ADMINISTRATIVE JUSTICE

Project 115

REPORT

AUGUST 1999

SOUTH AFRICAN LAW COMMISSION

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TO DR P MADUNA, MINISTER OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT

I am honoured to submit to you in terms of section 7(1) of the *South African Law Commission Act*, 1973 (Act 19 of 1973), for your consideration the Commission's report on administrative justice.

I MAHOMED
CHAIRPERSON: SA LAW COMMISSION
AUGUST 1999

INTRODUCTION

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

The members of the Commission are:

The Honourable Mr Justice I. Mahomed (Chairperson)
The Honourable Madam Justice Y. Mokgoro (Vice-Chairperson)
The Honourable Madam Justice L. Mailula
Adv J.J. Gauntlett SC
Mr P. Mojapelo
Prof R.T. Nhlapo
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This report will be available on the Internet on the South African Law Commission's Web site at http://www.law.wits.ac.za/salc/report/report.html once the Minister of Justice has approved the publication of the report.

The project leader responsible for this project is Mr J.J. Gauntlett SC. The project committee

further comprises Prof Hugh Corder, Ms Cora Hoexter and Prof Philip Iya. Mr Andrew Breitenbach is the committee's researcher. The project committee has also been assisted by Mr Rainer Pfaff of German Technical Co-operation (GTZ), funders of the project.

Any requests for information and administrative enquiries should be addressed to the Secretary of the Commission or the Commission staff member allocated to this project, Mr Pierre van Wyk.

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CHAPTER 1

ORIGIN OF THE INVESTIGATION

1.1 On 17 November 1992, the Commission submitted a report to the Minister of Justice relating to its investigation into the courts' powers of review of administrative acts. This followed the circulation of its earlier Working Paper 15 (1986) in that regard, the receipt of a number of responses, a request by the Minister of Justice to investigate whether it was considered that administrative appeal bodies should be reduced in number, and the consequential composition and distribution of a second Working Paper (Working Paper 34 of October 1991).

1.2 The original investigation into the courts' powers of review of administrative acts focussed on judicial supervision by means of appeal and the exercise of its review jurisdiction by the Supreme Court (now the High Court). It, however, also considered aspects of control exercised by administrative bodies themselves, as well as the question of administrative appeals. Certain articles of the Bill of Human Rights proposed in the Commission's interim report on group and human rights were also considered in relation to their potential impact on the investigation.

1.3 The 1992 report is a lengthy document which was widely distributed for comment at the time, and which has been the subject of analysis and comment in several subsequent administrative law studies. It is available at a number of university law libraries in South Africa, and it is also available for consultation at the Commission's offices.

1.4 On 22 July 1994, the Minister of Justice asked the Commission to advise him whether he should proceed with the Commission's original recommendations and legislation proposed in the 1992 report. The Minister's question was posed in the light of the coming into operation of South Africa's new constitutional dispensation, and particularly in view of the provisions of section 24 (dealing with administrative justice) of the 1993 Constitution.

1.5 In response, the Commission furnished a supplementary report relating to its investigation into the courts' powers of review of administrative acts to the Minister in October 1994. It recommended that legislation should be enacted to complement and to give practical

effect to section 24 of the 1993 Constitution. It advised that this legislation should provide for the review of administrative action, what was termed "an open-ended codification of the grounds for review", including the ground of unreasonableness, and the procedural regulation of a person's right to be furnished with reasons for administrative action. The Commission further recommended that the original proposed draft Bill be adapted in the respects apparent from the 1994 proposed draft Bill.

1.6 Both the 1992 and 1994 draft Bills were confined, it is to be noted, to judicial review of administrative action.

1.7 It appears that thereafter a fresh initiative commenced within the Ministry of Justice (Planning Unit) itself. This did not involve the Commission. It is understood that some initial discussion commenced at the request of the Planning Unit under the auspices of the Centre for Applied Legal Studies (CALS) of the University of the Witwatersrand, in collaboration with the University of Fort Hare.

1.8 The 1996 Constitution came into operation on 4 February 1997. Meetings took place between CALS, the Commission and the Planning Unit on 7 and 20 August 1997. The following process was agreed upon, and was submitted to the Minister for consideration:

(a) The review of administrative law should be placed on the Commission's programme by the Minister as a matter of urgency.

(b) The Commission should be the overall co-ordinating body to take responsibility for managing the project.

(c) A project committee would have to be established for the project in terms of section 7A(1)(b)(ii) of the South African Law Commission Act, 1973. The names of proposed appointees were forwarded to the Minister.

1.9 Correspondence and discussions thereafter ensued relating to the formal placing of the project on the Commission's programme, the appointment of the project committee, and other administrative matters, including the terms of reference of the project committee. The project committee was finally appointed by the Minister in November 1998. Immediate preliminary planning discussions ensued between the project leader (Mr Jeremy Gauntlett SC) and Mr

Rainer Pfaff, representing German Technical Co-operation (GTZ), Professor Hugh Corder and Mr Andrew Breitenbach (appointed as researcher in respect of the project). The first meeting of the project committee took place on 15 January 1999; its recommendations (in the form of a discussion paper and draft Bill were approved by the Working Committee of the Commission in January 1999, for circulation for comment. The further course of the project is discussed in chapter 5.

CHAPTER 2

TIMESCALE FOR THIS PROJECT

2.1 Any national legislation intended to give effect to section 33 of the Constitution (the successor to section 24 of the 1993 Constitution) must be enacted by no later than 3 February 2000. (We revert to this aspect in the ensuing chapter). The appointment of a project committee only in November 1998 has left very little time for this to be accomplished. The situation is made more difficult by the extensive current legislative burdens borne by Parliament, and the interruption of the legislative programme for 1999 by the national elections. The result, it must be stressed at the outset, is that this project has necessarily had to be conducted on an expedited basis, and the Commission is grateful for the understanding and co-operation of all potential respondents in this regard.

2.2 The Commission has had to devise a schedule to report to the Minister by no later than 30 September 1999. This has meant that within a period of nine months, the discussion paper and draft Bill have had to be prepared in an initial form for the consideration of the project committee; revised in the light of the preliminary analysis of the project committee; and approved by the Working Committee of the Commission. Thereafter, necessary adaptations have had to be effected and the discussion paper printed, publicised and distributed to interested parties. A consultative opportunity - including regional workshops - was afforded for their consideration and for the submission of responses and the responses evaluated. The report was thereafter revised in the light of responses and the revised report was considered by the Commission itself.

