



**South African**  
**Law Reform Commission**

**DISCUSSION PAPER 140**

**PROJECT 25**

**STATUTORY LAW REVISION:  
LEGISLATION ADMINISTERED BY THE DEPARTMENT OF ARTS AND CULTURE**

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## Introduction

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

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## Preface

This paper has been prepared to elicit responses from relevant stakeholders, in particular the Department of Arts and Culture (DAC). It contains the preliminary recommendations of the SALRC, and will serve as the basis for further deliberations in developing the final report.

This paper includes a draft Bill titled the “Arts and Culture Laws Amendment and Repeal Bill”, which, if enacted, will repeal redundant, obsolete and unconstitutional legislation or provisions in legislation. The paper and draft Bill are published in full to provide persons and bodies wishing to comment with sufficient background information to enable them to place focused submissions before the SALRC. Annexure A (the draft Bill) sets out the proposed amendments to the Acts reviewed in this investigation. The Schedule to the draft Bill lists the Acts that may be wholly repealed. Annexure B lists the statutes administered by the DAC.

The SALRC assumes that unless comments are marked “confidential”, respondents grant the SALRC permission to quote from their comments and to attribute such comments to the relevant respondents. Respondents should be aware that the SALRC may, in terms of the Promotion of Access to Information Act 2 of 2000, be required to release information contained in comments submitted to the SALRC.

Respondents are requested to submit written comment and representations to the SALRC by 31 March 2016. Comments can be sent by email, post or fax, with email being preferred.

This paper is available on the internet at <http://salawreform.justice.gov.za>

## Preliminary recommendations

1. The SALRC has been mandated with the task of revising the South African statute book. The purpose of this review is to identify and recommend for repeal or amendment any legislation or provisions in legislation that are inconsistent with the equality clause in the Constitution or are redundant or obsolete. Pursuant to this mandate, the SALRC has established that there are 2 800 Acts on the statute book. Furthermore, the SALRC has identified 24 statutes (16 principal Acts and 8 amendment Acts) that are administered by the DAC (see Annexure B).
2. After analysis of these statutes, the SALRC proposes that:
  - (i) The Acts set out in the draft Bill be amended for the reasons set out in Chapter 2 of this Discussion Paper and to the extent outlined in the draft Bill; and
  - (ii) the Acts set out in the Schedule to the Bill be repealed.
3. Furthermore, there might be statutes which relate to the functions of the DAC but which are not identified in this discussion paper for amendment. Moreover, it is possible that there are statutes or provisions which should be repealed as they no longer have practical utility, but which are not identified for repeal in this discussion paper. These should be identified and brought to the attention of the SALRC.

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# **CHAPTER 1**

## **BACKGROUND AND SCOPE OF PROJECT 25**

### **A Introduction**

#### **1 The objects of the South African Law Reform Commission**

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

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

1.2 Thus the SALRC is an advisory statutory body whose aim is the renewal and improvement of the law of South Africa on a continual basis.

#### **2 History of the investigation**

1.3 Shortly after its establishment in 1973, the SALRC began revising all pre-Union legislation, as part of its Project 7. This investigation resulted in the repeal of approximately 1 200 laws, 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, which aims to establish a permanently simplified, coherent, and generally accessible statute book. This report resulted in Parliament adopting the Repeal of Laws Act, 94 of 1981, which repealed approximately 790 post-Union statutes.

1.4 Immediately after the advent of constitutional democracy in South Africa in 1994, the legislation enacted prior to that year remained in force. Numerous pre-1994 provisions do not comply with the country's new Constitution, a discrepancy exacerbated by the fact that some of those provisions were enacted to promote and sustain the policy of apartheid.

1.5 In 2003, Cabinet directed 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, or birth. Consequently, Cabinet approved that the Minister of Justice and Constitutional Development should coordinate and mandate the SALRC to review provisions in the legislative framework that would result in discrimination, as defined by section 9 of the Constitution.

1.6 In 2004 the SALRC included in its law reform programme an investigation on statutory law to revise all statutes from 1910 to date. Whereas previous investigations had focused on identifying obsolete and redundant provisions for repeal, the current investigation emphasizes compliance with the Constitution. Redundant and obsolete provisions that are identified in the course of this investigation are also recommended for repeal, but the constitutional inquiry has focused mainly on identifying statutory provisions that blatantly violate the provisions of section 9 (the Equality Clause) of the Constitution.

1.7 A 2004 provisional audit by the SALRC of national legislation that has remained on the statute book since 1910 established that roughly 2 800 individual statutes exist, comprising principal Acts, amendment Acts, private Acts, additional or supplementary Acts, and partially repealed Acts. A substantial number of Acts on the statute book no longer serve any useful purpose and many others have retained unconstitutional provisions. This situation has already resulted in expensive and sometimes protracted litigation.

## **B What is statutory law revision?**

1.8 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.

1.9 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 is presently remedied by another measure or provision.

1.10 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.

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

- (a) references to bodies, organisations, etc. that have been dissolved or wound up or which have otherwise ceased to serve any purpose;
- (b) references to issues that are no longer relevant as a result of changes in social or economic conditions (e.g. legislation about tithes or tin mines);
- (c) references to Acts that have been superseded by more modern (or EU) legislation or by international Convention;
- (d) references to statutory provisions (i.e. sections, schedules, orders, etc.) that have been repealed;
- (e) repealing provisions e.g. “Section 33 is repealed/shall cease to have effect”;
- (f) commencement provisions once the whole of an Act is in force;

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<sup>1</sup> *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 (hereinafter referred to as Law Commission for England and Wales *Background Notes on Statute Law Repeals*).

<sup>2</sup> Law Commission for England and Wales *Background Notes on Statute Law Repeals the Background*, par 6.

<sup>3</sup> Law Commission for England and Wales *Background Notes on Statute Law Repeals*, par 7.

- (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.

1.12 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, 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.

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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 28 May 2008.

1.13 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.

1.14 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 33 of 1957<sup>6</sup> mirrors section 16(1) of the Interpretation Act of 1978 of England and Wales.<sup>7</sup> Section 12(2) of the South African Interpretation Act provides that where a law repeals any other law, then unless the contrary intention appears, the repeal shall not:

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

and that 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.

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<sup>5</sup> Law Commission for England and Wales *Background Notes on Statute Law Repeals*, par 9 and 10.

<sup>6</sup> Apart from a few minor changes, the South African Interpretation Act 5 of 1910 repeated the provisions of the United Kingdom Interpretation Act of 1889 (Interpretation Act 1889 (UK) 52 & 53 Vict c 63).

<sup>7</sup> Law Commission for England and Wales *Background Notes on Statute Law Repeals the Background*, par 8.

1.15 The methodology adopted in this investigation is to review the statute book by department. That is, 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. Once the paper has been approved by the Commission it is published for general information and comments. Finally, the SALRC develops a report in respect of each department, which reflects the comments on the discussion paper and contains a draft Bill proposing amending legislation.

## **C The initial investigation**

1.16 In the early 2000s, the SALRC and the German Agency for Technical Cooperation commissioned the Centre for Applied Legal Studies at the University of the Witwatersrand to conduct a preliminary study on law reform. The study examined the feasibility, scope, and operational structure of revising the South African statute book for constitutionality, redundancy, and obsolescence. The Centre for Applied Legal Studies pursued four main avenues of research in this study, which was conducted in 2001 and submitted to the SALRC in April 2001.<sup>8</sup> These four steps are outlined here.

1. A series of interviews was conducted with key role-players drawn from the three governmental tiers, Chapter 9 institutions, the legal profession, academia, and civil society. These interviews revealed a high level of support for the law reform project.
2. All Constitutional Court judgments up to 2001 were analysed. The results were compiled as schedules summarising the nature and outcome of these cases, and the statutes impugned. The three most problematic categories of legislative provisions were identified, and the Constitutional Court's jurisprudence in each category was analysed. The three most problematic categories were reverse onus provisions, discriminatory provisions, and provisions that infringe on the separation of powers. Guidelines summarising the Constitutional Court's jurisprudence were compiled for each category.

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<sup>8</sup> "Feasibility and Implementation Study on the Revision of the Statute Book" prepared by the Law and Transformation Programme of the Centre for Applied Legal Studies of the University of the Witwatersrand April 2001 available upon request from [pvanwyk@justice.gov.za](mailto:pvanwyk@justice.gov.za).

3. Sixteen randomly-selected national statutes were tested against the guidelines. The results were compared with the results of a control audit that tested the same statutes against the entire Bill of Rights, excluding socio-economic rights. Comparison of the outcomes showed that a targeted revision of the statute book in accordance with the guidelines had produced highly effective results.
4. A survey of law reform in five other countries (United Kingdom, Germany, Norway, Switzerland, and France) was conducted. Apart from France, all these countries had conducted or were conducting statutory revision exercises. The motivation for the revision and the outcomes of the exercises differed by country.

1.17 The SALRC finalised the following reports which proposed reform of discriminatory areas of the law or the repeal of specific discriminatory provisions:

- (a) the Recognition of Customary Marriages (August 1998);
- (b) the Review of the Marriage Act 25 of 1961 (May 2001);
- (c) the Application of the Bill of Rights to Criminal Procedure, Criminal Law, the Law of Evidence and Sentencing (May 2001);
- (d) Traditional Courts (January 2003);
- (e) the Recognition of Muslim Marriages (July 2003);
- (f) the Repeal of the Black Administration Act 38 of 1927 (March 2004);
- (g) Customary Law of Succession (March 2004); and
- (h) Domestic Partnerships (March 2006).

## **D Scope of the project**

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 is 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 has been left to the judicial process. The investigation also attends to obsolescence or redundancy of provisions. The SALRC agreed that the project must proceed by scrutinising and revising national legislation that discriminates unfairly.<sup>9</sup> However, as explained in the preceding sections of this chapter, even the section 9 inquiry was limited because it dealt primarily with statutory provisions that were blatantly in conflict with section 9 of the Constitution. This delimitation arose mainly from considerations of time and capacity. Nonetheless, during the investigation some other anomalies and obvious inconsistencies with the Constitution were identified, and recommendations have been made on how to address them.

## **E Consultation with stakeholders**

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

1.21 On 25 November 2011, the SALRC submitted to the Department of Arts and Culture (DAC) a consultation paper containing the preliminary findings and proposals of the SALRC. Furthermore, the Departments of Rural Development and Land Reform, and Public Works were requested to comment on certain aspects of the consultation paper.

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<sup>9</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” for the SALRC in February 2006, available upon request from [pvanwyk@justice.gov.za](mailto:pvanwyk@justice.gov.za).

1.22 The SALRC received input on its Consultation Paper on Arts and Culture from the DAC on 29 November 2011 and 30 April 2012 respectively; from the Department of Rural Development and Land Reform on 28 March 2012; and from the Department of Public Works on 27 March 2012. The discussion paper reflects the views of these departments on the proposed amendments and repeals.

1.23 The Commission has finalised the following reports as part of its project 25 investigation:

- (a) Legislation administered by the Department of Transport, in October 2009;
- (b) Legislation administered by the Department of Labour, in October 2011;
- (c) Legislation administered by National Treasury (non-tax legislation), in October 2011;
- (d) Legislation administered by the Department of Energy, in October 2011;
- (e) Legislation administered by the Department of Mineral Resources, in December 2011;
- (f) Legislation administered by the Department of Public Works, in December 2011;
- (g) Legislation administered by the Department of Rural Development and Land Reform, in December 2011;
- (h) Legislation administered by the Department of Human Settlements, in December 2011;
- (i) Legislation administered by the Department of Defence and Military Veterans, in July 2014;
- (j) Legislation administered by the Department of International Relations and Cooperation, in December 2014;
- (k) Legislation administered by the Departments of Basic and Higher Education and Training, in December 2014;
- (l) Legislation administered by the Department of Cooperative Governance and Traditional Affairs, in June 2015;
- (m) Legislation administered by the Department of Justice and Constitutional Development (Family law and marriage), in June 2015;
- (n) Legislation administered by the Departments of Cooperative Governance and Traditional Affairs, in June 2015
- (o) Legislation administered by the Department of Tourism, in June 2015.

## **CHAPTER 2**

# **LEGISLATION ADMINISTERED BY THE DEPARTMENT OF ARTS AND CULTURE**

### **A Summary of legislation proposed for amendment or repeal**

2.1 In this chapter, the statutes that are provisionally proposed for amendment include the following:

1. Heraldry Act 18 of 1962;
2. Culture Promotion Act 35 of 1983;
3. Pan South African Language Board Act 59 of 1995;
4. National Archives and Record Service of South Africa Act 43 of 1996;
5. Legal Deposit Act 54 of 1997;
6. National Arts Council Act 56 of 1997;
7. National Film and Video Foundation Act 73 of 1997;
8. South African Library for the Blind Act 91 of 1998;
9. National Library of South Africa Act 92 of 1998;
10. South African Geographical Names Act 118 of 1998;
11. Cultural Institutions Act 119 of 1998;
12. National Heritage Council Act 11 of 1999;
13. National Heritage Resources Act 25 of 1999;
14. National Council for Library and Information Services Act 6 of 2001;
15. Use of Official Languages Act 12 of 2012; and
16. South African Language Practitioners' Council Act 8 of 2014.

2.2 The statutes provisionally proposed for repeal include the following:

1. National Monuments Amendment Act 22 of 1970;
2. National Monuments Amendment Act 30 of 1971;

3. National Monuments Amendment Act 35 of 1979;
4. National Monuments Amendment Act 13 of 1981;
5. War Graves and National Monuments Amendment Act 11 of 1986;
6. National Libraries Amendment Act 23 of 1991;
7. National Monuments Amendment Act 25 of 1991; and
8. Reporting by Public Entities Amendment Act 30 of 1997.

2.3 The provisional proposed amendments and repeals are reflected in Annexure A (the draft Bill) to this Discussion Paper.

