



PROJECT 25

DISCUSSION PAPER 141

**STATUTORY LAW REVISION:
LEGISLATION ADMINISTERED BY
THE DEPARTMENT OF WATER AND SANITATION**

CLOSING DATE FOR COMMENT: 31 MARCH 2016

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Introduction

The South African Law Reform Commission Act 19 of 1973 established the South African Law Reform Commission (SALRC). The current members of the Commission, who the President appointed in 2013 for a period of five years, are –

The Honourable Madam Justice Mandisa Maya (Chairperson)
The Honourable Mr Justice Jody Kollapen (Vice-Chairperson)
Prof Marita Carnelley (Member)
Prof Vinodh Jaichand (Member)
Mr Irvin Lawrence (Member)
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The Secretary is Mr Nelson Matibe. The project leader responsible for this investigation is Prof Marita Carnelley. The researcher assigned to this investigation is Ms Anna-Marie Havenga, who may be contacted for enquiries about this report.

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Preface

This discussion paper was prepared to elicit responses and to serve as basis for the SALRC's further deliberations to finalise a report. It contains the SALRC's preliminary findings following the review of the legislation administered by the Department of Water and Sanitation (DWS) for constitutionality (in terms of section 9 of the Bill of Rights), redundancy and obsolescence.

Respondents are requested to submit written comment and representations to the SALRC by 31 March 2016 at the address appearing on the previous page. Comments can be sent by email or by post.

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

The SALRC will assume that respondents agree to the SALRC quoting from or referring to comments made in submissions to the SALRC and to attributing such comments to respondents. Respondents should be aware that the SALRC may in any event be required to release information contained in representations under the Promotion of Access to Information Act 2 of 2000.

Any enquiries should be addressed to the Secretary of the SALRC or to the SALRC official assigned to this investigation, Ms Anna-Marie Havenga, whose contact particulars appear on page (ii).

Preliminary recommendations

The SALRC has been mandated with the task of revising the South African statute book, with a view to identifying and recommending for repeal or amendment legislation or provisions in legislation that are inconsistent with the right to equality in the Constitution of the Republic of South Africa of 1996, or are redundant or obsolete.

All legislation administered by the DWS has been reviewed for redundancy or unconstitutionality and the findings are contained in this paper.

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CHAPTER 1

BACKGROUND AND SCOPE OF PROJECT 25: STATUTORY LAW REVISION

Introduction

The objects of the South African Law Reform Commission

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

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

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

History of the investigation

1.3 Shortly after its establishment in 1973, the SALRC (which was then the SALC) began revising all pre-Union legislation, as part of its Project 7. This investigation resulted in the repeal of approximately 1 200 laws, ordinances, and proclamations of the former Colonies and Republics. In 1981 the SALRC finalised a report on the repeal of post-Union statutes as part of its Project 25 on statute law, which aims to establish a simplified, coherent, and generally accessible statute book. This report

resulted in Parliament adopting the Repeal of Laws Act 94 of 1981, which repealed approximately 790 post-Union statutes.

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

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

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

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

What is statutory law revision?

1.8 Statutory law revision ordinarily focuses on the identification and repeal of statutes that are no longer useful in practice. As the Law Reform Commission for England and Wales explains, the purpose of statute revision is to modernise and simplify statutes that need updating, and to reduce the size of the statute book to the benefit of legal professionals and other people who use it.¹ Revision lessens the chance of people being misled by redundant laws that still appear in the statute book and seem to be relevant or “live”. If statutory provisions appear in the statute book and are referred to in legal textbooks, readers may reasonably assume they still serve a purpose.

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

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

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

- (a) references to bodies, organisations, etc. that have been dissolved or wound up or which have otherwise ceased to serve any purpose;
- (b) references to issues that are no longer relevant as a result of changes in social or economic conditions (e.g. legislation about tithes or tin mines);

¹ Law Commission for England and Wales *Background Notes on Statute Law Repeals* par 1.

² *Ibid* par 6.

³ *Ibid* par 7.

- (c) references to Acts that have been superseded by more modern (or EU) legislation or by international Convention;
- (d) references to statutory provisions (i.e. sections, schedules, orders, etc.) that have been repealed;
- (e) repealing provisions e.g. “Section 33 is repealed/shall cease to have effect”;
- (f) commencement provisions once the whole of an Act is in force;
- (g) transitional or savings provisions that are spent;
- (h) provisions that are self-evidently spent – e.g. a one-off statutory obligation to do something become spent once the required act has duly been done;
- (i) powers that have never been exercised over a period of many years or where any previous exercise is now spent.

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

- Expired – that is, enactments which having been originally limited to endure only for a specified period by a distinct provision, have not been either perpetuated or kept in force by continuance, or which have merely had as their object the continuance of previous temporary enactments for periods now gone by effluxion of time.
- Spent – that is, enactments spent or exhausted in operation by the accomplishment of the purposes for which they were passed, either at the moment of their first taking effect or on the happening of some event or on the doing of some act authorised or required.
- Repealed in general terms – that is, repealed by the operation of an enactment expressed only in general terms, as distinguished from an enactment specifying the Acts which it is to operate.

⁴ Law Commission of India *Ninety-Sixth Report on Repeal of Certain Obsolete Central Acts* p 3 of Chapter 2 (p 6 of 21).

- Virtually repealed – where an earlier enactment is inconsistent with, or is rendered nugatory by, a later one.
- Superseded – where a later enactment effects the same purposes as an earlier one by repetition of its terms or otherwise.
- Obsolete – where the state of things contemplated by the enactment has ceased to exist, or the enactment is of such a nature as to be no longer capable of being put in force, regard being had to the alteration of political or social circumstances.

1.13 Statutory provisions usually become redundant as time passes.⁵ Generally, the redundancy of legislation is not signalled by a single occurrence; rather, legislation is often simply overtaken by social and economic changes. Inevitably some provisions fade away more quickly than others. Relatively short-lived provisions include commencement and transitional provisions, and those that confer powers to be exercised during the period between the passing of a law and its implementation (in some jurisdictions known as “pump-priming” provisions). Provisions that provide for delegated legislation-making powers might also become unnecessary over time, or a committee or board established by a statute might no longer be required.

1.14 Substantial revision of statutory law is possible in South Africa because of the general savings provisions of section 12(2) of the South African Interpretation Act. The South African Interpretation Act 33 of 1957⁶ mirrors section 16(1) of the Interpretation Act of 1978 of England and Wales.⁷ Section 12(2) of the South African Interpretation Act provides that where a law repeals any other law, then unless the contrary intention appears, the repeal shall not:

- (a) revive anything not in force or existing at the time at which the repeal takes effect; or

⁵ Law Commission for England and Wales *Background Notes on Statute Law Repeals* par 9 and 10.

⁶ With the exception of few minor changes, the South African Interpretation Act 5 of 1910 repeated the provisions of the United Kingdom Interpretation Act of 1889 (Interpretation Act 1889 (UK) 52 & 53 Vict c 63).

⁷ Law Commission for England and Wales *Background Notes on Statute Law Repeals* par 8.

- (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.

1.15 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 Commission, the paper is published for general information and comments. Finally, the SALRC develops a report in respect of each department that reflects the comments on the discussion paper and contains a draft Bill proposing amending legislation.

