



REPORT ON STATUTORY LAW REVISION: LEGISLATION
ADMINISTERED BY THE DEPARTMENT OF TRANSPORT



South African
Law Reform Commission

SOUTH AFRICAN LAW REFORM COMMISSION: Project 25

**STATUTORY LAW REVISION: LEGISLATION ADMINISTERED
BY THE DEPARTMENT OF TRANSPORT**

REPORT

OCTOBER 2009

To Mr JT Radebe, MP, Minister of Justice and Constitutional Development

I am honoured to submit to you in terms of section 7(1) of the South African Law Reform Commission Act of 1973 (as amended) for your consideration and referral to the Minister of Transport, the Commission's report on Statutory Law Revision (Legislation administered by the Department of Transport).



MADAM JUSTICE Y MOKGORO
CHAIRPERSON: SOUTH AFRICAN LAW REFORM COMMISSION
OCTOBER 2009

South African Law Reform Commission

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

The members of the Commission who approved this report in October 2009 were –

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The Honourable Mr Justice WL Seriti (Vice-Chairperson)

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The Honourable Mr Justice DM Davis

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EXECUTIVE SUMMARY OF THE REPORT

A. Introduction

1. The advent of democracy and adoption of South Africa's current Constitution necessitated a review of the country's legal, policy and institutional framework to ensure alignment with the Constitution. However, since the advent of the constitutional democracy about 15 years ago, no comprehensive review of the statute book for constitutionality, redundancy or obsolescence has been undertaken. A number of Acts have been amended or repealed by Parliament on an *ad hoc* basis. To ensure a systemic and comprehensive statutory revision process, the South African Law Reform Commission (SALRC) was requested by government to undertake a review of the entire statute book. In response to a Cabinet directive, the SALRC included in its law reform programme an investigation into statutory law revision, in 2004. The purpose of the investigation is two-fold: (a) to align the South African statute book with the Constitution, especially the right to equality entrenched in section 9 of the Constitution of the Republic of South Africa of 1996; and (b) to provide a statute book that is free from obsolete and unnecessary provisions.

2. As part of this investigation, the SALRC has reviewed 218 Acts administered by the national Department of Transport which were enacted between 1910 and 2004, and that are still in force in the Republic. The subject-matter of these Acts varies and includes railways, harbours, aviation, transport services, shipping, road transportation, advertising on roads, adjudication of traffic offences and the Transnet Pension Fund. A consultative meeting involving the legal advisers of the Department of Transport and the officials of the SALRC was held on 20 October 2006. At this meeting, the purpose of statutory law revision; the guidelines used to determine the constitutionality and redundancy of legislation; and the significance of the involvement of the Department of Transport in this investigation were discussed. The preliminary findings and recommendations of the SALRC, contained in a consultation paper, were also submitted to the Department of Transport's legal advisers for consideration and comments. On 20 November 2006, the Department of Transport informed the SALRC that it agreed with the preliminary findings and proposals of the SALRC.

B. Discussion Paper 114

3. In accordance with its policy to consult widely and to involve the public in the law reform process, the SALRC further developed the consultation paper referred to above and published it as Discussion Paper 114 (the Discussion Paper) for general information and comment in June 2008. In the Discussion Paper, the SALRC listed all the statutes administered by the Department of Transport; explained the background to statutory law revision; set out the guidelines utilised by the SALRC to test the constitutionality and redundancy of these statutes; provided detailed findings and proposals for reform in respect of the statutes found wanting; appended a draft "Transport Acts Repeal Bill" setting out legislation or provisions in legislation which needed to be repealed and the extent of such repeal; and contained an invitation to interested parties to submit comments to the SALRC. The stakeholders to whom the Discussion Paper was submitted included the Department of Transport, agencies reporting to the Minister of Transport such as Transnet, the South African Civil Aviation Authority and the South African National Roads Agency; provincial departments responsible for transport; and the Parliamentary Portfolio Committee on Transport. On 1 October 2008, the then Minister of Transport, Mr JT Radebe informed the SALRC that his department had perused the Discussion Paper and that it concurred with the recommendations made therein. The SALRC also received comments from the Department of Justice and Constitutional Development; the Department of Transport, Roads and Public Works (Northern Cape Provincial Government); and the Department of Roads and Transport (Mpumalanga Provincial Government), all of which agreed with the proposals made by the SALRC. Transnet Freight Rail Legal Services also concurred with the proposals in the Discussion Paper, but urged the SALRC not to recommend

for repeal certain Acts which ratified and confirmed certain agreements between the State and private entities. The SALRC is of the view that the agreements in question did not acquire statutory force by virtue of being ratified or confirmed by these Acts (i.e. these agreements were not incorporated into these statutes). Accordingly, the SALRC is of the view that the repeal of these Acts would not affect the rights and duties of the parties to these agreements.

C. The implementation of the SALRC's proposals contained in the Discussion Paper

4. The Department of Transport has already initiated the process to have the recommendations made by the SALRC in the Discussion Paper implemented. In January 2009, the Department of Transport informed the SALRC about its decision to include the draft Transport Acts Repeal Bill in the legislative programme for 2009 and to initiate the parliamentary process to have the statutes identified by the SALRC as being outdated or unconstitutional repealed. To give effect to its decision, on 13 February 2009, the Department of Transport published a notice of intention to repeal obsolete legislation listed in the Transport Acts Repeal Bill, 2009 in the *Government Gazette* (Notice 150 of 2009, Gazette No. 31864) for comments. The Transport Acts Repeal Bill of 2009 was simultaneously submitted to the Office of the Chief State Law Adviser for scrutiny. Although this report had not yet been tabled before the full Commission for approval when the notice referred to above was published, the SALRC raised no objection to the implementation of its proposals. On 19 March 2009, the SALRC informed the then Minister of Justice and Constitutional Development, Mr Enver Surty, that it had no objections because it envisaged that the draft Bill in the report to follow would be similar in all respects to that contained in the Discussion Paper. Subject to the exceptions set out in the next paragraph, this is still the position of the SALRC.

5. The SALRC, after carefully analysing the comments of the Office of the Chief State Law Adviser, and after conducting further research, effected the following changes to the proposed legislation:

- Concurred with the Office of the Chief State Law Adviser and excluded the Transport (Co-ordination) Act, 1948 (Act 44 of 1948) from the proposed legislation as this Act was repealed.
- Excluded the Black Transport Services Amendment Act, 1972 (Act 11 of 1972); the Black Transport Services Amendment Act, 1974 (Act 47 of 1974); the Black Transport Services Amendment Act, 1982 (Act 76 of 1982); and the Transport Services for Coloured Persons and Indians Amendment Act, 1982 (Act 77 of 1982) from the proposed legislation because these Acts have been repealed by the National Land Transport Act 5 of 2009 which was assented to by the President in April 2009.
- Concurred with the Office of the Chief State Law Adviser that where a provision of one Act is incorporated by reference in another, the repeal of the former does not repeal the incorporated provision. In the light of this view, which was also adopted by the court in *End Conscription v Minister of Defence* 1993 (1) SA 589 (T), the SALRC has excluded the Railways and Harbours Special Pensions Act, 1955 (Act 36 of 1955); the Railways and Harbours Acts Amendment Act, 1956 (Act 15 of 1956); and the Railways and Harbours Acts Amendment Act, 1959 (Act 44 of 1959) from the proposed legislation.
- Concurred with the Office of the Chief State Law Adviser that the Railways and Harbours Acts Amendment Act, 1964 (Act 54 of 1964) should be repealed entirely. The SALRC has thus added this Act to Schedule 1 to the proposed legislation.

D. Concluding remarks

6. Notwithstanding the developments alluded to above, and in compliance with the provisions of section 7(1) of the SALRC Act, the SALRC has prepared this report for consideration by the Minister of Justice and Constitutional Development.

7. The SALRC expresses its sincere gratitude to the Department of Transport for its co-operation and assistance during this investigation, and for initiating the parliamentary process to implement the recommendations of the SALRC.

SUMMARY OF THE RECOMMENDATIONS

In this report, the SALRC makes the following recommendations:

1. That the following Acts be repealed wholly:
 - Railways and Harbours Strike and Service Amendment Act, 1914 (Act 7 of 1914).
 - Railway Construction Act, 1939 (Act 37 of 1939).
 - Railway Construction Act, 1945 (Act 17 of 1945).
 - Railway Expropriation Act, 1955 (Act 37 of 1955).
 - Merchant Shipping (Certificates of Competency) Amendment Act, 1957 (Act 48 of 1957).
 - Railway Construction Act, 1957 (Act 49 of 1957).
 - National Roads and Transport (Co-ordination) Amendment Act, 1957 (Act 51 of 1957).
 - Railway Construction Act, 1960 (Act 21 of 1960).
 - Railway Construction Act, 1961 (Act 57 of 1961).
 - National Roads and Transport (Co-ordination) Amendment Act, 1962 (Act 19 of 1962).
 - Second Railways Construction Act, 1963 (Act 58 of 1963).
 - Railway Construction Act, 1964 (Act 2 of 1964).
 - Railways and Harbours Acts Amendment Act, 1964 (Act 54 of 1964).
 - Railway Construction Act, 1965 (Act 5 of 1965).
 - Railway Construction Act, 1966 (Act 17 of 1966).
 - Railways and Harbours Acts Amendment Act, 1966 (Act 18 of 1966).
 - Railway Construction Act, 1968 (Act 38 of 1968).
 - Railway Purchase Act, 1971 (Act 25 of 1971).
 - Transport (Co-ordination) Amendment Act, 1971 (Act 59 of 1971).
 - Railway Construction Act, 1971 (Act 82 of 1971).
 - Second Railway Construction Act, 1971 (Act 83 of 1971).
 - Railways and Harbours Acts Amendment Act, 1972 (Act 33 of 1972).
 - Railway Construction Act, 1972 (Act 77 of 1972).
 - Sishen-Saldanha Bay Railway Construction Act, 1973 (Act 28 of 1973).
 - Railways and Harbours Acts Amendment Act, 1973 (Act 47 of 1973).
 - Railway Construction Act, 1973 (Act 71 of 1973).
 - Railways and Harbours Acts Amendment Act, 1974 (Act 44 of 1974).
 - National Road Safety Amendment Act, 1974 (Act 46 of 1974).
 - Railways and Harbours Acts Amendment Act, 1975 (Act 46 of 1975).
 - Railways and Harbours Acts Amendment Act, 1976 (Act 8 of 1976).
 - National Road Safety Amendment Act, 1976 (Act 40 of 1976).
 - Sishen-Saldanha Bay Railway Construction Amendment Act, 1976 (Act 72 of 1976).
 - Saldanha Bay Harbour Acquisition and Equipment Act, 1976 (Act 99 of 1976).
 - Railway and Harbour Purchase Act, 1977 (Act 47 of 1977).
 - Railways and Harbours Acts Amendment Act, 1977 (Act 69 of 1977).
 - Transport (Co-ordination) Amendment Act, 1977 (Act 73 of 1977).
 - Railways and Harbours Acts Amendment Act, 1978 (Act 64 of 1978).
 - Railways and Harbours Acts Amendment Act, 1979 (Act 80 of 1979).
 - National Road Safety Amendment Act, 1980 (Act 16 of 1980).
 - Railway Construction Act, 1980 (Act 65 of 1980).
 - Railway Construction, 1981 (Act 30 of 1981).

