Government Gazette 15160

STATE PRESIDENT'S OFFICE

No. 1852.
6 October 1993

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

No. 132 of 1993: General Law Fourth Amendment Act, 1993

GENERAL EXPLANATORY NOTE:

Words in bold type indicate omissions from existing enactments.

Words in italics indicate insertions in existing enactments.

ACT

To repeal or to amend provisions which differentiate between men and women; and to provide for matters connected therewith.

(Afrikaans text signed by the Acting State President.)
(Assented to 24 September 1993.)

BE IT ENACTED by the State President and the Parliament of the Republic of South Africa, as follows:

Amendment of section 17 of Act 47 of 1937, as substituted by section 29 of Act 88 of 1984 and amended by section 1 of Act 75 of 1987

1. Section 17 of the Deeds Registries Act, 1937, is hereby amended by the substitution for subsection (6) of the following subsection:

"(6) A **woman married out of community of property, or** *person* married in terms of a marriage the legal consequences of which are governed by the law of any other country, shall be assisted by *his or* her **husband** *spouse* in executing any deed or other document required or permitted to be registered in any deeds registry or required or permitted to be produced in connection with any such deed or document, **unless the marital power has been excluded or** unless the assistance of the **husband** *spouse* is in terms of this Act or on other grounds deemed by the registrar to be unnecessary.".

Repeal of section 94 of Act 47 of 1937

2. Section 94 of the Deeds Registries Act, 1937, is hereby repealed.

Amendment of section 5 of Act 32 of 1944, as amended by section 6 of Act 40 of 1952 and section 1 of Act 91 of 1977

3. Section 5 of the Magistrates' Courts Act, 1944, is hereby amended by the substitution for subsection (2) of the following subsection:

"(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.".

Amendment of section 111 of Act 32 of 1944, as amended by section 10 of Act 63 of 1976

4. Section 111 of the Magistrates' Courts Act, 1944, is hereby amended by the deletion of subsection (4).

Amendment of section 3 of Act 44 of 1949, as amended by section 3 of Act 64 of 1961, section 1 of Act 95 of 1981 and section 1 of Act 70 of 1991

5. Section 3 of the South African Citizenship Act, 1949, is hereby amended by the substitution for subsection (2) of the following subsection:

"(2) No person shall be a South African citizen by virtue of subsection (1) if, at the time of his birth-

(a) **his father** *one of his parents*-

(i) was a person enjoying diplomatic immunity in the Union in terms of any law relating to diplomatic privileges, or was a career representative of the government of another country, or was a person employed in the embassy or legation of such a government or in the office of such a career representative, or was a member of the household or a servant of any such person; and

(ii) was not a South African citizen or had not been lawfully admitted to the Union for permanent residence therein,

and his **mother** *other parent* was not a South African citizen; or

(b) **his father** *one of his parents* was an enemy alien and

the birth occurred at a place under occupation by the enemy and his **mother** *other parent* was not a South African citizen; or

(c) **his father** *one of his parents* was an enemy alien without the right of permanent residence in the Union and was interned or detained in custody in the Union and his **mother** *other parent* was not a South African citizen; or

(d) **his father** *one of his parents* was a prohibited person or had no right of permanent residence in the Union under the law then in force in the Union and his **mother** *other parent* was not a South African citizen.".

Amendment of section 4 of Act 44 of 1949, as amended by section 4 of Act 64 of 1961

6. Section 4 of the South African Citizenship Act, 1949, is hereby amended by the substitution in paragraph (b) of subsection (1) for the words preceding subparagraph (i) of the following words:

"(b) section 5 or 6 a South African citizen, and whose father *or mother* was at the time of such person's birth-".

Amendment of section 5 of Act 44 of 1949, as amended by section 5 of Act 64 of 1961 and section 2 of Act 70 of 1991

7. Section 5 of the South African Citizenship Act, 1949, is hereby amended-

(a) by the substitution for subsection (1) of the following subsection:

"(1) A person born outside the Union prior to the date of commencement of this Act, other than a person referred to in subsection (2) of section 2, shall be a South African citizen if **his father** *one of his parents* was at the time of his birth a British subject under the law then in force in the Union, and he fulfils any one of the following conditions, that is to say, if either-

(a) **his father** *one of his parents* was born in the Union; or

(b) **his father** *one of his parents* was, at the time of the birth, a person to whom a naturalization certificate had been granted in the Union; or

(c) **his father** *one of his parents* had acquired British

nationality by reason of the annexation of the territories of the South African Republic and the Republic of the Orange Free State; or

