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No. 41389

THE PRESIDENCY

No. 33 18 January 2018

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

Act No. 16 of 2017: Legal Practice Amendment Act, 2017

OFISI KAMONGAMELI

No. 33 18 January 2018

Esi sisaziso sokuba uMongameli uwamkele lo mthetho ulandelayo nonikezelwa kuluntu jikelele kolu xwebhu:—

Ino 16 ka 2017: nguMthetho Wokwenz' Utshintsho Kumsebenzi Wobugqwetha ka 2017

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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 17 January 2018)

ACT

To amend the Legal Practice Act, 2014, so as to further regulate the establishment of the South African Legal Practice Council; to further regulate the prescription of the areas of jurisdiction of the Provincial Councils; to provide that only practising legal practitioners may perform certain acts or render certain services; to further regulate the composition of the Board; to further regulate the duties of banks in respect of trust accounts; to further regulate the duration of the National Forum on the Legal Profession; to further provide for the functions of the National Forum on the Legal Profession; to further provide for the dissolution date of the law societies; to further provide for the commencement of Chapter 2; and to provide for matters connected therewith.

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

Substitution of section 4 of Act 28 of 2014

1. The following section is hereby substituted for section 4 of the Legal Practice Act, 2014 (hereinafter referred to as the principal Act):

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“Establishment of Council

4. The South African Legal Practice Council is hereby established as a body corporate with full legal capacity, and exercises jurisdiction over all legal practitioners and candidate legal practitioners as contemplated in this Act when section 120(4) comes into operation.”

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Amendment of section 6 of Act 28 of 2014

2. Section 6 of the principal Act is hereby amended—

- (a) by the deletion in subsection (1)(a) of the word “and” at the end of subparagraph (xiii);

nguMthetho Wokwenz' Utshintsho Kumsebenzi Wobugqwetha ka 2017

Ino 16 ka 2017

INKCAZELO NGOKUBANZI

[] Amagama abhalwe ngombhalo ongqindilili akwiibrakethi ezisisikweri abonisa okukhutshiweyo kumthetho okhoyo.

Amagama akrwelwe umgca ngaphantsi abonisa okufakelweyo kumthetho okhoyo.

(English text signed by the President)
(Assented to 17 January 2018)

UMTHETHO

Injongo kukwenza utshintsho kuMthetho Womsebenzi Wobugqwetha, ka-2014, ngenjongo yokukulawula kwakhona ukusekwa kweBhunga Lomsebenzi Wobugqwetha LaseMzantsi-Afrika; kukukulawula kwakhona ukuxelwa kwemimandla anegunya phezu kwayo amaBhunga amaPhondo; kukuxela ukuba ngamagqwetha awenza umsebenzi wobugqwetha kuphela anokwenza izenzo ezithile okanye imisebenzi ethile; kukuyilawula kwakhona indlela eyakhiwe ngayo iBhodi; kukuyilawula kwakhona imisebenzi yeebhanki malunga nee-akhawunti zeemali zokuphathiswa; kukubulawula kwakhona ubude bexesha leQonga Lomsebenzi Wobugqwetha; kukuxela kwakhona imisebenzi yeQonga Lomsebenzi Wobugqwetha; kukuxela kwakhona umhla eya kubhangiswa ngawo imibutho yamagqwetha; kukuxela kwakhona ukuba siqala nini ukusebenza iSahluko 2; nokulungiselela izinto ezihlobene nezi.

IPALAMENTE yeRiphabliki yoMzantsi-Afrika iqulunq' umthetho, ngale ndlela ilandelayo:—

Kufakwa isiqendu 4 esitsha soMthetho 28 ka-2014

1. Kufakwa isiqendu esitsha esilandelayo endaweni yesiqendu 4 ebesikho soMthetho Womsebenzi Wobugqwetha, ka-2014, (obizwa apha ngokuthi nguMthetho ekwaqalwa ngawo): 5

“Ukusekwa kweBhunga

4. Kusekwa iBhunga Lomsebenzi Wobugqwetha LaseMzantsi-Afrika njengequmrhu elinamagunya apheleleyo omthetho, nelinegunya phezu kwawo onke amagqwetha namagqwetha asengabakhwetha ngendlela 10
exelwe kulo Mthetho xa isiqendu 120(4) siqalisa ukusebenza.”.

