

170.	COMMENT	Gauteng DPRTW: Presumably subsection (2) is meant to be a function of the accounting officer rather than the user generally. If so, this should be made clear in the drafting of this sentence. If our understanding is incorrect, we suggest this provision be transformed into its own section to distinguish it from functions that fall directly to the accounting officer.
171.	DPW RESPONSE	Agreed, the words "accounting officer" to be inserted. The surrender of an asset is an operational decision.
172.	PROPOSED AMENDMENT	See proposed amendments in DPW Proposal to Portfolio Committee.
173.	COMMENT	Construction Education and Training Authority: The Bill should ensure that all State assets are accounted for and all asset registers completed. It might be important to commission a process of ensuring that all state assets are accounted for and are used for the purposes intended for, especially if one considered the homelands as defined in the Bill.
174.	DPW RESPONSE	Management of the immovable asset portfolio has to be supported by an immovable asset register. The onus is on a custodian to compile and maintain asset register for all immovable assets for which it is responsible. There are custodians who have or are in the process of developing asset registers. Accountability of assets is regulated by the PFMA.
175.	PROPOSED AMENDMENT	None
176.	COMMENT	Keith A Ross: An exercise would have to be undertaken for all State Departments in which the details of all capital assets (immovable and movable) written off over the years, would be checked and recorded in detailed schedules—at the same time checking to fixed asset registers—in order that the accounting records and fixed asset registers could be correctly updated. It is envisaged that obtaining historical detailed information will present problems. It is proposed that the Financial Statement of the Australian Department of Defence is used as a benchmark
177.	DPW RESPONSE	Noted. However, financial statements and correct accounting procedures is the domain of Treasury.
178.	PROPOSED AMENDMENT	None
179.	COMMENT	KEITH A ROSS The Bill puts an onerous responsibility on the management and accounting officers. The Bill might be premature. There are no asset registers available in the various departments and without that there is no information available to ensure that it is possible to comply with the provisions of the Bill. Information systems are lacking. The accounting officer will be held responsible whilst he/she does not have the necessary information.
180.	DPW RESPONSE	Management of the immovable asset portfolio has to be supported by an immovable asset register. The onus is on a custodian to compile and maintain asset registers for all immovable assets for which it is responsible. There are custodians who have or are in the process of updating existing or developing asset registers.
181.	PROPOSED AMENDMENT	None

182.	COMMENT	Construction Education and Training Authority: In respect of SETA's having accounting officers as defined in the PFMA the maintenance of those specific assets will probably fall within their jurisdiction, which will allow Department of Public Works to have more personnel contributing to the asset management which will in turn minimize the number of forgotten buildings. This will enhance the aspect of sustainability/sustainable development
183.	DPW RESPONSE	This Bill is not yet applicable to public entities. In the interim the management of assets of the CETA will be regulated by the PFMA and the asset management guidelines issued in terms thereof.
184.	PROPOSED AMENDMENT	None
185.	COMMENT	DEVELOPMENT BANK OF SOUTHERN AFRICA 14(1) – we suggest the first part should read: "The accounting officer of a user or custodian who is also a user must....."
186.	DPW RESPONSE	All custodians are in effect also users and must comply with this responsibility.
187.	PROPOSED AMENDMENT	None.
188.	COMMENT	DEVELOPMENT BANK OF SOUTHERN AFRICA 14(1)(e) – we see that both users and custodians (clause 13(1)(e) is identical wording) must establish performance measuring systems. Must they both do it? In the event of a conflict whose takes precedence.
189.	DPW RESPONSE	Yes both the custodian and user must implement performance measurement systems. The system of the user will address the performance of the accommodation as it relates to the user's service delivery objectives. The system of the custodian will address the physical and financial performance of the building.
190.	PROPOSED AMENDMENT	None.
191.	COMMENT	DEVELOPMENT BANK OF SOUTHERN AFRICA 14(2) – we commented above on the lack of rights of a user being required to surrender an asset. We ask the question: what if the user has carefully maintained an asset at his own expense and is then called upon to surrender it; does he do so without compensation? Should there be a procedure for this?
192.	DPW RESPONSE	The user has not maintained the asset. On national level the user has paid an accommodation charge to the custodian for the maintenance of an asset that it occupies. Should an asset be surplus and commercialized the proceeds will flow to the custodian to properly maintain other assets. On provincial level the proceeds from commercialization of an asset accrues to the provincial fiscus.
193.	PROPOSED AMENDMENT	None.
193A	DPW RECOMMENDATION	Subsection (1)(c) is a consequential amendment of the amendment to section 9.
193B	PROPOSED AMENDMENT	See proposed amendments in DPW Proposal to Portfolio Committee.

