



**South African Law Reform Commission**

**DISCUSSION PAPER 115**

**STATUTORY LAW REVISION**

**(LEGISLATION ADMINISTERED BY THE DEPARTMENT OF HOUSING)**

**PROJECT 25**

**OCTOBER 2008**

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## Introduction

The South African Law Reform Commission was established by the South African Law Reform Act, 1973 (Act 19 of 1973).

The members of the Commission are –

The Honourable Madam Justice Yvonne Mokgoro (Chairperson)

The Honourable Mr Justice Willie Seriti (Vice Chairperson)

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## Preface

This Paper has been prepared to elicit responses and to serve as basis for the Commission's further deliberations. It contains the Commission's **preliminary** recommendations. The views, conclusions and recommendations which follow should not be regarded as the Commission's final views.

The Paper (which includes a draft Bill entitled Rationalisation of Housing Laws Bill which, if enacted, will repeal redundant, obsolete and unconstitutional legislation or provisions in legislation) is published in full so as to provide persons and bodies wishing to comment with sufficient background information to enable them to place focused submissions before the Commission. **A summary of preliminary recommendations and questions for comment appear on page (v). The proposed Rationalisation of Housing Laws Bill is contained in Annexure A. Schedule 1 of the proposed Rationalisation of Housing Laws Bill consist of an Act that may be wholly repealed, and Schedule 2 identifies specific provision or provisions in the legislation that may be repealed. Annexure B contains list of statutes (including those recommended for repeal in this document) currently administered by the Department of Housing enacted between 1910 and 2007.**

The Commission will assume that respondents agree to the Commission quoting from or referring to comments of and attributing comments to respondents, unless representations are marked confidential. Respondents should be aware that the Commission may in any event be required to release information contained in representations under the Promotion of Access to Information Act 2 of 2000.

Respondents are requested to submit written comment and representations to the Commission by 31 January 2009 at the address appearing on the previous page. Comments can be sent by post or fax, but comments sent by e-mail in electronic format are preferable.

This Discussion Paper is available on the internet at [www.doj.gov.za/salrc/index.htm](http://www.doj.gov.za/salrc/index.htm)

Any inquiries should be addressed to the Secretary of the Commission or the researcher allocated to the project, Mr Linda Mngoma. Contact particulars also appear on the previous page.

## **Preliminary recommendations and questions for comments**

1. The Commission has been mandated with the task of revising the South African statute book with a view to identifying and recommending for repeal or amendment legislation or provisions in legislation that are inconsistent with the equality clause in the Constitution, redundant or obsolete. Pursuant to this mandate, the Commission has established that there are 2800 Acts in the statute book. Furthermore, the Commission has identified 15 Acts as being statutes that are administered by the Department of Housing. After careful and thorough analysis of the Acts administered by the Department of Housing, the Commission proposes that:

- (i) The Act set out in Schedule 1 of the proposed Rationalisation of Housing Laws Bill contained in Annexure A be repealed for the reasons set out in Chapter 2 of this Consultation Paper; and that
- (ii) Various provisions of Acts set out in Schedule 2 of the proposed Rationalisation of Housing Laws Bill, found in the same Annexure referred to above, be repealed to the extent set out in that Schedule.

2. Furthermore, it is possible that some of the statutes recommended for repeal are still useful, and thus should not be repealed. Moreover, it is also possible that there are pieces of legislation not identified for repeal in this Discussion Paper which are of no practical utility anymore and which could be repealed. These should be identified and brought to the attention of the Commission.

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**Chapter 1**  
**Project 25: Statutory Law Revisions**

**DISCUSSION PAPER**

**A INTRODUCTION**

**(a) Background of the investigation**

1.1 The objects of the SA Law Reform Commission (the Commission) are set out as follows in the South African Law Reform Commission Act 19 of 1973: to do research with reference to all branches of the law of the Republic and to study and to investigate all such branches of the law in order to make recommendations for the development, improvement, modernization or reform thereof, including –

- the repeal of obsolete or unnecessary provisions;
- the removal of anomalies;
- the bringing about of uniformity in the law in force in the various parts of the Republic; and
- the consolidation or codification of any branch of the law.

1.2 In short, the Commission is an advisory body whose aim is the renewal and improvement of the law of South Africa on a continuous basis.

