



**DISCUSSION PAPER 121**

**STATUTORY LAW REVISION**

**(LEGISLATION ADMINISTERED BY THE DEPARTMENT OF  
PUBLIC WORKS)**

**PROJECT 25**

**AUGUST 2010**

**Closing date for comments:**

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## Introduction

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

The members of the Commission are –

The Honourable Madam Justice Y Mokgoro (Chairperson)

The Honourable Mr Justice WL Seriti (Vice Chairperson)

Professor C Albertyn

The Honourable Mr Justice DM Davis

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## Preface

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

The Discussion paper (which includes a draft Bill entitled Public Works General Laws Amendment and Repeal 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 SALRC. A summary of preliminary recommendations and questions for comment appear on page (iv). The proposed Public Works General Laws Amendment and Repeal Bill is contained in Annexure A. Schedule 1 of the proposed Bill lists the 13 (thirteen) Acts that may be repealed as a whole, and Schedule 2 of the Bill lists the 9 (nine) Acts that may be amended. Annexure B contains a list of statutes (including those recommended for repeal in this paper) currently administered by the Department of Public Works enacted between 1910 and 2000.

The SALRC will assume that respondents agree to the SALRC quoting from or referring to comments of and attributing comments to respondents, unless representations are marked confidential. Respondents should be aware that the SALRC 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 SALRC by 31 May 2011 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 SALRC 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 SALRC 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 Constitution, particularly the equality clause thereof, and those that are redundant or obsolete. Pursuant to this mandate, the SALRC has established that there are 2800 Acts in the statute book. Furthermore, the SALRC has identified 57 statutes that are administered by the Department of Public Works. After careful and thorough analysis of the Acts administered by the Department of Public Works, the SALRC proposes that:

- (i) The Acts set out in Schedule 1 of the proposed Public Works General Laws Amendment and Repeal Bill contained in Annexure A, be repealed for the reasons set out in Chapter 2 of this Discussion Paper; and that
- (ii) Various provisions of Acts set out in Schedule 2 of the proposed Public Works General Laws Amendment and Repeal 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 SALRC.

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

**DISCUSSION PAPER**

**A INTRODUCTION**

**(a) The objects of the South African Law Reform Commission**

1.1 The objects of the SA Law Reform Commission (the SALRC) 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, modernisation 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 SALRC is an advisory body whose aim is the renewal and improvement of the law of South Africa on a continuous basis.

**(b) History of the investigation**

1.3 Shortly after its establishment in 1973, the SALRC undertook a revision of all pre-Union legislation as part of its project 7 that dealt with the review of pre-Union legislation. This resulted in the repeal of approximately 1 200 ordinances and proclamations of the former Colonies and Republics. In 1981 the SALRC 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 2003 Cabinet approved that the Minister of Justice and Constitutional Development co-ordinates and mandates the SALRC to review provisions in the legislative framework that would result in discrimination as defined by section 9 of the Constitution. This section prohibits unfair discrimination on the basis of race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth.

1.5 In 2004 the SALRC 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 SALRC, 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. WHAT IS STATUTORY LAW REVISION?

1.7 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>1</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.

1.8 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>2</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.

1.9 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.

1.10 The Law Commission for England and Wales lists the following guidelines for identifying statutory provisions that are candidates for repeal:<sup>3</sup>

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<sup>1</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>2</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.

<sup>3</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.

- (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.

1.11 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>4</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,

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<sup>4</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.

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
- 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.

1.12 Statutory provisions usually become redundant as time passes.<sup>5</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.

1.13 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>6</sup> Section 12(2) of the South African

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<sup>5</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>6</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.

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,

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.

1.14 The methodology adopted in this investigation is to review the statute book by Department – the SALRC identifies a Department, reviews the national legislation administered by that Department for constitutionality and redundancy, sets out the preliminary findings and proposals in a consultation paper and consults with that Department to verify the SALRC’s preliminary findings and proposals. The next step that the SALRC undertakes is the development of a discussion paper in respect of the legislation of each Department, and upon its approval by the SALRC, it is published for general information and comment. Finally, the SALRC develops a report in respect of each Department that reflects the comment on the discussion paper and contains a draft Bill proposing amending legislation.

### C. THE INITIAL INVESTIGATION

1.15 In the early 2000s the SALRC and the German Agency for Technical Cooperation commissioned the Centre for Applied Legal Studies (CALS) 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. CALS pursued four main avenues of research in their study conducted in 2001:<sup>7</sup>

- (a) 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.
- (b) 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 the principle of the separation of powers. Guidelines summarising the Constitutional Court's jurisprudence were compiled in respect of each category.
- (c) 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.
- (d) Fourth, a survey of five countries (United Kingdom, Germany, Norway, Switzerland and France) was conducted. With the exception of France, all

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<sup>7</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 countries have conducted or are conducting statutory revision exercises, although the motivation for and the outcomes of these exercises differ.

1.16 The SALRC finalised the following reports, proposing reform of discriminatory areas of the law or the repeal of specific discriminatory provisions –

- the Recognition of Customary Marriages (August 1998);
- the Review of the Marriage Act 25 of 1961 (May 2001);
- 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 38 of 1927 (March 2004);
- Customary Law of Succession (March 2004); and
- Domestic Partnerships (in March 2006)

#### **D. SCOPE OF THE PROJECT**

1.17 This investigation focuses 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.

1.18 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.

1.19 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.

1.20 The SALRC decided 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 Constitution. This is necessitated by, among other considerations, time and capacity. It is not foreseen that the SALRC 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.

#### **E. 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

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<sup>8</sup> 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 SALRC in February 2006.

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. The SALRC relies on the assistance of departments and stakeholders. This will ensure that all relevant provisions are identified during this review, and dealt with responsively and without creating unintended negative consequences.

## **F. CONSULTATION WITH THE DEPARTMENT OF PUBLIC WORKS**

1.22 As stated above, the SALRC has reviewed the 57 statutes administered by the DPW. The SALRC has been in consultation with representatives of the DPW since February 2006. On 13 November 2008, a meeting was held at the SALRC attended by representatives of the DPW to discuss preliminary findings contained in the Consultation Paper. In June 2009 and in accordance with its policy to consult widely and to involve the Department likely to be affected by the proposals made, the SALRC developed and submitted to the DPW its Consultation Paper. The Consultation Paper explains the background to statutory law revision, sets out the guidelines utilised by the SALRC to test the constitutionality and redundancy of statutes administered by DPW, and provided detailed findings and proposals for legislative reform in respect of legislation found wanting. Appended to the Consultation Paper was a Draft Public Works General Laws Amendment and Repeal Bill setting out statutes which needed to be amended and repealed, and the extent of such repeal, and invited DPW to peruse the preliminary findings, proposals and questions for comment and submit comments to the SALRC.

1.23 On 8 July 2010, the SALRC again requested for comments from the DPW in respect of the Consultation Paper referred to above. On 14 August 2010 the SALRC approved the publication of the DPW discussion paper for general information and comments, subject to further comments from the DPW. The SALRC wishes to express its appreciation to the DPW, for their support and participation in all the stages of this review leading to the development of this Discussion Paper.

## **Chapter 2**

### **Repeal and amendment of legislation administered by the Department of Public Works**

#### **A Introductory summary**

2.1 “In terms of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996) and other relevant legislation, the DPW’s mandate is the custodianship and manager of national government’s immovable assets. This includes the provision of accommodation requirements; rendering expert built environment services to user departments and the acquisition, management, maintenance and disposal of such assets.”<sup>9</sup>

2.2 In this chapter, the statutes provisionally proposed for repeal include the following:

- a) Bethelsdorp Settlement Act 34 of 1921;
- b) Bethelsdorp Settlement Act 1921 Amendment Act 3 of 1926;
- c) Bethelsdorp Settlement Amendment Act 44 of 1966;
- d) Bethelsdorp Settlement Amendment Act 13 of 1979;
- e) Bethelsdorp Settlement Amendment Act 49 of 1983;
- f) Carnarvon Outer Commonage Settlement Act 19 of 1913;
- g) Carnarvon Outer Commonage Settlement Act, Amendment Act 16 of 1920;
- h) Carnarvon Outer Commonage Subdivision Act 17 of 1926;
- i) Municipal Lands (Muizenberg) Act 9 of 1941;
- j) Mooi River Township Lands Act 5 of 1926;
- k) Church Square, Pretoria, Development Act 53 of 1972
- l) Church Square, Pretoria, Development Amendment Act 65 of 1978; and
- m) Church Square, Pretoria, Development Amendment Act (House of Assembly) 35 of 1988.

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<sup>9</sup> Department of Public Works Annual Report 2009/2010

2.3 Statutes provisionally proposed for amendment include the following:

- a) Cape Outspans Act 17 of 1937;
- b) State Land Disposal Act 48 of 1961;
- c) General Law Amendment Act 102 of 1972;
- d) Land Affairs Act 101 of 1987;
- e) Commonwealth War Graves Act 8 of 1992;
- f) Rhodes' Will (Groote Schuur Devolution) Act 9 of 1910;
- g) Local Government City of Cape Town (Muizenberg Beach) Improvement Act 17 of 1925;
- h) Government Villages Act 44 of 1973; and
- i) Construction Industry Development Board Act 38 of 2000.

2.4 Statutes provisionally recommended for retention without any amendment include the following:

- a) Parliamentary Villages Management Board Act 96 of 1998;
- b) Council for the Built Environment Act 43 of 2000;
- c) Architectural Profession Act 44 of 2000;
- d) Landscape Architectural Profession Act 45 of 2000;
- e) Engineering Profession Act 46 of 2000;
- f) Property Valuers Profession Act 47 of 2000;
- g) Project and Construction Management Professions Act 48 of 2000; and
- h) Quantity Surveying Profession Act 49 of 2000.

2.5 The Expropriation Act 63 of 1975 is excluded from this investigation due to the fact that the review of the Act is currently receiving attention by the DPW.

2.6 Provisional proposals flowing from the review of statutes listed in paragraphs 2.2-2.3 above have been summarised in a draft Public Works General Laws Amendment and Repeal Bill attached in Annexure A to this Discussion Paper.

## **B Statutes administered by the Department of Public Works**

2.7 The SALRC has identified 57 statutes that are administered by the Department of Public Works. The SALRC, 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 13 (thirteen) Acts that should be repealed wholly and 9 (nine) Acts that should be amended. These Acts are contained in Schedules 1 and 2 respectively of the draft Public Works General Laws Amendment and Repeal Bill attached as annexure A to this Discussion Paper. Furthermore, paragraph "C" below provides reasons and recommendations why these statutes and/or provisions in the said statutes were selected for repeal or amendment. For ease of reference the legislation has been divided into four categories as follows:

1. Statutes provisionally recommended for repeal;
2. Statutes provisionally recommended for amendment;
3. Statutes provisionally recommended for retention without any amendment; and
4. Statutes excluded from this investigation.

## **C Recommendations for the repeal and amendment of legislation currently administered by the Department of Public Works**

### **1. Statutes provisionally recommended for repeal**

2.8 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.

- (a) Bethelsdorp Settlement Act 34 of 1921 and Bethelsdorp Settlement Amendment Act 44 of 1966

## (i) Provisional proposal

2.9 It is provisionally proposed that the Bethelsdorp Settlement Act 34 of 1921, as amended by the Bethelsdorp Settlement Amendment Act 44 of 1966, be repealed. The Act has achieved its original purpose as discussed in the following paragraphs and no longer serves any useful purpose.

## (ii) Evaluation of Bethelsdorp Settlement Act 34 of 1921

2.10 The Bethelsdorp Settlement Act 34 of 1921 (the Act) sought to provide for the settlement of certain matters in dispute at Bethelsdorp between the London Missionary Society and its successors, the Congregational Union Church Aid and Missionary Society of South Africa and the Bethelsdorp Board of Supervisors.<sup>10</sup> The Act including the Schedule and its amending Acts<sup>11</sup> -

- refers to missionary organizations that are of historical significance;
- refers to the Bethelsdorp Board of Supervisors which no longer exists;
- in certain sections make a distinction on the grounds of race;<sup>12</sup>

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<sup>10</sup> The Act gave power to effect a resolution passed by the House of Assembly (on 30<sup>th</sup> July 1920) dealing with the matters in dispute which related to certain land in Bethelsdorp.

