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No. 37663

THE PRESIDENCY

No. 387 19 May 2014

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

Act No. 14 of 2014: Judicial Matters Amendment Act, 2014

MOPRESIDENTE

No. 387 19 May 2014

Go itsisiwi fano gore MoPresidente o saennwe Molao o o latelang o o Phasalediwanng kitso ya botlhe fano:—

No 14 wa 2014: Molao Tlhabololo wa Dintlha tsa Bosiamisi, 2014



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[] Words in bold type in square brackets indicate omissions from existing enactments.

 Words underlined with a solid line indicate insertions in existing enactments.

ACT

- the Attorneys Act, 1979, so as to further regulate the powers of the board of control of the Attorneys Fidelity Fund;
- the Child Justice Act, 2008, so as to further regulate the evaluation of the criminal capacity of a child; to provide for the delegation of certain powers and assignment of certain duties by the Cabinet member responsible for social development in respect of the accreditation of diversion programmes and diversion service providers; to repeal provisions that make the Criminal Law Amendment Act, 1997, applicable to persons under the age of 18 years; and to provide for matters connected therewith.

Amendment of section 78 of Act 53 of 1979, as substituted by section 28 of Act 87 of 1989

“(8) The court may on application made by the society of the province concerned or by the board of control, in consultation with the society of the province concerned, and on good cause shown, prohibit any practitioner from operating in any way on his or her trust account, and may appoint a *curator bonis* to control and administer such trust account, with such rights, duties and powers in relation thereto as the court may deem fit.”

(a) (i) the inquiry magistrate, for purposes of diversion; or

TEMOSO YA TLHALOSO YA KAKARETSO:

[] Mafoko a a gatisitsweng ka ditlhaka tse di kima tse di ka fa gare ga masakana a a sekwere a supa ditlogelo tse di mo ditaolong tse di leng teng.

_____ Mafoko a a thaletsweng ka mola o o kitlaneng a supa ditsenngwa mo ditaolong tse leng diteng.

(English text signed by the President)
(Assented to 16 May 2014)

MOLAO

Go tlhabolola—

- Molao wa Babueledi wa 1979, go laola go ya pele dithata tsa boto ya taolo ya Letlole la Boikanyego la Babueledi;
- Molao wa Bosiamisi wa Bana, wa 2008, go laola go ya pele tlhatlhobo ya bokgoni jwa bosenyi jwa ngwana; go tlamela thomeletso ya dithata tse di rileng le go neelana ka ditiro tse di rileng ke tokololo ya Kabinete e e rweleng maikarabelo a tlhabololo ya loago ka tumelelo ya manaane a phaposo le batlamedi ba tirelo ya phaposo; go phimola ditlamelo tse di dirang Molao wa Tlhabololo ya Molao wa Bosenyi wa 1997, o o dirang mo bathong ba ba kwa tlase ga dingwaga di le 18; e go tlamela ka dintlha tse di tshwaraganeng le ona.

KA JALO O DIRAGADIWA ke Palamente ya Rephaboliki ya Aforikaborwa, ka tsela e e latelang:—

Tlhabololo ya karolo 78 ya Molao 53 wa 1979, jaaka o fetolwa ka karolo 28 ya Molao wa 87 wa 1989

1. Karolo 78 ya lokwalo lwa Seaforikanse ya Molao wa Babueledi, wa 1979, e tlhabololwa ka phetolo ya karolwana (8) ya karolwana e e latelang: 5

“(8) Die hof kan op aansoek van die orde van die betrokke provinsie of deur die beheerraad, in oorleg met die orde van die betrokke provinsie, indien goeie redes aangevoer word, ’n praktisyn verbied om op enige wyse op sy of haar trustrekening te werk, en kan ’n *curator bonis* aanstel om daardie trustrekening te beheer en te administreer, met die regte, pligte en bevoegdhede met betrekking daartoe wat die hof goedvind.”. 10

Phetolo ya kgaolo 11 ya Molao wa 75 wa 2008

2. Kgaolo 11 ya Molao wa Bosiamisi wa Ngwana, 2008, ya fetolwa—

(a) ka go kwala boemong jwa kgaolotlaleletso (2) le (3) ka dikgaolotlaleletso tse di latelang, ka go farologana: 15

“(2) Fa go diriwa tshwetso tebang le kitso ya bosenyi ya ngwana o o amegang—

(a) (i) magiseterata yo o dirang patlisiso tebang le mabaka a go faposa; kgotsa 20