## **B Evaluation of legislation administered by the DAC**

### **1 Introduction**

2.4 After the elections in 2004, the then President Thabo Mbeki announced the split of the Ministry of Arts, Culture, Science and Technology into, respectively, the Ministry of Arts and Culture and the Ministry of Science and Technology.<sup>10</sup> This led to the creation of two different departments.

2.5 The DAC states its vision as follows: “We are a thriving arts, culture and heritage sector contributing to sustainable economic development, leveraging on partnerships for a socially cohesive nation.” The mission of the DAC is to “enhance job creation by preserving, protecting and developing arts, culture and heritage to sustain our democracy and build our nation”.<sup>11</sup>

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<sup>10</sup> Department of Arts and Culture *Annual Report 2004/2005* p.8.

<sup>11</sup> See the departmental website <http://www.dac.gov.za> for information in general about the Department of Arts and Culture (accessed on 17 November 2015).

2.6 The functions of the different branches in the DAC are as follows:<sup>12</sup>

- The Corporate Services Branch is responsible for managing and coordinating the provision of strategy and planning services; for managing and monitoring the provision of human resource management services; for managing and facilitating the provision of information communication and technology management services; for managing the provision of legal advice services; for managing the provision of security services; for managing the provision of office support and auxiliary services.
- The Arts and Culture Promotion and Development Branch is responsible for developing and promoting multilingualism; for the provisioning of translation and editing services; for guiding and directing the rendering of library services; for developing and supporting economic development opportunities for South African Arts and Culture, nationally and globally.
- The Heritage Promotion and Preservation Branch is responsible for the rendering of a National Archives Service; for developing, preserving and promoting of South African living heritage and heraldry.
- The Institutional Governance Branch is responsible for identifying and utilizing of opportunities for the promotion and development of South African arts, culture and heritage through national and global liaison and agreements; for coordinating, monitoring and evaluating of the activities of the Departmental entities to ensure good governance; for coordinating social cohesion, nation building and targeted groups.
- The Office of the CFO Branch is responsible for exercising control over state money, assets and expenditure by implementing effective and efficient mechanisms, systems and management of information; for providing services to the department; for managing and provisioning of effective and efficient financial services to the Department; for the rendering of effective and efficient procurement and provisioning of goods and services to the department.

2.7 The primary legislative mandate of the DAC comes from sections 16 and 30 of the Constitution of the Republic of South Africa, 1996, which respectively state as follows:

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<sup>12</sup> See the departmental website at <http://www.dac.gov.za/organogram> for the functions of the various branches in the DAC.

16. Everyone has the right to freedom of expression, which includes-

- (a) freedom of press and other media;
- (b) freedom to receive or impart information or ideas;
- (c) freedom of artistic creativity; and
- (d) academic freedom and freedom of scientific research;

30. Everyone has the right to use the language and to participate in the cultural life of their choice, but no one exercising these rights may do so in a manner inconsistent with any provision of the Bill of Rights.

2.8 Parliament has promulgated several Acts to create institutions in furtherance of the constitutional mandate of the DAC. The 16 principal statutes and 8 amendment statutes presently administered by the DAC are evaluated in this discussion paper.

## 2 Evaluation and recommendations

2.9 The SALRC has divided the arts and culture related legislation into five themes, as follows:

- Theme 1: Arts
- Theme 2: Culture
- Theme 3: Heritage
- Theme 4: Preservation
- Theme 5: Amendment Statutes.

The Acts under each theme are not arranged in a chronological order according to the number and year of each Act. The Acts under Theme 5 are dealt with separately from Acts under the other four themes, because each one amends several principal Acts.

### **(a) Theme 1: Arts**

#### *(i) National Arts Council Act 56 of 1997*

2.10 This Act establishes the National Arts Council (the Council). The objects of the Council are as follows:

- to provide and encourage the provision of opportunities for persons to practice the arts;
- to promote the appreciation, understanding and enjoyment of the arts;
- to promote the general application of the arts in the community;
- to foster the expression of a national identity and consciousness by means of the arts;
- to uphold and promote the right of any person to freedom in the practice of the arts;
- to give the historically disadvantaged such additional help and resources as are required to give them greater access to the arts;
- to address historical imbalances in the provision of infrastructure for the promotion of the arts;
- to promote and facilitate national and international liaison between individuals and institutions in respect of the arts; and
- to develop and promote the arts and to encourage excellence in regard to these.

2.11 The Act provides for a public and transparent process for electing representatives to the Council. It further determines the Council's functions and method of work, and prescribes the manner in which the Council is to be managed and governed.

2.12 The memorandum on the objects of the National Arts Council Bill of 1996, which preceded the Act, provides detail on the historical scene at the time. It states that in the past, the arts of a minority were promoted and developed to the exclusion of the arts of others. Furthermore, funding of the arts did not embrace the principles of accountability and transparency; a few large institutions were funded but the majority of artists had no access to State support. Hence the memorandum recognises that new legislation is necessary to establish a mechanism for the fair, democratic and transparent funding of the arts.

2.13 The Bill stemmed from the White Paper on Arts, Culture and Heritage. This white paper represented South Africa's first democratically formulated policy on arts, culture and heritage. Rooted in the framework of equity laid out in the Reconstruction and Development Programme (RDP), and based on the rights enshrined in the Constitution of the Republic of South Africa, 1996, the White Paper presented a new vision for arts, culture and heritage. The Bill was the first step in the process of transforming the field of arts and culture in South Africa. In line with international trends, the Bill also recognised the need to protect the arts from heavy-handed political interference.

2.14 Section 1 of the Act defines “Director-General” as follows:

“Director-General” means the Director-General: Arts, Culture, Science and Technology;

2.15 As previously mentioned,<sup>13</sup> the Department of Arts, Culture, Science and Technology was split into two departments, namely the Department of Arts and Culture and the Department of Science and Technology. In line with this development, the SALRC recommends that the term “Director-General” should be defined as follows:<sup>14</sup>

“Director-General” means the Director-General of the Department of Arts and Culture;

2.16 Section 1 of the Act defines “Foundation” as follows:

“Foundation” means the company known as the National Arts Council incorporated in terms of section 21 of the Companies Act, 1973 (Act No. 61 of 1973), and with the registration number of 89/01413/08;

2.17 The Foundation referred to above was an entity which existed prior to the adoption of the Act and the establishment of the Council. The White Paper on Arts, Culture and Heritage<sup>15</sup> explains that the Foundation for the Creative Arts (FCA) was formed in 1989 as a section 21 company under the Companies Act of 1973. Its aim was to provide public support to creative arts that were not supported by the Performing Arts Councils, and it played a similar role to that of the then proposed National Arts Council (NAC). However, the FCA had very limited funding and played a more minor role. In the light of the recommendations to establish the NAC, and the limited remit of the FCA, the FCA was to be deregistered and its infrastructure and resources were to be incorporated into the NAC.

2.18 The definition of “Foundation” should be read with section 20, which provides that “at the commencement of this section the Registrar of Companies shall deregister the Foundation in terms of the Companies Act 1973 (Act No. 61 of 1973)”. In terms of Proclamation No. R111 of 1999, the whole Act commenced on 1 November 1999. Therefore, section 20 refers to an act (deregistration) which happened after the commencement of the Act. The definition of “Foundation” is not obsolete because it is defined to mean the National Arts Council which is an existing entity operational in terms of the Act. Section 20 is obsolete because it has achieved its purpose. That is, deregistration of the Foundation (the entity

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<sup>13</sup> Paragraph 2.4.

<sup>14</sup> Clause 18 of the Bill.

<sup>15</sup> See the departmental website at [http://www.dac.gov.za/white\\_paper.htm](http://www.dac.gov.za/white_paper.htm).

which existed prior to the adoption of the Act) at the commencement of section 20. However, for purposes of legal certainty the SALRC recommends retaining on the statute book section 20, to inform readers that the Act did provide for such deregistration.

2.19 Section 17 of the Act makes reference to the Portfolio Committee on Arts, Culture, Science and Technology. As a result of the splitting of the department of Arts, Culture, Science and Technology into the Department of Arts and Culture and the Department of Science and Technology, the Portfolio Committee on Arts, Culture, Science and Technology was divided into two portfolio committees: the Portfolio Committee on Arts and Culture and the Portfolio Committee on Science and Technology. The SALRC therefore recommends that the section be amended to refer to the Portfolio Committee on Arts and Culture.<sup>16</sup>

*(ii) National Film and Video Foundation Act 73 of 1997*

2.20 This Act establishes the National Film and Video Foundation. The objects of the Foundation are as follows:

- (a) to develop and promote the film and video industry;
- (b) to provide and encourage the provision of opportunities for persons, especially from disadvantaged communities;
- (c) to encourage the development and distribution of local film and video products;
- (d) to support the nurturing and development of and access to the film and video industry; and
- (e) in respect of the film and video industry, to address historical imbalances in the infrastructure and distribution of skills and resources.

2.21 Section 1 of the Act defines “Director-General” and “Minister” respectively as follows:

“Director-General” means the Director-General: Arts, Culture, Science and Technology;

'Minister' means the Minister of Arts, Culture, Science and Technology;

2.22 In line with the splitting of the Ministry of Arts, Culture, Science and Technology and the subsequent parallel split in the Department of Arts, Culture, Science and Technology,<sup>17</sup>

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<sup>16</sup> Clause 19 of the Bill.

<sup>17</sup> Paragraph 2.4.

the SALRC recommends that “Director-General” and “Minister” be defined respectively as follows:<sup>18</sup>

“Director-General” means the Director-General of the Department of Arts and Culture;  
 ‘Minister’ means the Minister of Arts and Culture;

2.23 Section 17(2)(b) provides that the Foundation shall submit to the Minister an annual report containing a balance sheet, a statement of income and expenditure certified by the Auditor-General, and such other particulars as the Minister may require. Section 17(4) of the Act provides that within five months after the report referred to in section 17(2)(b) has been tabled, a delegation consisting of the chairperson of the council and at least two other council members must brief the Portfolio Committee on Arts, Culture, Science and Technology on the annual report. The SALRC proposes that this subsection be amended to refer to the Portfolio Committee on Arts and Culture in accordance with the split in the Portfolio Committee as discussed in paragraph 2.19 above.<sup>19</sup>

**(b) Theme 2: Culture**

*(i) Culture Promotion Act 35 of 1983*

2.24 The purpose of this Act is to provide for the preservation, development, fostering and extension of culture by planning, organizing, coordinating and providing facilities for the utilization of leisure and for non-formal education. The Act further provides for the development and promotion of cultural relations with other countries.

2.25 Section 1 defines “Minister” as follows:

“Minister”-

- (a) in so far as the administration of a provision of this Act has under section 235 (8) of the Constitution of the Republic of South Africa, 1993 (Act 200 of 1993), been assigned to a competent authority within the jurisdiction of the government of a province and the provision is applied in or with reference to the province concerned, means that competent authority; or
- (b) in so far as the administration of a provision of this Act has not been so assigned, means the Minister of Arts, Culture, Science and Technology;

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<sup>18</sup> Clause 20 of the Bill.

<sup>19</sup> Clause 21 of the Bill.

2.26 Section 235(8) of the Constitution of the Republic of South Africa, 1993 (interim Constitution) dealt with the assignment of powers and functions to a provincial government. However, the whole of section 235 was repealed by section 242 of the Constitution of the Republic of South Africa, 1996 (new Constitution). Section 99 of the new Constitution deals with the assignment of functions, and stipulates that a Cabinet member may assign any power or function that is to be exercised or performed in terms of an Act of Parliament to a member of a provincial Executive Council or to a Municipal Council. However, the assignment to provinces occurred under the interim Constitution, when the then President Nelson Mandela assigned the administration of the Act to a competent authority designated by the Premier of the province concerned.<sup>20</sup> The reference to the interim Constitution is therefore not obsolete. Furthermore, as mentioned earlier, the previous Department of Arts, Culture, Science and Technology was split into the Department of Arts and Culture and the Department of Science and Technology respectively. The SALRC thus proposes that the term “Minister” be defined with reference to the new Department of Arts and Culture.<sup>21</sup>

2.27 Section 1 defines “province” as a province established in terms of section 124 of the Constitution of the Republic of South Africa 1993. Because the inclusion of the definition of “province” in the Act arose from the assignment in terms of the interim Constitution, the SALRC is of the view that the reference to the interim Constitution in the definition is not obsolete.

*(ii) Culture Promotion Amendment Act 59 of 1998*

2.28 This Act amended the Culture Promotion Act 35 of 1983 to further regulate the powers of the then Minister of Arts, Culture, Science and Technology. After analysing the provisions of the Act, the SALRC has concluded that it is neither obsolete nor redundant. The SALRC recommends that this amendment Act be retained.

*(iii) Pan South African Language Board Act 59 of 1995*

2.29 This Act provides for the recognition, implementation and furtherance of multilingualism in South Africa. It further provides for the development of previously marginalised languages, and establishes a Pan South African Language Board.

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<sup>20</sup> Proclamation R.36 of 1995 in *Government Gazette* No. 16363 of 13 April 1995.

<sup>21</sup> Clause 5 of the Bill.