Kwenziwa utshintsho kwisiqendu 6 soMthetho 28 ka-2014

2. Kwenziwa utshintsho kwisiqendu 6 soMthetho ekwaqalwa ngawo—
(a) ngokuthi kwisiqendwana (1)(a) kucinywe igama elithi “kananjalo” ekupheleni kwisiqendwana (xiii); 15

- (b) by the substitution in subsection (1)(a) for the full stop at the end of subparagraph (xiv) of the expression; “and”; and
- (c) by the addition in subsection (1)(a) of the following subparagraph:
- “(xv) establish, promote, administer, assist in the establishment, the promotion, or the administration of—
- (aa) insurance schemes;
- (bb) medical aid schemes or medical benefit schemes;
- (cc) pension funds, provident funds, pension schemes or benevolent schemes,
- for legal practitioners, former legal practitioners, for the employees of such legal practitioners, for the officials and employees of the Council and for the dependents of—
- (A) legal practitioners;
- (B) former legal practitioners;
- (C) employees of legal practitioners; and
- (D) officials and employees of the Council;”.

Amendment of section 23 of Act 28 of 2014

3. Section 23 of the principal Act is hereby amended —

- (a) by the substitution of subsection (1) of the following subsection:
- “(1) The Council must, **subject to subsection (2) and progressively,** establish [a] Provincial [**Council in every province of the Republic**] Councils the areas of jurisdiction of which must correspond with the areas under the jurisdiction of the Divisions of the High Court of South Africa as determined by the Minister, from time to time, in terms of section 6(3) of the Superior Courts Act, 2013 (Act No. 10 of 2013), and may delegate to the Provincial Councils such powers and functions which, in the interests of the legal profession are better performed at provincial level.”; and
- (b) by the deletion of subsection (2).

Amendment of section 33 of Act 28 of 2014

4. Section 33 of the principal Act is hereby amended—

- (a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:
- “Subject to any other law, no person other than a practising legal practitioner who has been admitted and enrolled as such in terms of this Act may, in expectation of any fee, commission, gain or reward—”; and
- (b) by the substitution for subsection (3) of the following subsection:
- “(3) No person may, in expectation of any fee, commission, gain or reward, directly or indirectly, perform any act or render any service which in terms of any other law may only be done by an advocate, attorney, conveyancer or notary, unless that person is [an] a practising advocate, attorney, conveyancer or notary, as the case may be.”.

Amendment of section 62 of Act 28 of 2014

5. Section 62 of the principal Act is hereby amended by the addition of the following subsection:

- “(3) The members of the board of control of the Attorneys Fidelity Fund who hold office as members of that board at the date of commencement of Chapter 2, shall remain in office in that capacity as members of the Board for a period of six months after that date or until the members referred to in subsection (1) have been elected, whichever occurs later.”.

- (b) ngokuthi kwisiqendwana (1)(a) endaweni yesiphumlisi ekupheleni kwisiqendwana (xiv) kufakwe oku kulandelayo; “ngokuthi”; nangokuthi
- (c) nangokuthi kwisiqendwana (1)(a) kongezwe isiqendwana esilandelayo:
- “(xv) liseke, likhuthaze, lilawule, lincedise ekusekweni okanye eku-khuthazweni okanye ekulawulweni—
- (aa) kwee-inshorensi *schemes*;
- (bb) kweemedical aid okanye iinzuzo zamascemes onyango;
- (cc) kweengxowa-mali zemihlalaphantsi, *neeprovident funds*, ingxowamali *zeepension schemes* okanye *iibenevolent schemes*,
- izezamagqwetha, ababesakuba ngamagqwetha, izezabaqeshwa baloo magqwetha, ikwazezamagosa nabaqeshwa beBhunga, nabantwana—
- (A) bamagqwetha;
- (B) bababesakuba ngamagqwetha;
- (C) babaqeshwa bamagqwetha; nangokuthi
- (D) nabamagosa nabaqeshwa beBhunga;”.