- [(b)] (ii) if the matter has not been diverted, the child justice court, for purposes of plea and trial, must consider the assessment report of the probation officer referred to in section 40 and all evidence placed before the inquiry magistrate or child justice court prior to diversion or conviction, as the case may be, which evidence may include a report of an evaluation referred to in subsection (3); and
- (b) the inquiry magistrate or the child justice court must consider the cognitive, moral, emotional, psychological and social development of the child.
- (3) An inquiry magistrate or child justice court may, on own accord, or on the request of the prosecutor or the child's legal representative, order an evaluation of the criminal capacity of the child referred to in subsection (1), in the prescribed manner, by a suitably qualified person[, **which must include an assessment of the cognitive, moral, emotional, psychological and social development of the child**]."; and
- (b) by the insertion after subsection (4) of the following subsection:
“(4A) The provisions of section 77(2), (3) and (4) of the Criminal Procedure Act apply with the changes required by the context to a report referred to in subsection (4).”.

Amendment of section 56 of Act 75 of 2008

3. Section 56 of the Child Justice Act, 2008, is hereby amended by the addition of the following subsection:

- “(4) (a) The Cabinet member responsible for social development may delegate any power or assign any duty conferred on or imposed upon him or her by this section to any member of the Executive Council of a province responsible for welfare services, except the powers and duties referred to in subsection (2)(a).
- (b) A delegation or an assignment in terms of paragraph (a)—
- (i) is subject to any limitation, condition and direction that the Cabinet member responsible for social development may impose;
- (ii) must be in writing; and
- (iii) does not divest the Cabinet member responsible for social development of the responsibility concerning the exercise of the power or the performance of the duty.
- (c) The Cabinet member responsible for social development may—
- (i) confirm, vary or revoke any decision taken in consequence of a delegation or assignment in terms of this section, subject to any rights that may have accrued to a person as a result of the decision; and
- (ii) at any time withdraw a delegation or assignment.”.

Amendment of section 77 of Act 75 of 2008

4. Section 77 of the Child Justice Act, 2008, is hereby amended—

- (a) by the deletion of subsection (2);
- (b) by the substitution for subsection (3) of the following subsection:
“(3) A child who is 14 years or older at the time of being sentenced for the offence [, and in respect of whom subsection (2) does not apply,] may only be sentenced to imprisonment, if the child is convicted of an offence referred to in—
- (a) Schedule 3;
- (b) Schedule 2, if substantial and compelling reasons exist for imposing a sentence of imprisonment;
- (c) Schedule 1, if the child has a record of relevant previous convictions and substantial and compelling reasons exist for imposing a sentence of imprisonment.”;

[(b)] (ii) fa kgetsi e se e faposiwe, kgotlatshekelo ya bosiamisi ya bana, ya mabaka a boikuelo le tsheko, e tshwanetse go ela tlhoko repoto ya tshekatsheko ya modirediloago go ya ka tlhaloso ya kgaolo 40 le bopaki jotle jo bo tthagisitsweng fa pele ga magiseterata wa dipatlisiso kgotsa kgotlatshekelo ya bosiamisi ya bana pele ga tsheko ya go faposiwa kgotsa kotlhao, le fa e le ka mokgwa ofe, bopaki joo bo akaretsa repoto ya tlhatlhobo e e tlhalositsweng mo (3); le

(b) magiseterata wa dipatlisiso kgotsa kgotlatshekelo ya bosiamisi ya bana e tshwanetse go ela tlhoko kitso, maitshwaro, seemo sa maikutlo, tlhaloganyo le maemo a tlhabololo ya katlatleloloago ya ngwana.

(3) magiseterata mongwe le mongwe wa dipatlisiso kgotsa kgotlatshekelo ngwe le ngwe ya bosiamisi ya bana ka boyona, kgotsa go ya ka kopo ya motšhutšhushi kgotsa mmueledi wa molao wa ngwana, e ka dira taelo ya tshekatsheko ya kitso ya bosenyi tebang le ngwana o o tlhalositsweng mo kgaolotlaleletso (1), ka mokgwa o o tlhalositsweng, ke motho wa maitemogelo a a maleba, e e tshwanetseng go akaretsa maitshwaro, seemo sa maikutlo, tlhaloganyo le maemo a tlhabololo a katlatleloloago ya ngwana.”; le

(b) ka go kwala morago ga kgaolotlaleletso (4) kgaolotlaleletso e e latelang: “(4A) Ditaelo tsa kgaolo 77(2), (3) le (4) wa *Criminal Procedure Act* o tla dirisiwa le diphetogo tse di botlhokwa tsa bokao jwa repoto e e tlhalositsweng mo kgaolotlaleletso (4).”.