2.3 It was for this reason that the Commission was constrained to require all written responses to be submitted by no later than 31 March 1999.

2.4 Once the responses had been considered by the project committee, and consequential revisions to the draft Bill effected, a series of regional workshops was held during early June. Respondents (and other interested parties) were invited to these. The further process is discussed in Chapter 5 below.

2.5 Thereafter the project committee effected further revisions to the draft Bill, in the light of the four workshops.

2.6 That draft was then presented to a group of international experts in the field of administrative justice for their critical appraisal. They met with the project committee at Leeds Castle in the United Kingdom for an intensive discussion in early July.

2.7 The project committee thereafter prepared the fifth revised text of a draft Bill, which was presented to the Commission for consideration at a meeting on 13 August 1999. The final draft of the Bill as approved by the Commission is attached as Annexure A.

CHAPTER 3

THE CONSTITUTIONAL IMPERATIVE

3.1 The constitutional imperative is plain: national legislation must be enacted to give effect to the rights set out in section 33(1) and (2) of the Constitution, and must provide for the additional matters specified in section 33(3)(a), (b) and (c). Item 23(1) of Schedule 6 of the Constitution requires this to be done "within three years of the date on which the new Constitution took effect". Item 23(2) provides for a default position: section 33(3) of the Constitution "lapse[s] if the legislation envisaged in those sections, respectively, is not enacted within three years of the date the new Constitution took effect".

3.2 The idea of an Administrative Justice Act is not novel. Some other countries have already shown the way (see in this regard Corder "Administrative Justice in the Final Constitution" (1997) 13 **SAJHR** 28, in which a number of legislative instruments elsewhere are summarised, and the background in South Africa to the contemplated legislation is traced). The topic has also received particular attention at the Breakwater workshops held in Cape Town in February 1993 ("Administrative Law for a future South Africa": see 1993 **Acta Juridica** ***passim***) and March 1996 ("Controlling Public Power in Southern Africa" published in Corder and Maluwa (eds) **Administrative Justice in Southern Africa** (1997)). In June 1997 the Nuffield Foundation, British Council and GTZ sponsored a workshop at the University College London on "Codification of Just Administrative Action" (the papers are unpublished, but available at the Commission's offices). As the London and Cape Town workshops indicate, a number of eminent South African and foreign lawyers have displayed great interest in the concept and scope of an Administrative Justice Act for South Africa, and have made important contributions to the discussion, both in published and unpublished papers. The project committee has had the benefit of considering these. The contribution of international jurists to this project - and in particular those listed in Annexure F who attended the international workshop - is gratefully acknowledged.

3.3 During the course of this project recurrent themes emerged in the responses. One has been the need to guard against imposing paralysing burdens on effective administration in South Africa. Another, however, has been the need to ensure that governmental agencies whose working methods are rooted in pre-constitutional dispensation, reflect administrative

justice. A third has been the question of cost and accessibility.

3.4 The Commission has given careful consideration to these competing concerns tabulated in the approximately 800 pages of written submissions and argued at the workshops. It has endeavoured to balance them in the terms of the draft Bill. The touchstone remains what the Constitution requires. This does not in the Commission's view permit (as some have suggested) that the Bill deal only with a new formulation of review grounds, or specifying requirements relating to reasons, and leaving other parts of the scheme section 33 enjoins for future legislation. To the extent that funding has to be found to make the overall scheme work, the Commission's enquiries to the Department of Justice suggest that this would be modest as regards the contemplated Administrative Review Council (less than R 1 million per year). The cost of adaptation by individual agencies to meet the Bill's requirements is not possible to quantify. In both instances, the draft Bill has endeavoured to restrict the financial burden wherever this can be done without jeopardising the Bill's effect. The Commission believes that a more just and efficient administration are mutually interdependent, and that greater administrative justice must ultimately result in savings to society. In the final analysis, moreover, the constitutional imperatives in section 33 must, as a matter of legal requirement, be met.

CHAPTER 4

THE SOUTH AFRICAN BACKGROUND

4.1 Some other countries, it has been observed above, have preceded South Africa in adopting an Administrative Justice Act. South Africa is unique in being **required** by its Constitution to do so, and to achieve this within a stipulated time frame. What an Administrative Justice Act is required to achieve in South Africa is, however, not to be ascertained purely by reference to the wording of the constitutional imperative. Respondents, in considering submissions relating to the draft Bill, have naturally done so in a specifically South African setting.

4.2 What this encompasses has been a matter of exhaustive analysis in the 1992 report and the conferences and papers to which reference has been made. A useful overview is again to be found in the article by Prof Corder.

4.3 While the South African common law relating to administrative justice has developed significantly in recent years, an abiding restriction lay in its evolution under a system of Parliamentary supremacy, and domination in turn of Parliament by the executive. The Constitution reflects a determination that administrative law in South Africa should not henceforth survive interstitially, in legislative crevices, to the extent that judges are both able and minded to secure that result. The right to administrative justice, as the recent Constitutional Court judgment in **Fedsure Life Ass Ltd v Greater Johannesburg TMC** 1998 (12) **BCLR** 1458 (CC) underscores, is now rooted in the Constitution itself. The latter builds in this regard on the interim Constitution, which "has radically changed the setting within which administrative law operates in South Africa**"** (para [32]).

4.4 How that right is best now to be given effect, within the requirements and realities of South African society, is the challenge raised by this project.

CHAPTER 5

THE CONSULTATIVE PROCESS FOLLOWED IN THE INVESTIGATION

5.1 Discussion Paper 81 was distributed to approximately 400 local individuals and bodies and 240 foreign individuals and bodies at the end of January 1999. The availability of the discussion paper was announced in a media statement issued on 4 February 1999, on the Commission's Internet Web site and in the **Government Gazette**. Written comments were received from 56 respondents (see Annexure D). The draft Bill was revised by the Project Committee in the light of these comments. The revised Bill formed the basis for discussions at four regional workshops hosted by the project committee. Approximately 556 invitations were issued (see Annexure C) and approximately 356 persons attended the workshops (see Annexure E). Advertisements were also placed in the **Sunday Times** on 7 February 1999 and the **EP Herald** on 12 February 1999 announcing the regional workshops and inviting participation and responses to the discussion paper. Notices providing information on the workshops and inviting parties to attend them were also placed on the Commission's Web site. The regional workshops took place as follows:

* in Pretoria on 8 June 1999;
* in Durban on 9 June 1999;
* in East London on 10 June 1999;
* in Cape Town on 11 June 1999.