The initial investigation

1.16 In the early 2000s, the SALRC and the German Agency for Technical Cooperation commissioned the Centre for Applied Legal Studies at the University of the Witwatersrand to conduct a preliminary study on law reform. The study examined the feasibility, scope, and operational structure of revising the South African statute book for constitutionality, redundancy, and obsolescence. The Centre for Applied Legal Studies pursued four main avenues of research in this study, which was

conducted in 2001 and the findings of which were submitted to the SALRC in April 2001.⁸ These four steps are outlined here:

1. A series of interviews was conducted with key role-players drawn from the three governmental tiers, Chapter 9 institutions, the legal profession, academia, and civil society. These interviews revealed a high level of support for a law reform project.
2. All Constitutional Court judgments up to 2001 were analysed. The results were compiled as schedules summarising the nature and outcome of these cases, and the statutes impugned. The three most problematic categories of legislative provisions were identified, and the Constitutional Court's jurisprudence in each category was analysed. The three most problematic categories were reverse onus provisions, discriminatory provisions, and provisions that infringe on the separation of powers. Guidelines summarising the Constitutional Court's jurisprudence were compiled for each category.
3. Sixteen randomly-selected national statutes were tested against the guidelines. The results were compared with the results of a control audit that tested the same statutes against the entire Bill of Rights, excluding socio-economic rights. Comparison of the outcomes showed that a targeted revision of the statute book in accordance with the guidelines had produced highly effective results.
4. A survey of law reform in five other countries (United Kingdom, Germany, Norway, Switzerland, and France) was conducted. Apart from France, all these countries had conducted or were conducting statutory revision exercises. The motivation for the revision and the outcomes of the exercises differed by country.

1.17 The SALRC finalised the following reports as part of the Project 25 investigation:

- (a) Legislation administered by the Department of Transport, in October 2009;

⁸ CALS *Feasibility Study*.

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

Scope of the project

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

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

1.19 Consequently, a law or a provision in a law which appears on the face of it to be neutral and non-discriminatory, but which has or could have discriminatory effect or consequences, has been left to the judicial process. This investigation focuses on the constitutionality of provisions in statutes of South African law, with special attention paid to consonance with section 9 of the Constitution. The investigation also attends to obsolescence or redundancy of provisions. In 2003, Cabinet directed that the highest priority be given to reviewing provisions that would result in discrimination as defined in section 9 of the Constitution, which prohibits unfair discrimination on the basis of race, gender, sex, pregnancy, marital status, ethnic and social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language, or birth. The SALRC agreed that the project should proceed by scrutinising and revising national legislation that discriminates unfairly.⁹ However, as explained in the preceding sections of this chapter, even the section 9 inquiry was limited, because it dealt primarily with statutory provisions that were blatantly in conflict with section 9 of the Constitution. This delimitation arose mainly from considerations of time and capacity. Nonetheless, during the investigation certain other anomalies and obvious inconsistencies with the Constitution were identified. The SALRC has made recommendations on how to address these issues.

Consultation with stakeholders

1.20 In 2004, Cabinet endorsed the proposal that government departments should be asked to participate in and contribute to this investigation. In certain instances, legal researchers cannot decide whether to recommend a provision for repeal unless they have access to factual information that might be considered "inside" knowledge, of the type usually accessible within a specific department or organisation. Examples

⁹ *Albertyn Summary of Equality Jurisprudence.*

include savings or transitional provisions that are instituted to preserve the status quo until an office-holder ceases to hold office or until a loan has been repaid. In such cases, the consultation paper drafted by the SALRC invited the department or organisation being consulted to supply the necessary information. The aim of the publication of discussion papers in this investigation is likewise to determine whether departments and stakeholders agree with and support the proposed findings and the proposals for legislative amendment or repeal. The SALRC relies on the assistance of departments and stakeholders. This process should ensure that all relevant provisions are identified during this review, and dealt with responsively and without creating unintended negative consequences.

1.21 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 the SALRC undertakes is the development of a discussion paper in respect of legislation of each department, and upon its approval by the SALRC, the paper is published for general information and comment. Finally, the SALRC develops a report in respect of each department, which reflects the comments on the discussion paper. The report also contains a draft Bill that proposes amending legislation.

1.22 In September 2011, the SALRC submitted its consultation paper containing the SALRC's preliminary findings and proposals to the then Department of Water Affairs (DWA), now the Department of Water and Sanitation (DWS). In July 2012, the DWA submitted its comments to the SALRC on the SALRC consultation paper. The SALRC then commenced developing its draft discussion paper, which reflected the comments it had received from the DWA. Because the investigation could not proceed towards the finalisation of a discussion paper for some time, the draft discussion paper previously prepared was updated and expanded after the 2014 national elections, in view of the transfer of Cabinet responsibilities and the configuration of the DWA to include the sanitation function.¹⁰ In July 2015 the SALRC

¹⁰ The Commission resumed its work in September 2013, after the terms of office of the previous Commission had expired at the end of 2011 and new members were appointed to the Commission in August 2013. The project leader assigned to this investigation resigned from the Commission soon after the re-commencement. In a redistribution of work, the investigation was allocated to a new researcher at the end of May 2014.

submitted its updated version of the draft discussion paper to the DWS for comments; this updated paper reflected additional findings and proposals related to the configuration of the Department which had not been contained in the consultation paper.¹¹ In September 2015, the DWS submitted its comments to the SALRC on the draft discussion paper.¹²

1.23 The Commission considered the draft discussion paper on this review at its meeting held on 5 December 2015, and approved publication of the paper for general information and comment.

¹¹ See par 2.1 – 2.2 for information on the configuration of the department after the 2014 national elections.

¹² See par 2.7 below.

CHAPTER 2

EVALUATION OF LEGISLATION ADMINISTERED BY THE DEPARTMENT OF WATER AND SANITATION

Introduction

2.1 In the 2009 Cabinet reorganisation that followed the election of President Zuma, existing responsibilities of Cabinet members were divided and transferred, and certain national government departments were reorganised to better serve the government's goals.¹³ The then Ministry of Water Affairs and Forestry, which had existed since before 1996, was divided in two. The forestry responsibility was transferred to the Ministry of Agriculture, Forestry and Fisheries; and the water responsibility to the Ministry of Water and Environmental Affairs.¹⁴ Two national government departments served the latter Ministry, namely the Department of Environmental Affairs and the Department of Water Affairs (DWA).¹⁵ Water-related legislation entrusted to the DWA comprised the Water Services Act 108 of 1997 and the National Water Act 36 of 1998.¹⁶

2.2 In a similar re-organisation after the 2014 national elections, the Ministry of Water and Environmental Affairs was divided in two, namely the Ministry of Environmental Affairs and the Ministry of Water and Sanitation.¹⁷ The sanitation responsibility was transferred back to the DWA, where it had previously vested before being transferred to the Department of Human Settlements in 2009, and the

¹³ Statement by President Zuma May 2009. The transfer of functions and powers was done in terms of sec 97 of the Constitution, and the establishment of national government departments in terms of sec 7(5) of the Public Service Act, 1994 (Proclamation 103 of 1994). See also Proc 44 GG 32367 of 1 July 2009; and Proc 48 GG 32387 of 1 July 2009.

