



**DISCUSSION PAPER 127**

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

**PROJECT 25**

**OCTOBER 2011**

**CLOSING DATE FOR COMMENT:  
31 JANUARY 2012**

**ISBN: 978-0-621-40469-2**

## Introduction

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

The members of the SALRC are –

The Honourable Madam Justice Yvonne Mokgoro (Chairperson)  
The Honourable Mr Justice Willie Seriti (Vice Chairperson)  
Professor Cathi Albertyn  
The Honourable Mr Justice Dennis Davis  
Mr Tembeka Ngcukaitobi  
Advocate Dumisa Ntsebeza SC  
Professor PJ Schwikkard  
Advocate Mahlape Sello

The Secretary of the SALRC is Mr Michael Palumbo. The project leader responsible for this Investigation is Prof PJ Schwikkard. The researcher who was assigned to this investigation was Adv Tshepang Monare who has since assumed duty at the Legal Aid South Africa.

On 31 July 2008, Ms BS Mabandla, the then Minister of Justice and Constitutional Development, appointed the following advisory committee members who assisted the SALRC to develop this discussion paper namely:

Prof Louis Kotze (North-West University, Potchefstroom Campus)  
Mr Tumai Murombo (University of Witwatersrand)  
Ms Olivia Lefenya (North-West University, Mafikeng Campus)  
Prof Alexander Paterson (University of Cape Town)  
Prof Loretta Feris (University of Cape Town)  
Prof Werner Scholtz (North-West University, Potchefstroom Campus)

Correspondence should be addressed to:

The Secretary  
South African Law Reform Commission  
Private Bag X668  
Pretoria  
0001

Telephone: (012) 392-9550 or (012) 392 9555  
Fax: (012) 323-4406  
E-mail: [gmoloi@justice.gov.za](mailto:gmoloi@justice.gov.za)  
Website: <http://salawreform.justice.gov.za>

## **Preface**

This discussion paper has been prepared to elicit responses from respondents on the SALRC's preliminary findings and proposals contained in this discussion paper. The SALRC has liaised with the Department of Tourism in the phases of this investigation leading to the development of this discussion paper and acknowledges the valuable assistance it received, particularly from officials in the Legal Services section. This discussion paper was developed to serve as a basis for the SALRC's further deliberations in the development of a report. This discussion paper contains the SALRC's preliminary proposals. The views, conclusions and recommendations that follow should not be regarded as the SALRC's final views. The discussion paper (which includes draft legislation) is published in full so as to provide persons and bodies wishing to comment with sufficient background information to enable them to place focused submissions before the SALRC.

The SALRC will assume that respondents agree to the SALRC quoting from or referring to comments and attributing comments to respondents, unless representations are marked confidential. Respondents should be aware that the SALRC may in any event be required to release information contained in representations under the Promotion of Access to Information Act 2 of 2000. Respondents are requested to submit written comment and representations to the SALRC by 31 January 2012 at the address appearing on the previous page. Comment can be sent by e-mail or by post.

This discussion paper is also available on the Internet at <http://salawreform.justice.gov.za/dpapers.htm>

Any enquiries should be addressed to Ms Maureen Moloji. Contact particulars appear on the previous page.

## **Preliminary proposals and questions for comments**

1. The SALRC has been mandated with the task of revising the South African statute book with a view to identifying and recommending for repeal or amendment legislation or provisions in legislation that are inconsistent with the equality clause in the Constitution, redundant or obsolete. Pursuant to this mandate, the SALRC has established that there are approximately 2800 Acts in the statute book. The SALRC has identified four statutes administered by the Department of Tourism (see Annexure B). After analyzing these statutes, the SALRC proposes that sections 1 and 13 of the Tourism Act 72 of 1993 be amended as set out in the proposed Tourism Amendment Bill contained in Annexure A to this discussion paper, for the reasons set out in Chapter 2 of this discussion paper.

2. Furthermore, it is possible that the statute recommended for amendment is still useful, and should thus not be amended. Moreover, it is also possible that there are statutes or provisions that are not identified for amendment or repeal in this discussion paper but are of no practical utility and could be amended or repealed. These should be identified and brought to the attention of the SALRC.

