



**REPORT ON LEGISLATION ADMINISTERED  
BY DEPARTMENTS OF BASIC EDUCATION AND  
HIGHER EDUCATION AND TRAINING**

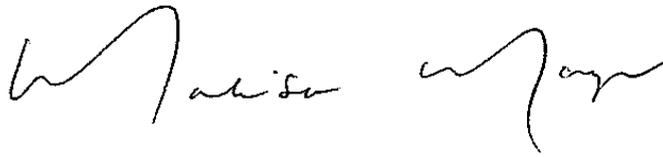
**PROJECT 25:  
STATUTORY LAW REVISION**

**AUGUST 2015**



**TO MR TM MASUTHA, MP, (ADV) MINISTER OF JUSTICE AND CORRECTIONAL SERVICES**

I am honoured to submit to you in terms of section 7(1) of the South African Law Reform Commission Act 19 of 1973 (as amended) for your consideration and referral to the Minister of Basic Education and the Minister of Higher Education and Training, the Commission's report on Project 25: Statutory Law Revision (Legislation administered by the Departments of Basic Education and Higher Education and Training).

A handwritten signature in black ink, appearing to read 'M M L Maya', written in a cursive style.

**JUDGE M M L MAYA**

**CHAIRPERSON: SOUTH AFRICAN LAW REFORM COMMISSION**

**20 AUGUST 2015**



## 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).

The members of the Commission are –

Judge Mandisa Muriel Lindelwa Maya (Chairperson)  
Judge Narandran (Jody) Kollapen (Vice-Chairperson)  
Professor Vinodh Jaichand  
Mr Irvin Lawrence  
Advocate Mahlape Sello  
Ms Thina Siwendu

The Secretary of the SALRC is Mr Nelson Matibe. The Project Leader responsible for this investigation is Professor Vinodh Jaichand. The SALRC official assigned to this investigation is Mr Linda Mngoma. The Commission's offices are situated at Spooral Park Building, 2007 Lenchen Avenue South, Centurion, Pretoria.

On 30 July 2008, Ms MS Mabandla, the then Minister of Justice and Constitutional Development, appointed the following advisory committee members to assist with this investigation, namely:

Professor Boyce Philip Wanda, University of Fort Hare  
Ms Simla Budhu, University of South Africa  
Ms Waruguru Kaguongo, University of Pretoria  
Dr Rika Joubert, University of Pretoria  
Professor Elmene Bray, University of South Africa

Professor Rassie Malherbe of the University of Johannesburg and Dr Marius Smit of the North-West University resigned due to other commitments that prevented their participation in the project.

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# EXECUTIVE SUMMARY

## A. Introduction

1. Since the advent of 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. Following the appointment in August 2008 of advisory committee members<sup>1</sup> by the then Minister of Justice and Constitutional Development, the Honourable Ms MS Mabandla, the advisory committee under the leadership of Mr Justice Dennis Davis approved two Consultation Papers for submission to the Departments of Higher Education and Training (DHET) and Basic Education (DBE) for comment. The Consultation Papers were submitted to the respective departments for comment on 26 May 2010. Comments were received from DHET on 4 August 2010 and from the DBE on 26 October 2010.

## B. Discussion Paper 125

3. In its response to the SALRC, the DBE supports without reservation the SALRC's recommendation for the repeal of obsolete and redundant statutes or provisions in statutes identified in the draft Bill attached to the Consultation Paper. The DBE further supports the repeal of legislation that was assigned to the provinces by the relevant provincial legislatures on the basis of their discriminatory nature and obsolescence. Due to the limited nature of the

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<sup>1</sup> The list of advisory committee members appears on page v of this Report.

legislative proposals contained in the review of statutes administered by the DHET,<sup>2</sup> the SALRC decided to merge the three statutes identified for partial repeal by the DHET into the Discussion Paper reviewing legislation administered by the DBE as the department responsible for the promotion of the proposed draft Bill in Parliament.

4. 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 the DBE and DHET respectively, and published it as Discussion Paper 125 (the Discussion Paper) for general information and comment in May 2011.

5. In the Discussion Paper, the SALRC listed all the 19 statutes administered by the DBE, including the three Education Laws Amendment Acts that deal with matters affecting further education and training (which is a subject matter for which the DHET is responsible), as well as the 36 statutes that were assigned to the provinces which are, in this Report, recommended for repeal by the relevant provincial legislatures. The SALRC explained the background to statutory law revision; set out the guidelines utilised by the SALRC to test the constitutionality and redundancy of these statutes; provided detailed findings and proposals for law reform in respect of the statutes found wanting; appended the draft Bill setting out legislation or provisions in legislation which needed to be amended and repealed, and the extent of such repeal; and 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 August 2011.

6. The stakeholders to whom the Discussion Paper was distributed include, among others, the DBE, DHET, Members of the Executive Council (MEC's) and Heads of Provincial Departments of Education. The Discussion Paper was also posted on the SALRC website. Comments were received from the Gauteng Department of Education and Equal Education.

7. The Gauteng Provincial Department of Education supports the SALRC's recommendations for the repeal of statutes that were assigned to the provinces on the basis that they are unconstitutional and discriminatory. In its submission to the SALRC, the Head of Department states as follows:

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<sup>2</sup> The only legislative proposals relevant to DHET was the repeal of sections 1, 18 and 19 of the Education Laws Amendment Act 53 of 2000; section 12 to 14 of the Education Laws Amendment Act 57 of 2001 and sections 14 to 26 of the Education Laws Amendment Act 50 of 2002. These sections deal with matters affecting further education and training. In terms of Proclamation 44 of 2009, the Further Education and Training Colleges Act 16 of 2006 was transferred to the Minister of Higher Education and Training as the Cabinet Minister responsible for the administration of the Act.

[W]e aver that certain provisions or statutes were repealed by virtue of obsolescence, for example, the Coloured Persons Education Act; Education and Training Act; and so on. The list is indicated on pages 12 and 13 of the DP. These legislative provisions were repealed on the basis that they were unconstitutional and discriminatory. We opine that the repeal of legislation on the basis of obsolescence is in order and is thus supported by the Gauteng Department of Education. It should be noted that the South African Schools Act, 1996 (Act 84 of 1996), as amended, as an example replaces the existence of the two legislative statutes as stated above.

8. Further consultation took place with the Western Cape Provincial Government and Juta Law in order to confirm the current status of the legislation listed in Annexure F to this Report that were assigned to the provinces in terms of Proclamation R151 in Government Gazette 16049 of 31 October 1994. The Department of the Premier, Western Cape Provincial Government confirmed that they have repealed all the above-mentioned statutes.

9. In its submission to the SALRC, Equal Education states that they are satisfied that the SALRC has dealt thoroughly and sufficiently, within the scope of its mandate, with legislation administered by the DBE, save for the comment on section 5A of the South African Schools Act. Paragraph 2.205 (iv) of the Discussion Paper had provisionally recommended that, although not part of the purpose and core mandate of the current investigation, consideration should be given to bringing about a set of statutory guidelines underpinning the matters referred to in subsection 5A(2) of the South African Schools Act for consideration by the Minister of Basic Education when determining national minimum norms and standards as required in terms of section 5A(1) of the Act. However, Equal Education is of the view that-

[A]s it is currently formulated; section 5A of the South African Schools Act provides sufficient guidance to the Minister for the prescription, by regulation, of norms and standards for school infrastructure and capacity in public schools.

10. The reasons supplied by Equal Education for the above viewpoint are discussed in detail in paragraphs 2.220 and 2.221 of this Report. The SALRC concurs with Equal Education's viewpoint.

## **C. Draft Basic Education General Laws Amendment and Repeal Bill**

### **1 Redundant and obsolete legislation and provisions in legislation recommended for repeal**

#### **(a) National Education Policy Amendment Act 25 of 1982; National Education Policy Amendment Act, (House of Assembly) 103 of 1986; and National Education Policy Amendment Act, (House of Assembly) 90 of 1991**

11. The draft Bill seeks to repeal the above three National Education Policy Amendment Acts. The purpose of all these statutes was to amend the National Education Policy Act, 1967 (Act No. 39 of 1967). However, the latter principal Act was repealed in its entirety by section 76(6) of the Higher Education Act, 1997 (Act No.101 of 1997), and this repeal renders the above Amendment Acts redundant. The DBE supports the SALRC's recommendation.

#### **(b) Correspondence Colleges Amendment Act (House of Assembly) 102 of 1990; and Correspondence Colleges Amendment Act (House of Assembly) 34 of 1992**

12. The draft Bill seeks to repeal the above two Correspondence Colleges Amendment Acts (House of Assembly) on account of obsolescence. The purpose of both statutes was to amend the Correspondence Colleges Act 59 of 1965. However, the latter principal Act was repealed by the Further Education and Training Act 98 of 1998 which means that these statutes are now redundant and must be removed from the statute book. The DBE supports the SALRC's recommendation.

#### **(c) Education and Culture Laws Amendment Act 28 of 1983**

13. The draft Bill seeks to repeal sections 1, 2 and 6 of the Education and Culture Laws Amendment, 1983 (Act No. 28 of 1983) on account of obsolescence. The above sections repeal sections in statutes that were subsequently repealed as a whole. This renders the said sections redundant. The SALRC recommends that these sections be repealed by the DBE.

**(d) Education Laws Amendment Act (House of Assembly) 139 of 1993**

14. The draft Bill seeks to repeal section 2 of the Education Laws Amendment Act (House of Assembly), 1993 (Act No. 139 of 1993) on account of obsolescence. The above section amended section 8 of the Education Policy Act 39 of 1967. However, the latter Act was repealed in its entirety by section 76(6) of the Higher Education Act 101 of 1997, which renders section 2 of Act 139 of 1993 redundant.

**(e) Education Laws Amendment Act 100 of 1997**

15. The draft Bill seeks to repeal sections 14 to 20 of the Education Laws Amendment Act, 1997 (Act 100 of 1997) on account of obsolescence. The purpose of the above sections was to amend the Educators' Employment Act, 1994 (Proclamation 138 of 1994). However, Proclamation 138 of 1994 was repealed by section 37 of the Employment of Educators Act 76 of 1998, which renders sections 14 to 20 of Act 100 of 1997 redundant.

**(f) Education Laws Amendment Act 53 of 2000**

16. The draft Bill seeks to repeal sections 5 and 7 of the Education Laws Amendment Act, 2000 (Act No. 53 of 2000) on account of obsolescence. The above sections substituted sections in statutes that were later substituted by other statutes, thus rendering the said sections redundant. The SALRC recommends that these sections be repealed by the DBE.

**(g) Education Laws Amendment Act 50 of 2002**

17. The draft Bill seeks to repeal section 11 of the Education Laws Amendment Act, 2002 (Act No. 50 of 2002) on account of obsolescence. Section 11 of the Act amended section 8 of the Employment of Educators Act 76 of 1998 by adding subsection (7). However, subsection (7) was later substituted by section 3 of the Education Laws Amendment Act 1 of 2004, which renders section 11 of Act 50 of 2002 redundant. The SALRC recommends that section 11 of Act 50 of 2002 be repealed by the DBE.

**(h) Education Laws Amendment Act 1 of 2004**

18. The draft Bill seeks to repeal section 1 of the Education Laws Amendment Act, 2004 (Act No.1 of 2004) on account of obsolescence. The above section amended section 4 of the South African Qualifications Authority Act 58 of 1995. However, the latter Act was repealed in

its entirety by section 37 of the National Qualifications Framework Act 67 of 2008, and that renders section 1 of the Act redundant. The SALRC recommends that section 1 of the Education Laws Amendment Act 1 of 2004 be repealed.

## **D Summary of recommendations**

19. In this report the SALRC recommends, firstly, that the following Acts be repealed as a whole by the DBE:

1. National Education Policy Amendment Act 25 of 1982;
2. National Education Policy Amendment Act, (House of Assembly) 103 of 1986;
3. National Education Policy Amendment Act, (House of Assembly) 90 of 1991;
4. Correspondence Colleges Amendment Act (House of Assembly) 102 of 1990;  
and
5. Correspondence Colleges Amendment Act (House of Assembly) 34 of 1992.

20. Second, the SALRC recommends that the specified provisions in the following Acts be repealed by the DBE:

1. Sections 1, 2 and 6 of the Education and Culture Laws Amendment Act 28 of 1983;
2. Section 2 of the Education Laws Amendment Act (House of Assembly) 139 of 1993;
3. Sections 14 to 20 of the Education Laws Amendment Act 100 of 1997;
4. Sections 5 and 7 of the Education Laws Amendment Act 53 of 2000;
5. Section 11 of the Education Laws Amendment Act 50 of 2002; and
6. Section 1 of the Education Laws Amendment Act 1 of 2004.

21. Third, the SALRC recommends that the specified provisions in the following Acts be repealed by the DHET:

1. Sections 1, 18 and 19 of the Education Laws Amendment Act 53 of 2000;
2. Sections 12 to 14 of the Education Laws Amendment Act 57 of 2001; and
3. Sections 14 to 26 of the Education Laws Amendment Act 50 of 2002.

22. Lastly, the SALRC recommends that the following statutes listed in Annexures C and D of this Report be repealed by the relevant provincial legislatures on account of obsolescence. These statutes were assigned by the President of the Republic of South Africa to a competent authority within the jurisdiction of a provincial government. They are as follows:

1. Coloured Persons Education Act 47 of 1963 (to be repealed by the North-West Provincial Legislature);
2. Education Affairs Act (House of Assembly) 70 of 1988 (to be repealed by the North-West Provincial Legislatures);
3. Education and Training Act 90 of 1979 (to be repealed by the North-West Provincial Legislature);
4. Indians Education Act 61 of 1965 (to be repealed by the North-West Provincial Legislature); and
5. Private Schools Act (House of Assembly) 104 of 1986 (to be repealed by the Limpopo and North-West Provincial Legislatures).

## **E Concluding remarks**

23. The SALRC has prepared this Report for consideration by the Minister of Justice and Correctional Services in terms of section 7(1) of the South African Law Reform Commission Act, 1973 (Act No.19 of 1973), and for referral to the Minister of Basic Education and the Minister of Higher Education and Training.

24. The SALRC wishes to express its sincere gratitude to officials of the Departments of Basic Education and Higher Education and Training 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 continual basis.

#### 2 History of 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 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 such 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. Reference to bodies, organisations, and so on that have been dissolved or wound up or which have otherwise ceased to serve any purpose.
2. Reference to issues that are no longer relevant as a result of changes in social or economic conditions.
3. Reference to Acts that have been superseded by more modern legislation or by an international convention.
4. Reference to statutory provisions (sections, schedules, etc.) that have been repealed.
5. Repealing provisions for example, "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: for example 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:<sup>3</sup>

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;
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.

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<sup>3</sup> 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.