1.3 Shortly after its establishment in 1973, the Commission undertook a revision of all pre-Union legislation as part of its project 7. This resulted in the repeal of approximately 1 200 laws, ordinances and proclamations of the former Colonies and Republics. In 1981 the Commission finalised a report on the repeal of post-Union statutes as part of its project 25 on statute law: the establishment of a permanently simplified, coherent and generally accessible statute book. This report resulted in Parliament adopting the Repeal of Laws Act, 1981 (Act No 94 of 1981) which repealed approximately 790 post-Union statutes.

1.4. In February 2001 Cabinet requested Government Departments to identify all discriminatory and unconstitutional legislation enacted prior to 1994, as well as the review of

provisions in the legislative framework that would result in unfair discrimination as defined in section 9 of the Constitution. It was resolved that the Minister of Justice and Constitutional Development would coordinate the process with a view to finalise the process by 31 December 2001.

1.5 In 2004 the Commission included in its law reform programme an investigation into statutory law revision, which entails a revision of all statutes from 1910 to date. While the emphasis in the previous investigations was to identify obsolete and redundant provisions for repeal, the emphasis in the current investigation will be on compliance with the Constitution. However, all redundant and obsolete provisions identified in the course of the current investigation will also be recommended for repeal. Furthermore, it should be stated right from the outset that the constitutional inquiry is limited to statutory provisions that blatantly violate the provisions of section 9 (the equality clause) of the Constitution.

1.6 With the advent of constitutional democracy in 1994, the legislation enacted prior to that year remained in force. This has led to a situation where numerous pre-1994 provisions are constitutionally non-compliant. The matter is compounded by the fact that some of these provisions were enacted to promote and sustain the policy of apartheid. A recent provisional audit, by the Commission, of national legislation remaining on the statute book since 1910, established that there are in the region of 2 800 individual statutes, comprising principal Acts, amendment Acts, private Acts, additional or supplementary Acts and partially repealed Acts. A substantial number of these Acts serve no useful purpose anymore, while many others still contain unconstitutional provisions that have already given rise to expensive and sometimes protracted litigation.

#### **(b) Initial investigation**

1.7 In the early 2000's the Commission and the German Agency for Technical Cooperation commissioned the Centre for Applied Legal Studies of the University of the Witwatersrand to conduct a study to determine the feasibility, scope and operational structure of revising the South African statute book for constitutionality, redundancy and obsolescence. The Centre for

Applied Legal Studies of the University of the Witwatersrand pursued four main avenues of research in their study conducted in 2001:<sup>1</sup>

First, a series of role-player interviews were conducted with representatives of all three tiers of government, Chapter 9 institutions, the legal profession, academia and civil society. These interviews revealed a high level of support for the project.

Second, an analysis of all Constitutional Court judgments until 2001 was undertaken. Schedules reflecting the nature and outcome of the cases, and the statutes impugned were compiled. The three most problematic categories of legislative provision were identified, and an analysis made of the Constitutional Court's jurisdiction in relation to each category. The three categories were: reverse onus provisions; discriminatory provisions; and provisions that infringe on the separation of powers. Guidelines summarising the Constitutional Court's jurisprudence were compiled in respect of each category.

Third, sixteen randomly selected national statutes were tested against these guidelines. The outcome of the test was then compared against a control audit that tested the same statutes against the entire Bill of Rights, excluding socio-economic rights. A comparison of the outcomes revealed that a targeted revision of the statute book, in accordance with the guidelines, produced surprisingly effective results.

Fourth, a survey of five countries (United Kingdom, Germany, Norway, Switzerland and France) was conducted. With the exception of France, all the countries have conducted or are conducting statutory revision exercises, although the motivation for and the outcomes of these exercises differ.

**(c) Reports of the Commission proposing reform or the repeal of discriminatory provisions**

1.8 The following reports, proposing reform of discriminatory areas of the law or the repeal of specific discriminatory provisions, were finalised by the Commission –

- the Recognition of Customary Marriages (August 1998);
- the Review of the Marriage Act 25 of 1961 (May 2001);

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<sup>1</sup> "Feasibility and Implementation Study on the Revision of the Statute Book" prepared by the Law & Transformation Programme of the Centre for Applied Legal Studies of the University of the Witwatersrand.

- the Application of the Bill of Rights to Criminal Procedure, Criminal Law, the Law of Evidence and Sentencing (May 2001);
- Traditional Courts (January 2003);
- the Recognition of Muslim marriages (July 2003);
- the Repeal of the Black Administration Act 1927(March 2004);
- Customary Law of Succession (March 2004); and
- Domestic Partnerships (in March 2006).