<sup>11</sup> The Bethelsdorp Settlement Act 1921 Amendment Act 3 of 1926; the Bethelsdorp Settlement Amendment Act 44 of 1966; the Bethelsdorp Settlement Amendment Act 13 of 1979 and the Bethelsdorp Settlement Amendment Act 49 of 1983.

<sup>12</sup> This is clear from the Schedule, Part 1, Resolution (3) of the Act, which states that, 'the grant of the balance of the garden lots laid out in October, 1876, as appear on the said plan II (1860) to the Congregational Union Church Aid and Missionary Society of South Africa, for sale, subject to such conditions and within such time as the Minister of Lands may decide, and on condition that the proceeds of such sale be applied towards the erection and maintenance of the Training Institute for coloured people to be erected at Uitenhage. These lots shall be sold subject to the special condition that they shall be owned and occupied by coloured people and blacks only. These lots shall have the same rights to the saltpan, grazing etc as the lots already granted.'

Such a distinction is also found in Resolution (4) of the Act;

'Such erven as are disposed of by sale shall be subject to the special condition that they shall be owned and occupied by coloured people and blacks only.'

Such apartheid era terminology is contrary to the spirit of the Constitution, 1996 and specifically to section 9(3) of the Bill of Rights.

See also the Bethelsdorp Settlement Amendment Act 3 of 1926; the Bethelsdorp Settlement Amendment Act 44 of 1966 - the Preamble to this Act states "AND WHEREAS portions of the said land are required by the City Council of Port Elizabeth and the Community Development Board for the erection of housing for Coloureds:", the Bethelsdorp Settlement Amendment Act 13 of 1979 and the Bethelsdorp Settlement Amendment Act 9 of 1983 - this Act assigns certain powers to the Minister of Community Development, a Ministry created by the apartheid state;

- section 3 of Part I to the Schedule provides for the use of money derived from the sale of garden lots towards the erection and maintenance of the Training Institute for coloured people to be erected at Uitenhage.

2.11 Does the Department of Public Works have knowledge of any legal body that may have succeeded the original Bethelsdorp Board of Supervisors? This would be a legal entity which may function under a different name but continues to conduct the work of the Board.

(iii) Evaluation of Bethelsdorp Settlement Amendment Act 44 of 1966

2.12 This Act was promulgated on 26 October 1966, and removed the right of owners of erven in Bethelsdorp to collect salt from the mentioned saltpan. It also granted a right to the Board to lease the saltpan to persons from 5 April 1963. The restrictions imposed on the local authority for the land allocated to it in terms of Clause (4) of Part 1 of the Schedule to the Bethelsdorp Settlement Act 34 of 1921 were removed by this Act and the provisions of the said Clause ceased to apply to the land granted to the local authority. Extensive research was done by Ms Gaynor Appels of the Port Elizabeth Regional Office of the Department of Public Works into the lots contained in plan II(1860). She states that the Surveyor General's Office has confirmed that the following properties are the properties on Plan II (1860):

Erven 187 -8; 190-206; 212-223;226-9; 235-242; 279-284;290-302;308-9; 330-348; 350; 405-411; 413; 415-8; 424-430; 432-440; 442-8; 450; 452; 474-5; 477; 480-9; 495-505; 545-7; 510; 553.

2.13 Of the above properties only Erf 227 is registered in the name of the Congregational Union Church. The property was transferred to the Church by virtue of a prescription claim lodged by it against the Department of Public Works in the early

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In terms of the equality provision in the Constitution, 1996 - s9(3) the state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, in including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth.

1980's. The property is used as a graveyard. The balance of the properties is unregistered state land, or registered in the name of the Cape Provincial Authority or the local authority, that is, the Port Elizabeth City Council.

2.14 The saltpan and the area surrounding it is registered in the name of the Bethelsdorp Saltpan Control Board under Title Deed No.G8/1929 dated 7 January 1929. The areas under the control of the Provincial Authority and the City Council are earmarked for the development of low costs housing and have already been subdivided.

2.15 The Acts may be repealed, as there is no possibility of any prejudice to any party or person. There is no land still registered in the name of the abovementioned Churches, which land was allocated to the latter institutions in terms of Clause (3) of Part 1 of the Schedule to Act 34 of 1921: Plan II (1860).

2.16 If the Acts are repealed, the Bethelsdorp Saltpan Control Board will continue to be the registered owner of the saltpan and the area surrounding it in terms of the Title Deed referred to above. It will also control the leasing of the Saltpan and the collection of revenue. The lots allocated to the City Council of Port Elizabeth have already been freed from the restrictions imposed upon it in terms of Clause (4) of Part 1 of the Schedule. The application of the Acts to these erven is therefore of no consequence.

2.17 There are no properties registered in the names of the abovementioned Churches, which require disposal, before the Acts could be repealed. The properties registered in the names of the above Churches do not have any effect on the application of the Acts. It is submitted that these Acts may be repealed. Alternatively, if it is found to be more prudent to retain the Acts, then the Acts have to be amended to remove the racial connotations of the Acts. The reference to the Minister of Community Development referred to in sections 1A(2) and 1B of Act 34 of 1921 needs to be replaced with the Minister of Public works.

(b) Carnarvon Outer Commonage Settlement Act 19 of 1913<sup>13</sup>

## (i) Provisional Proposal

2.18 Since the purpose of the Act was to create a legal framework for transfer of the land in the village of Carnarvon to registered owners in freehold title and such purpose has been fulfilled, it is provisionally proposed that the Carnarvon Outer Commonage Settlement Act 19 of 1913 as amended, be repealed.

## (ii) Evaluation of Carnarvon Outer Commonage Settlement Act 19 of 1913

2.19 In terms of section 2 of the Carnarvon Reserved Commonage Act 18 of 1882 (the latter Act was repealed by Act 17 of 1926), a Committee of Management was appointed to regulate and control the use of the commonage in Carnarvon (i.e. Remaining Extent of the Carnarvon Outer Commonage, measuring 81, 413 morgen 531 square roods). The Carnarvon Outer Commonage Settlement Act 19 of 1913 provides for the cancellation of quitrent title on erven in the village of Carnarvon and the granting of freehold title to registered owners of such erven and the regulation of opstallen, grazing as well as sowing rights in the Outer Commonage.

2.20 Section 14 of the Act provides for the vesting of ownership of the remainder of Outer Commonage in the Committee of Management, in trust for the owners of the opstallen.

## (iii) Evaluation of Carnarvon Outer Commonage Subdivision Act 17 of 1926

2.21 Section 1 of Act 17 of 1926 provides for the cancellation of the title deed which was issued in favour of the Committee of Management under title deed dated the 5<sup>th</sup> February 1920, and the vesting of the Remaining Extent in the State. No doubt this title

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<sup>13</sup> See also the Carnarvon Reserved Commonage Act 18 of 1882, the Carnarvon Outer Commonage Settlement Act 19 of 1913, the Carnarvon Outer Commonage Settlement Act Amendment Act 16 of 1920, and the Carnarvon Outer Commonage Subdivision Act 17 of 1926.

deed was duly cancelled, and the cancellation registered in the Deeds Office at Cape Town. However, the proviso to section 1 of the Act states that notwithstanding the cancellation of the said title deed, the owners of opstallen and the persons having grazing rights and sowing rights over the land in terms of section 10 of Act 19 of 1913, as the case may be, may continue to exercise the rights over the commonage, and the Committee of Management of the Carnarvon Outer Commonage shall continue to control and manage the Commonage in accordance with the provisions of Act 18 of 1882 of the Cape of Good Hope and Act 19 of 1913 until such time as the subdivision and allocation of the commonage has been completed in terms of section 3 of this Act.

2.22 Section 3(1) of the Act envisages that the Commonage will be subdivided and allocated and granted to registered owners of opstallen and persons entitled to sowing rights in terms of section 10 of Act 19 of 1913. Section 3(2) states that the Minister of Lands shall appoint a Board consisting of, inter alia and headed by, a Magistrate of the district of Carnarvon. In terms of section 3(4) of the Act it is the duty of the Board to subdivide and allocate the Commonage among registered owners of the opstallen and persons entitled to rights over the commonage in terms of section 10 of Act 19 of 1913.

2.23 Section 3(5) of the Act provides that upon completion of the division, survey and allocation, the Board shall publish in the gazette and two newspapers a description of the division and the allocations made by it. It further provides that 60 days after the advertisement, the communal rights which hitherto exercised over the commonage shall cease to exist.

2.24 Section 5 (1) of the Act provides that the Governor-General may issue title deeds to the persons allocated the sub-divisions of portions of the Commonage. It is therefore highly likely that the registration in the names of the allocatees have been effected. Searches of any land registered in the name of the Committee, have been done by the State Attorney in Cape Town, and the searches reveal that no land is registered in the name of the Committee. It may safely be concluded that the work of the Board has been completed in the sense that all land has been disposed of, and no land remains registered in the name of the Committee, which hitherto, had title to the land.

2.25 Deeds Office searches conducted by the State Attorney confirms that no land remains registered in the name of the Committee. Correspondence from the Regional Office of the Department of Public Works at Kimberly indicates that all portions of the Commonage have been transferred to individuals, and that only portion 353 remains, which land is now registered in the name of the Municipality of Carnarvon. A letter from the Magistrate of Carnarvon confirms that the Board established in terms of Sect 3(2) of this Act has ceased to exist, and it is no longer functioning. As mentioned before, the Magistrate for the district of Carnarvon is the Chairman of the Board in terms of section 3(2)(a) of the Act.

2.26 In view of the above facts, it is recommended that the Carnarvon Outer Commonage Settlement Act 19 of 1913 and the Carnarvon Outer Commonage Subdivision Act 17 of 1926 be repealed, due to the fact that no land remains registered in the name of the Committee and the Board has long ceased to function.

2.27 Since the purpose of the Act was to create a legal framework for transfer of the land in the village of Carnarvon to registered owners in freehold title and such purpose has been fulfilled, there is no longer a need to keep the Acts (Act 19 of 1913 and Act 17 of 1926) including its amendments in the statute book.

(c) Community Development Act 3 of 1966 (Section 51B)

(i) Provisional proposal

2.28 It is provisionally proposed that the President promulgates by notice in the Government Gazette the commencement of:

- (a) section 14(1) of the Land Affairs Act 101 of 1987, which will result in the repeal of the Community Development Act 3 of 1966 (with the exception of section 51B of the Community Development Act 3 of 1966); and

- (b) section 14(2) of the Land Affairs Act 101 of 1987, which will result in the repeal of section 51B of the Community Development Act 3 of 1966 and the Community Development Amendment Act 48 of 1986.
- (ii) Evaluation of Community Development Act 3 of 1966

2.29 The Community Development Act 3 of 1966 commenced on 17 February 1966 and has as some of its purposes the consolidation of the law relating to the development of certain areas; the promotion of community development in such areas; and the control of the disposal of affected properties. The Act provides for the granting of assistance to persons in order for them to acquire or hire immovable property; as well as for the establishment of a board for such purposes (sections 2 to 9 and sections 13 to 18) and the Community Development Fund (sections 11 and 12). The Act also provides for the termination of leases in certain areas (section 21). Reports on the activities of the board are required in terms of section 25. The Act provides for the extinction or modification of certain restrictions on land (section 26), and the waiving or modification of provisions of town-planning schemes or conditions of title of land (s 27). The Minister can, in terms of section 28, approve lay-out plans and the development of townships in anticipation of a proclamation.

2.30 Section 29 contains a list of affected properties, and section 37 provides for the removal of certain properties from this list. The Act provides for a pre-emptive right of the board in respect of affected properties (section 30); as well as for alterations, extensions or additions to buildings or new buildings on an affected property after the basic date (section 32). Section 33 deals with the determination of the basic value; and section 35 with the expropriation of an affected property by the State or any person other than the board. The Community Development Act 3 of 1966 provides for the prohibition on the disposal of affected property in certain circumstances (section 36), and for the acquisition of immovable property by the board by agreement or expropriation (section 38). Compensation in respect of the acquisition of property has to be determined in terms of section 41.