1.13 In South Africa, 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. After the paper is approved 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) at the University of the Witwatersrand to conduct a study to determine the feasibility, scope and operational structure of

revising the South African statute book for constitutionality, redundancy and obsolescence. CALS pursued four main avenues of research in their study conducted in 2001:<sup>4</sup>

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 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. Recognition of Customary Marriages (August 1998)
2. Review of the Marriage Act 25 of 1961 (May 2001)

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<sup>4</sup>

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

3. 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. Recognition of Muslim marriages (July 2003)
6. Repeal of the Black Administration Act 38 of 1927 (March 2004)
7. Customary Law of Succession (March 2004)
8. Domestic Partnerships (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. Section 9 of the Constitution 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;
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.<sup>5</sup> However, even the section 9 inquiry is fairly limited, dealing primarily with statutory provisions that are blatantly in conflict with section 9 of the Constitution. This is necessitated by, among other considerations, time and capacity. It is not foreseen that the SALRC and government departments will have capacity in the foreseeable future to revise all national statutes or the entire legislative framework to determine whether they contain unconstitutional provisions.

## **E Assistance by government departments and stakeholders**

1.21 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.

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<sup>5</sup> Cathi Albertyn prepared guidelines for the SALRC for assessing the South African Statute Book for constitutionality against section 9 of the Constitution. Albertyn C *Summary of the Equality Jurisprudence and Guidelines for assessing the SA Statute Book for constitutionality against section 9 of the 1996 Constitution* Unpublished paper prepared for the South African Law Reform Commission 2006.

## **F. Consultation with the Departments of Basic Education and Higher Education and Training**

1.22 The SALRC reviewed 19 statutes administered by the DBE,<sup>6</sup> 14 statutes administered by DHET,<sup>7</sup> and 36 statutes that were assigned to Provincial Departments of Education.<sup>8</sup> In May 2010 and in accordance with its policy to consult widely and to involve the department likely to be affected by any proposals made, the SALRC developed and submitted to DBE and DHET its Consultation Papers. The Consultation Papers explained the background to statutory law revision, set out the guidelines utilised by the SALRC to test the constitutionality and redundancy of statutes administered by DBE and DHET, and provided detailed findings and proposals for legislative reform in respect of legislation found wanting. Appended to the Consultation Papers were draft Bills setting out statutes which needed to be repealed, and the extent of such repeal. The SALRC invited the DBE and DHET to peruse the preliminary findings, proposals and questions for comment and submit comments.

1.23 On 4 August 2010, the DHET submitted comments to the SALRC. The only legislative proposals emanating from the review of the DHET investigation was the proposed repeal of sections 1, 18 and 19 of the Education Laws Amendment Act 53 of 2000; sections 12 to 14 of the Education Laws Amendment Act 57 of 2001; and sections 14 to 26 of the Education Laws Amendment Act 50 of 2002. These sections deal with matters affecting further education and training, which is a subject matter of the DHET. In February 2011, the SALRC decided that the above limited legislative proposals emanating from the DHET investigation should be incorporated in the DBE discussion paper. On 1 March 2011, the SALRC's decision was communicated to the DHET and was accepted by the DHET.

1.24 On 26 October 2010, the DBE submitted comments to the SALRC. In a nutshell, the DBE supports the preliminary findings as contained in the Consultation Paper referred to above.

1.25 On 14 May 2011, the SALRC approved Discussion Paper 125, which incorporated comments and input received from the DHET and DBE, for general information and comment.

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<sup>6</sup> Annexure E.

<sup>7</sup> Annexure G.

<sup>8</sup> Annexure F.

Comments to the Discussion Paper were received from the Gauteng Department of Education and Equal Education. Further consultation took place with the Western Cape Provincial Government and Juta Law in order to confirm the current status of the legislation that was assigned to the provinces in terms of Proclamation R151 in Government Gazette 16049 of 31 October 1994. The Department of the Premier, Western Cape Provincial Government confirmed that they have repealed the abovementioned statutes.

1.26 The SALRC wishes to express its appreciation to the DHET; DBE and the stakeholders who submitted comments to the Discussion Paper, for their support and participation in all the stages of this review leading to the development of this Report.

## Chapter 2

# Explanatory notes on the Draft Basic Education General Laws Amendment and Repeal Bill

## A. Introduction

2.1 According to the 2009/2010 *Annual Report* of the then Department of Education-

*Government has made Education the key priority. In doing so, it placed education and skills development at the centre of this administration's priorities. This required the creation of two Ministries with clear responsibilities. Basic Education will focus primarily on schools in order to achieve the goal of a quality basic education system. The Ministry of Higher Education and Training will deliver an improved higher education and training system which will provide a diverse range of learning opportunities for youth and adults.*

*Since 1994, a number of policies have been implemented and legislation promulgated to create a framework for transformation in education and training. These include, inter alia, the following:*

- 1) *The Constitution of the Republic of South Africa, which guarantees access to basic education for all, with the provision that everyone has the right to basic education, including adult education;*
- 2) *The National Education Policy Act (NEPA) (1996);*
- 3) *The South African Schools Act (SASA) (1996);*
- 4) *A whole spectrum of legislation, including the Employment of Educators Act (1998);*
- 5) *The National Curriculum Statement (Grades R to 12);*
- 6) *The Education White Paper on Early Childhood Development (2000); and*
- 7) *Education White Paper 6 on inclusive Education (2001).<sup>9</sup>*

2.2 In this Report, the following statutes are recommended for repeal. They were assigned by the President of the Republic of South Africa to a competent authority within the jurisdiction of the government of a province,<sup>10</sup> and are recommended for repeal by the North-West provincial legislature on the basis of discrimination and obsolescence. All the provincial

<sup>9</sup> Department of Education Annual Report 2009/10, at 12 and 16 to 18.

<sup>10</sup> In terms of Proclamation R151 in Government Gazette 16049 of 31 October 1994.

legislatures have now repealed the statutes mentioned below, save for the North-West provincial legislature. These statutes are the following:

- 1) Coloured Persons Education Act, 1963 (Act No. 47 of 1963);
- 2) Coloured Persons Education Amendment Act, 1967 (Act No. 76 of 1967);
- 3) Coloured Persons Education Amendment Act, 1973 (Act No. 53 of 1973);
- 4) Coloured Persons Education Amendment Act, 1976 (Act No. 29 of 1976);
- 5) Second Coloured Persons Education Amendment Act, 1976 (Act No.95 of 1976);
- 6) Coloured Persons Education Amendment Act, 1979 (Act No.50 of 1979);
- 7) Coloured Persons Education Amendment Act, 1980 (Act No. 15 of 1980);
- 8) Coloured Persons Education Amendment Act, 1983 (Act No. 85 of 1983);
- 9) Coloured Persons Education Amendment Act (House of Representatives), 1985 (Act No. 76 of 1985);
- 10) Coloured Persons Education Amendment Act (House of Representatives), 1992 (Act No. 112 of 1992);
- 11) Coloured Persons Education Amendment Act (House of Representatives), 1992 (Act No.113 of 1992);
- 12) Education Amendment Act (House of Delegates) 1986 (Act No. 100 of 1986);
- 13) Education Affairs Act (House of Assembly) 1988 (Act No. 70 of 1988);
- 14) Education Affairs Amendment Act (House of Assembly), 1991 (Act No. 88 of 1991);
- 15) Education Affairs Amendment Act (House of Assembly), 1992 (Act No. 39 of 1992);
- 16) Education Affairs Amendment Act (House of Assembly), 1993 (Act No 36 of 1993);
- 17) Education Affairs Second Amendment Act (House of Assembly), 1993 Act No. 162 of 1993);
- 18) Education and Training Act, 1979 (Act No. 61 of 1979);
- 19) Education and Training Amendment Act, 1980 (Act No. 52 of 1980);
- 20) Education and Training Amendment Act, 1981 (Act No.10 of 1981);
- 21) Education and Training Amendment Act, 1984 (Act No. 74 of 1984);
- 22) Education and Training Amendment Act, 1989 (Act No 35 of 1989);
- 23) Education and Training Amendment Act, 1990 (Act No. 42 of 1990);
- 24) Education and Training Amendment Act, 1991 (Act No. 100 of 1991);

- 25) Education and Training Amendment Act 1992 (Act No.55 of 1992);
- 26) Education and Training Second Amendment Act, 1992 (Act No. 106 of 1992);
- 27) Indians Education Act, 1965 (Act No. 61 of 1965);
- 28) Indians Education Amendment Act, 1967 (Act No. 60 of 1967);
- 29) Indians Education Amendment Act, 1979 (Act No. 39 of 1979);
- 30) Indians education Amendment Act, 1981 (Act No. 9 of 1981);
- 31) Indians Education Amendment Act, 1984 (Act No. 78 of 1984);
- 32) Indians Education Amendment Act (House of Delegates), 1985 (Act No. 64 of 1985);
- 33) Indians Education Amendment Act (House of Delegates), 1992 (Act No. 114 of 1992);
- 34) Indians Education Amendment Act (House of Delegates), 1993 (Act No.50 of 1993);
- 35) Private Schools Act (House of Assembly), 1986 (Act No.104 of 1986); and
- 36) Private Schools Amendment Act (House of Assembly), 1990 (Act No.60 of 1990).

2.3 Statutes which are recommended for repeal as a whole on the basis of their obsolescence or redundancy are the following:

- 1) National Education Policy Amendment Act, 1982 (Act No. 25 of 1982);
- 2) National Education Policy Amendment Act (House of Assembly) 1991 (Act No.90 of 1991);
- 3) National Education Policy Amendment Act, (House of Assembly), 1986 (Act No. 103 of 1986);
- 4) Correspondence Colleges Amendment Act (House of Assembly), 1990 (Act No. 102 of 1990); and
- 5) Correspondence Colleges Amendment Act (House of Assembly), 1992 (Act No.34 of 1992).

2.4 Statutes which are recommended for partial repeal on the basis of the obsolescence of specific provisions contained in those statutes are the following:

- 1) Education and Culture Laws Amendment Act, 1983 (Act No.28 of 1983);

- 2) Education Laws Amendment Act (House of Assembly), 1993 (Act No. 139 of 1993);
- 3) Education Laws Amendment Act, 1997 (Act No 100 of 1997);
- 4) Education Laws Amendment Act, 2000 (Act No. 53 of 2000);
- 5) Education Laws Amendment Act, 2001 (Act No. 57 of 2001);
- 6) Education Laws Amendment Act, 2002 (Act No 50 of 2002); and
- 7) Education Laws Amendment Act, 2004 (Act No. 1 of 2004).

2.5 Statutes which are recommended for retention without any amendment are the following:

- 1) Education Laws Amendment Act, 1999 (Act No. 48 of 1999);
- 2) Education Laws Amendment Act, 2005 (Act No. 24 of 2005);
- 3) National Education Policy Act, 1996 (Act No. 27 of 1996);
- 4) South African Schools Act, 1996 (No. 84 of 1996);
- 5) Employment of Educators, 1998 (No. 76 of 1998);
- 6) South African Council for Educators Act, 2000 (Act No. 31 of 2000); and
- 7) General and Further Education and Training Quality Assurance Act, 2001 (Act No.58 of 2001).

## **B. Statutes administered by the Department of Basic Education**

2.6 The SALRC has identified for purposes of this review, 19 statutes which are administered by the DBE (see Annexure E) and 36 statutes which were assigned to the Provincial Departments of Education (see Annexure F to this Report). 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 in terms of section 9 of the Constitution, has identified six statutes that may be partially repealed and five statutes that may be repealed in whole. These Acts are referred to in the second column of the Schedule to the proposed Bill (see Annexure A).

## **C. General observations**

2.7 Bearing in mind the importance of education to the people of South Africa and the inevitable impact of the successful implementation of education legislation on people's rights to education, it is to be made clear that this Report forms part of a relatively narrow and text-based statutory review process as is outlined above. Where a statute administered by the DBE seems to be free of any provisions that contradict or violate section 9 of the Constitution, it is accordingly not to say that the execution of such statute takes place in line with the protection afforded by the section 9 "equality clause". Therefore, this Report does not reflect on any consequential or operational effects of execution of the powers in terms of the legislation reviewed.

2.8 An evaluation of the post-1994, and in particular the post 1996 legislation, reveals that when enacting most of these laws, the legislature has been conscious not only of the constitutional prescriptions against discrimination, but generally of the need to respect provisions of the Bill of Rights. Discriminatory provisions wherever they appear, have been carefully justified. Nevertheless, there are a number of instances where the right to be heard is either totally ignored or only indirectly observed. Thus, in our view, is contrary to the provisions of sections 33 of the Constitution and the Promotion of Administrative Justice Act, 2000 (Act No.3 of 2000), among others.

## **D. Recommendations for the repeal and amendment of legislation administered by the Departments of Basic Education and Higher Education and Training**

2.9 For the purposes of this Report, the analysis of legislation administered by the DBE has indicated the need to make a distinction between the following categories of legislation:

- 1) Legislation or provisions in legislation the administration of which vests in the national Department of Basic Education or which was transferred to the Minister of Basic Education;<sup>11</sup>
- 2) Legislation or provisions in legislation the administration of which vests in the national Department of Higher Education and Training or which was transferred to the Minister of Higher Education and Training;<sup>12</sup>
- 3) Legislation or provisions in legislation the administration of which vests in the relevant provincial legislatures or which has been assigned to the relevant provincial legislatures by national legislation; and
- 4) Amendment Acts which are in principle included in the latest version of the principal legislation concerned. However, where relevant, the analysis contained in this Report focuses on the review of principal legislation and Amendment Acts separately, with a view to identifying, among other factors, if any existing Amendment Acts may need to be amended, repealed or retained as the case may be. An example of this is the Correspondence Colleges Amendment Act (House of Assembly) 102 of 1990 which remains on the statute book despite the fact that the principal legislation, that is, the Correspondence Colleges Act 59 of 1965, was repealed by the Further Education and Training Act 98 of 1998.

2.10 Some related observations follow in the discussion below. All the relevant Acts were categorized into the following categories:

- 1) Legislation which was assigned to the provinces and which is recommended for repeal by the relevant provincial legislatures on the basis of discriminatory nature in contravention of section 9 of the Constitution, on the one hand, and on the basis of obsolescence, on the other hand, such as the Coloured Persons Education Act, 1963 (Act No. 47 of 1963);
- 2) Legislation proposed for repeal as a whole on the basis of redundancy and obsolescence. These are mainly Amendment Acts that amend Acts which were later repealed, for example, all sections of the Correspondence Colleges

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<sup>11</sup> In terms of Proclamation 44 of 1 July 2009.

<sup>12</sup> In terms of Proclamation 44 of 1 July 2009 and Proclamation 56 of 4 September 2009.

Amendment Act (House of Assembly) 34 of 1992 amend the Correspondence Colleges Act 59 of 1965. However, the latter Act was repealed by the Further Education and Training Act 98 of 1998 which, in turn, was later repealed by the Further Education and Training Colleges Act 16 of 2006;

- 3) Legislation proposed for partial repeal on the basis of certain provisions in the statute concerned being redundant or obsolete; and
- 4) Legislation proposed for retention without any amendment.