**(d) Commencement of project**

1.9 Early in 2004 the Commission informed all national Government departments of the priority of the investigation into statutory law revision. The Commission conducted a workshop with representatives from these departments, so as to secure their participation in the revision process. From the outset it was clear that with the available capacity at the Commission and in government departments, the review will at this stage focus on national legislation.

1.10 As mentioned previously, a provisional audit of all national legislation on the statute book — from 1910 to 2004 — was conducted by the Commission, in 2004. This audit determined that there are in the region of 2 800 individual statutes, comprising principal Acts, amendment Acts, private Acts, additional or supplementary Acts and partially repealed Acts. Government departments were then requested, in August 2004, to study the provisional audit of national legislation and to confirm their respective responsibilities for administering the statutes that were allocated to them. A number of statutes, however, remained unaccounted for and were not claimed by any of the departments. Consequently, the Commission launched its own investigation in order to establish which Ministers introduced these statutes. A significant problem encountered in this regard was that some departments, which existed at the time the legislation was promulgated, are no longer in existence. Furthermore, it was not clear which of the current Government departments inherited the legislation administered by these “old” departments. The Commission then grouped the remaining legislation into various categories, and submitted this information, during 2005; to those departments the Commission believed had responsibility for administering the remaining statutes and requested them to investigate and provide feedback.

1.11 In 2006 the Commission once again corresponded with Government departments informing them that it wished to secure their assistance in reducing the number of obsolete or redundant pieces of legislation on the statute book. The number of statutes that each department is responsible for were set out in lists which were forwarded to them. It was pointed out to the departments that it was possible that although some of these statutes may be redundant or obsolete, they still remain on the statute book, since they have never been repealed. In some instances, Principal Acts may have been repealed while their corresponding Amendment Acts were never listed in a Schedule to the repealing Act — thus causing the Amendment Acts, although of no legal force, to clutter up the statute book (unless, of course, they contain substantive provisions).

## **B. WHAT IS STATUTORY LAW REVISION?**

1.12 Statutory law revision ordinarily focuses on the identification and repeal of statutes that are no longer useful in practice. As the Law Reform Commission for England and Wales explains, the purpose of statute revision is to modernise and simplify statutes that need updating, and to reduce the size of the statute book to the benefit of legal professionals and other people who use it.<sup>2</sup> Revision lessens the chance of people being misled by redundant laws that still appear in the statute book and seem to be relevant or “live”. If statutory provisions appear in the statute book and are referred to in legal textbooks, readers may reasonably assume they still serve a purpose.

1.13 As is the case in other jurisdictions (and will be evident in this review), once legislation is deemed no longer to apply, the question arises whether it should remain in the statute book or be repealed.<sup>3</sup> Usually such legislation no longer has any legal effect and is considered obsolete, redundant, or spent. A statutory provision may be identified for repeal because the grounds for which it was passed have lapsed or are presently remedied by another measure or provision.

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<sup>2</sup> See the *Background Notes on Statute Law Repeals* compiled by the Law Commission for England and Wales, par 1 accessed from [http://lawcommission.justice.gov.uk/docs/background\\_notes.pdf](http://lawcommission.justice.gov.uk/docs/background_notes.pdf) on 28 May 2008.

<sup>3</sup> See the *Background Notes on Statute Law Repeals* compiled by the Law Commission for England and Wales, par 6 accessed from [http://lawcommission.justice.gov.uk/docs/background\\_notes.pdf](http://lawcommission.justice.gov.uk/docs/background_notes.pdf) on 28 May 2008.

1.14 In the context of this investigation, the statutory law revision primarily targets statutory provisions that are obviously at odds with the Constitution, particularly section 9.

1.15 The Law Commission for England and Wales lists the following guidelines for identifying statutory provisions that are candidates for repeal:<sup>4</sup>

- (a) references to bodies, organisations, etc. that have been dissolved or wound up or which have otherwise ceased to serve any purpose;
- (b) references to issues that are no longer relevant as a result of changes in social or economic conditions (e.g. legislation about tithes or tin mines);
- (c) references to Acts that have been superseded by more modern (or EU) legislation or by international Convention;
- (d) references to statutory provisions (i.e. sections, schedules, orders, etc.) that have been repealed;
- (e) repealing provisions e.g. "Section 33 is repealed/shall cease to have effect";
- (f) commencement provisions once the whole of an Act is in force;
- (g) transitional or savings provisions that are spent;
- (h) provisions that are self-evidently spent - e.g. a one-off statutory obligation to do something becomes spent once the required act has duly been done;
- (i) powers that have never been exercised over a period of many years or where any previous exercise is now spent.