2.31 Section 14(1) of the Land Affairs Act 101 of 1987 repeals the whole of the Community Development Act 3 of 1966, except for section 51B. Section 14(2) repeals section 51B of the Community Development Act 3 of 1966 and the Community Development Amendment Act 48 of 1986. The date of commencement of section 14 still has to be proclaimed. The Community Development Act 3 of 1966 is thus currently still on the statute book. It is provisionally proposed that the President promulgates by notice in the Government Gazette the commencement of:

- (a) section 14(1) of the Land Affairs Act 101 of 1987, which will result in the repeal of the Community Development Act 3 of 1966 (with the exception of section 51B of the Community Development Act 3 of 1966); and
- (b) section 14(2) of the Land Affairs Act 101 of 1987, which will result in the repeal of section 51B of the Community Development Act 3 of 1966 and the Community Development Amendment Act 48 of 1986.

2.32 Section 51B of the Act provides that-

“(1) In the event of a body being established by or under any law, to exercise or to perform a power, duty or function in regard to any particular population group in any area referred to in paragraph 5 of Schedule 1 to the Republic of South Africa Constitution Act, 1983 (Act 110 of 1983), which in the opinion of the Minister was prior to the commencement of such law exercised or performed by the board (i.e. Community Development Board), the Minister may by notice in the Gazette declare that the assets, rights, liabilities and obligations of the board in regard to that area and such amount in the fund as the Treasury may determine shall vest in the said body as from a date mentioned in the notice, and on that date such assets, rights, liabilities and obligations shall so vest and such amount shall be paid into the fund or account of the said body, and from that date any reference to the board in any law or document shall, unless it would be clearly inconsistent, be interpreted as a reference to the said body.

(4) The Development and Housing Board, established under section 2 of the Development and Housing Act (House of Assembly), 1985 (Act 103 of 1985), shall be deemed to be a body referred to in subsection (1).”

2.33 Section 9 of the repealed Housing Arrangements Act 155 of 1993 provides that

(1) If the State President in terms of section 98A(5)(a) of the Republic of South Africa Constitution Act, 1983 (Act No.110 of 1983), assigns the administration of

(a) the Development and Housing Act, 1985 (Act No.103 of 1985);

(b) ...

to the Minister (for National Housing)

(i) the Development and Housing Board, the Housing Board, the Development Board or the Housing Development Board, as the case may be, shall cease to exist;

(ii) all rights and obligations of the board concerned shall pass to the board (i.e. National Housing Board); and

(iii) any reference in any law to the board concerned shall be construed as a reference to the board,

as from the date on which the administration of the Act concerned has been so assigned.

2.34 The Development and Housing Act (House of Assembly) 103 of 1985 was repealed as a whole by section 20 of the Housing Act 107 of 1997. The purpose of the Housing Act, among others, is to lay down general principles applicable to housing development in all spheres of government, to define the functions of national, provincial and local governments in respect of housing development and to provide for the establishment of a South African Housing Development Board, the continued existence of provincial boards under the name of provincial housing development boards and the financing of housing programmes.

2.35 It is not clear, however, that section 51B was ever repealed and unless the Department is aware of reasons to maintain the section then it is recommended that it should be repealed. In fact section 14(2) of the Land Affairs Act 101 of 1987 states that “section 51B of the Community Development Act, 1966 (Act 3 of 1966), and the Community Development Amendment Act, 1986 (Act 48 of 1986) shall be repealed with effect from a date fixed by the State President by proclamation in the Gazette”. Therefore, section 51 B of the Act could be repealed if necessary.

(d) Municipal Lands (Muizenberg) Act 9 of 1941

(i) Provisional proposal

2.36 It is provisionally proposed that the Municipal Lands (Muizenberg) Act 9 of 1941, be repealed since the purpose for which it was enacted has long been fulfilled and thus no longer serves any purpose.

(ii) Evaluation of the Municipal Lands (Muizenberg) Act 9 of 1941

2.37 The purpose of the Municipal Lands Act of 1941 is to make better provision for attaining the object of certain enactments by virtue of which certain lands adjoining False Bay are vested in the Council of the City of Cape Town.

2.38 In terms of section 1 of the Act, 1941, the Governor-General may issue in favour of the City Council of Cape Town a grant of the lands which by virtue of the Kalk Bay Municipal Improvement Act, 1897 are vested in the said Council, and which are not registered in a deeds registry as the property of the said Council. The lands primarily relate to the sea shores around the area.

2.39 The Act may be repealed if all the land it refers to have been transferred to the City Council of Cape Town. The Cape Town Regional Office of the Department of Public Works and the SALRC have written to the City Council of Cape Town to enquire as to whether it consents to the repeal of the Acts, and whether all land which vested in it in

terms of the said statute or the Kalk Bay Municipal Improvement Act 1897 as amended by the Kalk Bay Municipal Improvement Act, No. 8 of 1904, has been transferred to it. The City Council of Cape Town municipality will only consent to the repeal of Act 9 of 1941 if all the land which vested in it, in terms of the 1897 Act has been transferred to it.

2.40 The Sea Shore Act (No. 21 of 1935) was promulgated on 10 April 1935. In terms of Section 2 of this Act, the State President is deemed to be the owner of all sea –shores which have not been alienated before the date of the commencement of this Act. Therefore, it is submitted that no further sea shores can be acquired by the City Council of Cape Town or any other body if such sea-shores have not already vested in it prior to 10 April 1935, unless such sea-shores have been acquired in terms of Act 21 of 1935 and other statutes prior to 10 April 1935.

2.41 The Act still contains old terminology (like the ‘Governor-General’) and makes reference to a pre-1910 statute<sup>14</sup> that ought to have been repealed by the Cape Statute Law Revision Act, No. 25 of 1934. The Kalk Bay Municipal Improvement Act, No. 8 of 1904, has been repealed by section 1 of the Cape Statute Law Revision Act, No. 25 of 1934. If the purpose of the above Act has been fulfilled, there is no need to keep the Act in the statute book.

(e) Mooi River Township Lands Act 5 of 1926

(i) Provisional proposal

2.42 It is provisionally proposed that the Mooi River Township Lands Act 5 of 1926 be repealed since any amendment of the Act in order to update all the glaringly obsolete terminology like ‘Crown’, ‘Government of Natal’, ‘acres’, ‘rood’, ‘perches’, ‘County of Weenen’, ‘Colony of Natal’, ‘Governor-General’, ‘Administrator of the Province of Natal’ will not serve any useful purpose. Moreover, the purpose of Law 11 of 1881 has been superseded by recent local government legislation, in particular the Local Government: Municipal Structures Act 117 of 1998 which provides for the establishment of

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<sup>14</sup> The Act makes reference to Kalk Bay Municipal Improvement Act, 1897 of the old Cape of Good Hope administration.

municipalities in accordance with the requirements related to categories and types of municipalities.

#### Evaluation of Mooi River Township Lands Act 5 of 1926

2.43 The Mooi River Township Lands Act 5 of 1926 (the Act) provides for the grant of certain land to the local Board of the Township of Mooi River. This is set out in section 2 of the Act as follows:

- “(1) Notwithstanding anything contained in Law 11 of 1881 of Natal and the Commonages Act, 1904 (Act 35 of 1904) of Natal or in any other law, the Governor-General may grant to the local board of the township of Mooi River and its successors in office-
- (a) the land known as Turner Park referred to in section one of this Act as a site for a recreation ground, rifle range or for similar purposes for the use, benefit and enjoyment of the inhabitants of the township of Mooi River and surrounding district on such terms and conditions as may be imposed from time to time by the local board;
  - (b) the whole of the unalienated lands vested in the Crown within the villages of Weston and New Weston, including such lands as may have been destined or reserved for the purpose of such villages as provided in the aforesaid Acts, and the Crown lands adjoining the village of New Weston;
  - (c) the unalienated erven vested in the Crown within the villages of Weston and New Weston which are not required for public purposes.
- (2) The said local board shall hold the lands and erven granted to it in terms of paragraphs (b) and (c) of the preceding subsection, subject to the provisions of Law 11 of 1881 of Natal<sup>15</sup> and any amendment thereof, in trust

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<sup>15</sup> To provide for the Establishment and Local Management of Townships

for the inhabitants of the township of Mooi River as constituted in terms of the said law.”

2.44 According to information obtained from the Mpofana Municipality, the land known as Turner Park is currently vacant and is being utilized for grazing purposes.<sup>16</sup>

2.45 The land in question was leased by the Government of Natal to the trustees of the Turner Park for a period of 99 years starting from 1 September 1907 as a site for a recreation ground and rifle range and similar purposes. The lease has now expired [on 31 August 2006]. Is there a need for the lease to be extended or not? Is there still a local township board in existence at Mooi River to regulate the terms of the Act? If not then in which supervisory body has the ‘Crown’ land described in sections 2(1)(b) and (c) been vested?. Furthermore, Section 2(2) of the Act states that the said local board shall hold the lands and erven granted to it in terms of paragraphs (b) and (c) subject to the provisions of Law 11 of 1881 of Natal and any amendment thereof, in trust for the inhabitants of the township of Mooi River as constituted in terms of the said law.

2.46 Any amendment of the Act in order to update obsolete terminology like ‘Crown’, ‘Government of Natal’, ‘acres’, ‘rood’, ‘perches’, ‘County of Weenen’, ‘Colony of Natal’, ‘Governor-General’, ‘Administrator of the Province of Natal’ will not serve any useful purpose since it will not be possible to implement the provisions of Law 11 of 1881. The purpose of Law 11 of 1881 was to provide for the establishment and local management of townships. This Law has been superseded by recent local government legislation, in particular the Local Government: Municipal Structures Act 117 of 1998 which serves as an extensive framework law and provides for the establishment of municipalities in accordance with the requirements related to categories and types of municipalities. Furthermore, the functions of the local board are most definitely performed by the Mpofana Municipality.

(f) Church Square, Pretoria, Development Act 53 of 1972

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<sup>16</sup> E-mail received on 1 February 2010 from Mr Sandile Makhaye

## (i) Provisional proposal

2.47 The Church Square, Pretoria, Development Act 53 of 1972 provides for the development of Church Square, Pretoria, and certain sites bordering thereon and in the immediate vicinity thereof subject to the approval of the Minister of Local Government, Housing and Works: Administration: House of Assembly. This provision (section 2) in the Act appears to be inconsistent with the constitutional scheme for the allocation of functions between the national, provincial and local spheres of government. Furthermore, the Act also contains certain terminology that is glaringly obsolete. It is provisionally proposed that the Act be repealed.

## (ii) Evaluation of Church Square, Pretoria, Development Act 53 of 1972

2.48 The Act makes provision for the establishment of the 'management committee' to perform some of the powers vested in the Minister. These include the power to give approval or to withhold approval for any alterations to be effected to the planning, lay-out or design of the piece of land known as Church Square in the City of Pretoria. In terms of the Act, the land is held by the City Council of Pretoria under Crown Land Grant 1103.1905 dated 26 August 1905. The 'management committee' is defined in the Act to mean-

"the management committee of the City Council of Pretoria as established in terms of section 51 of the Local Government (Administration and Elections) Ordinance, 1960 (Ordinance No. 40 of 1960)".

2.49 In terms of section 2A of the Act, the Minister shall appoint a committee consisting of-

- i. the Town Clerk of Pretoria, who shall act as chairman;
- ii. the Head of the Architectural Services Section in the Department of Local Government, Housing and Works: Administration: House of Assembly;
- iii. the Senior Director of Works and Estates in the Department of Posts and Telecommunications;

- iv. an officer in the Department of Education and Culture: Administration: House of Assembly;
- v. an officer in the Department of Environmental Affairs;
- vi. two practising architects in Pretoria; and
- vii. two persons who in the opinion of the Minister have professional knowledge of the development of the piece of land and area referred to in section 2(1).

2.50 However, the Local Government (Administration and Elections) Ordinance, 1960 (Ordinance No. 40 of 1960) has now been repealed by section 38 of the Gauteng Local Government Laws Amendment Act, 2006 (Act No.1 of 2006). It would appear that the 'management committee' referred to in paragraph 2.48 above as well as the 'committee' referred to in paragraph 2.49 above are no longer in existence. Furthermore, the Act contains a number of obsolete and redundant terminology and provisions, for instance:

- the Minister is defined in section one 1 of the Act to mean 'the Minister of Local Government, Housing and Works: Administration: House of Assembly';
- Section 2A(1)(a) refers to-
  - i. the 'Head of the Architectural Services Section in the Department of Local Government, Housing and Works: Administration: House of Assembly' in subparagraph (ii);
  - ii. to 'the Senior Director of Works and Estates in the Department of Posts and Telecommunications' in subparagraph (iii);
  - iii. to 'an officer in the Department of Education and Culture: Administration: House of Assembly' in subparagraph (iv); and
  - iv. to 'an officer in the Department of Environment Affairs' in subparagraph (v).