¹⁴ Proc 44 GG 32367 of 1 July 2009, par 1.13.

¹⁵ Proc 48 GG 32387 of 7 July 2009.

¹⁶ Proc 44 GG 32367 of 1 July 2009, par 1.13.

¹⁷ Proc 47 GG 37839 of 15 July 2014, par 1.7.

new Department of Water and Sanitation (DWS) was formed accordingly.¹⁸ With the transfer of the sanitation responsibility to the Department of Human Settlements in 2009, the DWA had retained certain related responsibilities. Over time, however, fragmentation and the lack of a single national body to take the lead in the sanitation section resulted in particular challenges and a need for the sanitation responsibility again to be consolidated under a single national department, given the interrelationship between water and sanitation.¹⁹ Water and sanitation related legislation entrusted to the DWS in the 2014 reorganisation consists of the Water Services Act, 1997; the National Water Act, 1998; and the Water Research Act 34 of 1971.²⁰

2.3 The Constitution allocates the management of water resources to national government, and the management of water and sanitation services for all citizens to municipalities (local government).²¹ The DWS is the national custodian of South Africa's water resources. The Department is mainly responsible for the formulation and implementation of legislation and policy governing the water sector. It also has the overriding responsibility for water services, including drinking water and sanitation, provided by municipalities.²² The primary legislative instruments reflecting the Department's responsibilities are described below.

- The National Water Act, 1998 provides the legal framework for the effective and sustainable management of our water resources (rivers, streams, dams and ground water). In doing so, it deals with the protection, use, development, conservation, management and control of these water resources.²³

¹⁸ Proc 43 GG 37817 of 8 July 2014; PMG *Briefing* 30 July 2014.

¹⁹ DWA *Report on sanitation services* 3. PMG *Briefing* 30 July 2014; Sithole *Ndifuna Ukwazi*.

²⁰ Proc 47 GG 37839 of 15 July 2014, par 1.7.

²¹ Sec 10 of the Constitution provides that everyone has inherent dignity and the right to have their dignity respected and protected. Sec 24(a) provides that everyone has the right to an environment that is not harmful to their health or well-being; and sec 24(b) that everyone has the right to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that prevent pollution and ecological degradation, that promote conservation, and that secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development. Sec 27(1)(b) provides that everyone has the right to have access to sufficient water.

²² CMA *Induction Manual on SA Water Sector* 21; see also DWA *Annual Report 2013/14*, 31-33.

²³ DWAF *Guide to the National Water Act* 32-33.

- The Water Services Act, 1997 deals mainly with (drinkable) water and sanitation services as supplied by municipalities to households and other municipal water users. The Act's main objectives include providing for the right of access to basic water supply and basic sanitation, and monitoring the water supply and sanitation services by municipalities.²⁴ At the local government level, the Municipal Structures Act 117 of 1998 and the Municipal Systems Act 32 of 2000 regulate the functions of service authorities and service providers, in accordance with the principles of the Water Services Act, 1997.²⁵ The two municipal Acts are not administered by the DWS, and were evaluated under the SALRC's review of legislation administered by the Department of Cooperative Governance and Traditional Affairs.²⁶
- The Water Research Act, 1971 established the Water Research Commission and the Water Research Fund; the Act also promotes water-related research. The Minister responsible for water and sanitation exercises executive oversight over the Commission.

2.4 The SALRC noted that the DWS indicated in its most recent annual reports that the Department is currently reviewing the Water Act, 1998 and the Water Services Act, 1997 with a view to consolidating them into a single piece of legislation. The consolidated statute will govern the entire water value chain, covering water supply and sanitation services as well as water resource infrastructures. Its aim will be to enhance cooperative governance, and to establish clear institutional roles and responsibilities with mutually agreed targets for water delivery.²⁷

²⁴ Ibid.

²⁵ CMA *Induction Manual on SA Water Sector*, Chapter One 18-19. The Municipal Structures Act, 1998 deals specifically with the division of powers and functions between different types of municipalities with regard to water supply, and sewage purification and disposal (Ibid).

²⁶ See SALRC *Discussion Paper 120*. A report with final recommendations was approved by the SALRC in June 2015.

²⁷ DWA *Annual Report 2013/14*, 7. This was confirmed in the DWS *Annual Report 2014/15*, 16 and 29.

Evaluation of legislation

2.5 The evaluation of legislation in this paper deals with the relevant statutes according to two themes: legislation administered by the DWS, and ancillary legislation.

2.6 The SALRC has identified 11 Acts that are administered by the DWS.²⁸ An investigation was conducted to determine whether any of these Acts or provisions therein should be repealed because of redundancy, obsolescence or unconstitutionality in terms of section 9 of the Constitution. No statutes or provisions were identified for repeal. Three statutes have been identified for possible amendment. As indicated in paragraph 1.22 above, the SALRC consulted with the DWA (before its reorganisation in 2014 to include the sanitation responsibility) about the SALRC's preliminary findings and proposals for amendment of certain legislation. After the 2014 reorganisation, further research identified additional obsolete provisions in ancillary legislation, mainly references to the former "Department of Water Affairs" and the former "Department of Water Affairs and Forestry"; the SALRC has identified seven Acts in this category.²⁹ All proposed amendments are reflected in the Water Related Matters Amendment Bill attached as Annexure A. Reasons for the amendments are included below.

2.7 The proposed draft Bill incorporates the comments from DWS relating to the latest name change of the Department, its Director-General and its Minister. The DWS indicated that it prefers the following terms, which are in accordance with the transfer of responsibilities to Cabinet members after the 2014 national elections: "Department responsible for water and sanitation", "Director-General responsible for water and sanitation", and "Minister responsible for water and sanitation".³⁰

²⁸ See Annexure B.

²⁹ See Annexure C.

³⁰ Comments received from Ms Margaret-Ann Diedricks, Director-General, Department: Water and Sanitation, dated 27 September 2015. See also par 1.22 above.

Legislation administered by the Department of Water and Sanitation

Water Research Act 34 of 1971

2.8 The purpose of the Water Research Act 34 of 1971 is to provide for the promotion of research in connection with water affairs, and for that purpose to establish the Water Research Commission and Water Research Fund. The Minister responsible for water and sanitation appoints members of the Commission and exercises executive oversight with regard to the Commission.

2.9 None of the provisions are inconsistent with the Constitution. The SALRC therefore proposes that the Water Research Act, 1971 be retained on the statute book.

2.10 The introductory part of the definitions refers to the Water Act 54 of 1956. This Act was repealed by section 163(1) of the National Water Act 36 of 1998. The SALRC therefore recommends that the introductory part of the definitions must be changed to refer to the National Water Act of 1998.³¹

2.11 Section 3 of the Act refers to the Scientific Research Council Act 33 of 1945. The latter Act was repealed by section 20 of the Scientific Research Council Act 32 of 1962, which was in turn repealed by section 23 of the Scientific Research Council Act 82 of 1984. The Scientific Research Council Act of 1984 was subsequently repealed by section 23 of the Scientific Research Council Act 46 of 1988. The SALRC therefore recommends that reference to the Scientific Research Council Act 33 of 1945 be replaced with reference to the Scientific Research Council Act 46 of 1988.³²

2.12 The words “chairman” and “vice-chairman” of the Water Research Commission are used in relation to each other in sections 4(2) and 7(4) of the Act. In terms of section 4(2), the Minister may designate one of the members of the Commission as chairman and one as vice-chairman; and where these posts become vacant, the Minister may appoint other members of the Commission in acting capacities. In terms of section 7(4), the chairman presides over all meetings; and

³¹ Clause 5(a) in Annexure A.