1.16 The Law Commission of India notes that in England the terms "expired", "spent", "repealed in general terms", "virtually repealed", "superseded", and "obsolete" were defined in memoranda to Statute Law Revision Bills as follows:<sup>5</sup>

- Expired – that is, enactments which having been originally limited to endure only for a specified period by a distinct provision, have not been either perpetuated or kept in force by continuance, or which have merely had as their object the continuance of previous temporary enactments for periods now gone by effluxion of time
- Spent – that is, enactments spent or exhausted in operation by the accomplishment of the purposes for which they were passed, either at the moment of their first taking effect or on the happening of some event or on the doing of some act authorised or required
- Repealed in general terms – that is, repealed by the operation of an enactment expressed only in general terms, as distinguished from an enactment specifying the Acts which it is to operate

<sup>4</sup> See the *Background Notes on Statute Law Repeals* compiled by the Law Commission for England and Wales, par 7 accessed from [http://lawcommission.justice.gov.uk/docs/background\\_notes.pdf](http://lawcommission.justice.gov.uk/docs/background_notes.pdf) on 28 May 2008.

<sup>5</sup> Law Commission of India *Ninety-Sixth Report on Repeal of Certain Obsolete Central Acts* March 1984; p 3 of Chapter 2 (p 6 of 21) accessed from <http://lawcommissionofindia.nic.in/51-100/Report96.pdf> on 29 August 2007.

- Virtually repealed – where an earlier enactment is inconsistent with, or is rendered nugatory by, a later one
- Superseded – where a later enactment effects the same purposes as an earlier one by repetition of its terms or otherwise
- Obsolete – where the state of things contemplated by the enactment has ceased to exist, or the enactment is of such a nature as to be no longer capable of being put in force, regard being had to the alteration of political or social circumstances.

1.17 Statutory provisions usually become redundant as time passes.<sup>6</sup> Generally, the redundancy of legislation is not signalled by a single occurrence; rather, legislation is often simply overtaken by social and economic changes. Inevitably some provisions fade away more quickly than others. Relatively short-lived provisions include commencement and transitional provisions and those that confer powers to be exercised during the period between the passing of legislation and its implementation (in some jurisdictions known as “pump-priming” provisions). Provisions that provide for delegated legislation-making powers might also become unnecessary over time, or a committee or board established by a statute might no longer be required.

1.18 Substantial revision of statutory law is possible in South Africa because of the general savings provisions of section 12(2) of the South African Interpretation Act. The South African Interpretation Act, 1957 (Act 33 of 1957) mirrors section 16(1) of the Interpretation Act of 1978 of England and Wales.<sup>7</sup> Section 12(2) of the South African Interpretation Act provides that where a law repeals any other law, then unless the contrary intention appears, the repeal shall not:

- (a) revive anything not in force or existing at the time at which the repeal takes effect; or
- (b) affect the previous operation of any law so repealed or anything duly done or suffered under the law so repealed; or
- (c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any law so repealed; or
- (d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any law so repealed; or
- (e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, forfeiture or punishment as is in this subsection mentioned,

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<sup>6</sup> *Background Notes on Statute Law Repeals* compiled by the Law Commission for England and Wales, par 9 and 10 accessed from [http://lawcommission.justice.gov.uk/docs/background\\_notes.pdf](http://lawcommission.justice.gov.uk/docs/background_notes.pdf) on 28 May 2008.

<sup>7</sup> *Background Notes on Statute Law Repeals* compiled by the Law Commission for England and Wales, par 8 accessed from [http://lawcommission.justice.gov.uk/docs/background\\_notes.pdf](http://lawcommission.justice.gov.uk/docs/background_notes.pdf) on 28 May 2008.

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed, as if the repealing law had not been passed.

1.19 The constitutional validity aspect of this project focuses on statutes or provisions in statutes that are clearly inconsistent with the right to equality entrenched in section 9 of the Constitution. In practical terms this means that this leg of the investigation will be limited to those statutes or provisions in statutes that:

- Differentiate between people or categories of people, and which are not rationally connected to a legitimate government purpose; or
- unfairly discriminate against people or categories of people on one or more grounds listed in section 9(3) of the Constitution; or
- unfairly discriminate on grounds which impair or have the potential to impair a person's fundamental human dignity as a human being.

Consequently, a law or a provision in a law which appears, on the face of it, to be neutral and non-discriminatory but which has or could have discriminatory effect or consequences will be left to the judicial process.

