



**REPORT ON LEGISLATION ADMINISTERED
BY DEPARTMENT OF PUBLIC WORKS**

**PROJECT 25:
STATUTORY LAW REVISION**

DECEMBER 2011

**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, the Commission's report on Statutory Law Revision (Legislation administered by the Department of Public Works).

A handwritten signature in black ink, appearing to read 'Y Mokgoro', is centered on the page.

Y MOKGORO

CHAIRPERSON: SOUTH AFRICAN LAW REFORM COMMISSION

03 December 2011

South African Law Reform Commission

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

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EXECUTIVE SUMMARY

A Introduction

1. Since the advent of the constitutional democracy in 1994, no comprehensive review of the statute book for constitutionality, redundancy or obsolescence has been undertaken, although a number of Acts have been amended or repealed by Parliament on an *ad hoc* basis. To address this unsatisfactory state of affairs, in 2004, the South African Law Reform Commission (SALRC) included in its law reform programme an investigation into statutory law revision. The purpose of this investigation is two-fold: (a) to align the South African statute book with the right to equality entrenched in section 9 of the Constitution of the Republic of South Africa, 1996; and (b) to provide a statute book that is free from obsolete and unnecessary matter.

2. The SALRC has been in consultation with representatives of the Department of Public Works (hereinafter DPW) since February 2006. In June 2009, the SALRC developed and submitted to the DPW a Consultation Paper containing provisional findings and proposals for legislative reforms for comment. Appended to the Consultation Paper was a Draft Public Works General Laws Amendment and Repeal Bill (hereinafter the Draft Bill) setting out statutes which needed to be amended and repealed, and the extent of such repeal, and invited DPW to peruse the preliminary findings and questions for comment and submit comments to the SALRC. No comments were received from the DPW in response to the Consultation Paper referred to above.

3. On 8 July 2010, the SALRC again requested for comments from the DPW in respect of the Consultation Paper referred to in paragraph 2 above. On 14 August 2010, the SALRC approved publication of Discussion Paper 121 for general information and comments, subject to comments from the DPW. Further meetings were held between the SALRC official assigned to this investigation and DPW representatives on 27 August 2010 and 12 May 2011 at DPW offices to discuss DPW's comments in respect of Discussion Paper 121.

4. Following the meetings held with DPW representatives referred to in paragraph 3 above, the DPW supports in principle the repeal of redundant and obsolete legislation mentioned in Schedule 1 of the Draft Bill, as well as the proposed amendment of legislation mentioned in Schedule 2 of the said Draft Bill.

B Discussion Paper 121

5. In accordance with its policy to consult widely and to involve the public in the law reform process, the SALRC developed a discussion paper incorporating comments and input received from meetings held with DPW officials and published it as Discussion Paper 121 (the Discussion Paper) for general information and comment in February 2011.

6. As part of this investigation, the SALRC has reviewed 57 statutes administered by the DPW which were enacted between 1910 and 2000, and are still in force in the Republic, for the purposes mentioned in paragraph 1 above. The Government Villages Act, 1973 (Act No.44 of 1973) as amended by the Government Villages Amendment Act, 1984 (Act No.25 of 1984) was included in the scope of Discussion Paper 121 following comments received from the Department of Human Settlements in respect of Discussion Paper 115¹ that the (latter) Department is not responsible for the administration of the Act.

7. In the Discussion Paper, the SALRC listed all the 57 statutes administered by the DPW, including the Government Villages Act, 1973 as amended by the Government Villages Amendment Act, 1984 mentioned in paragraph 6 above. The SALRC explained the background to statutory law revision, setting out the guidelines it utilised to test the constitutionality and redundancy of these statutes and provided detailed findings and proposals for law reform in respect of the statutes found wanting. Appended to the Discussion Paper was the Draft Bill, setting out legislation or provisions in legislation which needed to be amended and repealed, and the extent of such repeal. The Discussion

¹ Discussion Paper 115 is Statutory Law Revision in respect of legislation administered by the Department of Human Settlements.

Paper contained an invitation to interested parties to submit comments to the SALRC. The closing date for submission of public comments to the SALRC was 31 May 2011.

8. The stakeholders to whom the Discussion Paper was distributed include the national and regional offices of the Department of Public Works; Provincial Members of Executive Councils (MEC's) responsible for Public Works and Human Settlements; the Department of Human Settlements; the Department of Rural Development and Land Reform (DRDLR); municipalities responsible for the administration of the relevant Acts discussed in Chapter 2 of this Report, the Construction Industry Development Board, and the judiciary.

9. The SALRC received comments from the City of Tshwane Metropolitan Municipality; the Department of the Premier: Provincial Government of the Western Cape and the Mpopana Municipality. All the comments received are discussed in the paragraphs below.

C Draft Public Works General Laws Amendment and Repeal Bill

1. Redundant and obsolete legislation recommended for repeal

(a) Bethelsdorp Settlement Act 34 of 1921

10. The Draft Bill seeks to repeal the Bethelsdorp Settlement Act, 1921 (Act No.34 of 1921) and all its amendment Acts on the grounds of obsolescence. The purpose of the Bethelsdorp Settlement Act, 1921 was to provide for the settlement of certain matters in dispute at Bethelsdorp between the London Missionary Society and its successors, the Congregational Union Church Aid and Missionary Society of South Africa, on the one hand, and the Bethelsdorp Board of Supervisors, on the other hand.

11. Any amendment of the Act in order to update all the obsolete terminology and to remove the racial connotations contained in item 3 of Part I of the Schedule to the Act² will not serve any useful purpose as it appears that the Act has now been spent for the following reasons:

1. There are no longer any matters in dispute at Bethelsdorp among the organisations referred to above. Some, if not all, of these organisations do not exist any longer.
2. In terms of the preamble to the Bethelsdorp Settlement Amendment Act, 1966 (Act 44 of 1966), the collection of salt from the Bethelsdorp saltpan by the owners of erven in Bethelsdorp, as provided for in the Bethelsdorp Settlement Act, 1921, is on economic grounds no longer feasible.
3. The conditions in terms of which certain land situate at Bethelsdorp granted to the 'Divisional Council of Port Elizabeth' (Nelson Mandela Bay Municipality) are, in terms of the Preamble referred to above, incompatible with the housing schemes in so far as they are applicable to the disposal of erven.
4. The state land or land under the control of the Provincial Authority (Western Cape) or the Nelson Mandela Bay Municipality was earmarked for the development of low cost housing and has already been sub-divided.

12. Discussion Paper 121 had provisionally proposed that the Bethelsdorp Settlement Act 34 of 1921, as amended, be repealed as it appears that the Act has achieved its original purpose. However, the DPW indicated that due to further investigation being conducted by the Department in this regard, the Act is only recommended for amendment at the present moment pending finalisation of the investigation at which time the Act may be considered for repeal.

² Item 3 of Part I of the Schedule to the Act states that "the sale of lots be subject to the special condition that they shall be owned and occupied by Coloured people and Blacks only" and "the proceeds of such sale be applied towards the erection and maintenance of the Training Institute for Coloured people to be erected at Uitenhage."

13. Accordingly, it is recommended that the Bethelsdorp Settlement Act, 1921 (Act 34 of 1921), as amended, be repealed as soon as the investigation conducted by the DPW in this regard has been finalised.

(b) Carnarvon Outer Commonage Settlement Act 19 of 1913

14. The Draft Bill seeks to repeal the Carnarvon Outer Commonage Settlement Act, 1913 (Act No.19 of 1913) and all its amendment Acts on the grounds of obsolescence. The purpose of the Carnarvon Outer Commonage Settlement Act, 1913 was to provide for the issue of individual titles to opstallen, sowing lots and garden lots at Carnarvon.

15. Since the purpose of the Act was to create a legal framework for transfer of the land in the village of Carnarvon to registered owners in freehold title and such purpose has been fulfilled, it is recommended that the Carnarvon Outer Commonage Settlement Act 19 of 1913, the Carnarvon Outer Commonage Settlement Amendment Act 16 of 1920 and the Carnarvon Outer Commonage Subdivision Act 17 of 1926 be repealed.

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

16. The SALRC recommends that the DPW initiates the process to bring into operation the commencement of-

- (a) section 14(1) of the Land Affairs Act, 1987 (Act No.101 of 1987), which will result in the repeal of the Community Development Act, 1966 (Act No.3 of 1966) (with the exception of section 51B of the Community Development Act 3 of 1966); and
- (b) section 14(2) of the Land Affairs Act, 1987 (Act No. 101 of 1987), which will result in the repeal of section 51B of the Community Development Act, 1966 (Act No.3 of 1966) and the Community Development Amendment Act, 1986 (Act No.48 of 1986).

17. Section 14(1) of the Land Affairs Act, 1987 (Act No.101 of 1987) repeals the whole of the Community Development Act 3 of 1966, except for section 51B. Section 14(2) of the Land Affairs Act, 1987 (Act No.101 of 1987) repeals section 51B of the Community Development Act 3 of 1966 and the Community Development Amendment Act 48 of 1986. The date of commencement of section 14 still has to be proclaimed. The Community Development Act 3 of 1966 is thus currently still on the statute book.

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

18. The Draft Bill seeks to repeal the whole Act which appears to be redundant. The purpose of the Municipal Lands Act, 1941 (Act No.9 of 1941) is to make better provision for attaining the object of certain enactments by virtue of which certain lands adjoining False Bay are vested in the Council of the City of Cape Town. The 'lands' concerned primarily relate to the sea-shores around the area.

19. In terms of Section 2 of the Sea-Shores Act, 1935 (Act No. 21 of 1935), the State President is deemed to be the owner of all sea-shores which have not been alienated before the date of the commencement of this Act. The Act came into operation on 10 April 1935. Section 2 of the Act provides as follows:

- (1) Subject to the provisions of this Act, the State President shall be the owner of the sea-shore and the sea, except of any portion thereof which was lawfully alienated before the commencement of this Act or may be alienated hereafter under this Act or under any other law.
- (2) Any portion of the sea-shore and the sea which was alienated before the commencement of this Act, shall be deemed to have been lawfully alienated.
- (3) The sea-shore and the sea of which the State President is declared by this section to be owner, shall not be capable of being alienated or let except as provided by this Act or by any other law, and shall not be capable of being acquired by prescription.

20. It is submitted that no further sea-shores can be acquired by the City Council of Cape Town or any other body if such sea-shores have not already vested in the said City Council prior to 10 April 1935, unless such sea-shores have been acquired in terms of Act 21 of 1935 or other statutes prior to 10 April 1935.

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

(e) Mooi River Township Lands Act 5 of 1926

22. The Draft Bill seeks to repeal the whole Act which appears to be redundant. The Mooi River Township Lands Act, 1926 (Act No.5 of 1926) provides for the grant of certain land to the local Board of the Township of Mooi River. Section 2(2) of the Act provides that the said local board shall hold the lands and erven granted to it subject to the provisions of Law 11 of 1881 of Natal and any amendment thereof, in trust for the inhabitants of the township of Mooi River as constituted in terms of the said law.

23. Any amendment of the Act in order to update all the obsolete terminology identified will not serve any useful purpose since it will not be possible to implement the provisions of Law 11 of 1881. The purpose of Law 11 of 1881 was to provide for the establishment and local management of townships. This Law has been superseded by recent local government legislation, in particular the Local Government: Municipal Structures Act 117 of 1998 which serves as an extensive framework law and provides for the establishment of municipalities in accordance with the requirements related to categories and types of municipalities.

24. The functions of the then 'local board of the township of Mooi River' are now performed by the Mpofana Municipality. The Mpofana Municipality is now the regulatory authority under whose jurisdiction the land referred to in the Act (Turner Park) falls.

25. Accordingly, it is recommended that the Mooi River Township Lands Act, 1926 (Act No.5 of 1926) be repealed.

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

26. The Draft Bill seeks to repeal the Church Square, Pretoria, Development Act, 1972 (Act No.53 of 1972) and all its amendment Acts on the grounds of obsolescence. The

Church Square, Pretoria, Development Act, 1972 (Act No.53 of 1972) provides for the development of Church Square, Pretoria, and certain sites bordering thereon and in the immediate vicinity thereof subject to the approval of the Minister of Local Government, Housing and Works: Administration: House of Assembly.

27. Section 2 of the Act prohibits the development of Church Square, Pretoria, and adjoining sites without prior approval of the Minister. This provision (section 2) in the Act appears to be inconsistent with the constitutional scheme for the allocation of functions between the national, provincial and local spheres of government. Furthermore, the Act also contains certain terminology that is glaringly obsolete.

28. In the *City of Johannesburg Metropolitan Municipality v Gauteng Development Tribunal and Others*,³ the Constitutional Court held that-

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

29. The City of Tshwane stated in their submission to the SALRC that-

It is the respectful submission by the City of Tshwane Metropolitan Municipality that the Church Square, Pretoria, Development Act, 1972 (Act No. 53 of 1972) has effectively been replaced by the National Heritage Resources Act, 1999 (Act No. 25 of 1999) and, therefore, recommends that the Church Square, Pretoria, Development Act, 1972 (Act No. 53 of 1972) be repealed, as what was sought to be done under the Church Square Act can now be done under the Heritage Act.

30. Accordingly, the SALRC recommends that the Church Square, Pretoria, Development Act, 1972 (Act No. 53 of 1972) and the Church Square, Pretoria,

³ (CCT89/09) [2010] ZACC 11 (18 June 2010).

Development Amendment Act (House of Assembly) 35 of 1988 be repealed on the basis that the provisions of these statutes have been superseded by other more recent legislation governing municipal planning and development and thus no longer serve any useful purpose.

2. Legislation recommended for partial repeal

(a) State Land Disposal Act 48 of 1961

31. The Draft Bill seeks to repeal sections 2(2) and 2B of the Act on the grounds of obsolescence.

32. The State Land Disposal Act, 1961 provides for the disposal of certain State land and for matters incidental thereto; and for the prohibition on the acquisition of State land by prescription. The Act is administered by both the DRDLR and the DPW and it confers powers on both the Minister for Rural Development and Land Reform and the Minister for Public Works.

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

34. Discussion paper 121 had provisionally proposed that section 2(2) be amended. However, the DPW recommended that section 2(2) be repealed. Section 2(2) provides as follows:

The State President shall not dispose of any particular State Land in terms of subsection (1) if the disposal thereof is governed by a provincial ordinance: Provided that the provisions of this subsection shall not apply in respect of the lease of the whole or any portion of –

- (a) places upon State land which have been reserved by the State President as contemplated in Item 5 of the Second Schedule to the Financial Relations Consolidation and Amendment Act, 1945 (Act 38

of 1945), as being places of public resort, of public recreation, or of historical or scientific interest; and

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

35. The reference to provincial ordinances is, however, obsolete. As will be pointed out in Chapter 2 of this Report, the disposal of provincial state land today is comprehensively regulated by Acts of the various provincial legislatures. In addition, all of the provincial Acts referred to above confer the power to lease provincial state land on the relevant Premier or Member of the Executive Council. There are, consequently, no places on provincial state land or portions of provincial state land which cannot lawfully be leased. The proviso to section 2(2) is therefore redundant.