³² Clause 5(b) in Annexure A.

where the chairman is not present, the vice-chairman presides over meetings. The words “chairman” and “vice-chairman” are not gender neutral. The SALRC recommends that reference to “chairman” and “vice-chairman” in sections 4(2) and 7(4) be substituted with “chairperson” and “vice-chairperson”, respectively.³³ The word “chairman” also appears in a number of other provisions in the Act (where it is not used in relation to “vice-chairman”), namely sections 7(1), 7(2) and 10(4). The SALRC likewise recommends that the word “chairperson” replaces the word “chairman” in these provisions.³⁴

2.13 In terms of section 11(5) of the Act, the Minister may charge interest, at a rate fixed in terms of section 26(1) of the Exchequer and Audit Act 66 of 1975, on rates levied on land which may be irrigated by means of water supplied or made available by the State. In terms of section 26(1) of the Exchequer and Audit Act, the Minister of Finance must determine a standard interest rate applicable to loans granted out of the State Revenue Fund. The Exchequer and Audit Act, except for certain provisions not relevant to this discussion, was repealed by section 94 of the Public Finance Management Act 1 of 1999. Section 80(1) of the latter Act contains a provision similar to the repealed section 26(1) of the Exchequer and Audit Act.³⁵ The SALRC recommends that the reference to the Exchequer and Audit Act be changed to refer to the relevant provision of the Public Finance Management Act.³⁶

2.14 Section 14 contains two out-dated references. Section 14(1) requires the Water Research Council to submit an annual report to the Minister, which must include a balance sheet and a statement of income and expenditure certified by the “Controller and Auditor-General”. After 1996, the Constitution established the “Auditor-General” as one of the Chapter 9 Institutions.³⁷ In terms of section 188(1)(c) of the Constitution, the Auditor-General must audit and report on the accounts, financial statements and financial management of any institution required by national legislation to be audited by the Auditor-General. The SALRC recommends that reference to the “Controller and Auditor-General” be replaced with reference to the

³³ Clauses 1 and 2 in Annexure A.

³⁴ Clause 5(c) in Annexure A.

³⁵ Sec 80(1)(a) of the Public Finance Management Act provides that the Minister of Finance must determine a uniform interest rate applicable to loans granted out of a Revenue Fund.

³⁶ Clause 5(d) in Annexure A.

³⁷ Sec 181(1)(e) of the Constitution. See further the Public Audit Act 25 of 2004 which further establishes and assigns functions to the Auditor-General.

“Auditor-General”.³⁸ Section 14(3) requires that the Minister must table the said annual report in “the Senate and ... the House of Assembly”. The Constitution, under transitional arrangements in Schedule 6, provides that unless inconsistent with the context or clearly inappropriate, a reference to “Parliament, the National Assembly or the Senate” in any legislation that existed when the new Constitution took effect, must be construed as a reference to “Parliament, the National Assembly or the National Council of Provinces”.³⁹ The SALRC recommends that the out-dated reference be replaced with reference to “Parliament”.⁴⁰ Similar amendments to section 14 have been included in the lapsed Water Research Amendment Bill, referred to in paragraph 2.26 below.⁴¹

2.15 In terms of section 14A(1), the Minister may delegate any power to the “Director-General: Environment Affairs” or any other officer in the “Department of Environment Affairs”. The designation should be amended to reflect the configuration of the former DWA after the 2014 transfer of responsibilities to Cabinet members.⁴² The SALRC recommends that references to “Director-General: Environment Affairs” and “Department of Environment Affairs” be replaced with, respectively, “Director-General responsible for water and sanitation” and “Department responsible for water and sanitation”.⁴³ These suggested amendments are in accordance with the comment received from the DWS.⁴⁴

Water Research Amendment Act 16 of 1974

2.16 The purpose of the Water Research Amendment Act 16 of 1974 is to amend the Water Research Act, 1971 so as to alter the period of the financial year of the Water Research Commission; to extend the functions of the said Commission; to alter the constitution of the said Commission; and to make provision for the appointment of officers and employees by the said Commission.

³⁸ Clause 5(e) in Annexure A.

³⁹ Item 3(1)(b) of Schedule 6.

⁴⁰ Clause 3 in Annexure A.

⁴¹ See the suggested amended clauses 14(1) and 14(6) in clause 19 of the lapsed Water Amendment Bill B29–2013.

⁴² See par 2.1 – 2.2 above.

⁴³ Clause 4 in Annexure A.

⁴⁴ See par 2.7 above.

2.17 Since the principal Act is still in force, the SALRC proposes that for legal certainty the Water Research Amendment Act, 1974 be retained on the statute book.

Water Research Amendment Act 37 of 1975

2.18 The purpose of the Water Research Amendment Act 37 of 1975 is to amend the Water Research Act, 1971 so as to make further provision in connection with the functions of the Water Research Commission, and to authorise the said Commission to establish committees and to delegate any of its powers.

2.19 None of the changes are inconsistent with the Constitution. The Water Research Amendment Act, 1975 ensures legal certainty. The SALRC therefore proposes that the amendment Act be retained on the statute book.

Water Research Amendment Act 106 of 1977

2.20 The purpose of the Water Research Amendment Act 106 of 1977 is to amend the Water Research Act, 1971 so as to provide for the levying of interest on arrear rates and charges referred to in section 11; and to apply the provisions of section 11 to the State.

2.21 Since the principal Act is still in force, it is proposed that for legal certainty the Water Research Amendment Act, 1977 be retained on the statute book.

Water Research Amendment Act 10 of 1982

2.22 The purpose of the Water Research Amendment Act 10 of 1982 is to amend the Water Research Act, 1971, so as to authorise the Minister of Environment Affairs to write off, from time to time, certain irrecoverable rates, charges and interest; and to provide for the delegation of powers by the said Minister.

2.23 None of the changes are inconsistent with the Constitution. The Water Research Amendment Act, 1982 ensures legal certainty. The SALRC therefore proposes that the amendment Act be retained on the statute book.

Water Research Amendment Act 93 of 1985

2.24 The purpose of the Water Research Amendment Act 37 of 1985 is to amend the Water Research Act, 1971 so as to provide for the establishment of the office of executive director of the Water Research Commission.

2.25 None of the changes are inconsistent with the Constitution. The Water Research Amendment Act, 1985 ensures legal certainty. The SALRC therefore proposes that the amendment Act be retained on the statute book.