### **C. SCOPE OF THE PROJECT**

1.20 This investigation will accordingly, focus not only on obsolescence or redundancy of provisions but also on the question of the constitutionality of provisions in statutes. In 2004 Cabinet endorsed that the highest priority be given to reviewing provisions that would result in discrimination as defined in section 9 of the Constitution which prohibits unfair discrimination on the basis of race, gender, sex, pregnancy, marital status, ethnic and social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth. The Commission agrees that the project should proceed by scrutinising and revising national legislation which discriminates unfairly.<sup>8</sup> However, even the section 9 inquiry is fairly limited, dealing primarily with statutory provisions that are blatantly in conflict with section 9 of the

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<sup>8</sup> Professor Cathi Albertyn prepared a 'Summary of Equality jurisprudence and Guidelines for assessing the SA Statute Book for Constitutionality against section 9 of the 1996 Constitution', specifically for the Commission in February 2006.

Constitution. This is necessitated by, among other considerations, time and capacity. It is not foreseen that the Commission and government departments will have capacity in the foreseeable future to revise all national statutes or the entire legislative framework to determine whether they contain unconstitutional provisions.

#### **D. ASSISTANCE BY GOVERNMENT DEPARTMENTS AND STAKEHOLDERS**

1.21 In 2004, Cabinet endorsed the proposal that government departments should be requested to participate in and contribute to this investigation. In certain instances, legal researchers cannot decide whether to recommend a provision for repeal unless they have access to factual information that might be considered “inside” knowledge – of the type usually accessible within a specific department or organisation. Examples include savings or transitional provisions that are instituted to preserve the status quo until an office-holder ceases to hold office or until a loan has been repaid. In such cases, the consultation paper drafted by the SALRC invited the department or organisation being consulted to supply the necessary information. The aim of the publication of discussion papers in this investigation is likewise to determine whether departments and stakeholders agree with and support the proposed findings and legislative amendment or repeal proposals. Any assistance that can be given to fill in the gaps will be much appreciated. It is important that the departments concerned take ownership over this process. This will ensure that all relevant provisions are identified and dealt with responsively and without creating unintended negative consequences.

## Chapter 2

### **A STATUTES ADMINISTERED BY THE DEPARTMENT OF HOUSING**

The Commission has identified 15 pieces of legislation as being statutes that are administered by the Department of Housing. The Commission, after conducting an investigation to determine whether any of these Acts or provisions therein may be repealed as a result of redundancy, obsolescence or unconstitutionality, has identified Acts that may be repealed wholly and Acts that may be partially repealed. These Acts are contained in Schedules 1 and 2 of the draft Bill attached as annexure A to this Discussion Paper. Further, paragraph "B" below provides reasons and preliminary recommendations why these statutes and/or provisions were selected for repeal or amendment. For ease of reference the legislation has been divided into two categories as follows:

### **B RECOMMENDATIONS FOR THE REPEAL AND AMENDMENT OF LEGISLATION CURRENTLY ADMINISTERED BY THE DEPARTMENT OF HOUSING**

#### **1. STATUTES RECOMMENDED FOR REPEAL**

On initial scrutiny the following statutes appear to contain references to bodies that are no longer in existence or otherwise have ceased to serve any purpose, rendering the Acts redundant. However, sometimes it is impossible to tell whether an Act/provision can be repealed without factual information that is not readily ascertainable without access to inside knowledge held by the Department.

##### **1.1 The Disestablishment of South African Trust Limited Act 26 of 2002**

1.1.1 This Act provides for the disestablishment and winding up of the South African Housing Trust Limited (the Trust), including the transfer of rights and assets of the Trust to the National Housing Finance Corporation as well as to vest the obligations and liabilities of the Trust in the South African Government.

1.1.2 Section 2(1) of the Act provides that-

“As from the effective date the Company ceases to exist as a company in terms of the Companies Act and must for the purposes of that Act be regarded as having been wound up”

- 1.1.3 According to the Department of Housing Annual Report 2006-2007<sup>9</sup> the disestablishment process was completed by the beginning of 2003. In the circumstances the Act no longer serves any purposes and should be repealed.