- National Road Safety Amendment Act, 1981 (Act 59 of 1981).
- Second Railway Construction Act, 1981 (Act 61 of 1981).
- Railways Construction Act, 1982 (Act 7 of 1982).
- Second Railway Construction Act, 1982 (Act 75 of 1982).
- South African Transport Services Amendment Act, 1983 (Act 13 of 1983).
- South African Transport Services Amendment Act, 1984 (Act 5 of 1984).
- Second South African Transport Services Amendment Act, 1984 (Act 93 of 1984).
- Railway Construction Act, 1985 (Act 75 of 1985).
- Second Railway Construction Act, 1985 (Act 94 of 1985).
- South African Transport Services Amendment Act, 1986 (Act 46 of 1986).
- South African Transport Services Amendment Act, 1987 (Act 91 of 1987).
- National Road Safety Amendment Act, 1991 (Act 67 of 1991).

2. That the specified provisions in the following Acts be repealed:

- Section 1 of the Railways and Harbours Service and Superannuation Fund Acts Amendment Act, 1930 (Act 27 of 1930).
- Section 1 and 2(1) and (2) of the Railways and Harbours Service and Superannuation Fund Acts Amendment Act, 1931 (Act 19 of 1931).
- Section 10(1) and (2), 14(2)(a), (b), (c) and (d) of the Railways and Harbours Acts Amendment Act, 1949 (Act 49 of 1949).
- Section 7 of the Railways and Harbours Acts Amendment Act, 1951 (Act 63 of 1951).
- Section 1(1) and (2) of the Railways and Harbours Acts Amendment Act, 1952 (Act 45 of 1952);
- Section 4(1) and (2) of the Railways and Harbours Acts Amendment Act, 1962 (Act 62 of 1962).
- Section 2(1) and (2) of the Railways and Harbours Acts Amendment Act, 1963 (Act 7 of 1963).
- Sections 6 to 10, 19, 70 to 75 of the Railways and Harbours Acts Amendment Act, 1965 (Act 6 of 1965).
- Section 9 of the Railways and Harbours Acts Amendment Act, 1968 (Act 8 of 1968).
- Section 1, 2 and 6 of the Railways and Harbours Acts Amendment, 1969 (Act 32 of 1969).
- Section 2 of the Second Railways and Harbours Acts Amendment Act, 1976 (Act 89 of 1976).
- Section 6 to 10 and 18 to 20 of the South African Transport Services Amendment Act, 1982 (Act 6 of 1982).
- Section 2 to 11, 21, 30 and 31 of the South African Transport Services Amendment Act, 1985 (Act 44 of 1985).
- Section 1 to 5 of the Transnet Limited Amendment Act, 1991 (Act 52 of 1991).
- Section 1 and 2 of the Transport Second General Amendment Act, 1995 (Act 82 of 1995).

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Chapter 1:

Project 25: Statutory Law Revision

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Chapter 1: Project 25: Statutory Law Revision

A. INTRODUCTION

1. Background of the investigation

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

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

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

1.3 Shortly after its establishment in 1973, the SALRC undertook a revision of all pre-Union legislation as part of its Project 7. This resulted in the repeal of approximately 1200 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: the establishment of a permanently simplified, coherent and generally accessible statute book. This report resulted in Parliament adopting the Repeal of Laws Act, 1981 (Act 94 of 1981) which repealed approximately 790 post-Union statutes.

1.4 In 2003, Cabinet approved that the Minister of Justice and Constitutional Development co-ordinates and mandates the SALRC to review provisions in the legislative framework that would result in discrimination as defined by section 9 of the Constitution. This section prohibits unfair discrimination on the basis of race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth.

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

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

2. Initial investigation

1.7 In the early 2000s, the SALRC and the German Agency for Technical Cooperation commissioned the Centre for Applied Legal Studies of the University of the Witwatersrand to conduct a study to determine the feasibility, scope and operational structure of revising the South African statute book for constitutionality, redundancy and obsolescence. The Centre for Applied Legal Studies of the University of the Witwatersrand pursued four main avenues of research in their study conducted in 2001:¹

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

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

Third, 16 randomly selected national statutes were tested against these guidelines. The outcome of the test was then compared against a control audit that tested the same statutes against the entire Bill of Rights, excluding socio-economic rights. A comparison of the outcomes revealed that a targeted revision of the statute book, in accordance with the guidelines, produced surprisingly effective results.

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

3. Reports of the SALRC proposing reform or the repeal of discriminatory provisions

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

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

4. Commencement of the project

1.9 Early in 2004, the SALRC informed all national Government departments of the priority of the investigation into statutory law revision. The SALRC conducted a workshop with representatives from these departments to secure their participation in the revision process. From the outset it was clear that with the

¹ "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.

available capacity at the Commission and in government departments, the review will at this stage focus on national legislation.

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

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

B. WHAT IS STATUTORY LAW REVISION?

1.12 Statutory law revision ordinarily focuses on the identification and repeal of statutes that are no longer of practical utility. The purpose of the revision process is to modernise and simplify the statute book, thereby reducing its size and saving the time of legal professionals and others who use it. This in turn helps to avoid unnecessary costs. It also ensures people are not misled by obsolete laws masquerading as “live” law. If Acts still feature in the statute book and are referred to in text-books, people reasonably enough assume those Acts still serve a purpose.

1.13 Legislation identified for repeal is selected on the basis that it is no longer of practical utility. Usually this is because these laws no longer have any legal effect on technical grounds- because they are spent, unnecessary or obsolete. But sometimes they are selected because, although strictly speaking they do continue to have legal effect, the purposes for which they were enacted, either no longer exist, or are currently being met by alternative means.

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

1.15 Provisions in the statute book this investigation seeks to remove include the following:²

- references to bodies, organisations, etc. that have been dissolved or wound up or which have otherwise ceased to serve any purpose;
- references to issues that are no longer relevant as a result of changes in social or economic conditions;
- references to Acts that have been superseded by more modern legislation or by international Convention;
- references to statutory provisions (i.e. sections, schedules, orders, etc.) that have been repealed;
- repealing provisions e.g. "Section 33 is repealed/shall cease to have effect";
- commencement provisions once the whole of an Act is in force;
- transitional or savings provisions that are spent;
- 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; and
- powers that have never been exercised over a period of many years or where any previous exercise is now spent.

1.16 The meaning of the terms expired, spent, repealed in general terms, virtually repealed, superseded and obsolete was explained by the Law Commission of India as follows³

- 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 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; and
- obsolete – where the state of things contemplated by the enactment has ceased to exist, or the enactment is of such a nature as to be no longer capable of being put in force, regard being had to the alteration of political or social circumstances.

1.17 The obsolescence of statutes tends to be a gradual process. Usually there is no single identifiable event that makes a statute obsolete, often it is simply a case of legislation being overtaken by social and economic changes. Inevitably, some provisions fade away more quickly than others. These include commencement and transitory provisions and "pump-priming" provisions (e.g. initial funding and initial appointments to a committee or a board) to implement the new legislation. Next to go may be subordinate legislation-making powers that are no longer needed. Then the committee or board established by the Act no longer meets and can be abolished.

2 These guidelines are based on the Background Notes on Statute Law Repeals compiled by the Law Commission for England and Wales available at: http://www.lawcom.gov.uk/docs/background_notes.pdf (accessed by 28 May 2009).

3 Law Commission of India Ninety-Sixth Report on Repeal of Certain Obsolete Central Acts March 1984 available at: <http://lawcommissionofindia.nic.in/51-100/Report96.pdf> accessed on 29 August 2007.

1.18 Much statutory law revision is possible because of the general savings provisions of section 12(2) of the Interpretation Act 33 of 1957. This section provides that where a law repeals any other law, then unless the contrary intention appears, the repeal shall not-

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

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

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

1.20 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.

C. SCOPE OF THE PROJECT

1.21 This investigation accordingly, focuses on the question of the constitutionality of provisions in statutes with special attention paid to consonance with section 9 of the Constitution. The investigation also attends to obsolescence or redundancy of provisions. 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 and birth. The SALRC agreed that the project should proceed by scrutinising and revising national legislation which discriminates unfairly⁴ However, even the section 9 inquiry is fairly limited, dealing primarily with statutory provisions that are blatantly in conflict with section 9 of the Constitution. This was necessitated by, among

⁴ Professor Cathi Albertyn prepared a "Summary of Equality jurisprudence and Guidelines for Assessing the SA Statute Book for Constitutionality against Section 9 of the 1996 Constitution", specifically for the SALRC in February 2006.

other considerations, time and capacity. However, any other obvious inconsistencies with the Constitution and anomalies have been identified and recommendations made on how to address them.

D. ASSISTANCE BY GOVERNMENT DEPARTMENTS AND OTHER STAKEHOLDERS

1.22 In 2004, Cabinet endorsed that departments should be requested to participate in and contribute to this investigation. Sometimes it is impossible to tell whether a provision can be repealed without factual information that is not readily ascertainable without access to “inside” knowledge held by a department or other organisation. Examples of this include savings or transitional provisions which are there to preserve the status quo, until an office-holder ceases to hold office or until repayment of a loan has been made. In cases like these, the repeal notes drafted by the SALRC invited the department or organisation being consulted to supply the necessary information.

E. STATUTES ADMINISTERED BY THE DEPARTMENT OF TRANSPORT

1.23 As stated above, the SALRC has identified 218 statutes administered by the Department of Transport. Of these, the SALRC has identified 53 Acts that may be repealed wholly and 15 Acts that may be partially repealed as a result of redundancy or unconstitutionality. These Acts are contained in Schedules 1 and 2 of the proposed Transport Acts Repeal Bill appended as Annexure A to this report. Chapter 2 of this report, the explanatory note on the proposed Transport Acts Repeal Bill, contains the motivation why these statutes and/or provisions were selected for repeal.

F. CONSULTATION PROCESS

1.24 As part of this investigation, the SALRC has reviewed 218 Acts administered by the national Department of Transport which were enacted between 1910 and 2004, and that are still in force in the Republic. The subject-matter of these Acts varies and includes railways, harbours, aviation, transport services, shipping, road transportation, advertising on roads, adjudication of traffic offences and the Transnet Pension Fund. A consultative meeting involving the legal advisers of the Department of Transport and the officials of the SALRC was held on 20 October 2006. At this meeting, the purpose of statutory law revision; the guidelines used to determine the constitutionality and redundancy of legislation; and the significance of the involvement of the Department of Transport in this investigation were discussed. The preliminary findings and recommendations of the SALRC, contained in a consultation paper, were also submitted to the Department of Transport’s legal advisers for consideration and comment. On 20 November 2006, the Department of Transport informed the SALRC that it agreed with the preliminary findings and proposals of the SALRC.