2.51 In the *City of Johannesburg Metropolitan Municipality v Gauteng Development Tribunal and Others*<sup>17</sup>, the main issue before the Constitutional Court was whether

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<sup>17</sup> (CCT89/09) [2010] ZACC 11 (18 June 2010)

Chapters V and VI of the Development Facilitation Act 67 of 1995 are indeed unconstitutional by reason of being inconsistent with the constitutional scheme for the allocation of functions between the national, provincial and local spheres of government. Like the Church Square, Pretoria, Development Act 1972, the Development Facilitation Act was also passed before the 1996 Constitution came into force. The Court held that-

“Section 40 of the Constitution defines the model of government contemplated in the Constitution. In terms of this section government consists of three spheres: the national, provincial and local spheres of government. These spheres are distinct from one another and yet interdependent and interrelated. Each sphere is granted the autonomy to exercise its powers and perform its functions within the parameters of its defined space. Furthermore, each sphere must respect the status, powers and functions of government in other spheres and “not assume any power or function except those conferred on it in terms of the Constitution”.

2.52 If the provisions of the Church Square, Pretoria, Development Act have been superseded by other more recent legislation governing municipal planning and development and thus no longer serve any useful purpose, the Act may be repealed.

## **2. Statutes provisionally recommended for amendment**

### (a) Cape Outspans Act 17 of 1937

#### (i) Provisional proposal

2.53 The Cape Outspans Act 17 of 1937 contains certain terminology that is glaringly obsolete and makes reference to certain pieces of legislation that no longer exists. It is provisionally proposed that these be amended as stated in the paragraphs below.

#### (ii) Evaluation of Cape Outspans Act 17 of 1937

2.54 This Act provides for the issue of deeds of grant to divisional and municipal councils in respect of outspans consisting of Crown Land situated in the Province of the

Western Cape. Outspans originated as public servitudes over areas of land that could be used for those traveling to rest, water and feed themselves and their animals. Although the use of outspans for this purpose has fallen away there are still sections of land which are categorized as 'outspan' land. Thus the Act still has relevance<sup>18</sup>, as is reflected in the following excerpt which can be found in the 'Informal Settlements Handbook';<sup>19</sup>

"Cape Outspans Act, 1937 [Act 17 /1937]

This Act will only be applicable where an informal settlement is located on a proclaimed outspan. The Sun City development in Sir Lowry's Pass is one such example.<sup>20</sup>"

2.55 It is, however, apparent that in consultation with the relevant bodies in the Western Cape Province, this Act should be amended and updated. For instance:

- section 3(2) of the Act refers to the Arbitrations Act 29 of 1898, which was repealed by the Arbitration Act 42 of 1965.
- section 4 of the Act refers to the consent of the 'Administrator of the Province of the Cape of Good Hope'.

(b) State Land Disposal Act 48 of 1961

(i) Provisional proposal

2.56 It is provisionally recommended that:

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<sup>18</sup> See in this regard also the Transfer of Powers and Duties of the State President Act 97 of 1986 This Act states in section (1) that certain power in 'The Outspans Act, 1902' (Act 41 of 1902), is to be exercised by the Minister of Public Works.  
'The power conferred under section 3(1) of 'The Outspans Act, 1902' (Act 41 of 1902), to the Governor referred therein, shall as from the commencement of this Act be exercised by the Minister of Public Works.'

In terms of the Pre-Union Statute Law Revision Act 78 of 1967 what remained unrepealed of the Outspans Act, 1902 was repealed with the exception of section 3(1). Therefore, section 3(1) remains in force. Section 3(1) reads as follows

From and after the taking effect of this Act, it shall be lawful for the Governor:

(1) To resume such Outspan ground being Crown Land as is no longer used and required for Outspan purposes, and to cancel the Outspan servitudes therein, and to dispose of such land under the laws for the time being regulating the disposal of Crown Lands.

<sup>19</sup> Published in 2005 by the Western Cape Provincial Department of Housing and compiled by a steering committee of members of the department and the city of Cape Town's Housing Branch

<sup>20</sup> [www.capegateway.gov.za/Text/2005/1/informal\\_settlements\\_handbook\\_compressed.pdf](http://www.capegateway.gov.za/Text/2005/1/informal_settlements_handbook_compressed.pdf)

- (a) Certain sections of the State Land Disposal Act 48 of 1961 be repealed on the ground of obsolescence;
  - (b) Certain sections of the State Land Disposal Act 48 of 1961 be amended on the basis of its partly obsolete nature.
- (ii) Evaluation of State Land Disposal Act 48 of 1961

2.57 The State Land Disposal Act 48 of 1961 commenced on 28 June 1961 and provides for the disposal of certain State land and for matters incidental thereto; and for the prohibition on the acquisition of State land by prescription (section 3). Section 2 provides for the disposal of certain State land by the President, and section 2A for powers of the President in relation to certain rights of the State in respect of private land. In addition, the Act also provides that the President may consent to the amendment or cancellation of any condition registered against any land conferring a right in that land on the State.

2.58 The State Land Disposal Act 48 of 1961 is administered by both the Department of Rural Development and Land Reform and the Department of Public Works and it confers powers on both the Minister for Rural Development and Land Reform and the Minister for Public Works. It should, therefore, be subject to a transversal review process and the Department of Rural Development and Land Reform should be consulted before any amendments are carried out.

2.59 The Act consists of 14 sections. Two of these sections have been repealed. The Act has also been amended on five occasions. The Act is important for a number of reasons:

- Firstly, the Act allows the disposal of national state land to take place on a centralised basis;
- Secondly, in practice, the disposal of national state land takes place primarily in terms of this Act;

- Thirdly, the Act confers on the President the power to amend or cancel any condition registered against any land conferring any right on the State; and
- Fourthly, the Act prohibits the acquisition of both national state land and provincial state land by means of acquisitive prescription.

2.60 With regard to the extent of, and reason for, current applicability, the State Land Disposal Act 48 of 1961 applies to the disposal of all types of national state land situated either within or outside of the Republic. It is currently applicable for the reasons set out above.

2.61 The Act does, however, contain a number of obsolete and possible spent provisions. In addition, it does not accurately reflect the current system of national and provincial government, or the distinction that may be drawn between national state land and provincial state land.

#### B. Section 1

2.62 It is provisionally recommended that the definition of the term “State land” in section 1 be amended. The definition of the term “State land” is obsolete. This is because it does not accurately reflect South Africa’s new system of national and provincial government and, in particular, it does not accurately reflect the distinction that may now be drawn between “national state land” and “provincial state land”. In this respect the following points may be made:

- (a) First, that in terms of the new constitutional dispensation, ownership of state land does not vest only in the national government. Ownership of state land may vest in either the national or the provincial governments. A distinction may, therefore, be drawn between national state land and provincial state land. Ownership of national state land vests in the national government and ownership of provincial state land vests in the relevant provincial government. Support for this proposition may be found in section 239 of the interim Constitution. This section regulated the manner

which state land that existed on the 27 April 1994 was allocated to either the national or the provincial governments. It essentially provided in this respect that state land associated with the administration of a particular law would vest in the authority that had been assigned administrative responsibility for that law in terms of section 235 of the interim Constitution. The 1996 Constitution does not contain an equivalent provision. Item 28(1) of Schedule 6 of the 1996 Constitution does, however, provide that “on the production of a certificate by a competent authority that immovable property owned by the state is vested in a particular government in terms of section 239 of the previous Constitution, a registrar of deeds must make such entries or endorsements in or on any relevant register, title deed or other document to register that immovable property in the name of that government”.

- (b) Second, that the disposal of provincial state land is comprehensively regulated by provincial legislation. Over the past 15 years each of the provincial legislatures has enacted a “land administration” statute. These statutes confer the authority to dispose of provincial state land on the Premier or the relevant Member of the Executive Council. In each of these Acts, the right to dispose of provincial state land encompasses the right to sell, exchange, let, donate and encumber provincial state land. The relevant provincial Acts are as follows: the Eastern Cape Land Disposal Act 7 of 2000, Free State Land Administration Act 1 of 1998, Gauteng Land Administration Act 11 of 1996, KwaZulu-Natal Land Administration Act 3 of 2003; Northern Province Land Administration Act 6 of 1999, Mpumalanga Land Administration Act 5 of 1998, Northern Cape Land Administration Act 6 of 2002; North West Land Administration Act 4 of 2001; and Western Cape Land Administration Act 6 of 1998. In addition, some of these Acts also prohibit the acquisition of provincial state land by means of acquisitive prescription (see s 21 of the Gauteng Land Administration Act, s 12 of the KwaZulu-Natal Land Administration Act, s 8 of the Northern Cape Land Administration Act, s 7 of the North West Land Administration Act, and s 7 Western Cape Land Administration Act).

- (c) Third, that in accordance with the system of co-operative government, Parliament has enacted framework legislation aimed at regulating the manner in which the provincial governments may dispose of provincial state land. The Government Immovable Asset Management Act 19 of 2007 provides in this respect that relevant national and provincial departments of state must prepare custodian immovable asset plans (see section 4) and that these plans must, *inter alia*, include a strategy for disposing of immovable assets (see section 7).

2.63 It is, therefore, provisionally proposed that the definition of state land be amended to reflect more accurately the distinction that may be drawn between national state land and provincial state land. Given, however, that such a change will have consequential effects on other provisions of the Act, for example section 3 which prohibits the acquisition of state land by means of acquisitive prescription, it is strongly recommended that the Department of Rural Development and Land Reform be consulted before any such amendment is made.

2.64 Apart from the fact that it does not accurately reflect the distinction that may be drawn between national state land and provincial state land, the definition of the term "State land" may also have to be amended because the references to section 3(4) of the Agricultural Holdings (Transvaal) Registration Act 22 of 1919 and sections 78(3) and (4) of the Town Planning and Townships Ordinance (Transvaal) 25 of 1965 may be obsolete.

2.65 Section 3(4) of the Agricultural Holdings (Transvaal) Registration Act 22 of 1919 refers to land which has been set aside for educational or other public purposes and which has been transferred to the President in return for being granted a certificate by the Minister exempting the area in which the land is located, and which has been divided into lots for the purpose of creating agricultural holdings, from certain provisions of the Town Planning and Townships Ordinance 11 of 1931.

2.66 It is unlikely that any such land has been transferred to the President since 1957. This is on account of the fact that the Agricultural Holdings (Transvaal) Registration Act 22 of 1919 was repealed in 1957 except in so far as it related to land which had already been divided into agricultural holdings and in respect of which a certificate had already been issued. The Agricultural Holdings (Transvaal) Registration Act 22 of 1919 was repealed by the Transvaal Provincial Council when it enacted section 36 of the Division of Land Ordinance (Transvaal) 20 of 1957 (the power to repeal the Agricultural Holdings (Transvaal) Registration Act 22 of 1919 was conferred on the Transvaal Provincial Council by section 4 of the Provincial Powers Extension Act 10 of 1944).

2.67 Given that it is unlikely that any such land has been transferred to the President since 1957, it is possible that the national government may have disposed of all such land. If this is the case then the purpose for which the reference to section 3(4) of the Agricultural Holdings (Transvaal) Registration Act 22 of 1919 was included in the definition of "State land" has been fulfilled. The reference to section 3(4) of the Agricultural Holdings (Transvaal) Registration Act 22 of 1919 may, therefore, be repealed.

2.68 A somewhat similar argument may also be made in respect of the reference to section 78(3) and (4) of the Town Planning and Townships Ordinance 25 of 1965. Section 78(3) and (4) referred to land in a township which had been transferred to the President in trust for a future local authority. This section has, however, been repealed and replaced by section 86(2) of the Town Planning and Townships Ordinance (Transvaal) 15 of 1986.

2.69 Once again it is unlikely that any such land has been transferred to the President at least since 1996. This is because the concept of a "future local authority" as referred to in section 86 of Ordinance 15 of 1986 does not appear to be consistent with the constitutional and legislative framework governing the establishment of municipalities in South Africa today.

