



MINISTRY: AGRICULTURE AND LAND AFFAIRS  
REPUBLIC OF SOUTH AFRICA

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Reference: L 3/1/1/9

Mr M L Mokoena  
The Chairperson:  
Select Committee on Security and Constitutional Affairs  
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*Handwritten notes:*  
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Dear Mr Mokoena

REPEAL OF THE BLACK ADMINISTRATION ACT AND AMENDMENT OF CERTAIN LAWS BILL, 2005: REPORTS TO PORTFOLIO COMMITTEE ON JUSTICE AND CONSTITUTIONAL DEVELOPMENT AND SELECT COMMITTEE ON SECURITY AND CONSTITUTIONAL AFFAIRS

The instruction of the Portfolio Committee on Justice and Constitutional Development and the Select Committee on Security and Constitutional Affairs to the Department of Land Affairs (DLA) and the Department of Provincial and Local Government (DPLG) to submit the above reports has reference.

Enclosed therefore please find the report of the DLA.

As will appear from the report the DLA intends to introduce a Bill to Parliament for the purpose of amending the Deeds Registries Act, 1937 (Act No. 47 of 1937). This Bill will confer powers upon the Registrars of Deeds to continue effecting registrations in terms of the Black Areas Townships Regulations (Proclamation R 293 of 1962) and the Regulations for the Registration of Deeds in Towns, 1988 (GN R403 of 1988).

The DPLG will obtain the outstanding information from the Provinces of Eastern Cape, Gauteng, Limpopo, Mpumalanga, Northern Cape and North West. It is suggested that this information be conveyed directly by the DPLG to the Portfolio Committee on Justice and Constitutional Development and the Select Committee on Security and Constitutional Affairs.

In my view, the duty to ensure that a legal vacuum is not created by the repeal of any of subordinate legislation falling within the functional responsibility of a government authority, vests with that authority. The responsible authority will therefore be in the

best position to identify any such vacuum and to deal with it. Legislation necessary to address any unintended consequences or to repeal subordinate legislation should also be the responsibility of the government authority that is responsible for the functions performed in terms of the subordinate legislation in question.

Kind regards

*A. T. Didiza*

A T DIDIZA

MINISTER FOR AGRICULTURE AND LAND AFFAIRS

DATE: 04-03-2006

- 3.5 It was therefore resolved at the workshop that approval will be sought for a Bill to be introduced to Parliament amending the Deeds Registries Act, 1937 (Act No. 47 of 1937), for the purpose of conferring the powers mentioned in paragraph 3.4 upon the Registrars of Deeds.
- 3.6 In respect of the other provisions of the subordinate legislation that is the responsibility of the DLA. (**Annexure D**), it was agreed that functions are no longer performed in terms of those provisions, that these provisions are no longer required and that it can therefore be repealed. The repeal thereof will not result in any unintended consequences.

**4. REPORT ON SUBORDINATE LEGISLATION FALLING WITHIN AMBIT OF FUNCTIONS PERFORMED BY OTHER NATIONAL GOVERNMENT DEPARTMENTS/AUTHORITIES**

- 4.1 On 23 November 2005 and on 3 January 2006 the DLA addressed and delivered letters to the Heads of Legal Services of the following National Government Departments/Authorities:

- 4.1.1 Department in the Presidency;
- 4.1.2 Department of Agriculture;
- 4.1.3 Department of Arts and Culture;
- 4.1.4 Department of Communications;
- 4.1.5 Department of Correctional Services;
- 4.1.6 Department of Defence;
- 4.1.7 Department of Education;
- 4.1.8 Department of Environmental Affairs and Tourism;
- 4.1.9 Department of Foreign Affairs;
- 4.1.10 Department of Health;
- 4.1.11 Department of Home Affairs;
- 4.1.12 Department of Housing;
- 4.1.13 Department of Justice and Constitutional Development;
- 4.1.14 Department of Labour;
- 4.1.15 Department of Minerals and Energy;

- 4.1.16 The DPLG;
- 4.1.17 Department of Public Enterprises;
- 4.1.18 Department of Public Service and Administration;
- 4.1.19 Department of Public Works;
- 4.1.20 Department of Science and Technology;
- 4.1.21 Department of Social Development;
- 4.1.22 Department of Trade and Industry;
- 4.1.23 Department of Transport;
- 4.1.24 Department of Water Affairs and Forestry;
- 4.1.25 National Intelligence Agency;
- 4.1.26 National Treasury;
- 4.1.27 Public Service Commission;
- 4.1.28 Secretariat for Safety and Security;
- 4.1.29 South African Police Service;
- 4.1.30 South African Revenue Service;
- 4.1.31 South African Secret Service; and
- 4.1.32 Sport and Recreation South Africa.