5.2 The following issues were identified in particular for discussion at the workshops, although participants were also invited to raise any other issue they wished to discuss:

* Clause 1A: the definition of administrative action - the scope of administrative action and the exclusions provided for in the draft Bill.

* The definition of "rules" and "standards" (clauses 1(m) and 1(o)) and the distinction between them.

* Clause 4: the list of grounds of review - should the list be open or closed and should it be positive or negative?

* Clause 5: the mechanism for obtaining reasons, e.g. remedies if no reasons or inadequate reasons advanced and procedure to be followed.

* Chapter 3: particularly clauses 11 and 13.

* Clause 15(1): public enquiries.

5.3 Valuable suggestions were made at the workshops.[1] The project committee took these proposals into account when further reconsidering and revising the Bill on Administrative Justice, in a fourth draft produced on 21 June 1999.

5.4 The project committee was also privileged to have been invited to attend a workshop at Leeds Castle in the United Kingdom from 5 to 7 July 1999. This event was initiated and organised by Professor Jeffrey Jowell QC, Dean of the Faculty of Laws and Vice Provost of University College London, and financial assistance was provided by the Nuffield Foundation, the British Council, the Rowntree Trust, the Lord Chancellor's Department and the GTZ. The international experts listed in Annexure F attended the workshop (as well as the members of the project committee and Mr Gilbert Marcus SC from within South Africa and Mr Rainer Pfaff of GTZ).

5.5 The UK workshop resulted in a further meeting of the project committee, and revisions made to the Bill as are reflected in the annotations to the Bill (see Annexure A).

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1 A summary of these discussions is available at the Commission on request.

CHAPTER 6

AN OVERVIEW OF THE DRAFT BILL

6.1 The draft Bill comprises seven chapters. The purpose here is not to paraphrase them at length, but to explain their structure. Nor is the purpose to raise points of textual detail; to facilitate reference by the reader, these are contained in the footnotes to the draft Bill itself.

6.2 The first chapter of the Bill contains a list of definitions. Following section 33 of the Constitution, at the core of the draft Bill is the concept of "administrative action", which is widely defined. The key exclusions are listed executive functions (which are not, properly viewed, administrative functions), the legislative actions of Parliament, the provincial legislatures and (following the Constitutional Court's recent decision in the **Fedsure** case **supra**) municipal councils. Administrative action by natural or juristic persons contemplated in section 8(2) of the Constitution and exercising a public power or performing a public function (e.g. non-statutory bodies controlling national sports codes) is specifically included. Collectively these bodies and organs of state are termed "administrators".

6.3 Other important features of chapter 1 are the wide definition of standing (in the definition of "qualified litigant"), and provision for a review jurisdiction which includes designated magistrates' courts.

6.4 Chapter 2 imposes a duty on all administrators to give effect to the rights in section 33(1) and (2) of the Constitution (clause 2 of the draft Bill, following section 33(3)(b) of the Constitution) and provides for the review of administrative action by the courts and independent and impartial tribunals (section 33(3)(a) of the Constitution).

6.5 In accordance with the requirement in section 33(3) of the Constitution that national legislation "be enacted to give effect to" the rights in section 33(1) and (2) of the Constitution, chapter 3 of the draft Bill requires administrative action to be procedurally fair. This is achieved by core requirements applying to all administrative action (clause 4(2)). Additional requirements may apply in appropriate circumstances (clause 4(3)). There is provision for a departure from the mandatory provisions in exceptional circumstances, and then only to the extent necessary. While some respondents have pressed for an exhaustive definition of "exceptional

circumstances", that is plainly not possible. Indeed it is established that wide words are not for that reason alone vague (see **Birch v Klein Karoo Agricultural Co-op Ltd** 1993 (3) SA 403 (A) at 411I-J).

6.6 Another important part of chapter 3 relates to the provision of reasons for administrative action (clause 6). This places a general obligation on an administrator (pursuant to the constitutional obligation in section 33(3) read with section 33(2) of the Constitution) to give reasons in writing when requested. This must be done within 90 days after the person was informed of the administrative action and the reasons for it, or becomes aware of it, or might reasonably have been expected to have become aware of it. (Provision is made later, as will be shown, for the amelioration of this time period, and also for the enforcement of the obligation to furnish reasons.) Flexibility is also introduced by the provisions of clauses 6(3) and (4), to ensure again that administration is not stultified by unrealistic requirements, while at the same time giving effect in a practical way to the constitutional entitlement.

6.7 Chapter 4 focuses on the grounds of review, and the procedure for obtaining it. Clause 7 is a vital part of the Bill, specifying the grounds of review established at common law, adapted in the light of recent formulations in South Africa and in other countries with a similar review jurisdiction. Two features are important: the distinction between review and appeal is retained, and the list (by virtue of clause 7(1)(h), reinforced by clause 3) is not a closed one. In this way, the opportunity exists for the courts to continue to develop and to define the South African law of review**,** in the spirit of section 8(3) of the Constitution.

6.8 Clause 9 specifies remedies available in proceedings for judicial review. These encompass both mandatory and prohibitory interdicts, declaratory orders, orders to give reasons, and review orders in the classic sense, setting aside the administrative action in question and either remitting it or, in exceptional cases, substituting or varying the administrative action and directing the payment of compensation.

6.9 Provision is also made for the extension of time periods specified in the statute (clause 10). There is both domestic and international consensus that no exact timetable can be laid down in advance for the institution of review proceedings: in certain circumstances, it may be wholly unreasonable for a review to be instituted after a few months have elapsed since the allegedly irregular administrative action. In other instances, it may be very difficult to launch

the proceedings within a short period of time. The solution proposed is to require the institution of proceedings in all cases without unreasonable delay, but with an outer limit of 180 days of the day on which the person was informed of the administrative action, or otherwise became aware of it, or might reasonably have been expected to have become aware of the action (the language of most prescription statutes, which have survived judicial scrutiny in the past). That outer limit, in turn, must however be amenable to judicial dispensation in special cases where the interests of justice so require (clause 10). In this regard, it may be noted that there is no spectre of additional judicial proceedings: an applicant instituting proceedings after 180 days would, as part of the relief in the main proceedings, ordinarily seek in the first place dispensation in terms of clause 10, making out its case in that regard in the course of the founding affidavit. There need be no necessary duplication of proceedings (although the parties might agree or the court direct that this issue be determined first).