## **1. Legislation which was assigned to the provinces**

### **(a) Coloured Persons Education Act, 1963 (Act No. 47 of 1963)**

2.11 The purpose of the Coloured Persons Education Act 1963 was to provide for the control of education for Coloured Persons by the Department of Internal Affairs, to amend the Republic of South Africa Constitution Act, 1961; and to provide for matters incidental thereto. The Act made provision for the education of Coloured persons. "Coloured persons" were defined by the Population Registration Act, 1950 (Act No. 30 of 1950) as members of the Cape Coloured, Malay, Griqua and other Coloured groups.

2.12 The administration of the whole of this Act, excluding sections 1A, 8 to 20 inclusive (which had been previously repealed), 26 and 28 to 31, has under Proclamation R151 of 1994, been assigned to a competent authority within the jurisdiction of the government of a province mentioned in section 124(1) of the Constitution<sup>13</sup> designated by the Premier of the province concerned with effect from 31 October 1994. However, all the retained sections mentioned in paragraph 2.11 above were subsequently repealed at the national government level.<sup>14</sup>

2.13 At the provincial government level, the position is currently the following:

<sup>13</sup> Constitution of the Republic of South Africa, 1993 (Act No.200 of 1993).

<sup>14</sup> Sections 1A, 26 and 28 to 30 respectively were repealed by section 63(1) of the South African Schools Act 84 of 1996, whereas sections 8 to 20 respectively were repealed by Proclamation 138 of 2 September 1994.

**Western Cape:**

2.14 The Act, including all its Amendment Acts, was repealed as a whole by section 74(1) of the Western Cape School Education Act 10 of 1994, except where the Act relates to colleges of education. The Act was again repealed by section 28(1) of the Western Cape Colleges of Education Act 11 of 1994 in so far as it relates to colleges of education. The remaining provisions of the Act were repealed as a whole by section 64(1) of the Western Cape Provincial School Education Act No.12 of 1997.

**Eastern Cape:**

2.15 The Act was repealed as a whole by section 74(1) of the Eastern Cape Schools Education Act 1 of 1999, except in so far as it relates to technical colleges and colleges of education. The remaining provisions of the Act were repealed as a whole, without any exception, by section 1 of the Eastern Cape General Law Amendment Act No.2 of 2012.

**Northern Cape:**

2.16 The Act was repealed as a whole, without any exception, by section 105(1) of the Northern Cape School Education Act No.1 of 1996.

**Mpumalanga:**

2.17 The Act, including all its Amendment Acts, was repealed as a whole by section 106(1) of the School Education Act (Mpumalanga) No.8 of 1995, except in so far as it relates to colleges of education.

**Free State:**

2.18 The Act was repealed as a whole, without any exception, by section 51(1) of the School Education Act No.1 of 1996.

**Gauteng:**

2.19 The Act, including all its Amendment Acts, was repealed as a whole by section 107(1) of the School Education Act No.6 of 1995, except in so far as it relates to colleges of education. The remaining sections of the Act were repealed as a whole by section 25 of the Gauteng General Law Amendment Act No.4 of 2005.

**KwaZulu-Natal:**

2.20 The Act was repealed as a whole, without any exception, by section 73(1) of the KwaZulu-Natal School Education Act No.3 of 1996.

**Limpopo:**

2.21 The Act, including all its Amendment Acts, was repealed as a whole by section 105(1) of the Northern Province School Education Act No.9 of 1995, except in so far as it relates to colleges of education and technical colleges.

**North-West:**

2.22 No proof could be found that the Act has been repealed.

**Remaining provisions of the Coloured Persons Education Act, 1963**

2.23 The remaining sections deal with the following areas: control of education for Coloured persons (section 2); establishment, erection and maintenance of schools for Coloured persons (section 3); making grants-in-aid and loans for the education of Colored persons (section 4); transfer of management and control of state-aided schools to the provincial Department of Education (section 5); the registration of private schools authorized to admit Coloured persons only (section 6); the admission of persons to and their discharge from State schools and state-aided schools (section 7); granting of power to the Minister of Education to institute courses in schools for Coloured persons (section 21); the inspection of schools, hostels, teachers' quarters and school clinics (section 22); compulsory school attendance for Coloured persons (section 23); financial assistance for the education and training of Coloured persons (section 24); payment of school and boarding fees (section 25); passing of property and obligations to the state on the transfer of state-aided schools to the Department of Education (section 27); establishment of boards, committees or other bodies to participate in the management of schools (section 32); delegation of powers to officers in the Department of Education (section 33); empowering the Minister to make regulations (34); and the Act's short title and commencement (section 38).

2.24 Although not all sections of the Act specifically refer to the education of Coloured persons, it is noted that the main purpose of the Act was to provide for the establishment and control of education of Coloured persons only. Thus, in so far as the Act is still in force and

remains on the statute book, it discriminates on the grounds of race and is therefore in conflict with section 9 of the Constitution. Furthermore, most of the provisions of the Act are now covered by the South African Schools Act 84 of 1996.

2.25 In its submission to the SALRC, the Gauteng Department of Education stated as follows:

We aver that certain provisions or statutes were repealed by virtue of obsolescence, for example, the Coloured Persons Education Act 47 of 1963, the Education and Training Act of 1979 and so on. The list is indicated on pages 12 and 13 of the DP. These legislative provisions were repealed on the basis that they were unconstitutional and discriminatory.

We opine that the repeal of legislation on the basis of the obsolescence is in order and is thus supported by the Gauteng Department of Education. It should be noted that the South African Schools Act 84 of 1996, as amended, as an example replaces the existence of the two legislative statutes as stated above.

### Recommendation

2.26 Accordingly, the SALRC recommends that the Coloured Persons Education Act No. 47 of 1963, including all its Amendment Acts discussed below, be repealed by the North-West provincial legislature on the followings grounds: firstly, that it is unconstitutional as being contrary to section 9 of the Constitution, and second, most of its provisions are now covered by the South African Schools Act of 1996.

(i) Coloured Persons Education Amendment Act, 1967 (Act No. 76 of 1967)

2.27 The purpose of the Coloured Persons Education Amendment Act 76 of 1967 was to amend the Coloured Persons Education Act, 1963, to provide for the granting of financial aid to private hostels attached to State schools, and for the retention of certain benefits by certain persons transferred to the service of the Department of Coloured Affairs or who were deemed to have been appointed under the provisions of the said Act. Sections 1 to 4 of Act 76 of 1967 amended sections 1, 4, 13 and 34 respectively of the principal Act 47 of 1963. Since Act 47 of 1963 is recommended for repeal, we therefore also recommend that Act 76 of 1967 be repealed, for the reasons as stated in paragraph 2.26 above.

(ii) Coloured Persons Education Amendment Act, 1973 (Act No. 53 of 1973)

2.28 The purpose of the Coloured Persons Education Amendment Act 53 of 1973 was to amend the Coloured Persons Education Act, 1963, so as further to define “vocational education”; to regulate further the admission of persons to training-colleges, the registration of private schools and the granting of assistance for education and training; and to provide for matters connected therewith.

2.29 All the provisions of Act 53 of 1973 provided for the amendment of the principal Act 47 of 1963. Since Act 47 of 1963 is recommended for repeal, Act 53 of 1973 is also recommended for repeal for the reasons as stated in paragraph 2.26 above.

(iii) Coloured Persons Education Amendment Act, 1976 (Act No. 29 of 1976)

2.30 The purpose of the Coloured Persons Education Amendment Act 29 of 1976 was to amend the Coloured Persons Education Act, 1963, so as to provide for the establishment of primary, junior secondary and senior secondary schools; and to provide for incidental matters.

2.31 Sections 1 and 2 of Act 29 of 1976 amended sections 1(1) and 3(1) respectively of the principal Act 47 of 1963. Since Act 47 of 1963 is recommended for repeal, Act 29 of 1976 is also recommended for repeal for the reasons as stated in paragraph 2.26 above.

(iv) Second Coloured Persons Education Amendment Act, 1976 (Act No.95 of 1976)

2.32 The purpose of the Second Coloured Persons Education Amendment Act 95 of 1976 was to amend the provisions of the Coloured Persons Education Act, 1963, so as to provide for the continued provision of education to certain Coloured persons; and to provide for incidental matters.

2.33 Section 1 of Act 95 of 1976 amended section 1 of the principal Act 47 of 1963. Since Act 47 of 1963 is recommended for repeal, Act 95 of 1976 is also recommended for repeal for the reasons as stated in paragraph 2.26 above.

(v) Coloured Persons Education Amendment Act, 1979 (Act No.50 of 1979)

2.34 The purpose of the Second Coloured Persons Education Amendment Act 50 of 1979 was to amend the Coloured Persons Education Act, 1963, in order to increase the fine which may be imposed in a case of misconduct.

2.35 Section 1 of Act 50 of 1979 amended section 1 of the principal Act 47 of 1963. Since Act 47 of 1963 is recommended for repeal, Act 50 of 1979 is also recommended for repeal for the reasons as stated in paragraph 2.26 above.

(vi) Coloured Persons Education Amendment Act, 1980 (Act No. 15 of 1980)

2.36 The purpose of the Coloured Persons Education Amendment Act 15 of 1980 was to amend the Coloured Persons Education Act, 1963, regarding the definition of “nursery school”; and to provide for the establishment, erection and maintenance of nursery schools for the education of Coloured persons; and for matters connected therewith.

2.37 Sections 1 and 2 of Act 15 of 1980 amended sections 1(1) and 3(1) respectively of the principal Act 47 of 1963. Since Act 47 of 1963 is recommended for repeal, Act 50 of 1979 is also recommended for repeal for the reasons as stated in paragraph 2.26 above.

(vii) Coloured Persons Education Amendment Act, 1983 (Act No. 85 of 1983)

2.38 All the provisions of Act 85 of 1983 amended the principal Act 47 of 1963. Since Act 47 of 1963 is recommended for repeal, Act 50 of 1979 is also recommended for repeal for the reasons as stated in paragraph 2.26 above.

(viii) Coloured Persons Education Amendment Act (House of Representatives), 1985 (Act No. 76 of 1985)

2.39 The purpose of the Coloured Persons Education Amendment Act (House of Representatives) 76 of 1985 was, among others, to amend the Coloured Persons Education Act, 1963 so as to replace certain obsolete expressions in consequence of the assignment of

the administration of the provisions of the said Act to the Minister of Education and Culture: House of Representatives.

2.40 Sections 1 to 4 of Act 76 of 1985 amended the principal Act 47 of 1963. Sections 5(1) to (3) of Act 76 of 1985 repealed provisions of the Children's Act 33 of 1960 with regard to the establishment, erection and maintenance of "school of industries" and reform schools for Coloured persons. However, the whole of Act 33 of 1960 has been repealed by section 313 of the Children's Act 38 of 2005, and such repeal renders sections 5(1) - (3) of Act 76 of 1985 redundant. Since Act 47 of 1963 is recommended for repeal, Act 50 of 1979 is also recommended for repeal for the reasons as stated in paragraph 2.26 above.

(ix) Coloured Persons Education Amendment Act (House of Representatives), 1992  
(Act No. 112 of 1992)

2.41 The purpose of the Coloured Persons Education Amendment Act (House of Representatives) 112 of 1992 was to amend the Coloured Persons Education Act, 1963, so as to make provision for the establishment of certain professional posts and for the appointment of persons to those posts; and to emend a certain expression; and to provide for matters connected therewith.

2.42 All the provisions of Act 112 of 1992 amend the principal Act 47 of 1963. Since Act 47 of 1963 is recommended for repeal, Act 112 of 1992 is also recommended for repeal for the reasons as stated in paragraph 2.26 above.

(x) Coloured Persons Education Amendment Act (House of Representatives), 1992  
(Act No.113 of 1992)

2.43 The purpose of the Coloured Persons Education Amendment Act (House of Representatives) 113 of 1992 was to amend the Coloured Persons Education Act, 1963, so as to further regulate the retirement of certain persons; and to provide for matters connected therewith.

2.44 Section 1 of Act 113 of 1992 amended section 12 of Act 47 of 1963. Since Act 47 of 1963 is recommended for repeal, Act 112 of 1992 is also recommended for repeal for the reasons as stated in paragraph 2.26 above.

(b) Education Affairs Act (House of Assembly), 1988 (Act No. 70 of 1988)

2.45 The purpose of the Act was to provide and control education for White pupils. Education is defined in section 1 as “*instruction, teaching, or training provided to White pupils in terms of this Act.*” The Act was enacted under the 1983 Republic of South Africa Constitution Act, No. 110 of 1983 which made provision for the segregated education of various population groups categorized by race. On the face of it, the Act appears to be value neutral in terms of actual education, however, direct discrimination occurs in the definition of “education” which means instruction, teaching or training provided to “White pupils”. In essence, this Act gives effect to the 1983 Constitution which differentiated between persons on the basis of race and created separate institutions and structures that provided for education for different racial groups in the country.

2.46 In terms of Proclamation R151 in *Government Gazette* 16049 of 31 October 1994, the whole of the administration of Act 47 of 1963, excluding sections 3 and 65 and chapter 7, was assigned to a competent authority within the jurisdiction of the government of a province mentioned in section 124(1) of Act 200 of 1993 as designated by the Premier of the province concerned. 2.51

2.47 Several sections of this Act have been repealed, mostly by the South African Schools Act 84 of 1996 (hereinafter “the Schools Act”) and by Proclamations. Sections 3 and 65 were repealed by the Schools Act, whereas section 4 and the entire chapter 7 (ss. 66-71) were initially repealed by Proclamation R151 of 31 October 1994 and later by the Schools Act.

2.48 At the provincial government level, the position is currently the following:

**Western Cape:**

2.49 The Act, including all its Amendment Acts, was repealed as a whole by section 74(1) of the Western Cape School Education Act 10 of 1994.

**Eastern Cape:**

2.50 The Act was repealed as a whole, without any exception, by section 74(1) of the Eastern Cape Schools Education Act 1 of 1999.

**Northern Cape:**

2.51 The Act was repealed as a whole, without any exception, by section 105(1) of the Northern Cape School Education Act No.1 of 1996.

**Mpumalanga:**

2.52 The Act, including all its Amendment Acts, was repealed as a whole by section 106(1) of the School Education Act (Mpumalanga) No.8 of 1995, except in so far as it relates to colleges of education.

**Free State:**

2.53 The Act was repealed as a whole by section 51(1) of the School Education Act No.1 of 1996, except in so far as it relates to state-aided schools. All the remaining sections of the Act relating to state-aided schools were repealed by section 75(1) of the Free State School Education Act No.2 of 2000.

**Gauteng:**

2.54 The Act, including all its Amendment Acts, was repealed as a whole by section 107(1) of the School Education Act No.6 of 1995.

**KwaZulu-Natal:**

2.55 The Act was repealed as a whole, without any exception, by section 73(1) of the KwaZulu-Natal School Education Act No.3 of 1996.

**Limpopo:**

2.56 The Act, including all its Amendment Acts, was repealed as a whole by section 105(1) of the Northern Province School Education Act No.9 of 1995.