SECTION 15: EXEMPTIONS

194.	SECTION 15	15. The Minister may, by notice in the <i>Gazette</i> , exempt any organ of state or part thereof to which this Act applies, from any provision of this Act for a period determined in the notice.
195.	COMMENT	Gauteng DPRTW: DPTRW supports this provision in so far as it allows for a degree of flexibility.
196.	DPW RESPONSE	Noted
197.	PROPOSED AMENDMENT	None
198.	COMMENT	DEVELOPMENT BANK OF SOUTHERN AFRICA Since the Minister may grant exemptions, is there a process for requesting them?
199.	DPW RESPONSE	If necessary, a process will be prescribed in the regulations.
200.	PROPOSED AMENDMENT	None.

SECTION 16: COMPLIANCE

201.	SECTION 16	16. A standard issued by the Minister in terms of this Act is compulsory and the Minister may incorporate any guideline issued in terms of this Act or any best practice or part thereof into that standard.
202.	COMMENT	Gauteng DPRTW: DPTRW draws attention to its comments in relation to section 19 of the Bill
203.	DPW RESPONSE	We agree that consultation is imperative. All the sections dealing with notices should be amended to cross-refer to section 20(2), (3) and (4).
204.	PROPOSED AMENDMENT	See proposed amendments in DPW Proposal to Portfolio Committee .
205.	COMMENT	DEVELOPMENT BANK OF SOUTHERN AFRICA The Minister must exercise caution to avoid precedents for the local sphere of government and state entities which are not government departments. General comment D: we would point out that a similar process would be desirable to guide municipalities in the management of their assets, including municipal infrastructure. It is important that the current bill, and publications authorized by it, do not create a precedent that is inappropriate for the municipal sphere. Detailed consultations with Treasury, DPLG and DWAF would be desirable in this regard. If it is intended that a similar approach be used for other state entities (SANRAL, ACSA) at some point in the future, then the same point applies – exercise care and increase consultation to avoid inappropriate precedents.
206.	DPW RESPONSE	We agree with your point of view that the Bill cannot apply without adaptation to suit the local sphere of government. As agreed with the Portfolio Committee, extension of GIAMA to local government has been entrusted to DPLG, with the active assistance and support of DPW. In a third phase, the extension of GIAMA to the various public entities will be dealt with in conjunction with relevant departments (eg. DoT and DPE) and taking due consideration of applicable legislation.

207.	PROPOSED AMENDMENT	None.
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SECTION 17: DELEGATION

208.	SECTION 17	<p>17. (1) The Minister may, in writing, delegate any of the powers or duties entrusted to him or her under this Act, to any official in the employ of the Department of Public Works or in the employ of another organ of state.</p> <p>(2) The accounting officer of a custodian or user may, in writing, delegate any of the powers or duties entrusted to him or her under this Act, to any official in the employ of that custodian or user.</p> <p>(3) A delegation referred to in subsection (1) or (2)—</p> <p>(a) is subject to any limitations or conditions that the Minister or accounting officer may impose;</p> <p>(b) may authorise the subdelegation of that power to another official: Provided that the subdelegation is in writing and does not exceed the power originally delegated;</p> <p>(c) does not divest the Minister or accounting officer of the responsibility concerning the exercise of the delegated power or the performance of the delegated duty.</p> <p>(4) The Minister or accounting officer may confirm, vary or revoke any decision taken by the person to whom the delegation or subdelegation was made, subject to any rights that may have become vested as a consequence of the decision.</p>
209.	COMMENT	<p>Gauteng DPRTW:</p> <p>We would like to see a notification process that accompanies delegations and assignments, so that all spheres of government affected by the delegation or assignment are notified of its occurrence or withdrawal.</p>
210.	DPW RESPONSE	It is implicit in the action of delegation and assignment that the affected entities will be informed thereof.
211.	PROPOSED AMENDMENT	None.
212.	COMMENT	<p>DEVELOPMENT BANK OF SOUTHERN AFRICA</p> <p>17(3)(b) – any authority to carry out sub-delegation should include a requirement to inform the accounting officer.</p>
213.	DPW RESPONSE	A requirement such as this does not reflect the day to day operations of the public administration. A delegation may be conditional and the delegator may stipulate that he/she must be informed.
214.	PROPOSED AMENDMENT	None.
215.	COMMENT	<p>DEVELOPMENT BANK OF SOUTHERN AFRICA</p> <p>17(4) – should the power to revoke a decision by a sub-delegated authority be constrained by a time period, or an administrative process? Any use of this clause without due process might induce uncertainties about such delegated decisions, eg the letting of contracts, with negative effects on service delivery.</p>
216.	DPW RESPONSE	It is not practical to set time-frames and the processes are in place in government in any event. See section 44 of PFMA.
217.	PROPOSED AMENDMENT	None.