**2. STATUTES WHICH HAVE EITHER BEEN REPEALED BUT ARE STILL REFERRED TO OR HAVE BEEN ASSIGNED TO A PROVINCE OR ARE IN FACT THE RESPONSIBILITY OF ANOTHER DEPARTMENT, AND STATUTES WHICH MAY REQUIRE AMENDMENT OR UPDATING**

2.1 The Government Villages Act 44 of 1973, as amended

2.1.1 This Act provides for the control and management of Government Villages, which are defined as “the former military camps used for residential purposes and situated at Benoni, Germiston, Randfontein, Vereeniging, Cradock Place (Port Elizabeth), Collondale (East London) and Oribi (Pietermaritzburg)”.

2.1.2 In the definitions section, the definition of “Director–General” as well as “Minister” both refer to the Department of Community Development, a department no longer provided for in the structure of government. It is also not clear which department, if any, took over the functions of the Department of Community Development, and if this Act is actually still being used.

2.1.3 Section 2(2)(b)(vi) of the Act is a provision that purports to grant core judicial powers and functions to the executive without recourse to the courts. This provision states that-

“2(1) The Director-General shall control and manage Government Villages subject to the directions of the Minister.

(2) In the performance of his functions under subsection (1) the Director-General may-

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(b)(vi) without obtaining a judgement or decree of the court, eject from any Government Village any person whose right to accommodation or to occupy any land, building or structure in that Government Village has expired by effluxion of time or has been terminated by notice or who has no right to be in that Government Village.”

2.1.4 Section 3 of the Act makes reference to the Exchequer and Audit Act, 1956 (Act 23 of 1956). The latter Act was repealed by the Exchequer Act, 1975 (Act 66 of 1975) which in turn was repealed by section 94 of the Public Finance Management Act, 1999 (Act 1 of 1999) as a whole, except sections 28, 29 and 30. These retained sections of the Exchequer Act only deal with transitional provisions relating to the Department of Posts and Telecommunications and the South African Broadcasting Corporation.

## 2.2 The Less Formal Township Establishment Act 113 of 1991

2.2.1 This Act provides for shortened procedures for the development of land and establishments of townships and less formal forms of residential settlement, as well as the use of land by tribal communities for communal forms of residential settlement.

2.2.2 In terms of Proclamation R159 of 31 October 1994, the administration of the Less Formal Township Establishment Act, 1991 (Act No.113 of 1991), excluding sections 3(5), 9(2) and (3), 12(2A) and (3), 19(6A) and (7), and 26(2) and (3), and any other provisions of the said Act which fall outside the functional areas specified in Schedule 6 to the Constitution of the Republic of South Africa Act, 1993 (Act No.200 of 1993) or which relate to matters referred to in paragraphs (a) to (e) of section 126(3) of the Constitution, has been assigned to a competent authority within the jurisdiction of the government of a province mentioned in section 124(1) of the Constitution, designated by the Premier of the province concerned

2.2.3 According to opinion received from the State Law Advisers, the assignment of the administration of legislation in terms of section 235(8) of the interim Constitution to a province renders that legislation provincial legislation. Therefore, if the assigned sections of the Act do not fall within the exclusions mentioned in the proclamations that assigned it

to the provinces it constitutes provincial legislation that can be repealed by the provincial legislatures concerned.

2.2.4 Against the foregoing background, the Commission would like to draw the attention of the Department of Housing to the following sections of the Act that have been assigned to the provinces that need to be updated, namely-

- (a) The definition of “Administrator”<sup>10</sup> in the Act refers to a competent authority to whom the administration of this Act has been assigned in terms of section 235(8) of the interim Constitution<sup>11</sup>. Similarly, the definition of “province” and section 28 dealing with the application of the Act, also refers to the interim Constitution. The interim Constitution was repealed by the Constitution of the Republic of South Africa, 1996, and accordingly the aforementioned definitions and section must be amended.
- (b) The definitions of “erf”, “general plan and “public place” refer to similar definitions in the Land Survey Act 9 of 1927. The latter was repealed by the Land Survey Act 8 of 1997.
- (c) Section 3(5)(c) refers to section 12 of the National Roads Act 54 of 1971. The latter was repealed by the South African National Roads Agency Limited and National Roads Act 7 of 1998.
- (d) Chapter III of the Act deals with Settlement by Indigenous Tribes. It is not clear whether this part of the Act still serves any purpose and in fact, if it is still being used.

### 2.3 Prevention of Illegal Eviction from and Unlawful Occupation of Land Act, 1998

2.3.1 The purpose of the Act is to provide for the prohibition of unlawful eviction and for procedures for the eviction of unlawful occupiers.