Phetolo ya kgaolo 56 ya Molao 75 wa 2008

3. Kgaolo 56 ya Molao wa Bosiamisi wa Ngwana, 2008, e fetolwa ka go tlaleletsa ka kgaolotlaleletso e e latelang:

“(4) (a) Leloko la Kabinete le le rweleng maikarabelo a tlhabololo ya katlatleloloago le ka laela thata ngwe le ngwe ya lona kgotsa tiro ngwe le ngwe ya lona kgotsa a na leng matla a go e diragatsa go ya ka kgaolo eno go leloko lengwe le lengwe la Khansela ya Khuduthamaga ya porofense le le rweleng maikarabelo a ditirelo tsa katlatleloloago, ntle le thata le ditiro tse di tlhalositsweng mo kgaolotlaleletso (2)(a).

(b) Taelo kgotsa tiro go ya ka mabaka a temana (a)—

- (i) go ya ka tekanyetso, lebaka le taelo ngwe le ngwe e e ka tlhomamisiwang ke leloko la Kabinete le le rweleng maikarabelo a tlhabololo ya katlatleloloago;
- (ii) e tshwanetse go kwadiwa fa fatshe; mme
- (iii) ga e amoge leloko la Khabinete le le rweleng maikarabelo a tlhabololo ya katlatleloloago maikarabelo a go diragatsa thata kgotsa go dira tiro ya lona.

(c) Leloko la Kabinete le le rweleng maikarabelo a tlhabololo ya katlatleloloago le ka—

- (i) atlanegisa, fetola kgotsa fedisa tshwetso ngwe le ngwe e e tseilweng ka ntlha ya taelo kgotsa tiro go ya ka mabaka a kgaolo eno, ka ntlha ya tshwanelo ngwe le ngwe e e bonweng ke motho ka ntlha ya tshwetso; le
- (ii) gogela morago taelo kgotsa tiro nako ngwe le ngwe.”.

Phetolo ya kgaolo 77 ya Molao 75 wa 2008

4. Kgaolo 77 ya Molao wa Bosiamisi wa Ngwana, 2008, ya fetolwa—

(a) ka go tlosa kgaolotlaleletso (2);

(b) ka go kwala boemong jwa kgaolotlaleletso (3) ya kgaolotlaleletso e e latelang:

“(3) Ngwana wa bogolo jwa dingwaga di le 14 kgotsa go feta ka nako fa a atlholelwa tatofatso [mme a sa amiwe ke kgaolotlaleletso (2),] o tshwanetse go atlholwa ka katlholo ya go romelwa kgolegelong fela, fa ngwana yoo a bonwe molato ka tatofatso e e tlhalositsweng mo—

(a) Sekhejule 3;

(b) Sekhejule 2, fa go nale mabaka a botlhokwa le a gapeletsang go ntshiwa ga katlholo ya kgolegelo;

(c) Sekhejule 1, fa ngwana a nale rekoto ya ditatofatso tse di maleba e bile go nale mabaka a botlhokwa le a a gapeletsang go ntshiwa ga katlholo ya kgolegelo.”;

- (c) by the substitution for subsection (4) of the following subsection:
 “(4) A child referred to in subsection (3) may be sentenced to a sentence of imprisonment—
 (a) for a period not exceeding 25 years; or
 (b) envisaged in section 276(1)(i) of the Criminal Procedure Act.”; and 5
- (d) by the substitution for subsection (5) of the following subsection:
 “(5) A child justice court imposing a sentence of imprisonment must **[antedate the term of imprisonment by]** take into account the number of days that the child has spent in prison or a child and youth care centre prior to the sentence being imposed.”. 10

Amendment of section 78 of Act 75 of 2008

5. Section 78 of the Child Justice Act, 2008, is hereby amended by the substitution for subsection (1) of the following subsection:

- “(1) **[Subject to section 77(2), the]** The provisions of section 297 of the Criminal Procedure Act apply in relation to the postponement or suspension of passing of sentence by a child justice court in terms of this Act.”. 15