**INDEX**

<b>South African Law Reform Commission</b>	(ii)
<b>Preface</b>	(iii)
<b>Preliminary recommendations</b>	(iv)
<b>Chapter 1</b>	
<b>Background and scope of Project 25</b>	1
A. Introduction	1
(a) The object of the South African Law Reform Commission	1
(b) History of investigation	1
B. What is statutory law revision?	2
C. The initial investigation	6
D. Scope of the project	7
E. Assistance by government departments and stakeholders	8
F. Consultation with the Department of Communications	9
<b>Chapter 2</b>	
<b>Review of legislation administered by the Department of Tourism</b>	10
A. Introduction	10
B. Evaluation of Legislation administered by the Department of Tourism	12
1. Tourism Act 72 of 1993	12
2. Tourism Amendment Act 105 of 1996	13
3. Tourism Amendment Act 8 of 2000	14
4. Tourism Second Amendment Act 70 of 2000	14
<b>Annexure A: Draft Bill</b>	15
<b>Annexure B: Legislation administered by the Department of Tourism</b>	17

## CHAPTER 1

### BACKGROUND AND SCOPE OF PROJECT 25

#### A INTRODUCTION

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

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

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

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

##### (b) History of the investigation

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

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

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

1.6 With the advent of constitutional democracy in 1994, the legislation enacted prior to that year remained in force. This has led to a situation where numerous pre1994 provisions are constitutionally non-compliant. The matter is compounded by the fact that some of these provisions were enacted to promote and sustain the policy of apartheid. A recent provisional audit, by the SALRC, of national legislation remaining on the statute book since 1910, established that there are in the region of 2 800 individual statutes, comprising principal Acts, amendment Acts, private Acts, additional or supplementary Acts and partially repealed Acts. A substantial number of these Acts serve no useful purpose anymore, while many others still contain unconstitutional provisions that have already given rise to expensive and sometimes protracted litigation.

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

1.7 Statutory law revision ordinarily focuses on the identification and repeal of statutes that are no longer useful in practice. As the Law Reform Commission for England and Wales explains, the purpose of statute revision is to modernise and simplify statutes that need updating, and to reduce the size of the statute book to the benefit of legal professionals and

other people who use it.<sup>1</sup> Revision lessens the chance of people being misled by redundant laws that still appear in the statute book and seem to be relevant or “live”. If statutory provisions appear in the statute book and are referred to in legal textbooks, readers may reasonably assume they still serve a purpose.

1.8 As is the case in other jurisdictions (and will be evident in this review), once legislation is deemed no longer to apply, the question arises whether it should remain in the statute book or be repealed.<sup>2</sup> Usually such legislation no longer has any legal effect and is considered obsolete, redundant, or spent. A statutory provision may be identified for repeal because the grounds for which it was passed have lapsed or are presently remedied by another measure or provision.

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

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

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

---

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

<sup>2</sup> See the *Background Notes on Statute Law Repeals* compiled by the Law Commission for England and Wales, par 6 accessed from [http://lawcommission.justice.gov.uk/docs/background\\_notes.pdf](http://lawcommission.justice.gov.uk/docs/background_notes.pdf) on 28 May 2008.

<sup>3</sup> See the *Background Notes on Statute Law Repeals* compiled by the Law Commission for England and Wales, par 7 accessed from [http://lawcommission.justice.gov.uk/docs/background\\_notes.pdf](http://lawcommission.justice.gov.uk/docs/background_notes.pdf) on 28 May 2008.



- (h) provisions that are self-evidently spent - e.g. a one-off statutory obligation to do something becomes spent once the required act has duly been done;
- (i) powers that have never been exercised over a period of many years or where any previous exercise is now spent.