2.30 The Preamble to the Act makes reference to the “Constitution of the Republic of South Africa, 1993 (Act 200 of 1993)”. The Act was amended by the Pan South African Language Board Amendment Act 10 of 1999, which effected (among others) certain consequential and technical amendments necessitated by the new Constitution having superseded the interim Constitution. These included an amendment of the definition of “Constitution” to refer the new Constitution. The SALRC is of the opinion that the failure by drafters of the Amendment Act to amend the Preamble of the Act so that it would refer to the new Constitution was an oversight. The SALRC thus recommends that the Preamble should make reference to the new Constitution.<sup>22</sup>

2.31 The Act defines Constitution as follows: “‘Constitution’ means the Constitution of the Republic of South Africa, 1996 (Act 108 of 1996).” However, the Citation of Constitutional Laws Act 5 of 2005 has changed the manner of referring to the Constitution. In terms of the latter Act, the name of the Constitution should be cited as follows: “Constitution of the Republic of South Africa, 1996.” The SALRC consequently recommends that the definition of “Constitution” in Act 59 of 1995 should be substituted accordingly.<sup>23</sup>

2.32 The Act defines “Director-General” and “Minister” respectively as follows:

“Director-General” means the Director-General of the Department of the Minister;  
 “Minister” means the Minister responsible for the administration of this Act;

2.33 The SALRC proposes that the above concepts be defined as follows:<sup>24</sup>

“Director-General” means the Director-General of the Department of Arts and Culture;  
 “Minister” means the Minister of Arts and Culture;

*(iv) Pan South African Language Board Amendment Act 10 of 1999*

2.34 This Act amended the Pan South African Language Board Act 59 of 1995 in relation to the composition, powers and functions, the financing and application of the funds of the Pan South African Language Board and the procedure for the appointment of its members.

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<sup>22</sup> Clause 6 of the Bill.

<sup>23</sup> Clause 7(a) of the Bill.

<sup>24</sup> See also paragraph 2.22, and clause 7(b) and (c) of the Bill.

After an analysis of the provisions of the Act, the SALRC concludes that the Act is not obsolete or redundant and thus recommends this amendment Act be retained.

(v) *Cultural Institutions Act 119 of 1998*

2.35 This Act establishes a National Museums Division and provides for the payment of subsidies to certain cultural institutions. It further provides for the establishment of certain institutions as declared cultural institutions under the control of councils.

2.36 Section 1 of the Act defines “Director-General” and “Minister” respectively as follows:

“Director-General” means the Director-General of the national Department responsible for culture;

“Minister” means the Minister of the national Department responsible for culture;

2.37 Although the functions of the Director-General and the Minister as provided for in the Act relates to matters pertaining to culture, it is incorrect to refer to their portfolios as above. The SALRC is therefore of the view that the reference to their portfolios be corrected as follows:<sup>25</sup>

“Director-General” means the Director-General of the Department of Arts and Culture;

“Minister” means the Minister of Arts and Culture;’

2.38 Section 4(5) of the Act provides as follows:

A declared institution may, unless the Minister otherwise determines and subject to the National Monuments Act, 1969 (Act No. 28 of 1969)—

- (a) let or exchange any specimen, collection or other movable property belonging to it; and
- (b) purchase or otherwise acquire, possess or hire any specimen, collection or other movable property;

2.39 The National Monuments Act of 1969 was repealed by section 60 of the National Heritage Resources Act 25 of 1999. Given that the principal Act has been repealed, the following pieces of amending legislation serve no purpose on the statute book and should also be repealed:

- (a) National Monuments Amendment Act 22 of 1970: This Act amended only the principal Act.

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Clause 33 of the Bill.

- (b) National Monuments Amendment Act 30 of 1971: This Act amended only the principal Act.
- (c) National Monuments Amendment Act 35 of 1979: This Act amended the principal Act and the Financial Relations Act 65 of 1976. The whole of the latter Act, except sections 27 and 28, was repealed by section 230(1) of the Constitution of the Republic of South Africa, Act 200 of 1993. Sections 27 and 28 of Act 65 of 1976 do not relate to any provisions of the National Monuments Act of 1969 or the National Monuments Amendment Act of 1979.
- (d) National Monuments Amendment Act 13 of 1981: This Act amended only the principal Act.
- (e) War Graves and National Monuments Amendment Act 11 of 1986.
- (f) National Monuments Amendment Act 25 of 1991: This Act amended only the principal Act.

2.40 The proposed draft Bill in Annexure A below should therefore reflect the repeal of the above Acts.<sup>26</sup> It was unclear whether section 4(5) of the Cultural Institutions Act 119 of 1998 had referred to the National Monuments Act 28 of 1969 simply so that specimens, collections or other movable property would be transferred from previous institutions to the new institutions. The SALRC therefore requested the DAC to comment on whether section 4(5), as set out in paragraph 2.38 above, should be amended to refer to the National Heritage Resources Act 25 of 1999 instead, having regard to the fact that Act 25 of 1999 had repealed the National Monuments Act 28 of 1969. Responding to this request, the DAC suggested the amendment of section 4(5) to refer to the National Heritage Resources Act 25 of 1999.<sup>27</sup>

2.41 Section 6 of the Cultural Institutions Act 119 of 1998 provides as follows:

Establishment of Flagship institutions

(1) The Northern Flagship institution is hereby established, comprising the—

- (a) National Cultural History Museum;
- (b) South African National Museum for Military History; and
- (c) Transvaal Museum.

(2) The Southern Flagship institution is hereby established, comprising the—

- (a) Michaelis Collection;
- (b) South African Cultural History Museum;
- (c) South African Museum;
- (d) South African National Gallery; and
- (e) William Fehr Collection.

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<sup>26</sup> Schedule to the Bill.

<sup>27</sup> Clause 34 of the Bill.

(3) The Flagship institutions contemplated in subsections (1) and (2) are hereby declared to be subject to the Act.

(4)(a) The members of a council of a flagship institution must, in consultation with the Minister, appoint a chief executive officer who must be responsible for the management of the flagship institution and who must report to the council on management affairs as the council may require.

(b) The chief executive officer is the accounting officer of a flagship institution.

(c) The chief executive officer—

- (i) serves for a renewable term of five years; and
- (ii) must enter into a performance agreement with the relevant council before taking up his or her post as chief executive officer.

2.42 In 1999, following the process of restructuring national museums, the museums listed under subsection (1) together with five other museums<sup>28</sup> were amalgamated into the Northern Flagship Institution. The same year witnessed the establishment of the Southern Flagship Institution through the amalgamation of 16 institutions in the Western Cape.<sup>29</sup> The Southern Flagship Institution was subsequently renamed as Iziko Museums of Cape Town. In April 2010, the Northern Flagship Institution was renamed as Ditsong Museums of South Africa.<sup>30</sup>

2.43 Several museums which form part of the Ditsong Museums underwent their own name changes. These include the previous South African National Museum for Military History, now called the National Museum of Military History;<sup>31</sup> and the previous Transvaal Museum, now called the National Museum of Natural History.<sup>32</sup>

2.44 Having regard to the name changes as mentioned above, the SALRC requested the DAC to comment on whether the Act should be amended to change the names “Northern Flagship Institution” and “Southern Flagship Institution” to “Ditsong Museums Institution” and “Iziko Museums Institution” respectively. The DAC proposed that the Act be amended to

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<sup>28</sup> Kruger Museum, Pioneer Museum, Sammy Marks Museum, Willem Prinsloo Agricultural Museum and the Tswaing Meteorite Crater.

<sup>29</sup> Speech by the Minister of Arts and Culture, Minister Lulu Xingwana, MP at launch of the new name for the Northern Flagship Institution on 28 May 2010, <http://www.info.gov.za/speech> (accessed on 16 September 2011);

<sup>30</sup> [http://en.wikipedia.org/wiki/Transvaal\\_Museum](http://en.wikipedia.org/wiki/Transvaal_Museum) (accessed on 29 September 2011 and 17 November 2015).

<sup>31</sup> <http://www.ditsong.org.za/militaryhistory.htm> (accessed on 16 September 2011 and on 17 November 2015).

<sup>32</sup> <http://www.ditsong.org.za/naturalhistory.htm> (accessed on 16 September 2011 and on 17 November 2015).

change the names as indicated. The SALRC also recommends that the proposed Bill should reflect the new names of the museums as mentioned above.<sup>33</sup>

2.45 Section 15(1) of the Act states as follows:

The Minister may, subject to the conditions he or she determines, in writing delegate any power conferred, except the power, in terms of section 16, to make regulations or any duty imposed on the Minister by this Act to an official employed by the national Department responsible for culture.

2.46 The SALRC recommends that the above section be amended by replacing the words “national Department responsible for culture” with the words “Department of Arts and Culture”.<sup>34</sup>

*(vi) Use of Official Languages Act 12 of 2012*

2.47 The Act provides for the regulation and monitoring of the use of official languages and consequently requires the adoption of a language policy. The Act further provides for the establishment of a National Language Unit as well as language units by a national department, national public entity and national public enterprise.

2.48 The Act defines “Minister” as follows:

“Minister” means the Minister responsible for language matters;

2.49 The SALRC is of the view that the Act should define “Minister” with reference to the name of his or her portfolio; that is, the Minister of Arts and Culture.<sup>35</sup>

*(vii) South African Language Practitioners’ Council Act 8 of 2014*

2.50 The Act establishes the South African Language Practitioners’ Council and provides for control of the accreditation and registration of language practitioners. The Act further provides for the regulation of the training of language practitioners.

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<sup>33</sup> Clause 35 of the Bill.

<sup>34</sup> Clause 36 of the Bill.

<sup>35</sup> Clause 53 of the Bill.

2.51. Section 1 of the Act defines “Department” and “Minister” respectively as follows:

“Department” means the Department in the National Government responsible for language matters;

“Minister” means the Minister responsible for language matters;

2.52 The SALRC recommends that “Department” and “Minister” be defined respectively as follows<sup>36</sup>:

“Department” means the national Department of Arts and Culture;

“Minister” means the Minister of Arts and Culture;

**(c) Theme 3: Heritage**

*(i) Heraldry Act 18 of 1962*

2.53 The Act establishes a bureau of heraldry, a heraldry committee, and a heraldry council, and provides for the registration and protection of coats of arms, badges, other emblems, names and uniforms.

2.54 The Act defines “Minister” as follows:

“Minister” means the Minister responsible for Heraldry;

2.55 The SALRC is of the view that the Act should define “Minister” with reference to the name of his or her portfolio. That is, the Minister of Arts and Culture.<sup>37</sup>

2.56 Section 7(6) of the Act states as follows:

Any descendant of any person who lawfully bears or bore a particular family coat of arms, or any adopted child, as defined in the Children’s Act, 1960 (Act No. 33 of 1960), of such person bearing the same lawfully conferred family name as that person, may apply to the bureau for the registration, with or without differencing, of that family coat of arms in his name.

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<sup>36</sup> Clause 54 of the Bill.

<sup>37</sup> Clause 1 of the Bill.

2.57 The SALRC would like to point out that the Children's Act 33 of 1960 was repealed by section 313 of the Children's Act 38 of 2005. It is thus recommended that the reference to the former Act be substituted with a reference to the latter Act.<sup>38</sup>

2.58 Section 20(2) of the Act provides as follows:

Nothing in this Act shall prevent the continued use of any mark or design registered under the Designs, Trade Marks and Copyright Act, 1916, or any mark or design not protected under that Act but which has been bona fide used as a trade mark before the commencement of this Act: Provided that the onus of proving such bona fide use shall be upon the person making such claim.

2.59 The Designs Act 195 of 1993 and the Trade Marks Act 194 of 1993, respectively, provide for the registration of designs and marks. The Designs, Trade Marks and Copyright Act of 1916 referred to above was repealed by section 37 of the Designs Act 57 of 1967. The latter Act was then repealed by section 55 of the Designs Act 195 of 1993. The SALRC therefore recommends that section 20(2) be amended to refer to the current Designs Act of 1993 and the Trade Marks Act of 1993.<sup>39</sup>

2.60 The SALRC draws the attention of the DAC to the amount for which a person may be sued in terms of section 21, and the fines provided for in sections 22 to 23A.<sup>40</sup> Except for

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<sup>38</sup> Clause 2 of the Bill.

<sup>39</sup> Clause 3 of the Bill.

<sup>40</sup> Sections 21 to 23A of the Act provide as follows:

**21. Damages for misuse of registered heraldic representations, names, special names or uniforms.—**Any person who—

- (a) without the written authority of the association or institution in whose name any name, special name or uniform has been registered, or without being a member of such association or institution, uses such name, special name or uniform or a material part thereof or any replica or reproduction thereof or any imitation which might reasonably be confused with any such name, special name or uniform; or
- (b) without the written authority of the official or municipal authority, association, institution or person in whose name any heraldic representation has been registered or, if such person has died, of the widow of such person in the case of a family coat of arms, or without any other lawful reason, wears, uses, sells, barter or trades in any such heraldic representation or a material part thereof or any replica or reproduction thereof or any imitation which might reasonably be confused with any such heraldic representation,

may be sued in any court of law by any such official or municipal authority, association, or person or widow of such person for—

- (i) an amount not exceeding one thousand rand, and such court may without proof of any damages, and in addition to the cost of the action, award such amount, not exceeding the said amount, as may in the circumstances of the case appear to it to be reasonable; or

section 22A, these provisions provide that the amount and the fines may not exceed one

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- (ii) damages or an interdict or for both damages and an interdict, and such court may, in addition to the costs of the action, award such damages as may appear to it to be reasonable in the circumstances, or grant an interdict or both award damages and grant an interdict.

**22. Penalties for misuse of registered representations, names, special names or uniforms.—**Any person who—

- (a) without the written permission of the official or municipal authority in whose name any official or municipal heraldic representation has been registered, or without any other lawful reason, sells, barter or uses for gain or trades in such heraldic representation or any material part thereof or any replica or reproduction thereof or any imitation thereof which might reasonably be confused therewith; or
- (b) uses a registered name, special name or an abbreviation thereof or a uniform in such a manner that it could reasonably be inferred that he is the owner or lawful user thereof or that he is a member of an association or institution, while in fact he is not such owner, user or member,

shall be guilty of an offence and liable on conviction to a fine not exceeding one thousand rand.

**22A. Offence in respect of coat of arms of the Republic.—**Any person who commits any act which displays contempt for the coat of arms of the Republic or which is likely to hold it up to ridicule, shall be guilty of an offence and liable on conviction to a fine not exceeding ten thousand rand or in default of payment to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

**23. Penalty for false entries.—**Any person who, knowing the same to be false—

- (a) makes or causes to be made a false entry in the register;
- (b) makes or causes to be made any document falsely purporting to be a copy of an entry in the register;
- (c) produces or tenders or causes to be produced or tendered as evidence any such entry or copy thereof;
- (d) makes any false statement or representation for the purpose of deceiving the state herald, the committee or the council in the execution of the provisions of this Act,

shall be guilty of an offence, and liable on conviction to a fine not exceeding one thousand rand or in default of payment to imprisonment for a period not exceeding one year.