6.10 Chapter 5 deals with rules and standards. There is a proclivity of administrators to make rules (which are defined as measures having the force of law) or standards (which do not have such force), to fail to disclose these to those upon whom they bear, and thereafter to invoke them. The Bill must on the other hand be aware of the need not to hamstring administrators by unrealistic requirements relating to the making of rules or standards. The middle course devised is to require administrators in general and flexible terms to take appropriate steps to communicate rules to those likely to be affected by them (clause 12(1)), and to impose upon administrators flexible obligations relating to the manner in which this is to be achieved (clause 12(2)). In relation to rules and standards, administrators are required to compile registers and indices (clause 13) to ensure accessibility. There is also provision for the Administrative Review Council to devise ways of making these measures more accessible, of pruning them, and of improving their content.

6.11 Chapter 6 focuses on the contemplated Administrative Review Council. As is indicated in the appropriate footnote, this has been in contention. There has been an understandable aversion (particularly on the part of the Department of Justice) to the creation of what is seen to be yet a further governmental structure. The Commission has considered this and related objections, and substantial amendments to the original proposed body have been effected through successive drafts. The latest indication by the Department is that the contemplated ARC would cost in the order of R980 000,00 per annum to run (this out of the current Justice budget in the order of R300 million). Three points to be made in this regard are the following:

that if the ARC is what it takes to obey the constitutional imperative, this limited funding has to be found; secondly, enhanced administrative justice contemplates greater state efficiency and thereby savings; and thirdly, that it is not evident that the function to be performed (given in particular the need for autonomy and public regard) is best served by seeking to warehouse the ARC's allocated tasks within some other institution or government department.

6.12 The last chapter deals with general matters. It allows the President, in providing for the proposed Administrative Justice Act to come into operation, to set different dates for the commencement of clauses 11, 12 and 13. Some respondents have sought to go further, and to suggest that the constitutional requirements of section 33 read with item 23 of schedule 6 could be met by a more cursory dealing with certain elements (such as providing now for the grounds of judicial review, and leaving other elements to be accommodated in other statutes in the future). This is not seen as a viable way of meeting the clear constitutional injunctions of section 33. That approach also holds the prospect of introducing a system of administrative justice which, even were it to survive constitutional challenge, would be explicitly unfulfilled, temporary and subject to later amendment. It would also give rise to particular difficulties as regards ensuring that the overall scheme of administrative justice is aligned with that of access to information (this Bill being on a parallel track, as regards timing, to the Open Democracy Bill).

ANNEXURE A

ADMINISTRATIVE JUSTICE BILL[1]

To give effect to the right to administrative action that is lawful, reasonable and procedurally fair and to the right to written reasons for administrative action in section 33 of the Constitution of the Republic of South Africa, 1996; to impose a duty on administrators to give effect to those rights; to establish fair administrative procedures; to provide for the review of administrative action; to enhance the accessibility of rules and standards; to promote efficient administration and for that purpose to establish an Administrative Review Council; and to provide for matters incidental thereto.

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

CHAPTER 1: DEFINITIONS

Definitions

1. In this Act, unless the context indicates otherwise:–

(a) "**administrative action**" means any act performed, decision taken or rule or standard made, or which should have been performed, taken or made, by:–

(i) an organ of state;

(ii) a judicial officer;

(iii) a prosecuting agency;

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1 This is the sixth draft of the Administrative Justice Bill ("the Bill") prepared by the Project Committee of the South African Law Commission ("Project Committee" and "SALC") and adopted by the SALC on 13 August 1999. It draws on nearly 800 pages of written responses to SALC Discussion Paper No. 81 (January, 1999); the regional workshops held at Pretoria, Durban, East London and Cape Town (June 1999); an international workshop with leading authorities in the field in the United Kingdom (July 1999); and the deliberations of the Project Committee and ultimately the SALC itself.

(iv) a natural or juristic person when exercising a public power or performing a public function,[2]

but does not include:[3]

(aa) the functions of the National Executive referred to in sections 79(1) and (4), 84(2)(a), (b), (c), (d), (g), (h), (i) and (k), 85(2), 91(2), (3), (4), (5), 92(3)(b), 93, 97, 98, 99 and 100 of the Constitution;[4]

(*bb*) the functions of the Provincial Executive referred to in sections 121(1) and (2), 125(2)(d), (e), (f), 126, 127(2)(a),(b), (c), (d) and (f), 132(2), 133(3)(b), 137, 138, 139, 145(1) of the Constitution;

(*cc*) the legislative functions of Parliament, a provincial legislature or a municipal council;[5]

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2 There has been very limited opposition to this provision, which has been included because paragraph (b)(ii) of the definition of "organ of state" in section 239 of the Constitution is limited to functionaries or institutions which function in terms of legislation. It has been suggested, however, that the Bill define "public power" and "public function" in order to eliminate uncertainty as to their meaning. This is not considered feasible. The meaning of these terms will be elucidated by the courts when dealing with the Bill and with section 239 of the Constitution, drawing on existing South African and other case law in this regard.

3 Some respondents wanted further exemptions, e.g. all decisions taken in terms of the Criminal Procedure Act, 1977 (Act 51 of 1977) and public sector employment matters (which are subject to the Labour Relations Act, 1995 (Act 66 of 1995)). Further total exemptions are however seen as undesirable. Where other statutes set specific standards of administrative justice, these will apply. See e.g. clauses 4(5) and 5(1)(d).

4 Earlier drafts of the Bill excluded certain of the functions of the National and Provincial Executives. Litigation relating to appointments made by the President has pointed up the difficulty of a precise definition of the executive functions of the President and provincial Premiers, which may either fall short of or extend beyond the listed subsections. Consequently, it was not considered feasible to provide a closed list of executive functions. The SALC was however concerned about uncertainty as regards the distinction between executive and administrative actions, and the consequences of a general exclusion of executive functions.