Water Research Amendment Bill B29 - 2013

2.26 A Water Research Amendment Bill was introduced into Parliament in August 2013 and published for public comment.⁴⁵ The purpose of the Bill was to address an evolved governance structure of the Water Research Council (formerly Water Research Commission), and to align the main Act with applicable legislation. As far as we could ascertain, the draft Bill lapsed at the end of the last sitting of the legislature in the Fourth Parliament (i.e. before the 2014 national elections), and has not been revived since.⁴⁶

Water Services Act 108 of 1997

2.27 The purpose of this Act is to provide for the rights of access to basic water supply and basic sanitation; to provide for the setting of national standards and of norms and standards for tariffs; to provide for water services development plans; to provide a regulatory framework for water services institutions and water services intermediaries; to provide for the establishment and disestablishment of water boards and water services committees, and their powers and duties; to provide for the monitoring of water services and intervention by the Minister or by the relevant Province; to provide for financial assistance to water services institutions; to provide for certain general powers of the Minister; to provide for the gathering of information

⁴⁵ B29-2013 GG 36754 of 16 August 2013.

⁴⁶ PMG *Legacy Report 2009–2014*, par 2.3.1 indicates that the draft Bill could not be finalised during the 2009–2014 period due to time constraints. See also the Parliamentary Monitoring Group's Webpage <http://bills.pmg.org.za> last accessed October 2015 for the history of Bill B29-2013.

in a national information system, and the distribution of that information; and to repeal certain laws.

2.28 In terms of section 1(x), “Minister” means the “Minister of Water Affairs and Forestry”. The definition should be amended to reflect the changes after the 2014 transfer of responsibilities to Cabinet members.⁴⁷ This suggestion is in accordance with the comment received from the DWS.⁴⁸ The SALRC thus recommends that “Minister for Water Affairs and Forestry” be replaced with “Minister responsible for water and sanitation”.⁴⁹

2.29 In terms of section 1(xi), “organisation representing municipalities” means any organisation considered by the Minister after consultation with the “Minister for Provincial Affairs and Constitutional Development”. The latter reference should be amended to reflect the changes after the 2009 transfer of responsibilities to Cabinet members, in terms of which the Minister to be consulted currently is the Minister of Cooperative Governance and Traditional Affairs.⁵⁰ The SALRC therefore recommends that “Minister for Provincial Affairs and Constitutional Development” should be substituted with “Minister of Cooperative Governance and Traditional Affairs”.⁵¹

1.30 Further, in terms of section 1(xi), “organisation representing municipalities” includes an organisation representing district or rural councils as defined in the Local Government Transition Act 209 of 1993. The latter Act was repealed by section 36 of the Local Government Laws Amendment Act 19 of 2008. The Organised Local Government Act 52 of 1997 in section 2(1) currently provides for the recognition of two types of organisations representing municipalities. The first is provincial organisations representing the majority of municipalities in each province (provided that all the different categories of municipalities are represented in such an organisation). The second is a single national organisation representing the majority of provincial organisations. Under this provision, nine provincial local government

⁴⁷ See par 2.1 – 2.2 above.

⁴⁸ See par 2.7 above.

⁴⁹ Clause 10(a) in Annexure A.

⁵⁰ See Proc 44 GG 32367 of 1 July 2009, par 2 in terms of which the administration of powers or functions with regard to provincial and local government were transferred to the Minister of Cooperative Governance and Traditional Affairs.

⁵¹ Clause 10(b) in Annexure A.

organisations have been recognised to present the majority of municipalities in specific provinces, and the South African Local Government Association (SALGA) has been recognised as the national organisation to represent the majority of provincial organisations.⁵² The SALRC recommends that reference to the Local Government Transition Act, 1993 be replaced with reference to the Organised Local Government Act, 1997.⁵³

2.31 In terms of section 1(xx), “water services authority” includes a district or rural council as defined in the Local Government Transition Act 209 of 1993. This Act was repealed by section 36 of the Local Government Laws Amendment Act 19 of 2008. “District council” is now defined in the Local Government: Municipal Structures Act 117 of 1998. The SALRC recommends that reference to the Local Government Transition Act, 1993 should be replaced with reference to the Local Government: Municipal Structures Act, 1998.⁵⁴

2.32 Both sections 12(1)(a) and 15(5) of the Water Services Act, 1997 refer to an “integrated development plan” as contemplated in terms of the Local Government Transition Act 209 of 1993. The latter Act was repealed by section 36 of the Local Government Laws Amendment Act 19 of 2008. The concept “integrated development plan” is currently defined in section 25 of the Local Government: Municipal Systems Act 32 of 2000. The SALRC recommends that the references in sections 12 and 15 to the Local Government Transition Act, 1993 be amended to refer to the Local Government: Municipal Systems Act, 2000.⁵⁵

2.33 “Minister for Provincial Affairs and Constitutional Development” is mentioned a number of times in the Act.⁵⁶ These references should be amended to reflect the changes after the 2009 transfer of responsibilities to Cabinet members, in terms of which the Minister to be consulted currently is the Minister of Cooperative Governance and Traditional Affairs.⁵⁷ The SALRC therefore recommends that “Minister for Provincial Affairs and Constitutional Development” should be substituted

⁵² Government Notice R175 GG 18645 of 30 January 1998.

⁵³ Clause 10(b) in Annexure A.

⁵⁴ Clause 10(c) in Annexure A.

⁵⁵ Clause 11(a) in Annexure A.

⁵⁶ See sec 12(2), 15(3), 16, 18(2)(b), 19(5), 51(2)(b), 62(2)(a), 63, and 71(1)(b)(i).

⁵⁷ Proc 44 GG 32367 of 1 July 2009, par 2.

with “Minister of Cooperative Governance and Traditional Affairs” wherever it occurs in the relevant provisions.⁵⁸

2.34 In terms of section 81(1), property may be expropriated by the Minister – who at the time of enactment was the Minister of Water Affairs and Forestry, but is now the Minister responsible for water and sanitation.⁵⁹ In this context, section 81(3) provides that any reference to “Minister” in the Expropriation Act 63 of 1975 must be construed as being a reference to “the Minister of Water Affairs and Forestry”. This reference should be amended to reflect the changes after the 2014 transfer of responsibilities to Cabinet members.⁶⁰ The SALRC therefore recommends that “Minister of Water Affairs and Forestry” in section 81(3) be replaced with “Minister responsible for water and sanitation”.⁶¹

2.35 The SALRC did not identify any provisions in the Water Services Act of 1997 which infringe the constitutional equality provisions. The SALRC proposes that this Act be retained.

Water Services Amendment Act 30 of 2004

2.36 The purpose of this Act is to amend the Water Services Act, 1997 so as to enable water boards to perform activities outside the borders of South Africa.

2.37 No provisions which infringe the constitutional equality provisions have been identified in this Act. The SALRC proposes that this Act be retained on the statute book.

National Water Act 36 of 1998

2.38 The fundamental aim of the National Water Act, 1998 (which replaced the Water Act 54 of 1956), is to reform past laws relating to water resources which were discriminatory and not appropriate to South African conditions. The 1956 Act ensured that water was mostly used by a small dominant group, which had privileged access

⁵⁸ Clause 11(b) in Annexure A.

⁵⁹ See par 2.1 – 2.2 above.

⁶⁰ Ibid.