SECTION 18: ASSIGNMENT

218.	SECTION 18	<p>18. (1) A Minister, Premier or MEC referred to in section 4, may, in writing, assign his or her powers, duties and responsibilities in terms of this Act in to any organ of state.</p> <p>(2) Upon acceptance of the assignment referred to in subsection (1), the organ of state assumes full responsibility and liability for all activities and functions performed on or in respect of the immovable asset, as if it were the custodian of the immovable asset in question, for the duration of the assignment.</p> <p>(3) The Minister, Premier or MEC referred to in section 4 may, in writing, withdraw an assignment contemplated in subsection (1) in the event of—</p> <p>(a) a contravention of or failure to comply with any provision of this Act by the assignee;</p> <p>(b) a written request to do so by the assignee.</p>
219.	COMMENT	<p>Gauteng DPRTW: DPTRW suggest that withdrawal of assignment under section 18(3) be entirely at the discretion of the Minister, Premier or MEC as the case may be, rather than only in the circumstances currently outlined.</p>
220.	DPW RESPONSE	Agreed.
221.	PROPOSED AMENDMENT	See proposed amendments in DPW Proposal to Portfolio Committee .
222.	COMMENT	<p>DEVELOPMENT BANK OF SOUTHERN AFRICA 18(1)- whereas clause 2 confines this bill to government departments, can the Minister in terms of this clause, assign powers to a public entity such as SANRAL or NWRA? If so, can the NWRA then sub-delegate powers to a Catchment Management Agency set up by DWAF?</p>
223.	DPW RESPONSE	Yes, provided that the original delegation authorized a subdelegation.
224.	PROPOSED AMENDMENT	None

SECTION 19: POWERS AND FUNCTIONS OF MINISTER

225.	SECTION 19	<p>19. (1) The Minister—</p> <p>(a) may, by notice in the <i>Gazette</i>, with the concurrence of the Minister of Finance and the Minister of Public Service and Administration, designate an organ of state as the custodian of an immovable asset;</p> <p>(b) must provide guidelines for the management of immovable assets to be incorporated into the asset management guidelines issued National Treasury in terms of the PFMA;</p> <p>(c) may, by notice in the <i>Gazette</i>, issue standards to facilitate benchmarking, condition assessment and performance measurement by determining—</p> <p>(i) minimum requirements in relation to cost and space;</p> <p>(ii) how the total and true cost of immovable assets is reflected in a transparent fashion, including all expenditure in respect of property rates and municipal service charges; and</p> <p>(iii) the minimum information required to manage immovable assets.</p>
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		<p>(2) The Minister may prescribe minimum requirements in relation to the—</p> <p>(a) content and format of, and processes required to compile an immovable asset management plan;</p> <p>(b) the management of an immovable asset throughout its life cycle; and</p> <p>(c) portfolio management by a custodian.</p> <p>(3) The Minister may implement government programmes which are necessary to give effect to immovable asset management.</p>
226.	COMMENT	<p>Gauteng DPRTW:</p> <p>As a general comment on this provision, DPTRW would stress the need for prior consultation with affected government departments before the Minister exercises any of his or her powers under this provision. All of the powers set out would have significant impact on, for example, provincial public works departments. As such, in the spirit of cooperative governance, it would be reasonable for such entities to be consulted by the Minister before any standards, for example, are issued. Given their practical experience of asset management, such departments could contribute greatly to the setting of standards etc which will be effective as well as realistic.</p>
227.	DPW RESPONSE	Please refer to our response to the comment on section 5. Consultation is seen as an important foundation for this Bill and the guidelines.
228.	PROPOSED AMENDMENT	See proposed amendments in DPW Proposal to Portfolio Committee .
229.	COMMENT	<p>Gauteng DPRTW:</p> <p>Further we would like reassurance that the power set out in section 19(1)(a) will not be exercised in a manner that interferes with the amendment of title deeds and other registration details in terms of Item 28(1) of Schedule 6 of the Final Constitution, as it is unclear from the terms of this provision under which circumstances the power will be exercised. In relation to subsection (1)(a), it is not clear when this provision is read with section 4(1) of the Bill as well as the definition of "custodian" in section 1, whether such designation is also meant to transfer ownership of the asset in question to the designee. A custodian's duties under section 4(2) include disposal of an asset under its control, but this may be complicated if it is not the owner. DPTRW suggests that the practical and legal implications of this provision as currently drafted be reviewed.</p>
230.	DPW RESPONSE	To assuage the fear of the province it is recommended that the words "in respect of assets that vest in the national government" be added to section 19(1).
231.	PROPOSED AMENDMENT	See proposed amendments in DPW Proposal to Portfolio Committee .
232.	COMMENT	<p>Gauteng DPRTW:</p> <p>With respect to section 19(b), we consider this an important provision as it should prevent any inconsistency between the Act and the asset management guidelines issued by National Treasury in terms of the Public Finance Management Act 1 of 1999.</p>
233.	DPW RESPONSE	Noted
234.	PROPOSED AMENDMENT	None.
235.	COMMENT	<p>Lamacs Solutions (Pty) Ltd:</p> <p>An appropriate immovable asset administration standard should be published by the Minister. This standard should enforce a single method of administration in the same way that the PFMA and MFMA enforce a single standard of accounting. Such a standard must cover three components, i.e. process, people and an information system. In essence, the Governmental property administration and management system is lacking all three components.</p>