2.70 In addition, section 86 appears in Part B of Chapter III of the Town Planning and Townships Ordinance (Transvaal) 15 of 1986 and this Part applies only to townships

which have been or which are going to be established in a local authority which is not an “authorised local authority”. The concept of an “unauthorised local authority” is also not consistent with the constitutional and legislative framework governing the status and the powers of municipalities in South African today.

2.71 Given that it is unlikely that any such land has been transferred to the President at least since 1996, it is possible that the national government may have disposed of all such land. If this is the case then it would serve no purpose to replace the reference to section 78(3) and (4) of the Town Planning and Townships Ordinance (Transvaal) 15 of 1986 with a reference to section 86(2) of the Town Planning and Townships Ordinance (Transvaal) 15 of 1986. The reference to section 78(3) and (4) may, therefore, be repealed.

2.72 Finally, it should also be noted that the Town Planning and Townships Ordinance (Transvaal) 15 of 1986 will be repealed – at least in so far as the province of Gauteng is concerned – when the Gauteng Planning and Development Act 3 of 2003 comes into operation (see section 97 of the Act).

2.73 Against the foregoing background, it is provisionally recommended that the definition of the term “State Land” should be amended as follows:

“State land includes [any land over which the right of disposal by virtue of the provisions of section 3(4) of the Agricultural Holdings (Transvaal) Registration Act, 1919 (Act 22 of 1919), and section 78(3) and (4) of the Town Planning and Townships Ordinance, 1965 (Ordinance 25 of 1965) (Transvaal), vests in the State President, and] any right in respect of State land”.

B. Section 2(2)

2.74 It is provisionally recommended that section 2(2) be amended. Section 2(2) provides as follows:

“The [State] President shall not dispose of any particular State Land in terms of subsection (1) if the disposal thereof is governed by a provincial ordinance:

Provided that the provisions of this subsection shall not apply in respect of the lease of the whole or any portion of –

- (a) places upon State land which have been reserved by the [State] President as contemplated in Item 5 of the Second Schedule to the Financial Relations Consolidation and Amendment Act, 1945 (Act 38 of 1945), as being places of public resort, of public recreation, or of historical or scientific interest; and
- (b) State land situated in public resorts, places of rest, seaside resorts, holiday centers, holiday camps, caravan parks, tent camps and picnic places referred to in Item 24 of the Second Schedule of the said Act which cannot lawfully be leased in terms of any such ordinance.”

2.75 Section 2(2) confirms the points made above. The reference to provincial ordinances, however, is obsolete. As pointed out above, the disposal of provincial state land today is comprehensively regulated by Acts of the various provincial legislatures.

2.76 In addition, all of the provincial Acts referred to above confer the power to lease provincial state land on the relevant Premier or Member of the Executive Council. There are, consequently, no places on provincial state land or portions of provincial state land which cannot lawfully be leased. The proviso to section 2(2) is therefore redundant.

2.77 Finally, the references to Item 5 and Item 24 of the Second Schedule Financial Relations Consolidation and Amendment Act 38 of 1945 are also obsolete. This is because the Financial Relations Consolidation and Amendment Act was repealed by the Financial Relations Act 65 of 1976, and the Financial Relations Act was repealed by the Constitution of the Republic of South Africa, Act 200 of 1993.

2.78 It is provisionally recommended that section 2(2) should be amended as follows:

2(2) The [State] President shall not dispose of any particular State land in terms of subsection (1) if the disposal thereof is governed by a provincial law

[ordinance: Provided that the provisions of this subsection shall not apply in respect of the lease of the whole or any portion of-

(a) places upon State land which have been reserved by the [State] President as contemplated in Item 5 of the Second Schedule to the Financial Relations Consolidation and Amendment Act, 1945 (Act 38 of 1945), as being places of public resort, of public recreation, or of historical or scientific interest; and

(b) State land situated in public resorts, places of rest, seaside resorts, holiday centres, holiday camps, caravan parks, tent camps and picnic places referred to in Item 24 of the Second Schedule to the said Act, which cannot lawfully be leased in terms of any such ordinance].

C. Section 2B

2.79 It is provisionally recommended that section 2B be repealed. The reason for this is that the land referred to in section 2B(1) vested in the State on 1 April 1979. It is highly probable that over the past 30 years the national government may have disposed of all such land. If this is the case section 2B no longer serves any purpose and it may, therefore, be repealed.

D. Section 8A

2.80 It is provisionally recommended that section 8A be amended. Section 8A provides as follows:

“The provisions of this Act shall apply in addition to, and not in substitution for, the provisions of any proclamation or regulation referred to in sections 5(2), 8(2) and 11(2) of the Abolition of Racially Based Land Measures Act, 1991 (Act 108 of 1991).”

2.81 There is a view that the references to section 5(2) and section 8(2) of the Abolition of Racially Based Land Measures Act 108 of 1991 are spent and should be

deleted from section 8A. Section 5(2) provided for the continued existence of proclamations made under section 25(1) of the Black Administration Act 38 of 1927, notwithstanding the repeal of section 25(1) itself.

2.82 In terms of section 6(a) of the Repeal of the Black Administration Act and Amendment of Certain Laws Act 28 of 2005, provision was made for the repeal of all such section 25(1) Black Administration Act 38 of 1927 proclamations on 30 September 2007, or such date as it is repealed by a competent authority, whichever occurs first.

2.83 The same argument should be made as regards regulations made under section 30(2) and bylaws made under section 30A(1) of the Black Administration Act 38 of 1927. Section 8(2) of the Abolition of Racially Based Land Measures Act 108 of 1991 provided for the continued existence of such regulations and bylaws. Section 8(2) was, however, repealed by section 6(b) of the Repeal of the Black Amendment Act and Amendment of Certain Laws Act 28 of 2005 on 30 September 2007, or such date as it is repealed by a competent authority, whichever occurs first.

2.84 It is provisionally recommended that section 8A be amended as follows:

8A. The provisions of this Act shall apply in addition to, and not in substitution for, the provisions of any [proclamation or] regulation referred to in section [s 5(2), 8(2) and] 11(2) of the Abolition of Racially Based Land Measures Act, 1991 (Act 108 of 1991).

(c) General Law Amendment Act 102 of 1972

(i) Provisional proposal

2.85 The General Law Amendment Act 102 of 1972 contains a provision that is glaringly in contravention of section 6 of the Constitution relating to official languages. It is provisionally proposed that the Act be amended as stated in the paragraphs below.

(ii) Evaluation of General Law Amendment Act 102 of 1972

2.86 It is recommended that an amendment should be effected to the following provision of this Act:

“Section 34 - Certain Conditions of title or other conditions applying in respect of immovable property owned by the State to lapse in certain circumstances – subsection (1) provides that in the case of State owned immovable property, which is subject to a condition of title, to the effect that the property may or shall only be used for certain purposes or only by the State, when such property is no longer required or used for such purposes, or used by the State the Minister of Public Works by means of a notice in ‘both official languages’, published simultaneously in the Gazette and a newspaper circulating in the area in which the property is situate.....”

2.87 This reference to ‘both official languages’ is problematic, there are now eleven official languages and although it may not yet be possible to publish such notices in all of these languages, perhaps the provision could be amended as follows, “at least two of the official languages”.

(d) Land Affairs Act 101 of 1987

(i) Provisional proposal

2.88 The Land Affairs Act 101 of 1987 contains certain terminology that is glaringly obsolete and makes reference to certain pieces of legislation that no longer exists. It is provisionally proposed that the Act be amended as stated in the paragraphs below.

(ii) Evaluation of Land Affairs Act 101 of 1987

2.89 It is recommended that the following amendment should be effected to this Act:

- The Preamble must be amended in order to remove the words ‘and Land Affairs’ after the words Department of Public Works, due to the fact that there

is no such Department of Public Works and Land Affairs. The same goes for the definition of the Department in section 1 of the Act;

- Section 3(1) Constitution of the Board – refers to the appointment of board members by the Minister of Public Works, after consultation with the ‘Minister of Local Government, Housing and Works in the Ministers Council: House of Representatives and the Minister of Local Government, Housing and Agriculture in the Ministers Council: House of Delegates’,
- These references to obsolete names like ‘own affairs’ portfolios should be deleted or substituted.
- Subsection 4(2)(c) makes reference to a repealed piece of legislation, namely- the Agricultural Credit Act, 1966 (Act 28 of 1966). The latter Act was repealed by the Agricultural Debt Management Act 45 of 2001. It is recommended that the above anomaly be deleted.
- Likewise, subsection 4(2)(d) makes reference to ‘the President’s Council’ which does no longer exist. It is recommended that the reference to the President’s Council be deleted.

(e) Commonwealth War Graves Act 8 of 1992

(i) Provisional proposal

2.90 The Commonwealth War Graves Act 8 of 1992 contains certain terminology that is glaringly obsolete and makes reference to certain pieces of legislation that no longer exists. It is provisionally proposed that the Act be amended as stated in the paragraphs below.

(ii) Evaluation of Commonwealth War Graves Act 8 of 1992

2.91 It is recommended that certain amendments should be effected to this Act as follows:

- The definition of the term 'local authority' in section 1 of the Act makes reference to a number of Acts, which have been repealed. These references should be deleted or substituted, namely-
  - “‘local authority’ means any institution or body contemplated in section 84(1)(f) of the Provincial Government Act 32 of 1961. However, this Act was repealed by the Constitution of the Republic of South Africa Act 200 of 1993.
- The definition 'local authority' includes-
  - (a) any local authority as defined in section 1 (1) of the Black Local Authorities Act, 1982 (Act 102 of 1982) - this Act was repealed by the Local Government Transition Act 209 of 1993;
  - (b) any local government body established by virtue of the provisions of section 30(2)(a) of the Black Administration Act 38 of 1927. Section 8(1) of the Abolition of Racially Based Land Measures Act 108 of 1991 repeals sections 30 and 30A of the Black Administration Act 38 of 1927. In terms of section 1 (6)(b) of the Repeal of the Black Administration Act and Amendment of Certain Laws Act 28 of 2005,-
    - “Any regulation made under section 30 (2) of the Act or any by-law made under section 30A(1) of the Act and in force immediately prior to the commencement of section 8 of the Abolition of Racially Based Land Measures Act, 1991 (Act 108 of 1991), in an area, including a former self-governing territory, which has not been repealed in terms of section 87 of the said Abolition of Racially Based Land Measures Act, 1991, is hereby repealed on –
      - (i) 30 September 2007; or
      - (ii) Such date as it is repealed by a competent authority, whichever occurs first;”. So clearly this definition needs to be revised.
  - (c) a 'board of management' or 'board' referred to in section 1 of the Rural Areas (House of Representatives) Act 9 of 1987 means in terms of this Act *'a board of management established under Act 24 of 1963 or*

*Law 1 of 1979 or this Act for the administration and control of any board area*<sup>21</sup>. The whole of Act 9 of 1987 has been repealed by section 10 of the Transformation of Certain Rural Areas Act 94 of 1998, which will come into operation on a date to be fixed by the President by proclamation in the Gazette (2 November 1998). This definition originated in apartheid 'own affairs' legislation and thus it should be amended;

- (d) any local development committee established under s28 A(1) of the Development (House of Representatives) Act 3 of 1987 (this Act was repealed by the Housing Act 107 of 1997);
- (e) the Local Government Affairs Council established by section 2 of the Local Government Affairs Council (House of Assembly) Act 84 of 1989 – this Act was repealed by section 2 of the Disestablishment of the Local Government Affairs Council Act 59 of 1999.”

(f) Rhodes' Will (Groote Schuur Devolution) Act 9 of 1910  
and Rhodes' Will (Groote Schuur Devolution) Amendment Act 55 of 1985

- (i) Provisional Proposal

2.92 Certain terminology of the Rhodes Will (Groote Schuur Devolution) Act 9 of 1910 are glaringly obsolete. It is provisionally proposed that these be amended as stated in paragraph 2.70 below.

- (ii) Evaluation of Rhodes' Will (Groote Schuur Devolution) Act 9 of 1910

2.93 The Act makes provision for the surrender of the Groote Schuur Estates to the Government of the Union of South Africa Africa in accordance with the Will of the late

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<sup>21</sup> The Rural Coloured Areas Act 24 of 1963 was repealed by the Rural Coloured Areas Amendment Act 31 of 1978 (excluding section 4) - this Act in turn was repealed by Act 108 of 1991; Law 1 of 1979 the Rural Coloured Areas Law 1979, of the Coloured Persons Representative Council of the Republic of South Africa was repealed by the Rural Areas Act (House of Representatives) 9 of 1987.