(d) **his father** *one of his parents* was, at the time of the birth, in the service of the Government of the Union; or

(e) **his father** *one of his parents* was, at the time of the birth, domiciled in the Union or South West Africa.";

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

"(2) A person who, immediately prior to the date of commencement of this Act, was a Union national by virtue of the provisions of paragraph (d) of section 1 of the Union Nationality and Flags Act, 1927 (Act No. 40 of 1927), but whose father *or mother* was not, at the time of such person's birth, a British subject under the law then in force in the Union, shall be a South African citizen if he would have been such a citizen by virtue of the provisions of subsection (1) of this section if **his father** *one of his parents* had, at the time of the birth, been a British subject under the law then in force in the Union."; and

(c) by the substitution for paragraph (b) of subsection (6) of the following paragraph:

"(b) he would be such a citizen by virtue of the provisions of subsection (1) if he were the natural child of his adoptive father *or mother*.".

Amendment of section 10 of Act 44 of 1949, as amended by section 9 of Act 64 of 1961, section 20 of Act 69 of 1962, section 3 of Act 23 of 1964 and section 2 of Act 95 of 1981

8. Section 10 of the South African Citizenship Act, 1949, is hereby amended-

(a) by the substitution for subsection (2) of the following subsection:

"(2) Any period during which an applicant for naturalization has been employed outside the Union in the service of the Government of the Union (otherwise than as a person engaged locally) or on a ship or aircraft or a public means of transport registered or licensed in and operating from the Union, and any period during which a **woman** *person* who is an applicant for naturalization has been resident outside the Union with **her husband** *his or her spouse* while the latter was so employed, shall, for the purposes of subsection (1), be regarded as a period of residence or

ordinary residence in the Union, and for such purposes the Minister may, in his discretion, regard as a period of residence or ordinary residence in the Union any period during which an applicant for naturalization has been employed outside the Union on a ship, aircraft or public means of transport operating from the Union, and any period during which a **woman** *person* who is an applicant for naturalization has been resident outside the Union with **her husband** *his or her spouse* while the latter was so employed, notwithstanding the fact that such ship, aircraft or public means of transport was not registered or licensed in the Union.";

(b) by the substitution for subsection (4)bis of the following subsection:

"(4)bis The Minister may, notwithstanding the provisions of subsection (1), upon application in the prescribed form, grant a certificate of naturalization as a South African citizen to any person who is not already a South African citizen and-

(a) who, or *one of* whose **father or paternal grandfather or paternal great-grandfather** *parents, grandparents or great -grandparents*, was born prior to the first day of September, 1900, in any part of South Africa included in the Union, or was a burgher of the late South African Republic or of the late Orange Free State Republic at any time prior to that date; and

(b) who satisfies the Minister that he has been lawfully admitted to the Union for permanent residence therein."; and

(c) by the substitution for subsection (6) of the following subsection:

"(6) The Minister may, notwithstanding the provisions of subsection (1), upon application in the prescribed form, grant a certificate of naturalization as a South African citizen to a **woman** *person* who is an alien and who satisfies the Minister that-

(a) *he is the husband or widower of, or in the case of a woman*, she is the wife or widow of a South African citizen and *he or* she has been lawfully admitted to the Union for permanent residence therein and has resided in the Union for a period of not less than two years immediately preceding the date of *his or* her application and after the date of *his or* her marriage to such citizen; or

(b) *he is the husband of, or in the case of a woman*, she is the wife of a South African citizen, *he or* she has in terms of any law relating to immigration obtained permission to

enter the Union for permanent residence therein and *he or* she has resided with **her husband** *his or her spouse* in the Union or, while he *or she* was employed in the service of the Government of the Union, outside the Union for a period of not less than two years.".

Amendment of section 17 of Act 44 of 1949, as amended by section 12 of Act 64 of 1961 and section 4 of Act 23 of 1964

9. Section 17 of the South African Citizenship Act, 1949, is hereby amended-

(a) by the substitution for paragraph (c) of subsection (1) of the following paragraph:

"(c) in the case of **a** *the husband*, wife or minor child of a person referred to in paragraph (a) or (b), such *husband*, wife or child so resides with such person; or"; and

(b) by the substitution for paragraph (d) of subsection (1) of the following paragraph:

"(d) in the case of the *husband*, wife or minor child of a person who is a South African citizen by birth or descent, such *husband*, wife or child so resides with such person; or".