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

37. It is recommended that section 2B be repealed. Section 2B provides as follows:

2B Disposal of State land in Foreshore, Cape Town

- (1) Land vesting in the State under section 19(2) of the Cape Town Foreshore Act, 1950 (Act 26 of 1950), as from 1 April 1979, shall be State land to which the provisions of this Act shall apply.
- (2) Land which before the date referred to in subsection (1) was-
 - (a) Sold, exchanged or donated by the board but in respect of which title has not yet been given on that date; or
 - (b) Leased by the board, shall be deemed to have been sold, exchanged, donated or leased under the provisions of this Act.
- (3) The Minister may from time to time out of the proceeds of the sale or lease referred to in subsections (1) and (2) pay to the City Council of

the City of Cape Town such amounts as the Minister may determine with the concurrence of the Minister of Finance.

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

39. The DPW supports the proposed repeal of sections 2(2) and 2B of the State Land Disposal Act 48 of 1961.

3. Legislation recommended for amendment

(a) Cape Outspans Act 17 of 1937

40. The Act provides for the issue of deeds of grant to divisional and municipal councils in respect of outspans consisting of state land in the Province of the Western Cape. Outspans originated as public servitudes over areas of land that could be used for those traveling to rest, water and feed themselves and their animals. Although the use of outspans for this purpose has fallen away, there are still sections of land which are categorized as 'outspan' land. Thus the Act still has relevance as can be inferred from section 1 of the Transfer of Powers and Duties of the State President Act, 1986 (Act No. 97 of 1986) which provides that-

The power conferred under section 3(1) of 'The Outspans Act, 1902 (Act 41 of 1902), to the Governor referred to therein, shall as from commencement of this Act be exercised by the Minister of Public Works.

41. The Act contains certain terminology that is glaringly obsolete and makes reference to the Arbitrations Act, 1898 (Act No.29 of 1898) that no longer exist. The Draft Bill seeks to effect the following amendments to the Act:

(i) By the substitution for the long title of the Act of the following long title:

“To provide for the issue of deeds of grant to divisional and municipal councils in respect of outspans consisting of **[Crown] State** land situated in the Province of the **[Cape of Good Hope] Western Cape**”

(ii) By the substitution for section 1 of the Act of the following section:

“1. Upon application by any divisional council or municipal council, the Minister of Public Works may, in his discretion, and without payment of any consideration, cause a deed of grant, containing such conditions as he may think fit, to be issued to that council in respect of the whole or any portion of the land of which any outspan consists, being **[Crown] State** land, situated within the area of jurisdiction of that council, and in the case of a divisional council, not situated within the area of jurisdiction of any other local authority.”

(iii) By the substitution for section 3(2) of the following subsection:

“(2) if the amount of compensation to be paid under subsection (1) is not settled by agreement between the Minister of **[Lands] Public Works** and the council concerned, the amount shall be fixed by arbitration under the provisions of the **[Arbitration Act 1898 (Act 29 of 1898) of the Cape of Good Hope] Arbitration Act, 1965 (Act 42 of 1965)**, and for that purpose it shall be presumed that the said Minister of Public Works and the council concerned, agreed to refer the fixing of the amount to a single arbitrator.”

(iv) By the substitution for section 4 of the following section:

“(4) The council to which any land has been granted under section one shall not sell, exchange or donate or otherwise alienate, or let or mortgage or otherwise burden, the land or any portion thereof, without the consent of the **[Administrator of the Province of the Cape of Good Hope] Minister of Public Works**, and except upon conditions approved by him or her.”

(v) By the substitution for section 5 of the following section:

“(5) This Act shall not apply to any land situated outside the Province of the **[Cape of Good Hope]** Western Cape.”

(b) State Land Disposal Act 48 of 1961

42. The DPW recommended that the definition of ‘State Land’ in section 1 of the Act should be amended as follows:

“‘State land’ **[includes any land over which the right of disposal by virtue of the provisions of section 3(4) of the Agricultural Holdings (Transvaal) Registration Act, 1919 (Act 22 of 1919), and section 78(3) and (4) of the Town Planning and Townships Ordinance, 1965 (Ordinance 25 of 1965) (Transvaal), vests in the State President,]** means land that is owned by or vest in the national government of the Republic of South Africa and any right in respect of such [State] land”.

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

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

44. There is a view that the references to section 5(2) and section 8(2) of the Abolition of Racially Based Land Measures Act 108 of 1991 are spent and should be deleted from section 8A. Section 5(2) provided for the continued existence of proclamations made under section 25(1) of the Black Administration Act 38 of 1927, notwithstanding the repeal of section 25(1) itself.

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

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

47. Accordingly, it is recommended that section 8A be amended as follows:

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

48. It is also recommended that all the references in the Act to State President found in sections 2(1); 2(2); 2A(1); 2A(2); 5(1); 5(2); 6(1); 6(2) and 8 of the Act be substituted with reference to the President.

49. The DPW supports the proposed amendment of the definition of ‘State land’ and section 8A of the State Land Disposal Act 48 of 1961 as stated above.

(c) General Law Amendment Act 102 of 1972

50. The Draft Bill seeks to update the reference in the Act to ‘both official languages’ which is glaringly obsolete. Section 34 of the General Law Amendment Act 102 of 1972 contains a provision (i.e. ‘both official languages’) that is glaringly in contravention of section 6 of the Constitution relating to official languages.

51. The reference to ‘both official languages’ is problematic, since there are now eleven official languages and although it may not yet be possible to publish such notices in all of these languages, it is recommended that the provision should be amended to read

“at least two of the official languages”. The DPW is, however, of the view that the provision should be amended to read ‘English and another official language’.

(d) Land Affairs Act 101 of 1987

52. The Land Affairs Act 101 of 1987 contains certain terminology that is glaringly obsolete and makes reference to certain pieces of legislation that no longer exists. The Draft Bill seeks to effect the following amendments in the Act:

- (i) The long title must be amended in order to remove the words *and Land Affairs* after the words Department of Public Works, due to the fact that there is no such Department of Public Works and Land Affairs.
- (ii) Likewise, the definition of Department in section 1 of the Act also contains the words *and Land Affairs* after the words Department of Public Works.
- (iii) Section 3(1) of the Act refers to the appointment of board members by the Minister of Public Works, after consultation with the *Minister of Local Government, Housing and Works in the Ministers Council: House of Representatives and the Minister of Local Government, Housing and Agriculture in the Ministers Council: House of Delegates*. These references to obsolete names like ‘own affairs’ portfolios should be deleted.
- (iv) Subsection 4(2)(c) makes reference to a repealed piece of legislation, namely- the *Agricultural Credit Act, 1966 (Act 28 of 1966)*. The latter Act was repealed by the Agricultural Debt Management Act 45 of 2001. It is recommended that the above anomaly be deleted.
- (v) Subsection 4(2)(d) makes reference to *the President’s Council* which does no longer exist. It is recommended that the reference to ‘the President’s Council’ be deleted.

53. The DPW supports the proposed amendments to the Land Affairs Act, 1987 as recommended above.

(e) Commonwealth War Graves Act 8 of 1992

54. The Draft Bill seeks to update certain terminology in the Act that is glaringly obsolete. The Act also makes reference to certain pieces of legislation that no longer exist. The definition of 'local authority' in section 1 of the Act makes reference to a number of Acts, which have been repealed. These references should be deleted or substituted.

55. The DPW recommended that the definition of 'local authority' be amended as follows:

“‘local authority’ means any [institution or body contemplated in section 84(1)(f) of the Provincial Government Act, 1961 (Act 32 of 1961), and includes-

- (a) **any local authority as defined in section 1(1) of the Black Local Authorities Act, 1982 (Act 102 of 1982);**
- (b) **any local government body established by virtue of the provisions of section 30(2)(a) of the Black Administration Act, 1927 (Act 38 of 1927);**
- (c) **a board of management or board referred to in section 1 of the Rural Areas Act (House of Representatives), 1987 (Act 9 of 1987);**
- (d) **any local council established under section 2 of the Local Councils Act (House of Assembly), 1987 (Act 94 of 1987);**
- (e) **any local development committee established under section 28A(1) of the Development Act (House of Representatives), 1987 (Act 3 of 1987);;**
- (f) **the Local Government Affairs Council established by section 2 of the Local Government Affairs Council Act (House of Assembly), 1989 (Act 84 of 1989);**
- (g) **any regional services council established under section 3 of the Regional Services Councils Act, 1985 (Act 109 of 1985);**
- (h) **any joint services board established under section 4 of the KwaZulu and Natal Joint Services Act, 1990 (Act 84 of 1990).] district municipality, local municipality or metropolitan municipality as defined in and established in terms of sections 1 and 12 respectively of the Local Government: Municipal Structures Act, 1998 (Act No.117 of 1998)”.**

(f) Rhodes' Will (Grootte Schuur Devolution) Act 9 of 1910

56. The Draft Bill seeks to update certain terminology in the Act that is glaringly obsolete. The Rhodes Will (Grootte Schuur Devolution) Act, 1910 makes provision for the surrender of the Grootte Schuur Estates to the Government of the Union of South Africa in accordance with the Will of the late Cecil John Rhodes and for the release of the Trustees thereunder from all responsibility in connection with the said Estates and for other purposes.

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

58. Since certain terminology in the Act are glaringly obsolete, it is recommended that these be amended as follows:

- (i) By the substitution for the words *Government of the Union of South Africa* and *Union Government* respectively of the words 'National Government of the Republic of South Africa' wherever they appear in the Act;
- (ii) By the substitution for the words *Governor-General* of the words 'National Government of the Republic of South Africa' wherever they appear in the Act;
- (iii) By the deletion of the word *State* before the word *President* wherever it appears in section (1)(A) of the Act; and
- (iv) By the substitution for the words *Cape of Good Hope* of the words 'Western Cape' in section (2)(1) of the Act.

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

59. The Draft Bill seeks to remove from the Act all the outdated terminology and references to statutes that no longer exist. The purpose of the Local Government City of Cape Town (Muizenberg Beach) Improvement Act, 1925 is to vest certain lands adjoining False Bay in the Council of the City of Cape Town.

60. The Act contains old terminology, like the *Governor-General*, and makes reference to the *Land and Arbitration Clause Act of the Cape of Good Hope* that does no longer exist.

61. The DPW recommended the following amendments to the Act, namely:

- (i) That *Governor-General* should be substituted by 'President', wherever it appears in the Act; and
- (ii) That the reference to the *Land and Arbitration Clause Act, 1882 of the Cape of Good Hope* should be substituted by reference to 'Arbitration Act 42 of 1965'.

62. The SALRC agrees with the proposed amendments to the Act made by the DPW above.

(h) Construction Industry Development Board Act 38 of 2000

63. The purpose of the Act is to provide for the establishment of the Construction Industry Development Board; to implement an integrated strategy for the reconstruction, growth and development of the construction industry and to provide for matters connected therewith.

64. The Draft Bill seeks to remove references in paragraph (a) of section 7(4) of the Act to the Prevention of Corruption Act, 1958 (Act 6 of 1958) and the Corruption Act, 1992 (Act No.94 of 1992) as these Acts have now been repealed.⁴

65. It is recommended that paragraph (a) of section 7(4) of the Act be amended in order to remove references to legislation that no longer exists as follows:

“(a) is convicted, whether in the Republic or elsewhere, of theft, fraud, forgery or uttering a forged document, perjury, or any offence involving dishonesty or of any offence in terms of **[the Prevention of Corruption Act, 1958 (Act 6 of 1958) and the Corruption Act, 1992 (Act No.94 of 1992),]** Part 1 to 4, or section 17, 20 or 21 (in so far as it relates to the aforementioned offences) of Chapter 2 of the Prevention and Combating of Corrupt Activities Act, 2004, or the Companies Act, 1973 (Act 61 of 1973), or of contravening this Act.”

D. Summary of recommendations

1. In this Report, the SALRC makes the following recommendations:

66. That the following Acts be repealed as a whole:

- 1) Bethelsdorp Settlement Act, 1921 (Act 34 of 1921).
- 2) Bethelsdorp Settlement Act 1921 Amendment Act, 1926 (Act No.3 of 1926).
- 3) Bethelsdorp Settlement Amendment Act, 1966 (Act No.44 of 1966).
- 4) Bethelsdorp Settlement Amendment Act, 1979 (Act No.13 of 1979).
- 5) Bethelsdorp Settlement Amendment Act, 1983 (Act No.49 of 1983).
- 6) Carnarvon Outer Commonage Settlement Act, 1913 (Act No.19 of 1913).
- 7) Carnarvon Outer Commonage Subdivision Act, 1926 (Act No. 17 of 1926).
- 8) Community Development Act, 1966 (Act No.3 of 1966) (Section 51B).

⁴ The Prevention of Corruption Act, 1958 (Act 6 of 1958) was repealed by the Corruption Act, 1992 (Act No.94 of 1992). In turn, the latter Act was repealed as a whole by the Prevention and Combating of Corrupt Activities act, 2004 (Act No.12 of 2004).

- 9) Municipal Lands (Muizenberg) Act, 1941 (Act No.9 of 1941).
 - 10) Mooi River Township Lands Act, 1926 (Act No.5 of 1926).
 - 11) Church Square, Pretoria, Development Act, 1972 (Act No.53 of 1972).
 - 12) Church Square, Pretoria, Development Amendment Act, 1978 (Act No.65 of 1978).
 - 13) Church Square, Pretoria, Development Amendment Act (House of Assembly), 1988 (Act No.35 of 1988).
67. That the specified sections in the following Act be repealed:
1. Sections 2(2) and 2B of the State Land Disposal Act, 1961 (Act No.48 of 1961).
68. That the specified provisions in the following Acts be amended:
1. The long title; sections 1; 3(2); 4 and 5 of the Cape Outspans Act, 1937 (Act No.17 of 1937).
 2. Sections 1; 2(1); 2(2); 2A(1); 2A(2); 5(1); 5(2); 6(1); 6(2); 8 and 8A of the State Land Disposal Act, 1961 (Act No.48 of 1961).
 3. Section 34 of the General Law Amendment Act, 1972 (Act No.102 of 1972).
 4. Long title; sections 1; 3(1); 4(2)(c) and 4(2)(d) of the Land Affairs Act, 1987 (Act No.101 of 1987).
 5. Section 1 of the Commonwealth War Graves Act, 1992 (Act No 8 of 1992).
 6. Preamble; sections 1(1); 1(2); 1(3); 1A; 2; 3 and 5 of the Rhodes' Will (Groote Schuur Devolution) Act, 1910 (Act No. 9 of 1910).
 7. Sections 1(2) and 4 of the Local Government City of Cape Town (Muizenberg Beach) Improvement Act, 1925 (Act No.17 of 1925).

8. Section 7(4)(a) of the Construction Industry Development Board Act, 2000 (Act No.38 of 2000).

E Concluding remarks

69. The SALRC has prepared this Report for consideration by the Minister of Justice and Constitutional Development in terms of section 7(1) of the South African Law Reform Commission Act, 1973 (Act No.19 of 1973).

70. The SALRC wishes to express its sincere gratitude to the officials of the DPW for their co-operation and assistance during the investigation process.

CHAPTER 1

PROJECT 25: STATUTORY LAW REVISION

A Introduction

1 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 –

1. the repeal of obsolete or unnecessary provisions;
2. the removal of anomalies;
3. the bringing about of uniformity in the law in force in the various parts of the Republic; and
4. 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.

2 History of the investigation

1.3 Shortly after its establishment in 1973, the SALRC undertook a revision of all pre-Union legislation as part of its project 7 that dealt with the review of pre-Union legislation. This resulted in the repeal of approximately 1 200 ordinances and proclamations of the former Colonies and Republics. In 1981 the SALRC finalised a report on the repeal of post-Union statutes as part of its project 25 on statute law: the establishment of a permanently simplified, coherent and generally accessible statute book. This report

resulted in Parliament adopting the Repeal of Laws Act, 1981 (Act No 94 of 1981) which repealed approximately 790 post-Union statutes.