Cecil John Rhodes and for the release of the Trustees thereunder from all responsibility in connection with the said Estates and for other purposes.

2.94 The Act contains certain restrictions on the usage and disposal of numerous properties mentioned in the Act and the Will, and it is believed that the repeal of this Act would render the aforesaid restrictions non operable. This will be contrary to the wishes of the Testator, which should be respected. Therefore, it is not prudent to alter the conditions attached to the bequest, as non compliance with the conditions and restrictions of the bequest could render the bequest itself nugatory.

2.95 If the Act is repealed, the only way of ensuring that the restrictions and conditions mentioned in the said Will are enforceable is to ensure that these conditions and restrictions are registered against the Title Deed of each Property. In terms of the Deeds Act and conveyancing practice, the title deed in favour of the beneficiary must contain all the conditions of the Will of the transferor, as specified in the Will. In view of the large amount of property transferred to the State and other institutions, for example the University of Cape town and the Kirstenbosch Gardens, it is not certain if all the conditions contained in the Will have actually been registered against each title deed, or whether these conditions were mentioned by reference to a provision of the Act. The only method of determining whether the restrictive conditions pertaining to each lot have been registered in the Deeds Office is to do a Deeds search and obtain a copy of each title deed. This is a very difficult task, in view of the numerous properties involved, and the fact that the property descriptions of the lots may have been changed, probably more than once. The original properties may also have been consolidated or sub-divided and obtained different erf numbers.

2.96 Accordingly, it would be safer and more prudent to retain this Act in its entirety. However, all the glaringly obsolete terminology, like 'Prime Minister', 'Union Government' and 'Governor-General' need to be amended in order to bring the language of the Act in line with current terminology. This will ensure that the restrictive conditions mentioned in the Will are still applicable to each property, be it by means of a Statute and not necessarily by individual conditions registered against each title deed.

- (iii) Evaluation of Rhodes' Will (Groote Schuur Devolution) Amendment Act 55 of 1985

2.97 The above Act inserts Section 1A into the Principal Act. The amendment gives the State President the power to grant permission for portions of the Groote Schuur Estates to be utilized as a museum or a park. The provisions of this Act give the State President certain extra-ordinary powers relating to the usage of the land, and should not be repealed. It is possible that the President may wish to use this provision in future to establish a museum or park, which may not be possible should this legislative enabling provision be repealed. It is not certain whether there is another legislation on the statute book giving the State President similar powers. Accordingly, it is recommended that the Rhodes' Will (Groote Schuur Devolution) Amendment Act 55 of 1985 be retained.

- (g) Local Government City of Cape Town (Muizenberg Beach) Improvement Act 17 of 1925

- (i) Provisional Proposal

2.98 Certain terminology of the Local Government City of Cape Town (Muizenberg Beach) Improvement Act, No.17 of 1925 are glaringly obsolete. It is provisionally proposed that these be amended as stated in paragraph 2.74 below.

- (ii) Evaluation of Local Government City of Cape Town (Muizenberg Beach) Improvement Act 17 of 1925

2.99 The purpose of the Local Government City of Cape Town (Muizenberg Beach) Improvement Act 17 of 1925 is to vest certain lands adjoining False Bay in the Council of the City of Cape Town.

2.100 The Act still contains old terminology, like the ‘Governor-General’, and makes reference to a statute that no longer exist<sup>22</sup>. Section 4 of the Act provides that:

“the Governor-General shall at all times have the right of resuming the whole or a portion of the lands vested in the council in terms of section one of this Act, if required for public purposes, without compensation except for improvements to the said lands; and the amount of such compensation shall be agreed upon by the parties concerned, or, failing such agreement, shall be determined by arbitration in accordance with the provisions of the Land and Arbitration Clauses Act, 1882, of the Cape of Good Hope”.

2.101 It is recommended that the Act be amended in order to substitute the “Minister of Public Works” for the “Governor-General”; to delete the reference to the “Land and Arbitration Clause Act, 1882” and to remove the provision which empowers the “Governor-General” to expropriate land without compensation in order to align it with the Constitution<sup>23</sup> and applicable legislation<sup>24</sup>.

(h) The Government Villages Act 44 of 1973, as amended

(i) Provisional Proposal

2.102 Certain terminology of the Government Villages Act 44 of 1973 are glaringly obsolete. It is provisionally proposed that these be amended as stated below.

(ii) Evaluation of Government Villages Act 44 of 1973

2.103 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

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<sup>22</sup> Section 4 of Act 17 of 1925 makes reference to Land and Arbitration Clause Act, 1882, of the Cape of Good Hope. The latter Act was superseded by the Arbitration Act 42 of 1965.

<sup>23</sup> Constitution of the Republic of South Africa Act, No.108 of 1996.

<sup>24</sup> The Expropriation Bill, among other relevant legislation.

Benoni, Germiston, Randfontein, Vereeniging, Cradock Place (Port Elizabeth), Collondale (East London) and Oribi (Pietermaritzburg)".

2.104 In the definitions section, the definitions of "Minister" as well as "Director-General" both refer to the Department of Community Development, a department no longer provided for in the structure of government. It is provisionally proposed that the definitions of "Minister" and "Director-General" of "Community Development" be replaced by those of Public Works.

2.105 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-
  - (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."

2.106 According to the comments received from the Department of Rural Development and Land Reform on the draft discussion paper in respect of legislation administered by the Department of Human Settlements, the Department considers section 2(2)(b)(vi) of the Act to be in direct conflict with section 26 of the Constitution of the Republic of South Africa of 1996 which provides in subsection (3) that "no one may be evicted from their home, or have their home demolished, without an order of court made after considering all relevant circumstances. No legislation may permit arbitrary evictions".

2.107 The DRDLR, however, suggested that the amendment of section 2(2)(b)(vi) and related provisions be dealt with as part of the evictions review project being undertaken by the DRDLR in conjunction with the Department of Human Settlements.

2.108 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. This means that the reference to section 3 of the Exchequer and Audit Act, 1956 needs to be updated with reference to the Public Finance Management Act, 1999.

(i) Construction Industry Development Board Act 38 of 2000

(i) Provisional Proposal

2.109 Paragraph (a) of section 7(4) of the Act makes reference to legislation that no longer exists. It is provisionally recommended that the Act be amended as stated below.

(ii) Evaluation of Construction Industry Development Board Act 38 of 2000

2.110 The Construction Industry Development Board Act 38 of 2000 commenced on 1 December 2000. The purpose of the Act is to provide for the establishment of the Construction Industry Development Board; to implement an integrated strategy for the reconstruction, growth and development of the construction industry and to provide for matters connected therewith.

2.111 Section 7(4) of the Act provides that “a member of the Board must immediately vacate office if he or she-

(a) is convicted, whether in the Republic or elsewhere, of theft, fraud, forgery or uttering a forged document, perjury, or any offence involving

dishonesty or of any offence in terms of the Prevention of Corruption Act, 1958 (Act 6 of 1958) and the Corruption Act, 1992 (Act No.94 of 1992), Part 1 to 4, or section 17, 20 or 21 (in so far as it relates to the aforementioned offences) of Chapter 2 of the Prevention and Combating of Corrupt Activities Act, 2004, or the Companies Act, 1973 (Act 61 of 1973), or of contravening this Act.“

2.112 However, the Prevention of Corruption Act, 1958 (Act 6 of 1958) was repealed by the Corruption Act, 1992 (Act No.94 of 1992). In turn, the latter Act was repealed as a whole by the Prevention and Combating of Corrupt Activities act, 2004 (Act No.12 of 2004).

2.113 Section 36 of Act 12 of 2004 (**Repeal and amendment of laws and transitional provisions**) provides that-

- “(2) all criminal proceedings which immediately prior to the commencement of this Act were instituted in terms of the provisions of the Corruption Act, 1992 (Act 94 of 1992), and which proceedings have not been concluded before the commencement of this Act, shall be continued and concluded, in all respects, as if this Act had not been passed.
  
- (3) An investigation or prosecution or other legal proceedings, in respect of conduct which would have constituted an offence under the Corruption Act, 1992, and which occurred after the commencement of that Act but before the commencement of this Act, may be concluded, instituted and continued as if this Act had not been passed.
  
- (4) Notwithstanding the repeal or amendment of any provision of any law by this Act, such provision shall, for the purpose of the disposal of any investigation, prosecution or any criminal or legal proceedings contemplated in subsection (2) or (3), remain in force as if such provision had not been repealed or amended.

2.114 Accordingly, it is recommended that paragraph (a) of section 7(4) of Act 38 of 2000 be amended in order to remove references to legislation that no longer exists.

### **3. Statutes provisionally recommended for retention without any amendment**

#### **(a) Parliamentary Villages Management Board Act 96 of 1998**

2.115 The purpose of the Parliamentary Villages Management Board Act 96 of 1998 is to provide for the establishment, functions and funds of the Parliamentary Villages Management Board; and to provide for matters connected therewith. The Act commenced on 2 November 1998.

2.116 The Act does not contain any unconstitutional, obsolete or redundant provisions. In the context of the current investigation, it is provisionally proposed that the Act be retained as it seems in line with section 9 of the Constitution and remains essential for the purposes of achieving its objectives

#### **(b) Council for the Built Environment Act 43 of 2000**

2.117 The purpose of the Council for the Built Environment Act 43 of 2000 is to provide for the establishment of a juristic person to be known as the Council for the Built Environment; to provide for the composition, functions, powers, assets, rights, duties and financing of such a council; and to provide for matters connected therewith. The Act commenced on 21 September 2000.

2.118 In the context of the current investigation, it is provisionally proposed that the Act be retained as it seems in line with section 9 of the Constitution.

#### **(c) Architectural Profession Act 44 of 2000**

2.119 The purpose of the Architectural Profession Act 44 of 2000 is to provide for the establishment of a juristic person to be known as the South African Council for the Architectural Profession; to provide for the registration of professionals, candidates and

specified categories in the architectural profession; to provide for the regulation of the relationship between the South African Council for the Architectural Profession and the Council for the Built Environment; and to provide for matters connected therewith.

2.120 Although paragraphs (d) and (e) respectively of section 13 of the Act provide that the council may-

- (d) consult with the South African Qualifications Authority established by the South African Qualifications Authority Act, 1995 (Act No 58 of 1995), or any body established by it and the voluntary associations, to determine competency standards for the purpose of registration;
- (e) liaise with the relevant National Standard Body established in terms of Chapter 3 of the regulations under the South African Qualifications Authority Act, 1995, with a view to the establishment of a standards generating body in terms of those regulations;

and although the South African Qualifications Authority Act was repealed in its entirety by section 37 of the National Qualifications Framework Act, 2008 (Act 67 of 2008), however, section 36 of Act 67 of 2008 provides that-

- “36 Despite the repeal of the SAQA Act contemplated in section 37-
- (a) the members of the SAQA appointed in terms of the SAQA Act who are in office immediately prior to the commencement of this Act must fulfil the functions contemplated in section 13 until a new board is appointed by the Minister;
  - (c) the regulations made under the SAQA Act continue to exist to the extent that they are consistent with this Act until they are repealed by the Minister by notice in the Gazette;”

2.121 Accordingly, it is recommended that the Architectural Profession Act 44 of 2000 be retained.

(d) Landscape Architectural Profession Act 45 of 2000

2.122 The purpose of the Landscape Architectural Profession Act 45 of 2000 is to provide for the establishment of a juristic person to be known as the South African Council for the Landscape Architectural Profession; to provide for the registration of professionals, candidates and specified categories in the landscape architectural profession; to provide for the regulation of the relationship between the South African Council for the Landscape Architectural Profession and the Council for the Built Environment; and to provide for matters connected therewith. The Act commenced on 26 January 2001.

2.123 The wording of paragraphs (d) and (f) respectively of section 13 of Act 45 of 2000 is the same as those of paragraphs (d) and (e) respectively of section 13 of Act 44 of 2000. The Act does not contain any unconstitutional, obsolete or redundant provisions. Accordingly it is recommended that the Landscape Architectural Profession Act 45 of 2000 be retained.