**North-West:**

2.57 No proof could be found that the Act has been repealed.

Remaining provisions of the Education Affairs Act (House of Assembly), 1988

2.58 Chapter 3 of the Act (ss.12 and 13) confers power on the Minister to establish and maintain public schools out of moneys appropriated for this purpose by the now defunct House of Assembly and to close those schools after consultation with relevant councils established under section 15. These provisions no longer apply under the new dispensation. They have largely been overtaken by the provisions of section 12 of the Schools Act and have consequently fallen into disuse and are irrelevant. Chapter 4 of the Act (ss. 14-20) provides for the establishment of regional councils and school boards. These provisions no longer apply because they have been overtaken by sections 16 to 32 of the Schools Act which provides for the establishment and functions of democratically elected school governing bodies for all public schools. Each of the nine provinces is responsible for dividing its province into regions or districts. The provisions of this chapter therefore serve no useful purpose.

2.59 Chapter 5 of the Act (ss. 21 to 40) provides for private schools and state-aided schools. The Schools Act provides for only two categories of schools, namely, public and independent schools. These sections thus serve no purpose.

2.60 Chapter 6 of the Act addresses various aspects of pupils in education. Sections 41 to 48 specifically provide for specialized education for handicapped children.

2.61 Sections 50 to 54 deal with age requirements for admission to particular schools and restrictions on attendance at particular schools, feeder areas for admission of children to schools, powers of school boards in relation to admission of children, and compulsory school attendance and exemption thereof. Most of these matters are sufficiently covered by the Schools Act and their existence on the Statute book no longer serves any useful purpose. The SALRC recommends that these sections be repealed.

2.62 Sections 55 to 61 provide for the determination of medium of instruction to be used in schools. Section 55 states that when a child is admitted to a school for the first time the principal of the school must ascertain in which official language the child is more proficient and that language must be regarded as the mother tongue of the child. If "*the child has equal command of both official languages, or cannot speak or understand either official language*", the parent of the child may be required to choose which official language should be determined by the

principal as the mother tongue of the child. If the parent fails to make a choice, the principal must determine which official language will be the mother tongue of the child, and failing the determination by the principal, the matter has to be referred to the Head of Education who must designate a person to determine the mother tongue of the child. Furthermore, a person designated by the Head of Education may, after an investigation into the language ability of the child, withdraw the determination made by the principal and instead “*determine that the other official language shall be the mother tongue of the child.*”

2.63 Section 56 entitles the parent of a child to appeal to the Minister against the choice of mother tongue for the child as determined by the principal or the Head of Education, as the case may be. Section 57 provides that the official language as determined in terms of sections 55 and 56 will be the medium of instruction for the child until, in the case of a handicapped child, he leaves the school and in the case of any other child up to and including the ninth level. Section 58 empowers the Minister to designate either Afrikaans or English as the medium of instruction for all pupils at a certain school, or to designate a school as one in which the medium of instruction is Afrikaans for some pupils and English for others.

2.64 Section 59 prescribes that the official language which was not determined to be the mother tongue of a child must be offered to the child as a subject at school. The other official language which was not determined to be the child’s mother tongue must be offered to the child as a subject instructed through the medium of that language. Section 60 deals with a foreign language as a subject at school, and prescribes that the official language determined to be mother tongue must remain the medium of instruction until the child has made such progress in the foreign language that it can be used as the medium of instruction. Section 61 empowers the Minister to exempt a school or principal from the application of the provisions of sections 55, 57, 59 and 60 in respect of any parent who is not a South African citizen.

2.65 It is clear from the provisions of sections 55 to 61 that the Act had in mind the recognition of only two languages as official languages, namely, Afrikaans and English. This is particularly clear from section 55 which speaks of child having equal command of “*both official languages*” and the principal having to “*determine that the other official language shall be the mother tongue*”. This was in accordance with the spirit and purport of the dispensation prevailing under the Constitution of 1983 in terms of which the Act was enacted, and prior to that date.

2.66 It is also apparent that the provisions relating to instruction in the mother tongue were aimed at White children whose education the Act was intended to regulate, most of whom had either Afrikaans or English as their mother tongue. The Act does not recognize or cater for the other nine official languages as well as the sign language, all of which are recognized under the present constitutional dispensation. It excludes a great majority of children from its embrace in providing for them to be instructed in their mother tongue, if their parents so choose and such exclusion amounts to unfair discrimination in terms of section 9 of the Constitution.

2.67 The whole issue of language in schools is now governed by section 6 of the Schools Act. Subsection (1) of this section empowers the Minister, subject to the Constitution and after consultation with the Council of Education Ministers, to determine the norms and standards for language policy in public schools. Subsection (2) places the responsibility of determining the language policy of a public school on the governing body of the school subject to the Constitution, the Act and any applicable provincial law. Under the Schools Act, it is no longer the responsibility of the principal of the school or the Head of Department to determine the language policy of the school, and thus the language of instruction for any child at school.<sup>15</sup> In so far as a school's governing body comprises a majority of representatives elected by parents in terms of section 23(1), the arrangement under the Schools Act is more democratic than the one provided for and prevailing under the Education Affairs Act (House of Assembly) 1988.

2.68 Section 55 of the Education Affairs Act (House of Assembly) 1988 effectively placed the responsibility for determining the language of instruction for a child at school on the principal's shoulders. The Act required the principal of a school to initially determine or choose the child's mother tongue. Once the mother tongue had been determined, that language would remain the medium of instruction for the child throughout his or her school career. There was no provision under this Act for broader participation by a parents' representative body such as the school governing body as provided for under the Schools Act. Subsection (3) of section 6 of the Schools Act prohibits any form of discrimination to be practiced in implementing the policy under

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<sup>15</sup> The Courts have clearly emphasized this position in the two leading cases of *Governing Body, Mikro Primary School v Minister of Education, Western Cape* 2005 (3) SA 504 (C), a decision of the Cape High Court and affirmed by the Supreme Court of Appeal in *Minister of Education, Western Cape v Governing Body, Mikro Primary School* 2006 (1) SA 1 (SCA). See also *Hoërskool Ermelo and Another v The Head of Department of Education: Mpumalanga* [2009] ZASCA 22; 2009 (3) SA 422 (SCA) affirmed by the Constitutional Court in *Head of Mpumalanga Department of Education and Another v Hoërskool Ermelo* [2009] ZACC 32 (CC).

this section. Thus, a school governing body may not discriminate against any pupil, expressly or indirectly, under the guise of implementing a language policy that it has adopted for the school.<sup>16</sup> Finally, subsection (4) recognizes sign language to have the status of an official language for purposes of learning at a public school. It should also be noted that in terms of section 29 of the Constitution every child has the right to be taught in any of the official languages or a language of the child's choice where the same is practicable.

2.69 As observed in the foregoing paragraphs, the purpose of the Education Affairs Act (House of Assembly) 70 of 1988 was to provide for and control the education of White pupils. However, as noted, a number of the Act's sections have been repealed and others have either been overtaken or rendered obsolete or irrelevant by the provisions of the Schools Act. In particular sections 12 to 40 and sections 50 to 54 (which deal with public schools, establishment of regional councils, private schools and state aided schools, age of admission to school, powers of school boards, compulsory attendance, etc.) have been overtaken or rendered obsolete by the Schools Act.

2.70 Sections 41 to 48 of the Act provide for the specialized education of handicapped children. Currently, the education of children with special needs is provided for in provincial legislation. For instance, sections 27 to 31 of the School Education Act No.1 of 1996 of the Free State Province provide for the accommodation, admission, assessment and placement of learners with special needs in ordinary schools and in state schools for special education.

2.71 Accordingly, it is not recommended that the above 8 sections out of the 114 sections which originally comprised the Act be retained. The retention of these sections under the present title of the Act would also be out of keeping with the new constitutional dispensation. Parliament is no longer divided into various legislative assemblies according to the various racial groups of the country, but is simply divided into a National Assembly and a National Council of Provinces. The emphasis of the present constitutional dispensation is on creating national, provincial and local legislative institutions, rather than racially segregated legislatures that cater for the different racial communities of the country.

2.72 Sections 55 to 61, which deal with the issue of language, are couched in neutral language and are, *prima facie*, not discriminatory. However, as pointed out in paragraph (ii)

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<sup>16</sup> See, for instance, *Matukane and Others v Laerskool Potgietersrus* 1996 (3) SA 223 (T).

above, these provisions have been overtaken by the provisions of the Schools Act, the policy orientation which is fundamentally differs from the Act under consideration. Under the Schools Act, the functionary responsible for the choice of a language policy, and thus, the determination of the medium of instruction at the school, is the school governing body, not the principal of the school or Head of Department. Whereas sections 55 to 61 emphasize the use of a mother tongue, under the Schools Act, the governing body is not confined to the mother tongue when choosing a language policy, although the mother tongue is a very important consideration in the whole process of choosing a language policy. It is common knowledge that many African schools in South Africa use English as the medium of instruction rather than the indigenous mother tongue. The choice of English as a medium of instruction at African schools, controlled by African school governing bodies, is influenced not only by considerations about mother tongue, but also by the opportunities that English proficiency can open up the wider world of education, commerce and business after school years.

### Recommendation

2.73 The SALRC recommends that the entire Education Affairs Act (House of Assembly) 1988 (Act No. 70 of 1988), and the Amendments Acts discussed below, be repealed by the North-West provincial legislature on the following grounds: firstly, the Act is premised on the provision of racially segregated education and thus contravenes section 9 of the Constitution. Second, most of the provisions and terms used in the Act have been overtaken or rendered obsolete by the South African Schools Act of 1996.

- (i) Education Affairs Amendment Act (House of Assembly), 1991 (Act No. 88 of 1991)

2.74 The purpose of the Education Affairs Amendment Act 88 of 1991 was to amend the Education Affairs Act (House of Assembly), 1988. All the sections of Act 88 of 1991 amended the principal Act 70 of 1988. Since Act 70 of 1988 is recommended for repeal, Act 88 of 1991 is also recommended for repeal for the reasons as stated in paragraph 2.73 above.

- (ii) Education Affairs Amendment Act (House of Assembly), 1992 (Act No. 39 of 1992)

2.75 The purpose of the Education Affairs Amendment Act 39 of 1992 was to amend the Education Affairs Act (House of Assembly), 1988. All the sections of Act 39 of 1992 amended the principal Act 70 of 1988. Since Act 70 of 1988 is recommended for repeal, Act 88 of 1991 is also recommended for repeal for the reasons as stated in paragraph 2.73 above.

(iii) Education Affairs Amendment Act (House of Assembly), 1993 (Act No 36 of 1993)

2.76 The purpose of the Education Affairs Amendment Act 36 of 1993 was to amend the Education Affairs Act (House of Assembly), 1988. All the sections of Act 36 of 1993 amended the principal Act 70 of 1988. Since Act 70 of 1988 is recommended for repeal, Act 36 of 1993 is also recommended for repeal for the reasons as stated in paragraph 2.73 above.

(iv) Education Affairs Second Amendment Act (House of Assembly), 1993 (Act No. 162 of 1993)

2.77 The purpose of the Education Affairs Second Amendment Act (House of Assembly) 162 of 1993 was to amend the Education Affairs Act (House of Assembly), 1988. All the sections of Act 162 of 1993 amended the principal Act 70 of 1988. Since Act 70 of 1988 is recommended for repeal, Act 162 of 1993 is also recommended for repeal for the reasons as stated in paragraph 2.73 above.

(c) Education and Training Act, 1979 (Act No. 90 of 1979)

2.78 The purpose of this Act was to provide for the control of education for Black people by the Department of Education and Training, and to provide for other incidental matters. It is clear from its long title and name that the Act was enacted solely to control education for the Black population, that is, persons who were then referred to as "*Bantu*" as defined in the Population Registration Act 30 of 1950. The Act effected and carried out the apartheid policy of racial segregation by providing separate educational facilities for each racial group.

2.79 The administration of the whole of this Act, excluding sections 1A, 3, 4, 11 to 29 inclusive (which had been previously repealed), 31, 32, 43 and 44(1)(h), has under Proclamation R151 of 1994, been assigned to a competent authority within the jurisdiction of the

government of a province mentioned in section 124(1) of Act 200 of 1993 as designated by the Premier of the province concerned. Sections 31, 32, 43 and 44(1)(h) were repealed by section 63(1) of the South African Schools Act, 1996.

2.80 At the provincial government level, the position is currently the following:

**Western Cape:**

2.81 The Act, including all its Amendment Acts and where it relates to technical colleges and colleges of education, was repealed as a whole by section 74(1) of the Western Cape Schools Education Act 10 of 1994.

**Eastern Cape:**

2.82 The Act was repealed as a whole by section 74(1) of the Eastern Cape Schools Education Act 1 of 1999, except in so far as it relates to technical colleges and colleges of education. The remaining provisions of the Act were repealed as a whole without any exception by section 1 of the Eastern Cape General Law Amendment Act No.2 of 2012.

**Northern Cape:**

2.83 The Act was repealed as a whole without any exception by section 105(1) of the Northern Cape School Education Act No.1 of 1996.

**Mpumalanga:**

2.84 The Act, including all its Amendment Acts, was repealed as a whole by section 106(1) of the School Education Act (Mpumalanga) No.8 of 1995, except in so far as it relates to technical colleges and colleges of education.

**Free State:**

2.85 The Act was repealed as a whole without any exception by section 51(1) of the School Education Act No.1 of 1996.

**Gauteng:**

2.86 The Act, including all its Amendment Acts, was repealed as a whole by section 107(1) of the School Education Act No.6 of 1995, except in so far as it relates to technical colleges and

colleges of education. The remaining sections of the Act were repealed by section 25 of the Gauteng General Law Amendment Act No.4 of 2005.

**KwaZulu-Natal:**

2.87 The Act was repealed as a whole without any exception by section 73(1) of the KwaZulu-Natal School Education Act No.3 of 1996.

**Limpopo:**

2.88 The Act, including all its Amendment Acts, was repealed as a whole by section 105(1) of the Northern Province School Education Act No.9 of 1995, except in so far as it relates to technical colleges and colleges of education.

**North-West:**

2.89 No proof could be found that the Act has been repealed.

**Remaining provisions of the Education and Training Act, 1979**

2.90 The majority of the Act's remaining provisions or sections are *prima facie* discriminatory and therefore directly contravene section 9 of the Constitution. These provisions reveal the real original intent of the legislation and run counter to the spirit of the present constitutional dispensation, which is based on the values of human dignity, equality and non-racialism as enshrined in the Preamble and sections 1, 9 and 10 of the Constitution. Thus, section 1 of the Act, which is the definition section, retains expressions such as the following:

- 1) "independent state", which referred to a territory which formed part of the Republic and which became an independent state in terms of an Act of Parliament, and
- 2) "self-governing territory", which referred to a self-governing territory as defined in section 38 of the Self- Governing Territories Constitution Act, 1971 (Act 21 of 1971).