1.11 The Law Commission of India notes that in England the terms “expired”, “spent”, “repealed in general terms”, “virtually repealed”, “superseded”, and “obsolete” were defined in memoranda to Statute Law Revision Bills as follows:<sup>4</sup>

- Expired – that is, enactments which having been originally limited to endure only for a specified period by a distinct provision, have not been either perpetuated or kept in force by continuance, or which have merely had as their object the continuance of previous temporary enactments for periods now gone by effluxion of time
- Spent – that is, enactments spent or exhausted in operation by the accomplishment of the purposes for which they were passed, either at the moment of their first taking effect or on the happening of some event or on the doing of some act authorised or required
- Repealed in general terms – that is, repealed by the operation of an enactment expressed only in general terms, as distinguished from an enactment specifying the Acts which it is to operate
- Virtually repealed – where an earlier enactment is inconsistent with, or is rendered nugatory by, a later one
- Superseded – where a later enactment effects the same purposes as an earlier one by repetition of its terms or otherwise
- Obsolete – where the state of things contemplated by the enactment has ceased to exist, or the enactment is of such a nature as to be no longer capable of being put in force, regard being had to the alteration of political or social circumstances.

1.12 Statutory provisions usually become redundant as time passes.<sup>5</sup> Generally, the redundancy of legislation is not signalled by a single occurrence; rather, legislation is often

---

<sup>4</sup> Law Commission of India *Ninety-Sixth Report on Repeal of Certain Obsolete Central Acts* March 1984; p 3 of Chapter 2 (p 6 of 21) accessed from <http://lawcommissionofindia.nic.in/51-100/Report96.pdf> on 29 August 2007.

simply overtaken by social and economic changes. Inevitably some provisions fade away more quickly than others. Relatively short-lived provisions include commencement and transitional provisions and those that confer powers to be exercised during the period between the passing of legislation and its implementation (in some jurisdictions known as “pump-priming” provisions). Provisions that provide for delegated legislation-making powers might also become unnecessary over time, or a committee or board established by a statute might no longer be required.

1.13 Substantial revision of statutory law is possible in South Africa because of the general savings provisions of section 12(2) of the South African Interpretation Act. The South African Interpretation Act, 1957 (Act 33 of 1957) mirrors section 16(1) of the Interpretation Act of 1978 of England and Wales.<sup>6</sup> Section 12(2) of the South African Interpretation Act provides that where a law repeals any other law, then unless the contrary intention appears, the repeal shall not:

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

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

---

<sup>5</sup> *Background Notes on Statute Law Repeals* compiled by the Law Commission for England and Wales, par 9 and 10 accessed from [http://lawcommission.justice.gov.uk/docs/background\\_notes.pdf](http://lawcommission.justice.gov.uk/docs/background_notes.pdf) on 28 May 2008.

<sup>6</sup> *Background Notes on Statute Law Repeals* compiled by the Law Commission for England and Wales, par 8 accessed from [http://lawcommission.justice.gov.uk/docs/background\\_notes.pdf](http://lawcommission.justice.gov.uk/docs/background_notes.pdf) on 28 May 2008.

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

### **C. THE INITIAL INVESTIGATION**

1.15 In the early 2000s the SALRC and the German Agency for Technical Cooperation commissioned the Centre for Applied Legal Studies (CALs) of the University of the Witwatersrand to conduct a study to determine the feasibility, scope and operational structure of revising the South African statute book for constitutionality, redundancy and obsolescence. CALs pursued four main avenues of research in their study conducted in 2001:<sup>7</sup>

- First, a series of role-player interviews were conducted with representatives of all three tiers of government, Chapter 9 institutions, the legal profession, academia and civil society. These interviews revealed a high level of support for the project.
- Second, an analysis of all Constitutional Court judgments until 2001 was undertaken. Schedules reflecting the nature and outcome of the cases, and the statutes impugned were compiled. The three most problematic categories of legislative provision were identified, and an analysis made of the Constitutional Court’s jurisdiction in relation to each category. The three categories were: reverse onus provisions; discriminatory provisions; and provisions that infringe the principle of the separation of powers. Guidelines summarising the Constitutional Court’s jurisprudence were compiled in respect of each category.
- Third, sixteen randomly selected national statutes were tested against these guidelines. The outcome of the test was then compared against a control audit that tested the same statutes against the entire Bill of Rights, excluding socio-

---

<sup>7</sup> “Feasibility and Implementation Study on the Revision of the Statute Book” prepared by the Law & Transformation Programme of the Centre for Applied Legal Studies of the University of the Witwatersrand.

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.