(e) Engineering Profession Act 46 of 2000

2.124 The purpose of the Engineering Profession Act 46 of 2000 is to provide for the establishment of a juristic person to be known as the Engineering Council of South Africa; to provide for the registration of professionals, candidates and specified categories in the engineering profession; to provide for the regulation of the relationship between the Engineering Council of South Africa and the Council for the Built Environment; and to provide for matters connected therewith. The Act commenced on 26 January 2001.

2.125 Since the wording of paragraphs (d) and (f) respectively of section 13 of Act 46 of 2000 is the same as those of paragraphs (d) and (e) respectively of section 13 of Act 44 of 2000, it is accordingly recommended that the Engineering Profession Act 46 of 2000 be retained.

(f) Property Valuers Profession Act 47 of 2000

2.126 The purpose of the Property Valuers Profession Act 47 of 2000 is to provide for the establishment of a juristic person to be known as the South African Council for the Property Valuers Profession; to provide for the registration of professionals, candidates and specified categories in the property valuation profession; to provide for the regulation of the relationship between the South African Council for the Property Valuers Profession and the Council for the Built Environment; and to provide for matters connected therewith.

2.127 The wording of paragraphs (d) and (f) respectively of section 13 of Act 47 of 2000 is the same as those of paragraphs (d) and (e) respectively of section 13 of Act 44 of 2000. The Act does not contain any unconstitutional, obsolete or redundant provisions. Accordingly it is recommended that the Property Valuers Profession Act 47 of 2000 be retained.

(g) Project and Construction Management Professions Act 48 of 2000

2.128 The purpose of the Project and Construction Management Professions Act 48 of 2000 is to provide for the establishment of a juristic person to be known as the South African Council for the Project and Construction Management Professions; to provide for the registration of professionals, candidates and specified categories in the project and construction management professions; to provide for the regulation of the relationship between the South African Council for the Project and Construction Management Professions and the Council for the Built Environment; and to provide for matters connected therewith. The Act commenced on 26 January 2001.

2.129 The wording of paragraphs (d) and (f) respectively of section 13 of Act 48 of 2000 is the same as those of paragraphs (d) and (e) respectively of section 13 of Act 44 of 2000. The Act does not contain any unconstitutional, obsolete or redundant provisions. Accordingly it is recommended that the Project and Construction Management Professions Act 48 of 2000 be retained.

(h) Quantity Surveying Profession Act 49 of 2000

2.130 The purpose of the Quantity Surveying Profession Act 49 of 2000 is provide for the establishment of a juristic person to be known as the South African Council for the Quantity Surveying Profession; to provide for the registration of professionals, candidates and specified categories in the quantity surveying profession; to provide for the regulation of the relationship between the South African Council for the Quantity Surveying Profession and the Council for the Built Environment; and to provide for matters connected therewith. The Act commenced on 26 January 2001.

2.131 The wording of paragraphs (d) and (f) respectively of section 13 of Act 49 of 2000 is the same as those of paragraphs (d) and (e) respectively of section 13 of Act 44 of 2000. The Act does not contain any unconstitutional, obsolete or redundant provisions. Accordingly it is accordingly recommended that the Quantity Surveying Profession Act 49 of 2000 be retained.

#### **4. Statutes excluded from the investigation**

(a) Expropriation Act 63 of 1975

2.132 In light of the proposed revised Expropriation Bill currently being tabled in Parliament by the Department of Public Works which seeks to harmonise over 100 Acts and Ordinances that exist in the country dealing with expropriations, the recommendations contained in this section following the review of the existing Expropriation Act 63 of 1975 within the framework of the current investigation are only included for the sake of comprehensiveness and historical memory. Accordingly, the recommendations below have been excluded from the draft Public Works General Laws Amendment and Repeal Bill in view of the fact that the said proposed recommendations may already have been addressed at the time this legislative process is completed.

(i) Evaluation of Expropriation Act 63 of 1975

2.133 It is recommended that the following amendments should be effected to this Act, namely-

- (1) The definition of the terms 'executive committee', 'local authority', 'master' and 'owner' in section 1 make reference to a number of Acts which have been repealed. These references should be deleted or substituted, namely-
- "‘executive committee’ means the executive committee of a Province mentioned in section 7 of the Provincial Government Act, 1986 (Act 69 of 1986)". This Act was repealed by section 230 (1) of the Constitution of the Republic of South Africa, Act 200 of 1993, which came into operation on 27 April 1994.<sup>25</sup>
  - "‘local authority’ means-
    - “(a) an institution contemplated in sections (1)(f)(i) of the Provincial Government Act, 1961 (Act 32 of 1961).” This Act was repealed by the Constitution of the Republic of South Africa Act 200 of 1993;
    - “(b) a board of management or board contemplated in section 1 of the Rural Areas Act (House of Representatives), 1987 (Act 9 of 1987).” This Act was repealed by the Transformation of Certain Rural Areas Act 94 of 1998;
    - “(e) a local authority as defined in section 1 of the Black Local Authorities Act, 1982 (Act 102 of 1982).” This Act was repealed by section 13 (1) of the Local Government Transition Act 209 of 1993;
    - “(g) the Local Government Affairs Council contemplated in section 2 of the Local Government Affairs Council Act (House of Assembly) Act, 1989 (Act 84 of 1989).” This Act was repealed by section 2 of the Disestablishment of the Local Government Affairs Council Act 59 of 1999;
    - “(h) a Local Development Committee established under section 28A (1) of the Development Act (House of Representatives),

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<sup>25</sup>

Excluding section 20 which deals with pension matters of those elected to provincial councils.

1987 (Act 3 of 1987)". This Act was repealed by section 20 of the Housing Act 107 of 1997.

- "‘master’, in relation to a particular property, means the Master of the Supreme Court appointed in respect of the area in which that property is or is situated." This definition should be amended to read ‘Master of the High Court’.
- "‘owner’ means, in relation to land or a registered right in or over land, the person in whose name such land or right is registered, and -
  - (d) if any property has vested in a liquidator or trustee elected or appointed in terms of the Agricultural Credit Act, 1966 (Act 28 of 1966), that liquidator or trustee;". The latter Act was repealed by the Agricultural Debt Management Act 45 of 2001.

2.134 Section 3 of the Act also contains a number of references to Acts which have been repealed. These references should be deleted or substituted, namely-

- 3(1) Expropriation of immovable property by Minister on behalf of certain juristic persons or bodies-
- 3(2) The juristic persons or bodies contemplated in subsection (1) are-
  - (a) a university as defined in section 1 of the Universities Act 61 of 1955. This Act was repealed by the Higher Education Act 101 of 1997;
  - (b) a university college as defined in section 1 of the Extension of University Education Act 45 of 1969. This Act was repealed by the Tertiary Education Act 66 of 1988 which, in turn, was repealed in its entirety by section 76 of the Higher Education Act 101 of 1997;
  - (c) a technikon mentioned in section 1 of the Technikons (National Education) Act 40 of 1967. This Act was repealed by section 40 of the Technikons Act 125 of 1993 which, in turn, was repealed by the Higher Education Act 101 of 1997;

- (d) a governing body as defined in section 1 of the Educational Services Act 41 of 1967. This Act was repealed by the Education Affairs (House of Assembly) Act 70 of 1988 (which came into operation on 1 April 1990). This excluded sections 13 and 15 which were repealed by Act 44 of 1989);
- (e) the Atomic Energy Board mentioned in section 11 of the Atomic Energy Act 90 of 1967. This Act was repealed by the Nuclear Energy Act 92 of 1982 which, in turn, was repealed by the Nuclear Energy Act 46 of 1999 and the National Nuclear Regulator Act 47 of 1999;
- (f) a college as defined in section 1 of the Indians Advanced Technical Education Act, 1968 (Act 12 of 1968). This Act has been repealed in its entirety by the Technikons Act 125 of 1993 which, in turn, was repealed by the Higher Education Act 101 of 1997;
- (g) the council mentioned in section 1 of the National Monuments Act 28 of 1969. This Act was repealed by the National Heritage Resources Act 25 of 1999. In that Act 'Council' means the Council of the South African Heritage Resources Agency, established in terms of section 14 of the Act.

2.135 Certain provisions in section 12 also contain references to Acts which have been repealed. These references should be deleted or substituted, namely-

- (12)(3)(a) refers to the 'standard interest rate determined in terms of section 26(1) of the Exchequer Act 66 of 1975'. The whole of this Act except sections 28, 29 and 30 was repealed by section 94 of the Public Finance Management Act 1 of 1999, which came into operation on 1 April 2000.

- (5)(h)(iv) refers to the Water Act 54, 1956 (Act 54 of 1956)<sup>26</sup> which was repealed by the National Water Act 36 of 1998.

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<sup>26</sup>

Repealed with effect from 1 October 1998, except ss. 1, 9, 9B, 10, 12B, 15, 16, 20, 21, 32A, 32B, 32C, 32D, 32E, 32J 56 (3), 56 (5), 62 63, 66, 88, 89 (1) (j), 90, 91, 92, 165, 166 and 179A which were repealed with effect from 1 October 1999.

## **Annexure A**

### **PUBLIC WORKS GENERAL LAWS AMENDMENT AND REPEAL BILL**

#### **GENERAL EXPLANATORY NOTE:**

[     ]     Unless otherwise indicated words in bold type in square brackets indicate omissions from existing enactments.

\_\_\_\_\_     Unless otherwise indicated words underlined with a solid line indicate insertions in existing enactments.

#### **BILL**

**To amend and repeal certain laws of the Republic pertaining to the department of public works containing discriminatory or obsolete provisions**

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

#### **Repeal of laws**

1. The laws specified in Schedule 1 are hereby repealed.

#### **Amendment of laws**

2. The laws specified in Schedule 2 are hereby amended to the extent set out in the fourth column of the Schedule.

#### **Short title and commencement**

3. This Act is called Public Works General Laws Amendment and Repeal Act, 20... and comes into operation on a date determined by the President by proclamation in the Gazette.

**Schedule 1**

<b>Item No.</b>	<b>Number and year of law</b>	<b>Title or subject of law</b>	<b>Extent</b>
1.	Act No. 34 of 1921	Bethelsdorp Settlement Act, 1921	The whole
2.	Act 3 of 1926	Bethelsdorp Settlement Act 1921 Amendment Act, 1926	The whole
3.	Act No.44 of 1966	Bethelsdorp Settlement Amendment Act, 1966	The whole
4.	Act No.13 of 1979	Bethelsdorp Settlement Amendment Act, 1979	The whole
5.	Act No.49 of 1983	Bethelsdorp Settlement Amendment Act, 1983	The whole
6.	Act No.19 of 1913	Carnarvon Outer Commonage Settlement Act, 1913	The whole
7.	Act No.16 of 1920	Carnarvon Outer Commonage Settlement Act, Amendment Act,1920	The whole
8.	Act No.17 of 1926	Carnarvon Outer Commonage Subdivision Act, 1926	The whole
9.	Act No.9 of 1941	Municipal Lands (Muizenberg) Act, 1941	The whole
10.	Act 5 of 1926	Mooi River Township Lands Act	The whole
11.	Act 53 of 1972	Church Square, Pretoria, Development Act	The whole
12.	Act 65 of 1978	Church Square, Pretoria, Development Amendment Act	The whole
13.	Act 35 of 1988	Church Square, Pretoria, Development Amendment Act (House of Assembly)	The whole

## Schedule 2

Item No.	No. and year of law	Short title	Extent of amendment
1.	Act No.17 of 1937	Cape Outspans Act, 1937	<p>1. Section 3 of the Act is hereby amended by the substitution for subsection (2) of the following subsection-</p> <p>“(2) if the amount of compensation to be paid under subsection (1) is not settled by agreement between the Minister of <b>[Lands]</b> Public Works and the council concerned, the amount shall be fixed by arbitration under the provisions of the <b>[Arbitration Act 1898 (Act 29 of 1898) of the Cape of Good Hope]</b> <u>Arbitration Act, 1965 (Act 42 of 1965), and for that purpose it shall be presumed that the said Minister of Public Works and the council concerned, agreed to refer the fixing of the amount to a single arbitrator.”</u></p>
2.	Act No.48 of 1961	State Land Disposal Act, 1961	<p>1. Section 1 of the Act is hereby amended by the substitution for the definition of ‘state land’ of the following definition:</p> <p>‘State land’ includes any <b>[land over which the right of disposal by</b></p>