Repeal of sections 1 and 2 of Act 37 of 1953

10. Sections 1 and 2 of the Matrimonial Affairs Act, 1953, are hereby repealed.

Amendment of section 3 of Act 23 of 1957, as amended by section 5 of Act 139 of 1992

11. Section 3 of the Sexual Offences Act, 1957, is hereby amended by the substitution for paragraph (g) of the following paragraph:

"(g) any person whose **wife** *spouse* keeps or resides in or manages or assists in the management of a brothel unless **he** *such person* proves that he *or she* was ignorant thereof or that he *or she* lives apart from **her** *the said spouse* and did not receive the whole or any share of the moneys taken therein.".

Amendment of section 78 of the First Schedule to Act 44 of 1957

12. Section 78 of the First Schedule to the Defence Act, 1957, is hereby amended by the substitution for subsection (3) of the following

subsection:

"(3) Whenever it appears to a convening authority or a court martial that, in the interests of good order or public morals or the administration of justice or for reasons of security, a trial ought not to be conducted or continued in open court, the convening authority or the court martial may at any time either before the commencement or during the course of the trial, order that persons other than the accused, his counsel and the necessary court officials, or **females,** *that* juveniles or other classes of persons, shall not be permitted to be present at the trial.".

Amendment of section 5 of Act 63 of 1962, as amended by section 2 of Act 30 of 1972, section 11 of Act 70 of 1974, section 10 of Act 4 of 1976, section 2 of Act 115 of 1977, section 7 of Act 102 of 1983 and section 2 of Act 29 of 1987

13. Section 5 of the Sorghum Beer Act, 1962, is hereby amended-

(a) by the substitution for paragraph (b) of subsection (1C) of the following paragraph:

"(b) The provisions of subsections (2), (3) **(4)** and (8) shall apply mutatis mutandis in relation to any authority under paragraph (a) to sell and supply sorghum beer."; and

(b) by the deletion of subsection (4).

Amendment of section 16 of Act 63 of 1962, as amended by section 93 of Act 42 of 1964, section 19 of Act 98 of 1965, section 5 of Act 30 of 1972 and section 23 of Act 62 of 1973

14. Section 16 of the Sorghum Beer Act, 1962, is hereby amended by the deletion of paragraph (c) of subsection (1).

Amendment of section 15 of Act 47 of 1963, as substituted by section 6 of Act 112 of 1992

15. Section 15 of the Coloured Persons Education Act, 1963, is hereby amended by the deletion of paragraph (g) of subsection (1).

Repeal of section 17 of Act 66 of 1965

16. Section 17 of the Administration of Estates Act, 1965, is hereby repealed.

Substitution of section 85 of Act 66 of 1965

17. The following section is hereby substituted for section 85 of the Administration of Estates Act, 1965:

"Application of certain sections to tutors and curators

85. Sections **17,** 24, 26, 28 and 36, subsection (2) of section 42, sections 46 and 48, subsection (2) of section 49 and sections 52, 53, 54 and 56 shall mutatis mutandis apply with reference to tutors and curators: Provided that-

(a) any reference in any of the said sections to a will shall, for the purposes of its application under this section, include a reference to any written instrument by which the tutor or curator concerned has been nominated**; and**

(b) notwithstanding the provisions of section 17 as so applied, letters of curatorship may be granted to a married woman as curatrix of her husband or his property, without his consent.".

Amendment of section 16 of Act 16 of 1967, as substituted by section 6 of Act 14 of 1991

18. Section 16 of the Mining Titles Registration Act, 1967, is hereby amended by the substitution for subsection (5) of the following subsection:

"(5) A **woman married out of community of property, or** *person* married in terms of a marriage the legal consequences of which are governed by the law of any other country, shall be assisted by *his or* her **husband** *spouse* in executing any deed or other document required or permitted to be registered in the Mining Titles Office or required or permitted to be produced in connection with any such deed or document, **unless the marital power has been excluded or** unless the assistance of the **husband** *other spouse* is in terms of this Act or on other grounds deemed by the registrar to be unnecessary.".

Substitution of section 30 of Act 16 of 1967

19. The following section is hereby substituted for section 30 of the Mining Titles Registration Act, 1967:

"Endorsement of deed to reflect the change of status of a person

30. When rights are or a bond is registered in the name of-

(a) a **woman** *person* who since the registration was effected has been married either in or out of community of property or has been married and whose marriage is governed by the law of any

country other than the Republic **or South-West Africa**; or

(b) a **woman** *person* who at the date of the registration was married out of community of property or whose marriage was at that date governed by the law of any country other than the Republic **or South-West Africa** and who has since **been widowed or** *become a widow or widower or been* divorced,

the registrar may on written application by such **woman** *person* (assisted where necessary by **her husband** *such person's spouse*) and on production of the relevant deed or, where there are two or more interdependent deeds, of all such deeds, and of proof to his satisfaction of the change in **her** *such person's* status, record the change on such deed or deeds and in the registers.".