Kwenziwa utshintsho kwisiqendu 23 soMthetho 28 ka-2014

3. Kwenziwa utshintsho kwisiqendu 23 soMthetho ekwaqalwa ngawo—
- (a) ngokuthi endaweni yesiqendwana (1) ebesikho kufakwe esi silandelayo: 20
- “(1) IBhunga malithi[, **ngokulawulwa sisiqendwana (2) nangokuthe ngcembe,**] liseke [**iBhunga lePhondo kwiphondo ngalinye leRiphabliki**] amaBhunga amimandla yolawulo ahambelana nemi-mandla ephantsi kolawulo lwamaCandelo eNkundla Ephakamileyo yaseMzantsi-Afrika eman’ ukugqitywa nguMphathiswa ngokwesiqendu 6(3) soMthetho Weenkundla Ezingentla (uMthetho 10 ka-2013) kwaye lisenokuthi amaBhunga amaPhondo liwaphathise amagunya anemisebenzi ekubonakala ukuba kubhetele abe kumaphondo ukuze kuncedakale abakumsebenzi wobugqwetha.”; nangokuthi
- (b) kucinywe isiqendwana (2). 30

Kwenziwa utshintsho kwisiqendu 33 soMthetho 28 ka-2014

4. Kwenziwa utshintsho kwisiqendu 33 soMthetho ekwaqalwa ngawo—
- (a) ngokuthi kwisiqendwana (1) amazwi awandulela isiqendu (a) indawo yawo ithathwe ngamazwi alandelayo: 35
- “Ngokulawulwa nguwo nawuphi na umthetho ongomnye, akukho mntu uvumelekileyo ngaphandle kwegqwetha elenza umsebenzi wobugqwetha elamkelweyo laza labhaliswa ngokwalo Mthetho onokuthi, elindele ukuhlululwa, okanye elindele ukufumana ikhomishini, okanye inzuzo okanye umvuzo—”; nangokuthi
- (b) indawo yesiqendwana (3) ebesikho ithathwe sisiqendwana esilandelayo: 40
- “(3) Akukho mntu onokuthi, elindele ukuhlululwa, okanye ukufumana ikhomishini, okanye inzuzo okanye umvuzo, enze ngokungqalileyo okanye ngokungangqalanga nasiphi na isenzo okanye umsebenzi onokuthi, ngokutsho komthetho, wenziwe kuphela ligqwetha leejaji, okanye ligqwetha okanye ligqwetha lonaniselwano ngemizi, okanye ligqwetha lamaxwebhu afungelweyo, ngaphandle kokuba loo mntu uligqwetha leejaji elenza umsebenzi wegqwetha leejaji, okanye uligqwetha elenza umsebenzi wobugqwetha, okanye uligqwetha lonaniselwano ngemizi elenza umsebenzi wonaniselwano ngemizi okanye uligqwetha lamaxwebhu afungelweyo elenza umsebenzi wamaxwebhu afungelweyo.”. 50

Kwenziwa utshintsho kwisiqendu 62 soMthetho 28 ka-2014

5. Kwenziwa utshintsho kwisiqendu 62 soMthetho ekwaqalwa ngawo ngokuthi kongezwe isiqendwana esilandelayo: 55
- “(3) Amalungu ebhodi yolawulo yeAttorneys Fidelity Fund akwizikhundla njengamalungu aloo bhodi ngomhla wokuqalisa kweSahluko 2, ukusebenza makahlale esezikhundleni akuzo njengamalungu eBhodi ithuba eliziinyanga ezintandathu emva kwaloo mhla okanye de amalungu ekuthethwe ngawo kwisiqendwana (1) abe anyuliwe, kuxhomekeke ekubeni kokuphi okwenzeka kuqala.”. 60