**23A. Penalty for making certain allegations in connection with family coats of arms.—**(1) Any person who furnishes any representation which he alleges or which on the face of it purports to be a true representation of a family coat of arms which was or could have been lawfully borne by any person with a particular family name, while he does not have at his disposal a certificate as contemplated in section 7 (7) issued in respect of such representation, shall be guilty of an offence, and liable on conviction to a fine not exceeding one thousand rand or in default of payment to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

(2) If in any prosecution for a contravention of subsection (1) it is proved that the accused furnished a representation which on the face of it purports to be a true representation of a family coat of arms, a statement, made by the accused in connection with the furnishing of the representation, to the effect that it is not claimed or implied that the representation concerned is such a true representation, shall not be a defence to the charge.

thousand rand. The SALRC recommends that the DAC consider whether the amount, fines and the period of imprisonment in default of payment should be increased.

2.61 Section 24(3) states as follows:

Within five months after the report has been tabled, a delegation consisting of the state herald and at least two other council members must brief the Portfolio Committee on Arts, Culture, Science and Technology on the annual report.

2.62 The SALRC recommends that this section be amended to reflect the separation of the previous Portfolio Committee on Arts, Culture, Science and Technology as explained in paragraph 2.19 above.<sup>41</sup>

(ii) *Heraldry Amendment Act 54 of 1969; 63 of 1980; and 22 of 1982*

2.63 These Amendments Acts amended the provisions of the Heraldry Act 18 of 1962. After analysing the provisions of the principal Act, the SALRC concludes that it is neither obsolete nor redundant, and recommends that these amendment Acts be retained.

(iii) *South African Geographical Names Council Act 118 of 1998*

2.64 This Act establishes a permanent advisory body known as the “South African Geographical Names Council” to advise the Minister of Arts and Culture on the transformation and standardization of geographical names in South Africa for official purposes. Section 1 of the Act defines “Director-General” and “Minister” respectively as follows:

“Director-General” means the Director-General of the national department responsible for arts and culture;  
 “Minister” means the Minister responsible for arts and culture;

2.65 The SALRC recommends that “Director-General” and “Minister” be defined as follows:<sup>42</sup>

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<sup>41</sup> Clause 4 of the Bill.

<sup>42</sup> Clause 30(a) and (b) of the Bill.

“Director-General” means the Director-General of the Department of Arts and Culture;

“Minister” means the Minister of Arts and Culture;

2.66 Furthermore, section 1 defines “municipality” as follows:

“Municipality” means a municipality as defined in section 10B of the Local Government Transition Act, 1993 (Act No. 209 of 1993);

2.67 With reference to the definition of municipality, the Local Government Transition Act 209 of 1993 was repealed by section 36 of the Local Government Laws Amendment Act 19 of 2008. The Local Government: Municipal Structures Act 117 of 1998 currently provides for the establishment of municipalities.<sup>43</sup> The SALRC therefore proposes that the concept municipality be defined with reference to the Local Government: Municipal Structures Act 117 of 1998.<sup>44</sup>

2.68 Section 3 of the Act states that the South African Geographical Names Council consists of no fewer than 15 and no more than 25 members appointed by the Minister, of whom one must be nominated by the Chief Directorate: Surveys and Mapping. However, the latter mentioned Chief Directorate has been renamed and is now called the Chief Directorate: National Geo-spatial Information. The SALRC thus proposes that the section be amended accordingly.<sup>45</sup>

2.69 Section 11 of the Act provides for the submission of an annual report on the South African Geo-graphical Names Council’s activities to the Minister and states that the Minister must cause the report to be tabled in Parliament.<sup>46</sup> It further states that within five months after the report has been tabled, a delegation consisting of the chairperson of the council and at least two other council members must brief the Portfolio Committee on Arts, Culture, Science and Technology on the annual report.<sup>47</sup> The SALRC proposes that this subsection be amended to refer to the Portfolio Committee on Arts and Culture in accordance with the separation of the Portfolio Committee as explained in paragraph 2.19 above.<sup>48</sup>

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<sup>43</sup> See also section 155 of the Constitution of the Republic of South Africa, 1996.

<sup>44</sup> Clause 30(c) of the Bill.

<sup>45</sup> Clause 31 of the Bill.

<sup>46</sup> Subsections (1) and (2).

<sup>47</sup> Subsection (3).

<sup>48</sup> Clause 32 of the Bill.

(iv) *National Heritage Council Act 11 of 1999*

2.70 This Act establishes the National Heritage Council. It further determines the objects, functions and method of work of the National Heritage Council and prescribes the manner in which it is to be managed and governed.

2.71 The Act defines Minister as follows: “Minister” means the Minister of the national department responsible for arts and culture. The name of the portfolio of the said Minister is the “Minister of Arts and Culture”. The SALRC suggests that the proposed Bill should define Minister accordingly.<sup>49</sup>

2.72 Section 5(1) of the Act provides as follows:

Composition of Council

- (1) The Council consists of—
- (a) at least five members, appointed by the Minister;
  - (b) a representative of each province to be nominated by the MEC concerned;
  - (c) the chairpersons of each of—
    - (i) the Council of the South African Heritage Resources Agency;
    - (ii) the National Archives Commission;
    - (iii) the Heraldry Council;
    - (iv) the Board of the National Library;
    - (v) the Council of the Northern Flagship Institution;
    - (vi) the Council of the Southern Flagship Institution, and/or any other body or institution the Minister considers relevant.

2.73 With reference to paragraph 2.42 above, the DAC proposed that the names in the Cultural Institutions Act, 119 of 1998; viz “Northern Flagship Institution” and “Southern Flagship Institution” should be changed to “Ditsong Museums Institution” and “Iziko Museums Institution” respectively having regard to the change of names of the former-mentioned institutions. In this regard, it is also recommended that references to the Northern Flagship Institution and the Southern Flagship Institution in paragraph (c)(v) and (vi) be changed.

(v) *National Heritage Resources Act 25 of 1999*

2.74 The Act introduces an integrated and interactive system for the management of the national heritage resources and empowers civil society to nurture and conserve their heritage resources so that they may be bequeathed to future generations. It lays down

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<sup>49</sup> Clause 37 of the Bill.

general principles for governing heritage resources management throughout South Africa and introduces an integrated system for the identification, assessment and management of the heritage resources of South Africa. Furthermore, it establishes the South African Heritage Resources Agency together with its Council to co-ordinate and promote the management of heritage resources at national level and to enable the provinces to establish heritage authorities which must adopt powers to protect and manage certain categories of heritage resources.

2.75 Section 1 of the Act contains the following definitions:

“Department” means the national department responsible for arts and culture and heritage;

“Director-General” means the Director-General of the Department;

“local authority” means a municipality as defined in section 10B of the Local Government Transition Act, 1993 (Act No. 209 of 1993);

“Minister” means the Minister responsible for arts and culture;

“national symbols” means any heraldic representation so determined under section 5 of the Heraldry Act, 1963 (Act No. 18 of 1963);

2.76 The SALRC is of the view that “Department” should be defined as follows:<sup>50</sup>

“Department” means the Department of Arts and Culture;

2.77 Furthermore, “Director-General” and “Minister” should be defined as follows:<sup>51</sup>

“Director-General” means the Director-General of the Department of Arts and Culture;”

“Minister” means the Minister of Arts and Culture;”

2.78 Regarding the definition of “local authority” and cognisant of the repeal of the Local Government Transition Act 209 of 1993 by the Local Government Laws Amendment Act 19 of 2008, the SALRC recommends that “local authority” be defined as follows:<sup>52</sup>

“local authority” means a municipality established in terms of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998)

2.79 With reference to the definition of “national symbols”, the year cited for the Heraldry Act is incorrect and the reference should be to the “Heraldry Act 1962 (Act No. 18 of 1962)”. The SALRC recommends that this be rectified.<sup>53</sup>

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<sup>50</sup> Clause 38(a) of the Bill.

<sup>51</sup> Clause 38(b) and (d) of the Bill. See also paragraph 2.22.

<sup>52</sup> Clause 38(c).

<sup>53</sup> Clause 38(e) of the Bill.

2.80 Section 3(1) of the Act provides that those heritage resources of South Africa which are of cultural significance or other special value for the present community and for future generations must be considered part of the national estate. Section 3(2)(g) further states that the national estate may include graves and burial grounds, including other human remains which are not covered in terms of the Human Tissue Act 65 of 1983. The Human Tissue Act was repealed by section 93 of the National Health Act 61 of 2003. The SALRC thus recommends that the reference to the Human Tissue Act be substituted with a reference to the National Health Act.<sup>54</sup>

2.81 Section 3(2)(i)(vii) and section 32(1)(h) make reference to the National Archives of South Africa Act, 1996 (Act No. 43 of 1996). The citation of the name of the Act is incorrect and should read “the National Archives and Record Service of South Africa Act, 1996 (Act No. 43 of 1996)”. The SALRC recommends that the Act be amended accordingly.<sup>55</sup>

2.82 Section 28(4) of the Act provides as follows:

With regard to an area of land covered by a mine dump referred to in subsection (1) (c) SAHRA must make regulations providing for the protection of such areas as are seen to be of national importance in consultation with the owner, the Minister of Minerals and Energy and interested and affected parties within the mining community.

2.83 On 10 May 2009, in his statement on the appointment of the new Cabinet, President Jacob Zuma announced that the Department of Minerals and Energy would be split into two departments, namely the Department of Mining and the Department of Energy.<sup>56</sup> It was subsequently decided that the Department of Mining would become the Department of Mineral Resources. The SALRC considers it appropriate to substitute the reference to the Minister of Minerals and Energy with a reference to the Minister of Mineral Resources, and recommends that the Act be amended accordingly.<sup>57</sup>

2.84 Section 33(4) of the Act provides as follows:

SAHRA may, with the consent of the Minister and the Minister of Foreign Affairs, liaise and co-operate with the authority responsible for the protection of cultural property in any reciprocating state and may enter into agreements with any such authority with regard to the return to the country of origin of any

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<sup>54</sup> Clause 39(b) of the Bill.

<sup>55</sup> Clause 39(a) and 41 of the Bill.

<sup>56</sup> [http://www.info.gov.za/events/2009/new\\_cabinet.htm](http://www.info.gov.za/events/2009/new_cabinet.htm) (accessed on 29 September 2011).

<sup>57</sup> Clause 40 of the Bill.

heritage object or cultural property which is illegally imported into South Africa or the reciprocating state, whether specifically or in general.

2.85 However, the Department of Foreign Affairs has been renamed the Department of International Relations and Cooperation.<sup>58</sup> Hence the SALRC recommends that the reference to the “Minister of Foreign Affairs” be substituted with a reference to the “Minister of International Relations and Cooperation.”<sup>59</sup>

2.86 Section 38(8) states as follows:

The provisions of this section do not apply to a development as described in subsection (1) if an evaluation of the impact of such development on heritage resources is required in terms of the Environment Conservation Act, 1989 (Act 73 of 1989), or the integrated environmental management guidelines issued by the Department of Environment Affairs and Tourism, or the Minerals Act, 1991 (Act 50 of 1991), or any other legislation: Provided that the consenting authority must ensure that the evaluation fulfils the requirements of the relevant heritage resources authority in terms of subsection (3), and any comments and recommendations of the relevant heritage resources authority with regard to such development have been taken into account prior to the granting of the consent.

2.87 Following the announcement by President Jacob Zuma on 10 May 2009 that the structure of government was to be reorganised, the environmental affairs portfolio of the Department of Environmental Affairs and Tourism was placed under the newly created Department of Water and Environmental Affairs.<sup>60</sup> The SALRC therefore recommends that the reference to the “Department Environmental Affairs and Tourism” be substituted with a reference to the “Department of Water and Environmental Affairs.”<sup>61</sup> The SALRC requested comment from the DAC on this suggestion, and the DAC agreed with the suggestion.

2.88 The Minerals Act 50 of 1991 was repealed by section 110 of the Mineral and Petroleum Resources Development Act 28 of 2002. The SALRC thus proposes that the reference to the former Act be replaced with a reference to the latter Act.<sup>62</sup>

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<sup>58</sup> Department of International Relations and Co-operation *Statement by Minister Maite Nkoane-Mashabane on the name change to the Department of International Relations and Co-operation* 14 May 2009.

<sup>59</sup> Clause 42 of the Bill.

<sup>60</sup> Department of Environmental Affairs *Government re-organises the environmental and tourism portfolios to improve service delivery* 13 May 2009.

<sup>61</sup> Clause 43 of the Bill.

<sup>62</sup> Clause 43 of the Bill.

**(d) Theme 4: Preservation**

*(i) National Archives and Record Service of South Africa Act 43 of 1996*

2.89 This Act establishes the National Archives and Record Service of South Africa. It provides for the management and care of the records of governmental bodies, and for the preservation and use of a national archival heritage.

2.90 The Act defines “Minister” as follows:

“Minister” means the Minister responsible for the administration of this Act;

2.91 In accordance with the definition of “Minister” proposed earlier in this document<sup>63</sup> and for the sake of consistency, the SALRC suggests that “Minister” be defined as follows:

“Minister” means the Minister of Arts and Culture.<sup>64</sup>

2.92 Sections 4(1)(b) and 6(4)(a) make reference to the “Director-General: Arts, Culture, Science and Technology”. Furthermore, section 10(4) makes reference to the “Portfolio Committee on Arts, Culture, Science and Technology”. The SALRC proposes that these sections be amended to reflect the new name of the portfolio of the Director-General and that of the Portfolio Committee, namely the Director General: Arts and Culture and the Portfolio Committee on Arts and Culture.<sup>65</sup>

*(ii) Legal Deposit Act 54 of 1997*

2.93 This Act provides for the preservation of the national documentary heritage through legal deposit of published documents; and ensures the preservation and cataloguing of, and access to, published documents emanating from or adapted for South Africa. It further provides for access to government information and for the establishment of a Legal Deposit Committee.