2.3.2 Sections 8(5)(c)(i) and (iv) of the Act refer to the Attorney-General. Section 179(1) of the Constitution of the Republic of South Africa provides that-

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<sup>10</sup> See section 1 of Act 113 of 1991

<sup>11</sup> Constitution of the Republic of South Africa, 1993

“there is a single national prosecuting authority in the Republic, structured in terms of an Act of Parliament, and consisting of a National Director of Public Prosecutions, who is the head of the prosecuting authority,”.

2.3.3 Section 22 of the National Prosecuting Authority Act, 1998 (Act 32 of 1998) provides that the-

-(1) The National Director, as the head of the prosecuting authority, shall have authority over the exercising of all the powers, and the performance of all the duties and functions conferred or imposed on or assigned to any member of the prosecuting authority by the Constitution, this Act or any other law.

2.3.4 Section 43 of Act 32 of 1998 (transitional arrangements) provides that-

“(1) (a) Anyone holding office as an attorney-general in terms of the Attorney-General Act, 1992 (Act 92 of 1992), shall, subject to paragraph (b), be deemed to have been appointed as a Director in terms of this Act, and shall continue to function in terms of the laws applicable to his or her Office.” Act 32 of 1998 repealed the Attorney-General Act, 1992 (Act 92 of 1992) as a whole.

## 2.4 Housing Consumers Protection Measures Act, 1998

2.4.1 The Act makes provision for the protection of housing consulting and to provide for the establishment and functions of the National Home Builders Registration Council.

2.4.2 Reference is made in the Act to certain legislation that has now been repealed, namely-

- Definition of “competent person” in section 1 makes reference to the Engineering Professions of South Africa, 1990 (Act No. 114 of 1990) and the Natural Scientific Professions Act, 1993 (Act No.106 of 1993). The latter Act were repealed by the Engineering Profession Act, 2000 (Act 46 of 2000) and Natural Scientific Professions Act, 2003 (Act No.27 of 2003)

- Section 16(7)(a) makes reference to the Financial Institutions (Investment of Funds) Act, 1984 (Act No.39 of 1984). The latter Act was repealed by the Financial Institutions (Protection of Funds ) Act, 2001 (Act No.28 of 2001
- Section 23(9)(a) makes reference to the Insurance Act, 1943 (Act No.27 of 1943). The latter Act was repealed by the Long-term Insurance Act, 1998 (Act No.52 of 1998), excluding section 60(1)(f).

## 2.5 Home Loan and Mortgage Disclosure Act, 2000

2.5.1 The purpose of the Act is to promote fair practices, which require disclosure by financial institutions of information regarding the provision of home loans, to establish an Office of Disclosure; and to provide for matters connected therewith.

2.5.2 Section 8(2) of the Act states that a member of the Office (of Disclosure) ceases to be a member if-

(c) his or her estate is sequestrated or he or she applies for assistance contemplated in section 10(1)(c) of the Agricultural Credit Act, 1966 (Act No.28 of 1996). The latter Act was repealed as a whole by the Agricultural Debt Management Act, 2001 (Act No.45 of 2001).

## Annexure A

### RATIONALISATION OF HOUSING LAWS BILL

#### To repeal certain laws of the Republic

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

1 Repeal of laws

(1) The laws specified in the First Schedule are hereby repealed.

(2) The laws specified in the Second Schedule are hereby repealed to the extent set out in the third column of that Schedule.

2 Short title and commencement

This Act shall be called the Rationalisation of Housing Laws Act, ... and comes into operation on a date determined by the President by proclamation in the *Gazette*.

#### Schedule 1

| Number and year of law | Title or subject of law                                           | Extent    |
|------------------------|-------------------------------------------------------------------|-----------|
| Act No. 26 of 2002     | Disestablishment of South African Housing Trust Limited Act, 2002 | The whole |

## Schedule 2

| Item No. | No. and year of law | Short title                                                                   | Extent of Repeal or amendment                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
|----------|---------------------|-------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1.       | Act No.44 of 1973   | Government Villages Act, 1973                                                 | <p>1. The definition of 'Director-General' in section 1 of the Act is amended as follows-</p> <p>“Director-General' means the Director-General: <b>[Community Development] Department of Housing</b>”;</p> <p>2. The definition of 'Minister' in section 1 of the Act is amended as follows-</p> <p>“Minister' means the Minister of <b>[Community Development] Housing</b>”;</p> <p>3. Amend section 3 of the Act as follow-</p> <p>“The Director-General shall administer the moneys appropriated by Parliament in respect of Government Villages, and shall for the purposes of the <b>[Exchequer and Audit Act, 1956, (Act 23 of 1956)] Public Finance Management Act, 1999 (Act 1 of 1999)</b>, be the accounting officer in respect of such moneys.”</p> |
| 2.       | Act 19 of 1998      | Prevention of Illegal Eviction from and Unlawful Occupation of Land Act, 1998 | <p>1. Section 8(5)(c)(i) and (iv) of the Act is amended as follows-</p> <p>“(i) the person prosecuting privately need not produce a certificate issued by the <b>[Attorney-General] National Director of Public Prosecutions</b> stating that he or she has refused to prosecute the accused;</p> <p>(iv) the <b>[Attorney-General] National</b></p>                                                                                                                                                                                                                                                                                                                                                                                                           |