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

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

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

B What is Statutory Law Revision?

1.7 Statutory law revision is the review of statutes to determine whether they need updating or are still relevant and enjoy practical application. The purpose of the review is to modernise and simplify those statutes that need modernization or updating and to reduce the size of the statute book to the benefit of legal professionals and all other parties who make use of it. It also ensures people are not misled by obsolete laws on the statute book which seem to be relevant or 'live' law. If legislation features in the statute book and is referred to in text-books, users reasonably enough assume those statutes still serve a purpose.

1.8 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.

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

1.10 Provisions commonly repealed by Repeals of Laws Acts include the following-

1. references to bodies, organisations, etc that have been dissolved or wound up or which have otherwise ceased to serve any purpose;
2. references to issues that are no longer relevant as a result of changes in social or economic conditions;
3. references to Acts that have been superseded by more modern legislation or by an international convention;
4. references to statutory provisions (i.e. sections, schedules, etc) that have been repealed;

5. repealing provisions e.g. “Section 28 is repealed/shall cease to have effect”;
6. commencement provisions once the whole of an Act is in force;
7. transitional or savings provisions that are spent;
8. provisions that are self-evidently spent – e.g. a once-off statutory obligation to do something becomes spent once the required act has duly been done;
9. powers that have never been exercised over a period of many years or where any previous exercise is now spent.

1.11 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 follows:⁵

1. 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;
2. 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;
3. 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;
4. Virtually repealed – where an earlier enactment is inconsistent with, or is rendered nugatory by, a later one;
5. Superseded – where a later enactment effects the same purposes as an earlier one by repetition of its terms or otherwise;

⁵ Law Commission of India *Ninety-Sixth Report on Repeal of Certain Obsolete Central Acts* The Law Commission of India 15 July 2011 Web 26 September 2011.

6. 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 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.

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

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

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

C The initial investigation

1.15 In the early 2000s the SALRC and the German Agency for Technical Cooperation commissioned the Centre for Applied Legal Studies (CALs) of the University of the Witwatersrand to conduct a study to determine the feasibility, scope and operational structure of revising the South African statute book for constitutionality, redundancy and obsolescence. CALs pursued four main avenues of research in their study conducted in 2001.⁶

1. 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.
2. 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

⁶ Centre for Applied Legal Studies: University of the Witwatersrand *Feasibility and Implementation Study on the Revision of the Statute Book* Unpublished paper 2001.

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.

3. Sixteen randomly selected national statutes were tested against these guidelines. The outcome of the test was then compared against a control audit that tested the same statutes against the entire Bill of Rights, excluding socio-economic rights. A comparison of the outcomes revealed that a targeted revision of the statute book, in accordance with the guidelines, produced surprisingly effective results.
4. 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 –

1. the Recognition of Customary Marriages (August 1998);
2. the Review of the Marriage Act 25 of 1961 (May 2001);
3. the Application of the Bill of Rights to Criminal Procedure, Criminal Law, the Law of Evidence and Sentencing (May 2001);
4. Traditional Courts (January 2003);
5. the Recognition of Muslim marriages (July 2003);
6. the Repeal of the Black Administration Act 38 of 1927 (March 2004);
7. Customary Law of Succession (March 2004); and
8. 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:

1. differentiate between people or categories of people, and which are not rationally connected to a legitimate government purpose; or
2. unfairly discriminate against people or categories of people on one or more grounds listed in section 9(3) of the Constitution; or
3. 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.⁷ However, even the section 9 inquiry is

⁷ Cathi Albertyn prepared guidelines for the SALRC for assessing the South African Statute Book for constitutionality against section 9 of the 1996 Constitution Unpublished paper for the SALRC 2006.

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 Cabinet endorsed in 2004 that government 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 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 preliminary consultation paper drafted by the SALRC invites the department being consulted to supply the necessary information. Any assistance that can be given to fill in the gaps will be much appreciated. It is important that the departments concerned take ownership over this process. This will ensure that all relevant provisions are identified during this review, and dealt with responsively and without creating unintended negative consequences.

F. Consultation with the Department of Public Works

1.22 As stated above, the SALRC has reviewed the 57 statutes administered by the DPW. The SALRC has been in consultation with representatives of the DPW since February 2006. On 13 November 2008, a meeting was held at the SALRC attended by representatives of the DPW to discuss preliminary findings contained in the Consultation Paper. In June 2009 and in accordance with its policy to consult widely and to involve the Department likely to be affected by the proposals made, the SALRC developed and submitted to the DPW its Consultation Paper. The Consultation Paper explains the

background to statutory law revision, sets out the guidelines utilised by the SALRC to test the constitutionality and redundancy of statutes administered by DPW, and provided detailed findings and proposals for legislative reform in respect of legislation found wanting. Appended to the Consultation Paper was a Draft Public Works General Laws Amendment and Repeal Bill setting out statutes which needed to be amended and repealed, and the extent of such repeal, and invited DPW to peruse the preliminary findings, proposals and questions for comment and submit comments to the SALRC.

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

CHAPTER 2

EXPLANATORY NOTES ON DRAFT PUBLIC WORKS GENERAL LAWS AMENDMENT AND REPEAL BILL

A Introduction

2.1 According to the Department of Public Works 2009/ 2010 Annual Report-

(T)he DPW's mandate is the custodianship and manager of national government's immovable assets. This includes the provision of accommodation requirements; rendering expert built environment services to user departments and the acquisition, management, maintenance and disposal of such assets.⁸

2.2 In this Report, the statutes provisionally proposed for repeal are the following:

1. Bethelsdorp Settlement Act 34 of 1921
2. Bethelsdorp Settlement Act 1921 Amendment Act 3 of 1926
3. Bethelsdorp Settlement Amendment Act 44 of 1966
4. Bethelsdorp Settlement Amendment Act 13 of 1979
5. Bethelsdorp Settlement Amendment Act 49 of 1983
6. Carnarvon Outer Commonage Settlement Act 19 of 1913
7. Carnarvon Outer Commonage Settlement Act, Amendment Act 16 of 1920
8. Carnarvon Outer Commonage Subdivision Act 17 of 1926
9. Municipal Lands (Muizenberg) Act 9 of 1941
10. Mooi River Township Lands Act 5 of 1926
11. Church Square, Pretoria, Development Act 53 of 1972
12. Church Square, Pretoria, Development Amendment Act 65 of 1978

⁸ Department of Public Works Annual Report 2009/2010 on 12.

13. Church Square, Pretoria, Development Amendment Act (House of Assembly) 35 of 1988

2.3 Statutes proposed for amendment in this Report are the following:

1. Cape Outspans Act 17 of 1937
2. State Land Disposal Act 48 of 1961
3. General Law Amendment Act 102 of 1972
4. Land Affairs Act 101 of 1987
5. Commonwealth War Graves Act 8 of 1992
6. Rhodes' Will (Groote Schuur Devolution) Act 9 of 1910
7. Local Government City of Cape Town (Muizenberg Beach) Improvement Act 17 of 1925
8. Government Villages Act 44 of 1973
9. Construction Industry Development Board Act 38 of 2000

2.4 Statutes recommended for retention without any amendment are the following:

- 1) Parliamentary Villages Management Board Act 96 of 1998
- 2) Council for the Built Environment Act 43 of 2000
- 3) Architectural Profession Act 44 of 2000
- 4) Landscape Architectural Profession Act 45 of 2000
- 5) Engineering Profession Act 46 of 2000
- 6) Property Valuers Profession Act 47 of 2000
- 7) Project and Construction Management Professions Act 48 of 2000
- 8) Quantity Surveying Profession Act 49 of 2000

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

2.6 Proposals flowing from the review of statutes listed in paragraphs 2.2-2.3 above have been summarised in a Draft Public Works General Laws Amendment and Repeal Bill (Draft Bill) attached in Annexure A to this Report.

2.7 The SALRC has identified 57 statutes that are administered by the Department of Public Works. The SALRC, after conducting an investigation to determine whether any of these Acts or provisions therein may be repealed as a result of redundancy, obsolescence or unconstitutionality, has identified 13 (thirteen) Acts that should be repealed wholly, (1) one Act that may be partly repealed and 9 (nine) Acts that should be amended. These Acts are contained in Schedules 1 and 2 respectively of the Draft Bill attached as annexure A to this Report. Furthermore, paragraph “C” below provides reasons and recommendations why these statutes and/or provisions in the said statutes were selected for repeal or amendment. For ease of reference the legislation has been divided into four categories as follows:

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

B Statutes recommended for repeal

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

1. Bethelsdorp Settlement Act 34 of 1921

2.9 It is recommended that the Bethelsdorp Settlement Act 34 of 1921, as amended by the Bethelsdorp Settlement Act 1921 Amendment Act, 1926 (Act 3 of 1926); Bethelsdorp Settlement Amendment Act, 1966 (Act 44 of 1966); Bethelsdorp Settlement

Amendment Act, 1979 (Act 13 of 1979) and the Bethelsdorp Settlement Amendment Act, 1983 (Act 49 of 1983) be repealed. The Act has achieved its original purpose as discussed in the following paragraphs and no longer serves any useful purpose.

2.10 The Bethelsdorp Settlement Act 34 of 1921 (the Act) sought to provide for the settlement of certain matters in dispute at Bethelsdorp between the London Missionary Society and its successors, the Congregational Union Church Aid and Missionary Society of South Africa and the Bethelsdorp Board of Supervisors.⁹ The Act including the Schedule and its amending Acts¹⁰-

1. refers to missionary organizations that are of historical significance;
2. refers to the Bethelsdorp Board of Supervisors which no longer exists;
3. in certain sections make a distinction on the grounds of race;¹¹

⁹ The Act gave power to effect a resolution passed by the House of Assembly (on 30th July 1920) dealing with the matters in dispute which related to certain land in Bethelsdorp.

¹⁰ The Bethelsdorp Settlement Act 1921 Amendment Act 3 of 1926; the Bethelsdorp Settlement Amendment Act 44 of 1966; the Bethelsdorp Settlement Amendment Act 13 of 1979 and the Bethelsdorp Settlement Amendment Act 49 of 1983.

¹¹ This is clear from the Schedule, Part 1, Resolution (3) of the Act, which states that, 'the grant of the balance of the garden lots laid out in October, 1876, as appear on the said plan II (1860) to the Congregational Union Church Aid and Missionary Society of South Africa, for sale, subject to such conditions and within such time as the Minister of Lands may decide, and on condition that the proceeds of such sale be applied towards the erection and maintenance of the Training Institute for coloured people to be erected at Uitenhage. These lots shall be sold subject to the special condition that they shall be owned and occupied by coloured people and blacks only. These lots shall have the same rights to the saltpan, grazing etc as the lots already granted.'

This distinction is also found in Resolution (4) of the Act which provides that '(s)uch erven as are disposed of by sale shall be subject to the special condition that they shall be owned and occupied by coloured people and blacks only.' Such apartheid era terminology is contrary to the spirit of the Constitution, 1996 and specifically to section 9(3) of the Bill of Rights.

See also the Bethelsdorp Settlement Amendment Act 3 of 1926; the Bethelsdorp Settlement Amendment Act 44 of 1966 - the Preamble to this Act states 'AND WHEREAS portions of the said land are required by the City Council of Port Elizabeth and the Community Development Board for the erection of housing for Coloureds:', the Bethelsdorp Settlement Amendment Act 13 of 1979 and the Bethelsdorp Settlement Amendment Act 9 of 1983 - this Act assigns certain powers to the Minister of Community Development, a Ministry no longer provided for in the structure of government.

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

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

2.11 The Bethelsdorp Settlement Amendment Act 44 of 1966 was promulgated on 26 October 1966, and removed the right of owners of erven in Bethelsdorp to collect salt from the mentioned saltpan. It also granted a right to the Board to lease the saltpan to persons from 5 April 1963. The restrictions imposed on the local authority for the land allocated to it in terms of Clause 4 of Part 1 of the Schedule to the Bethelsdorp Settlement Act 34 of 1921 were removed by this Act and the provisions of the said Clause ceased to apply to the land granted to the local authority. Extensive research was done by Ms Gaynor Appels of the Port Elizabeth Regional Office of the Department of Public Works into the lots contained in plan II(1860). She states that the Surveyor General's Office has confirmed that the following properties are the properties on Plan II (1860):

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

2.12 Of the above properties only Erf 227 is registered in the name of the Congregational Union Church. The property was transferred to the Church by virtue of a prescription claim lodged by it against the Department of Public Works in the early 1980's. The property is used as a graveyard. The balance of the properties is unregistered state land, or registered in the name of the Cape Provincial Authority or the local authority, that is, the Port Elizabeth City Council.

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

2.14 The Acts may be repealed, as there is no possibility of any prejudice to any party or person. There is no land still registered in the name of the abovementioned Churches, which land was allocated to the Congregational Union Church Aid and Missionary Society of South Africa in terms of Clause 3 of Part 1 of the Schedule to Act 34 of 1921: Plan II (1860).

2.15 If the Acts are repealed, the Bethelsdorp Saltpan Control Board will continue to be the registered owner of the saltpan and the area surrounding it in terms of the Title Deed referred to above. In terms of the preamble to the Bethelsdorp Settlement Amendment Act, 1966 it is no longer feasible for the owners of erven in Bethelsdorp to collect salt from the Bethelsdorp saltpan. The lots allocated to the City Council of Port Elizabeth have already been freed from the restrictions imposed upon it in terms of Clause 4 of Part 1 of the Schedule. The application of the Acts to these erven is therefore of no consequence.

2.16 There are no properties registered in the names of the abovementioned Churches, which require disposal before the Acts could be repealed. The properties registered in the names of the above Churches do not have any effect on the application of the Acts. It is submitted that these Acts may be repealed.

2.17 Discussion Paper 121 had provisionally proposed that the Bethelsdorp Settlement Act 34 of 1921, as amended by the Bethelsdorp Settlement Amendment Act 44 of 1966, be repealed as it appears that the Act has achieved its original purpose. However, the DPW indicated that due to further investigation being conducted by the Department in this regard, the Act is only recommended for amendment at the present moment pending finalisation of the investigation at which time the Act may be considered for repeal.

2.18 However, any amendment of the Act in order to update all the obsolete terminology and to remove the racial connotations contained in clause 3 of Part I of the Schedule to the Act will still not serve any useful purpose as it appears that the Act has now been spent for the following reasons, namely:

1. there are no longer any matters in dispute at Bethelsdorp between the London Missionary Society and its successors the Congregational Union Church Aid and Missionary Society of South Africa and the Bethelsdorp Board of Supervisors. Some, if not all, of these organisations do not exist any longer;
2. in terms of the preamble to the Bethelsdorp Settlement Amendment Act, 1966 (Act 44 of 1966), the collection of salt from the Bethelsdorp saltpan by the owners of erven in Bethelsdorp, as provided for in the Bethelsdorp Settlement Act, 1921, is on economic grounds no longer feasible;
3. the conditions in terms of which certain land situate at Bethelsdorp granted to the 'Divisional Council of Port Elizabeth' are, in terms of the preamble referred to above, incompatible with the housing schemes in so far as they are applicable to the disposal of erven; and
4. the state land or land under the control of the Provincial Authority (Western Cape) or the Nelson Mandela Bay Municipality was earmarked for the development of low cost housing and have already been subdivided.