Amendment of section 38 of Act 16 of 1967

20. Section 38 of the Mining Titles Registration Act, 1967, is hereby amended by the substitution for subsection (4) of the following subsection:

"(4) The provisions of this section shall not apply if the mortgaged rights are to be transferred or ceded-

(a) to a person who would not himself be competent to mortgage them; or

(b) to two or more persons, unless they take transfer or cession of the rights in undivided shares and renounce in the written consent referred to in subsection (1) the exception de duobus vel pluribus reis debendi**; or**

(c) to a woman unless in the said written consent she renounces any special legal exceptions which she would otherwise be entitled to raise.".

Repeal of section 60 of Act 16 of 1967

21. Section 60 of the Mining Titles Registration Act, 1967, is hereby repealed.

Amendment of section 3 of Act 68 of 1969, as amended by section 10 of Act 139 of 1992

22. Section 3 of the Prescription Act, 1969, is hereby amended by the substitution for paragraph (a) of subsection (1) of the following paragraph:

"(a) the person against whom the prescription is running is a minor

or is insane, **or is a woman whose separate property is controlled by her husband by virtue of his marital power,** or is a person under curatorship, or is prevented by superior force from interrupting the running of prescription as contemplated in section 4; or".

Amendment of section 216 of Act 61 of 1973, as substituted by section 15 of Act 59 of 1978 and amended by section 15 of Act 83 of 1981, section 10 of Act 70 of 1984 and section 8 of Act 18 of 1990

23. Section 216 of the Companies Act, 1973, is hereby amended by the substitution for subsection (3) of the following subsection:

"(3) In respect of any of the matters referred to in section 211(1) the return referred to in subsection (2) shall contain a statement, signed by a director, a secretary who is a body corporate or an officer of the company, that-

(a) the consent, referred to in section 211, of the director or officer in respect of whom particulars are reflected in such return, has been obtained on a duly completed and signed prescribed form; and

(b) any person appointed as director or officer of the company, is not disqualified under section 218 or 219**; and**

(c) the written consent under section 218(1)(b) of the husband of any woman appointed as a director of the company has been obtained on the prescribed form."

Amendment of section 218 of Act 61 of 1973, as substituted by section 17 of Act 59 of 1978

24. Section 218 of the Companies Act, 1973, is hereby amended by the substitution for paragraph (b) of subsection (1) of the following paragraph:

"(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**;".

Amendment of section 14 of Act 78 of 1973

25. Section 14 of the Occupational Diseases in Mines and Works Act, 1973, is hereby amended-

(a) by the substitution for subsection (1) of the following subsection:

"**(1) Save as provided in subsection (2),** No **male**

person under the age of 16 years **and no female** shall perform risk work at a controlled mine or a controlled works, and no owner of such a mine or works or person in control of such a mine or works or any part thereof or contractor shall knowingly permit any **male** person under the age of 16 years **or any female** to perform risk work at such mine or works."; and

(b) by the deletion of subsection (2).

Amendment of section 1 of Act 80 of 1976

26. Section 1 of the Rent Control Act, 1976, is hereby amended by the substitution for paragraph (a) of the definition of "lessee" of the following paragraph:

"(a) a sublessee and the *widower or* widow or divorced or deserted **wife** *spouse* of a lessee or sublessee who was living with **him** *the lessee* at the time of **his** *the lessee's* death, divorce or desertion;".

Amendment of section 108 of Act 91 of 1981, as amended by section 15 of Act 42 of 1985

27. Section 108 of the Co-operatives Act, 1981, is hereby amended by the deletion of paragraph (c) of subsection (1).

Amendment of section 33 of Act 61 of 1984

28. Section 33 of the Small Claims Courts Act, 1984, is hereby amended by the deletion of subsection (4).

Substitution of section 11 of Act 88 of 1984

29. The following section is hereby substituted for section 11 of the Matrimonial Property Act, 1984:

"Abolition of marital power

11. (1) The common law rule in terms of which a husband obtains the marital power over the person and property of his wife is hereby repealed.