|    |                   |                                                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
|----|-------------------|-------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|    |                   |                                                 | <u>Director of Public Prosecutions is barred from prosecuting except with the leave of the court concerned.</u>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| 3. | Act No.95 of 1998 | Housing Consumers Protection Measures Act, 1998 | <p>1. Amend the definition of “competent person” in section 1 of the Act by the substitution for the phrases <b>‘[Engineering Professions of South Africa Act, 1990 (Act No.114 of 1990)]’</b> and <b>‘[Natural Scientific Professions Act, 1993 (Act No.106 of 1993)]’</b> where ever it appears of the phrase <u>‘Engineering Profession Act, 2000 (Act No.46 of 2000)’</u> and <u>‘Natural Scientific Professions Act, 2003 (Act No.27 of 1993)’</u>.</p> <p>2. Amend section 16(7)(a) by the substitution for the phrase <b>‘[Financial Institutions (Investment of Funds) Act, 1984 (Act No.39 of 1984)]’</b> where ever it appears of the phrase <u>‘Financial Institutions (Protection of Funds) Act, 28 of 2001’</u>.</p> <p>3. Amend section 23(9)(a) by the substitution for the phrase <b>‘[Insurance Act, 1943 (Act No.27 of 1943)]’</b> where ever it appears of the phrase <u>‘Long-term Insurance Act, 1998 (Act No.52 of 1998)’</u>.</p> |
| 4. | Act 63 of 2000    | Home Loan and Mortgage Disclosure Act, 2000     | <p>Section 8(2) of the Act is hereby amended by the substitution for subsection (c) of the following subsection-</p> <p>(c) “his or her estate is sequestrated <b>[or he or she applies for assistance</b></p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |

|  |  |  |                                                                                                      |
|--|--|--|------------------------------------------------------------------------------------------------------|
|  |  |  | <b>contemplated in section 10(1)(c) of the Agricultural Credit Act, 1996 (Act No.28 of 1966)] ”.</b> |
|--|--|--|------------------------------------------------------------------------------------------------------|

## Annexure B

### STATUTES ADMINISTERED BY THE DEPARTMENT OF HOUSING

| Number | Name of Act, number and year                                                                      |
|--------|---------------------------------------------------------------------------------------------------|
| 1.     | Government Villages Act, 1973 (Act No. 44 of 1973)                                                |
| 2.     | Government Villages Amendment Act, 1984 (Act No.25 of 1984)                                       |
| 3.     | Less Formal Township Establishment Act, 1991 (Act No.113 of 1991)                                 |
| 4.     | General Law Amendment Act, 1993 (Act 18 of 1993)                                                  |
| 5.     | Housing Act, 1997 (Act No.107 of 1997)                                                            |
| 6.     | Housing Amendment Act, 1999 (Act No.28 of 1999)                                                   |
| 7.     | Housing Second Amendment Act, 1999 (Act No.60 of 1999)                                            |
| 8.     | Housing Amendment Act, 2001 (Act No. 4 of 2001)                                                   |
| 9.     | Prevention of Illegal Eviction from and Unlawful Occupation of Land Act, 1998 (Act No.19 of 1998) |
| 10.    | Housing Consumers Protection Measures Act, 1998 (Act No.95 of 1998)                               |
| 11.    | Housing Consumers Protection Measures Amendment Act, 1999 (Act No.27 of 1999)                     |
| 12.    | Rental Housing Act, 1999 (Act No.50 of 1999)                                                      |
| 13.    | Home Loan and Mortgage Disclosure Act, 2000 (Act 63 of 2000)                                      |
| 14.    | Disestablishment of South African Housing Trust Limited Act, 2002 (Act 26 of 2002)                |
| 15.    | Housing Consumers Protection Measures Act, 2007 (Act No.17 of 2007)                               |