1.25. In accordance with its policy to consult widely and to involve the public in the law reform process, the SALRC further developed the consultation paper referred to above and published it as Discussion Paper 114 (the Discussion Paper) for general information and comment in June 2008. In the Discussion Paper, the SALRC listed all the statutes administered by the Department of Transport; explained the background to statutory law revision; set out the guidelines utilised by the SALRC to test the constitutionality and redundancy of these statutes; provided detailed findings and proposals for reform in respect of the statutes found wanting; appended a draft “Transport Acts Repeal Bill”, setting out legislation or provisions in legislation which needed to be repealed and the extent of such repeal. It also contained an invitation to interested parties to submit comments to the SALRC. The stakeholders to whom the Discussion Paper was submitted included the Department of Transport; agencies reporting to the Minister of Transport such as Transnet, the

South African Civil Aviation Authority and the South African National Roads Agency; provincial departments responsible for transport; and the Parliamentary Portfolio Committee on Transport. On 1 October 2008, the then Minister of Transport, Mr JT Radebe informed the SALRC that his department had perused the Discussion Paper and that it concurred with the recommendations made therein. The SALRC also received comments from the Department of Justice and Constitutional Development; the Department of Transport, Roads and Public Works (Northern Cape Provincial Government); and the Department of Roads and Transport (Mpumalanga Provincial Government), all of which agreed with the proposals made by the SALRC. Transnet Freight Rail Legal Services also concurred with the proposals in the Discussion Paper, but urged the SALRC not to recommend for repeal certain Acts which ratified and confirmed certain agreements between the State and private entities. The SALRC is of the view that the agreements in question did not acquire statutory force by virtue of being ratified or confirmed by these Acts (i.e. these agreements were not incorporated into these statutes). Accordingly, the SALRC is of the view that the repeal of these Acts would not affect the rights and duties of the parties to these agreements.

1.26 The Department of Transport has already initiated the process to have the recommendations made by the SALRC in the Discussion Paper implemented. In January 2009, the Department of Transport informed the SALRC about its decision to include the draft Transport Acts Repeal Bill in the legislative programme for 2009 and to initiate the parliamentary process to have the statutes identified by the SALRC as being outdated or unconstitutional repealed. To give effect to its decision, on 13 February 2009, the Department of Transport published a notice of intention to repeal obsolete legislation listed in the Transport Acts Repeal Bill, 2009 in the *Government Gazette* (Notice 150 of 2009, Gazette No. 31864) for comments. The Transport Acts Repeal Bill of 2009 was simultaneously submitted to the Office of the Chief State Law Adviser for scrutiny. Although this report had not yet been tabled before the full Commission for approval when the notice referred to above was published, the SALRC raised no objection to the implementation of its proposals. On 19 March 2009, the SALRC informed the then Minister of Justice and Constitutional Development, Mr Enver Surty, that it had no objections because it envisaged that the draft Bill in the report to follow would be similar in all respects to that contained in the Discussion Paper. Subject to the exceptions set out in the next paragraph, this is still the position of the SALRC.

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Chapter 2: Explanatory notes on the Draft Transport Acts Repeal Bill

A. Introduction

2.1 The South African Law Reform Commission (SALRC) has reviewed 218 Acts currently administered by the Department of Transport to determine which of these Acts contain provisions that are inconsistent with the Constitution or no longer serve any useful purpose as a result of redundancy or obsolescence. The subject-matter of these Acts varies and includes railways, harbours, aviation, transport services, shipping, road transportation, advertising on roads, adjudication of traffic offences and the Transnet Pension Fund. The SALRC has found that 53 Acts and various provisions in 15 Acts serve no useful purpose anymore. The SALRC recommends, in this report, that these Acts or provisions be repealed. As it is authorised by section 5(5) of the South African Law Reform Commission Act of 1973, the SALRC has included in this report a draft Bill entitled the "Transport Acts Repeal Bill", which, if enacted, will give effect to the recommendations contained in this report. This chapter provides a detailed explanation why the Acts and provisions contained in the Transport Acts Repeal Bill should be repealed.

B. Legislation recommended for repeal or amendment

1. Black Transport Services Amendment Acts and the Transport Services for Coloured Persons and Indians Amendment Act

2.2 In the consultation paper and subsequently, in the Discussion Paper 114, the SALRC identified four statutes as being inconsistent with the right to equality. These statutes were the Black Transport Services Amendment Acts of 1972,⁵ 1974,⁶ 1982,⁷ and the Transport Services for Coloured Persons and Indians Amendment Act 77 of 1982. The purpose of the Black Transport Services Amendment Acts was to amend various provisions of the Black Transport Services Act 53 of 1957. The purpose of the Transport Services for Coloured Persons and Indians Amendment Act of 1982 was to amend the Transport Services for Coloured Persons and Indians Act 27 of 1972. Both these principal Acts were repealed by the Population Registration Act Repeal Act 114 of 1991.⁸ However, the amending Acts were not repealed contemporaneously with the principal Act.

2.3 In the Discussion Paper, the SALRC recommended these amending Acts for repeal. This proposal was supported by the Department of Transport. The Department of Transport developed its National Land Transport Bill in 2008. This Bill resulted in the National Land Transport Act 5 of 2009. Section 94 contained in the Schedule to the National Land Transport Act repeals all the statutes listed in the preceding paragraph. Although the National Land Transport Act of 2009 was assented to by the President, it has not yet come into operation. Once it comes into operation the four statutes will be repealed. To avoid duplication and uncertainty which may later arise, the SALRC recommends that the four statutes referred to above be excluded from the Transport Acts Repeal Bill.

5 Black Transport Services Amendment Act 11 of 1972.

6 Black Transport Services Amendment Act 47 of 1974.

7 Black Transport Services Amendment Act 76 of 1982.

8 The purpose of this Act, as set out in the long title, was to "Repeal the Population Registration Act, 1950; to amend or repeal certain laws so as to abolish the distinctions made therein between persons belonging to different races or population groups...".

2. Railway Construction Acts

(a) Introduction

2.4 The statutes recommended for repeal under this heading are the Railway Construction Acts of 1939;⁹ 1945;¹⁰ 1957;¹¹ 1960;¹² 1961;¹³ 1964;¹⁴ 1965;¹⁵ 1966;¹⁶ 1968;¹⁷ 1971;¹⁸ 1972;¹⁹ 1973;²⁰ 1980;²¹ 1981;²² 1982;²³ 1985;²⁴ Second Railway(s) Construction Acts of 1963;²⁵ 1971;²⁶ 1981;²⁷ 1982;²⁸ 1985;²⁹ and the Sishen-Saldanha Bay Railway Construction Act 28 of 1973. These statutes provide for the construction and equipment of a railway line or lines. Each of these statutes specified, either in the long title,³⁰ section or Schedule,³¹ the place or places where such construction would take place; the gross cost and the approximate length of such a railway line.

(b) Submission by Transnet

2.5 Transnet Freight Rail Legal Services made a submission to the SALRC in which it supports the repeal of the Acts enumerated above, except the Railway Construction Act of 1961 (Act 57 of 1961); Railway Construction Act 5 of 1965; Railway Construction Act 17 of 1966; and the Second Railway Construction Act of 1963 (Act 58 of 1963). The reason advanced by Transnet is that these Acts ratified certain agreements

9 Railway Construction Act 37 of 1939.

10 Railway Construction Act 17 of 1945.

11 Railway Construction Act 49 of 1957.

12 Railway Construction Act 21 of 1960.

13 Railway Construction Act 57 of 1961.

14 Railway Construction Act 2 of 1964.

15 Railway Construction Act 5 of 1965.

16 Railway Construction Act 17 of 1966.

17 Railway Construction Act 38 of 1968.

18 Railway Construction Act 82 of 1971.

19 Railway Construction Act 77 of 1972.

20 Railway Construction Act 71 of 1973.

21 Railway Construction Act 65 of 1980.

22 Railway Construction Act 30 of 1981.

23 Railway Construction Act 7 of 1982.

24 Railway Construction Act 75 of 1985.

25 Second Railways Construction Act 58 of 1963.

26 Second Railway Construction Act 83 of 1971.

27 Second Railway Construction Act 61 of 1981.

28 Second Railway Construction Act 75 of 1982.

29 Second Railway Construction Act 94 of 1985.

30 For example, the long title of the Railway Construction Act 17 of 1945 provides that the purpose of this Act is "To provide for the construction and equipment of a double line of railway between Kensington (Cape) and Belville Station and for matters incidental thereto".

31 In the Railway Construction Act 2 of 1964, for example, the places where construction would take place are listed in the First, Second and Third Schedules to the Act.

which contain provisions that are operative for periods which have not yet expired. The Railway Construction Act of 1961, for example, has five sections and a Schedule. Section 1 empowers the President to authorise the construction of a railway line at a cost not exceeding the specified amount of money. Section 2 provides that the cost of construction will be defrayed out of loans raised by the President and appropriated by Parliament. Section 3 confers on the President powers set out in the Railway Expropriation Act of 1955. Section 4 confirmed and ratified the agreement entered into by the Government and the Corporation which petitioned the Government to build the railway line in question. Section 5 contains the short title. The schedule to the Act contains a translation of the agreement between the Government and the Corporation. Clause 9 of this agreement provides that:

"The Corporation agrees that if at a future date within fifty years of the date of opening of the railway for public traffic, the traffic falls off to such an extent that the total volume of traffic carried over the railway line is, in the opinion of the Administration after consultation with the Corporation, insufficient to justify the operation of the railway, the Administration shall have the right to uplift the whole or any portion of the railway, and if so uplifted, to recover from the Corporation an amount equal to the total of the original cost of construction and any amount subsequently expended on the railway (including expenditure financed from the Administration's Renewals Fund of Betterment Fund)..."

2.6 All the other Railway Construction Acts listed in paragraph 2.5 above are similar to the Railway Construction Act of 1961, and contain provisions identical to the provision quoted in the preceding paragraph.³² Therefore, the response of the SALRC below applies to all the Acts listed above.

(c) SALRC's response to the submission made by Transnet

2.7 Put differently, Transnet is concerned that if these Acts are repealed, the agreement would no longer be legally binding and the rights accorded to the State, for example to uplift the whole or portion of the railway line would become unenforceable. The SALRC submits that such a conclusion can only be drawn if it is shown that these agreements were not merely validated, but incorporated into these statutes. This distinction is of utmost importance because, as Chief Justice Lamer of the Canadian Supreme Court points out in his minority decision in *British Columbia (Attorney-General) v Canada (Attorney-General) An Act respecting the Vancouver Island Railway (Re)*,³³ the validity of contracts simply approved cannot be challenged for lack of authority, lack of privity and other reasons which might render the contract void and incorporated contracts have an additional feature of being assimilated to statutes.³⁴ The *British Columbia* case concerned the question whether the provisions of an agreement (the Dunsmuir Agreement), which appeared in the schedule to the Dominion Act were given statutory force by that Act, such that the provisions of the Dunsmuir Agreement were in fact the provisions of the Act itself. Section 2 of the Dominion Act provided the following in respect of the Dunsmuir Agreement:

"2. The agreement, a copy of which, with specification, is hereto appended as a schedule, for the construction, equipment, maintenance and working of a continuous line of railway of a uniform gauge of four feet, eight and one-half inches, from Esquimalt

32 In respect of the Railway Construction Act 5 of 1965 clause 10 of the Agreement provides "for the period between thirty years but within fifty years of the date of opening of the railway line for public traffic". The Railway Construction Act of 1966 provides in clause 10 of the Agreement "for the period between thirty years but within fifty years of the date of opening of the railway line for public traffic". The Second Railway Construction Act of 1963 provides in clause 9 "for the period between thirty years but within fifty years of the date of opening of the railway line for public traffic."

33 1994 2 SCR 41 Date: May 5 1994.

34 *Id* at 17.

to Nanaimo in Vancouver Island, British Columbia, and also for the construction, equipment, maintenance and working of a telegraph line along the line of the said railway, is hereby approved and ratified, and the Governor in Council is authorized to carry out the provisions thereof according to their purport.”