2.19 Accordingly it is recommended that the Bethelsdorp Settlement Act, 1921 (Act 34 of 1921) as amended by the Bethelsdorp Settlement Act 1921 Amendment Act, 1926 (Act No.3 of 1926); Bethelsdorp Settlement Amendment Act, 1966 (Act No.44 of 1966); Bethelsdorp Settlement Amendment Act, 1979 (Act No.13 of 1979) and the Bethelsdorp Settlement Amendment Act, 1983 (Act No.49 of 1983) be repealed as soon as the investigation conducted by the DPW in this regard has been finalised.

2. Carnarvon Outer Commonage Settlement Act 19 of 1913

2.20 The purpose of the Carnarvon Outer Commonage Settlement Act, 1913 (Act No. 19 of 1913) is to provide for the issue of individual titles to opstallen, sowing lots and garden lots at Carnarvon. Since the purpose of the Act was to create a legal framework for transfer of the land in the village of Carnarvon to registered owners in freehold title and such purpose has been fulfilled, it is recommended that the Carnarvon Outer Commonage Settlement Act 19 of 1913 as amended, be repealed.

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

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

2.23 Section 1 of Act 17 of 1926 provides for the cancellation of the title deed which was issued in favour of the Committee of Management under title deed dated the 5th February 1920, and the vesting of the Remaining Extent in the State. No doubt this title deed was duly cancelled, and the cancellation registered in the Deeds Office at Cape Town. However, the proviso to section 1 of the Act states that notwithstanding the cancellation of the said title deed, the owners of opstallen and the persons having grazing rights and sowing rights over the land in terms of section 10 of Act 19 of 1913, as the case may be, may continue to exercise the rights over the commonage, and the Committee of Management of the Carnarvon Outer Commonage shall continue to control and manage the Commonage in accordance with the provisions of Act 18 of 1882 of the Cape of Good Hope and Act 19 of 1913 until such time as the subdivision and allocation of the commonage has been completed in terms of section 3 of this Act.

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

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

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

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

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

2.29 Since the purpose of the Act was to create a legal framework for transfer of the land in the village of Carnarvon to registered owners in freehold title and such purpose

has been fulfilled, there is no longer a need to keep the Acts (Act 19 of 1913 and Act 17 of 1926) including amendments in the statute book.

3. Community Development Act 3 of 1966

2.30 It is recommended that the DPW initiates the process to bring into operation the commencement of-

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

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

2.32 Section 29 contains a list of affected properties, and section 37 provides for the removal of certain properties from this list. The Act provides for a pre-emptive right of the board in respect of affected properties (section 30); as well as for alterations,

extensions or additions to buildings or new buildings on an affected property after the basic date (section 32). Section 33 deals with the determination of the basic value; and section 35 with the expropriation of an affected property by the State or any person other than the board. The Community Development Act 3 of 1966 provides for the prohibition on the disposal of affected property in certain circumstances (section 36), and for the acquisition of immovable property by the board by agreement or expropriation (section 38). Compensation in respect of the acquisition of property has to be determined in terms of section 41.

2.33 Section 14(1) of the Land Affairs Act 101 of 1987 repeals the whole of the Community Development Act 3 of 1966, except for section 51B. Section 14(2) repeals section 51B of the Community Development Act 3 of 1966 and the Community Development Amendment Act 48 of 1986. The date of commencement of section 14 still has to be proclaimed. The Community Development Act 3 of 1966 is thus currently still on the statute book. It is recommended that the DPW initiates the process to bring into operation the commencement of-

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

2.34 Section 51B of the Act provides that-

- (1) In the event of a body being established by or under any law, to exercise or to perform a power, duty or function in regard to any particular population group in any area referred to in paragraph 5 of Schedule 1 to the Republic of South Africa Constitution Act, 1983 (Act 110 of 1983), which in the opinion of the Minister was prior to the commencement of such law exercised or performed by the board (i.e. Community Development Board), the Minister may by notice in the Gazette declare that the assets, rights, liabilities and obligations of the board in

regard to that area and such amount in the fund as the Treasury may determine shall vest in the said body as from a date mentioned in the notice, and on that date such assets, rights, liabilities and obligations shall so vest and such amount shall be paid into the fund or account of the said body, and from that date any reference to the board in any law or document shall, unless it would be clearly inconsistent, be interpreted as a reference to the said body.

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

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

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

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

(b) ...

to the Minister (for National Housing)

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

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

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

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

2.36 The Development and Housing Act (House of Assembly) 103 of 1985 was repealed as a whole by section 20 of the Housing Act 107 of 1997. The purpose of the Housing Act, among others, is to lay down general principles applicable to housing

development in all spheres of government, to define the functions of national, provincial and local governments in respect of housing development and to provide for the establishment of a South African Housing Development Board, the continued existence of provincial boards under the name of provincial housing development boards and the financing of housing programmes.

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

4. Municipal Lands (Muizenberg) Act 9 of 1941

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

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

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

2.41 The Act may be repealed if all the land it refers to has been transferred to the City Council of Cape Town. The Cape Town Regional Office of the Department of Public Works and the SALRC wrote to the City Council of Cape Town to enquire as to whether

it consents to the repeal of the Acts, and whether all land which vested in it in terms of the said statute or the Kalk Bay Municipal Improvement Act 1897, as amended by the Kalk Bay Municipal Improvement Act, 8 of 1904 has been transferred to it. The City Council of Cape Town municipality will only consent to the repeal of Act 9 of 1941 if all the land which vested in it, in terms of the 1897 Act has been transferred to it.

2.42 The Sea-Shores Act 21 of 1935 was promulgated on 10 April 1935.¹² In terms of Section 2 of this Act, the State President is deemed to be the owner of all sea –shores which have not been alienated before the date of the commencement of this Act. This section provides as follows:

- (1) Subject to the provisions of this Act, the State President shall be the owner of the sea-shore and the sea, except of any portion thereof which was lawfully alienated before the commencement of this Act or may be alienated hereafter under this Act or under any other law.
- (2) Any portion of the sea-shore and the sea which was alienated before the commencement of this Act, shall be deemed to have been lawfully alienated.
- (3) The sea-shore and the sea of which the State President is declared by this section to be owner, shall not be capable of being alienated or let except as provided by this Act or by any other law, and shall not be capable of being acquired by prescription.

2.43 Therefore, it is submitted that no further sea-shores can be acquired by the City Council of Cape Town or any other body if such sea-shores have not already vested in the said City Council prior to 10 April 1935, unless such sea-shores have been acquired in terms of Act 21 of 1935 and other statutes prior to 10 April 1935.

2.44 The Act still contains old terminology, like the ‘Governor-General’, and makes reference to a pre-1910 statute¹³ that ought to have been repealed by the Cape Statute

¹² The whole of Act 21 of 1935 has been repealed (to the extent that it has not been assigned to the provinces) by section 98 of the National Environmental Management: Integrated Coastal Management Act 24 of 2008. The latter Act came into operation on 1 December 2009.

¹³ The Act makes reference to Kalk Bay Municipal Improvement Act, 1897 of the old Cape of Good Hope administration.

Law Revision Act 25 of 1934. The Kalk Bay Municipal Improvement Act 8 of 1904 has been repealed by section 1 of the Cape Statute Law Revision Act 25 of 1934. If the purpose of the above Act has been fulfilled, there is no need to keep the Act in the statute book.

5. Mooi River Township Lands Act 5 of 1926

2.45 It is recommended that the Mooi River Township Lands Act 5 of 1926 be repealed since any amendment of the Act in order to update all the glaringly obsolete terminology like 'Crown', 'Government of Natal', 'acres', 'rood', 'perches', 'County of Weenen', 'Colony of Natal', 'Governor-General', 'Administrator of the Province of Natal' will not serve any useful purpose. Moreover, the purpose of Law 11 of 1881¹⁴ has been superseded by recent local government legislation, in particular the Local Government: Municipal Structures Act 117 of 1998 which provides for the establishment of municipalities in accordance with the requirements related to categories and types of municipalities.

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

- (1) Notwithstanding anything contained in Law 11 of 1881 of Natal and the Commonages Act, 1904 (Act 35 of 1904) of Natal or in any other law, the Governor-General may grant to the local board of the township of Mooi River and its successors in office-
 - (a) the land known as Turner Park referred to in section one of this Act as a site for a recreation ground, rifle range or for similar purposes for the use, benefit and enjoyment of the inhabitants of the township of Mooi River and surrounding district on such terms and conditions as may be imposed from time to time by the local board;

¹⁴ The purpose of Law 11 of 1881 was to provide for the Establishment and Local Management of Townships.

- (b) the whole of the unalienated lands vested in the Crown within the villages of Weston and New Weston, including such lands as may have been destined or reserved for the purpose of such villages as provided in the aforesaid Acts, and the Crown lands adjoining the village of New Weston;
 - (c) the unalienated erven vested in the Crown within the villages of Weston and New Weston which are not required for public purposes.
- (2) The said local board shall hold the lands and erven granted to it in terms of paragraphs (b) and (c) of the preceding subsection, subject to the provisions of Law 11 of 1881 of Natal and any amendment thereof, in trust for the inhabitants of the township of Mooi River as constituted in terms of the said law.

2.47 The land in question was leased by the Government of Natal to the trustees of the Turner Park for a period of 99 years starting from 1 September 1907 as a site for a recreation ground and rifle range and similar purposes. The lease has now expired (on 31 August 2006).

2.48 According to the response received from the Municipal Manager of Mpofana Municipality-

*the land referred to as Turner Park is registered under the ownership of Mpofana Municipality. It is zoned as private open space. Even though the land is still in the form of a Park, it cannot be regarded as exclusively set aside for such (recreational) use including rifle range. The land can now be considered for other future development initiatives which could be a park or any other purpose. The Municipality does not intend to extend the lease. To our knowledge, there is no local township board which is in existence other than the Municipality as a regulatory authority. It is against this background that we believe that the Mooi River Township Lands Act, 1926 does not serve any purpose.*¹⁵

2.49 Any amendment of the Act in order to update obsolete terminology like 'Crown', 'Government of Natal', 'acres', 'rood', 'perches', 'County of Weenen', 'Colony of Natal', 'Governor-General', 'Administrator of the Province of Natal' will not serve any useful purpose since it will not be possible to implement the provisions of Law 11 of 1881. The

¹⁵ Letter from the Municipal Manager: Mpofana Municipality addressed to the Deputy Chief State Law Adviser: SA Law Reform Commission dated 6 July 2011.

purpose of Law 11 of 1881 was to provide for the establishment and local management of townships. This Law has been superseded by recent local government legislation, in particular the Local Government: Municipal Structures Act 117 of 1998 which serves as an extensive framework law and provides for the establishment of municipalities in accordance with the requirements related to categories and types of municipalities.

2.50 As stated in the letter received from the Municipal Manager, the Mpofana Municipality is now the regulatory authority under whose jurisdiction the land referred to as Turner Park falls. The functions of the then 'local board of the township of Mooi River' are now performed by the Mpofana Municipality. Accordingly, it is recommended that the Mooi River Township Lands Act 5 of 1926 be repealed.

6. Church Square, Pretoria, Development Act 53 of 1972

2.51 The Church Square, Pretoria, Development Act 53 of 1972 provides for the development of Church Square, Pretoria, and certain sites bordering thereon and in the immediate vicinity thereof subject to the approval of the Minister of Local Government, Housing and Works: Administration: House of Assembly and to provide for incidental matters.

2.52 Section 2 of the Act prohibits the development of Church Square, Pretoria, and adjoining sites without prior approval of the Minister. This provision (section 2) in the Act appears to be inconsistent with the constitutional scheme for the allocation of functions between the national, provincial and local spheres of government. Furthermore, the Act also contains certain terminology that is glaringly obsolete. It is provisionally proposed that the Act be repealed.

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

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

- i. the Town Clerk of Pretoria, who shall act as chairman;
- ii. the Head of the Architectural Services Section in the Department of Local Government, Housing and Works: Administration: House of Assembly;
- iii. the Senior Director of Works and Estates in the Department of Posts and Telecommunications;
- iv. an officer in the Department of Education and Culture: Administration: House of Assembly;
- v. an officer in the Department of Environmental Affairs;
- vi. two practising architects in Pretoria; and
- vii. two persons who in the opinion of the Minister have professional knowledge of the development of the piece of land and area referred to in section 2(1).

2.55 The 'management committee' is defined in the Act to mean-

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

2.56 However, the Local Government (Administration and Elections) Ordinance, 1960 (Ordinance No. 40 of 1960) has now been repealed by section 38 of the Gauteng Local Government Laws Amendment Act, 2006 (Act No.1 of 2006). It would appear that the 'management committee' referred to in paragraph 2.53 above as well as the 'committee' referred to in paragraph 2.54 above are no longer in existence. Furthermore, the Act contains a number of obsolete and redundant terminology and provisions. For instance:

- 1) The Minister is defined in section 1 of the Act to mean the 'Minister of Local Government, Housing and Works: Administration: House of Assembly';
- 2) Section 2A(1)(a) refers to-

- i. The 'Head of the Architectural Services Section in the Department of Local Government, Housing and Works: Administration: House of Assembly' in subparagraph (ii);
- ii. To the 'Senior Director of Works and Estates in the Department of Posts and Telecommunications' in subparagraph (iii);
- iii. To an 'officer in the Department of Education and Culture: Administration: House of Assembly' in subparagraph (iv); and
- iv. To an 'officer in the Department of Environment Affairs' in subparagraph (v).

2.57 Following research conducted by the City of Tshwane in response to the request by the SALRC for comment and input in respect of this Act, the City of Tshwane came to the following conclusion:

The conclusion has been reached (above) that the enactment of the Church Square Act, was to protect and preserve the heritage on Church Square. The Church Square Act was assented to on 19 May 1972 and became operative on the 2 June 1972. The intention whereof was to protect and preserve the heritage on Church Square. Subsequent thereto, the National Heritage Act, 1999 (Act No.25 of 1999) hereinafter referred to as "the Heritage Act" was assented to on 14 April 1999 and preserve National Heritage resources.

The dual and simultaneous operation of both the Church Square Act and the Heritage Act in respect of one and the same issue, necessitates a look at which Act takes precedence over the other. In this regard one needs to do a clinical examination of both Acts, to determine the operation thereof and apply the canons of construction. If there be a discrepancy between two Acts of Parliament, then, the later law repeals the earlier law. In this exercise, one should not lose sight of the fact that since the Church Square Act came into being there has been introduced a significant number of profound changes in both the constitutional and legal enactment which impact on the Church Square Act.

2.58 In the City of Johannesburg Metropolitan Municipality v Gauteng Development Tribunal and Others,¹⁶ the main issue before the Constitutional Court was whether Chapters V and VI of the Development Facilitation Act 67 of 1995 are indeed

¹⁶ 2010 (6) SA 182 (CC) (18 June 2010).

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

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

2.59 The City of Tshwane stated in their submission to the SALRC that:

It is the respectful submission by the City of Tshwane Metropolitan Municipality that the Church Square, Pretoria, Development Act, 1972 (Act No. 53 of 1972) has effectively been replaced by the National Heritage Resources Act, 1999 (Act No. 25 of 1999) and, therefore, recommends that the Church Square, Pretoria, Development Act, 1972 (Act No. 53 of 1972) be repealed, as what was sought to be done under the Church Square Act can now be done under the Heritage Act.