Amendment of section 91 of Act 28 of 2014

6. Section 91 of the principal Act is hereby amended by the substitution for subsection (4) of the following subsection:

“(4) Any bank at which a trust account practice keeps its trust account or any separate account forming part of its trust account, must, if so directed by the Council or the Board, furnish the Council or the Board with a signed **[statement] transaction history** of that account for the period determined by the Council or the Board, as the case may be.” 5

Amendment of section 94 of Act 28 of 2014

7. Section 94 of the principal Act is hereby amended by the deletion in subsection (1) of paragraph (e). 10

Amendment of section 96 of Act 28 of 2014

8. Section 96 of the principal Act is hereby amended —

(a) by the substitution for subsection (4) of the following subsection:

“(4) The **[duration of the] National Forum [is for a period not exceeding three years and it]** ceases to exist on the date of the meeting with the Council as envisaged in section 105(3), which date may not be later than 31 October 2018 **[commencement of Chapter 2]**.”; and 15

(b) by the deletion of subsection (5).

Amendment of section 97 of Act 28 of 2014

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9. Section 97 of the principal Act is hereby amended—

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

“(ii) the establishment of the Provincial Councils **[and their areas of jurisdiction, taking into account the factors referred to in section 23(2)(a)]**.”; 25

(b) by the deletion in subsection (1)(a) of subparagraph (iv);

(c) by the substitution in subsection (1)(a) for subparagraph (v) of the following subparagraph:

“(v) all the practical vocational training requirements that candidate attorneys or pupils must comply with before they can be admitted by the court as **[a] legal practitioners**.”; 30

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

“(c) make rules, as provided for in section 109(2) and (3).” 35

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

“(2) (a) The National Forum must, within 24 months of the commencement of this Chapter, negotiate with, and reach an agreement with, the law societies referred to in section 56 of the Attorneys Act **[and any other similar statutory bodies still regulating the legal profession established in the former homelands]**, in respect of the transfer of their assets, rights, liabilities, obligations and staff, to the Council or Provincial Councils as well as a date on which the law societies shall be dissolved and such transfer effected: Provided that such date may not be later than six months after the date of commencement of Chapter 2.”; 40
and 45

Kwenziwa utshintsho kwisiqendu 91 soMthetho 28 ka-2014

6. Kwenziwa utshintsho kwisiqendu 91 soMthetho ekwaqalwa ngawo ngokuthi indawo yesiqendwana (4) ithatyathwe sisiqendwana esilandelayo:

“(4) Nayiphi na ibhanki ekugcinwa kuyo imali yiofisi yobugqwetha yeemali zokuphathiswa okanye nayiphi na i-akhawunti esecaleni eyinxalenye ye-
akhawunti yeemali zokuphathiswa mayithi, ukuba iyalelwe ukuba yenze njalo
liBhunga okanye yiBhodi, inike iBhunga okanye iBhodi **[isiteyitimenti
esityikityiweyo saloo akhawunti sobude]** uludwe olutyikityiweyo lwezinto
ebezisenzeka kuloo akhawunti olububude bexesha elifunwa liBhunga okanye
yiBhodi.”.

Kwenziwa utshintsho kwisiqendu 94 soMthetho 28 ka-2014

7. Kwenziwa utshintsho kwisiqendu 94 soMthetho ekwaqalwa ngawo ngokuthi kucinywe isiqendu (e) kwisiqendwana (1).

Kwenziwa utshintsho kwisiqendu 96 soMthetho 28 ka-2014

8. Kwenziwa utshintsho kwisiqendu 96 soMthetho ekwaqalwa ngawo— 15

(a) ngokuthi indawo yesiqendwana (4) ithatyathwe sisiqendwana esilandelayo:

“(4) **[Ixesha lobukho beQonga lixesha elingagqithiyo kwiminyaka
emithathu, kwaye] IQonga** liyeka ukubakho ngomhla **[esiqalisa ngawo
ukusebenza iSahluko 2]** wokudibana neBhunga njengoko kuxelwe
kwisiqendu 105(3), mhla lowo ongenakuba ngemva kowama-31
kuOktobha 2018.”; nangokuthi

(b) kucinywe isiqendwana (5).