2.8 Iacobucci J, writing for the majority in the above case, provides guidelines that can be used to establish whether an agreement scheduled to an Act forms part of the Act or not. Relying on the decision of the Supreme Court in *Ottawa Electric Railway Co. v. Corporation of the City of Ottawa*, [1945] S.C.R. 105³⁵ Iacobucci J stated that a statutory ratification and confirmation of an agreement standing alone is generally insufficient reason to conclude that such an agreement constitutes a part of the statute itself. Furthermore, the judge quoted with approval a dictum from *Winnipeg v Winnipeg Electric Railway Co.*, [1921] 2 W.W. R 282 (Man. C.A) where the judge said that “in order to make an agreement scheduled to an Act a part of the Act itself it is not sufficient to find words in the statute merely confirming and validating the agreement; you must find words from which the intention can be inferred”.³⁶ Iacobucci J added that all tools of statutory interpretation can be called in aid to determine whether incorporation is intended. The judge, in the light of authority referred to above, came to the conclusion that section 2 of the Dominion Act did not bestow statutory force upon the Dunsmuir Agreement.³⁷

2.9 The requirement referred to in the *British Columbia* case above that an Act must contain words from which the intention to incorporate an agreement into a statute was invoked by the same court in *Fleitmann v. The King* 52 S.C.R. 15. Section 1 of the Statutes of British Columbia, 1912 read:

“The agreement, a copy of which forms the schedule to this Act, made between His Majesty the King, represented by the Honourable the Premier of British Columbia and the Canadian Pacific Railway Company, the British Columbia Southern Railway Company and the Columbia and Western Railway Company is hereby ratified and confirmed and declared to be legally binding, according to the tenor thereof, upon the parties thereto; and the said parties to the said agreement are hereby authorized and empowered to do whatever is necessary to give full effect to the said agreement, the provisions of which are to be taken as if they had been expressly enacted hereby and formed an integral part of this Act.”³⁸

2.10 The court in this case held that the underlined words, read literally, seem to give statutory force to the statements in the agreement.³⁹ It is for this reason that in this case the court refused to interpret the agreement as a document separate from the statute. According to the court, such an approach would deprive the words of the Act of some part of their literal effect.

2.11 The following guidelines can be distilled from the decisions referred to above:

- a statement in a statute confirming or ratifying an agreement appended in the schedule is

35 Section 1 of the Act at issue in this case provided that “The agreement set out in the Schedule to this Act... is ratified and confirmed, and the parties thereto are hereby empowered and authorized to carry out their respective obligations and to exercise their respective privileges thereunder”. Two of the judges held that “the agreement, while being ‘ratified and confirmed’ by section 1, was not made part of Act. The object of that section is to give the agreement validity and to state that “the parties thereto are hereby empowered and authorized to carry out the respective privileges thereunder”. Be it noticed that the authorization is to carry out the obligations and the privileges thereunder and, therefore, those of the agreement. No power or authorization is added to the agreement itself.” *Id* at 78.

36 *Id* at 79.

37 At 81.

38 At p 25 of the *Fleitmann v. The King* judgment. (Our emphasis).

39 At p 27 of the decision above.

- insufficient to conclude that such an agreement constitutes a part of the statute;
- the statute itself must contain words from which the intention to incorporate the agreement into legislation can be inferred; and
 - when determining whether the legislature intended to give statutory force to the agreement, one must look at the provisions of the Act and not in the clauses of the agreement.

2.12 Applying this criteria to the Railway Construction Acts under discussion, the SALRC has come to the conclusion that there is nothing in section 4 of the Railway Construction Act 57 of 1961; section 4 of the Second Railway Construction Act 58 of 1963; section 4 of the Railway Construction Act 5 of 1965; and section 4 of the Railway Construction Act 17 of 1966 from which an inference to incorporate these agreements into these Acts can be drawn. In fact, the provisions of section 4 contained in these Acts are similar to section 2 of the Dominion Act referred to in paragraph 2.6 above. The SALRC is of the view that the repeal of these Railway Construction Acts would not affect the rights and duties of parties to the agreements appended in the Schedules to these Acts because these agreements were not incorporated into these statutes.

3. Railways and Harbours Strike and Service Amendment Act 7 of 1914

2.13 This Act was promulgated after the strike involving employees of the Railways and Harbours which took place in January 1914. Its purpose was two-fold. It was aimed at rewarding those employees of the Railways and Harbours who, during the strike, continued to perform their duties. It further regulated conditions of re-employment of those employees who, during the period of the strike, deserted, refused to serve or absented themselves from duty. This Act granted those employees who remained faithful to their conditions of service special leave (which had to be taken before 31 December 1915) or pay in lieu thereof, a bonus, reward, or special promotion.⁴⁰ In respect of employees who were on strike, the Act provided, *inter alia*, that the period of absence would be reckoned as leave without pay; an employee who did not offer to return to work at or before ten o'clock in the evening on the 27 January 1914 or who did so but was not accepted, would be deemed to have retired from the service.⁴¹ This Act is recommended for repeal on grounds that it no longer serves any useful purpose.

4. Railways and Harbours Acts Amendment Act 45 of 1952

2.14 This Act sought to amend the Railways and Harbours Regulation, Control and Management Act 22 of 1916; the Railways and Harbours Service Act 23 of 1925; the Railways and Harbours Superannuation Fund Act 24 of 1925; and the Railways and Harbours Acts Amendment Act 49 of 1949. The first three Acts that were amended by this Act were repealed by the Railways and Harbours Control and Management (Consolidation) Act 70 of 1957; Railways and Harbours Service Act 22 of 1960; and by the Railways and Harbours Superannuation Fund Act 39 of 1960 respectively. However, the Railways and Harbours Acts Amendment Act of 1949 is still in force. Section 1(1) and (2) of the Railway and Harbours Act Amendment Act of 1952 reads:

"1 (1) Amends section 4 of the Railways and Harbours Regulation, Control and Management Act 22 of 1916.

40 Section 2(1)-(5) of the Act.

41 See for example sections 3 and 4 of the Act.

(2) Any regulation made under paragraphs (5) and (11) of section four of the Railways and Harbours Regulation, Control and Management Act, 1916, after the date of commencement of this Act, may be expressed to apply also in respect of fares, freight, dues or other charges that became due before the said date”.

2.15 The purpose of these provisions was to effect amendments to the Railways and Harbours Regulation, Control and Management Act 22 of 1916. As stated above, this Act was repealed by the Railways and Harbours Control and Management (Consolidation) Act 70 of 1957. It is therefore recommended that section 1(1) and (2) of Act 45 of 1952 be repealed on the ground that it refers to a piece of legislation that no longer exists in the statute books. This is necessary as the Interpretation Act 33 of 1957, unlike interpretation legislation in other jurisdictions where the technique of direct amendment is used, does not contain a provision that where a written law which has been amended by any other written law is repealed, such repeal shall include the repeal of all those provisions of such other law by which the first repealed law was amended.⁴²

5. Railway Expropriation Act 37 of 1955

2.16 The Act recommended for repeal here came into operation in January 1956. Its aim was to regulate the procedure to be followed, and the assessment of the compensation to be paid by the Railway Administration in connection with, and pursuant to the exercise by it of the powers of expropriation conferred upon it by law.⁴³ Initially, this Act had 19 sections. Seventeen of these sections were repealed by various pieces of legislation.⁴⁴ The only substantive provision that remains, in addition to the long title and section 19 (the short title and date of commencement), is section 15 which provides that:

“Any person who wilfully obstructs any person doing any of the acts authorized by subsection (7) *ter*, *quat* and *quin* of section 2 of the principal Act, or who wilfully fills up, destroys, damages or displaces any excavation, trench, beacon, mark or weir made or erected under subsection (7) *ter* of section 2 of the principal Act, shall be guilty of an offence and liable on conviction to a fine not exceeding one hundred rand or in default of payment to imprisonment for a period not exceeding six months, or to both such fine and such imprisonment”.

2.17 This section was amended by section 10 of the Railways and Harbours Acts Amendment Act 6 of 1965 and then substituted by section 4 of the Railways and Harbours Acts Amendment Act 46 of 1975. Section 4 of the latter Act was itself repealed by the Repeal of Laws Act 94 of 1981. It is clear that section 15 of the Railway Expropriation Act 37 of 1955 is an ancillary provision which should have been repealed when section 2 of the principal Act was repealed by the Expropriation Act 63 of 1975. In other words, the application of this provision depends on the existence of section 2 of the principal Act and this section no longer exists. Section 15 became obsolete when section 2 of the principal Act was repealed. Furthermore, since this is the only provision remaining, the entire Act, and not just section 15, is recommended for repeal.

42 See GC Thornton *Legislative Drafting* (1996) 4th Edition, 398.

43 See the long title.

44 The Railways and Harbours Control and Management Consolidation Act 70 of 1957, Expropriation Act 63 of 1975, Railways and Harbours Acts Amendment Act 46 of 1975, and the General Law Amendment Act 49 of 1996.

6. Merchant Shipping (Certificates of Competency) Amendment Act 48 of 1957

2.18 The purpose of this Act was to amend sections 8, 16, 18, and 19 of the Merchant Shipping (Certificates of Competency) Act 45 of 1925. This amending Act is recommended for repeal in its entirety because the Merchant Shipping (Certificates of Competency) Act 45 of 1925 to which these amendments applied was repealed by the Merchant Shipping Act 57 of 1951.

7. National Roads and Transport (Co-ordination) Amendment Act 51 of 1957

2.19 This legislation was enacted to amend the National Roads Act of 1935 and the Transport (Co-ordination) Act of 1948.⁴⁵ Sections 1 to 6 of this Act (Act 51 of 1957) were repealed by section 29(1) of Act 54 of 1971. The only remaining section, section 7, amended section 6 of the Transport (Co-ordination) Act 44 of 1948. This Act was repealed by the Transport Deregulation Act of 1988 and the Cross-Border Road Transport Act of 1998. Therefore, the SALRC recommends the repeal of the National Roads Transport (Co-ordination) Amendment Act 51 of 1957 in its entirety.

8. National Roads and Transport (Co-ordination) Amendment Act 19 of 1962

2.20 This Act is recommended for repeal for the same reason as Act 51 of 1957. The purpose of the remaining section 10 of this Act was to amend section 9 of the Transport (Co-ordination) Act 44 of 1948. As stated, the Transport (Co-ordination) Act of 1948 was repealed by the Transport Deregulation Act of 1988 and the Cross-Border Road Transport Act of 1998, and as a result, section 10 has become redundant.

9. Railway Purchase Act 25 of 1971

2.21 This Act authorised the State President to cause to be purchased from the Electricity Supply Commission a railway of approximately 48 kilometers, from a junction at Broodsnyersplaas Station to a terminal point on the farm Tweefontein, in the district of Middelburg in the then Province of the Transvaal, at a cost not exceeding four million rand. Furthermore, it empowered the State President to initiate the construction and equipment of all sidings, stations, building and other accessories necessary for and incidental to the proper functioning of the said railway line. Transnet Legal Services has confirmed that this railway line is on the asset register of Transnet, which confirms that the powers conferred to the President by this Act were exercised. For that reason it is recommended for repeal. Transnet supports the repeal of the Railway Purchase Act of 1971.

10. Transport (Co-ordination) Amendment Act 59 of 1971

2.22 The purpose of this amendment Act was to amend the provisions of the Transport (Co-ordination) Act of 1948 relating to definitions, and the constitution and functions of the National Transport Commission; to incorporate that body; and to repeal the provisions of the Transport (Co-ordination) Act relating to the Advisory Committee on Roads. As stated in paragraph 2.19 above, the Transport (Co-ordination) Act 44 of 1948 was repealed by section 2(1) of the Transport Deregulation Act 80 of 1988. Subsection (2) to (8) made provision for the continued existence of the National Transport Commission. Section 53 of the Cross-Border

45 See the long title.

Road Transport Act 4 of 1998 repealed, inter alia, the remaining provisions of the Transport (Co-ordination) Act of 1948. As a result of these repeals, the Transport (Co-ordination) Amendment Act of 1971 has become redundant and is hereby recommended for repeal.