2.94 Section 1 of the Act defines “Department” and “Minister” respectively as follows:

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<sup>63</sup> Paragraph 2.22.

<sup>64</sup> Clause 8 of the Bill.

<sup>65</sup> See clauses 9, 10 and 11 of the Bill; and paragraphs 2.19 and 2.22 above.

“Department” means the Department of Arts, Culture, Science and Technology;

“Minister” means the Minister of Arts, Culture, Science and Technology;

2.95 The SALRC suggests that the above terms be defined as follows:<sup>66</sup>

“Department’ means the Department of Arts and Culture;”

“Minister’ means the Minister of Arts and Culture;”

2.96 Section 1 further defines “official publication” as follows:

“official publication” means a document published by an organ of national, provincial or local government, a parastatal organisation or any other institution listed as a public entity in terms of section 3 of the Reporting by Public Entities Act, 1992 (Act No. 93 of 1992);

2.97 However, the Reporting by Public Entities Act was repealed by section 94 of the Public Finance Management Act 1 of 1999. The latter Act defines “public entity” as a national or provincial public entity,<sup>67</sup> and lists in its Schedule 2 the major public entities, and in Schedule 3 other public entities. Similarly, section 7(4)(a) and section 8(5)(f) of the Act make reference to the Reporting by Public Entities Act. Having regard to the repeal of the latter Act, the SALRC recommends that the above provisions be amended to refer to the Public Finance Management Act.<sup>68</sup>

2.98 The Reporting by Public Entities Amendment Act 30 of 1997, which amended the Reporting by Public Entities Act 93 of 1992, is still on the statute book. The SALRC recommends that this Act be repealed, because the principal Act has now been repealed.<sup>69</sup>

2.99 Section 6(1) of the Act provides for places of legal deposit and states as follows:

The places of legal deposit shall be—

- (a) the City Library Services, Bloemfontein;
- (b) the Library of Parliament, Cape Town;
- (c) the Natal Society Library, Pietermaritzburg;
- (d) the South African Library, Cape Town;
- (e) the State Library, Pretoria;
- (f) the National Film, Video and Sound Archives, Pretoria, for purposes of certain categories of documents as prescribed; and

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<sup>66</sup> Clause 12(a) and (b) of the Bill.

<sup>67</sup> Section 1 of the Act.

<sup>68</sup> Clauses 12(c), 16(c), and 17 of the Bill.

<sup>69</sup> Schedule to the Bill.

- (g) any other library or institution prescribed by the Minister for purposes of certain prescribed categories of documents.

2.100 On 1 April 2004, the Natal Society relinquished its control over the library system and transferred it to the Msunduzi Municipality. The Natal Society Library is now called the Msunduzi Municipal Library Services. This body includes the main library, which in June 2005 was renamed the Bessie Head Library, and eight branch libraries.<sup>70</sup>

2.101 The South African Library in Cape Town and the State Library in Pretoria were amalgamated with effect from 1 November 1999 to form the National Library of South Africa (NLSA). The NLSA consists of a Pretoria Division (the former State Library) and a Cape Town Division (the former South African Library).<sup>71</sup>

2.102 Section 2(2), section 5(1) to (3), and section 7(2) to (3) also refer to the former names of the above-mentioned libraries.

2.103 The SALRC proposes that the Act be amended in accordance with the name changes of the above-mentioned libraries.<sup>72</sup>

(iii) *South African Library for the Blind Act 91 of 1998*

2.104 This Act provides for the South African Library for the Blind, the object of which is to provide a national library and information service to serve blind and print-handicapped readers in South Africa.<sup>73</sup>

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<sup>70</sup> <http://natalia.org.za/natalsociety.html> (accessed on 27 September 2011).

<sup>71</sup> <http://library.stanford.edu/depts/ssrg/africa/rsalibs.html> (accessed on 27 September 2011); <http://www.nlsa.ac.za/index.php/where-we-come-from> (accessed on 17 November 2015).

<sup>72</sup> Clauses 13, 14, 15 and 16(a) and (b) of the Bill.

<sup>73</sup> The memorandum on the objects of the South African Library for the Blind Bill, B 105b of 1998 also provides as follows:

1. The need of blind and print-handicapped readers for access to information is acknowledged by upgrading the status of the South African Library for the Blind. The Library is at present administered as a cultural institution under the Cultural Institutions Act, 1969 (Act No. 29 of 1969) but should be brought into an information environment.
2. The objects of the South African Library for the Blind will be to provide a national library and information service to blind and print-handicapped readers in South Africa.

2.105 The definition of “document” in section 1 of the Act makes reference to the “National Archives of South Africa Act, 1996 (Act No. 43 of 1996).” This reference is incorrect and should be changed to read as follows: “National Archives and Record Service of South Africa Act, 1996 (Act No. 43 of 1996).”<sup>74</sup>

2.106 The Act further defines “Minister” as follows:

“Minister” means the Minister of Arts, Culture, Science and Technology;

2.107 The SALRC proposes that the term “Minister” be defined as follows:<sup>75</sup>

“Minister” means the Minister of Arts and Culture;

2.108 Section 5 of the Act provides as follows:

Powers of Library for the Blind.—(1) The Library for the Blind is a juristic person, and may, subject to subsection (2), perform any act which in the opinion of the Board is necessary for or incidental to the performance of its functions.

(2) The Library for the Blind may not without the prior approval of the Minister granted with the concurrence of the Minister of Finance—

(a) ...;

(b) as long as a guarantee furnished in terms of section 35 of the Exchequer Act, 1975 (Act No. 66 of 1975), is in force in respect of a loan granted to the Library for the Blind—

(i) mortgage or otherwise encumber its immovable property acquired through that loan;

(ii) lease or sell, exchange or otherwise alienate, or hypothecate or otherwise encumber its movable property acquired through that loan;

2.109 However, the Exchequer Act of 1975 was repealed in its entirety, except sections 28 to 30, by section 94 of the Public Finance Management Act 1 of 1999. Chapter 8 (sections 66 to 75) of the Public Finance Management Act deals with guarantees, loans and other commitments. More specifically, section 70 provides for guarantees in respect of financial commitments.<sup>76</sup> The SALRC thus recommends that the reference to section 35 of the

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<sup>74</sup> Clause 22(a) of the Bill.

<sup>75</sup> Clause 22(b) of the Bill. See also paragraph 2.22 above.

<sup>76</sup> Section 70 states as follows:

**70. Guarantees, indemnities and securities by Cabinet members.—**

(1) A Cabinet member, with the written concurrence of the Minister (given either specifically in each case or generally with regard to a category of cases and subject to any conditions approved by the Minister), may issue a guarantee, indemnity or security which binds—

Exchequer Act 66 of 1975 be substituted with a reference to section 70 of the Public Finance Management Act 1 of 1999.<sup>77</sup>

2.110 Section 11 of the Act states as follows:

**Transfer of certain assets to Library for the Blind.**—Subject to section 2 of the State Land Disposal Act, 1961 (Act No. 48 of 1961), the Minister may, in consultation with the Board and with the concurrence of the Minister of Public Works, the Minister for Agriculture and Land Affairs and the Minister of Finance, and on such conditions as the Minister may determine, transfer to the Library for the Blind any immovable property belonging to the State in order to enable the Library for the Blind to perform its functions.

2.111 The Minister of Agriculture and Land Affairs referred to in section 11 above was, from 1996 to 2009, the Minister responsible for the Departments of Agriculture and Land Affairs. The portfolio was created in 1996 when the positions of Minister of Agriculture and Minister of Land Affairs were merged. After the election of President Jacob Zuma and the reorganisation of Cabinet, the portfolio's responsibilities were divided and transferred to the Minister of Agriculture, Forestry and Fisheries and the Minister of Rural Development and Land Reform, respectively.<sup>78</sup> The SALRC recommends that the reference to "Minister for Agriculture and Land Affairs" should be updated to "Minister of Rural Development and Land

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- (a) the National Revenue Fund in respect of a financial commitment incurred or to be incurred by the national executive; or
  - (b) a national public entity referred to in section 66 (3) (c) in respect of a financial commitment incurred or to be incurred by that public entity.

(2) Any payment under a guarantee, indemnity or security issued in terms of—

- (a) subsection (1) (a), is a direct charge against the National Revenue Fund, and any such payment must in the first instance be defrayed from the funds budgeted for the department that is concerned with the issue of the guarantee, indemnity or security in question; and
- (b) subsection (1) (b), is a charge against the national public entity concerned.

(3) A Cabinet member who seeks the Minister's concurrence for the issue of a guarantee, indemnity or security in terms of subsection (1) (a) or (b), must provide the Minister with all relevant information as the Minister may require regarding the issue of such guarantee, indemnity or security and the relevant financial commitment.

(4) The responsible Cabinet member must at least annually report the circumstances relating to any payments under a guarantee, indemnity or security issued in terms of subsection (1) (a) or (b), to the National Assembly for tabling in the National Assembly.

<sup>77</sup> Clause 23 of the Bill.

<sup>78</sup> [http://en.wikipedia.org/wiki/Minister\\_of\\_Agriculture\\_and\\_Land\\_Affairs](http://en.wikipedia.org/wiki/Minister_of_Agriculture_and_Land_Affairs) (accessed on 21 September 2011). See also Proclamation 44 of 2009 in *Government Gazette* 32367 of 1 July 2009, which transferred the administration and the powers and functions of the Minister of Agriculture and Land Affairs to the Minister of Rural Development and Land Reform.

Reform.”<sup>79</sup> Because the Department of Public Works administers the State Land Disposal Act, the SALRC requested this department as well as the Department of Rural Development and Land Reform to comment on this section, in addition to the DAC. Responding to the request, all three departments submitted that the reference to “Minister for Agriculture and Land Affairs” should be substituted by “Minister of Rural Development and Land Reform”.

2.112 The Department of Rural Development and Land Affairs (DRDLA) further submitted that the State Land Disposal Act of 1961 is administered by both the Minister of Public Works and the Minister of Rural Development and Land Reform. The Minister of Rural Development and Land Reform administers the State Land Disposal Act of 1961, in relation to a provision which applies to or is connected to the former Independent Bantustans: Transkei, Bophuthatswana, Venda and Ciskei) and the so-called self-governing territories. The Minister of Public Works administers other state land. The DRDLA therefore questions whether both these Ministers need to be consulted and agree, where land is to be transferred in terms of section 11 of the National Library of South Africa Act of 1998 or section 11 of the South African Library for the Blind Act of 1998. The DRDLA recommends that these sections be amended to require only the consent of the Minister who administers the land in question, and the consent of the Minister of Finance. The SALRC supports this recommendation.<sup>80</sup>

2.113 Section 13(3) of the Act provides that the Board of the Library for the Blind may invest any money not required for immediate use or as a reasonable operating balance with the Public Investment Commissioners, or in such other manner as the Minister with the concurrence of the Minister of Finance may determine.

2.114 However, the Public Investment Commissioners Act 45 of 1984, which provided for Public Investment Commissioners, was repealed by the Public Investment Corporation Act 23 of 2004. Section 10 of the latter Act states as follows:

**Investment of deposits.**—(1) The corporation may invest every deposit or portions of a deposit, with regard to the period, if any, after the expiration of which such a deposit or portions of such a deposit may again become necessary for use, on behalf of the depositor concerned in accordance with the investment policy of the corporation.

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<sup>79</sup> Clause 24 of the Bill.

<sup>80</sup> Clause 24 of the Bill.

2.115 The Act defines “deposit” to include an amount of money which is not required for immediate use or as a reasonable working balance; and “Corporation” in terms of the Act means the Public Investment Corporation Limited. Having regard to the repeal of the Public Investment Commissioners Act of 1984 by the Public Investment Corporation Act of 2004, the SALRC recommends that the proposed draft Bill in Annexure A below should provide that the Board of the Library for the Blind may invest any money not required for immediate use or as a reasonable operating balance with the Public Investment Corporation Limited.<sup>81</sup>

*(iv) National Library of South Africa Act 92 of 1998*

2.116 The Act provides for the National Library of South Africa through the amalgamation of the South African Library and the State Library.<sup>82</sup>

2.117 The definition of “document” in section 1 of the Act makes reference to the “National Archives of South Africa Act, 1996 (Act No. 43 of 1996)”. This reference is incorrect and should be changed to read as follows: “National Archives and Record Service of South Africa Act, 1996 (Act No. 43 of 1996).”<sup>83</sup>

2.118 The Act further defines “Minister” as follows:

“Minister” means the Minister of Arts, Culture, Science and Technology;

2.119 The SALRC recommends that the term “Minister” be defined as follows:<sup>84</sup>

“Minister” means the Minister of Arts and Culture;

2.120 Section 5 of the Act provides as follows:

Powers of National Library.—(1) The National Library is a juristic person, and may, subject to subsection (2), perform any act which in the opinion of the Board, is necessary for or incidental to the performance of its functions.

(2) The National Library may not without the prior approval of the Minister granted with the concurrence of the Minister of Finance—

(a) ...;

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<sup>81</sup> Clause 25 of the Bill.

<sup>82</sup> Section 2.

<sup>83</sup> Clause 26(a) of the Bill.

<sup>84</sup> Clause 26(b) of the Bill.