2.60 Accordingly, the SALRC recommends that the Church Square, Pretoria, Development Act 53 of 1972 and the Church Square, Pretoria, Development Amendment Act (House of Assembly) 35 of 1988 be repealed on the basis that the provisions of these statutes have been superseded by other more recent legislation governing municipal planning and development and thus no longer serve any useful purpose.

C Statutes recommended for amendment

1. Cape Outspans Act 17 of 1937

2.61 The Cape Outspans Act 17 of 1937 provides for the issue of deeds of grant to divisional and municipal councils in respect of outspans consisting of Crown Land situated in the Province of the Western Cape. Outspans originated as public servitudes over areas of land that could be used for those traveling to rest, water and feed themselves and their animals. Although the use of outspans for this purpose has fallen away, there are still sections of land which are categorized as 'outspan' land. Thus the Act still has relevance as can be inferred from section 1 of the Transfer of Powers and Duties of the State President Act 97 of 1986 which provides as follows:

1. **Certain power in 'The Outspans Act, 1902', to be exercised by the Minister of Public Works**

The power conferred under section 3(1) of 'The Outspans Act, 1902 (Act 41 of 1902), to the Governor referred to therein, shall as from commencement of this Act be exercised by the Minister of Public Works.

2.62 The following excerpt can be found in the 'Informal Settlements Handbook' published in 2003 by the Western Cape Provincial Department of Housing and compiled by a steering committee of members of the Department and the city of Cape Town' Housing Branch:

1.5.3.4 Cape Outspans Act, 1937 (Act 17 /1937)

This Act provides for the issue of deeds of grant to municipal councils in respect of outspans consisting of Crown land in the Province of the Western Cape.

This Act will only be applicable where an informal settlement is located on a proclaimed outspan. The Sun City development in Sir Lowry's Pass is one such an example.¹⁷

2.63 The Act contains certain terminology that is glaringly obsolete and makes reference to the Arbitrations Act 29 of 1898 that no longer exist. Discussion Paper 121 had recommended that this Act should be amended and updated. For instance:

¹⁷ Western Cape Provincial Department of *Housing A Quick Guide to Dealing with Common Informal Settlements Problems* 2003 para 1.5.3.4 Unpublished paper Web October 2011 [www.capecgateway.gov.za/informal settlements handbook](http://www.capecgateway.gov.za/informal%20settlements%20handbook).

1. section 3(2) of the Act refers to the *Arbitrations Act 29 of 1898*, which was repealed by the Arbitration Act 42 of 1965;
2. section 4 of the Act refers to the consent of the *Administrator of the Province of the Cape of Good Hope*. However, as stated in paragraph ...above, the power to issue a deed of grant on *Crown* land consisting of any outspan is vested in the Minister of Public Works.
3. Other outdated terminology found in the Act includes *Crown land* in section 1 of the Act and *Province of the Cape of Good Hope* (in the long title as well as in sections 3(2); 4 and 5 of the Act. It is recommended that 'State land' be substituted for *Crown land* and 'Province of the Western Cape' be substituted for *Province of the Cape of Good Hope* respectively.

2.64 In a nutshell, it is recommended that the Cape Outspans Act, 1937 be amended as follows:

1. By the substitution for the long title of the Act of the following long title:

“To provide for the issue of deeds of grant to divisional and municipal councils in respect of outspans consisting of **[Crown]** State land situated in the Province of the **[Cape of Good Hope]** Western Cape”
2. By the substitution for section 1 of the Act of the following section:

“1. Upon application by any divisional council or municipal council, the Minister of Public Works may, in his discretion, and without payment of any consideration, cause a deed of grant, containing such conditions as he may think fit, to be issued to that council in respect of the whole or any portion of the land of which any outspan consists, being **[Crown]** State land, situated within the area of jurisdiction of that council, and in the case of a divisional council, not situated within the area of jurisdiction of any other local authority.”
3. By the substitution for subsection 3(2) of the following subsection:

“(2) if the amount of compensation to be paid under subsection (1) is not settled by agreement between the Minister of **[Lands] Public Works** and the council concerned, the amount shall be fixed by arbitration under the provisions of the **[Arbitration Act 1898 (Act 29 of 1898) of the Cape of Good Hope] Arbitration Act, 1965 (Act 42 of 1965)**, and for that purpose it shall be presumed that the said Minister of Public Works and the council concerned, agreed to refer the fixing of the amount to a single arbitrator.”

4. By the substitution for section 4 of the following section:

“(4) The council to which any land has been granted under section one shall not sell, exchange or donate or otherwise alienate, or let or mortgage or otherwise burden, the land or any portion thereof, without the consent of the **[Administrator of the Province of the Cape of Good Hope] Minister of Public Works**, and except upon conditions approved by him or her.”

5. By the substitution for section 5 of the following section:

“(5) This Act shall not apply to any land situated outside the Province of the **[Cape of Good Hope] Western Cape**.”

2. State Land Disposal Act 48 of 1961

2.65 It is recommended that:

1. Sections 2(2) and 2B of the State Land Disposal Act, 1961 (Act No. 48 of 1961) be repealed on the ground of obsolescence; and
2. The definition of ‘state land’ in section 1 of the Act as well as sections 2(1); 2(2); 2A(1); 2A(2); 5(1); 5(2); 6(1); 6(2); 8 and 8A of the State Land

Disposal Act, 1961 (Act No.48 of 1961) be amended on the basis of their partly obsolete nature.

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

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

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

1. Firstly, the Act allows the disposal of national state land to take place on a centralised basis;
2. Secondly, in practice, the disposal of national state land takes place primarily in terms of this Act;
3. Thirdly, the Act confers on the President the power to amend or cancel any condition registered against any land conferring any right on the State; and
4. Fourthly, the Act prohibits the acquisition of both national state land and provincial state land by means of acquisitive prescription.

2.69 With regard to the extent of, and reason for, current applicability, the State Land Disposal Act 48 of 1961 applies to the disposal of all types of national state land situated

either within or outside of the Republic. It is currently applicable for the reasons set out above.

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

(a) Section 1

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

1. First, that in terms of the new constitutional dispensation, ownership of state land does not vest only in the national government. Ownership of state land may vest in either the national or the provincial governments. A distinction may, therefore, be drawn between national state land and provincial state land. Ownership of national state land vests in the national government and ownership of provincial state land vests in the relevant provincial government. Support for this proposition may be found in section 239 of the interim Constitution. This section regulated the manner which state land that existed on the 27 April 1994 was allocated to either the national or the provincial governments. It essentially provided in this respect that state land associated with the administration of a particular law would vest in the authority that had been assigned administrative responsibility for that law in terms of section 235 of the interim Constitution. The 1996 Constitution does not contain an equivalent provision. Item 28(1) of Schedule 6 of the 1996 Constitution does, however, provide that “on the production of a certificate by a competent authority that immovable property owned by the state is vested in a

particular government in terms of section 239 of the previous Constitution, a registrar of deeds must make such entries or endorsements in or on any relevant register, title deed or other document to register that immovable property in the name of that government”.

2. Second, that the disposal of provincial state land is comprehensively regulated by provincial legislation. Over the past 15 years each of the provincial legislatures has enacted a “land administration” statute. These statutes confer the authority to dispose of provincial state land on the Premier or the relevant Member of the Executive Council. In each of these Acts, the right to dispose of provincial state land encompasses the right to sell, exchange, let, donate and encumber provincial state land. The relevant provincial Acts are as follows: the Eastern Cape Land Disposal Act 7 of 2000, Free State Land Administration Act 1 of 1998, Gauteng Land Administration Act 11 of 1996, KwaZulu-Natal Land Administration Act 3 of 2003; Northern Province Land Administration Act 6 of 1999, Mpumalanga Land Administration Act 5 of 1998, Northern Cape Land Administration Act 6 of 2002; North West Land Administration Act 4 of 2001; and Western Cape Land Administration Act 6 of 1998. In addition, some of these Acts also prohibit the acquisition of provincial state land by means of acquisitive prescription (see s 21 of the Gauteng Land Administration Act, s 12 of the KwaZulu-Natal Land Administration Act, s 8 of the Northern Cape Land Administration Act, s 7 of the North West Land Administration Act, and s 7 Western Cape Land Administration Act).
3. Third, that in accordance with the system of co-operative government, Parliament has enacted framework legislation aimed at regulating the manner in which the provincial governments may dispose of provincial state land. The Government Immovable Asset Management Act 19 of 2007 provides in this respect that relevant national and provincial departments of state must prepare custodian immovable asset plans (see section 4) and that these plans must, *inter alia*, include a strategy for disposing of immovable assets (see section 7).

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

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

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

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

2.76 Given that it is unlikely that any such land has been transferred to the President since 1957, it is possible that the national government may have disposed of all such

land. If this is the case then the purpose for which the reference to section 3(4) of the Agricultural Holdings (Transvaal) Registration Act 22 of 1919 was included in the definition of “State land” has been fulfilled. The reference to section 3(4) of the Agricultural Holdings (Transvaal) Registration Act 22 of 1919 may, therefore, be repealed.

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

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

2.79 In addition, section 86 appears in Part B of Chapter III of the Town Planning and Townships Ordinance (Transvaal) 15 of 1986 and this Part applies only to townships which have been or which are going to be established in a local authority which is not an “authorised local authority”. The concept of an “unauthorised local authority” is also not consistent with the constitutional and legislative framework governing the status and the powers of municipalities in South African today.

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

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

2.82 The DPW recommended that the definition of the term ‘State Land’ should be amended as follows:

“ ‘State land’ [includes any land over which the right of disposal by virtue of the provisions of section 3(4) of the Agricultural Holdings (Transvaal) Registration Act, 1919 (Act 22 of 1919), and section 78(3) and (4) of the Town Planning and Townships Ordinance, 1965 (Ordinance 25 of 1965) (Transvaal), vests in the State President,] means land that is owned by or vest in the national government of the Republic of South Africa and any right in respect of such [State] land”.

(b) Section 2(2)

2.83 Discussion paper 121 had provisionally proposed that section 2(2) be amended. However, the DPW recommended that section 2(2) be repealed. Section 2(2) provides as follows:

“The State President shall not dispose of any particular State Land in terms of subsection (1) if the disposal thereof is governed by a provincial ordinance: Provided that the provisions of this subsection shall not apply in respect of the lease of the whole or any portion of –

- (a) places upon State land which have been reserved by the State President as contemplated in Item 5 of the Second Schedule to the Financial Relations Consolidation and Amendment Act, 1945 (Act 38 of 1945), as being places of public resort, of public recreation, or of historical or scientific interest; and
- (b) State land situated in public resorts, places of rest, seaside resorts, holiday centers, holiday camps, caravan parks, tent camps and picnic places referred to in Item 24 of the Second Schedule of

the said Act which cannot lawfully be leased in terms of any such ordinance.”

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

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

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

2.87 Accordingly, the SALRC recommends that section 2(2) should be repealed.

(c) Section 2B

2.88 It recommended that section 2B be repealed. Section 2B provides as follows:

2B Disposal of State land in Foreshore, Cape Town

- (1) Land vesting in the State under section 19(2) of the Cape Town Foreshore Act, 1950 (Act 26 of 1950), as from 1 April 1979, shall be State land to which the provisions of this Act shall apply.
- (3) Land which before the date referred to in subsection (1) was-
 - (a) Sold, exchanged or donated by the board but in respect of which title has not yet been given on that date; or
 - (b) Leased by the board, shall be deemed to have been sold, exchanged, donated or leased under the provisions of this Act.
- (4) The Minister may from time to time out of the proceeds of the sale or lease referred to in subsections (1) and (2) pay to the City

Council of the City of Cape Town such amounts as the Minister may determine with the concurrence of the Minister of Finance.

2.89 The reason for this is that the land referred to in section 2B(1) vested in the State on 1 April 1979. It is highly probable that over the past 30 years the national government may have disposed of all such land. If this is the case section 2B no longer serves any purpose and it may, therefore, be repealed. The DPW supports the proposed repeal of section 2B of the State Land Disposal Act 48 of 1961.

(d) Section 8A

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

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

2.91 There is a view that the references to section 5(2) and section 8(2) of the Abolition of Racially Based Land Measures Act 108 of 1991 are spent and should be deleted from section 8A. Section 5(2) provided for the continued existence of proclamations made under section 25(1) of the Black Administration Act 38 of 1927, notwithstanding the repeal of section 25(1) itself.

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

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

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

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

2.95 Finally, it is recommended that all the references in the Act to **[State President]** found in sections 2(1); 2(2); 2A(1); 2A(2); 5(1); 5(2); 6(1); 6(2) and 8 of the Act be substituted with reference to the ‘President’.

2.96 The DPW supports the proposed amendment of the definition of ‘State land’ and section 8A as well as the proposed repeal of sections 2(2) and 2B of the State Land Disposal Act 48 of 1961 as stated above.

3. General Law Amendment Act 102 of 1972

2.97 Section 34 of the General Law Amendment Act 102 of 1972 contains a provision that is glaringly in contravention of section 6 of the Constitution relating to official languages. It is recommended that the section be amended as follows:

34 Certain Conditions of title or other conditions applying in respect of immovable property owned by the State to lapse in certain circumstances

(1) If the State owns immovable property which is subject to a condition of title, or a condition contained in any other document, to the effect that such property may or shall only be used for certain purposes or only by the State and that the ownership of such property may or shall be transferred to the person from whom such property was acquired or to some other person when such property is no longer required or used for such purposes or used by the State, and the Minister of Public Works, by means of a notice in [both official languages] ‘at least two of the official languages’, published simultaneously in the Gazette and a newspaper circulating in the area in which the property is situate, makes known that such property is no longer required or used for such purposes, or used by the State, such condition of title or other condition shall lapse after the

expiry of a period of one year from the date on which such notice was published, unless the person from whom such property was acquired or such other person provides the Minister of Public Works before the expiry of such period with all documents required for the transfer of the ownership of such property in accordance with such condition of title or other condition.

2.98 The reference to 'both official languages' is problematic, since there are now eleven official languages and although it may not yet be possible to publish such notices in all of these languages, it is recommended that the provision should be amended to read "at least two of the official languages". However, the DPW is of the view that the provision should be amended to read 'English and another official language'.

4. Land Affairs Act 101 of 1987

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

2.100 It is recommended that the following amendments be effected to this Act:

1. The long title must be amended in order to remove the words *and Land Affairs* after the words Department of Public Works, due to the fact that there is no such Department of Public Works and Land Affairs. It is recommended that the long title to the Act be amended as follows:

"To provide for the determination of amounts of compensation, purchase prices or rents in respect of immovable property expropriated, purchased or leased by the Department of Public Works **[and Land Affairs]** for public purposes and the giving of advice with regard to the value of land, rights on or in respect of land and purchase prices or rents in respect of certain immovable property; for that purpose to make provision for the establishment of a Land Affairs Board; and to provide for incidental matters."