2.91 These above definitions embody the past concept of racial and ethnic segregation and separate development which have since been overtaken by new constitutional values. The Act

was intended to carry out the apartheid policy of racial segregation and the provision of separate facilities for each racial group within education.

2.92 Firstly, as noted above, the definition of “Black” or “Black person” was based on the Population Registration Act 1950 (Act No 30 of 1930), which categorized people in the country according to their racial groups. The definition of “training” referred to the Black Employees’ In-service Training Act, 1976 (Act 86 of 1976). The latter Act was repealed by the Manpower Training Act 56 of 1981.

2.93 Second, section 2 has been overtaken by the South African Schools Act of 1996 regarding matters of school administration and control. In addition, subsection (1) of section 2 refers to “*the general administration of education for Blacks*”. Section 2A empowers the Minister to authorize the council or committee “*to admit to the school persons belonging to a population group other than the one referred to in section 2(1)*”.

2.94 Third, section 8(1) of the Act, which regulates the registration and management of private and state-aided schools, is similarly racially oriented. It provides that “*Any person who wishes to provide education to a Black person . . .*” Within the same section, there are similar references to “Black person”, namely, in subsection (3) (d), “*a school registered . . . and providing education to a Black person . . .*”, and in subsection (5) “*... or any person who admits any Black person to a school which is not registered . . .*” These definitions, being based on racial classification are discriminatory and therefore contrary to section 9 of the Constitution.

2.95 Three other aspects of this Act are inconsistent with the present constitutional dispensation. Firstly, section 38 (a) states as follows:

*The Minister may . . . grant financial or other material assistance . . . to-*  
*(a) a pupil who is resident in the Republic and who has been admitted to a public school, a state-aided school or school situated in a national state designated by the Minister for the purpose of this section.*

2.96 In terms of section 1 of the Constitution, the Republic of South Africa is one, sovereign, democratic state founded on the values stated therein and on the principle of supremacy of the Constitution. The so-called national states no longer exist within the territorial bounds of the Republic.

2.97 Secondly, section 44(1) (g) provides as follows:

*The Minister may make regulations-  
(g) as to the medium of instruction in schools and the manner in which parents  
shall be consulted.*

2.98 This section has been overtaken by section 6 of the South African Schools Act of 1996 and the *Norms and Standards for the Language Policy in Public Schools*.<sup>17</sup>

2.99 Thirdly, section 44(k) provides:

*The Minister may make regulations-  
(k) as to the religious instruction and religious ceremonies at schools.*

2.100 Again, subject to the overarching provisions of section 9 of the Constitution, this provision has been overtaken by section 7 of the South African Schools Act 84 of 1996 and the policy on religion in schools.

### Recommendation

2.101 Accordingly, the SALRC recommends that the entire Education and Training Act, 1979 (Act No 90 of 1979), and the Amendments Acts discussed below, be repealed by the North-West provincial legislature on the following grounds: firstly, the Act is unconstitutional as it is contrary to section 9 of the Constitution. Second, most of its provisions are covered by the South African Schools Act 84 of 1996.

(i) Education and Training Amendment Act, 1980 (Act No. 52 of 1980)

2.102 The purpose of the Education and Training Amendment Act 52 of 1980 was to amend the Education and Training Act, 1979. All the sections of Act 52 of 1980 amended the principal Act 90 of 1979. Since Act 90 of 1979 is recommended for repeal, Act 52 of 1980 is also recommended for repeal for the same reasons as stated in paragraph 2.101 above.

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<sup>17</sup> Published under Government Notice 1701, *Government Gazette* 18546 of 19 December 1997.

(ii) Education and Training Amendment Act, 1981 (Act No.10 of 1981)

2.103 The purpose of the Education and Training Amendment Act 10 of 1981 was to amend the Education and Training Act, 1979. All the sections of Act 10 of 1981 amended the principal Act 90 of 1979. Since Act 90 of 1979 is recommended for repeal, Act 10 of 1981 is also recommended for repeal for the reasons as stated in paragraph 2.101 above.

(iii) Education and Training Amendment Act, 1984 (Act No. 74 of 1984)

2.104 The purpose of the Education and Training Amendment Act 74 of 1984 was to amend the Education and Training Act, 1979. All the sections of Act 74 of 1984 amended the principal Act 90 of 1979. Since Act 90 of 1979 is recommended for repeal, Act 74 of 1984 is also recommended for repeal for the reasons as stated in paragraph 2.101 above.

(iv) Education and Training Amendment Act, 1989 (Act No. 35 of 1989)

2.105 The purpose of the Education and Training Amendment Act 35 of 1989 was to amend the Education and Training Act, 1979. All the sections of Act 35 of 1989 amended the principal Act 90 of 1979. Since Act 90 of 1979 is recommended for repeal, Act 35 of 1989 is also recommended for repeal for the reasons as stated in paragraph 2.101 above.

(iv) Education and Training Amendment Act, 1990 (Act No. 42 of 1990)

2.106 The purpose of the Education and Training Amendment Act 42 of 1990 was to amend the Education and Training Act, 1979. All the sections of Act 42 of 1990 amended the principal Act 90 of 1979. Since Act 90 of 1979 is recommended for repeal, Act 42 of 1990 is also recommended for repeal for the reasons as stated in paragraph 2.101 above.

(v) Education and Training Amendment Act, 1991 (Act No. 100 of 1991)

2.107 The purpose of the Education and Training Amendment Act 100 of 1991 was to amend the Education and Training Act, 1979. All the sections of Act 100 of 1991 amended the principal Act 90 of 1979. Since Act 90 of 1979 is recommended for repeal, Act 100 of 1991 is also recommended for repeal for the reasons as stated in paragraph 2.101 above.

(vi) Education and Training Amendment Act 1992 (Act No.55 of 1992)

2.108 The purpose of the Education and Training Amendment Act 55 of 1992 was to amend the Education and Training Act, 1979. All the sections of Act 55 of 1992 amended the principal Act 90 of 1979. Since Act 90 of 1979 is recommended for repeal, Act 55 of 1992 is also recommended for repeal for the reasons as stated in paragraph 2.101 above.

(viii) Education and Training Second Amendment Act, 1992 (Act No. 106 of 1992)

2.109 The purpose of the Education and Training Second Amendment Act 106 of 1992 was to amend the Education and Training Act, 1979. All the sections of Act 106 of 1992 amended the principal Act 90 of 1979. Since Act 90 of 1979 is recommended for repeal, Act 106 of 1992 is also recommended for repeal for the reasons as stated in paragraph 2.101 above.

(d) Indians Education Act 1965 (Act No. 61 of 1965)

2.110 The purpose of the Indians Education Act was to provide for the control of education of Indians, excluding education through university or institution for advanced technical education. Initially control fell to the Department of Indian Affairs, but after 1993 this fell to a provincial education department or the national Department of Education.<sup>18</sup> The Act also provided for matters incidental thereto.

2.111 In terms of Proclamation R151 in *Government Gazette* 16049 of 31 October 1994, the whole of the administration of Act 61 of 1965, excluding sections 1A, 3B, 8 to 20, 26, 28, 29, 31, and 33(1)(g), was assigned to a competent authority within the jurisdiction of the government of a province mentioned in section 124(1) of Act 200 of 1993 as designated by the Premier of the province concerned. Sections 1A, 3B, 8 to 20, 26, 28, 29, 31, and 33(1)(g) were repealed by section 63(1) of the South African Schools Act, 1996.

2.112 At the provincial government level, the position is currently the following:

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<sup>18</sup> The Act also amended the Special Education Act, 1948, the Vocational Education Act, 1955 and the Republic of South Africa Act, 1961.

**Western Cape:**

2.113 The Act, including its Amendment Acts, was repealed as a whole by section 74(1) of the Western Cape School Education Act 10 of 1994, except where it relates to colleges of education. The remaining provisions of the Act relating to colleges of education and technical colleges were repealed by section 28(1) of the Western Cape Colleges of Education Act No.11 of 1994 and section 49(1) of the Western Cape Technical Colleges Act No.12 of 1994 respectively.

**Eastern Cape:**

2.114 The Act was repealed as a whole by section 74(1) of the Eastern Cape Schools Education Act 1 of 1999, except in so far as it relates to technical colleges and colleges of education. The remaining provisions of the Act were repealed as a whole without any exception by section 1 of the Eastern Cape General Law Amendment Act No.2 of 2012.

**Northern Cape:**

2.115 The Act was repealed as a whole without any exception by section 105(1) of the Northern Cape School Education Act No.1 of 1996.

**Mpumalanga:**

2.116 The Act, including its Amendment Acts, was repealed as a whole by section 106(1) of the School Education Act (Mpumalanga) No.8 of 1995, except in so far as it relates to colleges of education.

**Free State:**

2.117 The Act was repealed as a whole without any exception by section 51(1) of the School Education Act No.1 of 1996.

**Gauteng:**

2.118 The Act, including all its Amendment Acts, was repealed as a whole by section 107(1) of the School Education Act No.6 of 1995, except in so far as it relates to technical colleges and colleges of education. The remaining sections of the Act were repealed by section 25 of the Gauteng General Law Amendment Act No.4 of 2005.

**KwaZulu-Natal:**

2.119 The Act was repealed as a whole without any exception by section 73(1) of the KwaZulu-Natal School Education Act No.3 of 1996.

**Limpopo:**

2.120 The Act, including its Amendment Acts, was repealed as a whole by section 105(1) of the Northern Province School Education Act No.9 of 1995, except in so far as it relates to technical colleges and colleges of education.

**North-West:**

2.121 No proof could be found that the Act has been repealed.

**Remaining provisions of the Indians Education Act, 1965**

2.122 The remaining sections of the Act cover various matters including the definition of terms used in the Act, and the following matters: application of the Act (s. 1); control of education for Indians (s. 2); the establishment, erection and maintenance of schools and colleges of education and their councils (ss. 3 and 3A); Indian students being granted access to universities of South Africa, or a college of education, to be trained as teachers (s. 3B); the award of grants-in-aid, subsidies and loans for schools and hostels (s. 4); the transfer of management and control of state-aided schools and the registration and management of private schools(ss. 5 and 6); the admission of persons to state school and state-aided schools (s. 7); certain matters relating to the institution and examination of courses in schools, inspection of the schools and hostels, compulsory attendance (ss. 21,22 &23); financial and other assistance to pupils and the payment of school and boarding fees (ss. 24 & 25); passing of property and obligations from governing body to the state (s. 27); and the making of regulations by the Minister (s. 33).

2.123 Several cases have been decided on the provisions of this Act; however, most of the provisions on which these cases were decided have now been repealed. Although a number of sections in the Act, appear at face value, to be race neutral, it must be appreciated that the Act as a whole, as can be deduced from its long title, was enacted within the context of the policy of providing racially segregated education and educational facilities. Indeed, a few sections still reveal the essentially racial character of the Act. Thus, section 1 of the Act, which is the

definition section, “Indian” is defined according to the Population Registration Act No 30 of 1950, which classified people according to racial categories. Section 3B provides for the training of Indian students as teachers. Further, section 6(2), which regulates the registration and management of private schools states that “*Any school for the education of Indians which at the commencement of this Act is registered with a provincial administration or the Department of National Education under any law shall be deemed to have been registered with the Department under subsection (1)*”. (Emphasis added.) Finally, section 33, which empowers the Minister to make regulations, authorizes the Minister in paragraph (h) to make regulations “*providing for the registration of Indians qualified as teachers.*” (Emphasis added.) While some provisions of the Act have been repealed, the remaining provisions still bear this heritage and seek to regulate education for Indians only. The intention to regulate education on the basis of race still permeates these provisions. In addition to this general orientation of the legislation, specific provisions identify Indians as the subject of the legislation.

2.124 Some matters dealt with in the Act are now regulated by the South African Schools Act No 84 of 1996 and as such these provisions appear redundant. Examples are section 6 on the registration and management of private schools; section 23 on the compulsory attendances; sections 24 and 25 on financial assistance to pupils and the payment of school and boarding fees.

2.125 The Act makes reference to redundant institutions such as the House of Delegates and to repealed legislation such as the Constitution of the Republic of South Africa 1993 (Act No.200 of 1993) and the Population Registration Act 1950, among others.

### Recommendation

2.126 Accordingly, The SALRC recommends that the Indians Education Act 1967 (Act 61 of 1967), and the Amendment Acts discussed below, be repealed on the following grounds: firstly, this Act is premised on the basis of segregation between races in education, and as such contravenes section 9 of the Constitution. Second, most of its provisions are now covered by the South African Schools Act 84 of 1996.

(i) Indians Education Amendment Act, 1967 (Act No. 60 of 1967)

2.127 The purpose of the Indians Education Amendment Act 60 of 1967 was to amend the Indians Education Act, 1965. Section 1 of the Indians Education Amendment Act 60 of 1967 amended section 13 of the principal Act 61 of 1965. Since Act 61 of 1965 is recommended for repeal, Act 60 of 1967 is also recommended for repeal for the reasons as stated in paragraph 2.126 above.

(ii) Indians Education Amendment Act, 1979 (Act No. 39 of 1979)

2.128 The purpose of the Indians Education Amendment Act 39 of 1979 was to amend the Indians Education Act, 1965. All the sections of the Indians Education Amendment Act 39 of 1979 amended the principal Act 61 of 1965. Since Act 61 of 1965 is recommended for repeal, Act 39 of 1979 is also recommended for repeal for the reasons as stated in paragraph 2.126 above.

(iii) Indians Education Amendment Act, 1981 (Act No. 9 of 1981)

2.129 The purpose of the Indians Education Amendment Act 9 of 1981 was to amend the Indians Education Act, 1965. All the sections of the Indians Education Amendment Act 9 of 1981 amended the principal Act 61 of 1965. Since Act 61 of 1965 is recommended for repeal, Act 9 of 1981 is also recommended for repeal for the reasons as stated in paragraph 2.126 above.

(iv) Indians Education Amendment Act, 1984 (Act No. 78 of 1984)

2.130 The purpose of the Indians Education Amendment Act 78 of 1984 was to amend the Indians Education Act, 1965. All the sections of the Indians Education Amendment Act 78 of 1984 amended the principal Act 61 of 1965. Since Act 61 of 1965 is recommended for repeal, Act 78 of 1984 is also recommended for repeal for the reasons as stated in paragraph 2.126 above.

- (v) Indians Education Amendment Act (House of Delegates), 1985 (Act No. 64 of 1985)

2.131 The purpose of the Indians Education Amendment Act 64 of 1985 was to amend the Indians Education Act, 1965. Section 1 of the Indians Education Amendment Act (House of Delegates) 64 of 1985 amended section 3 of the principal Act 61 of 1965. Since Act 61 of 1965 is recommended for repeal, Act 64 of 1985 is also recommended for repeal for the reasons as stated in paragraph 2.126 above.

