OFFICE OF THE PRESIDENT

No. 1529.
4 October 1995

NO. 85 OF 1995: JUDICIAL MATTERS AMENDMENT ACT, 1995.

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

GENERAL EXPLANATORY NOTE:

<< >> Words between pointed brackets indicate insertions in existing enactments.

ACT

To make the Magistrates Act, 1993, applicable throughout the Republic; to validate certain transfers of and the performance of certain functions by certain magistrates; and to amend the said Act so as to make provision for a magistrate to be transferred to, and appointed to a post in, the public service; and to provide for matters in connection therewith.

(English text signed by the President.)
(Assented to 28 September 1995.)

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

Definitions

1. In this Act, unless the context otherwise indicates-

(i) "fixed date" means the date of the commencement of this Act; (iii)

(ii) "former state" means any area which forms part of the national territory of the Republic, and in respect of which, before the fixed date, the Magistrates Act, did not apply; (iv)

(iii) "magistrate" means any person appointed as a magistrate under a law of a former state, excluding any person occupying that office in terms of such law in an acting or temporary capacity and any assistant magistrate; (i)

(iv) "Magistrates Act" means the Magistrates Act, 1993 (Act No. 90 of 1993); (v) and

(v) "Magistrates Commission" means the Magistrates Commission established by section 2 of the Magistrates Act. (ii)

Application of Magistrates Act

2. (1) The Magistrates Act shall from the fixed date apply throughout the Republic:

Provided that section 13(1) of that Act shall not be so applicable to a magistrate to whom a different retirement age than 65 years was applicable on 1 October 1993, unless such magistrate consents to such application by notice in writing to the Director-General:

Justice within one month after the fixed date.

(2) Any magistrate shall from the fixed date be deemed to have been duly appointed in accordance with section 10 of the Magistrates Act, and the

provisions of that Act shall, subject to the provisions of this Act, be applicable in respect of such magistrate.

(3) For the purpose of the appointment of a magistrate in a former state after the fixed date, any reference in the Magistrates Act to a provision of the Magistrates' Courts Act, 1944 (Act No. 32 of 1944), shall be construed as a reference to the corresponding law in force in such former state at the time of such appointment.

Transitional provisions

3. (1) Any magistrate transferred before the fixed date to perform magisterial functions at any place in the Republic outside the former state where such magistrate was appointed as a magistrate, shall for all purposes be deemed to have been validly so transferred and to have performed such functions validly.

(2) The conditions of service contemplated in section I I of the Magistrates Act which were applicable to a magistrate immediately before the fixed date, shall continue to apply to such magistrate until amended by a determination under that section, made in order to establish uniformity of the terms and conditions of service of magistrates throughout the Republic.

(3) Notwithstanding the provisions of section 2(2), and of section 18(5)(c) of the Magistrates Act, any magistrate who, immediately before the fixed date, was a member of any pension fund other than the Government Service Pension Fund referred to in section 3 of the Government Service Pension Act, 1973 (Act No. 57 of 1973), shall-

(a) remain a member of such pension fund; and

(b) contribute to such pension fund, until otherwise provided for under section 16(1)(b) of the Magistrates Act.

(4)(a) The Director-General: Justice shall refer any investigation or procedure in terms of a law of a former state in respect of-

(i) alleged misconduct by; or

(ii) any complaint by or grievance of,

a magistrate, which has not been finalised by the fixed date, to the Magistrates Commission, which shall, subject to the Constitution, treat the matter as it deems appropriate.

(b) The Magistrates Commission may in respect of any matter referred to it in terms of paragraph (a)-

(i) exercise the powers and the jurisdiction conferred upon it by the Magistrates Act and the regulations made thereunder; and

(ii) have such regard to the existing record of any proceedings in such matter as it deems appropriate.

Amendment of section 13 of Act 90 of 1993

4. Section 13 of the Magistrates Act, 1993, is hereby amended-

(a) by the deletion in subsection (5) of "or" at the end of subparagraph (i) of paragraph (a);

(b) by the insertion after subparagraph (i) of paragraph (a) of subsection (5) of the following subparagraph:

"<<(iA) in order to effect a transfer and appointment as contemplated in section 15(1) of the Public Service Act, 1994 (Proclamation No. R.103 of 1994); or>>"; and

(c) by the addition of the following subsections:

"<<(6) For the purpose of a transfer and appointment contemplated in section 15(1) of the Public Service Act, 1994, a magistrate shall be deemed to be holding an appointment in an institution as contemplated in that section.

(7) The period of service as a magistrate of a magistrate transferred and appointed under section 15(1) of the Public Service Act, 1994, shall be reckoned as part of and continuous with his or her service in the public service for the purposes of leave, pension and any other condition of service.>> ".

Short title and commencement

5. This Act shall be called the Judicial Matters Amendment Act, 1995, and shall come into operation on a date fixed by the President by proclamation in the Gazette.