2. Likewise, the definition of Department in section 1 of the Act also contains the words *and Land Affairs* after the words Department of Public Works. It is recommended that the definition of 'department' be amended as follows:

“department’ means the Department of Public Works **[and Land Affairs];**’

2.101 Section 3(1) of the Act refers to the appointment of board members by the Minister of Public Works, after consultation with the ‘Minister of Local Government, Housing and Works in the Ministers Council: House of Representatives and the Minister of Local Government, Housing and Agriculture in the Ministers Council: House of Delegates’. These references to obsolete names like ‘own affairs’ portfolios should be deleted. It is recommended that section 3(1) of the Act be amended as follows:

- “(1) Subject to the provisions of subsection (2), the board shall consist of not more than five members appointed by the Minister in a full-time or part-time capacity **[after consultation with the Minister of Local Government, Housing and Works in the Ministers’ Council: House of Representatives and the Minister of Local Government, Housing and Agriculture in the Ministers’ Council: House of Delegates.]**”
3. Subsection 4(2)(c) makes reference to a repealed piece of legislation, namely- *the Agricultural Credit Act, 1966 (Act 28 of 1966)*. The latter Act was repealed by the Agricultural Debt Management Act 45 of 2001. It is recommended that the above anomaly be deleted. It is recommended that section 4(2)(c) of the Act be amended as follows:
4. “(2)(c) if his or her estate is sequestrated **[or he applies for assistance contemplated in section 10(1)(c) of the Agricultural Credit Act, 1996 (Act 28 of 1966);]**”

5. Subsection 4(2)(d) makes reference to *the President's Council* which does no longer exist. It is recommended that section 4(2)(d) of the Act be amended as follows:
6. "(2)(d) if he 'or she' seeks election at any party or official nomination of candidates for Parliament [**the President's Council**] or any other legislative authority elected on a party political basis, or attempts to have himself 'or herself' nominated at any such nomination;"

2.102 The DPW supports the proposed amendments of the Land Affairs Act, 1987 as recommended above.

5. Commonwealth War Graves Act 8 of 1992

2.103 The Commonwealth War Graves Act 8 of 1992 contains certain terminology that is glaringly obsolete and makes reference to certain pieces of legislation that no longer exist. The definition of 'local authority' in section 1 of the Act makes reference to a number of Acts which have been repealed. The references that should be deleted or substituted are the following:

1. *'local authority' means any institution or body contemplated in section 84(1)(f) of the Provincial Government Act 32 of 1961.*

2.104 The latter Act was repealed by the Constitution of the Republic of South Africa Act 200 of 1993.

2. The definition 'local authority' includes-

- (a) *any local authority as defined in section 1 (1) of the Black Local Authorities Act, 1982 (Act 102 of 1982).*

2.105 The latter Act was repealed by the Local Government Transition Act 209 of 1993.

- (b) *any local government body established by virtue of the provisions of section 30(2)(a) of the Black Administration Act 38 of 1927.*

2.106 Section 8(1) of the Abolition of Racially Based Land Measures Act 108 of 1991 repeals sections 30 and 30A of the Black Administration Act 38 of 1927. In terms of section 1(6)(b) of the Repeal of the Black Administration Act and Amendment of Certain Laws Act 28 of 2005:

Any regulation made under section 30(2) of the Act or any by-law made under section 30A(1) of the Act and in force immediately prior to the commencement of section 8 of the Abolition of Racially Based Land Measures Act, 1991 (Act 108 of 1991), in an area, including a former self-governing territory, which has not been repealed in terms of section 87 of the said Abolition of Racially Based Land Measures Act, 1991, is hereby repealed on –

- (i) 30 September 2007; or
- (ii) Such date as it is repealed by a competent authority, whichever occurs first.

2.107 So clearly this definition needs to be revised.

- (c) *a board of management or board referred to in section 1 of the Rural Areas (House of Representatives) Act 9 of 1987 means in terms of this Act ‘a board of management established under Act 24 of 1963 or Law 1 of 1979 or this Act for the administration and control of any board area.’¹⁸*

2.108 The whole of Act 9 of 1987 has been repealed by section 10 of the Transformation of Certain Rural Areas Act 94 of 1998, which will come into operation on a date to be fixed by the President by proclamation in the Gazette (2 November 1998). This definition originated in apartheid ‘own affairs’ legislation and thus it should be amended.

¹⁸ The Rural Coloured Areas Act 24 of 1963 was repealed by the Rural Coloured Areas Amendment Act 31 of 1978 (excluding section 4) - this Act in turn was repealed by Act 108 of 1991; Law 1 of 1979 the Rural Coloured Areas Law 1979, of the Coloured Persons Representative Council of the Republic of South Africa was repealed by the Rural Areas Act (House of Representatives) 9 of 1987.

- (d) *any local development committee established under section 28A(1) of the Development (House of Representatives) Act 3 of 1987.*

2.109 The latter Act was repealed by the Housing Act 107 of 1997.

- (e) *the Local Government Affairs Council established by section 2 of the Local Government Affairs Council (House of Assembly) Act 84 of 1989.*

2.110 The latter Act was repealed by section 2 of the Disestablishment of the Local Government Affairs Council Act 59 of 1999.

- (f) *any regional services council established under section 3 of the Regional Services Councils Act, 1985 (Act 109 of 1985);*

7. *any joint services board established under section 4 of the KwaZulu and Natal Joint Services Act, 1990 (Act 84 of 1990).*

2.111 The Regional Services Councils Act (No.109 of 1985) and the KwaZulu and Natal Joint Services Act, 1990 (Act 84 of 1990) were assigned to the appropriate provinces in terms of section 235 of the Interim Constitution¹⁹. The power of the regional services councils and the joint services boards to levy and claim RSC levies were vested in the district and metropolitan councils established under the Local Government Transition Act No.209 of 1993 ("LGTA"), following the dissolution of regional services councils and the joint services boards. However, the relevant provisions in the LGTA were later replaced by section 93(6) of the Local Government: Municipal Structures Act No.117 of 1998 that authorize district and metropolitan municipalities to levy and claim a regional services levy and a regional establishment levy.

¹⁹ See Proclamation R153 in Government Gazette 16049 of 31 October 1994, as amended by Proclamation R31 in Government Gazette 16346 of 7 April 1995.

2.112 The Regional Services Councils Act, 1985 and the KwaZulu and Natal Joint Services Act, 1990 have not been amended to vest the RSC levying powers in district and metropolitan councils. As a result, the source of the levying power was not the Regional Services Councils Act, 1985 or the KwaZulu and Natal Joint Services Act, 1990 but the Municipal Structures Act, 1998. Section 93(6) of the latter Act was repealed by section 59(1) of the Small Business Tax Amnesty and Amendment of Taxation laws Act No.9 of 2006, thereby removing district and metropolitan municipalities' authority to collecting these levies and thus making the Regional Services Council Act and the KwaZulu and Natal Joint Services Act redundant.

2.113 The DPW recommended that the definition of 'local authority' be amended as follows:

“‘local authority’ means any district municipality, local municipality or metropolitan municipality as defined in and established in terms of sections 1 and 12 respectively of the Local Government: Municipal Structures Act, 1998 (Act No.117 of 1998)’.

6. Rhodes' Will (Groote Schuur Devolution) Act 9 of 1910

2.114 Certain terminology in the Rhodes Will (Groote Schuur Devolution) Act 9 of 1910 are glaringly obsolete. It is recommended that these be amended as stated in the paragraphs below.

2.115 The Act makes provision for the surrender of the Groote Schuur Estates to the Government of the Union of South Africa in accordance with the Will of the late Cecil John Rhodes and for the release of the Trustees thereunder from all responsibility in connection with the said Estates and for other purposes.

2.116 The Act contains certain restrictions on the usage and disposal of numerous properties mentioned in the Act and the Will, and it is believed that the repeal of this Act would render the aforesaid restrictions non operable. This will be contrary to the wishes of the Testator, which should be respected. Therefore, it is not prudent to alter the

conditions attached to the bequest, as non-compliance with the conditions and restrictions of the bequest could render the bequest itself nugatory.

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

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

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

another legislation on the statute book giving the President similar powers. Accordingly, it is recommended that the Rhodes' Will (Groote Schuur Devolution) Amendment Act 55 of 1985 be retained.

2.120 It is recommended that the Rhodes' Will (Groote Schuur Devolution) Act, 1910 be amended as follows:

1. By the substitution for the Preamble to the Act of the following Preamble:

“To provide for the surrender of the Groote Schuur Estates to the 'National' Government of the **[Union]** 'Republic' of South Africa in accordance with the Will of the late Cecil John Rhodes and for the release of the Trustees thereunder from all responsibility in connection with the said Estates and for other purposes.”

2. By the substitution for subsection (1)(1) of the following subsection:

“(1)(1) From the commencement of this Act the Groote Schuur Estates (comprising the properties specified in the First Schedule thereto) together with all furniture, plate, and other articles belonging to the said Estate shall be transferred to the **[Union Government]** 'National Government of the Republic of South Africa' and shall vest in the **[Governor-General]** 'National Government of the Republic of South Africa', subject to the conditions and directions contained in Clause 13 and 15 of the Will of the testator, hereinbefore recited, and as if the **[Union Government]** 'National Government of the Republic of South Africa' were the Federal Government mentioned or referred to in those clauses”.

3. By the substitution for subsection (1)(2) of the following subsection:

“(1)(2) The trustees shall hand over to the **[Union Government]** 'National Government of the Republic of South Africa' all documents of title in their possession or control of or relating to the Groote Schuur

Estates or any part thereof, and the Registrar of Deeds of the Province of the **[Cape of Good Hope]** 'Western Cape' shall endorse thereon, and on the counterparts thereof in his or her office, memoranda denoting the transfer of the property specified therein to the said **[Union Government]** 'National Government of the Republic of South Africa'.

4. By the substitution for subsection (1)(3) of the following subsection:

“(1)(3) If at any time hereafter it be discovered that any property described in Clause 13 of the Will of the testator has been omitted from the First Schedule to this Act, such property shall, notwithstanding the omission, be transferred to and shall vest in the **[Governor-General]** 'National Government of the Republic of South Africa'.

5. By the substitution for subsection (1)(A) of the following subsection:

“(1)(A) Notwithstanding the provisions of sections 1 and 2 of this Act or of clauses 13 and 14 of the Will of the testator, the **[State]** President may-

(b) Grant permission that the residence known as De Groote Schuur also be used for the purposes of establishing and maintaining a museum;

(c) Place a portion of Erf 44214, Cape Town, in extent approximately 13 hectares, at the disposal of any person to be utilized as a park, open to all members of the public, subject to such conditions as the **[State]** President may determine from time to time,

But the said residence and the said portion of the said erf shall remain vested in the **[State]** President.”

6. By the substitution for section (2) of the following section:

“(2) The Groote Schuur Estates shall be held and enjoyed by the **[Union Government]** 'National Government of the Republic of South Africa' subject to and under reservation of the tenancies, servitudes,

rights, privileges, and concessions (whether created by parole grant or otherwise) affecting those estates and more particularly specified in the Second Schedule to this Act, and to no others.”

7. By the substitution for section (3) of the following section:

“(3) At the commencement of this Act the trustees shall pay to the **[Union Government]** ‘National Government of the Republic of South Africa’ the sum of twenty-five thousand pounds sterling in lieu of the annual sum of one thousand pounds sterling provided for in Clause 14 of the Will of the testator, and thereupon the **[Union Government]** ‘National Government of the Republic of South Africa’ shall provide for in the Estimates of Expenditure annually submitted to Parliament, and shall expend annually, a sum of not less than one thousand pounds sterling upon the services specified in the said Clause 14: Provided that the trustees may deduct from the said sum of twenty-five thousand pounds the sum of two thousand three hundred pounds, nine shillings and twopence being the amount expended by them since the thirty-first day of May 1910 upon the upkeep of the said Estates.”

8. By the substitution for section (5) of the following section:

“(5) Subject to the tenancies, servitudes, rights, privileges, and concessions contained in the Second Schedule to this Act, and to the conditions contained in Clause 13 of the Will of the testator, the **[Union Government]** ‘National Government of the Republic of South Africa’ may, if it think fit, dedicate a site on the Groote Schuur Estates for the purpose of University Buildings.”

2.121 In a nutshell, it is recommended that the Rhodes’ Will (Groote Schuur Devolution) Act, 1910 (Act No. 9 of 1910), save for the Schedules to the Act, be amended as follows:

1. By the substitution for the words **[Government of the Union of South Africa]** and **[Union Government]** respectively of the words 'National Government of the Republic of South Africa' wherever they appear in the Act;
2. By the substitution for the words **[Governor-General]** of the words 'National Government of the Republic of South Africa' wherever they appear in the Act;
3. By the deletion of the word **[State]** before the word President wherever it appears in section (1)(A) of the Act; and
4. By the substitution for the words **[Cape of Good Hope]** of the Words 'Western Cape' in section (2)(1) of the Act.

7. Local Government City of Cape Town (Muizenberg Beach) Improvement Act 17 of 1925

2.122 The purpose of the Local Government City of Cape Town (Muizenberg Beach) Improvement Act 17 of 1925 is to vest certain lands adjoining False Bay in the Council of the City of Cape Town. The Act further entitles the "Governor-General" to resume the land for a public purpose.

2.123 The Act contains old terminology, like the 'Governor-General', and makes reference to the Land and Arbitration Clause Act of the Cape of Good Hope that does no longer exist.²⁰ Section 4 of the Act provides that:

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

²⁰ Section 4 of Act 17 of 1925 makes reference to Land and Arbitration Clause Act, 1882, of the Cape of Good Hope. The latter Act was superseded by the Arbitration Act 42 of 1965.

the provisions of the Land and Arbitration Clauses Act, 1882, of the Cape of Good Hope.

2.124 Discussion Paper 121 had provisionally recommended the following amendments to the Act:

1. That the Act be amended in order to substitute the “Premier of the Province of the Western Cape” for the “Governor-General” wherever it appears in the Act;
2. That the reference to the “Land and Arbitration Clause Act, 1882 of the Cape of Good Hope” be deleted; and
3. That the provision in section 4 of the Act which empowers the “Governor-General” to expropriate land without compensation be removed in order to align it with the Constitution²¹ and applicable legislation.²²

2.125 However, the DPW recommended the following amendments to the Act:

1. That “Governor-General” should be substituted by “President of the Republic of South Africa”, wherever it appears in the Act;
2. That the reference to the “Land and Arbitration Clause Act, 1882 of the Cape of Good Hope” should be substituted by reference to “Arbitration Act 42 of 1965” and
3. That section 4 of the Act should be retained without amendment since it was common then, as it is now, for such a reversionary clause to be included when the state disposes of land free of charge or at nominal value.

2.126 The SALRC agrees with the proposed amendments to the Act made by the DPW above.

²¹ Constitution of the Republic of South Africa Act, 1996 (Act No.108 of 1996).

²² The Expropriation Bill, among other relevant legislation.

8. Construction Industry Development Board Act 38 of 2000

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

2.137 Section 7(4) of the Act provides that

a member of the Board must immediately vacate office if he or she-

- (a) is convicted, whether in the Republic or elsewhere, of theft, fraud, forgery or uttering a forged document, perjury, or any offence involving dishonesty or of any offence in terms of the Prevention of Corruption Act, 1958 (Act 6 of 1958) and the Corruption Act, 1992 (Act No.94 of 1992), Part 1 to 4, or section 17, 20 or 21 (in so far as it relates to the aforementioned offences) of Chapter 2 of the Prevention and Combating of Corrupt Activities Act, 2004, or the Companies Act, 1973 (Act 61 of 1973), or of contravening this Act.

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

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

- (2) all criminal proceedings which immediately prior to the commencement of this Act were instituted in terms of the provisions of the Corruption Act, 1992 (Act 94 of 1992), and which proceedings have not been concluded before the commencement of this Act, shall be continued and concluded, in all respects, as if this Act had not been passed.
- (3) An investigation or prosecution or other legal proceedings, in respect of conduct which would have constituted an offence under the Corruption Act, 1992, and which occurred after the

commencement of that Act but before the commencement of this Act, may be concluded, instituted and continued as if this Act had not been passed.