11. National Road Safety Amendment Acts

2.23 The Acts recommended for repeal under this heading are the National Road Safety Amendment Acts of 1974⁴⁶, 1976⁴⁷, 1980⁴⁸, 1981⁴⁹ and 1991⁵⁰. These statutes were enacted to amend various provisions of the National Road Safety Act 9 of 1972. The National Road Safety Act has been identified for repeal in the National Road Traffic Act 93 of 1996 as amended by section 39 of the National Road Traffic Amendment Act 21 of 1999.⁵¹ However, section 39 of Act 21 of 1999 has not yet come into operation. If this provision does come into operation, the five amendment Acts referred to above will become redundant. It is for this reason that they are recommended for repeal.

12. Saldanha Bay Harbour Acquisition and Equipment Act 99 of 1976

2.24 This Act was enacted for the purpose of empowering the Administration⁵² to acquire and equip the harbour at Saldanha Bay in the then Province of the Good Hope.⁵³ The Administration, as defined in the Act did acquire and equip the harbour at Saldanha Bay. Since the purpose for which this Act was enacted was accomplished, the Act is redundant and it is hereby recommended for repeal.

13. Railway and Harbour Purchase Act 47 of 1977

2.25 This Act empowered the then State President to cause to be purchased from the South African Iron and Steel Industrial Corporation Limited, the railway line built in terms of the Sishen-Saldanha Bay Railway Construction Act of 1973, the harbour at Saldanha Bay constructed in terms of the Saldanha Bay Harbour Construction Act of 1973, and any land or real rights in land acquired or to be acquired by the South African Iron and Steel Corporation Limited, for the purposes of such a railway line or such harbour prior to, or subsequent to the date of purchase. Transnet has confirmed that the powers conferred on the President by this Act were in fact exercised, and supports the repeal of this Act. The SALRC is of the view that this Act has become spent and recommends that it be repealed.

46 National Road Safety Amendment Act 46 of 1974.

47 National Road Safety Amendment Act 40 of 1976.

48 National Road Safety Amendment Act 16 of 1980.

49 National Road Safety Amendment Act 59 of 1981.

50 National Road Safety Amendment Act 67 of 1991.

51 Initially only three provisions of this Act, viz sections 7A, 14 and 26 were repealed by the National Road Traffic Act 93 of 1996. On the heels of Act 93 of 1996 came the National Road Traffic Amendment Act 21 of 1999 which amended the Schedule to Act 93 of 1996 by substituting the phrase "The Whole" for the expression "Sections 7A, 14 and 26". However, this section is yet to come into operation. Once this happens, the National Road Safety Act of 1972 will cease to exist.

52 Defined in the Act as "the authority that administers and works the railways, harbours, airways and pipelines of the Republic under the Railway Board Act, 1962 (Act 73 of 1962).

53 Section 2(1).

14. Transport (Co-ordination) Amendment Act 73 of 1977

2.26 The Transport (Co-ordination) Act 44 of 1948 which was amended by this Act was repealed, first by the Transport Deregulation Act of 1988, and then by section 53(3) of the Cross-Border Road Transport Act 4 of 1998. However, this amendment Act was not repealed together with the principal Act. For this reason, it is recommended for repeal.

15. South African Transport Services Amendment Act 6 of 1982

2.27 Some of the statutes amended by this Act have been repealed by various pieces of legislation. Therefore, section 6 amending section 1 of the Level Crossings Act 41 of 1960;⁵⁴ sections 7 and 8 amending sections 1 and inserting section 9A in the Railways and Harbours Pensions Act 35 of 1971;⁵⁵ sections 9 and 10 amending the Railways and Harbours Pensions for Non-Whites Act 43 of 1974;⁵⁶ and sections 18, 19 and 20 amending the South African Transport Services Act 65 of 1981⁵⁷ should be repealed. In addition, section 22(ii), providing that "sections 4, 5 and 8 shall come into operation on 1 April 1982", became spent after that date and may be repealed.

16. South African Transport Services Amendment Act 13 of 1983

2.28 All the statutes targeted by this amending Act have been repealed by some or other legislation. These statutes are the Railways and Harbours Service Act 22 of 1960, the Level Crossings Act 41 of 1960, the Railways and Harbours Pensions for Non-Whites Act 43 of 1974 and the South African Transport Services Act 65 of 1981. The commencement provisions (section 17(ii) and (iii)) became spent when the sections referred therein came into operation. This Act (Act 13 of 1983) no longer serves any useful purpose and the SALRC recommends that it be repealed in its entirety.

17. South African Transport Services Amendment Act 5 of 1984

2.29 All the Acts affected by the amendments brought about by this legislation have been repealed.⁵⁸ For this reason, it is recommended for repeal in its entirety.

18. Second South African Transport Services Amendment Act 93 of 1984

2.30 The only Act affected by amendments introduced by the Second Transport Services Amendment Act 93 of 1984 was the South African Transport Services Act 65 of 1981. The South African Transport Services Act 65 of 1981 was repealed by the Legal Succession to the South African Transport Services Act 9 of 1989.

54 Repealed by Proclamation 112 of 19 November 1993.

55 Repealed by Act 62 of 1990.

56 Repealed by Act 62 of 1990.

57 Repealed by Act 9 of 1989.

58 These are the Railways and Harbours Pensions Act 35 of 1971, the Railways and Harbours Pensions for Non-Whites Act 43 of 1974, the South African Transport Services Act 65 of 1981, and the South African Transport Services Finances and Accounts Act 17 of 1983.

For this reason, the amendments effected by Act 93 of 1984 have ceased to have any practical value, and the SALRC recommends the repeal of the entire Act.

19. South African Transport Services Amendment Act 44 of 1985

2.31 All the provisions of this Act, with the exception of section 1 which amended section 1 of the Railways and Harbours Pensions Amendment Act,⁵⁹ should be repealed since the Acts to which they refer have been repealed by some or other piece of legislation. These provisions are sections 2 to 7 and 9;⁶⁰ sections 8 and 10;⁶¹ sections 11 to 21;⁶² and sections 30 and 31.⁶³

20. South African Transport Services Amendment Act 46 of 1986

2.32 This Act amended three sections of the South African Transport Services Act 65 of 1981.⁶⁴ As stated above, Act 65 of 1981 was repealed by Act 9 of 1989. Therefore, there is no longer a principal Act to which these amendments apply and it is hereby recommended for repeal.

21. South African Transport Services Amendment Act 91 of 1987

2.33 This amending Act contained eight sections. Three of these sections, namely sections 5, 6 and 7 were repealed by Act 41 of 1988 and Act 49 of 1996 respectively. The remaining provisions amended the Railways and Harbours Pensions for Non-Whites Act of 1974, and the Transport Services Act 65 of 1981. As stated in paragraph 2.27, both these Acts were repealed. It is therefore, recommended that this amendment Act be repealed.

22. South African Transport Services Amendment Act 11 of 1988

2.34 This amending Act effected amendments to the South African Transport Services Act 65 of 1981. The South African Transport Services Act 65 of 1981 was repealed by the Legal Succession to the South African Transport Services Act 9 of 1989. As a result, the South African Transport Services Amendment Act 11 of 1988 no longer serves any useful purpose. The SALRC recommends that it be repealed.

23. Transnet Limited Amendment Act 52 of 1991

2.35 The sections of the Transnet Limited Amendment Act recommended for repeal in this paragraph, namely sections 1, 2, 3, 4 and 5, amended various sections of the Level Crossings Act 41 of 1961. The Level

59 Act 26 of 1941.

60 These amended various provisions of the Railways and Harbours Pensions Act 35 of 1971.

61 Affecting the Railways and Harbours Pensions for Non-Whites Act 43 of 1974.

62 Amending various provisions of the South African Transport Services Act 65 of 1981.

63 These amended section 14 and substituted section 15 respectively of the South African Transport and Services Finances and Accounts Act 17 of 1983.

64 Sections 9, 59(1), and 61. The amendment introduced by section 4 was repealed in 1996 by section 1 of Act 49 of 1996.

Crossings Act was repealed by Proclamation No 112 of November 19, 1993. Therefore, these amendments make reference to an Act that no longer exists and for that reason they are recommended for repeal.

24. Transport Second General Amendment Act 82 of 1995

2.36 Sections 1 and 2 of this amending Act effected changes to sections in the Railway Construction Act 75 of 1985 and the Second Railway Construction Act 94 of 1985 respectively. Both Acts have been recommended for repeal in this report.⁶⁵ If these statutes are repealed, these amendments would cease to have any useful purpose. For this reason, they are recommended for repeal.

25. Railway and Harbours Service and Superannuation Fund Acts Amendment Act 27 of 1930

2.37 Section 1(1) of this amending Act provides that no payment shall be made to the revenue of the Department of Railways and Harbours from the Fund in terms of sections 44 and 45 of the Railways and Harbours Service Act 28 of 1912, unless the member "shall have received" from the revenue a gratuity in terms of section 11 of the Railways and Harbours Service Act 23 of 1925 or any amendment thereof. Act 23 of 1925 was repealed by the Railways and Harbours Service Act 22 of 1960. Since section 1 is dependent on section 11, which no longer exists, this section is recommended for repeal.

26. Railways and Harbours Service and Superannuation Fund Acts Amendment Act 19 of 1931

2.38 Sections 1, 2(1) and (2) of this Act make reference to the Railways and Harbours Superannuation Fund Act 24 of 1925. Section 1 provides that "principal Act" means the Railways and Harbours Superannuation Fund Act of 1925. Section 2(1) validates all acts of the Minister or joint committee of management established under the principal Act. Section 2(2) provides that any expression that is used in this Act shall bear the meaning assigned to it in the principal Act. However, the Act to which reference is made by these provisions, was repealed by Act 39 of 1960. For this reason, these provisions are recommended for repeal.

27. Railways and Harbours Acts Amendment Act 49 of 1949

2.39 Section 10(1) of this Act provides that a certificate of permanent employment may, subject to the provisions of section 6(3)(a) of the Railways and Harbours Service Act 23 of 1925, be issued to an apprentice in the employment of the Administration whose apprenticeship was interrupted by reason of his having enlisted for full time military service during the war (as defined in the Public Servants (Military Service) Act of 1944) or who was compelled to defer the commencement of his apprenticeship and who availed himself of the election mentioned in subsection 5 of section 7 of that Act. The two Acts referred to in this provision were repealed. The Railways and Harbours Service Act 23 of 1925 was repealed by Act 22 of 1960 and the Public Servant (Military Service) Act 27 of 1944 was repealed by the Repeal of Laws Act 94 of 1981. Therefore, it is no longer necessary to have section 10(1). Subsection 2 (section 10(2)) merely states that subsection (1) applies with retrospective effect. This provision may also be repealed.

2.40 Section 14(2)(a) to (d) is also recommended for repeal. Section 14(2)(a) gave a member of the "New Fund" who was admitted to membership thereof between 1 July 1931 and 31 December 1948 an

65 See paragraph 2.4 above.

option of electing to contribute to that fund in respect of the period of his continuous employment from the date upon which he attained the age of 16 years. Furthermore, paragraph (b) provides that this option had to be exercised within the period of three months from the date on which the servant was furnished with an official statement setting out the amount of the arrear contribution and interest that would become payable by him to the Fund should he decide to exercise the said option. Paragraph (c) states that the "New Fund" means the New Railways and Harbours Superannuation Fund constituted by section 3 of the principal Act. Paragraph (d) provides for subsection (1) to apply with retrospective effect.

