in question.

(6) For purposes of this section ‘audiovisual link’ means facilities that enable both audio and visual communications between a witness and persons at a courtroom in real-time as they take place.”. 45

Short title and commencement

19. This Act is called the Criminal and Related Matters Amendment Act, 2021, and comes into operation on a date fixed by the President by proclamation in the *Gazette*. 50