5 Some respondents argue that when municipalities exercise delegated law-making powers they act administratively (see e.g. section 10 of the Sea Shore Act, 21 of 1935). In *Fedsure Life Assurance Ltd & others v Greater Johannesburg Transitional Metropolitan Council & others* 1998 (12) BCLR 1458 (CC) at par 41-2, however, the Constitutional Court held that the making of municipal by-laws does not fall within the ambit of the administrative justice provision in the interim Constitution. The same applies to by-laws passed under the new Constitution. The difference between, on the one hand, by-laws made by municipalities in terms of section 156(2) of the new Constitution in relation to matters within their executive authority assigned to them by national or provincial legislation and, on the other, delegated legislation made by

(dd) the judicial functions of a judicial officer;[6]

(ee) a decision to institute or continue a prosecution;[7]

(*ff)* a decision of the Judicial Service Commission;[8]

(b) "**administrator**" means an organ of state, judicial officer, prosecuting agency, or natural or juristic person taking administrative action;

(c) "**Chairperson**" means the Chairperson of the Council appointed in terms of section 14(1)(a);

(d) "**Chief State Law Adviser**" includes State Law Advisers and provincial State Law Advisers designated by the Chief State Law Adviser;

(e) "**Constitution**" means the Constitution of the Republic of South Africa, 1996;

(f) "**Council**" means the Administrative Review Council established by section 14;

(g) "**court**" means:[9]

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municipalities in relation to matters assigned to them without any executive authority, if such difference exists, is one of form, not substance.

6 Some judicial officers perform administrative functions, e.g. issuing warrants, authorizing telephone taps.

7 This exemption, though controversial, is designed to avoid a multiplicity of hearings about the "merits" of criminal charges, which must be determined at the trial and through the antecedent steps envisaged by the Criminal Procedure Act 51 of 1977. See *Wiseman and another v Borneman and others* [1971] AC 297 (HL) at 308E-G ([1969] 3 All ER 275 (HL) at 277I-278B); *Park-Ross v Director: Office for Serious Economic Offences* 1998 (1) SA 108 (C) at pars 14 to 25.

8 This exemption was added by the SALC, by virtue of what it sees as the particular constitutional status of the JSC. The question has been raised whether this should also apply to the Magistrates Commission.

9 The function of this provision, when read with clause 9, is to provide that the only courts with jurisdiction to review administrative action will be the Constitutional Court (where direct access is allowed), High Courts (and courts of similar status) and certain specially-designated Magistrates' Courts. This provision is based on the assumption that Parliament will accept the SALC's recommendations regarding the extension to Magistrates' Courts of jurisdiction to rule on the constitutionality of most types of legislation and all administrative action other than conduct of the President (SALC Project 111), and will amend section 170 of the Constitution and

(i) the Constitutional Court acting in terms of section 167(6)(a) of the Constitution; or

(ii) a High Court or another court of similar status; or

(iii) a Magistrate's Court designated in writing by the Minister, after consultation with the Magistrates' Commission,[10] either generally or in respect of a specified class of administrative action,[11]

within whose area of jurisdiction the administrative action occurred or the administrator has its principal place of administration;

(h) "**executing authority**" means:–

(i) in the case of the organs of state referred to in the definition of "executing authority" in section 1 of the Public Service Act, 1994 (Proclamation 103 of 1994), the "executing authority" as so defined in relation to each such organ of state;

(ii) in the case of all other organs of state and all juristic persons when exercising public powers or performing public functions, the chief executive officer thereof;

(iii) in the case of natural persons when exercising public powers or performing public functions, such persons;

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section 110 of the Magistrates' Courts Act 32 of 1944 accordingly. However, litigants have the option of approaching the High Court in all cases.

10 Established in terms of the Magistrates Act 90 of 1993.

11 Many participants in the regional workshops were opposed to the SALC's earlier proposal that all Magistrates' Courts be permitted to review all types of administrative action. In particular, it was suggested that the proposal would place an additional and unwelcome burden on certain magistrates and that it would be inappropriate for magistrates to exercise review powers in respect of all types of administrative action. The suggestion in this paragraph aims to meet these concerns. Conferring on the High Courts exclusive first-instance jurisdiction in all judicial review matters will make this branch of the law inaccessible to many people for whom the High Courts are expensive and, often, geographically remote forums. The Minister could use the power conferred by this paragraph to appoint, for example, "circuit magistrates" with the power to review municipal administrative action.

(i) "**Open Democracy Act**" means the Open Democracy Act, 1999;[12]

(j) "**organ of state**" bears the meaning assigned to it in section 239 of the Constitution;

(k) "**provincial Constitution**" means a provincial Constitution made in terms of sections 142 to 145 of the Constitution;

(l) "**Public Protector**" means the Public Protector described in sections 182 and 183 of the Constitution;

(m) "**qualified litigant**"[13] means:–

(i) anyone acting in their own interest;

(ii) anyone acting on behalf of another person who cannot act in their own name;

(iii) anyone acting as a member of, or in the interest of, a group or class of persons;

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12 The Bill has been drafted on the assumption that the Open Democracy Bill, 1998, will be enacted timeously and substantially in its current form. The course of the Open Democracy Bill must be closely monitored, and its interaction with the Bill carefully assessed. At present, the provisions in the Bill dealing with the publication of information (e.g. reasons or the text of standards) are made subject to the Open Democracy Bill (which, in turn, exempts certain categories of information from its freedom of information regime). It is suggested that the blunt "subject to the Open Democracy Act" formulation currently used hereafter in the Bill (see e.g. clauses 4 and 6) be replaced with a more specific reference to the exemption sections of the Open Democracy Bill.

13 It has been suggested that this definition be omitted or amended to require applicants for judicial review to show some direct interest in the subject-matter of the litigation or some grievance special to themselves. As the right to lawful, reasonable and procedurally fair administrative action in section 33(1) of the Constitution is not restricted to persons whose rights, interests or legitimate expectations are affected or threatened (cf. item 23(2)(b) of Schedule 6 to the Constitution), this suggestion would result in a limitation of the right in section 33(1). The justifiability of the suggested restriction must, therefore, be carefully examined, particularly in the light of the SALC's draft Class Actions Bill submitted to the Minister of Justice in 1998. In any event, it is not clear at all whether the Bill may validly restrict the rights in section 33(1) and (2) of the Constitution. Section 33(3) requires that the Bill "give effect to" those rights.