2.41 Although the expression "principal Act" is not defined in this Act, it is clear that it refers to the Railways and Harbours Superannuation Fund Act 24 of 1925. Act 24 of 1925 made provision, in section 3, for the establishment of a new superannuation fund. The provisions recommended for repeal became spent when the Railways and Harbours Superannuation Fund Act of 1925 was repealed by the Railways and Harbours Superannuation Fund Act 39 of 1960.

28. Railways and Harbours Acts Amendment Act 63 of 1951

2.42 Section 7 of this Act amended section 5 of the South-West African Railways and Harbours Act 20 of 1922. The South-West African Railways and Harbours Act of 1922 was repealed by the South African Transport Services Amendment Act 13 of 1983. For this reason, this amendment has become obsolete and it is hereby recommended for repeal.

29. Railways and Harbours Acts Amendment Act 45 of 1952

2.43 Section 1(1) of this Act amended section 4 of the Railways and Harbours Regulation, Control and Management Act 22 of 1916. This Act (Act 22 of 1916) was repealed by the Railways and Harbours Control and Management (Consolidation) Act 70 of 1957. Furthermore, subsection (2) of section 1 provides that any regulation made under paragraph (5) and (11) of section 4 of Act 22 of 1916, after the commencement date of this Amendment, may be expressed to apply also in respect of fares, freight, dues and other charges that became due before the said date. Since these provisions effected amendments to an Act that no longer exists, they are recommended for repeal.

30. Railways and Harbours Acts Amendment Act 62 of 1962

2.44 Section 4(1) of this Act amends the Schedule to the Railway Construction Act 43 of 1956. Subsection (2) provides that any expenditure incurred in connection with the construction and equipment of the first railway line mentioned in the Schedule to Act 43 of 1956, as amended, and the expenditure incurred in connection with the construction and equipment of any portion thereof prior to the commencement of this Act shall not exceed the amount shown in the third column of the said Act. The Railway Construction Act referred to in these provisions was repealed by the Repeal of Laws Act 94 of 1981. Therefore, section 4(1) and (2) are hereby recommended for repeal because they no longer serve any purpose.

31. Railways and Harbours Acts Amendment Act 7 of 1963

2.45 Section 2(1) and (2) of this Act (Act 7 of 1963) amended the First Schedule to the Second Railway Construction Act 47 of 1955. It stipulated that the expenditure incurred in connection with the construction

and equipment of the railway line should not exceed the amount shown in the third column of the said Schedule. The Second Railway Construction Act of 1955 was repealed by the Repeal of Laws Act 94 of 1981. As a result, section 2(1) and (2) no longer serve any purpose.

32. Railways and Harbours Acts Amendment Act 54 of 1964

2.46 The only remaining substantive provisions in this Act are section 1 which repealed sections 33 and 34 of the Railways and Harbours Acts Amendment Act 44 of 1959 and section 9 which amended section 1 of the Second Railway Construction Act 58 of 1963. The Second Railway Construction Act of 1963 is recommended for repeal in Schedule 1 of the proposed Transport Acts Repeal Bill annexed to this report. Section 9 of the Railway and Harbours Acts Amendment Act will cease to have any effect if Act 58 of 1963 is repealed. The provisions of section 33 and 34 of Act 44 of 1959 would not revive if section 1 of this Act (Act 54 of 1964) is repealed. The SALRC, therefore, recommends that the Railways and Harbours Acts Amendment Act of 1964 be repealed in its entirety.

33. Railways and Harbours Acts Amendment Act 6 of 1965

2.47 Originally this Act contained 81 sections. A number of these sections have been repealed by other Acts.⁶⁶ The remaining sections, with the exception of sections 2 to 5,⁶⁷ are hereby recommended for repeal for the reasons that follow. Section 6 amended section 1 of the Railway Expropriation Act 37 of 1955. This section (s 1 of Act 37 of 1955) was repealed by section 40 of the Expropriation Act 63 of 1975. Section 7 substituted section 2 of Act 37 of 1955. This section was also repealed by section 40 of Act 63 of 1975. Sections 8 to 10 amended sections 3, 8, and 15 of Act 37 of 1955. Sections 3 and 8 were repealed by section 40 of Act 63 of 1975. Section 15 without the other provisions is meaningless and for this reason it is recommended for repeal.

2.48 Section 19 effected changes to section 18(1)(d) of the Railways and Harbours Control and Management (Consolidation) Act 70 of 1957 by substituting the words "hostile forces" for the words "the Queens enemies". Act 70 of 1957 was repealed by the South African Transport Services Act 65 of 1981. Section 19 is hereby recommended for repeal.

2.49 Sections 70 to 74 amended sections 1, 2, 3, 4, and 6 of the Level Crossings Act 41 of 1960. Section 75 inserted section 8*bis* in this Act (Act 41 of 1960). The Level Crossings Act of 1960 was repealed by Proclamation 1121993 of 1993. Therefore, these amendments have become obsolete and are hereby recommended for repeal.

34. Railways and Harbours Acts Amendment Act 18 of 1966

2.50 This Act, originally, had 14 sections. Sections 1 to 13 were repealed by various statutes. The remaining section, section 14, contains the short title of the Act. Since this Act contains no substantive provisions anymore, it is hereby recommended for repeal.

66 These are sections 1, 11 to 18, 20 to 44, 45 to 60, 61 to 69, 76 and 77, 78, 79 and 80.

67 These sections amend sections 1, 2, 7 and 8 of the Railways and Harbours Pensions Amendment Act 26 of 1941 and these provisions are still in force.

35. Railways and Harbours Acts Amendment Act 8 of 1968

2.51 Section 9 of this Act amended section 2(2) of the Level Crossings Act 41 of 1960 by substituting the words "three million rand" for the words "one million five hundred thousand rand". The Level Crossings Act was repealed by Proclamation 1121993 of 1993. In the light of this, section 9 of Act 8 of 1968 is hereby recommended for repeal.

36. Railways and Harbours Acts Amendment Act 32 of 1969

2.52 Section 1 and 2 of this Act amended sections 13 and 14 of the Railway Expropriation Act 37 of 1955. Section 6 amended Schedule 1 to the Railway Construction Act of 1966. These two Acts have been recommended for repeal in this report. Sections 1, 2 and 6 make reference to these Acts and for that reason they are also recommended for repeal.

37. Railways and Harbours Acts Amendment Act 24 of 1971

2.53 Sections 1 and 11 of this Act are recommended for repeal. Section 1 amended section 7(2) of the Railway Expropriation Act 37 of 1955 by substituting the words "four thousand square metres" for "one acre". The Railway Expropriation Act has been recommended for repeal. It is for this reason that section 1 of Act 24 of 1971 is also recommended for repeal in this report. Section 11 amended section 2(2) of the Level Crossings Act 41 of 1960. As stated, Act 41 of 1960 was repealed by Proclamation 1121993 of 1993.

38. Railways and Harbours Acts Amendment Act 33 of 1972

2.54 This Act had 17 sections. Sections 1 to 5 and 15 were repealed by section 38 of the Conditions of Employment (South African Transport Services) Act 16 of 1983. Section 8 was repealed by section 76 of the South African Transport Services Act 65 of 1981. Section 16 was repealed by section 1 of the General Law Amendment Act 49 of 1996. Sections 6, 7, 9, 10, 11, 12, 13, 14, and 17 are still in force. These sections are recommended for repeal for the following reasons. Sections 6 and 7 amended section 2(2) and 6(1) respectively of the Level Crossings Act 41 of 1960. This Act was repealed by Proclamation 1121993 of 1993. Sections 9, 10, 11, 12, 13 and 14 amended various provisions of the Railways and Harbours Pensions Act 35 of 1971. This Act (Act 35 of 1971) was repealed by the Transnet Pension Fund Act 62 of 1990. Section 17 contains the short title and may be repealed together with the substantive provisions recommended for repeal. The SALRC recommends the repeal of this Act in its entirety.

39. Railways and Harbours Acts Amendment Act 47 of 1973

2.55 Sections 1 to 13, 18 and 19 of this Act were repealed by Acts 65 of 1981, 16 of 1983 and 49 of 1996. The provisions that are still in force, namely sections 14, 15, 16 and 17, were aimed at effecting changes to the Railways and Harbours Pensions Act 35 of 1971. Act 35 of 1971 was repealed by the Transnet Pension Fund Act 62 of 1990. For this reason, amendments in Act 47 of 1973 have become redundant. The SALRC recommends the repeal of Act 47 of 1973 in its entirety.

40. Railways and Harbours Acts Amendment Act 44 of 1974

2.56 Sections 1, 2 to 4 and 5 to 11, 16 and 17 were repealed by various statutes.⁶⁸ The remaining provisions are hereby recommended for repeal for the following reasons: sections 12 and 13 amended provisions of the Level Crossings Act 41 of 1960 which was repealed by Proclamation 1121993 of 1993; section 14 repealed section 12 of the Railways and Harbours Acts Amendment Act 41 of 1969; section 15 amended section 17(4) of the Railways and Harbours Pensions Act of 1971. As stated, Act 35 of 1971 was repealed by Act 62 of 1990.

41. Railways and Harbours Acts Amendment Act 46 of 1975

2.57 Only two sections of this Act are still in force, sections 15 and 19(1) and (2). Section 15 amended section 1 of the Railways and Harbours Pensions Act 35 of 1971. This section is recommended for repeal because Act 35 of 1971 was repealed by Act 62 of 1990. Section 15(1) provides that the Administration may, in terms of section 2 of the Railways and Harbours Control and Management (Consolidation) Act 70 of 1957, enter into agreements with the Rhodesian Railways. Act 70 of 1957 was repealed by the South African Transport Services Act 65 of 1981. Section 15(2) of Act 46 of 1975 makes provision for the retrospective application of subsection (1). These sections are recommended for repeal.

42. Railways and Harbours Acts Amendment Act 8 of 1976

2.58 The purpose of this Act was to amend and/or repeal various sections in the Railway Construction Acts,⁶⁹ the Railways and Harbours Pensions Act 35 of 1971 and the Railways and Harbours Loans Act 1 of 1973. The Railway Construction Acts whose sections were amended by Act 8 of 1976 have been recommended for repeal in this report, namely Act 57 of 1961, Act 58 of 1963, Act 5 of 1965, Act 17 of 1966 and Act 82 of 1971. For this reason, sections 20 to 31 and 37 to 46 are recommended for repeal. Sections 32 to 36 amending various sections of the Railways and Harbours Pensions Act 35 of 1971 are also recommended for repeal because Act 35 of 1971 no longer exists in the statute books. Act 35 of 1971 was repealed by section 15 of Act 62 of 1990. Section 47 amended section 2 of the Railways and Harbours Loans Act 1 of 1973. Act 1 of 1973 was repealed by the Railways and Harbours Finances and Accounts Act 48 of 1977.

43. Second Railways and Harbours Acts Amendment Act 89 of 1976

2.59 Section 2 of this Act amended section 1 of the Railways and Harbours Pensions for Non-Whites Act 43 of 1974 by inserting the definition of "Republic of South Africa". The Railways and Harbours Pensions for Non-Whites Act of 1974 amended by this Act was subsequently repealed by Transnet Pension Fund Act 62 of 1990. As a result, section 2 of the Second Railways and Harbours Acts Amendment Act 89 of 1976 no longer serves any useful purpose and it is hereby recommended for repeal.