- (4) Notwithstanding the repeal or amendment of any provision of any law by this Act, such provision shall, for the purpose of the disposal of any investigation, prosecution or any criminal or legal proceedings contemplated in subsection (2) or (3), remain in force as if such provision had not been repealed or amended.

2.140 It is recommended that paragraph (a) of section 7(4) of Act 38 of 2000 be amended in order to remove references to legislation that no longer exists as follows:

- “(a) is convicted, whether in the Republic or elsewhere, of theft, fraud, forgery or uttering a forged document, perjury, or any offence involving dishonesty or of any offence in terms of **[the Prevention of Corruption Act, 1958 (Act 6 of 1958) and the Corruption Act, 1992 (Act No.94 of 1992),]** Part 1 to 4, or section 17, 20 or 21 (in so far as it relates to the aforementioned offences) of Chapter 2 of the Prevention and Combating of Corrupt Activities Act, 2004, or the Companies Act, 1973 (Act 61 of 1973), or of contravening this Act.”

D Statutes recommended for retention without any amendment

1. Parliamentary Villages Management Board Act 96 of 1998

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

2.142 The Act does not contain any unconstitutional, obsolete or redundant provisions. In the context of the current investigation, it is recommended that the Act be retained as

it seems in line with section 9 of the Constitution and remains essential for the purposes of achieving its objectives

2. Council for the Built Environment Act 43 of 2000

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

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

3. Architectural Profession Act 44 of 2000

2.145 The purpose of the Architectural Profession Act 44 of 2000 is to provide for the establishment of a juristic person to be known as the South African Council for the Architectural Profession; to provide for the registration of professionals, candidates and specified categories in the architectural profession; to provide for the regulation of the relationship between the South African Council for the Architectural Profession and the Council for the Built Environment; and to provide for matters connected therewith.

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

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

Authority Act, 1995, with a view to the establishment of a standards generating body in terms of those regulations;

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

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

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

4. Landscape Architectural Profession Act 45 of 2000

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

2.149 The wording of paragraphs (d) and (f) respectively of section 13 of Act 45 of 2000 is the same as those of paragraphs (d) and (e) respectively of section 13 of Act 44 of 2000.²³ The Act does not contain any unconstitutional, obsolete or redundant provisions. Accordingly it is recommended that the Landscape Architectural Profession Act 45 of 2000 be retained.

5. Engineering Profession Act 46 of 2000

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

2.151 Since the wording of paragraphs (d) and (f) respectively of section 13 of Act 46 of 2000 is the same as those of paragraphs (d) and (e) respectively of section 13 of Act 44 of 2000,²⁴ it is accordingly recommended that the Engineering Profession Act 46 of 2000 be retained.

6. Property Valuers Profession Act 47 of 2000

2.152 The purpose of the Property Valuers Profession Act 47 of 2000 is to provide for the establishment of a juristic person to be known as the South African Council for the Property Valuers Profession; to provide for the registration of professionals, candidates and specified categories in the property valuation profession; to provide for the

²³ Architectural Profession Act, 2000 (Act No.44 of 2000).

²⁴ Architectural Profession Act, 2000 (Act No.44 of 2000).

regulation of the relationship between the South African Council for the Property Valuers Profession and the Council for the Built Environment; and to provide for matters connected therewith.

2.153 The wording of paragraphs (d) and (f) respectively of section 13 of Act 47 of 2000 is the same as those of paragraphs (d) and (e) respectively of section 13 of Act 44 of 2000.²⁵ The Act does not contain any unconstitutional, obsolete or redundant provisions. Accordingly it is recommended that the Property Valuers Profession Act 47 of 2000 be retained.

7. Project and Construction Management Professions Act 48 of 2000

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

2.155 The wording of paragraphs (d) and (f) respectively of section 13 of Act 48 of 2000 is the same as those of paragraphs (d) and (e) respectively of section 13 of Act 44 of 2000.²⁶ The Act does not contain any unconstitutional, obsolete or redundant provisions. Accordingly it is recommended that the Project and Construction Management Professions Act 48 of 2000 be retained.

²⁵ Architectural Profession Act, 2000 (Act No.44 of 2000).

²⁶ Architectural Profession Act, 2000 (Act No.44 of 2000).

8. Quantity Surveying Profession Act 49 of 2000

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

2.157 The wording of paragraphs (d) and (f) respectively of section 13 of Act 49 of 2000 is the same as those of paragraphs (d) and (e) respectively of section 13 of Act 44 of 2000.²⁷ The Act does not contain any unconstitutional, obsolete or redundant provisions. Accordingly it is accordingly recommended that the Quantity Surveying Profession Act 49 of 2000 be retained.

E Statute recommended for further investigation

1. Government Villages Act 44 of 1973

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

2.159 According to information obtained from meetings held with DPW officials, it appears that some of these 'Government Villages' have been transferred to or absorbed

²⁷ Architectural Profession Act, 2000 (Act No.44 of 2000).

by the adjacent municipalities and have been subdivided and disposed of to the occupants or owners as the case may be.²⁸

2.160 Certain terminology in the Government Villages Act 44 of 1973 are glaringly obsolete. In the definitions section, the definitions of ‘Minister’ as well as ‘Director-General’ both refer to the Department of Community Development, a department no longer provided for in the structure of government.

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

- (1) The Director-General shall control and manage Government Villages subject to the directions of the Minister.
- (2) In the performance of his functions under subsection (1) the Director-General may-
 - (b)(vi) without obtaining a judgement or decree of the court, eject from any Government Village any person whose right to accommodation or to occupy any land, building or structure in that Government Village has expired by effluxion of time or has been terminated by notice or who has no right to be in that Government Village.

2.162 According to comments received from the Department of Rural Development and Land Reform (DRDLR) in respect of Discussion Paper 115,²⁹ the Department considers section 2(2)(b)(vi) of the Act to be in direct conflict with section 26 of the Constitution of the Republic of South Africa of 1996 which provides in subsection (3) that-

²⁸ The ‘Government Villages’ situated in Germiston and Vereeniging were transferred to the relevant municipalities in 1992.

²⁹ Discussion Paper 115 in respect of legislation administered by the Department of Human Settlements published by the SALRC for general information and comment in November 2008.

no one may be evicted from their home, or have their home demolished, without an order of court made after considering all relevant circumstances. No legislation may permit arbitrary evictions.

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

2.164 Section 3 of the Act provides that-

The Director-General shall administer the moneys appropriated by Parliament in respect of Government Villages, and shall for the purposes of the Exchequer and Audit Act, 1956, (Act 23 of 1956), be the accounting officer in respect of such moneys.

2.165 However, the latter Act was repealed by the Exchequer Act, 1975 (Act 66 of 1975) which in turn was repealed by section 94 of the Public Finance Management Act, 1999 (Act 1 of 1999) as a whole, except sections 28, 29 and 30. The retained sections of the Exchequer Act only deal with transitional provisions relating to the Department of Posts and Telecommunications and the South African Broadcasting Corporation. This means therefore that the remaining sections of the Exchequer and Audit Act, 1956 are irrelevant for purposes of the Government Villages Act.

2.166 In essence, the investigation required to determine whether the Act still serves a useful purpose or not entails verifying with every municipality in whose area of administration the former military camps were situated in order to find out who the current occupants of those houses are and what their land tenure is; whether the occupants are returning soldiers or descendants of returning soldiers; whether the houses concerned are still being maintained by government and, if so, which sphere of government is responsible for providing which services to the occupants of the houses in question. It is submitted that the SALRC does not have all the resources required to conduct such an investigation and is of the view that either the Department of Human Settlements or the DPW is in a position to conduct the required investigation.

2.167 The Department of Human Settlements stated in their response to Discussion Paper 115 that the *Department (of Human Settlements) is not responsible for these*

villages as they were not developed in terms of the current housing legislation. Since it is also unclear as to whether the administration of the Act was assigned to the relevant Provincial Departments of Human Settlements or transferred to the Minister of Public Works, neither the Department of Human Settlements nor the DPW could support the proposal to amend the definitions of 'Minister' and 'Director-General' to refer to those of their respective departments.

2.168 Accordingly, it is recommended that further investigation be undertaken by the two Departments in order to determine whether a need still exists to keep the Act on the statute book, and depending on the finding of such investigation, appropriate action be taken to amend or repeal the Act as the case may be.

F Statute excluded from the investigation

1. Expropriation Act 63 of 1975

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

2.170 The definition of the terms 'executive committee', 'local authority', 'master' and 'owner' in section 1 of the Act make reference to a number of Acts which have been repealed. These references should be deleted or substituted for the following reasons:

1. 'executive committee' means the executive committee of a Province mentioned in section 7 of the Provincial Government Act, 1986 (Act 69 of 1986).

2.171 The Provincial Government Act, 1986 (Act 69 of 1986) was repealed by section 230 (1) of the Constitution of the Republic of South Africa, Act 200 of 1993, which came into operation on 27 April 1994.³⁰

2. *'local authority' means-*
 - (a) *an institution contemplated in sections (1)(f)(i) of the Provincial Government Act, 1961 (Act 32 of 1961);*

2.172 The Provincial Government Act 32 of 1961 was repealed by the Constitution of the Republic of South Africa Act 200 of 1993.

- (b) *a board of management or board contemplated in section 1 of the Rural Areas Act (House of Representatives), 1987 (Act 9 of 1987);*

2.173 The Rural Areas Act (House of Representatives), Act 9 of 1987 was repealed by the Transformation of Certain Rural Areas Act 94 of 1998.

- (c) a local authority as defined in section 1 of the Black Local Authorities Act, 1982 (Act 102 of 1982);

2.174 The Black Local Authorities Act 102 of 1982 was repealed by section 13 (1) of the Local Government Transition Act 209 of 1993.

- (d) the Local Government Affairs Council contemplated in section 2 of the Local Government Affairs Council Act (House of Assembly) Act, 1989 (Act 84 of 1989);

2.175 The Local Government Affairs Council Act (House of Assembly), Act 84 of 1989 was repealed by section 2 of the Disestablishment of the Local Government Affairs Council Act 59 of 1999.

³⁰ Excluding section 20 which deals with pension matters of those elected to provincial councils.

- (e) a Local Development Committee established under section 28A (1) of the Development Act (House of Representatives), 1987 (Act 3 of 1987);

2.176 The Development Act (House of Representatives), Act 3 of 1987 was repealed by section 20 of the Housing Act 107 of 1997.

- 3. 'master', in relation to a particular property, means the Master of the Supreme Court appointed in respect of the area in which that property is or is situated.

2.177 This definition should be amended to read 'Master of the High Court'.

- 4. 'owner' means, in relation to land or a registered right in or over land, the person in whose name such land or right is registered, and -
 - (a)...
 - (b)...
 - (c)...
 - (d) if any property has vested in a liquidator or trustee elected or appointed in terms of the Agricultural Credit Act, 1966 (Act 28 of 1966), that liquidator or trustee;

2.178 The Agricultural Credit Act 28 of 1966 was repealed by the Agricultural Debt Management Act 45 of 2001.

2.179 Section 3 of the Act also contains a number of references to Acts which have been repealed. Section 3(1) of the Act provides for the expropriation of immovable property by the Minister on behalf of certain juristic persons or bodies. The juristic persons or bodies contemplated in section 3(1) are the following-

- (a) a university as defined in section 1 of the Universities Act 61 of 1955.

2.180 The Universities Act 61 of 1955 was repealed by the Higher Education Act 101 of 1997.

- (b) a university college as defined in section 1 of the Extension of University Education Act 45 of 1969.

2.181 The Extension of University Education Act 45 of 1969 was repealed by the Tertiary Education Act 66 of 1988 which, in turn, was repealed in its entirety by section 76 of the Higher Education Act 101 of 1997.

- (c) a technikon mentioned in section 1 of the Technikons (National Education) Act 40 of 1967.

2.182 The Technikons (National Education) Act 40 of 1967 was repealed by section 40 of the Technikons Act 125 of 1993 which, in turn, was repealed by the Higher Education Act 101 of 1997.

- (d) a governing body as defined in section 1 of the Educational Services Act 41 of 1967.

2.183 The Educational Services Act 41 of 1967 was repealed by the Education Affairs (House of Assembly) Act 70 of 1988 (which came into operation on 1 April 1990). This excluded sections 13 and 15 which were repealed by Act 44 of 1989).

- (e) the Atomic Energy Board mentioned in section 11 of the Atomic Energy Act 90 of 1967.

2.184 The Atomic Energy Act 90 of 1967 was repealed by the Nuclear Energy Act 92 of 1982 which, in turn, was repealed by the Nuclear Energy Act 46 of 1999 and the National Nuclear Regulator Act 47 of 1999.

- (f) a college as defined in section 1 of the Indians Advanced Technical Education Act, 1968 (Act 12 of 1968).

2.185 The Indians Advanced Technical Education Act, 1968 (Act 12 of 1968) was repealed in its entirety by the Technikons Act 125 of 1993 which, in turn, was repealed by the Higher Education Act 101 of 1997.

- (g) the council mentioned in section 1 of the National Monuments Act 28 of 1969.

2.186 The National Monuments Act 28 of 1969 was repealed by the National Heritage Resources Act 25 of 1999. In that Act 'Council' means the Council of the South African Heritage Resources Agency, established in terms of section 14 of the Act.

2.187 Certain provisions in section 12 also contain references to Acts which have been repealed. Section (12)(3)(a) refers to the '*standard interest rate determined in terms of section 26(1) of the Exchequer Act 66 of 1975*'. The whole of this Act except sections 28, 29 and 30 was repealed by section 94 of the Public Finance Management Act 1 of 1999, which came into operation on 1 April 2000. Section (5)(h)(iv) refers to the *Water Act 54, 1956 (Act 54 of 1956)*³¹ which was repealed by the National Water Act 36 of 1998.

³¹ Repealed with effect from 1 October 1998, except ss. 1, 9, 9B, 10, 12B, 15, 16, 20, 21, 32A, 32B, 32C, 32D, 32E, 32J 56 (3), 56 (5), 62 63, 66, 88, 89 (1) (j), 90, 91, 92, 165, 166 and 179A which were repealed with effect from 1 October 1999.