		<p>virtue of the provisions of section 3(4) of the Agricultural Holdings (Transvaal) Registration Act, 1919 (Act 22 of 1919), and section 78(3) and (4) of the Townplanning and Townships Ordinance, 1965 (Ordinance 25 of 1965) (Transvaal) vests in the State President, and any] rights in respect of State land.</p> <p>2. Section 2 of the Act is hereby amended by the substitution for subsection 2 of the following subsection:</p> <p>2.(2) 'The <b>[State]</b> President shall not dispose of any particular State land in terms of subsection (1) if the disposal thereof is governed by a provincial law <b><u>Ordinance: Provided that the provisions of this subsection shall not apply in respect of the lease of the whole or any portion of-</u></b></p> <p><b>(a)</b> places upon State land which have been reserved by the State President [as contemplated in Item 5 of the Second Schedule to the Financial Relations Consolidation and Amendment Act, 1945 (Act 38 of 1945),] as being places of public resort, of</p>
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			<p>public recreation, or of historical or scientific interest; and</p> <p>(b) State land situated in public resorts, place of rest, seaside resorts, holiday centres, holiday camps, caravan parks, tent camps and picnic places referred to in Item 24 of the Second Schedule to the said Act], which cannot lawfully be leased in terms of any ordinance].</p> <p>3. The Act is hereby amended by the substitution for section 8A of the following section:</p> <p>8A 'The provisions of this Act shall apply in addition to, and not in substitution for, the provisions of any [proclamation or] regulation referred to in section[s 5(2), 8(2) and] 11(2) of the Abolition of Racially Based Land Measures Act, 1991 (Act 108 of 1991).</p> <p>4. The Act is hereby amended by the substitution of the term '<u>President</u>' for [State President] wherever it appears in sections 2(1), 2A(1) and (2), 5(1) and 2, 6(1) and 6(2) and 8.</p>
3.	Act No.102 of 1972	General Law Amendment Act, 1972	1. Section 34 of the Act is amended by the substitution for subsection (1) of the following subsection-

			(1) If the State own immovable property..., and the Minister of Public Works, by means of a notice, in <b>[both official languages,]</b> <u>“at least two of the official languages.”</u> .
4.	Act No.101 of 1987	Land Affairs Act, 1987	<p>1. The Act is hereby amended by the substitution of the term ‘<u>Department of Public Works</u>’ for <b>[Department of Public Works and Land Affairs]</b> wherever it appears in the Preamble and in the definition of ‘Department’ in section 1 of the Act.</p> <p>3. Section 3 of the Act is hereby amended by the substitution for subsection (1) of the following subsection-</p> <p>“3(1) Subject to the provisions of subsection (2), ... after consultation with the <b>[the Minister of Local Government, Housing and Works in the Ministers’ Council: House of Representatives and the Minister of Local Government, Housing and Agriculture in the Ministers’ Council: House of Delegates]</b> <u>“the Minister of Public Works.”</u>”;</p> <p>4. Section 4 of the Act is hereby amended by the substitution of subsection (2)(c) of the following subsection-</p>

			<p>“(2)(c) if his estate is sequestrated [<b>or he applies for assistance contemplated in section 10(1)(c) of the Agricultural Credit Act, 1966 (Act 28 of 1966)</b>];</p> <p>5. Section 4(2)(d) of the Act is hereby amended by the substitution of subsection (2)(d) of the following subsection-</p> <p>“(2)(d) if he seeks election at any party or official nomination of candidates for Parliament[, <b>the President’s Council</b>] or any other legislative authority elected on a party political basis, or attempts to have himself nominated at any such nomination;”</p>
5.	Act No.8 of 1992	Commonwealth War Graves Act, 1992	<p>1. Section 1 of the Act is hereby amended by the substitution for the definition of ‘local authority’ of the following definition-</p> <p><u>“local authority’ means any district municipality, local municipality or metropolitan municipality as defined in section 1 and established in terms of section 12 of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998).”</u></p>

6.	Act No9 of 1910	Rhodes' Will (Groote Schuur Devolution) Act, 1910	<p>1. Section 1 of the Act is hereby amended by the substitution for subsection (1) of the following subsection:</p> <p><u>“(1) From the commencement of this Act the Groote Schuur Estates (comprising the properties specified in the First Schedule thereto) together with all furniture, plate, and other articles belonging to the said Estate shall be transferred to the Government of the Republic of South Africa and shall vest in the State, subject to the conditions and directions contained in Clause 13 and 15 of the Will of the testator, hereinbefore recited, and as if the Government of the Republic of South Africa were the Federal Government mentioned or referred to in those clauses”.</u></p> <p>2. Section 1 of the Act is amended by the substitution for (2) of the following subsection:</p> <p><u>“(2) The trustees shall hand over to the Government of the Republic of South Africa all documents of title in their possession or control of or relating to the Groote Schuur Estates or any part thereof, and the Registrar of Deeds of the Province of the Western Cape shall endorse thereon.</u></p>
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			<p><u>and on the counterparts thereof in his or her office, memoranda denoting the transfer of the property specified therein to the said Government of the Republic of South Africa”.</u></p> <p>3. Section 1 of the Act is hereby amended by the substitution of the term ‘Government of the Republic of South Africa’ for <b>[Governor-General]</b> wherever it appears in subsection (3).</p> <p>4. The Act is hereby amended by the substitution of the term ‘Government of the Republic of South Africa’ for <b>[Union Government]</b> wherever it appears in sections 2, 3 and 4.</p>
7.	Act No.17 of 1925	Local Government City of Cape Town (Muizenberg Beach) Improvement Act, 1925	<p>1. Section 1 of the Act is hereby amended by the substitution for subsection (2) of the following subsection:</p> <p>“2. The <b>[Governor-General]</b> <u>Minister of Public Works</u> may, subject to the provisions of section three of this Act, issue in favour of the council a grant of the lands described in the preceding subsection“.</p> <p>2. The Act is amended by the substitution for section (4) of the following section:</p>

			<p>“4. The <b>[Governor-General]</b> <u>Minister of Public Works</u> shall, <u>subject to the Expropriation Act 63 of 1975</u>, at all times have the right of resuming the whole or a portion of the lands vested in the council in terms of section one of this Act, if required for public purposes[, <b>without compensation except for improvements to the said lands; and the amount of such compensation shall be agreed upon by the parties concerned, or, failing such agreement, shall be determined by arbitration in accordance with the provisions of the Land and Arbitration Clauses Act, 1882, of the Cape of Good Hope</b>].”.</p>
8.	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]</b> <u>Department of Public Works</u>”;</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]</b> Public Works”;</p> <p>3. Amend section 3 of the Act as follows-</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)]</b> <u>Public Finance Management Act, 1999 (Act 1 of 1999)</u>, be the accounting officer in respect of such moneys.”</p>
9.	Act No.38 of 2000	Construction Industry Development Board Act, 2000	<p>1. The Act is amended by the substitution for paragraph (a) of section 7(4) of the following paragraph:</p> <p>“(a) is convicted, whether in the Republic or elsewhere, of theft, fraud, forgery or uttering a forged document, perjury, or any offence involving dishonesty or of any offence in terms of <b>[the Prevention of Corruption Act, 1958 (Act 6 of 1958), the Corruption Act, 1992 (Act 94 of 1992,]</b> Part 1 to 4, or section 17, 20 or 21 (in so far as it relates to aforementioned offences) of Chapter 2 of the Prevention and Combating of Corrupt Activities Act, 2004, or the Companies Act, 1973 (Act 61 of 1973), or of contravening this Act;”</p>

## Annexure B

### STATUTES ADMINISTERED BY THE DEPARTMENT OF PUBLIC OWRKS

Number	Name of Act, number and year
1.	Rhodes Will (Groote Schuur Devolution) Act, 1910 (Act No.9 of 1910)
2.	Rhodes Will (Groote Schuur Devolution) Amendment Act, 1985 (Act No.55 of 1985)
3.	Government Villages Act 44 of 1973
4.	Government Villages Amendment Act, 1984 (Act No.25 of 1984)
5.	Bethelsdorp Settlement Act, 1921 (Act 34 of 1921)
6.	Bethelsdorp Settlement Act 1921 Amendment Act, 1926 (Act No. 3 of 1926)
7.	Bethelsdorp Settlement Amendment Act, 1966 (Act No.44 of 1966)
8.	Bethelsdorp Settlement Amendment Act, 1979 (Act No.13 of 1926)
9.	Bethelsdorp Settlement Amendment Act, 1983 (Act No.49 of 1983)
10.	Mooi River Township Land Act, 1926 (Act No.5 of 1926)
11.	Carnarvon Outer Commonage Settlement Act, 1913 (Act No.19 of 1913)
12.	Carnarvon Outer Commonage Settlement Act, Amendment Act,1913 (Act No.16 of 1920)
13.	Carnarvon Outer Commonage Subdivision Act, 1926 (Act No.17 of 1926)
14.	Cape Outspans Act, 1937 (Act No.17 of 1937)
15.	Municipal Lands (Muizenburg) Act, 1941 (Act No.9 of 1941)
16.	State Land Disposal Act, 1961 (Act No.48 of 1961)
17.	State Land Disposal Amendment Act, 1968 (Act No.28 of 1968)
18.	State Land Disposal Amendment Act, 1976 (Act No.26 of 1976)
19.	State Land Disposal Amendment Act, 1987 (Act No.47 of 1987)
20.	State Land Disposal Amendment Act, 1988 (Act No.19 of 1988)
21.	Community Development Act, 1966 (Act No.3 of 1966)
22.	Community Development Amendment Act, 1967 (Act No.42 of 1967)
23.	Community Development Amendment Act, 1968 (Act No.58 of 1968)

24.	Community Development Amendment Act, 1970 (Act No.74 of 1970)
25.	Community Development Amendment Act, 1971 (Act No.68 of 1971)
26.	Community Development Amendment Act, 1972 (Act No.93 of 1972)
27.	Community Development Amendment Act, 1975 (Act No.19 of 1975)
28.	Community Development Amendment Act, 1977 (Act No.126 of 1977)
29.	Community Development Amendment Act, 1978 (Act No.19 of 1978)
30.	Community Development Amendment Act, 1980 (Act No.12 of 1980)
31.	Community Development Amendment Act, 1982 (Act No.26 of 1982)
32.	Second Community Development Amendment Act, 1982 (Act No.68 of 1982)
33.	Community Development Amendment Act, 1983 (Act No.64 of 1983)
34.	Community Development Amendment Act, 1984 (Act No.20 of 1984)
35.	Community Development Amendment Act, 1986 (Act No.48 of 1986)
36.	Church Square Pretoria, Development Act, 1972 (Act 53 of 1972)
37.	Church Square Pretoria, Development Amendment Act, 1978 (Act 65 of 1978)
38.	Church Square Pretoria, Development Amendment Act, (House of Assembly) 1988 (Act 35 of 1988)
39.	General Law Amendment Act, 1972 (Act No.102 of 1972) (section 34)
40.	Expropriation Act, 1975 (Act No.63 of 1975)
41.	Expropriation Amendment Act, 1977 (Act No.19 of 1977)
42.	Expropriation Amendment Act, 1978 (Act No.3 of 1978)
43.	Expropriation Amendment Act, 1980 (Act No.8 of 1980)
44.	Expropriation Amendment Act, 1982 (Act No.21 of 1982)
45.	Expropriation Amendment Act, 1992 (Act No.45 of 1992)
46.	Transfer of Powers and Duties of the State President Act, 1986 (Act No.97 of 1986) [section 1]
47.	Land Affairs Act, 1987 (Act No.101 of 1987)
48.	General Law Amendment Act, 1983 (Act No.18 of 1983)
49.	Parliamentary Villages Management Board Act, 1998 (Act No.96 of 1998)
50.	Construction Industry Development Board Act, 2000 (Act No.38 of 2000)
51.	Council for the Built Environment Act, 2000 (Act No.43 of 2000)

52.	Architectural Profession Act, 2000 (Act No.44 of 2000)
53.	Landscape Architectural Profession Act, 2000 (Act No.45 of 2000)
54.	Engineering Profession Act, 2000 (Act No. 46 of 2000)
55.	Property Valuers Profession Act, 2000 (Act No.47 of 2000)
56.	Project and Construction Management Professions Act, 2000 (Act No.48 of 2000)
57.	Quantity Surveying Profession Act, 2000 (Act No. 49 of 2000)