Kwenziwa utshintsho kwisiqendu 97 soMthetho 28 ka-2014

9. Kwenziwa utshintsho kwisiqendu 97 soMthetho ekwaqalwa ngawo—

(a) ngokuthi kwisiqendwana (1)(a) indawo yesiqendwana (ii) ithatyathwe sisiqendwana esilandelayo: 25

“(ii) ukusekwa kwamaBhunga amaPhondo **[okuqala nemimandla
anegunya phezu kwayo, kucingelwa izinto ezixelwe
kwisiqendu 23(2)(a)];**”;

(b) ngokuthi kwisiqendwana (1)(a) kucinywe isiqendwana (iv); 30

(c) ngokuthi kwisiqendwana (1)(a) indawo yesiqendwana (v) ithathwe sisiqendwana esilandelayo emthethweni wesiNgesi:

“(v) all the practical vocational training requirements that candidate
attorneys or pupils must comply with before they can be admitted
by the court as **[a] legal practitioners;**”;

(d) ngokuthi kwisiqendwana (1) indawo yesiqendu (c) ithatyathwe sisiqendu esilandelayo: 35

“(c) liqulunqe imigaqo, njengoko kutshiwo kwisiqendu 109(2) nesesi-
(3).”;

(e) ngokuthi kwisiqendwana (2) indawo yesiqendu (a) ithathwe sisiqendu esilandelayo: 40

“(2) (a) Zingaphelanga iinyanga ezingama-24 siqalisile ukusebenza esi Sahluko, iQonga malifikelele kwisivumelwano nemibutho yamagqwetha ekuthethwe ngawo kwisiqendu 56 seAttorneys Act **[kunye nawo nawaphi na amanye amaqumrhu anjengaleyo esalawula umsebenzi wobugqwetha eyayisekwe kumaphandle]**, mayela nokufuduselwa kwiBhunga okanye kumaBhunga amaphondo, kufuduselwa impahla yabo, namalungelo abo, namatyala abo, neembopheleleko abanazo, nabasebenzi babo kwakunye nomhla eza kupheliswa ngawo imibutho yamagqwetha kuze kwenziwe noko kufudusela: Kodwa ke loo mhla mawungabi ngaphaya kweenyanga ezintandathu emva komhla wokuqalisa ukusebenza kweSahluko 2.”; nangokuthi 50

(f) by the addition of the following subsection:

“(6) The National Forum must, at least six months before the date of commencement of Chapter 2, make recommendations to the Minister for purposes of making the regulations contemplated in section 94.”.

Amendment of section 109 of Act 28 of 2014

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10. Section 109 of the principal Act is hereby amended—

(a) by the insertion in subsection (1) after paragraph (b) of the following paragraph:

“(bA) The Minister must, after receiving recommendations from the National Forum as contemplated in section 97(6), and in consultation with the National Forum, make the regulations contemplated in section 94 by publication in the *Gazette*, before the date of commencement of Chapter 2.”; and

(b) by the addition of the following subsection:

“(3) The National Forum must, before the date of commencement of Chapter 2, make rules as contemplated in section 95(1) and (3) by publication in the *Gazette* and the provisions of subsection (2)(b), (c) and (d) apply with the changes required by the context.”.

Amendment of section 114 of Act 28 of 2014

11. Section 114 of the principal Act is hereby amended by the addition of the following subsection: 20

“(5) Every attorney who, on the date referred to in section 120(4), has the right of appearance in the High Court of South Africa, the Supreme Court of Appeal or the Constitutional Court in terms of any law, retains that right after the commencement of this Act.”. 25

Substitution of section 117 of Act 28 of 2014

12. The following section is hereby substituted for section 117 of the principal Act:

“Transitional provisions relating to existing law societies

117. The existing law societies must continue to perform their powers and functions until the [commencement of Chapter 2] date of transfer contemplated in section 97(2)(a).”.