- (vi) Indians Education Amendment Act (House of Delegates), 1992 (Act No 114 of 1992)

2.132 The purpose of the Indians Education Amendment Act (House of Delegates) 114 of 1992 was to amend the Indians Education Act, 1965. Section 1 of Act 114 of 1992 amended section 15 of the principal Act 61 of 1965. Since Act 61 of 1965 is recommended for repeal, Act 114 of 1992 is also recommended for repeal for the reasons as stated in paragraph 2.126 above.

- (vii) Indians Education Amendment Act (House of Delegates), 1993 (Act No.50 of 1993)

2.133 The purpose of the Indians Education Amendment Act (House of Delegates) 50 of 1993 was to amend the Indians Education Act, 1965. All the sections of the Indians Education Amendment Act (House of Delegates) 50 of 1993 amended the principal Act 61 of 1965. Since Act 61 of 1965 is recommended for repeal, Act 50 of 1992 is also recommended for repeal for the reasons as stated in paragraph 2.126 above.

- (e) Private Schools Act (House of Assembly), 1986 (Act No.104 of 1986)

2.134 The purpose of the Private Schools Act (House of Assembly) 104 of 1986 was to provide for the registration of, the control over, and the making of financial grants to, private schools, and for matters connected therewith.

2.135 In terms of Proclamation R151 in *Government Gazette* 16049 of 31 October 1994, the whole of the administration of Act 104 of 1986, excluding section 1A, was assigned to a competent authority within the jurisdiction of the government of a province mentioned in section 124(1) of Act 200 of 1993 as designated by the Premier of the province concerned. Section 1A was repealed by section 63(1) of the South African Schools Act, 1996.

2.136 At the provincial government level, the position is currently the following:

**Western Cape:**

2.137 The Act, including the Private Schools Amendment Act (House of Assembly) No.60 of 1990, was repealed as a whole by section 74(1) of the Western Cape Colleges of Education Act 10 of 1994.

**Eastern Cape:**

2.138 The Act was repealed as a whole by section 74(1) of the Eastern Cape Schools Education Act 1 of 1999.

**Northern Cape:**

2.139 The Act was repealed as a whole without any exception by section 105(1) of the Northern Cape School Education Act No.1 of 1996.

**Mpumalanga:**

2.140 The Act, including the Private Schools Amendment Act (House of Assembly) 60 of 1990, was repealed as a whole by section 106(1) of the School Education Act (Mpumalanga) No.8 of 1995.

**Free State:**

2.141 The Act was repealed as a whole without any exception by section 51(1) of the School Education Act No.1 of 1996.

**Gauteng:**

2.142 The Act, including the Private Schools Amendment Act (House of Assembly) 60 of 1990, was repealed as a whole by section 107(1) of the School Education Act No.6 of 1995.

**KwaZulu-Natal:**

2.143 The Act was repealed as a whole without any exception by section 73(1) of the KwaZulu-Natal School Education Act No.3 of 1996.

**Limpopo:**

2.144 The Private Schools Amendment Act 60 of 1990 was repealed as a whole by section 105(1) of the Northern Province School Education Act No.9 of 1995. However, it appears that the Private Schools Act (House of Assembly) 104 of 1986 has not been repealed by the Limpopo provincial government.

**North-West:**

2.145 No proof could be found that the Act has been repealed.

**Remaining provisions of the Private Schools Act (House of Assembly), 1986**

2.146 As stated in paragraph 2.45 above, the basic aim of Act 70 of 1988 was to provide for and control the education of White pupils. Both these Acts<sup>19</sup> were enacted under the 1983 Republic of South Africa Constitution Act, No. 110 of 1983, which made provision for the segregated education of various population groups categorized according to race. In essence, Act 104 of 1986 gave effect to the 1983 Constitution which differentiated between on the basis of race, and created separate institutions and structures for the education of specified racial groups in the country.

2.147 Education is defined in section 1 of the Act to mean:

*Education provided in terms of the Education Affairs Act (House of Assembly), 1988 (Act 70 of 1988), but does not include pre-primary education or specialized education.*

2.148 In terms of section 1 of Act 70 of 1988, "education" is defined to mean:

*Instruction, teaching, or training provided to White pupils in terms of this Act.*

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<sup>19</sup> Private Schools Act (House of Assembly) 104 of 1986 and Education Affairs Act (House of Assembly) 70 of 1988.

2.149 Section 2 of the Act provides for the establishment, conduct and maintenance of private schools. Sections 3 to 5 provide for the registration of private schools whereas section 6 provides for subsidies to registered private schools. These matters were taken over by sections 45 to 48 of the South African Schools Act 1996 which makes provision for two categories of schools, namely: public and independent schools. However, only section 1A of the Act was repealed by the Schools Act, which means that the remaining sections of the Act remain in force until repealed by a competent authority.

### Recommendation

2.150 The SALRC recommends that the Private Schools Act (House of Assembly) 104 of 1986 be repealed by the North-West and Limpopo provincial legislatures.

(f) Private Schools Amendment Act (House of Assembly), 1990 (Act No.60 of 1990)

2.151 The purpose of the Private Schools Amendment Act (House of Assembly), 60 of 1990 was to amend the Private Schools Act (House of Assembly), 1986, so as to bring certain definitions and provisions into line with the wording of the Education Affairs Act (House of Assembly), 1988; and to redefine the prohibition of unregistered private schools; and to provide for matters incidental thereto.

2.152 All the sections of the Private Schools Amendment Act (House of Assembly), 60 of 1990 amended the principal Act 104 of 1986. Since Act 104 of 1986 is recommended for repeal, the SALRC recommends that Act 60 of 1990 also be repealed by the North-West provincial legislature.

## **2. Statutes recommended for repeal as a whole on the basis of obsolescence**

(a) Correspondence Colleges Amendment Act (House of Assembly), 1990 (Act No. 102 of 1990)

2.153 The SALRC recommends that the Correspondence Colleges Amendment Act (House of Assembly), 1990 (Act No. 102 of 1990) be repealed as a whole.

2.154 The purpose of the Correspondence Colleges Amendment Act (House of Assembly) 102 of 1990 was, among others, to amend the Correspondence Colleges Act 59 of 1965.

2.155 Sections 1, 2 and 3 of Act 102 of 1990 amended sections 1, 4 and 26 respectively of the Correspondence Colleges Act 59 of 1965. However, the latter Act was repealed by the Further Education and Training Act 98 of 1998 which, in turn, was repealed by the Further Education and Training Colleges Act 16 of 2006. This means that sections 1, 2 and 3 of Act 102 of 1990 are redundant.

2.156 The DBE is of the view that the Correspondence Colleges Amendment Act (House of Assembly), 102 of 1990 no longer serve any purpose. Accordingly, the SALRC recommends that sections 1, 2 and 3 of the Correspondence Colleges Amendment Act (House of Assembly) 102 of 1990 be repealed since they are redundant.

(b) Correspondence Colleges Amendment Act (House of Assembly), 1992 (Act No.34 of 1992)

2.157 The SALRC recommends the Correspondence Colleges Amendment Act (House of Assembly) 34 of 1992 be repealed as a whole.

2.158 The purpose of the Correspondence Colleges Amendment Act 34 of 1992 was to amend the Correspondence Colleges Act 59 of 1965, and to provide for matters connected therewith.

2.159 Section 1 of Act 34 of 1992 amended section 3(4) of the Correspondence Colleges Act 59 of 1965. However, the latter Act was repealed by the Further Education and Training Act 98 of 1998 which, in turn, was repealed by the Further Education and Training Colleges Act 16 of 2006. This means that section 1 of Act 34 of 1992 is redundant.

2.160 Accordingly, the SALRC recommends that the Correspondence Colleges Amendment Act (House of Assembly) 34 of 1992 be repealed since the Act is redundant.

(c) National Education Policy Amendment Act, 1982 (Act No. 25 of 1982)

2.161 The SALRC recommends that the National Education Policy Amendment Act 25 of 1982 be repealed as a whole.

2.162 The purpose of the National Education Policy Amendment Act 25 of 1982 was to amend the National Education Policy Act, 1967 (Act No. 39 of 1967), and to provide for incidental matters.

2.163 All sections of Act 25 of 1982 amended the National Education Policy Act 39 of 1967. However, the latter Act was repealed in its entirety by section 76 (6) of the Higher Education Act 101 of 1997, which renders the whole Act 25 of 1982 redundant.

2.164 Accordingly, the SALRC recommends that the National Education Policy Amendment Act 25 of 1982 be repealed.

(d) National Education Policy Amendment Act, (House of Assembly), 1986 (Act No. 103 of 1986)

2.165 The SALRC recommends that the National Education Policy Amendment Act, (House of Assembly) 103 of 1986, including the Schedule to the Act, be repealed as a whole.

2.166 The purpose of the National Education Policy Amendment Act (House of Assembly) 103 of 1986 was to amend the National Education Policy Act, 1967 (Act No. 39 of 1967), to repeal certain Acts and to provide for matters connected therewith.

2.167 Sections 1 to 16 of Act 103 of 1986 amended the National Education Policy Act 39 of 1967. However, the latter Act was repealed in its entirety by section 76 (6) of the Higher Education Act 101 of 1997, which renders all the sections of the Act, including the Schedule, redundant.

2.168 Accordingly, the SALRC recommends that the National Education Policy Amendment Act, (House of Assembly) 103 of 1986 be repealed as a whole.

(e) National Education Policy Amendment Act (House of Assembly) 1991 (Act No.90 of 1991)

2.169 The SALRC recommends that the National Education Policy Amendment Act (House of Assembly) 90 of 1991 be repealed as a whole.

2.170 The purpose of the National Education Policy Amendment Act 90 of 1991 was to amend the National Education Policy Act, 1967 (Act No. 39 of 1967), and to provide for incidental matters.

2.171 All sections of Act 90 of 1991 amended the National Education Policy Act 39 of 1967. However, the latter Act was repealed in its entirety by section 76 (6) of the Higher Education Act 101 of 1997, which renders the whole of Act 90 of 1991 redundant.

2.172 Accordingly, The SALRC recommends that the National Education Policy Amendment Act (House of Assembly) 90 of 1991 be repealed.

### **3. Statutes recommended for partial repeal on the basis of obsolescence**

(a) Education and Culture Laws Amendment Act, 1983 (Act No. 28 of 1983)

2.173 The SALRC recommends that sections 1, 2 and 6 of the Education and Culture Laws Amendment Act, 1983 (Act No. 28 of 1983) be repealed.

2.174 The main purpose of the Education and Culture Laws Amendment Act 28 of 1983 was to amend the Correspondence Colleges Act, 1965, and to amend the Technical Colleges Act, 1981.

2.175 Sections 1 and 2 of Act 28 of 1983 amended sections 1 and 25 respectively of the Correspondence Colleges Act 59 of 1965. However, the latter Act was repealed by the Further Education and Training Act 98 of 1998 which, in turn, was repealed by the Further Education and Training Colleges Act 16 of 2006. This means therefore that sections 1 and 2 of Act 28 of 1983 are redundant.

2.176 Section 6 of Act 28 of 1983 substituted section 35 of the Mentally Retarded Children's Training Act 63 of 1974. However, the latter Act was repealed in entirety by the Education Affairs Act (House of Assembly) 70 of 1988.

2.177 Accordingly, the SALRC recommends that sections 1, 2 and 6 of Act 28 of 1983 be repealed.

(b) Education Laws Amendment Act (House of Assembly), 1993 (Act No. 139 of 1993)

2.178 The SALRC recommends that section 2 of the Education Laws Amendment Act (House of Assembly) 139 of 1993 be repealed.

2.179 The purpose of the Education Laws Amendment Act (House of Assembly) 139 of 1993 was to amend the Education Affairs Act (House of Assembly), 1988, so as to provide for the payment of rates by the state in respect of immovable property owned by state-aided schools; to amend the Education Policy Act, 1967, so as to make provision for the recognition of a successor to the Teachers' Federal Council; and to provide for matters connected therewith.

2.180 Section 1 of Act 139 of 1993 amended section 31A of the Education Affairs Act (House of Assembly) 70 of 1988. However, section 31A of Act 70 of 1988 was assigned to a competent authority within the jurisdiction of the government of a province mentioned in section 124(1) of Act 200 of 1993 as designated by the Premier of the province concerned in terms of Proclamation R151 in *Government Gazette* 16049 of 31 October 1994. This means that section

1 of Act 139 of 1993 may be repealed by the Eastern Cape and North West provincial legislatures.

2.181 Section 2 of Act 139 of 1993 amended section 8 of the Education Policy Act 39 of 1967. However, the latter Act was repealed in its entirety by section 76 (6) of the Higher Education Act 101 of 1997, which renders section 2 of Act 139 of 1993 redundant.

2.182 Accordingly, the SALRC recommends that section 2 of the Education Laws Amendment Act (House of Assembly) 139 of 1993 be repealed by the DBE. Section 1 of Act 139 of 1993 may be repealed by the Eastern Cape and North West provincial legislatures.

(c) Education Laws Amendment Act, 1997 (Act No 100 of 1997)

2.183 The SALRC recommends that sections 14 to 20 of the Education Laws Amendment Act 100 of 1997 be repealed.

2.184 The main purpose of the Education Laws Amendment Act 100 of 1997 was to amend the South African Schools Act, 1996; to amend the National Education Policy Act, 1996; and to provide for matters connected therewith.

2.185 Sections 14 to 15, and sections 7 to 20 of Act 100 of 1997 amended the Educators' Employment Act, 1994 (Proclamation 138 of 1994), whereas section 16 of the Act repealed section 3A of the Educators' Employment Act, 1994 (Proclamation 138 of 1994). However, Proclamation 138 of 1994 was repealed by section 37 of the Employment of Educators Act 76 of 1998, which renders sections 14 to 20 of Act 100 of 1997 redundant. Accordingly, the SALRC recommends that sections 14 to 20 of the Education Laws Amendment Act 100 of 1997 be repealed.

2.186 Section 21 of Act 100 of 1997 repealed the National Policy on the Salaries and Conditions of Employment of Educators Act 76 of 1984. The SALRC recommends that, for purposes of promoting legal certainty, the Education Laws Amendment Act 100 of 1997 should not be repealed as a whole, but be retained on the statute book. However, sections 14 to 20 should be repealed as discussed in paragraph 2.175 above.

(d) Education Laws Amendment Act, 2000 (Act No. 53 of 2000)

2.187 The SALRC recommends that sections 5 and 7 of the Education Laws Amendment Act 53 of 2000 be repealed, whereas sections 1, 18 and 19 of the Act be considered for repeal by the Department of Higher Education and Training.

2.188 The main purpose of the Education Laws Amendment Act 53 of 2000 was to amend the South African Qualifications Authority Act, 1995; to amend the South African Schools Act, 1996; to amend the Employment of Educators Act, 1998; to amend the Further Education and Training Act, 1998; and to provide for matters connected therewith.

2.189 Section 1 of Act 53 of 2000 amended section 4(3) of the South African Qualifications Authority Act 58 of 1995 by substituting paragraph (e). However, the latter Act was repealed as a whole by section 37 of the National Qualifications Framework Act 67 of 2008. This means that section 1 of Act 53 of 2000 is redundant.