⁶¹ Clause 11(c) in Annexure A.

to land and economic power. Water access was not recognised as a basic human right. The old Act also aimed to apply the water rules of countries in Europe to the South African situation. This was not appropriate, as countries in Europe have plentiful water whereas South Africa is a dry country with limited water. In contrast, the 1998 Act promotes water use that is in the public interest and is beneficial for the achievement of equitable and sustainable economic and social development.⁶²

2.39 Section 1 of the Act defines “Department” as “Department of Water Affairs and Forestry”, and “Minister” as “Minister of Water Affairs and Forestry”. These definitions should be amended to reflect the configuration of the Department after the 2014 transfer of responsibilities to Cabinet members.⁶³ This suggestion is in accordance with the comment received from the DWS.⁶⁴ The SALRC recommends that section 1 of the Act be amended accordingly.⁶⁵

2.40 Section 117 defines “approved professional person” as a person registered in terms of the Engineering Profession of South Africa Act 114 of 1990. The 1990 Act was repealed by the Engineering Profession Act 46 of 2000. In terms of section 1 of the latter Act, a “professional” means “a person who is registered in terms of section 19(2)(a)”. Therefore, the SALRC recommends that section 117 should be amended to refer to section 19(2)(a) of the Engineering Profession Act 46 of 2000.⁶⁶

2.41 We have not identified any provisions of the National Water Act of 1998 which infringe the constitutional equality provisions. The SALRC proposes that this Act be retained on the statute book.

National Water Amendment Act 45 of 1999

2.42 The purpose of the National Water Amendment Act 45 of 1999 is to amend the National Water Act, 1998 so as to effect textual improvements; and to change the procedure for the appointment of members of the Water Tribunal.

⁶² DWAF *Guide to the National Water Act* 3, 9.

⁶³ See par 2.1 – 2.2 above.

⁶⁴ See par 2.7 above.

⁶⁵ Clause 12(a) and (b) in Annexure A.

⁶⁶ Clause 13 in Annexure A.

2.43 None of the changes are inconsistent with the Constitution. The National Water Amendment Act, 1999 ensures legal certainty. The SALRC therefore proposes that the amendment Act be retained on the statute book.

National Water Amendment Act 27 of 2014

2.44 The purpose of the National Water Amendment Act 27 of 2014 is to amend the National Water Act, 1998, so as to make provision for the correct designation of the Department and Minister; to correct out-dated references; to provide for an alignment and integration of the process for consideration of water use licences relating to prospecting, exploration, mining or production activities; to provide for the appointment of the Minister as the responsible authority for appeals relating to prospecting, exploration, mining or production activities; to amend the authority of the Water Tribunal as the appeal authority relating to prospecting, exploration, mining or production activities; and to provide for the concurrence between the Minister, the Minister responsible for mineral resources, and the Minister responsible for environmental affairs when amending provisions of the Agreement related to prospecting, exploration, mining or production activities.

2.45 Section 1 of the Amendment Act provides for the substitution for the definitions of “Department” and “Minister” in section 1 of the main Act, so as to refer to the “Department responsible for water affairs” and “the Minister responsible for water affairs”, respectively. The original text of the main Act referred to the “Department of Water Affairs and Forestry” and “the Minister of Water Affairs and Forestry”. We recommended in paragraph 2.39 above that these two expressions should, in amendments to the main Act, be changed to “Department responsible for water and sanitation” and “Minister responsible for water and sanitation”, respectively.⁶⁷ These changes are in accordance with the latest transfer of responsibilities to members of Cabinet in July 2014,⁶⁸ and reflect the comments received from the DWS.⁶⁹ The changes recommended in paragraph 2.39 make amendment to section 1 of the National Water Amendment Act, 2014 unnecessary.

⁶⁷ Clause 12(a) and (b) in Annexure A.

⁶⁸ See par 2.1 – 2.2 above.

⁶⁹ See par 2.7 above.

2.46 The National Water Amendment Act 27 of 2014 has been enacted recently, and none of the changes are inconsistent with the Constitution. The SALRC proposes that the amendment Act be retained.

Ancillary legislation considered

Foodstuffs, Cosmetics and Disinfectants Act 54 of 1972

2.47 The purpose of this Act is to control the sale, manufacture, importation and exportation of foodstuffs, cosmetics and disinfectants.

2.48 In terms of section 15A, the Minister of Health may, after consultation with a number of Ministers – including the “Minister of Water Affairs and Forestry” – make certain regulations. The SALRC suggests that the Act be amended to reflect changes that resulted from the 2014 transfer of responsibilities to Cabinet members.⁷⁰ This suggestion is in accordance with the comment received from the DWS.⁷¹ The SALRC therefore recommends that section 15A be amended to refer to the “Minister responsible for water and sanitation”.⁷²

Environment Conservation Act 73 of 1989

2.49 The purpose of this Act is to provide for the effective protection and controlled utilisation of the environment.

2.50 Sections 33(1), 35(1) and 35(4) contain references to the “Minister for Water Affairs”. It is suggested that these provisions be amended to reflect the changes after the 2014 transfer of responsibilities to Cabinet members.⁷³ This suggestion is in accordance with the comment received from the DWS.⁷⁴ The SALRC thus

⁷⁰ See par 2.1 – 2.2 above.

⁷¹ See par 2.7 above.

⁷² Clause 6 in Annexure A.

⁷³ See par 2.1 – 2.2 above.

⁷⁴ See par 2.7 above.

recommends that “Minister for Water Affairs” be replaced with “Minister responsible for water and sanitation” in the sections referred to.⁷⁵

2.51 In the context of delegations which could be granted to an officer or employee, section 33(1) of the Act refers to the “Department of Water Affairs”. It is suggested that this provision be amended to reflect the configuration of the Department after the 2014 transfer of Cabinet responsibilities. This suggestion is in accordance with the comment received from the DWS.⁷⁶ The SALRC thus recommends that “Department of Water Affairs” be replaced with “Department responsible for water and sanitation” in section 33(1).⁷⁷

Overvaal Resorts Limited Act 127 of 1993

2.52 The purpose of this Act is to provide for the incorporation of the Board for Public Resorts as a public company, and for the transfer of certain public resorts to the said company.

2.53 Section 3(2) of the Act refers to the old Water Act 54 of 1956, and to the “Minister of Water Affairs”. The SALRC recommends that these out-dated expressions be replaced with reference to the current National Water Act, 1998 and to the “Minister responsible for water and sanitation”, respectively.⁷⁸ The latter recommendation reflects the 2014 transfer of responsibilities to Cabinet members⁷⁹ and is in accordance with the comment received from the DWS.⁸⁰

Genetically Modified Organisms Act 15 of 1997

2.54 The purpose of this Act is to provide for measures to promote the responsible development, production, use and application of genetically modified organisms.

⁷⁵ Clause 7(a) in Annexure A.

⁷⁶ See par 2.7 above.

⁷⁷ Clause 7(b) in Annexure A.

⁷⁸ Clause 8 in Annexure A.

⁷⁹ See par 2.1 – 2.2 above.

⁸⁰ See par 2.7 above.