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

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

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

1.17 This investigation focuses not only on obsolescence or redundancy of provisions but also on the question of the constitutionality of provisions in statutes. In 2004 Cabinet endorsed that the highest priority be given to reviewing provisions that would result in discrimination as defined in section 9 of the Constitution which prohibits unfair discrimination on the basis of race, gender, sex, pregnancy, marital status, ethnic and social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth.

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

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

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

1.20 The SALRC decided that the project should proceed by scrutinising and revising national legislation which discriminates unfairly.<sup>8</sup> However, even the section 9 inquiry is fairly limited, dealing primarily with statutory provisions that are blatantly in conflict with section 9 of the Constitution. This is necessitated by, among other considerations, time and capacity. It is not foreseen that the SALRC and government departments will have capacity in the foreseeable future to revise all national statutes or the entire legislative framework to determine whether they contain unconstitutional provisions.

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

1.21 In 2004, Cabinet endorsed the proposal that government departments should be requested to participate in and contribute to this investigation. In certain instances, legal researchers cannot decide whether to recommend a provision for repeal unless they have access to factual information that might be considered "inside" knowledge – of the type usually accessible within a specific department or organisation. Examples include savings or transitional provisions that are instituted to preserve the status quo until an office-holder ceases to hold office or until a loan has been repaid. In such cases, the consultation paper drafted by the SALRC invited the department or organisation being consulted to supply the necessary information. The aim of the publication of discussion papers in this investigation is likewise to determine whether departments and stakeholders agree with and support the proposed findings and legislative amendment or repeal proposals. Any assistance that can be

---

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

given to fill in the gaps will be much appreciated. It is important that the departments concerned take ownership over this process. This will ensure that all relevant provisions are identified and dealt with responsively and without creating unintended negative consequences.

## **F. CONSULTATION WITH THE DEPARTMENT OF TOURISM**

1.22 The SALRC submitted its consultation paper containing preliminary findings and proposals to the DT on 27 January 2011 for consideration. The purpose of the consultation paper was to consult with the DT on the preliminary findings and proposals contained in the consultation paper and for the department to confirm that it has no objection to the provisionally proposed amendments. On 21 June 2011 the DT submitted a letter acknowledging receipt of the consultation paper and an indication that the comments will be taken into account in the process of drafting new tourism legislation. The SALRC acknowledges the valuable assistance it received from the Legal Service Directorate of the former Department of Environmental Affairs and Tourism.

## Chapter 2

# Amendment of legislation administered by the Department of Tourism

### A. Introduction

2.1 In his statement on the new Cabinet, President Zuma announced on 10 May 2009, amongst others, that the Department of Water Affairs and Forestry became the Department of Water and Environmental Affairs and that a new Department of Tourism was created.<sup>9</sup> The Department of Environmental Affairs and Tourism indicates in its 2009/2010 Annual Report that in the period 1 April 2009 to 31 March 2010, both the Department of Environmental Affairs and the Department of Tourism shared a vote. This followed the announcement of the new Cabinet by the President on 10 May 2009. The announcement of the new Cabinet followed allocation of the vote, which was subsequently shared by both departments.<sup>10</sup>

2.2 The core business of South African Tourism, established in terms of the Tourism Act 72 of 1993, is to market South Africa as a tourism destination of choice.<sup>11</sup> Key activities include the promotion of tourism by encouraging persons to undertake travels to and in the Republic of South Africa, ensuring the highest attainable quality standards of tourism services and facilities, and (until the end of 2009/10, when the Tourism Empowerment Council of South Africa was transferred to the Department of Tourism) facilitating tourism sector transformation. Key objectives include increasing the annual volume of international tourists visiting the country, increasing the average spend per tourist, increasing the international brand awareness of South Africa as a travel destination and increasing the number of graded accommodation establishments. Funding is primarily used for running marketing offices in market countries, promoting local tourism, which helps reduce seasonality in the industry, facilitating the grading of products and services, and implementing the Tourism Black Economic Empowerment (BEE) Charter and scorecard.

---

<sup>9</sup> See [http://www.info.gov.za/events/2009/new\\_cabinet.htm](http://www.info.gov.za/events/2009/new_cabinet.htm) accessed on 19 January 2011.