		<p>It is necessary for organs of state to –</p> <ul style="list-style-type: none"> ❖ gain managerial control of their respective property portfolios; ❖ create accurate and integrated data bases for the extensive information required for the appropriate management of the portfolio; ❖ creating a well-defined subject area which will serve as the scope and benchmark for capacitating, training and certification of relevant staff; and ❖ establishing a uniform approach with uniform predictable administrative outcomes. <p>It is the submission of the commentator that the absence of a property administration standard will negate the objectives of GIAMB and make it almost impossible to hold relevant staff accountable. It is recommended that an asset centric management and administration process together with capacitated staff and an asset centric information system, be prescribed as the standard.</p>
236.	DPW RESPONSE	The comment is noted. The Act is an enabling one and DPW is in the process of developing various standards and guidelines, to ensure uniformity and best practice in immovable asset management.
237.	PROPOSED AMENDMENT	None
238.	COMMENT	<p>BUILT CARE:</p> <p>It is necessary to develop and use a common system to use throughout for the rating of the facilities.</p>
239.	DPW RESPONSE	Please note response above.
240.	PROPOSED AMENDMENT	None.
241.	COMMENT	<p>DEVELOPMENT BANK OF SOUTHERN AFRICA</p> <p>19(1)(a) – “the Minister may...designate an organ of state as a custodian..” is this a unilateral action? Could this be a means by which DPW divests itself of responsibility for many assets? It may be with the best intentions –devolving responsibility to those closest to the problem—but it can only be done with adequate consultation, preparation and the possibility of extra budgetary provision. We note that DWAF has been in the process of transferring rural water schemes to municipalities for some time. This has been delayed by municipalities’ reluctance to accept poorly maintained assets which require massive ongoing subsidies to operate. In some instances DWAF has now agreed to finance large amounts of refurbishment before transfer takes place. At the very least, this sub-clause should include “in consultation with the designated organ of state”.</p>
242.	DPW RESPONSE	The DPW is committed to ensuring that the Constitutional vision of co-operative governance is cemented in its sphere of influence. Consultation is seen as imperative by DPW. The section will therefore be amended to assuage any fears in this regard.
243.	PROPOSED AMENDMENT	See proposed amendments in DPW Proposal to Portfolio Committee.
244.	COMMENT	<p>DEVELOPMENT BANK OF SOUTHERN AFRICA</p> <p>19(c)(i) – “minimum requirements in relation to cost and space” may be useful for buildings but not so for roads, dams and canals. Does this need a broader more inclusive definition, such as “cost per unit of the relevant asset”?</p>
245.	DPW RESPONSE	Different standards will be issued in respect of various types of assets.
246.	PROPOSED AMENDMENT	None.