Amendment of section 97 of Act 75 of 2008

6. Section 97 of the Child Justice Act, 2008, is hereby amended by the substitution for subsection (3) of the following subsection:

- “(3) (a) The Cabinet member responsible for the administration of justice must by notice in the *Gazette*— 20
- [(a)]** (i) determine the persons or the category or class of persons who are competent to conduct the evaluation of the criminal capacity of a child referred to in section 11(3); and
- [(b)]** (ii) in consultation with the Cabinet member responsible for finance, determine the allowances and remuneration of those persons. 25
- (b) Different categories or classes of persons may be determined for the purposes of the different aspects of development of a child referred to in section 11(2)(b).
- (c) Different allowances and tariffs of remuneration may be determined for the persons referred to in paragraph (a), according to their calling, occupation and stations in life.”. 30

Short title and commencement

7. (1) This Act is called the Judicial Matters Amendment Act, 2014.
- (2) Sections 2, 3 and 6 come into operation on a date fixed by the President by proclamation in the *Gazette*. 35

- (c) Ka go kwala boemong jwa kgaotlaleletso (4) kgaotlaleletso e e latelang:
 “(4) Ngwana yo o tlhalositsweng mo kgaotlaleletso (3) a ka
 atlholelwa katlholo ya kgolegelo—
 (a) ya paka e e sa feteng dingwaga di le 25; kgotsa
 (b) katlholo go ya ka kgaolo 276(1)(i) ya *Criminal Procedure Act*.”; le 5
- (d) ka go kwala boemong jwa kgaotlaleletso (5) ya kgaotlaleletso e e latelang:
 “(5) Kgotlatshekelo ya bosiamisi jwa bana e e ntshang kotlholo ya
 kgolegelo e tshwanetse go [akaretse paka ya kgolegelo ka go] ela
 tlhoko palo ya matsatsi ao ngwana a wa dutseng mo kgolegelong kgotsa
 legae la bana le legae la tlhokomelo ya baswa pele go ntshiwa katlholo.”. 10

Phetolo ya kgaolo 78 ya Molao 75 wa 2008

5. Kgaolo 78 ya Molao wa Bosiamisi wa Ngwana, 2008, e fetolwa ka go kwala boemong jwa kgaotlaleletso (1) ya kgaotlaleletso e e latelang:

- “(1) [Go tsamaelana le kgaolo 77(2), di] Ditaelo tsa kgaolo 297 ya *Criminal Procedure Act* di dirisiwa mabapi le go gogelwa morago kgotsa go 15
 kgaphelwathoko ga go ntshiwa ga katlholo ke kgotlatshekelo ya bosiamisi jwa bana go ya ka Molao ono.”.

Phetolo ya kgaolo 97 ya Molao 75 wa 2008

6. Kgaolo 97 ya ya Molao wa Bosiamisi wa Ngwana, 2008, ka go kwala boemong jwa kgaotlaleletso (3) kgaotlaleletso e e latelang: 20

- “(3) (a) Leloko la Kabinete le le rweleng maikarabelo a taolo ya bosiamisi le tshwanetse go dira kitsiso mo Lokwalodikgang la Puso go—
 [(a)] (i) tlhomamisa batho kgotsa magato kgotsa ditlhopa tsa batho ba ba na leng bokgoni jwa go tlathloba kitso ya ngwana ka ga bosenyi go ya ka tlhaloso ya 11(3); le 25
 [(b)] (ii) ka dipuisano le leloko la Kabinete le le rweleng maikarabelo a matlole, go tlhomamisa diallawense le mepusto ya batho bao.
 (b) Magato a a farologaneng kgotsa ditlhopa tsa batho di ka tlhomamisiwa tebang le dintlha tse di farologaneng tsa tlhabololo ya ngwana yo o tlhalositsweng mo kgaolo 11(2)(b). 30
 (c) Diallawense tse di farologaneng le ditekanyetso tsa mepusto di ka tlhomamisiwa tebang le batho ba ba tlhalositsweng mo temana (a), go tsamaelana le go bidiwa ga bona, tiro le maemo a botshelo.”.

Setlhogo se se khutshwane le tshimologo

7. (1) Molao o o bidiwa Molao Tlhabololo wa Dintlha tsa Bosiamisi, 2014. 35
 (2) Dikarolo 2, 3 le 6 di tsena mo tirisong ka letlha le le tlhomamisitsweng ke Moporesidente ka kitsiso mo Kaseteng.