Amendment of section 120 of Act 28 of 2014

13. Section 120 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection:

“(3) Chapter 2 comes into operation [three years after the date of commencement of Chapter 10 or] on any [earlier] date fixed by the President by proclamation in the *Gazette*.”.

Short title

14. This Act is called the Legal Practice Amendment Act, 2017.

(f) kongezwe isiqendwana esilandelayo:

“(6) IQonga malithi, ubuncinane kusasele iinyanga ezintandathu ngaphambi kokuqalisa ukusebenza kweSahluko 2, lenze izindululo eziya kuMphathiswa ngenjongo yokuba kuqulunqwe imimiselo exelwe kwisiqendu 94.”.

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Kwenziwa utshintsho kwisiqendu 109 soMthetho 28 ka-2014

10. Kwenziwa utshintsho kwisiqendu 109 soMthetho ekwaqalwa ngawo—

(a) ngokuthi kwisiqendwana (1) kufakelwe isiqendu esilandelayo emva kwisiqendu (b):

“(bA) UMphathiswa makathi, emva kokuba efumene izindululo ezivela kwiQonga njengoko kuxelwe kwisiqendu 97(6), nangokubonisa neQonga, aqulunqe imimiselo exelwe kwisiqendu 94 ngokupapasha kuShicilelo-Mithetho, ngaphambi komhla wokuqalisa kweSahluko 2 ukusebenza.”; nangokuthi

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(b) kongezwe isiqendwana esilandelayo:

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“(3) IQonga malithi, ngaphambi komhla wokuqalisa kweSahluko 2 ukusebenza, liqulunqe imigaqo njengoko kuxelwe kwisiqendu 95(1) neses-3) ngokupapasha kuShicilelo-Mithetho, ekuya kuthi ke okutshiwo sisiqendwana (2)(b), (c) no-(d) kusebenze, kubekho nje utshintsho olunokuthi lufuneke.”.

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Kwenziwa utshintsho kwisiqendu 114 soMthetho 28 ka-2014

11. Kwenziwa utshintsho kwisiqendu 114 soMthetho ekwaqalwa ngawo ngokuthi kongezwe isiqendwana esilandelayo:

“(5) Igqwetha ngalinye ekuthi xa kubetha umhla oxelwe kwisiqendu 120(4) libe linelungelo lokumela abantu kwiNkundla Ephakamileyo yaseMzantsi-Afrika, nakwiNkundla Ephakamileyo Yezibheni, okanye nakwiNkundla YoMgaqo-siseko ngokutsho komthetho, liqhubeka linalo elo lungelo emva kokuqalisa kwalo Mthetho ukusebenza.”.

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Indawo yesiqendu 117 soMthetho 28 ka-2014 ithatyathwa sesinye

12. Indawo yesiqendu 117 soMthetho ekwaqalwa ngawo ithatyathwa sesi silandelayo:

“Okuza kwenzeka okwethutyana malunga nemibutho yamagqwetha ekhoyo

117. Imibutho yamagqwetha ekhoyo mayiqhubeke isebenzisa amagunya ayo isenza nemisebenzi yayo [side siqalise ukusebenza iSahluko 2] kude kube ngumhla wokufuduswa oxelwe kwisiqendu 97(2)(a).”.

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Kwenziwa utshintsho kwisiqendu 120 soMthetho 28 ka-2014

13. Kwenziwa utshintsho kwisiqendu 120 soMthetho ekwaqalwa ngawo ngokuthi indawo yesiqendwana (3) ithatyathwe sisiqendwana esilandelayo:

“(3) ISahluko 2 siqalisa ukusebenza [emva kweminyaka emithathu siqalile ukusebenza iSahluko 10 okanye] ngawo nawuphi na umhla ogqitywe nguMongameli ngesihlokomiso kuShicilelo-Mithetho.”.

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Igama lawo

14. Lo Mthetho ubizwa ngokuba nguMthetho Wokwenz' Utshintsho Kumsebenzi Wobugqwetha, ka-2017.

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