2.55 Section 3(2)(a)(viii) of this Act lists the “Department of Water Affairs and Forestry” as one of several government departments from which officers must be nominated, to act as members of the Executive Council for Genetically Modified Organisms. The SALRC recommends that the reference to “Department of Water Affairs and Forestry” be updated to refer to the “Department responsible for water and sanitation”.⁸¹ This recommendation reflects the 2014 configuration of the Department after the 2014 transfer of Cabinet responsibilities,⁸² and is in accordance with comment received from the DWS.⁸³

Nuclear Energy Act 46 of 1999

2.56 The purpose of this Act is to provide for the establishment of the South African Nuclear Energy Corporation Limited, a public company wholly owned by the State; and to define the Corporation’s functions and powers, and its financial and operational accountability.

2.57 Sections 45(2) and 46(3) of this Act refer to the “Minister of Water Affairs and Forestry”. These references appear in provisions that stipulate that the Minister must be consulted in the making of regulations about discarding radioactive waste, and that the Minister may impose conditions with regard to permission to store irradiated nuclear fuel. The SALRC recommends that these out-dated references be replaced with reference to the “Minister responsible for water and sanitation”.⁸⁴ The recommendation reflects the 2014 transfer of responsibilities to Cabinet members,⁸⁵ and is in accordance with the comment received from the DWS.⁸⁶

National Radioactive Waste Disposal Institute Act 53 of 2008

2.58 The purpose of this Act is to provide for the establishment of the National Radioactive Waste Disposal Institute, in order to manage radioactive waste disposal on a national basis.

⁸¹ Clause 9 in Annexure A.

⁸² See par 2.1 – 2.2 above.

⁸³ See par 2.7 above.

⁸⁴ Clause 14 in Annexure A.

⁸⁵ See par 2.1 – 2.2 above.

⁸⁶ See par 2.7 above.

2.59 Section 7(2)(c) of the Act provides that the Board of the National Radioactive Waste Disposal Institute must consist of officials nominated by certain government departments, including the “Department of Water Affairs and Forestry”. The SALRC recommends that the out-dated reference to the Department be replaced with reference to the “Department responsible for water and sanitation”.⁸⁷ This recommendation reflects the configuration of the Department after the 2014 transfer of responsibilities to Cabinet members,⁸⁸ and is in accordance with the comment received from the DWS.⁸⁹

National Environmental Management: Waste Act 59 of 2008

2.60 The purpose of this Act is to reform the law regulating waste management, in order to protect health and the environment. The Act provides reasonable measures for the prevention of pollution and ecological degradation, and for securing ecologically sustainable development.

2.61 The Act contains nine references to the “Minister of Water Affairs and Forestry”. These appear in sections 36(1), 37(1), 38(1), 39(2), 49(2), 65(1) and (2), 69(5) and 70(3). The SALRC recommends that the out-dated references to the Minister in these provisions be replaced with reference to the “Minister responsible for water and sanitation”.⁹⁰ This recommendation reflects the 2014 transfer of Cabinet responsibilities,⁹¹ and is in accordance with the comment received from the DWS.⁹²

⁸⁷ Clause 15 in Annexure A.

⁸⁸ See par 2.1 – 2.2 above.

⁸⁹ See par 2.7 above.

⁹⁰ Clause 16 in Annexure A.

⁹¹ See par 2.1 – 2.2 above.

⁹² See par 2.7 above.

ANNEXURE A

WATER RELATED MATTERS AMENDMENT BILL

GENERAL EXPLANATORY NOTES:

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

_____ Words underlined with solid line indicate insertions in existing enactments

BILL

To amend certain water related laws of the Republic.

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

Amendment of section 4 of Act 34 of 1971

1. Section 4 of the Water Research Act, 1971 is amended by the substitution for subsection (2) of the following subsection:

“(2) The Minister shall designate one of the members of the commission as **[chairman]** chairperson and one as **[vice-chairman]** vice-chairperson of the commission for such period as **[he]** the Minister may in each case determine, and if the office of **[chairman]** chairperson or **[vice-chairman]** vice-chairperson becomes vacant for any reason the Minister shall designate another member of the commission as **[chairman]** chairperson or **[vice-chairman]** vice-chairperson, as the case may be, for the remainder of the period for which **[his]** the predecessor to such office was so designated, or as acting **[chairman]** chairperson or **[vice-chairman]**

vice-chairperson, as the case may be, for such period as **[he]** the Minister may determine: Provided that the executive director shall not be so designated.”.

Amendment of section 7 of Act 34 of 1971

2. Section 7 of the Water Research Act, 1971 is amended by the substitution for subsection (4) of the following subsection:

“(4) The **[chairman]** chairperson, or in **[his]** the chairperson’s absence, the **[vice-chairman]** vice-chairperson of the commission shall preside at all meetings thereof at which **[he]** either of them is present, and if both the **[chairman]** chairperson and the **[vice-chairman]** vice-chairperson are absent from any meeting, the members present shall elect one of their number to preside at such meeting.”.

Amendment of section 14 of Act 34 of 1971

3. Section 14 of the Water Research Act, 1971 is amended by the substitution for subsection (3) of the following subsection:

“(3) The Minister shall **[lay the said report upon the Table of the Senate and of the House of Assembly]** table the said report in Parliament within fourteen days after receipt thereof, if Parliament is in ordinary session or, if Parliament is not in ordinary session, within fourteen days after the commencement of its next ensuing ordinary session.”.

Amendment of section 14A of Act 34 of 1971

4. Section 14A of the Water Research Act, 1971 is amended by the substitution for subsection (1) of the following subsection:

“(1) The Minister may delegate any power conferred upon him or her by section 11(5A) or 13(6) to the Director-General **[: Environment Affairs]** responsible for water and sanitation or any other officer in the Department **[of Environment Affairs]** responsible for water and sanitation.”.

Amendment of certain expressions in Act 34 of 1971

5. The Water Research Act, 1971 is hereby amended –
- (a) by the substitution for the expression “Water Act, 1956 (Act 54 of 1956)” of the expression “National Water Act, 1998 (Act 36 of 1998)” wherever it occurs in section 1;
 - (b) by the substitution for the expression “Scientific Research Council Act, 1945 (Act 33 of 1945)” of the expression “Scientific Research Council Act, 1988 (Act 46 of 1988)” wherever it occurs in section 3(1)(a);
 - (c) by the substitution for the expression “chairman” of the expression “chairperson” wherever it occurs in sections 7(1), 7(2) and 10(4).
 - (d) by the substitution for the expression “section 26(1) of the Exchequer and Audit Act, 1975 (Act 66 of 1975)” of the expression “section 80(1) of the Public Finance Management Act, 1999 (Act 1 of 1999)” wherever it occurs in section 11(5).
 - (e) by the substitution for the expression “Controller and Auditor-General” of the expression “Auditor-General” wherever it occurs in section 14(1).

Amendment of section 15A of Act 54 of 1972

6. The Foodstuffs, Cosmetics and Disinfectants Act, 1972 is amended by the substitution for the expression “Minister of Water Affairs and Forestry” of the expression “Minister responsible for water and sanitation” wherever it occurs in section 15A.