2.190 Section 5 of Act 53 of 2000 substituted section 61 of the South African Schools Act 84 of 1996. However, section 61 of Act 84 of 1996 was later substituted by section 9 of the Education Laws Amendment Act 50 of 2002. This means that section 5 of Act 53 of 2000 is redundant and may be repealed.

2.191 Section 7 of Act 53 of 2000 amended section 6(3) of the Employment of Educators Act 76 of 1998 by adding paragraph (e). However, paragraph (e) of section 6(3) was later substituted by section 58(3) of the Further Education and Training Colleges Act 16 of 2006. This means that section 7 of Act 53 of 2000 is redundant and may be repealed.

2.192 Sections 18 and 19 of Act 53 of 2000 amended sections 9 and 51 respectively of the Further Education and Training Act 98 of 1998. However, the latter Act was repealed as a whole by section 58(1) of the Further Education and Training Colleges Act 16 of 2006 which renders sections 18 and 19 of Act 53 of 2000 redundant.

2.193 Accordingly, the SALRC recommends that sections 5 and 7 of the Education Laws Amendment Act 53 of 2000 be repealed, whereas sections 1, 18 and 19 of the Act be considered for repeal by the Department of Higher Education and Training.

(e) Education Laws Amendment Act, 2001 (Act No. 57 of 2001)

2.194 The SALRC recommends that sections 12 to 14 of the Education Laws Amendment Act 57 of 2001 be considered for repeal by the Department of Higher Education and Training.

2.195 The purpose of the Education Laws Amendment Act 57 of 2001 was, among others, to amend the South African Schools Act, 1996; to amend the Employment of Educators Act, 1998; to amend the Further Education and Training Act, 1998; and to provide for matters connected therewith.

2.196 Sections 12 to 14 of Act 57 of 2001 amended sections 8, 20 and 49 respectively of the Further Education and Training Act 98 of 1998. However, the latter Act was repealed as a whole by section 58(1) of the Further Education and Training Colleges Act 16 of 2006 which renders sections 12 to 14 of Act 57 of 2001 redundant.

2.197 Accordingly, the SALRC recommends that sections 12 to 14 of the Education Laws Amendment Act 57 of 2001 be considered for repeal by the Department of Higher Education and Training.

(f) Education Laws Amendment Act, 2002 (Act No 50 of 2002)

2.198 The SALRC recommends that section 11 of the Education Laws Amendment Act 50 of 2002 be repealed, whereas sections 14 to 26 of the Act be considered for repeal by the Department of Higher Education and Training.

2.199 The main purpose of the Education Laws Amendment Act 50 of 2002 was to amend the South African Schools Act, 1996; to amend the Employment of Educators Act, 1998; to amend the Further Education and Training Act, 1998; to amend the Adult Basic Education and Training Act, 2000; to amend the General and Further Education and Training Quality Assurance Act, 2001; and to provide for matters connected therewith.

2.200 Section 11 of Act 50 of 2002 amended section 8 of the Employment of Educators Act 76 of 1998 by adding subsection (7). However, subsection (7) was later substituted by section 3 of

the Education Laws Amendment Act 1 of 2004, and by section 58(3) of the Further Education and Training Colleges Act 16 of 2006, which renders sections 11 of Act 50 of 2002 redundant.

2.201 Sections 14 to 26 of Act 50 of 2002 amended the Further Education and Training Act 98 of 1998. However, the latter Act was repealed as a whole by section 58(1) of the Further Education and Training Colleges Act 16 of 2006. This means therefore that sections 14 to 26 of Act 50 of 2002 are redundant and may be repealed.

2.202 Accordingly, the SALRC recommends that section 11 of the Education Laws Amendment Act 50 of 2002 be repealed, whereas sections 14 to 26 of the Act be considered for repeal by the Department of Higher Education and Training.

(g) Education Laws Amendment Act, 2004 (Act No. 1 of 2004)

2.203 The SALRC recommends section 1 of the Education Laws Amendment Act 1 of 2004 be repealed.

2.204 The main purpose of the Education Laws Amendment Act 1 of 2004 was to amend the South African Qualifications Authority Act, 1995; to amend the South African Schools Act, 1996; to amend the Employment of Educators Act, 1998; to amend the General and Further Education and Training Quality Assurance Act, 2001; and to provide for matters connected therewith.

2.205 Section 1 of Act 1 of 2004 amended section 4 of the South African Qualifications Authority Act 58 of 1995. However, the latter Act was repealed as a whole by section 37 of the National Qualifications Framework Act 67 of 2008, which renders section 1 of Act 1 of 2004 redundant.

2.206 Accordingly, the SALRC recommends that section 1 of the Education Laws Amendment Act 1 of 2004 be repealed.

#### **4. Legislation recommended for retention without any amendment**

(a) Education Laws Amendment Act, 1999 (Act No. 48 of 1999)

2.207 The Education Laws Amendment Act 48 of 1999 provides for the amendment of the following Acts: National Education Policy Act, 1996; the South African Schools Act, 1996; the Employment of Educators Act, 1998; and for matters connected therewith. Accordingly, the SALRC recommends that the Education Laws Amendment Act 48 of 1999 be retained as it still serves the purpose of promoting legal certainty.

(b) Education Laws Amendment Act, 2005 (Act No. 24 of 2005)

2.208 The Education Laws Amendment Act 24 of 2005 provided for the amendment of the South African Schools Act, 1996; the Employment of Educators Act, 1998; and for matters connected therewith.

2.209 Section 9 of the Act repealed 22 Acts which are listed in the Schedule to the Act. The Education Laws Amendment Act 24 of 2005 is a Repeal Act. The SALRC recommends that it be retained as it still serves the purpose of promoting legal certainty.

(c) National Education Policy Act, 1996 (Act No. 27 of 1996)

2.210 The purpose of the National Education Policy Act, 1996, was to provide for the determination of a national policy for education; to amend the National Policy for General Education Affairs Act, 1984, by substituting certain definitions; to provide afresh for the determination of policy on the salaries and conditions of employment of educators; and to provide for matters connected therewith.

2.211 This principal Act was adopted to facilitate the democratic transformation of the national system of education into one which serves the needs and interests of all the people of South Africa and upholds their fundamental rights. To this effect the Act has repealed the previous

National Policy for General Education Affairs Act 76 of 1984 which became obsolete in a new democratic education system. Likewise, a number of later Acts have amended Act 27 of 1996<sup>20</sup> to incorporate and accommodate important and necessary changes in the development of the national education policy.

2.212 The Act contains provisions that deal with matters such as the determination of national education by the Minister, and the directive principles of a national education policy;<sup>21</sup> consultation on education policy and legislation;<sup>22</sup> the publication of the national education policy and monitoring and evaluation of education;<sup>23</sup> institutions such as the Council of Education Ministers, Heads of Education Departments Committee and consultative bodies; and the administrative functions of these bodies and their allowances and remuneration..<sup>24</sup>

2.213 The Act is one of the principal statutes in the education sphere; it steers the education system in the right direction as provided for in the Constitution and education legislation.

2.214 The Act does not contain any unconstitutional, redundant or obsolete provisions, and should remain on the statute books.

(d) South African Schools Act, 1996 (Act No. 84 of 1996)

2.215 The purpose of the South African Schools Act, 1996, is to provide for a uniform system for organizing, governing and funding of schools; and for the repeal of a number of Acts which caused the previous education system to be fragmented and discriminatory.

2.216 The provisions of the Act *per se* are not directly in violation of section 9 of the Constitution. However, the following observations regarding a few provisions of the Act as well as the Regulations are worth noting:

2.217 Among others, sections 6, 8, and 20 of the Act place a number of obligations on a school governing body to determine policies and code of conduct for the school. This is understandable

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<sup>20</sup> See Education Laws Amendment Act 100 of 1997; Education Laws Amendment Act 48 of 1999; Education Laws Amendment Act 31 of 2007.

<sup>21</sup> Ss 2-4.

<sup>22</sup> Ss 5-6.

<sup>23</sup> Ss 7-8.

<sup>24</sup> Ss 9-13.

given that it is the body that deals with governance and financial accountability at schools, and is intended to be a community based body able to promote the particular interests of a school. Such policies must be developed and exercised in line with the Constitution and relevant legislation. Where they fall short, the Department may intervene in accordance with the law,<sup>25</sup> or an aggrieved learner may approach the court, as was the case in *MEC for Education: KwaZulu-Natal and Others v Pillay*.<sup>26</sup>

2.218 Section 46(3)(b) specifically provides that the admission policy of a school cannot discriminate on the grounds of race. Whilst this was the primary cause of fragmentation prior to 1993, it may give the false impression that differentiation on other grounds may be permissible despite the supremacy of the 1996 Constitution.

2.219 Section 5(4) of the Act provides for the age at which learners may gain admission to public schools. The section makes exception for learners who are below the stipulated age requirement to gain admission if “good cause” is shown. No similar provision is made for learners above the stipulated age. Provision for over-age learners is made in subsidiary

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<sup>25</sup> For a discussion on this in relation to language policy see *Head of Department: Mpumalanga Department of Education and Another v Hoërskool Ermelo and Another (CCT40/09) [2009] ZACC 32; 2010 (2) SA 415 (CC) ; 2010 (3) BCLR 177 (CC) (14 October 2009)*.

<sup>26</sup> 2008(2) BCLR 99 (CC) As the Constitutional Court indicates, this case raises vital questions about the nature of discrimination under the provisions of the Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000 (the Equality Act) as well as the extent of protection afforded to cultural and religious rights in the public school setting and possibly beyond. At the centre of the storm is a tiny gold nose stud. Writing for the majority Chief Justice Langa held as follows:

“ . . . 112. The discrimination has had a serious impact on Sunali and, although the evidence shows that uniforms serve an important purpose, it does not show that the purpose is significantly furthered by refusing Sunali her exemption. Allowing the stud would not have imposed an undue burden on the School. A reasonable accommodation would have been achieved by allowing Sunali to wear the nose stud. I would therefore confirm the High Court’s finding of unfair discrimination.

. . . 114. It is worthwhile to explain at this stage, for the benefit of all schools, what the effect of this judgment is, and what it is not. It does not abolish school uniforms; it only requires that, as a general rule, schools make exemptions for sincerely held religious and cultural beliefs and practices. There should be no blanket distinction between religion and culture. There may be specific schools or specific practices where there is a real possibility of disruption if an exemption is granted. Or, a practice may be so insignificant to the person concerned that it does not require a departure from the ordinary uniform. The position may also be different in private schools, although even in those institutions, discrimination is impermissible. Those cases all raise different concerns and may justify refusing exemption. However, a mere desire to preserve uniformity, absent real evidence that permitting the practice will threaten academic standards or discipline, will not.”

legislation. It is recommended that the Act should provide for the admission of over-age learners subject to regulations made by the Minister.

2.220 Paragraph 2.205 (iv) of the Discussion Paper contained the following provisional observation, namely:

*Section 5A (1) of the Act provides that the Minister may by regulation prescribe minimum uniform norms and standards for school infrastructure, capacity of a school in respect of the number of learners a school can admit, and the provision of learning and teaching support material. It has been observed that there are no guidelines defined in the Act that inform the list of matters referred to in subsection (2) in respect of which the norms and standards must be determined by the Minister. Although not part of the purpose and core mandate of the current investigation, however, it is proposed that consideration be given to bringing about a set of statutory guidelines underpinning the matters referred to in subsection (2) of the Act for consideration by the Minister when determining national minimum norms and standards as required in terms of section 5A(1) of the Act.*

2.221 However, Equal Education disagrees with the above observation. In its submission to the SALRC, Equal Education states that:

*It is our view that, as it is currently formulated, section 5A of the SASA provides sufficient guidance to the Minister for the prescription, by regulation, of norms and standards for school infrastructure and capacity in public schools. The provision provides sufficient guidance for the following reasons:*

- a. *Unlike other sections of the SASA, which make provision for norms and standards regulation, section 5A speaks specifically of minimum norms and standards. By referring to minimum standards the section does not require that the Minister adopts definitive and comprehensive regulations, but stipulates specifically that minimum benchmarks and targets must be set.*
- b. *Section 5A(2) provides open lists detailing specific matters that must be dealt with should the Minister prescribe regulations. It is our view that these open lists provide sufficient guidance as to the nature of the minimum standards required to be set by the Minister. Moreover, the formulation for more specific guidance in this regard may be too cumbersome and beyond the capacity of the legislature.*
- c. *When section 5A(1) is read together with section 5A(2), the SASA gives clear and appropriate guidance with respect to the particular aspects relating to school infrastructure, capacity of schools, and the provision of teaching and learning materials that must be regulated.*

2.222 The SALRC concurs with the views of Equal Education presented above.

(e) Employment of Educators Act, 1998 (Act No. 76 of 1998)

2.223 Section 37 (1) of this Act repealed the Employment of Educators Act of 1994. This Act provides for the following matters: the employment of educators by the state, the regulation of conditions of service, discipline, retirement and discharge of educators; and ancillary matters thereto. In the case of *Larbi-Odam and Others v Member of the Executive Council for Education (North-West Province) and Another*,<sup>27</sup> Justice Mokgoro declared regulation 2(2) of the regulations regarding the terms and conditions of employment in education made under the Education of Employment Act of 1994 unconstitutional because it promoted unfair discrimination on the basis of citizenship or non-citizenship. Subsequent to the judgment, the current Act was passed by Parliament.

2.224 In the case of *Phenithi v Minister of Education and Others*<sup>28</sup> the applicant sought direct access to the Constitutional Court to have parts of section 14(1) and section 14(2) of the Employment of Educators Act (the Act) declared unconstitutional and invalid. The Applicant had been employed by the Free State Provincial government in a permanent capacity as an educator until 18 May 2000. She stated in her affidavit that she had to be away from work for more than a month because she was ill. When the applicant returned to work, however, she was informed by the provincial Department of Education that she was deemed to have been discharged from service by reason of the provision of section 14(1) of the Act which provides as follows:

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<sup>27</sup> 1997(12) BCLR 1655 (CC): “[25] I hold that regulation 2(2) constitutes unfair discrimination against permanent residents, because they are excluded from employment opportunities even though they have been permitted to enter the country permanently. The government has made a commitment to permanent residents by permitting them to so enter, and discriminating against them in this manner is a detraction from that commitment. Denying permanent residents security of tenure, notwithstanding their qualifications, competence and commitment is a harsh measure. . . . [30] In my view, the appellants’ argument is too sweeping. Surely it must be a legitimate purpose for a government department to reduce unemployment among South African citizens. However the provision of quality education must be the primary aim of an education department. While reducing unemployment for citizens may in certain circumstances be a legitimate aim, particularly when thousands of qualified educators are unemployed, that must never be permitted to compromise the primary aim, especially at a time in our history when quality education is crucial in transforming our society.