<sup>10</sup> *Department of Environmental Affairs and Tourism Annual Report 2009/2010* at p 3 see <http://www.environment.gov.za/AboutUs/StratDoc/AnnRep.html> accessed on 19 January 2011.

<sup>11</sup> *Department of Environmental Affairs and Tourism Annual Report 2009/2010* at p 14.

2.3 The newly formed Department of Tourism aims to fulfill the national role of Government towards creating the conditions for the growth and development of tourism, thereby creating jobs and entrepreneurial opportunities and encouraging the meaningful participation of previously disadvantaged individuals.

2.4 The SALRC has identified for purposes of the review four Acts that are administered by the Department of Tourism. The SALRC, after conducting an investigation to determine whether any of these Acts or provisions therein may be repealed or amended as a result of redundancy, obsolescence or unconstitutionality in terms of section 9 of the Constitution, has identified one Act that may be amended. This Act is contained in the proposed Tourism Amendment Bill (see Annexure A). This Chapter contains reasons why this statute may be amended.

2.5 In response to the consultation paper the Department of Tourism responded as follows on 21 June 2011:

Thank you very much for your comments and for your proposals on the amendment of the Tourism Act, 1993 (the Act). The Department of Tourism is currently in the process of reviewing the Act. Our intention is to repeal it and to create a legal framework that will create a conducive environment for the sustainable growth and development of tourism within South Africa. Your comments will be taken consideration in the process of drafting the legislation.

The SALRC is aware that the Department of Tourism has published the Tourism Bill of 2011 for comment in Notice 520 of 5 August 2011 and that the process is still ongoing. The SALRC has nevertheless reviewed the Tourism Act 72 of 1993 with all its amendments.



## **B. Evaluation of Legislation administered by the Department of Tourism**

### **1. Tourism Act 72 of 1993**

2.6 The principal aim of the Act is to provide for the promotion of tourism to and in South Africa. It also aims to provide for regulation and rationalization of the tourism industry; measures aimed at the maintenance and enhancement of the standards of facilities and services hired out or made available to tourists; and the co-ordination and rationalization of the activities of persons who are active in the tourism industry. It further establishes a board with legal personality which is competent and obliged to exercise, perform and carry out certain powers, functions and duties.

2.7 The Act also authorizes the Minister to establish a grading and classification scheme in respect of accommodation establishments, to authorize the Minister to establish schemes for prescribed sectors of the tourism industry; to make provision for the registration of tourist guides; to prohibit any person to act for gain as a tourist guide unless he has been registered as a tourist guide in terms of the Act; to authorize the Minister to make regulations; and to provide for incidental matters.

2.8 It should be noted that the Act is largely constitutive as the majority of its provisions deal with the establishment of the South African Tourism Board and its powers in regulating tourism and ancillary services.

2.9 In terms of section 1 “department” means the Department of Environmental Affairs and Tourism. As was seen in the introductory paragraph to this Chapter, in May 2009 changes were effected to Government Departments and new departments were created. A separate Department of Tourism was created. Section 1 therefore needs to be amended and the term “Department” should be defined as the “Department of Tourism”.

2.10 In terms of section 1 “Minister” means the Minister of Environmental Affairs and Tourism. This section should be amended and the term “Minister” should be defined as “Minister of Tourism”.

2.11 In terms of section 1 the term “tourist guide” means any person who for reward, whether monetary or otherwise, accompanies any person who travels within or visits any

place within the Republic and who furnishes such a person with information or comments with regard to any matter. The SALRC suggests that the term “tourist guide” should be amended to refer to a tourist guide registered in terms of section 21A of the Tourism Act 72 of 1993.

2.12 In terms of section 13 of the Tourism Act of 1993, the South African Tourism Board, in order to achieve its objects, may, among other things, negotiate or co-operate with the Board for Public Resorts referred to in section 1 of the Extension of Public Resorts Ordinance Act 105 of 1990. The Extension of Public Resorts Ordinance Act of 1990 was repealed by section 6 of the Overvaal Resorts Limited Act 127 of 1993. Section 1 of the latter Act defines “board” as the board for Public Resorts referred to in section 5 of the Public Resorts Ordinance 1969 (Ordinance 18 of 1969) (Transvaal). The SALRC, therefore, recommends that section 13 of the Tourism Act 72 of 1993 be amended to comply with the reference as stipulated in section 1 of the Overvaal Resorts Limited Act of 1993.