Amendment of certain expressions in Act 73 of 1989

7. The Environment Conservation Act, 1989 is hereby amended –
- (a) by the substitution for the expression “Minister of Water Affairs” of the expression “Minister responsible for water and sanitation” wherever it occurs in sections 33(1), 35(1) and 35(4);
 - (b) by the substitution for the expression “Department of Water Affairs” of the expression “Department responsible for water and sanitation” wherever it occurs in section 33(1).

Amendment of section 3 of Act 127 of 1993

8. Section 3 of the Overvaal Resources Limited Act, 1993 is amended by the substitution for subsection (2) of the following subsection:
- “(2) The State shall, in respect of the resorts Willem Pretorius, Loskopdam and Hendrik Verwoerd, acquire servitudes of storage as defined in section 139 of the **[Water Act, 1956 (Act 54 of 1956)]** National Water Act, 1998 (Act 36 of 1998), the physical extent of which shall be determined by the Minister **[of Water Affairs]** responsible for water and sanitation with due consideration of the Government water works concerned and any future works which in the Minister’s opinion may become necessary, without any obligation for compensation by the State.”.

Amendment of section 3 of Act 15 of 1997

9. Section 3(2)(a) of the Genetically Modified Organisms Act, 1997 is hereby amended by the substitution for subparagraph (viii) of the following subparagraph:
- “(viii) the Department **[of Water Affairs and Forestry]** responsible for water and sanitation,”.

Amendment of section 1 of Act 108 of 1997

10. Section 1 of the Water Services Act, 1997 is amended –

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

“‘Minister’ means the Minister **[of Water Affairs and Forestry]** responsible for water and sanitation;”;

(b) by the substitution for the definition of “organisation representing municipalities” of the following definition:

“‘organisation representing municipalities’ means an organisation recognised under a law contemplated in section 163 of the Constitution as representing municipalities, or in the absence of such a law, any organisation or organisations considered by the Minister after consultation with the Minister **[for Provincial Affairs and Constitutional Development]** of Cooperative Governance and Traditional Affairs as representing municipalities, and includes an organisation representing **[district or rural councils as defined in the Local Government Transition Act, 1993 (Act 209 of 1993)]** a majority of municipalities as recognised in terms of section 2 of the Organised Local Government Act, 1997 (Act 52 of 1997);”;

(c) by the substitution for the definition of “water services authority” of the following definition:

“‘water services authority’ means any municipality, including a district council as defined in the **[Local Government Transition Act, 1993]** Local Government: Municipal Structures Act, 1998 (Act 117 of 1998);”.

Amendment of certain expressions in Act 108 of 1997

11. The Water Services Act, 1997 is amended –

(a) by the substitution for the expression “Local Government Transition Act 1993, (Act 209 of 1993)” of the expression “Local Government:

Municipal Systems Act, 2000 (Act 32 of 2000)” wherever it occurs in sections 12(1)(a) and 15(5).

- (b) by the substitution for the expression “Minister for Provincial Affairs and Constitutional Development” of the expression “Minister of Cooperative Governance and Traditional Affairs” wherever it occurs in sections 12(2), 15(3), 16, 18(2)(b), 19(5), 51(2)(b), 62(2)(a), 63 and 71(1)(b)(i);
- (c) by the substitution for the expression “Minister of Water Affairs and Forestry” of the expression “Minister responsible for water and sanitation” wherever it occurs in section 81(3).

Amendment of section 1 of Act 36 of 1998

12. Section 1 of the National Water Act, 1998 is amended –

- (a) by the substitution for the definition of “Department” for the following definition:
 “‘Department’ means the Department **[of Water Affairs and Forestry]** responsible for water and sanitation”;
- (b) by the substitution for the definition of “Minister” for the following definition:
 “‘Minister’ means the Minister **[of Water Affairs and Forestry]** responsible for water and sanitation”.

Amendment of section 117 of Act 36 of 1998

13. Section 117 of the National Water Act, 1998 is amended by the substitution for paragraph (a) of the following paragraph:

“(a) ‘approved professional person’ means a person registered in terms of **[the Engineering Profession of South Africa Act, 1990 (Act 114 of 1990)]** section 19(2)(a) of the Engineering Profession Act, 2000 (Act 46 of 2000), and approved by the Minister after consultation with the Engineering Council of South Africa (established by section 2 of that Act);”.

Amendment of Act 46 of 1999

14. The Nuclear Energy Act, 1999 is amended by the substitution for the expression “Minister of Water Affairs and Forestry” of the expression “Minister responsible for water and sanitation” wherever it occurs in sections 45(2) and 46(3).

Amendment of section 7 of Act 53 of 2008

15. The National Radioactive Waste Disposal Institute Act, 2008 is hereby amended by the substitution for the expression “Minister of Water Affairs and Forestry” of the expression “Minister responsible for water and sanitation” wherever it occurs in section 7(2)(c).

Amendment of Act 59 of 2008

16. The National Environmental Management: Waste Act, 2008 is amended by the substitution for the expression “Minister of Water Affairs and Forestry” of the expression “Minister responsible for water and sanitation” wherever it occurs in sections 36(1), 37(1), 38(1), 39(2), 49(2), 65(1), 65(2), 69(5) and 70(3).

Short title and commencement

17. This Act is called the Water Related Matters Amendment Act, 2015 and comes into operation on a date determined by the President by proclamation in the *Gazette*.

ANNEXURE B

WATER RELATED LEGISLATION ADMINISTERED BY THE DEPARTMENT OF WATER AND SANITATION

Number	Name of Act, number and year
1.	Water Research Act 34 of 1971
2.	Water Research Amendment Act 16 of 1974
3.	Water Research Amendment Act 37 of 1975
4.	Water Research Amendment Act 106 of 1977
5.	Water Research Amendment Act 10 of 1982
6.	Water Research Amendment Act 93 of 1985
7.	Water Services Act 108 of 1997
8.	Water Services Amendment Act 30 of 2004
9.	National Water Act 36 of 1998
10.	National Water Amendment Act 45 of 1999
11.	National Water Amendment Act 27 of 2014

PRINCIPAL STATUTES LISTED IN

PROCLAMATIONS 44 OF 2009, AND 47 OF 2014

Legislation	Cabinet member pre 2009	Cabinet member indicated in Proclamation 44 of 2009	Current Cabinet member indicated in Proclamation 47 of 2014
Water Research Act 34 of 1971	Minister of Water Affairs and Forestry	Minister of Water and Environmental Affairs	Minister of Water and Sanitation
Water Services Act 108 of 1997	Minister of Water Affairs and Forestry	Minister of Water and Environmental Affairs	Minister of Water and Sanitation
National Water Act 36 of 1998	Minister of Water Affairs and Forestry	Minister of Water and Environmental Affairs	Minister of Water and Sanitation

ANNEXURE C

ANCILLARY LEGISLATION CONSIDERED

Number	Name of Act, number and year
1.	Foodstuffs Cosmetics and Disinfectants Act 54 of 1972
2.	Environment Conservation Act 73 of 1989
3.	Overvaal Resorts Limited Act 127 of 1993
4.	Genetically Modified Organisms Act 15 of 1997
5.	Nuclear Energy Act 46 of 1999
6.	National Radioactive Waste Disposal Institute Act 53 of 2008
7.	National Environmental Management: Waste Act 59 of 2008