(2) Any marital power which a husband has over the person and property of his wife immediately prior to the date of coming into operation of this subsection, is hereby abolished.

(3) The provisions of Chapter III shall apply to every marriage in community of property irrespective of the date on which such marriage

was entered into.

(4) The abolition of the marital power by subsection (2) shall not affect the legal consequences of any act done or omission or fact existing before such abolition.".

Substitution of section 13 of Act 88 of 1984

30. The following section is hereby substituted for section 13 of the Matrimonial Property Act, 1984:

"Savings

13. The provisions of this Chapter do not affect the law relating to **the position of the husband as head of the family or the law relating to domicile and** guardianship.".

Repeal of section 26 of Act 88 of 1984, as substituted by section 5 of Act 3 of 1988

31. Section 26 of the Matrimonial Property Act, 1984, is hereby repealed.

Amendment of section 1 of Act 72 of 1986

32. Section 1 of the Identification Act, 1986, is hereby amended by the substitution in paragraph (d) of subsection (2) for the word "wife" of the word "spouse".

Amendment of section 4 of Act 72 of 1986

33. Section 4 of the Identification Act, 1986, is hereby amended by the substitution in paragraph (b) for the word "wife" of the word "spouse".

Amendment of section 4 of Act 73 of 1986

34. Section 4 of the Restoration of South African Citizenship Act, 1986, is hereby amended by the substitution for subsection (2) of the following subsection:

"(2) Any period during which a person applying for registration as a South African citizen has been employed outside the Republic in the service of the Government of the Republic or on a ship or aircraft or any public means of transport registered or licensed in and operating from the Republic, and any period during which **a woman** *the spouse of a person* so applying has been resident outside the Republic with *his or* her **husband** *spouse* while the latter was so employed, shall, for the purposes of subsection (1), be

regarded as a period of permanent residence in the Republic, and for such purposes the Director-General may, in his discretion, regard as a period of permanent residence in the Republic any period during which an applicant for registration as a South African citizen has been employed outside the Republic on a ship, aircraft or public means of transport operating from the Republic, and any period during which **a woman** *the spouse of a person* so applying has been resident outside the Republic with *his or* her **husband** spouse while the latter was so employed notwithstanding the fact that such ship, aircraft or public means of transport was not registered or licensed in the Republic.".

Amendment of section 5 of Act 73 of 1986

35. Section 5 of the Restoration of South African Citizenship Act, 1986, is hereby amended by the substitution for subsection (2) of the following subsection:

"(2) The Director-General may, notwithstanding the provisions of subsection (1), on written application grant a certificate of naturalization as a South African citizen to a **woman** person who in terms of an Act specified in the Schedule is a citizen of an independent state and who convinces the Director-General that *he or* she-

(a) is the **wife** *spouse or widower* or widow of a South African citizen; and

(b) is lawfully and permanently resident in the Republic and has been so resident for a continuous period of not less than two years immediately preceding **her** *the* application and after **her** *such person's* marriage to such citizen.".

Amendment of section 32 of Act 50 of 1991

36. Section 32 of the Minerals Act, 1991, is hereby amended by the deletion of subsection (2).

Amendment of section 28 of Act 96 of 1991

37. Section 28 of the Aliens Control Act, 1991, is hereby amended by the substitution in subsection (1) for the word "wife" of the word "spouse".

Amendment of section 31 of Act 96 of 1991

38. Section 31 of the Aliens Control Act, 1991, is hereby amended-

(a) by the substitution for paragraph (iv) of subsection (1) of the following paragraph:

"(iv) in the case of the **wife** *spouse* or dependant child of a person referred to in paragraph (i), (ii) or (iii), such **wife** *spouse* or child was so resident with such person;"; and

(b) by the substitution for paragraph (v) of subsection (1) of the following paragraph:

"(v) in the case of the **wife** *spouse* or dependant child of a person who is a South African citizen, such **wife** *spouse* or child was so resident with such person; or".

Legal proceedings not affected by repeal

39. Sections 111(4) of the Magistrates' Courts Act, 1944 (Act No. 32 of 1944), and 33(4) of the Small Claims Courts Act, 1984 (Act No. 61 of 1984), shall, notwithstanding their repeal by sections 4 and 28 respectively, remain in force in respect of legal proceedings instituted before such repeal.

Short title and commencement

40. (1) This Act shall be called the General Law Fourth Amendment Act, 1993, and shall come into operation on a date fixed by the State President by proclamation in the Gazette.

(2) Different dates may be fixed under subsection (1) in respect of different provisions of this Act.