(iv) anyone acting in the public interest; and

(v) an association acting in the interest of its members;

(n) "**rule**" means any measure with the force of law applying generally or to a group or class of persons, including subordinate legislation made in terms of an Act of Parliament or in terms of provincial legislation, but does not include a law made by Parliament, a provincial legislature or a municipal council;

(o) "**Rules Board**" means the Rules Board for courts of law established by section 2 of the Rules Board for Courts of Law Act 107 of 1985; and

(p) "**standard**"[14] means any guideline, policy, general instruction or similar measure setting out the way in which a public power or public function should be interpreted or exercised or performed, but does not include a rule or a law made by Parliament, a provincial council or a municipal council.

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14 It is not possible to draw exhaustive schedules of what constitute rules and standards. In difficult cases the distinction between "rules" and "standards" must be determined by the courts. It has been suggested that a provision be included to the effect that measures must be treated as standards if they are labeled as such and state that they will have no binding effect on any person. This is, however, not considered appropriate.

CHAPTER 2: JUST ADMINISTRATIVE ACTION

Obligation to give effect to the rights to just administrative action[15]

2. (1) Every administrator must give effect to the right of everyone to administrative action that is lawful, reasonable and procedurally fair, in section 33(1) of the Constitution.

(2) Every administrator must give effect to the right of everyone whose rights have been adversely affected by administrative action to be given written reasons, in section 33(2) of the Constitution.

(3) A failure to give effect to these rights is reviewable:

(a) by a court in terms of Chapter 4 of this Act; or

(b) by any independent and impartial tribunal, including a tribunal established pursuant to section 16(c) of this Act.

Interpretation of this Act

3. The provisions of this Act do not deny the existence of any other rights and freedoms that are recognized or conferred by common law, customary law, international law or legislation, to the extent that they are consistent with this Act.

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15 Some respondents have suggested that section 33(3) of the Constitution requires a positive list of duties in addition to (or, in some cases, instead of) a negative list of grounds of review. They argue that setting out the duties in detail will provide a balance of emphasis between a preventive system of administrative justice and a remedy-driven approach. Drafting in positive terms obligations which, if breached, give rise to judicial review or other relief, presents particular difficulties (as a consideration of clause 7 below will indicate). Clause 15(b)(i) of the Bill moreover obliges the Council to formulate and publish in the *Government Gazette* a binding code of good administrative conduct within two years after the date of commencement of this Act, which goes some way towards meeting this suggestion. Non-compliance with the code will be a reviewable irregularity (cf. the definition of "law" in clause 7(2)(b)). Clauses 4 and 5 of the Bill set out specific procedures for administrative action affecting individuals and the public.

CHAPTER 3: PROCEDURAL FAIRNESS

Procedurally fair administrative action

4. (1) Administrative action which adversely affects rights, interests[16] or legitimate expectations must be procedurally fair.

(2) A fair procedure depends on the circumstances, but includes at least:–

(a) adequate notice of the nature and purpose of the proposed administrative action;

(b) a reasonable opportunity to make representations;

(c) a clear statement of the administrative action; and

(d) adequate notice of any right of appeal or review.

(3) A fair procedure may also entail:–

(a) access to relevant information, subject to the Open Democracy Act;

(b) an opportunity to obtain assistance and, in serious or complex cases, legal representation;

(c) an opportunity to present and controvert information and argument;

(d) an opportunity to appear in person; and

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16 Section 33 read with item 23 of Schedule 6 to the Constitution does not in terms encompass "interests". Their omission here, however, will leave without an entitlement to the administrative justice protections in this section many persons who, for instance, are applicants for licences, pensions or other benefits to which they have no existing right, or who fall within neither the "promise" nor "past practice" categories normally associated with legitimate expectations (*Administrator, Transvaal v Traub* 1989 (4) SA 731 (A)).

(e) subject to the procedures in section 6 below, the reasons for the administrative action.

(4) If circumstances justify it, an administrator may depart from the requirements in subsection (2)*(a)* to *(d)*, to the extent necessary.[17]

(5) Where an administrator is empowered by any other law to follow a procedure which is fair but different from subsections (2) and (3), the administrator may act in accordance with that different procedure.

(6) The Council may prescribe procedures to be followed by designated administrators or in relation to classes of administrative action in order to give further effect to the right to procedural fairness.

(7) The Council may by notice in the *Government Gazette*:–

(a) in exceptional circumstances, exempt an administrator, administrative action or a group or class of administrative actions from the application of this section to the extent necessary; or

(b) in order to promote efficient administration, permit an administrator to vary the requirements in subsections (2) and (3) and section 5(2) and (3), in a manner specified in the notice,

provided that any such exemption or permission must be compatible with the right to procedurally fair administrative action.

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17 The project committee had proposed that this provision read:
"In exceptional circumstances an administrator may depart from the requirements in subsection (2)(a) to (d) to the extent necessary."

Administrative action affecting the public

5. (1) In cases adversely affecting the public,[18] an administrator must give effect to section 4 and in order to do so must decide whether:

(a) to hold a public inquiry in terms of subsection (2);

(b) to follow a notice and comment procedure in terms of subsection (3);

(c) both to hold a public inquiry and follow a notice and comment procedure;

(d) where the administrator is empowered by any other law to follow a procedure which is fair but different, to follow that procedure, or

(e) to follow another appropriate procedure which gives effect to section 4.

(2) If an administrator decides to hold a public inquiry:–

(a) the executing authority must conduct the public inquiry or appoint a suitably qualified person or panel of persons to do so;

(b) the executing authority or the person or panel referred to in paragraph (a) must:–

(i) determine the procedure for the public inquiry, which must:–

(aa) include a public hearing; and

(bb) comply with any rules regulating the procedure to be followed in connection with public inquiries which may prescribed by the Council by notice in the *Government Gazette*;

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18 Defined (for purposes of this section) in clause 5(5).

(ii) conduct the inquiry in accordance with that procedure;

(iii) report in writing on the inquiry with a statement of reasons for any administrative action taken or recommended; and

(iv) as soon as possible thereafter publish in English[19] and at least one of the other official languages in the *Government Gazette* or relevant provincial *Gazette* a notice containing:–

(aa) a concise summary of any report; and

(bb) the particulars of the places and times at which the report can be inspected and copied.

(3) If an administrator decides to follow a notice and comment procedure the administrator must:–

(a) take appropriate steps to communicate the administrative action to those likely to be adversely affected by it and call for comments from them;

(b) consider any comments received;

(c) decide whether or not to take the administrative action, with or without changes; and

(d) comply with any rules regulating the procedure to be followed in connection with notice and comment procedures, which may prescribed by the Council by notice in the *Government Gazette*.