68 By Acts 94 of 1981, 65 of 1981, 16 of 1983 and 49 of 1996.

69 The Railway Construction Act 57 of 1961, Second Railway Construction Act 58 of 1963, Railway Construction Act 5 of 1965, Railway Construction Act 17 of 1966, Railway Construction Act 82 of 1971.

44. Railways and Harbours Acts Amendment Act 69 of 1977

2.60 Initially, this Act had twenty-three sections. Sections 1 to 17 were repealed by section 76 of Act 65 of 1981. Sections 18 to 20 were repealed by section 38 of Act 16 of 1983. Section 22 was repealed by section 1 of Act 49 of 1996. Section 21 is the only provision that is still in force. This section amended section 1 of the Railway Construction Act 38 of 1968. Act 38 of 1968 is recommended for repeal and all references to it in other statutes should also be repealed. Since section 21 is the only provision that is still in force, the SALRC recommends that this Act, and not just section 21, be repealed entirely.

45. Railways and Harbours Acts Amendment Act 64 of 1978

2.61 The remaining provisions of this Act amended various sections of the Railways and Harbours Pensions Act 35 of 1971 and the Railways and Harbours Pensions for Non-Whites Act 43 of 1974. Both Acts were repealed by the Transnet Pension Fund Act 62 of 1990. The Act has no practical utility anymore and is recommended for repeal.

46. Railways and Harbours Acts Amendment Act 80 of 1979

2.62 The remaining sections of this statute amended sections of the Railways and Harbours Pensions Act 35 of 1971 and the Railway and Harbour Purchase Act 47 of 1977. The former Act was repealed by Act 62 of 1990, and the latter is recommended for repeal in Schedule 1 of this report. If the Railway and Harbour Purchase Act 47 of 1977 is repealed as recommended in this report, there would be no principal Act left to which the amendments contained in this Act apply. For this reasons, Act 80 of 1979 is hereby recommended for repeal.

List of Annexures:

Annexures

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Annexure A

Transport Acts Repeal Bill

To repeal certain laws of the Republic

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

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

2. Short title and commencement

This Act shall be called the Transport Acts Repeal Act, 2009 and comes into operation on a date determined by the President by proclamation in the *Gazette*.

Schedule 1

Number and year of law	Title or subject of law
Act 7 of 1914	Railways and Harbours Strike and Service Amendment Act, 1914
Act 37 of 1939	Railway Construction Act, 1939
Act 17 of 1945	Railway Construction Act, 1945
Act 37 of 1955	Railway Expropriation Act, 1955
Act 48 of 1957	Merchant Shipping (Certificates of Competency) Amendment Act, 1957
Act 49 of 1957	Railway Construction Act, 1957
Act 51 of 1957	National Roads and Transport (Co-ordination) Amendment Act, 1957
Act 21 of 1960	Railway Construction Act, 1960
Act 57 of 1961	Railway Construction Act, 1961
Act 19 of 1962	National Roads and Transport (Co-ordination) Amendment Act, 1962
Act 58 of 1963	Second Railway Construction Act, 1963
Act 2 of 1964	Railway Construction Act, 1964
Act 54 of 1964	Railways and Harbours Acts Amendment Act, 1964
Act 5 of 1965	Railway Construction Act, 1965
Act 17 of 1966	Railway Construction Act, 1966
Act 18 of 1966	Railways and Harbours Acts Amendment Act, 1966
Act 38 of 1968	Railway Construction Act, 1968
Act 25 of 1971	Railway Purchase Act, 1971
Act 59 of 1971	Transport (Co-ordination) Amendment Act, 1971
Act 82 of 1971	Railway Construction Act, 1971

Number and year of law	Title or subject of law
Act 83 of 1971	Second Railway Construction Act, 1971
Act 33 of 1972	Railways and Harbours Acts Amendment Act, 1972
Act 77 of 1972	Railway Construction Act, 1972
Act 28 of 1973	Sishen-Saldanha Bay Railway Construction Act, 1973
Act 47 of 1973	Railways and Harbours Acts Amendment Act, 1973
Act 71 of 1973	Railway Construction Act, 1973
Act 44 of 1974	Railways and Harbours Acts Amendment Act, 1974
Act 46 of 1974	National Road Safety Amendment Act 46 of 1974
Act 46 of 1975	Railways and Harbours Acts Amendment Act, 1975
Act 8 of 1976	Railways and Harbours Acts Amendment Act, 1976
Act 40 of 1976	National Road Safety Amendment Act, 1976
Act 72 of 1976	Sishen-Saldanha Bay Railway Construction Amendment Act, 1976
Act 99 of 1976	Saldanha Bay Harbour Acquisition and Equipment Act, 1976
Act 47 of 1977	Railway and Harbour Purchase Act, 1977
Act 69 of 1977	Railways and Harbours Acts Amendment Act, 1977
Act 73 of 1977	Transport (Co-ordination) Amendment Act, 1977
Act 64 of 1978	Railways and Harbours Acts Amendment Act, 1978
Act 80 of 1979	Railways and Harbours Acts Amendment Act, 1979
Act 16 of 1980	National Road Safety Amendment Act, 1980
Act 65 of 1980	Railway Construction Act, 1980
Act 30 of 1981	Railway Construction Act, 1981
Act 59 of 1981	National Road Safety Amendment Act, 1981
Act 61 of 1981	Second Railway Construction Act, 1981
Act 7 of 1982	Railway Construction Act, 1982
Act 75 of 1982	Second Railway Construction Act, 1982
Act 13 of 1983	South African Transport Services Amendment Act, 1983
Act 5 of 1984	South African Transport Services Amendment Act, 1984
Act 93 of 1984	Second South African Transport Services Amendment Act, 1984
Act 75 of 1985	Railway Construction Act, 1985
Act 94 of 1985	Second Railway Construction Act, 1985
Act 46 of 1986	South African Transport Services Amendment Act, 1985
Act 91 of 1987	South African Transport Services Amendment Act, 1987
Act 67 of 1991	National Road Safety Amendment Act, 1991

Schedule 2

Number and year of law	Title or subject	Extent of Repeal
Act 27 of 1930	Railways and Harbours Service and Superannuation Fund Acts Amendment Act, 1930	Section 1
Act 19 of 1931	Railways and Harbours Service and Superannuation Fund Acts Amendment Acts, 1931	Sections 1 and 2(1) and (2)
Act 49 of 1949	Railways and Harbours Acts Amendment Acts, 1949	Section 10(1) and (2), 14(2)(a),(b),(c) and (d)
Act 63 of 1951	Railways and Harbours Acts Amendment Act, 1951	Section 7
Act 45 of 1952	Railways and Harbours Acts Amendment Act, 1952	Section 1(1) and (2).
Act 62 of 1962	Railways and Harbours Acts Amendment Act, 1962	Section 4(1) and (2)
Act 7 of 1963	Railways and Harbours Acts Amendment Act, 1963	Section 2(1) and (2)
Act 6 of 1965	Railways and Harbours Acts Amendment Act, 1965	Sections 6, 7, 8 to 10, 19, 70 to 74 and 75
Act 8 of 1968	Railways and Harbours Acts Amendment Act, 1968	Section 9
Act 32 of 1969	Railways and Harbours Acts Amendment Act, 1969	Sections 1, 2 and 6
Act 89 of 1976	Second Railways and Harbours Acts Amendment Act, 1976	Section 2
Act 6 of 1982	South African Transport Services Amendment Act, 1982	Sections 6, 7, 8, 9, 10, 18, 19 and 20
Act 44 of 1985	South African Transport Services Amendment Act, 1985	Sections 2 to 11, 21, 30 and 31
Act 52 of 1991	Transnet Limited Amendment Act, 1991	Sections 1, 2, 3, 4, and 5
Act 82 of 1995	Transport Second General Amendment Act, 1995	Section 1 and 2

Annexure B

Statutes administered by the Department of Transport

Number	Name of Act, number and year
1.	Railways and Harbours Service Act 28 of 1912
2.	Railways and Harbours Strike and Service Amendment Act 7 of 1914
3.	Railways and Harbours Service Act Amendment and Further Provision Act 33 of 1917
4.	Railways and Harbours Service and Superannuation Fund Acts Amendment Act 27 of 1930
5.	Railways and Harbours Service and Superannuation Fund Acts Amendment Act 19 of 1931
6.	Railways and Harbours Acts Amendment Act 18 of 1938
7.	Railway Construction Act 37 of 1939
8.	Railways and Harbours (Pensions and Service) Amendment Act 15 of 1940
9.	Advertising on Roads and Ribbon Development Act 21 of 1940 (assigned to provinces)
10.	Railways and Harbours Pensions Amendment Act 26 of 1941
11.	National Roads and Ribbon Development Amendment Act 22 of 1944
12.	Railways and Harbours Acts Amendment Act 23 of 1944
13.	Railways and Harbours Acts Amendment Act 16 of 1945
14.	Railway Construction Act 17 of 1945
15.	Carriage by Air Act 17 of 1946
16.	Transport (Co-ordination) Act 44 of 1948
17.	Railways and Harbours Acts Amendment Act 49 of 1949
18.	Merchant Shipping Act 57 of 1951
19.	Railways and Harbours Acts Amendment Act 63 of 1951
20.	Advertising on Roads and Ribbon Development Amendment Act 28 of 1952
21.	Railways and Harbours Acts Amendment Act 45 of 1952
22.	Railways and Harbours Special Pensions Act 36 of 1955
23.	Railway Expropriation Act 37 of 1955
24.	Railways and Harbours Acts Amendment Act 15 of 1956
25.	Railways and Harbours Acts Amendment Act 34 of 1957
26.	Merchant Shipping (Certificates of Competency) Amendment Act 48 of 1957
27.	Railway Construction Act 49 of 1957
28.	National Roads and Transport (Co-ordination) Amendment Act 51 of 1957
29.	Merchant Shipping Amendment Act 30 of 1959
30.	Railways and Harbours Acts Amendment Act 44 of 1959

Number	Name of Act, number and year
31.	Railway Construction Act 21 of 1960
32.	Railway Construction Act 57 of 1961
33.	Railways and Harbours Acts Amendment Act 62 of 1961
34.	Advertising on Roads and Ribbon Development Amendment Act 16 of 1962
35.	National Roads and Transport (Co-ordination) Amendment Act 19 of 1962
36.	Railways and Harbours Acts Amendment Act 62 of 1962
37.	Aviation Act 74 of 1962
38.	Railways and Harbours Acts Amendment Act 7 of 1963
39.	Merchant Shipping Amendment Act 40 of 1963
40.	Second Railways Construction Act 58 of 1963
41.	Railway Construction Act 2 of 1964
42.	Carriage by Air Amendment Act 5 of 1964
43.	Railways and Harbours Acts Amendment Act 54 of 1964
44.	Railway Construction Act 5 of 1965
45.	Railways and Harbours Acts Amendment Act 6 of 1965
46.	Aviation Amendment Act 12 of 1965
47.	Merchant Shipping Amendment Act 13 of 1965
48.	Advertising on Roads and Ribbon Development Amendment Act 16 of 1966
49.	Railway Construction Act 17 of 1966
50.	Railways and Harbours Acts Amendment Act 18 of 1966
51.	Railways and Harbours Acts Amendment Act 8 of 1968
52.	Railway Construction Act 38 of 1968
53.	Railways and Harbours Acts Amendment Act 32 of 1969
54.	Second Railways and Harbours Acts Amendment Act 41 of 1969
55.	Merchant Shipping Amendment Act 42 of 1969
56.	Aviation Amendment Act 83 of 1969
57.	Railways and Harbours Acts Amendment Act 57 of 1970
58.	Railways and Harbours Acts Amendment Act 24 of 1971
59.	Railway Purchase Act 25 of 1971
60.	National Roads Act 54 of 1971
61.	Transport (Co-ordination) Amendment Act 59 of 1971
62.	Railway Construction Act 82 of 1971
63.	Second Railway Construction Act 83 of 1971