<sup>28</sup> 2003(11) BCLR 1217 (CC)

*An educator appointed in a permanent capacity who . . . is absent from work for a period exceeding 14 consecutive days without permission of the employer . . . shall, unless the employer directs otherwise, be deemed to have been discharged from service on account of misconduct . . .”.*

2.225 The Constitutional Court held<sup>29</sup> that the applicant raised a constitutional point which warranted consideration. The Court held, however, that:

*[S]he has delayed more than eighteen months in pursuing relief, and discloses no good reason for this delay. Moreover the applicant, instead of launching proceedings in the High Court in the ordinary way, has sought to approach this Court directly. On the limited papers we have, it seems possible that factual disputes may arise between the applicant and the respondents. This Court has stated on many occasions that it is not desirable for this Court to sit as a court of first and final instance in any circumstances, but especially where disputes of fact may arise. The fact that the applicant is indigent and the fact that the ordinary procedure would take time before relief is finalised are not sufficient, in the light of these other considerations to warrant the grant of direct access.*

2.226 Sections 14(1) and (2) could give rise to a section 9 challenge on the basis of sex, gender, or pregnancy since women are definitely more affected than men given the natural and social responsibilities that remain reserved for women only. Apart from that, subsection (2) gives the employer too wide a discretion with regard to reinstatement of such educator.

(f) South African Council for Educators Act, 2000 (Act No. 31 of 2000)

2.227 The South African Council for Educators Act 31 of 2000 provides for the continued existence of the South African Council for Educators; provides anew for the functions of the said council; provides anew for the composition of the said council; and provides for matters incidental thereto.

2.228 The Act applies to all educators, lecturers and management staff of colleges appointed in terms of the Employment of Educators Act, 1998; the South African Schools Act, 1996; the Further Education and Training Colleges Act, 2006; and the Public Service Act, 1994. This includes all staff appointed at an independent school or an adult learning centre.

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<sup>29</sup> At par 5.

2.229 In the context of the current investigation, it is proposed 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.

(g) General and Further Education and Training Quality Assurance Act, 2001 (Act No.58 of 2001)

2.230 The purpose of the General and Further Education and Training Quality Assurance Act 58 of 2001 is to provide for the establishment, composition and functioning of the General and Further Education and Training Quality Assurance Council; to provide for quality assurance in general and further education and training; to provide for control over norms and standards of curriculum and assessment; to provide for the issue of certificates at the exit points; to provide for the conduct of assessment; to repeal the South African Certification Council Act, 1986; and to provide for matters connected therewith.

2.231 In the context of the current investigation, it is proposed that the Act be retained as it seems to comply with section 9 of the Constitution and remains essential for the purposes of achieving its objectives.

## **Annexure A**

### **Basic Education 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 amend and repeal certain laws of the Republic pertaining to basic education containing discriminatory or obsolete and redundant provisions**

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

#### **Repeal of laws**

1. The laws referred to in the second column of the Schedule are hereby repealed to the extent mentioned in the fourth column thereof.

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

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

## Laws repealed by section 1

### SCHEDULE

Item No.	No. and year of law	Title and subject	Extent of repeal
1.	25 of 1982	National Education Policy Amendment Act 25 of 1982	The whole
2.	103 of 1986	National Education Policy Amendment Act, (House of Assembly) 103 of 1986	The whole
3.	102 of 1990	Correspondence Colleges Amendment Act, House of Assembly) 102 of 1990	The whole
4.	90 of 1991	National Education Policy Amendment Act (House of Assembly) 90 of 1991	The whole
5.	34 of 1992	Correspondence Colleges Amendment Act (House of Assembly) 34 of 1992	The whole
6.	28 of 1983	Education and Culture Laws Amendment Act 28 of 1983	Sections 1, 2 and 6
7.	139 of 1993	Education Laws Amendment Act (House of Assembly) 139 of 1993	Section 2
8.	100 of 1997	Education Laws Amendment Act 100 of 1997	Sections 14 to 20
9.	53 of 2000	Education Laws Amendment Act 53 of 2000	Sections 5 and 7
10.	50 of 2002	Education Laws Amendment Act 50 of 2002	Section 11
11.	1 of 2004	Education Laws Amendment Act 1 of 2004	Section 1

## Annexure B

### Provisions in statutes recommended for repeal by the Department of Higher Education and Training

#### SCHEDULE

Item No.	No. and year of law	Title and subject	Extent of repeal
1.	53 of 2000	Education Laws Amendment Act 53 of 2000	Sections 1, 18 and 19
2.	57 of 2001	Education Laws Amendment Act 57 of 2001	Sections 12 to 14
3.	50 of 2002	Education Laws Amendment Act 50 of 2002	Section 14 to 26

## Annexure C

### Statutes recommended for repeal by the North-West provincial legislature

#### SCHEDULE

Item No.	No. and year of law	Title and subject	Extent of repeal
1.	47 of 1963	Coloured Persons Education Act 47 of 1963	The whole
2.	76 of 1967	Coloured Persons Education Amendment Act 76 of 1967	The whole
3.	53 of 1973	Coloured Persons Education Amendment Act 53 of 1973	The whole
4.	29 of 1976	Coloured Persons Education Amendment Act 29 of 1976	The whole
5.	95 of 1976	Second Coloured Persons Education Amendment Act 95 of 1976	The whole
6.	50 of 1979	Coloured Persons Education Amendment Act 50 of 1979	The whole
7.	15 of 1980	Coloured Persons Education Amendment Act 15 of 1980	The whole
8.	85 of 1983	Coloured Persons Education Amendment Act 85 of 1983	The whole
9.	76 of 1985	Coloured Persons Education Amendment Act (House of Representatives) 76 of 1985	The whole
10.	112 of 1992	Coloured Persons Education Amendment Act (House of Representatives) 112 of 1992	The whole

11.	113 of 1992	Coloured Persons Education Amendment Act (House of Representatives) 113 of 1992	The whole
12.	70 of 1988	Education Affairs Act (House of Assembly) 70 of 1988	The whole
13.	88 of 1991	Education Affairs Amendment Act (House of Assembly) 88 of 1991	The whole
14.	39 of 1992	Education Affairs Amendment Act (House of Assembly) 39 of 1992	The whole
15.	36 of 1993	Education Affairs Amendment Act (House of Assembly) 36 of 1993	The whole
16.	162 of 1993	Education Affairs Second Amendment Act (House of Assembly) 162 of 1993	The whole
17.	90 of 1979	Education and Training Act 90 of 1979	The whole
18.	52 of 1980	Education and Training Amendment Act 52 of 1980	The whole
19.	10 of 1981	Education and Training Amendment Act 10 of 1981	The whole
20.	74 of 1984	Education and Training Amendment Act 74 of 1984	The whole
21.	35 of 1989	Education and Training Amendment Act 35 of 1989	The whole
22.	42 of 1990	Education and Training Amendment Act 42 of 1990	The whole
23.	100 of 1991	Education and Training Amendment Act 100 of 1991	The whole
24.	55 of 1992	Education and Training Amendment Act 55 of 1992	The whole
25.	106 of 1992	Education and Training Second Amendment Act 106 of 1992	The whole

26.	61 of 1965	Indians Education Act 61 of 1965	The whole
27.	60 of 1967	Indians Education Amendment Act 60 of 1967	The whole
28.	39 of 1979	Indians Education Amendment Act 39 of 1979	The whole
29.	9 of 1981	Indians Education Amendment Act 9 of 1981	The whole
30.	78 of 1984	Indians Education Amendment Act 78 of 1984	The whole
31.	64 of 1985	Indians Education Amendment Act (House of Delegates) 64 of 1985	The whole
32.	114 of 1992	Indians Education Amendment Act (House of Delegates) 114 of 1992	The whole
33.	50 of 1993	Indians Education Amendment Act (House of Delegates) 50 of 1993	The whole
34.	64 of 1985	Indians Education Amendment Act (House of Delegates) 64 of 1985	The whole
35.	104 of 1986	Private Schools Act (House of Assembly) 104 of 1986	The whole
36.	60 of 1990	Private Schools Amendment Act (House of Assembly) 60 of 1990	The whole

## Annexure D

### Statute recommended for repeal by the Limpopo provincial legislature

#### SCHEDULE

Item No.	No. and year of law	Title and subject	Extent of repeal
1.	104 of 1986	Private Schools Act (House of Assembly) 104 of 1986	The whole

## Annexure E

### Statutes Administered by Department of Basic Education

No	Name of Act, number and year
1.	Education and Culture Laws Amendment Act, 1983 (Act No. 28 of 1983)
2.	Correspondence Colleges Amendment Act (House of Assembly), 1990 (Act No. 102 of 1990)
3.	Correspondence Colleges Amendment Act (House of Assembly), 1992 (Act No. 34 of 1992)
4.	National Education Policy Amendment Act, (House of Assembly), 1986 (Act No. 103 of 1986)
5.	National Education Policy Amendment Act, 1982 (Act No. 25 of 1982)
6.	National Education Policy Amendment Act (House of Assembly) 1991 (Act No.90 of 1991)
7.	National Education Policy Act, 1996 (Act No. 27 of 1996)
8.	Education Laws Amendment Act (House of Assembly), 1993 (Act No. 139 of 1993)
9.	Education Laws Amendment Act, 1997 (Act No 100 of 1997)
10.	Education Laws Amendment Act, 1999 (Act No. 48 of 1999)
11.	Education Laws Amendment Act, 2000 (Act No. 53 of 2000)
12.	Education Laws Amendment Act, 2001 (Act No. 57 of 2001)
13.	Education Laws Amendment Act, 2002 (Act No 50 of 2002)
14.	Education Laws Amendment Act, 2004 (Act No. 1 of 2004)
15.	Education Laws Amendment Act, 2005 (Act No. 24 of 2005)
16.	South African Schools Act, 1996 (Act No. 84 of 1996)
17.	Employment of Educators Act, 1998 (Act No. 76 of 1998)
18.	South African Council for Educators Act, 2000 (Act No. 31 of 2000)
19.	General and Further Education and Training Quality Assurance Act, 2001 (Act No.58 of 2001)

## Annexure F

### Statutes assigned to the Provincial Departments of Education

No.	Name of Act, number and year
1.	Coloured Persons Education Act, 1963 (Act No. 47 of 1963)
2.	Coloured Persons Education Amendment Act, 1967 (Act No. 76 of 1967)
3.	Coloured Persons Education Amendment Act, 1973 (Act No. 53 of 1973)
4.	Coloured Persons Education Amendment Act, 1976 (Act No. 29 of 1976)
5.	Second Coloured Persons Education Amendment Act, 1976 (Act No.95 of 1976)
6.	Coloured Persons Education Amendment Act, 1979 (Act No.50 of 1979)
7.	Coloured Persons Education Amendment Act, 1980 (Act No. 15 of 1980)
8.	Coloured Persons Education Amendment Act, 1983 (Act No. 85 of 1983)
9.	Coloured Persons Education Amendment Act (House of Representatives), 1985 (Act No. 76 of 1985)
10.	Coloured Persons Education Amendment Act (House of Representatives), 1992 (Act No. 112 of 1992)
11.	Coloured Persons Education Amendment Act (House of Representatives), 1992 (Act No.113 of 1992)
12.	Education Amendment Act (House of Delegates) 1986 (Act No. 100 of 1986)
13.	Education Affairs Act (House of Assembly) 1988 (Act No. 70 of 1988)
14.	Education Affairs Amendment Act (House of Assembly), 1991 (Act No. 88 of 1991)
15.	Education Affairs Amendment Act (House of Assembly), 1992 (Act No. 39 of 1992)
16.	Education Affairs Amendment Act (House of Assembly), 1993 (Act No 36 of 1993)
17.	Education Affairs Second Amendment Act (House of Assembly), 1993 9ACT No. 162 of 1993)
18.	Education and Training Act, 1979 (Act No. 61 of 1979)
19.	Education and Training Amendment Act, 1980 (Act No. 52 of 1980)
20.	Education and Training Amendment Act, 1981 (Act No.10 of 1981)
21.	Education and Training Amendment Act, 1984 (Act no. 74 of 1984)

22.	Education and Training Amendment Act, 1989 (Act No 35 of 1989)
23.	Education and Training Amendment Act, 1990 (Act No. 42 of 1990)
24.	Education and Training Amendment Act, 1991 (Act no. 100 of 1991)
25.	Education and Training Amendment Act 1992 (Act No.55 of 1992)
26.	Education and Training Second Amendment Act, 1992 (Act No. 106 of 1992)
27.	Indians Education Act, 1965 (Act No. 61 of 1965)
28.	Indians Education Amendment Act, 1967 (Act No. 60 of 1967)
29.	Indians Education Amendment Act, 1979 (Act No. 39 of 1979)
30.	Indians education Amendment Act, 1981 (Act No. 9 of 1981)
31.	Indians Education Amendment Act, 1984 (Act No. 78 of 1984)
32.	Indians Education Amendment Act (House of Delegates), 1985 (Act No. 64 of 1985)
33.	Indians Education Amendment Act (House of Delegates), 1992 (Act No 114 of 1992)
34.	Indians Education Amendment Act (House of Delegates), 1993 (Act No.50 of 1993)
35.	Private Schools Act (House of Assembly), 1986 (Act No.104 of 1986)
36.	Private Schools Amendment Act (House of Assembly), 1990 (Act No.60 of 1990)

## Annexure G

### Statutes Administered by Department of Higher Education and Training

No	Name of Act, number and year
1.	National Education Policy Act, 1996 (Act No.27 of 1996)
2.	Employment of Educators Act, 1998 (Act No.76 of 1998)
3.	Higher Education Act, 1997 (Act No,101 of 1997)
4.	National Student Financial Aid Scheme Act, 1999 (Act No.56 of 1999)
5.	South African Council for Educators Act, 2000 (Act No.31 of 2000)
6.	Adult Basic Education and Training Act, 2000 (Act No.52 of 2000)
7.	Education Laws Amendment Act, 2000 (Act No.53 of 2000)
8.	Education Laws Amendment Act, 2001 (Act No.57 of 2001)
9.	Education Laws Amendment Act, 2002 (Act No.50 of 2002)
10.	General and Further Education and Training Quality Assurance Act, 2001 (Act No.58 of 2001)
11.	Further Education and Training Colleges Act, 2006 (Act No.16 of 2006)
12.	National Qualifications Framework Act, 2008 (Act No. 67 of 2008)
13.	Skills Development Act, 1998 (Act No.97 of 1998)
14.	Skills Development Levies Act, 1999 (Act No. 9 of 1999)

## **Annexure H**

### **List of respondents to Discussion Paper 125**

1. Department of Basic Education  
(Mr Bobby Soobrayan: Director-General: Basic Education)
2. Department of Education: Gauteng Province  
(Mr Boy Ngobeni: Head of Department: Gauteng Department of Education)
3. Department of Higher Education and Training  
(Professor Mary Metcalfe: Director-General: Higher Education and Training)
4. Department of the Premier, Western Cape Provincial Government  
(Ms Michelle Melim: State Law Adviser, Chief Directorate: Legal Services)
5. Equal Education  
(Dmitri Holtzman: Deputy Head of Policy, Communication and Research)

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