(4) If circumstances justify it, an administrator may depart from the requirements in subsections (1) to (3), to the extent necessary.

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19 The English language requirement is a practical expedient, and accords with section 6(3)(a) of the Constitution.

(5) In this section "**public**" means the public generally or any group or class of the public.

Reasons for administrative action

6. (1) Subject to the Open Democracy Act, a person whose rights have been adversely affected[20] by administrative action and who has not been given reasons for the action may, within 90 days after the date on which the person became aware of the action or might reasonably have been expected to have become aware of the action, request that the administrator concerned furnish written reasons for the action.[21]

(2) The administrator to whom the request is made must, at the time the action is taken or as soon as possible thereafter, and in any event not less than 90 days after receiving the request, give that person adequate reasons in writing for the administrative action, incorporating the essential facts and the legal basis for the action.

(3) If circumstances justify it, an administrator may depart from the requirements in subsection (2) to the extent necessary.

(4) Where an administrator is empowered by any other law to follow a procedure which is fair but different from subsection (2), the administrator may act in accordance with that different procedure.

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20 The right to written reasons in section 33(2) of the Constitution is limited to administrative action which adversely affects a person's "rights" (compare the interim measure in item 23(2) of Schedule 6 to the Constitution which refers to "rights or interests"). As is apparent from clause 4(3), however, the SALC considers that, in certain cases, the right to procedural fairness in section 33(1) of the Constitution may require the giving of reasons. In such cases the procedures in clause 6 will apply.

21 The Project Committee had proposed that section 6(1) and (2) read as follows:
"(1) Subject to the Open Democracy Act, an administrator who takes administrative action, excluding making a rule or a standard, which adversely affects a person's rights must, at the time the action is taken or as soon as possible thereafter, inform that person in writing of:
(a) adequate reasons for the administrative action, incorporating the essential facts and the legal basis for the action; or
(b) the person's right to request reasons in terms of subsection(2),
provided that when personal notification in writing to those concerned is impracticable the particulars set out in paragraphs (*a*) or (*b*) may be communicated in another appropriate manner.
(2) A person whose rights have been adversely affected by administrative action and who has not been given reasons for the action may, within 90 days after the date on which the person was informed in terms of subsection (1), became aware of the action or might reasonably have been expected to have become aware of the action, request that the administrator concerned furnish written reasons for the action."

(5) The Council may by notice in the *Government Gazette*:–

(a) in exceptional circumstances, exempt an administrator, administrative action or a group or class of administrative actions from the application of this section to the extent necessary; or

(b) in order to promote efficient administration, permit an administrator to vary the requirements in subsection (2), in a manner specified in the notice,

provided that any such exemption or permission must be compatible with the right of persons adversely affected by administrative action to written reasons for that administrative action.

(6) The Council may by notice in the *Government Gazette* publish procedures for dealing with requests for reasons.

CHAPTER 4: JUDICIAL REVIEW OF ADMINISTRATIVE ACTION

Grounds of review

7. (1) A court has the power to review administrative action if:–[22]

(a) the administrator which took the action:

(i) was not authorized to do so by the empowering provision;

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22 Some respondents would prefer an exclusive formulation which displaces (expressly or by implication) the courts' common law powers of review. The main reason for the closed-list approach is to provide administrators with a measure of certainty as to the administrative-justice constraints within which they must function. As it now reads, clause 7(1) attempts to provide that certainty by way of a detailed list of grounds of review. It deals with authority to act and impartiality (clause 7(1)(a)), procedure (clauses 7(1)(b) and (c)), the reasoning process (clauses 7(1)(d) and (e)) and the attributes and results of the administrative action itself (clause 7(1)(f) and (g). In view of the open-ended par (h), however, the courts may interpret, or add to, the enumerated grounds. This is consonant with the power of the courts to develop the common law to give effect to the Bill of Rights and, in particular, the right to just administrative action (cf. section 39(2) of the Constitution). See also clause 3 above, which deals with the interpretation of the provisions of the Bill, and the decision by the Supreme Court of Appeal in *Commissioner of Customs and Excise v Container Logistics (Pty) Ltd/Rennies Group Limited*, unreported 28 May 1999, at par 19-20.

(ii) acted under a delegation of power which was not authorized by the empowering provision; or

(iii) was biased or reasonably suspected of bias;

(b) a mandatory procedure or mandatory condition prescribed by law was not complied with;

(c) the action was procedurally unfair;[23]

(d) the action was materially influenced by an error of law;

(e) the action was taken:–

(i) for a reason not authorized by the empowering provision;

(ii) for an ulterior purpose or motive or in bad faith;

(iii) because irrelevant considerations were taken into account or relevant considerations not considered;

(iv) because of too rigid an adherence to a standard;

(v) because of the unauthorized or unwarranted dictates of another person or body; or

(vi) arbitrarily, capriciously or without properly considering the matter;

(f) the action itself:–

(i) contravenes a law or is not authorized by law;

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23 The "procedurally fair" constitutional requirement has been restated because the flexibility of the requirement makes sensible elaboration problematic. This provision must, however, be read with clauses 4 and 5, which provide specific procedures for administrative action adversely affecting individuals and the public.

(ii) is vague or uncertain;

(iii) is not rationally connected[24] to:–

(aa) the purpose for which it was taken;

(bb) the purpose of the empowering provision;

(cc) the information before the administrator; or

(dd) the reasons given for it by the administrator;

(g) the effect of the action is unreasonable, including any:–

(i) disproportionality between the adverse and beneficial consequences of the action; and

(ii) less restrictive means[25] to achieve the purpose for which the action was taken; or

(h) the administrative action is otherwise unconstitutional or unlawful.

(2) In this section:–

(a) "**empowering provision**" means the legislative or constitutional provision, the rule of common law, customary law or international law or the agreement or document in terms of which the administrative action was purportedly taken;

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24 It has been suggested that the rationality and reasonableness grounds should be replaced with a general statement, namely "is unreasonable" plus, possibly, an attenuated list of relevant factors e.g. "having regard to the reasons given for the action and the information before the administrator". During the regional workshops, in contrast, the overwhelming majority of participants were positive about the distinction between the two. In the light of the discussion at the international workshop and other submissions, the section has however been redrawn (in the form of a new par (g))to make it clear that review for unreasonableness is not to be equated with appeal.