Number	Name of Act, number and year
64.	Second Railways and Harbours Acts Amendment Act 85 of 1971
65.	National Road Safety Act 9 of 1972 (assigned to provinces)
66.	Civil Aviation Offences Act 10 of 1972
67.	Black Transport Services Amendment Act 11 of 1972
68.	Harbour Construction Act 28 of 1972
69.	Railways and Harbours Acts Amendment Act 33 of 1972
70.	Railway Construction Act 77 of 1972
71.	Sishen-Saldanha Bay Railway Construction Act 28 of 1973
72.	Saldanha Bay Harbour Construction Act 29 of 1973
73.	Railways and Harbours Acts Amendment Act 47 of 1973
74.	Railway Construction Act 71 of 1973
75.	Merchant Shipping Amendment Act 24 of 1974
76.	Railways and Harbours Acts Amendment Act 44 of 1974
77.	Railways and Harbours Pensions Further Amendment Act 45 of 1974
78.	National Road Safety Amendment Act 46 of 1974
79.	Black Transport Services Amendment Act 47 of 1974
80.	Railways and Harbours Acts Amendment Act 46 of 1975
81.	Merchant Shipping Amendment Act 5 of 1976
82.	Advertising on Roads and Ribbon Development Amendment Act 6 of 1976
83.	Railways and Harbours Acts Amendment Act 8 of 1976
84.	National Road Safety Amendment Act 40 of 1976
85.	Sishen-Saldanha Bay Railway Construction Amendment Act 72 of 1976
86.	Second Railways and Harbours Acts Amendment Act 89 of 1976
87.	Saldanha Bay Harbour Acquisition and Equipment Act 99 of 1976
88.	Railway and Harbour Purchase Act 47 of 1977
89.	Railways and Harbours Acts Amendment Act 69 of 1977
90.	Merchant Shipping Amendment Act 70 of 1977
91.	Transport (Co-ordination) Amendment Act 73 of 1977
92.	Road Transportation Act 74 of 1977 (partially assigned to provinces)
93.	Urban Transport Act 78 of 1977 (partially assigned to provinces)
94.	Railway and Harbour Purchase Amendment Act 97 of 1977
95.	Merchant Shipping Amendment Act 62 of 1978
96.	Civil Aviation Offences Amendment Act 63 of 1978

Number	Name of Act, number and year
97.	Railways and Harbours Acts Amendment Act 64 of 1978
98.	Advertising on Roads and Ribbon Development Amendment Act 2 of 1979
99.	Railways and Harbours Acts Amendment Act 80 of 1979
100.	Carriage by Air Amendment Act 81 of 1979
101.	Road Transportation Amendment Act 93 of 1979
102.	National Road Safety Amendment Act 16 of 1980
103.	Aviation Amendment Act 64 of 1980
104.	Railway Construction Act 65 of 1980
105.	Railways and Harbours Acts Amendment Act 67 of 1980
106.	Road Transportation Amendment Act 91 of 1980
107.	Marine Traffic Act 2 of 1981
108.	Merchant Shipping Amendment Act 3 of 1981
109.	Civil Aviation Offences Amendment Act 4 of 1981
110.	Marine Pollution (Control and Civil Liability) Act (previous title: Prevention and Combating of Pollution of the Sea by Oil Act) 6 of 1981 (partly)
111.	Railways and Harbours Acts Amendment Act 29 of 1981
112.	Railway Construction Act 30 of 1981
113.	National Road Safety Amendment Act 59 of 1981
114.	Second Railways and Harbours Acts Amendment Act 60 of 1981
115.	Second Railway Construction Act 61 of 1981
116.	Aviation Amendment Act 63 of 1981
117.	Road Transportation Amendment Act 64 of 1981
118.	Merchant Shipping Amendment Act 3 of 1982
119.	Aviation Amendment Act 4 of 1982
120.	South African Transport Services Amendment Act 6 of 1982
121.	Railways Construction Act 7 of 1982
122.	Second Railway Construction Act 75 of 1982
123.	Black Transport Services Amendment Act 76 of 1982
124.	Transport Services for Coloured Persons and Indians Amendment Act 77 of 1982
125.	Road Transportation Amendment Act 78 of 1982
126.	Transport Services Unauthorized Expenditure Act 79 of 1982
127.	Marine Traffic Amendment Act 5 of 1983
128.	Road Transportation Amendment Act 8 of 1983

Number	Name of Act, number and year
129.	South African Transport Services Amendment Act 13 of 1983
130.	Transport Services Unauthorized Expenditure Act 80 of 1983
131.	Aviation Amendment Act 1 of 1984
132.	South African Transport Services Amendment Act 5 of 1984
133.	Second South African Transport Services Amendment Act 93 of 1984
134.	International Convention for Safe Containers Act 11 of 1985 (partly)
135.	Merchant Shipping Amendment Act 25 of 1985
136.	Advertising on Roads and Ribbon Development Amendment Act 43 of 1985
137.	South African Transport Services Amendment Act 44 of 1985
138.	Railway Construction Act 75 of 1985
139.	Second Railway Construction Act 94 of 1985
140.	Carriage of Goods by Sea Act 1 of 1986
141.	Marine Pollution (Prevention of Pollution from Ships) Act (Previous title: International Convention for the Prevention of Pollution from Ships Act) 2 of 1986
142.	South African Transport Services Amendment Act 46 of 1986
143.	International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties Act (new title: Marine Pollution (Intervention) Act) 64 of 1987
144.	South African Transport Services Amendment Act 91 of 1987
145.	South African Transport Services Amendment Act 11 of 1988
146.	South African Transport Services Conditions of Service Act 41 of 1988
147.	South African Roads Board Act 74 of 1988
148.	Transport Deregulation Act 80 of 1988 (partly assigned to provinces)
149.	Merchant Shipping Amendment Act 3 of 1989
150.	Legal Succession to the South African Transport Services Act 9 of 1989 (partly)
151.	Road Traffic Act 29 of 1989 (only in so far as not substituted by Act 93 of 1996) (partly assigned to provinces)
152.	Transnet Pension Fund Act 62 of 1990 (partly)
153.	Urban Transport Amendment Act 77 of 1990
154.	Air Services Licensing Act 115 of 1990
155.	Transnet Limited Amendment Act 52 of 1991
156.	National Road Safety Amendment Act 67 of 1991
157.	Transnet Limited Second Amendment Act 110 of 1991
158.	Urban Transport Amendment Act 14 of 1992
159.	Air Services Licensing Amendment Act 15 of 1992

Number	Name of Act, number and year
160.	Aviation Amendment Act 16 of 1992
161.	Merchant Shipping Amendment Act 18 of 1992
162.	Legal Succession to the South African Transport Services Amendment Act 47 of 1992
163.	Transport General Amendment Act 86 of 1992
164.	Marine Traffic Amendment Act 38 of 1993
165.	Airports Company Act 44 of 1993
166.	Air Traffic and Navigation Services Company Act 45 of 1993
167.	Convention on the International Recognition of Rights in Aircraft Act 59 of 1993
168.	International Air Services Act 60 of 1993
169.	Maritime Zones Act 15 of 1994
170.	Shipping and Civil Aviation Laws Rationalisation Act 28 of 1994
171.	South African Roads Board Amendment Act 15 of 1995
172.	Transport General Amendment Act 16 of 1995
173.	Legal Succession to the South African Transport Services Amendment Act 43 of 1995
174.	Transport Second General Amendment Act 82 of 1995
175.	Air Services Licensing Amendment Act 83 of 1995
176.	Transport Advisory Council Abolition Act 9 of 1996
177.	International Air Services Amendment Act 10 of 1996
178.	Road Accident Fund Act 56 of 1996
179.	National Road Traffic Act 93 of 1996
180.	Wreck and Salvage Act 94 of 1996
181.	Aviation Laws Amendment Act 98 of 1996
182.	Shipping General Amendment Act 23 of 1997
183.	Aviation Laws Amendment Act 82 of 1997
184.	Airports Company Amendment Act 2 of 1998
185.	Cross-Border Road Transport Act 4 of 1998
186.	South African Maritime Safety Authority Act 5 of 1998
187.	South African Maritime Safety Authority Levies Act 6 of 1998
188.	The South African National Roads Agency Limited and National Roads Act 7 of 1998
189.	National Road Traffic Amendment Act 8 of 1998
190.	Transport Appeal Tribunal Act 39 of 1998
191.	South African Civil Aviation Authority Act 40 of 1998
192.	South African Civil Aviation Authority Levies Act 41 of 1998

Number	Name of Act, number and year
193.	National Land Transport Interim Arrangements Act 45 of 1998
194.	Administrative Adjudication of Road Traffic Offences Act 46 of 1998
195.	Road Traffic Laws Rationalisation Act 47 of 1998
196.	Shipping Laws Amendment Act 57 of 1998
197.	Ship Registration Act 58 of 1998
198.	Road Transport Appeal Matters Amendment Act 70 of 1998
199.	Road Accident Fund Commission Act 71 of 1998
200.	Port of Ngqura Act 77 of 1998
201.	Road Traffic Management Corporation Act 20 of 1999
202.	National Road Traffic Amendment Act 21 of 1999
203.	Administrative Adjudication of Road Traffic Offences Amendment Act 22 of 1999
204.	South African Airways Unallocatable Debt Act 7 of 2000 (partly)
205.	Road Accident Fund Commission Amendment Act 18 of 2000
206.	National Land Transport Transition Act 22 of 2000
207.	Administrative Adjudication of Road Traffic Offences Amendment Act 24 of 2000
208.	Road Traffic Management Corporation Amendment Act 25 of 2000
209.	South African Rail Commuter Corporation Limited Financial Arrangements Act 64 of 2000
210.	Sea Transport Documents Act 65 of 2000
211.	Airports Company Amendment Act 14 of 2001
212.	Road Accident Fund Amendment Act 15 of 2001
213.	National Land Transport Transition Amendment Act 31 of 2001
214.	National Railway Safety Regulator Act 16 of 2002
215.	Road Accident Fund Amendment Act 43 of 2002
216.	South African Maritime and Aeronautical Search and Rescue Act 44 of 2002
217.	Administrative Adjudication of Road Traffic Offences Amendment Act 72 of 2002
218.	National Road Traffic Amendment Act 20 of 2003

Annexure C

List of respondents to the Discussion Paper 114

1. The Minister of Transport, the Honourable Mr JT Radebe
2. The Department of Transport
3. The Director-General: Department of Justice and Constitutional Development, Advocate Menzi Simelane
4. Senior Legal Adviser, Transnet Freight Rail Legal Services, Mr Gert Boshoff
5. The MEC: Transport, Roads and Public Works (Northern Cape), KD Molusi
6. The Head of Department of Roads and Transport (Mpumalanga Provincial Government)

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