- (b) as long as a guarantee furnished in terms of section 35 of the Exchequer Act, 1975 (Act No. 66 of 1975), is in force in respect of a loan granted to the National Library—
- (i) mortgage or otherwise encumber its immovable property acquired through that loan;
  - (ii) lease or sell, exchange or otherwise alienate, or hypothecate or otherwise encumber its movable property acquired through that loan;

2.121 As mentioned above,<sup>85</sup> the Exchequer Act 66 of 1975 was repealed by the Public Finance Management Act 1 of 1999. It is therefore recommended that the reference to “section 35 of the Exchequer Act 66 of 1975” be substituted with a reference to “section 70 of the Public Finance Management Act 1 of 1999.”<sup>86</sup>

2.122 Section 11 of the Act states as follows:

**Transfer of certain assets to National Library.**—Subject to section 2 of the State Land Disposal Act, 1961 (Act No. 48 of 1961), the Minister may, in consultation with the Board and with the concurrence of the Minister of Public Works, the Minister for Agriculture and Land Affairs and the Minister of Finance, and on such conditions as the Minister may determine, transfer to the National Library any immovable property belonging to the State in order to enable the National Library to perform its functions.

2.123 As stated above,<sup>87</sup> the portfolio of the Minister of Agriculture and Land Affairs was split in 2009 and was transferred to the Minister of Agriculture, Forestry and Fisheries and the Minister of Rural Development and Land Reform, respectively. The SALRC therefore requested the DAC, the Department of Public Works, and the Department of Rural Development and Land Reform to comment on the proposed amendment of section 11, namely the substitution of “Minister for Agriculture and Land Affairs” with “Minister of Rural Development and Land Reform”.<sup>88</sup> All three departments subsequently agreed to the proposed amendment.<sup>89</sup>

2.124 Section 13(3) of the Act provides that the Board of the National Library may invest any money not required for immediate use or as a reasonable operating balance with the Public Investment Commissioners, or in such other manner as the Minister may determine with the concurrence of the Minister of Finance.

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<sup>85</sup> Paragraph 2.109.

<sup>86</sup> Clause 27 of the Bill.

<sup>87</sup> Paragraph 2.111.

<sup>88</sup> Clause 28 of the Bill.

<sup>89</sup> See also paragraph 2.111.

2.125 The Public Investment Commissioners Act 45 of 1984, which provided for Public Investment Commissioners, was repealed by the Public Investment Corporation Act 23 of 2004, which provides for the Public Investment Corporation Limited.

2.126 The SALRC thus recommends that the reference to “Public Investment Commissioners” be substituted with a reference to the “Public Investment Corporation Limited.”<sup>90</sup>

*(v) National Libraries Amendment Act 23 of 1991*

2.127 This Act amended the National Libraries Act 56 of 1985. The latter Act was, however, repealed by section 17 of the National Library of South Africa Act 92 of 1998. Given that the principal Act has been repealed, the National Libraries Amendment Act 23 of 1991 serves no purpose on the statute book. The SALRC thus recommends that it should be repealed.<sup>91</sup>

*(vi) National Council for Library and Information Services Act 6 of 2001*

2.128 The Act establishes the National Council for Library and Information Services to advise the Minister of Arts and Culture and the Minister of Education on matters relating to library and information services.

2.129 Section 1 of the Act defines “Department”, “Director-General”, and “Minister” respectively as follows:

“Department” means the Department of Arts, Culture, Science and Technology;

“Director-General” means the Director-General: Arts, Culture, Science and Technology or any officer of the department acting on the authority of the Director-General;

“Minister” means the Minister of Arts, Culture, Science and Technology;

2.130 The SALRC recommends that the above terms be defined as follows.<sup>92</sup>

“Department” means the Department of Arts and Culture;

“Director-General” means the Director-General: Arts and Culture

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<sup>90</sup> Clause 29 of the Bill.

<sup>91</sup> Schedule to the Bill.

<sup>92</sup> Clause 44 of the Bill.

“Minister” means the Minister of Arts and Culture;”

2.131 Sections 3, 4(1), 5(1), 6(1), 9(2), and 14(1) make reference to the “Minister of Education”, and sections 5(1), 8(1), and 9(1) make reference to the “Department of Education”. However, after the election of President Jacob Zuma and the reorganisation of Cabinet, the portfolio of the Minister of Education was divided, and was transferred to the Minister of Basic Education and the Minister of Higher Education and Training respectively. Consequently, two departments were created. The SALRC thus requested the DAC to comment on whether the Act should be amended to refer to both Ministers and departments in the above-mentioned sections. Responding to the SALRC’s request, the DAC agreed that the Act should be amended accordingly.<sup>93</sup>

2.132 Sections 7(2) and 14(2) make reference to the “Portfolio Committee on Arts, Culture, Science and Technology”. The SALRC recommends that these sections be amended to read “Portfolio Committee on Arts and Culture” in line with the splitting of the Portfolio Committee as described in paragraph 2.19 above.<sup>94</sup>

**(e) Theme 5: Amendment Statutes**

*(i) Cultural Laws Amendment Act 36 of 2001*

2.133 This Act amended the Heraldry Act 18 of 1962. It provided for the vacation of office by members of the council and for the dissolution of the council. It amended the Pan South African Language Board Act 59 of 1995 to further regulate the composition of the board and the termination of its membership; it also provided for the dissolution of the board. It also empowered the Minister to determine criteria for honoraria payable to, and reimbursement of expenses incurred by, members of the board. It amended the National Archives of South Africa Act 43 of 1996 to rename the National Archives of South Africa and to further regulate the appointment of the National Archivist. It provided for the establishment of the National Archives Advisory Council in place of the National Archives Commission; and empowered the Minister to determine criteria for the allowances payable to, and reimbursement of expenses incurred by, members of the council. It amended the National Arts Council Act 56 of 1997 to empower the Minister to appoint the chairperson of the council, and provided for the dissolution of the council. It amended the National Film and Video Foundation Act 73 of

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<sup>93</sup> Clauses 45, 46, 47, 48, 50, 51, 52(a) of the Bill.

<sup>94</sup> Clauses 49 and 52(b) of the Bill.

1997 to empower the National Film and Video Foundation to establish a separate legal entity for purposes of investing in film and video projects. It amended the South African Geographical Names Council Act 118 of 1998 to empower the Minister to determine criteria for the honoraria payable to, and reimbursement for expenses incurred by, members of the council, and to provide for matters connected with the Act.

2.134 The provisions of this Act are not obsolete or redundant. The SALRC proposes for purposes of legal certainty that this Amendment Act be retained.

*(ii) Cultural Laws Second Amendment Act 69 of 2001*

2.135 This Act amended the Cultural Institutions Act 119 of 1998. It regulated the amalgamation of declared institutions; and provided that a declared institution may in certain circumstances, without prior approval of the Minister, sell or otherwise alienate any specimen, collection or other movable property. It provided for the vacation of office by members of a council and for the dissolution of a council. It empowered the Minister to determine criteria for the allowances payable to, and reimbursement of expenses incurred by, members of the council, and to appoint the chairperson of a council. It amended the National Heritage Council Act 11 of 1999 to empower the Minister to appoint a chairperson for the council; to provide for the dissolution of the council; and to determine criteria for the allowances payable to, and reimbursement of expenses incurred by, members of the council. It further provided for matters connected with the Act.

2.136 The SALRC recommends the retention of this Act on the statute book as its provisions are not obsolete or redundant.

# Annexure A

## ARTS AND CULTURE LAWS AMENDMENT AND REPEAL BILL

### GENERAL EXPLANATORY NOTE:

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

\_\_\_\_\_        Words underlined with a solid line indicate insertions in existing enactments

### BILL

**To amend and repeal certain laws of the Republic pertaining to arts and culture and containing redundant or obsolete provisions; and to provide for matters connected therewith.**

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

#### **Amendment of section 1 of Act 18 of 1962**

1. Section 1 of the Heraldry Act, 1962, is hereby amended by the substitution for the definition of “Minister” of the following definition:

“‘Minister’ means the Minister [**responsible for Heraldry**] of Arts and Culture;”

#### **Amendment of section 7 of Act 18 of 1962**

2. Section 7 of the Heraldry Act, 1962, is hereby amended by the substitution for subsection (6) of the following subsection:

“(6) Any descendant of any person who lawfully bears or bore a particular family coat of arms, or any adopted child, as defined in the [**Children’s Act, 1960 (Act No. 33 of 1960)**] Children’s Act, 2005 (Act No. 38 of 2005), of such person bearing the same lawfully conferred family name as that person, may apply to the bureau for the registration, with or without differencing, of that family coat of arms in his name.”

### **Amendment of section 20 of Act 18 of 1962**

3. Section 20 of the Heraldry Act, 1962, is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) Nothing in this Act shall prevent the continued use of any mark registered under the Trade Marks Act, 1993 (Act No. 194 of 1993) or design registered under the **[Designs, Trade Marks and Copyright Act, 1916] Designs Act, 1993 (Act No. 195 of 1993)**, or any mark or design not protected under **[that] these Acts** but which has been bona fide used as a trade mark before the commencement of this Act: Provided that the onus of proving such bona fide use shall be upon the person making such claim.”

### **Amendment of section 24 of Act 18 of 1962**

4. Section 24 of the Heraldry Act, 1962, is hereby amended by the substitution for subsection (3) of the following subsection:

“(3) Within five months after the report has been tabled, a delegation consisting of the state herald and at least two other council members must brief the Portfolio Committee on **[Arts, Culture, Science and Technology] Arts and Culture** on the annual report.”

### **Amendment of section 1 of Act 35 of 1983**

5. Section 1 of the Culture Promotion Act, 1983, is hereby amended by the substitution for the definition of “Minister” of the following definition:

“‘Minister’

- (a) in so far as the administration of a provision of this Act has under section 235 (8) of the Constitution of the Republic of South Africa, 1993 (Act 200 of 1993) been assigned to a competent authority within the jurisdiction of the government of a province and the provision is applied in or with reference to the province concerned, means that competent authority; or
- (b) in so far as the administration of a provision of this Act has not been so assigned, means the Minister of **[Arts, Culture, Science and Technology] Arts and Culture;**”

### **Amendment of Preamble of Act 59 of 1995**

6. The Pan South African Language Board Act, 1995, is hereby amended by the substitution for the Preamble of the following Preamble:

“**Preamble**

SINCE the **[Constitution of the Republic of South Africa, 1993 (Act 200 of 1993)] Constitution of the Republic of South Africa, 1996**, provides **[for the recognition of the principle of multilingualism]** that everyone has the right to use the language of their choice;

AND SINCE provision is to be made for measures designed to achieve respect, adequate protection and furtherance of the official South African languages and for the advancement of those official languages which in the past did not enjoy full recognition, in order to promote the full and equal enjoyment of the official South African languages and respect for the other South African languages used for communication and religious purposes:”

#### **Amendment of section 1 of Act 59 of 1995**

7. Section 1 of the Pan South African Language Board Act, 1995, is hereby amended —

(a) by the substitution for the definition of “Constitution” of the following definition:

“‘Constitution’ means the Constitution of the Republic of South Africa, 1996 **[(Act 108 of 1996)]**,”

(b) by the substitution for the definition of “Director General” of the following definition:

“‘Director-General’ means the Director-General of the Department of **[the Minister] Arts and Culture**,”

(c) by the substitution for the definition of “Minister” of the following definition:

“‘Minister’ means the Minister **[responsible for the administration of this Act]** of Arts and Culture,”

#### **Amendment of section 1 of Act 43 of 1996**

8. Section 1 of the National Archives and Record Service of South Africa Act 1996, is hereby amended by the substitution for the definition of “Minister” of the following definition:

“‘Minister’ means the Minister **[responsible or the administration of this Act]** of Arts and Culture,”

#### **Amendment of section 4 of Act 43 of 1996**

9. Section 4 of the National Archives and Record Service of South Africa Act 1996, is hereby amended by the substitution for paragraph (b) of subsection (1) of the following paragraph:

“(b) The National Archivist shall manage the National Archives under the direction of the Director-General: **[Arts, Culture, Science and Technology]** Arts and Culture.”

#### **Amendment of section 6 of Act 43 of 1996**

10. Section 6 of the National Archives and Record Service of South Africa Act 1996, is hereby amended by the substitution for paragraph (a) of subsection (4) of the following paragraph:

“(a) advise the Minister and the Director-General: **[Arts, Culture, Science and Technology]** Arts and Culture on any matter related to the operation of this Act;”

#### **Amendment of section 10 of Act 43 of 1996**

11. Section 10 of the National Archives and Record Service of South Africa Act 1996, is hereby amended by the substitution for subsection (4) of the following subsection:

“(4) Within five months after the reports have been tabled, a delegation consisting of the National Archivist and at least two members of the Council must brief the Portfolio Committee on **[Arts, Culture, Science and Technology]** Arts and Culture on the reports.”

#### **Amendment of section 1 of Act 54 of 1997**

12. Section 1 of the Legal Deposit Act 1997, is hereby amended—

- (a) by the substitution for the definition of “department” of the following definition:
- “‘Department’ means the Department of **[Arts, Culture, Science and Technology]** Arts and Culture.”
- (b) by the substitution for the definition of “Minister” of the following definition:
- “‘Minister’ means the Minister of **[Arts, Culture, Science and Technology]** Arts and Culture.”
- (c) by the substitution for the definition of “official publication” of the following definition:
- “‘official publication means a document published by an organ of national, provincial or local government, a parastatal organisation or any other institution listed as a public entity in **[terms of section 3]** Schedule 2 or Schedule 3 of the **[Reporting by Public Entities Act, 1992 (Act No. 93 of 1992)]** Public Finance Management Act, 1999 (Act No. 1 of 1999).”

#### **Amendment of section 2 of Act 54 of 1997**

13. Section 2 of the Legal Deposit Act 1997, is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) A publisher shall for each published document furnish the **[State Library]** National Library of South Africa, Pretoria with the prescribed information pertaining to that document.”