Annexure A

Public Works General Laws Amendment and Repeal Bill

General Explanatory Note:

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

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

BILL

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

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

Repeal of laws

1. The laws specified in Schedule 1 are hereby repealed to the extent set out in fourth column of the Schedule.

Amendment of laws

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

Short title and commencement

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

Schedule 1

Item No.	Number and year of law	Title or subject of law	Extent of repeal
1.	19 of 1913	Carnarvon Outer Commonage Settlement Act, 1913	The whole
2.	16 of 1920	Carnarvon Outer Commonage Settlement Act, Amendment Act, 1920	The whole
3.	34 of 1921	Bethelsdorp Settlement Act, 1921	The whole
4.	3 of 1926	Bethelsdorp Settlement Act 1921 Amendment Act, 1926	The whole
5.	5 of 1926	Mooi River Township Lands Act	The whole
6.	17 of 1926	Carnarvon Outer Commonage Subdivision Act, 1926	The whole
7.	9 of 1941	Municipal Lands (Muizenberg) Act, 1941	The whole
8.	48 of 1961	State Land Disposal Act	Sections 2(2) and 2B
9.	44 of 1966	Bethelsdorp Settlement Amendment Act, 1966	The whole
10.	53 of 1972	Church Square, Pretoria, Development Act	The whole
11.	65 of 1978	Church Square, Pretoria, Development Amendment Act	The whole
12.	13 of 1979	Bethelsdorp Settlement Amendment Act, 1979	The whole
13.	49 of 1983	Bethelsdorp Settlement Amendment Act, 1983	The whole
14.	35 of 1988	Church Square, Pretoria, Development Amendment Act (House of Assembly)	The whole

Schedule 2

Item No.	No. and year of law	Short title	Extent of amendment
1.	Act No.17 of 1937	Cape Outspans Act, 1937	<p>1. The Act is hereby amended by the substitution for the long title of the following long title:</p> <p style="padding-left: 40px;">“To provide for the issue of deeds of grant to divisional and municipal councils in respect of outspans consisting of [Crown] State land situated in the Province of the [Cape of Good Hope] Western Cape”</p> <p>2. The Act is hereby amended by the substitution for section 1 of the following section:</p> <p style="padding-left: 40px;">“1. Upon application by any divisional council or municipal council, the Minister of Public Works may, in his discretion, and without payment of any consideration, cause a deed of grant, containing such conditions as he may think fit, to be issued to that council in respect of the whole or any portion of the land of which any outspan consists, being [Crown] State land, situated within the area of jurisdiction of that council, and in the case of a divisional council, not situated within the area of jurisdiction of any other local authority.”</p> <p>3. Section 3 of the Act is hereby amended by the substitution for</p>

			<p>subsection (2) of the following subsection:</p> <p>“(2) If the amount of compensation to be paid under subsection (1) is not settled by agreement between the Minister of [Lands] Public Works and the council concerned, the amount shall be fixed by arbitration under the provisions of the [Arbitration Act 1898 (Act 29 of 1898) of the Cape of Good Hope] <u>Arbitration Act, 1965 (Act 42 of 1965)</u>, and for that purpose it shall be <u>presumed that the said Minister of Public Works and the council concerned, agreed to refer the fixing of the amount to a single arbitrator.</u>”</p> <p>4. The Act is hereby amended by the substitution for section 4 of the following section:</p> <p>“(4) The council to which any land has been granted under section one shall not sell, exchange or donate or otherwise alienate, or let or mortgage or otherwise burden, the land or any portion thereof, without the consent of the [Administrator of the Province of the Cape of Good Hope] <u>Minister of Public Works</u>, and except upon conditions approved by him <u>or her.</u>”</p> <p>5. The Act is hereby amended by the substitution for section 5 of the following section:</p> <p>“(5) This Act shall not apply to any land situated outside the</p>
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			Province of the [Cape of Good Hope] <u>Western Cape.</u> ”
2.	Act No.48 of 1961	State Land Disposal Act, 1961	<p>1. Section 1 of the Act is hereby amended by the substitution for the definition of ‘state land’ of the following definition:</p> <p>“State land’ [includes any land over which the right of disposal by virtue of the provisions of section 3(4) of the Agricultural Holdings (Transvaal) Registration Act, 1919 (Act 22 of 1919), and section 78(3) and (4) of the Town Planning and Townships Ordinance, 1965 (Ordinance 25 of 1965) (Transvaal), vests in the State President,] <u>means land that is owned by or vest in the national government of the Republic of South Africa and any right in respect of such [State] land”.</u></p> <p>2. Sections 2(1); 2(2); 2A(1); 2A(2); 5(1); 5(2); 6(1); 6(2) and 8 of the Act are hereby amended by the substitution for the words [State President] of the word <u>‘President’</u> wherever they appear in these sections.</p> <p>3. The Act is hereby amended by the substitution for section 8A of the following section:</p> <p>“8A. The provisions of this Act shall apply in addition to, and not in substitution for, the provisions of any [proclamation or] regulation referred to in section[s 5(2), 8(2) and] 11(2) of the Abolition of Racially Based Land</p>

			Measures Act, 1991 (Act 108 of 1991).”
3.	Act No.102 of 1972	General Law Amendment Act, 1972	<p>1. Section 34 of the Act is amended by the substitution for subsection (1) of the following subsection:</p> <p>“(1) If the State owns immovable property..., and the Minister of Public Works, by means of a notice, in [both official languages,] <u>“at least two of the official languages,...</u>”.</p>
4.	Act No.101 of 1987	Land Affairs Act, 1987	<p>1. The Act is hereby amended by the substitution for the long title of the following long title:</p> <p>“To provide for the determination of amounts of compensation, purchase prices or rents in respect of immovable property expropriated, purchased or leased by the Department of Public Works [and Land Affairs] for public purposes and the giving of advice with regard to the value of land, rights on or in respect of land and purchase prices or rents in respect of certain immovable property; for that purpose to make provision for the establishment of a Land Affairs Board; and to provide for incidental matters.”</p> <p>2. Section 1 of the Act is hereby amended by the substitution for the definition of ‘department’ of the following definition:</p> <p>“‘department’ means the Department of Public Works [and Land Affairs];”.</p>

			<p>3. Section 3 of the Act is hereby amended by the substitution for subsection (1) of the following subsection:</p> <p>“(1) Subject to the provisions of subsection (2),... after consultation with the [Minister of Local Government, Housing and Works in the Ministers’ Council: House of Representatives and the Minister of Local Government, Housing and Agriculture in the Ministers’ Council: House of Delegates] “ <u>Minister of Public Works</u> .”;</p> <p>4. Section 4 of the Act is hereby amended by the substitution for paragraph (c) of subsection (2) of the following paragraph:</p> <p>“(2)(c) if his ‘<u>or her</u>’ estate is sequestrated [or he applies for assistance contemplated in section 10(1)(c) of the Agricultural Credit Act, 1966 (Act 28 of 1966)].”</p> <p>5. Section 5 of the Act is hereby amended by the substitution for paragraph (d) of subsection (2) of the following paragraph:</p> <p>“(2)(d) if he ‘or she’ seeks election at any party or official nomination of candidates for Parliament[, the President’s Council] or any other legislative authority elected on a party</p>
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			political basis, or attempts to have himself 'or herself' nominated at any such nomination;”
5.	Act No.8 of 1992	Commonwealth War Graves Act, 1992	<p>1. Section 1 of the Act is hereby amended by the substitution for the definition of 'local authority' of the following definition-</p> <p><u>“local authority' means any district municipality, local municipality or metropolitan municipality as defined in section 1 and established in terms of section 12 of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998”.</u></p>
6.	Act No.9 of 1910	Rhodes' Will (Groote Schuur Devolution) Act, 1910	<p>1. The Act is hereby amended by the substitution for the long title of the following long title:</p> <p>“To provide for the surrender of the Groote Schuur Estates to the '<u>National</u>' Government of the [Union] '<u>Republic</u>' of South Africa in accordance with the Will of the late Cecil John Rhodes and for the release of the Trustees thereunder from all responsibility in connection with the said Estates and for other purposes.”</p> <p>2. Section 1 of the Act is hereby amended by-</p> <p>(a) the substitution for subsection (1) of the following subsection:</p> <p>“(1) From the commencement of this Act the Groote Schuur Estates (comprising the properties specified in the First Schedule thereto) together with all furniture,</p>

			<p>plate, and other articles belonging to the said Estate shall be transferred to the [Union Government] <u>'National Government of the Republic of South Africa'</u> and shall vest in the [Governor-General] <u>'National Government of the Republic of South Africa'</u>, subject to the conditions and directions contained in Clause 13 and 15 of the Will of the testator, hereinbefore recited, and as if the [Union Government] <u>'National Government of the Republic of South Africa'</u> were the Federal Government mentioned or referred to in those clauses”.</p> <p>(b) by the substitution for subsection (2) of the following subsection:</p> <p>“(2) The trustees shall hand over to the [Union Government] <u>'National Government of the Republic of South Africa'</u> all documents of title in their possession or control of or relating to the Groote Schuur Estates or any part thereof, and the Registrar of Deeds of the Province of the [Cape of Good Hope] <u>'Western Cape'</u> shall endorse thereon, and on the counterparts thereof in his or her office, memoranda denoting the transfer of the property specified therein to the said [Union Government] <u>'National Government of the Republic of South Africa'</u>”.</p> <p>(c) by the substitution for subsection (3) of the following subsection:</p> <p>“(3) If at any time hereafter it be discovered that any property</p>
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			<p>described in Clause 13 of the Will of the testator has been omitted from the First Schedule to this Act, such property shall, notwithstanding the omission, be transferred to and shall vest in the [Governor-General] <u>'National Government of the Republic of South Africa'</u>.</p> <p>3. The Act is hereby amended by the substitution for section 1A of the following section:</p> <p>“1A Notwithstanding the provisions of sections 1 and 2 of this Act or of clauses 13 and 14 of the Will of the testator, the [State] President may-</p> <p>(a) Grant permission that the residence known as De Groote Schuur also be used for the purposes of establishing and maintaining a museum;</p> <p>(b) Place a portion of Erf 44214, Cape Town, in extent approximately 13 hectares, at the disposal of any person to be utilized as a park, open to all members of the public, subject to such conditions as the [State] President may determine from time to time,</p> <p>but the said residence and the said portion of the said erf shall remain vested in the [State] President.”</p> <p>4. The Act is hereby amended by the substitution for section 2 of the</p>
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			<p>following section:</p> <p>“2 The Groote Schuur Estates shall be held and enjoyed by the [Union Government] <u>‘National Government of the Republic of South Africa’</u> subject to and under reservation of the tenancies, servitudes, rights, privileges, and concessions (whether created by parole grant or otherwise) affecting those estates and more particularly specified in the Second Schedule to this Act, and to no others.”</p> <p>5. The Act is hereby amended by the substitution for section 3 of the following section:</p> <p>“(3) At the commencement of this Act the trustees shall pay to the [Union Government] <u>‘National Government of the Republic of South Africa’</u> the sum of twenty-five thousand pounds sterling in lieu of the annual sum of one thousand pounds sterling provided for in Clause 14 of the Will of the testator, and thereupon the [Union Government] <u>‘National Government of the Republic of South Africa’</u> shall provide for in the Estimates of Expenditure annually submitted to Parliament, and shall expend annually, a sum of not less than one thousand pounds sterling upon the services specified in the said Clause 14: Provided that the trustees may deduct from the said sum of twenty-five thousand pounds the sum of two thousand three hundred pounds, nine shillings and twopence being the amount expended by them since the thirty-first day of May 1910</p>
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			<p>upon the upkeep of the said Estates.”</p> <p>6. The Act is hereby amended by the substitution for section 5 of the following section:</p> <p>“5. Subject to the tenancies, servitudes, rights, privileges, and concessions contained in the Second Schedule to this Act, and to the conditions contained in Clause 13 of the Will of the testator, the [Union Government] <u>‘National Government of the Republic of South Africa’</u> may, if it think fit, dedicate a site on the Groote Schuur Estates for the purpose of University Buildings.”</p>
7.	Act No.17 of 1925	Local Government City of Cape Town (Muizenberg Beach) Improvement Act, 1925	<p>1. Section 1 of the Act is hereby amended by the substitution for subsection (2) of the following subsection:</p> <p>“2. The [Governor-General] <u>President of the Republic of South Africa</u> may, subject to the provisions of section three of this Act, issue in favour of the council a grant of the lands described in the preceding subsection.”</p> <p>2. The Act is amended by the substitution for section (4) of the following section:</p> <p>“4. The [Governor-General] <u>President of the Republic of South Africa</u> shall at all times have the right of resuming the whole or a portion of the lands vested in the</p>

			<p>council in terms of section one of this Act, if required for public purposes, without compensation except for improvements to the said lands; and the amount of such compensation shall be agreed upon by the parties concerned, or, failing such agreement, shall be determined by arbitration in accordance with the provisions of the [Land and Arbitration Clauses Act, 1882, of the Cape of Good Hope] <u>Arbitration Act, 1965 (Act No.42 of 1965).</u>”</p>
8.	Act No.38 of 2000	Construction Industry Development Board Act, 2000	<p>1. Section 7 of the Act is amended by the substitution for paragraph (a) of subsection (4) of the following paragraph:</p> <p>“(4)(a) is convicted, whether in the Republic or elsewhere, of theft, fraud, forgery or uttering a forged document, perjury, or any offence involving dishonesty or of any offence in terms of [the Prevention of Corruption Act, 1958 (Act 6 of 1958), the Corruption Act, 1992 (Act 94 of 1992,] Part 1 to 4, or section 17, 20 or 21 (in so far as it relates to aforementioned offences) of Chapter 2 of the Prevention and Combating of Corrupt Activities Act, 2004, or the Companies Act, 1973 (Act 61 of 1973), or of contravening this Act;”</p>

Annexure B

Statutes administered by the Department of Public Works

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

23.	Community Development Amendment Act, 1968 (Act No.58 of 1968)
24.	Community Development Amendment Act, 1970 (Act No.74 of 1970)
25.	Community Development Amendment Act, 1971 (Act No.68 of 1971)
26.	Community Development Amendment Act, 1972 (Act No.93 of 1972)
27.	Community Development Amendment Act, 1975 (Act No.19 of 1975)
28.	Community Development Amendment Act, 1977 (Act No.126 of 1977)
29.	Community Development Amendment Act, 1978 (Act No.19 of 1978)
30.	Community Development Amendment Act, 1980 (Act No.12 of 1980)
31.	Community Development Amendment Act, 1982 (Act No.26 of 1982)
32.	Second Community Development Amendment Act, 1982 (Act No.68 of 1982)
33.	Community Development Amendment Act, 1983 (Act No.64 of 1983)
34.	Community Development Amendment Act, 1984 (Act No.20 of 1984)
35.	Community Development Amendment Act, 1986 (Act No.48 of 1986)
36.	Church Square Pretoria, Development Act, 1972 (Act 53 of 1972)
37.	Church Square Pretoria, Development Amendment Act, 1978 (Act 65 of 1978)
38.	Church Square Pretoria, Development Amendment Act, (House of Assembly) 1988 (Act 35 of 1988)
39.	General Law Amendment Act, 1972 (Act No.102 of 1972) (section 34)
40.	Expropriation Act, 1975 (Act No.63 of 1975)
41.	Expropriation Amendment Act, 1977 (Act No.19 of 1977)
42.	Expropriation Amendment Act, 1978 (Act No.3 of 1978)
43.	Expropriation Amendment Act, 1980 (Act No.8 of 1980)
44.	Expropriation Amendment Act, 1982 (Act No.21 of 1982)
45.	Expropriation Amendment Act, 1992 (Act No.45 of 1992)
46.	Transfer of Powers and Duties of the State President Act, 1986 (Act No.97 of 1986) [section 1]
47.	Land Affairs Act, 1987 (Act No.101 of 1987)
48.	General Law Amendment Act, 1983 (Act No.18 of 1983)
49.	Parliamentary Villages Management Board Act, 1998 (Act No.96 of 1998)
50.	Construction Industry Development Board Act, 2000 (Act No.38 of 2000)
51.	Council for the Built Environment Act, 2000 (Act No.43 of 2000)

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

Annexure C

List of respondents to Discussion Paper 121

1. The City of Tshwane Metropolitan Municipality
(Office of the City Manager and Regional Services Department)
2. Department of the Premier: Provincial Government of the Western Cape
(Corporate Services Centre: Chief Directorate: Legal Services)
3. Mpofana Municipality (Municipal Manager)

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