4.2 In addition to letters, e-mail correspondence or faxes were on those dates directed to the National Departments/ Authorities mentioned in paragraph 4.1.

4.3 In the above-mentioned correspondence National Departments/ Authorities were informed of the instructions of the Justice Portfolio Committee and Justice Select Committee and they were requested to submit reports to the DLA by 13 January 2006 containing the following information:

4.3.1 A list of the provisions of subordinate legislation contemplated in clause 1(6) of the Bill administered by each Department/Authority;

4.3.2 Any unintended consequences brought about by the repeal of the subordinate legislation; and

4.3.3 Progress made in identifying, repealing or amending such legislation or enacting new legislation, as may be required by the circumstances.

- 4.4 The correspondence emphasised that each Department/Authority should conduct its own investigation to identify the relevant subordinate legislation under the Black Administration Act, 1927, in terms of which functions are performed for which it is responsible and in respect of which it has legislative authority. A table was enclosed listing the relevant subordinate legislation under the B A Act that from research conducted up to the stage the letters were drafted, appeared to be in force. Government authorities were mentioned in the table which appeared to be responsible for the performance of any functions that may still be performed in terms of the subordinate legislation in question and, where required, for repealing or amending the subordinate legislation or enacting new legislation in respect of these functions.
- 4.5 It should also be mentioned that the Director-General of the Department of Justice and Constitutional Development during October and November 2005 informed all government authorities of the instruction of the Justice Portfolio Committee and requested them to provide input to the DLA. A table was attached to this letter listing some of the subordinate legislation, details of assignment to provinces, if any, and the possible administering authorities.
- 4.6 The required Input was received from all the National Government Departments/Authorities mentioned in paragraph 4.1, except the following:
- 4.6.1 Department of Correctional Services;
  - 4.6.2 Department of Defence;
  - 4.6.3 Department of Housing;
  - 4.6.4 Department of Minerals and Energy;
  - 4.6.5 The DPLG (in respect of legislation administered by that Department);
  - 4.6.6 Department of Public Enterprises; and
  - 4.6.7 Secretariat for Safety and Security.

- 4.7 None of the National Government Departments/Authorities from which input was received mentioned any functions still being performed in terms of the relevant subordinate legislation or any unintended consequences arising out of the repeal of that legislation. A summary of the input of those Departments/Authorities is enclosed as **Annexure F**.

**5. REPORT ON SUBORDINATE LEGISLATION FALLING WITHIN AMBIT OF FUNCTIONS PERFORMED BY THE PROVINCES**

- 5.1 The report of the DPLG in respect of feedback obtained from the Provinces is enclosed as **Annexure G**.
- 5.2 It appears from this report as well as from input received by the DLA from the Province of KwaZulu - Natal that the Provinces of the Western Cape, KwaZulu – Natal, Free State and Mpumalanga have either already put arrangements in place or will put arrangements in place before 31 July 2006 to ensure that the repeal of the subordinate legislation in force does not leave a vacuum. DPLG is still working on the reports from the other Provinces (Gauteng, Mpumalanga, Limpopo, Eastern Cape, North West and Northern Cape).

**6. SUMMARY**

- 6.1 None of the National Government Departments from which input was received has mentioned any functions still being performed in terms of the relevant subordinate legislation or any unintended consequences arising out of the repeal of that legislation.
- 6.2 The DLA will urgently seek approval for a Bill to be introduced to Parliament for the purpose of amending the Deeds Registries Act, 1937 (Act No. 47 of 1937). This Bill will confer powers upon the Registrars of Deeds to continue effecting registrations in terms of the Black Areas Townships Regulations (Proclamation R 293 of 1962) and the Regulations for the Registration of Deeds in Towns, 1988 (GN R403 of 1988).

- 6.3 The Provinces of Free State, KwaZulu – Natal, Mpumalanga and Western Cape have either already put arrangements in place or will put arrangements in place before 31 July 2006 to ensure that the repeal of the subordinate legislation in force does not leave a vacuum. The DPLG is still working on the reports from the other Provinces (Eastern Cape, Gauteng, Limpopo, Mpumalanga and Northern Cape).