#### **Amendment of section 5 of Act 54 of 1997**

14. Section 5 of the Legal Deposit Act 1997, is hereby amended—

- (a) by the substitution for paragraph (b) of subsection (1) of the following paragraph:
- “(b) The Minister shall not exempt a publisher under paragraph (a) from his or her obligation to supply a copy of a document to the **[South African Library]** National Library of South Africa, Cape Town or the National Film, Video and Sound Archives, as the case may be, and to furnish the **[State Library]** National Library of South Africa, Pretoria with the information contemplated in section 2 (2).”
- (b) by the substitution for paragraph (c) of subsection (1) of the following paragraph:
- “(c) The Minister may, after consultation with the Committee, grant financial relief to publishers who suffer serious financial hardship as a result of their obligation to supply certain documents to the **[South African Library]** National Library of South Africa, Cape Town or the National Film, Video and Sound Archives, as the case may be: Provided that such relief shall not exceed the cost of producing an additional copy of such documents.”
- (c) by the substitution for subsection (3) of the following subsection:
- “(3) If a publisher is exempted under this section from the obligation to supply a copy of a document to the **[State Library]** National Library of South Africa, Pretoria, such publisher must nevertheless furnish the **[State Library]** National Library of South Africa, Pretoria with the information contemplated in section 2 (2) relating to that document.”

### **Amendment of section 6 of Act 54 of 1997**

15. Section 6 of the Legal Deposit Act 1997, is hereby amended by the substitution for subsection (1) of the following subsection:

- “(1) The places of legal deposit shall be—
- (a) the City Library Services, Bloemfontein;
  - (b) the Library of Parliament, Cape Town;
  - (c) the **[Natal Society Library]** Msunduzi Municipal Library Services, Pietermaritzburg;
  - (d) the **[South African Library]** National Library of South Africa, Cape Town;
  - (e) the **[State Library]** National Library of South Africa, Pretoria;
  - (f) the National Film, Video and Sound Archives, Pretoria, for purposes of certain categories of documents as prescribed; and
  - (g) any other library or institution prescribed by the Minister for purposes of certain prescribed categories of documents.”

### **Amendment of section 7 of Act 54 of 1997**

16. Section 7 of the Legal Deposit Act 1997, is hereby amended—

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

- “(2) The **[State Library]** National Library of South Africa, Pretoria shall, with the assistance of other places of legal deposit and other appropriate libraries or institutions, compile—
- (a) a national bibliography; and
  - (b) statistics of the South African production of published documents on the basis of the documents supplied in terms of section 2 (1) and the information furnished in terms of section 2 (2).”

(b) by the substitution for subsection (3) of the following subsection:

- “(3) The **[South African Library]** National Library of South Africa, Cape Town and the National Film, Video and Sound Archives shall, with the assistance of other places of legal deposit, preserve at least one copy of each document supplied in terms of section 2 (1) for current and future use.”

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

- “(a) serve as a centre for promoting public awareness of, and access to, official publications and information held by the government and the institutions listed in **[terms of section 3] Schedule 2 and Schedule 3 of the [Reporting by Public Entities Act, 1992 (Act No. 93 of 1992)] Public Finance Management Act, 1999 (Act No. 1 of 1999);** and”.

### **Amendment of section 8 of Act 54 of 1997**

17. Section 8 of the Legal Deposit Act 1997, is hereby amended by the substitution for paragraph (f) of subsection (5) of the following paragraph:

- “(f) report to Parliament on the activities and financial affairs of the places of legal deposit in accordance with the provisions of the **[Reporting by Public Entities Act, 1992 (Act No. 93 of 1992)] Public Finance Management Act, 1999 (Act No. 1 of 1999).**”

#### **Amendment of section 1 of Act 56 of 1997**

18. Section 1 of the National Arts Council Act, 1997, is hereby amended by the substitution of the definition of “Director General” of the following definition:

“‘Director-General’ means the Director-General of the Department of [ Arts, Culture, Science and Technology] Arts and Culture.”

#### **Amendment of section 17 of Act 56 of 1997**

19. Section 17 of the National Arts Council Act, 1997, is hereby amended by the substitution for subsection (4) of the following subsection:

“(4) Within five months after the report has been tabled, a delegation consisting of the chairperson of the council and at least two other council members must brief the Portfolio Committee on **[Arts, Culture, Science and Technology] Arts and Culture** on the annual report.”

#### **Amendment of section 1 of Act 73 of 1997**

20. Section 1 of the National Film and Video Foundation Act, 1997, is hereby amended —

(a) by the substitution for the definition of “Director General” of the following definition:

“‘Director-General’ means the Director-General of the Department of [ Arts, Culture, Science and Technology] Arts and Culture.”

(b) by the substitution for the definition of “Minister” of the following definition:

“‘Minister’ means the Minister of **[Arts, Culture, Science and Technology] Arts and Culture.**”

#### **Amendment of section 17 of Act 73 of 1997**

21. Section 17 of the National Film and Video Foundation Act, 1997, is hereby amended by the substitution for subsection (4) of the following subsection:

“(4) Within five months after the report has been tabled, a delegation consisting of the chairperson of the council and at least two other council members must brief the Portfolio Committee on **[Arts, Culture, Science and Technology] Arts and Culture** on the annual report.”

#### **Amendment of section 1 of Act 91 of 1998**

22. Section 1 of the South African Library for the Blind Act 1998, is hereby amended —

(a) by the substitution for the definition of “document” of the following definition:

“‘document’ means any object which is intended to store or convey information in textual, graphic, visual, auditory or other intelligible format through any medium, and any version or edition of a document which is significantly different from that document in respect of its information content, intelligibility or physical presentation, is considered to be a separate document: Provided that public records as defined in section 1 of the National Archives and Record Service of South Africa Act, 1996 (Act No. 43 of 1996), or in provincial legislation pertaining to records and archives, other than published records, are not considered to be documents for the purposes of this Act;”

- (b) by the substitution for the definition of “Minister” of the following definition:

“Minister’ means the Minister of **[Arts, Culture, Science and Technology]** Arts and Culture;”

**Amendment of section 5 of Act 91 of 1998**

- 23.** Section 5 of the South African Library for the Blind Act 1998, is hereby amended by the substitution for paragraph (b) of subsection (2) of the following paragraph:

“(b) as long as a guarantee furnished in terms of **[section 35 of the Exchequer Act, 1975 (Act No. 66 of 1975)]** section 70 of the Public Finance Management Act, 1999 (Act No. 1 of 1999), is in force in respect of a loan granted to the Library for the Blind—

- (i) mortgage or otherwise encumber its immovable property acquired through that loan;
- (ii) lease or sell, exchange or otherwise alienate, or hypothecate or otherwise encumber its movable property acquired through that loan;”

**Substitution of section 11 of Act 91 of 1998**

- 24.** The following section is hereby substituted for section 11 of the South African Library for the Blind Act 1998:

“11. Transfer of certain assets to Library for the Blind.—Subject to section 2 of the State Land Disposal Act, 1961 (Act No. 48 of 1961), the Minister may, in consultation with the Board and with the concurrence of the Minister of Public Works, or the Minister [for Agriculture and Land Affairs] of Rural Development and Land Reform (depending on which Minister administers the immovable property in question) and the Minister of Finance, and on such conditions as the Minister may determine, transfer to the Library for the Blind any immovable property belonging to the State in order to enable the Library for the Blind to perform its functions.”

**Amendment of section 13 of Act 91 of 1998**

- 25.** Section 13 of the South African Library for the Blind Act 1998, is hereby amended by the substitution for subsection (3) of the following subsection:

“(3) The Board may invest any money not required for immediate use or as a reasonable operating balance with the **[Public Investment Commissioners]** Public Investment Corporation Limited or in such other manner as the Minister with the concurrence of the Minister of Finance may determine.”

**Amendment of section 1 of Act 92 of 1998**

- 26.** Section 1 of the National Library of South Africa Act 1998, is hereby amended —

- (a) by the substitution for the definition of “document” of the following definition:

“‘document’ means any object which is intended to store or convey information in textual, graphic, visual, auditory or other intelligible format through any medium, and any version or edition of a document which is significantly different from that document in respect of its information content, intelligibility or physical presentation, is considered to be a separate document: Provided that public records as defined in section 1 of the National Archives and Record Service of South Africa Act, 1996 (Act No. 43 of 1996), or in provincial legislation pertaining to records and archives, other than published records, are not considered to be documents for the purposes of this Act;”

- (b) by the substitution for the definition of “Minister” of the following definition:

“Minister” means the Minister of **[Arts, Culture, Science and Technology]** Arts and Culture;”

**Amendment of section 5 of Act 92 of 1998**

27. Section 5 of the National Library of South Africa Act, 1998, is hereby amended by the substitution for paragraph (b) of subsection (2) of the following paragraph:

“(b) as long as a guarantee furnished in terms of **[section 35 of the Exchequer Act, 1975 (Act No. 66 of 1975)]** section 70 of the Public Finance Management Act, 1999 (Act No. 1 of 1999), is in force in respect of a loan granted to the National Library—

- (i) mortgage or otherwise encumber its immovable property acquired through that loan;
- (ii) lease or sell, exchange or otherwise alienate, or hypothecate or otherwise encumber its movable property acquired through that loan;”

**Substitution of section 11 of Act 92 of 1998**

28. The following section is hereby substituted for section 11 of the National Library of South Africa Act, 1998:

“11. Transfer of certain assets to National Library.—Subject to section 2 of the State Land Disposal Act, 1961 (Act No. 48 of 1961), the Minister may, in consultation with the Board and with the concurrence of the Minister of Public Works, or the Minister [for Agriculture and Land Affairs] of Rural Development and Land Reform (depending on which Minister administers the immovable property in question) and the Minister of Finance, and on such conditions as the Minister may determine, transfer to the National Library any immovable property belonging to the State in order to enable the National Library to perform its functions.”

**Amendment of section 13 of Act 92 of 1998**

29. Section 13 of the National Library of South Africa Act, 1998, is hereby amended by the substitution for subsection (3) of the following subsection:

“(3) The Board may invest any money not required for immediate use or as a reasonable operating balance with the **[Public Investment Commissioners]** Public Investment Corporation Limited or in such other manner as the Minister with the concurrence of the Minister of Finance may determine.”

**Amendment of section 1 of Act 118 of 1998**

30. Section 1 of the South African Geographical Names Act, 1998, is hereby amended —

- (a) by the substitution for the definition of “Director General” of the following definition:

“‘Director-General’ means the Director General of the **[national department responsible for arts and culture]** Department of Arts and Culture;”

- (b) by the substitution for the definition of “Minister” of the following definition:

“‘Minister’ means the Minister **[responsible for arts and culture]** of Arts and Culture;”

- (c) by the substitution for the definition of “Municipality” of the following definition:

“Municipality’ means a municipality **[as defined in section 10B of the Local Government Transition Act, 1993 (Act No. 209 of 1993)]** established in terms of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998);

#### **Amendment of section 3 of Act 118 of 1998**

31. Section 3 of the South African Geographical Names Act, 1998, is hereby amended by the substitution for subparagraph (ii) of paragraph (b) of the following subparagraph:

“(ii) the Chief Directorate: **[Surveys and Mapping]** National Geo-spatial Information;”

#### **Amendment of section 11 of Act 118 of 1998**

32. Section 11 of the South African Geographical Names Act, 1998, is hereby amended by the substitution for subsection (3) of the following subsection:

“Within five months after the report has been tabled, a delegation consisting of the chairperson of the council and at least two other council members must brief the Portfolio Committee on **[Arts, Culture, Science and Technology]** Arts and Culture on the annual report.”

#### **Amendment of section 1 of Act 119 of 1998**

33. Section 1 of the Cultural Institutions Act, 1998, is hereby amended —

(a) by the substitution for the definition of “Director General” of the following definition:

“‘Director-General’ means the Director-General of the **[national]** Department **[responsible for culture]** of Arts and Culture;”

(b) by the substitution for the definition of “Minister” of the following definition:

“‘Minister’ means the Minister of **[the national Department responsible for culture]** Arts and Culture;”

#### **Amendment of section 4 of Act 119 of 1998**

34. Section 4 of the Cultural Institutions Act, 1998, is hereby amended by the substitution for subsection (5) of the following subsection:

“(5) A declared institution may, unless the Minister otherwise determines and subject to the **[National Monuments Act, 1969 (Act No. 28 of 1969)]** National Heritage Resources Act, 1999 (Act No. 25 of 1999)—

- (a) let or exchange any specimen, collection or other movable property belonging to it; and
- (b) purchase or otherwise acquire, possess or hire any specimen, collection or other movable property.”

#### **Amendment of section 6 of Act 119 of 1998**

35. Section 6 of the Cultural Institutions Act, 1998, is hereby amended—

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

“(1) The **[Northern Flagship institution]** Ditsong Museums of South Africa is hereby established, comprising the—

- (a) National Cultural History Museum;
- (b) **[South African]** National Museum **[for]** of Military History; and
- (c) National [Transvaal] Museum of Natural History.”

(b) by the substitution for subsection (2) of the following subsection:

“(2) The **[Southern Flagship institution]** Iziko Museums of Cape Town is hereby established, comprising the—

- (a) Michaelis Collection;
- (b) South African Cultural History Museum;
- (c) South African Museum;
- (d) South African National Gallery; and
- (e) William Fehr Collection.”

(c) by the substitution for subsection (3) of the following subsection:

“(3) The **[Flagship institutions]** Museums contemplated in subsections (1) and (2) are hereby declared to be subject to the Act.”

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

“(4) (a) The members of a council of a **[flagship institution]** Museum must, in consultation with the Minister, appoint a chief executive officer who must be responsible for the management of the **[flagship institution]** Museum and who must report to the council on management affairs as the council may require.

(b) The chief executive officer is the accounting officer of a **[flagship institution]** Museum.

(c) The chief executive officer—

- (i) serves for a renewable term of five years; and
- (ii) must enter into a performance agreement with the relevant council before taking up his or her post as chief executive officer.”

#### **Amendment of section 15 of Act 119 of 1998**

**36.** Section 15 of the Cultural Institutions Act, 1998, is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) The Minister may, subject to the conditions he or she determines, in writing delegate any power conferred, except the power, in terms of section 16, to make regulations or any duty imposed on the Minister by this Act to an official employed by the **[national]** Department **[responsible for culture]** of Arts and Culture.”

