

Act No. 72, 1985

IMMORALITY AND PROHIBITION OF MIXED MARRIAGES  
AMENDMENT ACT, 1985

## GENERAL EXPLANATORY NOTE:

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

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

## ACT

To amend the provisions of the Immorality Act, 1957, and the Criminal Procedure Act, 1977, in so far as they relate to unlawful carnal intercourse between white persons and coloured persons; to repeal the Prohibition of Mixed Marriages Act, 1949; and to provide for matters connected therewith.

*(English text signed by the State President.)*  
*(Assented to 12 June 1985.)*

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

Amendment of section 1 of Act 23 of 1957.

1. Section 1 of the Immorality Act, 1957, is hereby amended—
- (a) by the deletion of the definition of "coloured person"; 5
  - and
  - (b) by the deletion of the definition of "white person".

Repeal of section 16 of Act 23 of 1957.

2. Section 16 of the Immorality Act, 1957, is hereby repealed.

Amendment of section 21 of Act 23 of 1957, as amended by section 3 of Act 68 of 1967.

3. Section 21 of the Immorality Act, 1957, is hereby amended by the deletion of subsection (2). 10

Amendment of section 22 of Act 23 of 1957, as amended by section 4 of Act 68 of 1967 and section 4 of Act 57 of 1969.

4. Section 22 of the Immorality Act, 1957, is hereby amended—
- (a) by the substitution for paragraph (a) of the following paragraph:  
“(a) in the case of an offence referred to in section 2 or 15 20 (1) (a), to imprisonment for a period not exceeding three years with or without a fine not exceeding six hundred rand in addition to such imprisonment **[, or where it is proved that the person convicted kept a brothel and that unlawful carnal intercourse took place in such brothel to his knowledge between a white female and a coloured male or between a coloured female and a white male, for a period not exceeding seven years with or without a fine not exceeding one thousand rand in addition to such imprisonment];**”;
  - (b) by the substitution for paragraph (c) of the following paragraph:  
“(c) in the case of an offence referred to in section 10, to imprisonment for a period not exceeding five 30 years **[, or, where it is proved that the person con-**

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victed procured or attempted to procure any white female for the purpose of having unlawful carnal intercourse with a coloured male, or any coloured female for the purpose of having unlawful carnal intercourse with a white male, for a period not exceeding seven years];” and

(c) by the substitution for paragraph (e) of the following paragraph:

“(e) in the case of an offence referred to in section 12 (1) or 13 (1) [or 16], to imprisonment for a period not exceeding seven years;”.

Amendment of section 195 of Act 51 of 1977.

5. Section 195 of the Criminal Procedure Act, 1977, is hereby amended by the substitution in subsection (1) for the words following upon paragraph (i) of the following words:

“and shall be competent but not compellable to give evidence for the prosecution in criminal proceedings where the accused is charged with any offence against the separate property of the wife or of the husband of the accused, or with any offence under [section 16 of the said Immorality Act, 1957, or], in the case of the territory, section 1 or 2 of the said Immorality Proclamation, 1934.”.

Amendment of section 261 of Act 51 of 1977.

6. Section 261 of the Criminal Procedure Act, 1977, is hereby amended—

- (a) by the deletion, in subsection (1), of paragraphs (g) and (h);
- (b) by the deletion, in subsection (2), of paragraphs (d) and (e); and
- (c) by the deletion of subsection (3).

Repeal of Act 55 of 1949.

7. (1) The Prohibition of Mixed Marriages Act, 1949, is hereby repealed.

(2) Any of the parties to a marriage which, but for the provisions of the Prohibition of Mixed Marriages Act, 1949, would have been a valid marriage in the Republic, may with the consent of the other party or, if the other party is deceased, without such consent, apply to the Director-General: Home Affairs for a written direction contemplated in subsection (4).

(3) The Director-General: Home Affairs may, for the purposes of the consideration of an application referred to in subsection (2), require the applicant to furnish the said Director-General with such information or documents as he may deem necessary.

(4) If the Director-General: Home Affairs, after consideration of an application referred to in subsection (2) and of information, if any, furnished to him in terms of subsection (3) or contained in any document so furnished, as well as of any other information, if any, already at his disposal, is satisfied that—

- (a) the marriage in question would, but for the provisions of the Prohibition of Mixed Marriages Act, 1949, have been a valid marriage in the Republic;
- (b) the said marriage has not on a ground other than the provisions of the Prohibition of Mixed Marriages Act, 1949, been dissolved or declared invalid by a competent court; and
- (c) neither of the parties to the said marriage has after the contraction thereof and during the life of the other party lawfully married another person,

he shall direct in writing that the marriage in question shall for all purposes be a valid marriage in the Republic, and the marriage in question shall thereupon be deemed to have been such a valid marriage with effect from the date upon which it was contracted.

Short title.

8. This Act shall be called the Immorality and Prohibition of Mixed Marriages Amendment Act, 1985.