## **2. *Tourism Amendment Act 105 of 1996***

2.13 The purpose of this amendment Act is to amend the Tourism Act 72 of 1993, relating to the definitions, to restate the object of the board established by that Act, to provide for the representation of the provinces on that board and to make further provisions regarding the disqualification from membership of the board.

2.14 The Act also aims to withdraw certain powers of the board which relates to matters which have in terms of the Constitution been assigned to the provinces, to provide that the Act shall apply throughout the Republic and to circumscribe the relationship of the said board with the Department of Tourism with regard to the promotion of tourism and to make provision for matters connected therewith.

2.15 None of the changes are inconsistent with the Constitution. This amendment Act will ensure legal certainty. It is therefore proposed that the amendment Act be retained

### **3. *Tourism Amendment Act 8 of 2000***

2.16 The purpose of the Act is to amend the Tourism Act 72 of 1993, so as to further regulate the composition of the South African Tourism Board, to further regulate the convening of an extraordinary meeting of the board and to provide for measures to promote and maintain a sound working relationship between the board and the provinces.

2.17 Since the principal Act is still in force, it is proposed that for legal certainty the amendment Act be retained.

### **4. *Tourism Second Amendment Act 70 of 2000***

2.18 The purpose of this Act is to amend the Tourism Act 72 of 1993 so as to insert certain definitions, to further provide for the training and registration of tourist guides, to make provision for a code of conduct and ethics for tour guides and to regulate the procedure for lodging complaints.

2.19 The Act seeks to make provision for the endorsement of certain registers in appropriate cases, to provide for disciplinary measures, appeals and reviews, to criminalise certain conduct, to provide for transitional matters and to provide for matters connected therewith.

2.20 The amendment Act does not contain any provision that is obsolete or redundant. Since the principal Act is still in force, it is proposed that for legal certainty the amendment Act be retained.

## Annexure A

### TOURISM AMENDMENT BILL

#### GENERAL EXPLANATORY NOTES:

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

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

#### To amend certain laws of the Republic

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

#### **Amendment of section 1 of Act 72 of 1993, as amended by Act 105 of 1996.**

1. Section 1 of the Tourism Act, 1993 (hereinafter referred to as the principal Act), is amended-
  - (a) By the substitution for the definition of for the definition of "Department" of the following definition:
 

"Department" means the Department of Tourism;
  - (b) By the substitution for the definition of "Minister" of the following definition:
 

"Minister" means the Minister of Tourism;
  - (c) By the substitution for the definition of "tourist guide" of the following definition:
 

"tourist guide" means any person registered in terms of section 21A of this Act, who for reward, whether monetary or otherwise, accompanies any person who travels within or visits any place within the Republic and who furnishes such person with information or comments with regard to any matter;"

#### **Amendment of section 13 of Act 72 of 1993, as amended by Act 105 of 1999**

2. Section 13 of the principal Act is amended by the substitution for paragraph (b) of the following paragraph:

(b) “The board may in order to achieve its objects mentioned in section 3 negotiate or co-operate with any government, provincial administration or local government, the Board of Public Resorts referred to in section 1 of the **[extension of the public Resorts Ordinance Act (Transvaal) (House of Assembly), 105 of 1990]** Overvaal Resorts Limited Act, 1993 (Act 127 of 1993), any other board established in terms of any law, or any other board or person, in the Republic or elsewhere, with regard to any matter which is directly or indirectly aimed at the achievement of the object of the board .

**Short title and commencement**

**3.** This Act is called the Tourism Amendment Act, 2011 and comes into operation on a date determined by the President by proclamation in the *Gazette*.

**Annexure B****STATUTES ADMINISTERED BY THE DEPARTMENT OF TOURISM**

Number	Name of Act, number and year
1.	Tourism Act 72 of 1993
2.	Tourism Act 105 of 1996
3.	Tourism Amendment Act 8 of 2000
4.	Tourism Second Amendment Act 70 of 2000