#### **Amendment of section 1 of Act 11 of 1999**

**37.** Section 1 of the National Heritage Council Act, 1999, is hereby amended by the substitution for the definition of “Minister” of the following definition:

“‘Minister’ means the Minister of **[the national Department responsible for arts and culture]** Arts and Culture;”

#### **Amendment of section 1 of Act 25 of 1999**

**38.** Section 1 of the National Heritage Resources Act, 1999, is hereby amended—

(a) by the substitution for the definition of “Department” of the following definition:

“‘Department’ means the **[national] [d]Department [responsible for arts and culture and heritage]** of Arts and Culture;”

- (b) by the substitution for the definition of “Director-General” of the following definition:

“‘Director-General’ means the Director-General of the Department of Arts and Culture;”

- (c) by the substitution for the definition of “local authority” of the following definition:

“‘local authority’ means a municipality **[as defined in section 10B of the Local Government Transition Act, 1993 (Act No. 209 of 1993)]** established in terms of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998);”

- (d) by the substitution for the definition of “Minister” of the following definition:

“‘Minister’ means the Minister **[responsible for arts and culture]** of Arts and Culture;”

- (e) by the substitution for the definition of “national symbols” of the following definition:

“‘national symbols’ means any heraldic representation so determined under section 5 of the Heraldry Act, **[1963] 1962** (Act No. 18 of **[1963] 1962);**”

#### **Amendment of section 3 of Act 25 of 1999**

**39.** Section 3 of the National Heritage Resources Act, 1999, is hereby amended—

- (a) by the substitution for subparagraph (vii) of paragraph (i) of subsection (2) of the following subparagraph:

“(vii) books, records, documents, photographic positives and negatives, graphic, film or video material or sound recordings, excluding those that are public records as defined in section 1 of the National Archives and Record Service of South Africa Act, 1996 (Act No. 43 of 1996).”

- (b) by the substitution for subparagraph (vi) of paragraph (g) of subsection (2) of the following subparagraph:

“(vii) other human remains which are not covered in terms of the **[Human Tissue Act, 1983 (Act No. 65 of 1983)]** National Health Act, 2003 (Act No. 61 of 2003);”

#### **Amendment of section 28 of Act 25 of 1999**

**40.** Section 28 of the National Heritage Resources Act, 1999, is hereby amended by the substitution for subsection (4) of the following subsection:

“(4) With regard to an area of land covered by a mine dump referred to in subsection (1) (c) SAHRA must make regulations providing for the protection of such areas as are seen to be of national importance in consultation with the owner, the Minister of Mineral**[s and Energy]** Resources and interested and affected parties within the mining community.”

#### **Amendment of section 32 of Act 25 of 1999**

**41.** Section 32 of the National Heritage Resources Act, 1999, is hereby amended by the substitution for paragraph (h) of subsection (1) of the following paragraph:

“(h) books, records, documents, photographic positives and negatives, graphic material, film or video or sound recordings, excluding those that are public records as defined in section 1 (xiv) of the National Archives and Record Service of South Africa Act, 1996 (Act 43 of 1996), or in a provincial law pertaining to records or archives; and”

#### **Amendment of section 33 of Act 25 of 1999**

**42.** Section 33 of the National Heritage Resources Act, 1999, is hereby amended by the substitution for subsection (4) of the following subsection:

“(4) SAHRA may, with the consent of the Minister and the Minister of **[Foreign Affairs] International Relations and Cooperation**, liaise and co-operate with the authority responsible for the protection of cultural property in any reciprocating state and may enter into agreements with any such authority with regard to the return to the country of origin of any heritage object or cultural property which is illegally imported into South Africa or the reciprocating state, whether specifically or in general.”

#### **Amendment of section 38 of Act 25 of 1999**

**43.** Section 38 of the National Heritage Resources Act, 1999, is hereby amended by the substitution for subsection (8) of the following subsection:

“(8) The provisions of this section do not apply to a development as described in subsection (1) if an evaluation of the impact of such development on heritage resources is required in terms of the Environment Conservation Act, 1989 (Act No. 73 of 1989), or the integrated environmental management guidelines issued by the Department of Water and Environmental Affairs [and Tourism], or the **[Minerals Act, 1991 (Act No. 50 of 1991)] Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002)**, or any other legislation: Provided that the consenting authority must ensure that the evaluation fulfils the requirements of the relevant heritage resources authority in terms of subsection (3), and any comments and recommendations of the relevant heritage resources authority with regard to such development have been taken into account prior to the granting of the consent.”

#### **Amendment of section 1 of Act 6 of 2001**

**44.** Section 1 of the National Council for Library and Information Services Act, 2001, is hereby amended —

(a) by the substitution for the definition of “department” of the following definition:

“‘Department’ means the Department of **[Arts, Culture, Science and Technology] Arts and Culture;**”

(b) by the substitution for the definition of “Director-General” of the following definition:

“‘Director-General’ means the Director-General: **[Arts, Culture, Science and Technology] Arts and Culture** or any officer of the department acting on the authority of the Director-General;”

(c) by the substitution for the definition of “Minister” of the following definition:

“‘Minister’ means the Minister of **[Arts, Culture, Science and Technology] Arts and Culture;**”

### Amendment of section 3 of Act 6 of 2001

45. Section 3 of the National Council for Library and Information Services Act, 2001, is hereby amended by the substitution of subsection (3) for the following subsection:

- “(3). Object of council.—The object of the council is to advise the Minister,<sup>1</sup> **[and]** the Minister of Basic Education and the Minister of Higher Education and Training on matters relating to library and information services in order to—
- (a) support and stimulate the socio-economic, educational, cultural, recreational, scientific research, technological and information development of all communities in the country; and
  - (b) provide optimal access to relevant information to every person in an economic and cost-effective manner.”

### Amendment of section 4 of Act 6 of 2001

46. Section 4 of the National Council for Library and Information Services Act, 2001, is hereby amended by the substitution for subsection (1) of the following subsection:

- “(1) The council must inform and advise the Minister,<sup>1</sup> **[and]** the Minister of Basic Education and the Minister of Higher Education and Training on—
- (a) the development and co-ordination of library and information services;
  - (b) the promotion of co-operation among library and information services;
  - (c) legislation affecting library and information services;
  - (d) policies, principles and criteria that should govern the allocation of public funds for library and information services;
  - (e) existing adequacies and deficiencies of library and information resources, including literature in African languages, and services;
  - (f) the effectiveness of library and information science education and training;
  - (g) service priorities, after consultation with any organ of State responsible for library and information services and other interested parties;
  - (h) the promotion of basic and functional literacy, and information literacy and a culture of reading;
  - (i) ways in which new information and communication technologies should be harnessed to achieve improved integration, equity, cost-effectiveness and quality in library and information services;
  - (j) any other matter relating to library and information services which the council deems necessary or which the Minister,<sup>1</sup> **[or]** the Minister of Basic Education or the Minister of Higher Education and Training may refer to the council.”

### Amendment of section 5 of Act 6 of 2001

47. Section 5 of the National Council for Library and Information Services Act, 2001, is hereby amended by the substitution for subsection (1) of the following subsection:

- “(1) The council consists of—
- (a) 12 members appointed by the Minister, after consultation with the Minister of Basic Education and the Minister of Higher Education and Training and after a process of public nomination set out in section 7;
  - (b) one officer of the department nominated by the Director-General;
  - (c) one officer of the Department of Basic Education nominated by the Director-General of that department;
  - (cA) one officer of the Department of Higher Education and Training nominated by the Director-General of that department;
  - (d) the National Librarian referred to in section 1 of the National Library of South Africa Act, 1998 (Act No. 92 of 1998); and
  - (e) one representative nominated by the Library and Information Association of South Africa.”

#### **Amendment of section 6 of Act 6 of 2001**

**48.** Section 6 of the National Council for Library and Information Services Act, 2001, is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) The chairperson of the council is appointed by the Minister, with the concurrence of the Minister of Basic Education and the Minister of Higher Education and Training, from the members referred to in section 5 (1) (a).”

#### **Amendment of section 7 of Act 6 of 2001**

**49.** Section 7 of the National Council for Library and Information Services Act, 2001, is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) (a) The Minister must appoint a panel, after the composition was approved by the Portfolio Committee on **[Arts, Culture, Science and Technology]** Arts and Culture, consisting of persons with experience or expertise in library and information services to compile a short list of not more than 15 candidates from the persons nominated in terms of subsection (1) (a).”

#### **Amendment of section 8 of Act 6 of 2001**

**50.** Section 8 of the National Council for Library and Information Services Act, 2001, is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) The members of the council other than the officers of the department, **[and]** the Department of Basic Education and the Department of Higher Education and Training, must all be persons who have—

- (a) expertise in the field of library and information services or science;
- (b) expertise in relation to the leadership in, and management and economics of, library and information services; or
- (c) special insight into library and information services and the needs of users of library and information services.”

#### **Amendment of section 9 of Act 6 of 2001**

**51.** Section 9 of the National Council for Library and Information Services Act, 2001, is hereby amended—

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

“(1) A member of the council other than officers of the department, **[and]** the Department of Basic Education and the Department of Higher Education and Training, holds office for such period, not exceeding three years, as the Minister may determine at the time of the member’s appointment.”

(b) by the substitution for subsection (2) of the following subsection:

“(2) If, for any reason, a member of the council vacates his or her office before the expiration of his or her term of office, the Minister may, subject to section 8, and after consultation with the Minister of Basic Education and the Minister of Higher Education and Training, appoint any person as a member of the council for the unexpired portion of the period for which that member was appointed.”

#### **Amendment of section 14 of Act 6 of 2001**

**52.** Section 14 of the National Council for Library and Information Services Act, 2001, is hereby amended—

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

“(1) The council must annually submit a report on its activities, advice and recommendations to the Minister and the Minister of Basic Education and the Minister of Higher Education and Training, and the Minister must table the report in Parliament as soon as possible after its receipt.”

(b) by the substitution for subsection (2) of the following subsection:

“(2) Within five months after the report has been tabled, a delegation consisting of the chairperson and at least two other council members must brief the Portfolio Committee on **[Arts, Culture, Science and Technology]** Arts and Culture on the annual report.”

#### **Amendment of section 1 of Act 12 of 2012**

**53.** Section 1 of the Use of Official Languages Act, 2012, is hereby amended by the substitution for the definition of “Minister” of the following definition:

“‘Minister’ means the Minister **[responsible for language matters]** of Arts and Culture;”

#### **Amendment of section 1 of Act 8 of 2014**

**54.** Section 1 of the South African Language Practitioners’ Council Act, 2014, is hereby amended—

(a) by the substitution for the definition of “Department” of the following definition:

“‘Department’ means the national Department **[in the National Government responsible for language matters]** of Arts and Culture;”

(b) by the substitution for the definition of “Minister” of the following definition:

“‘Minister’ means the Minister **[responsible for language matters]** of Arts and Culture;”

#### **Repeal of laws**

**55.** The laws specified in the Schedule are hereby repealed.

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

**56.** This Act is called the Arts and Culture Amendment and Repeal Bill, and comes into operation on a date determined by the President by proclamation in the Gazette.

**SCHEDULE**  
**(Section 55)**

<b>Item</b>	<b>No. and year of law</b>	<b>Title or subject of law</b>
1.	Act No 22 of 1970	National Monuments Amendment Act, 1970
2.	Act No 30 of 1971	National Monuments Amendment Act, 1971
3.	Act No 35 of 1979	National Monuments Amendment Act, 1979
4.	Act No 13 of 1981	National Monuments Amendment Act, 1981
5.	Act No 11 of 1986	War Graves and National Monuments Amendment Act, 1986
6.	Act No 23 of 1991	National Libraries Amendment Act, 1991
7.	Act No 25 of 1991	National Monuments Amendment Act, 1991
8.	Act No 30 of 1997	Reporting by Public Entities Amendment Act, 1997

## Annexure B

### STATUTES ADMINISTERED BY THE DEPARTMENT OF ARTS AND CULTURE

No.	Name of Act, number and year
1.	Heraldry Act, 1962 (No. 18 of 1962)
2.	Heraldry Amendment Act, 1969 (No. 54 of 1969)
3.	Heraldry Amendment Act, 1980 (No. 63 of 1980)
4.	Heraldry Amendment Act, 1982 (No. 22 of 1982)
5.	Culture Promotion Act, 1983 (No. 35 of 1983)
6.	National Libraries Amendment Act, 1991 (No. 23 of 1991)
7.	Pan South African Language Board Act, 1995 (No. 59 of 1995)
8.	National Archives and Records Service of South Africa Act (No 43 of 1996)
9.	Legal Deposit Act, 1997 (No. 54 of 1997)
10.	National Arts Council Act, 1997 (No. 56 of 1997)
11.	National Film and Video Foundation Act, 1998 (No. 73 of 1997)
12.	Culture Promotion Amendment Act, 1998 (No. 59 of 1998)
13.	South African Library for the Blind Act, 1998 (No. 91 of 1998)
14.	National Library of South Africa, 1998 (No. 92 of 1998)
15.	South African Geographical Names Council Act, 1998 (No. 118 of 1998)
16.	Cultural Institutions Act, 1998 (No. 119 of 1998)
17.	Pan South African Language Board Amendment Act, 1999 (No. 10 of 1999)
18.	National Heritage Council Act, 1999 (No. 11 of 1999)
19.	National Heritage Resources Act, 1999 (No. 25 of 1999)
20.	National Council for Library and Information Services Act (No.6 of 2001)
21.	Cultural Laws Amendment Act, 2001 (No. 36 of 2001)
22.	Cultural Laws Second Amendment Act, 2001 (No. 69 of 2001)
23.	Use of Official Languages Act, 2012 (No. 12 of 2012)
24.	South African Language Practitioners' Council Act, 2014 (No. 8 of 2014)

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