25 The phrase "less restrictive means" means alternatives with a lesser adverse effect. It is derived from section 36 of the Constitution.

(b) "**law**" means the common law, customary law, international law, the empowering provision or any other applicable constitutional or legislative provision, including this Act and the code of conduct contemplated in section 15*(b)*(i) of this Act; and

(c) "**relevant considerations**" includes all material information, objections and alternatives to the administrative action.

Procedure for review

8. (1) A qualified litigant may without unreasonable delay and not later than 180 days after the date on which the person was informed of the administrative action, became aware of the action and the reasons for it or might reasonably have been expected to have become aware of the action and the reasons, institute proceedings[26] in a court for judicial review of the administrative action.

(2) The Rules Board must, in consultation with the Council and within one year after the date of commencement of the Act, make and implement rules of procedure for proceedings for judicial review.

(3) In the period before the implementation of the rules of procedure in terms of subsection (2) all proceedings for judicial review must be instituted in the High Courts or the Constitutional Court.

(4) If an administrator fails to furnish adequate reasons for an administrative action it must be presumed in any proceedings for review, in the absence of proof to the contrary, that the administrative action was taken without good reason.[27]

Remedies in proceedings for judicial review

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26 The words "apply to" have been replaced with "institute legal proceedings in" to make it possible for the Rules Board and the Council to allow for trial actions as well as applications, should they deem it appropriate.

27 Some respondents argued that this presumption was too harsh a sanction for a failure or refusal to provide reasons or inadequate reasons. The practical effect of the presumption, however, will be to compel the administrator to furnish adequate reasons in its affidavits or oral evidence.

9. The court in proceedings for judicial review may grant any order that is just and equitable, including orders:–

(a) directing the administrator:–

(i) to act in the manner the court requires;

(ii) to give reasons;

(b) prohibiting the administrator from acting in a particular way;

(c) setting aside the administrative action and:–

(i) remitting the matter for reconsideration by the administrator, with or without directions; or

(ii) in exceptional cases:–

(aa) substituting or varying the administrative action or correcting a defect in any state of affairs resulting from the administrative action; and/or

(bb) directing the administrator or any other party to the proceedings to pay compensation;

(iii) a declaration of rights;

(iv) a temporary interdict or other temporary relief; and

(v) costs of suit.

Extensions of time[28]

10. (1) The periods of 90 days and 180 days referred to in sections 6 and 8 may be extended for a fixed period:–

(a) by agreement between the parties; or

(b) failing agreement, by a court on application by the person or administrator concerned.

(2) The court may grant an application in terms of subsection (1)(*b*) where the interests of justice so require.[29]

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28 It has been suggested that the Bill should not prescribe time limits, particularly within which to apply for administrative action, because in many cases those adversely affected by administrative action will be poor and have inadequate access to legal advice. This clause is designed to meet these concerns. Time limits are, however, considered important as they will promote certainty both as to the validity of administrative action and as to the processes for obtaining reasons and challenging administrative action in court.

29 It has been suggested that the person seeking to rely on the validity of the administrative action should be required to demonstrate that an extension of time is not in the interests of justice.

CHAPTER 5: RULES AND STANDARDS[30]

Duties of Chief State Law Adviser

11. The Chief State Law Adviser[31] must:–

(a) compile and publish protocols for the drafting of rules and standards;

(b) in conjunction with the Council, provide training to the drafters of rules and standards; and

(c) perform the other functions required by this Act or any other law.

Publication of rules

12. (1) If an administrator decides to make a rule it must:–

(a) take appropriate steps to communicate the rule to those likely to be affected by it; and

(b) comply with any rules regulating the procedure to be followed, which may prescribed by the Council by notice in the *Government Gazette*.

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30 This Chapter has been substantially revised in an attempt to balance the disadvantages of complying with its requirements and procedures (e.g. costs, delays, unnecessary work, unintended consequences) and the advantages (transparency, responsiveness, contemporaneity) of doing so. In terms of clause 22(2) the commencement of the provisions of this Chapter can be delayed to allow the public administration first to develop the mechanisms, systems and habits which are necessary to ensure the achievement of the core requirements of administrative justice. Provision is also made for the exemption of certain administrators, rules or standards or types of rules and standards from provisions in this Chapter. The provision dealing with the automatic lapsing of rules and standards has been omitted in favour of a provision requiring the Council to investigate the feasibility of "sunsetting" (clause 15(d)).

31 The proposal for the establishment of a Central Drafting Office has been scrapped because the Department of Justice has suggested that the functions of the Office can better and more cheaply be performed by several specially appointed State Law Advisers. The new proposal envisages that the Chief State Law Adviser will control the activities of the State Law Advisers and provincial State Law Advisers in question (cf. the definition of "Chief State Law Adviser" in clause 1).

(2) The Council may by notice in the *Government Gazette*:–

(a) in exceptional circumstances, exempt an administrator, a rule or a group or class of rules from the application of this section, to the extent necessary; or

(b) in order to promote efficient administration, permit an administrator to vary the rules in subsection (1)*(b)*, in a manner specified in the notice,

provided that any such exemption must be compatible with the right of persons to access to all current rules.

Registers and indexes of rules and standards

13. (1) Subject to the Open Democracy Act:–[32]

(a) every administrator must:–

(i) compile and maintain an up-to-date register containing the text of all current rules and standards used by it;

(ii) compile and maintain an up-to-date and accessible index of all current rules and standards used by it, including a concise description of their contents and the particulars of the places and times at which the rules and standards or further information regarding them can be inspected and copied;

(iii) make available all rules and standards used by it for inspection and copying at all reasonable times by any member of the public at his or her own expense; and

(iv) annually forward to the Council copies of that register and index; and

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32 It has been suggested that the interaction between this clause and clause 6 of the Open Democracy Bill should be assessed.

(b) the Council must:–[33]

(i) compile and maintain an up-to-date national register containing the text of all current rules and standards used by organs of state;

(ii) compile and maintain an up-to-date and accessible national index of all current rules and standards used by organs of state, including a concise description of their contents and the particulars of the places and times at which the rules and standards or further information regarding them can be inspected and copied;

(iii) publish that national index:–

(aa) weekly on the Internet; and

(bb) annually in the *Government Gazette*; and

(iv) itself make available all current rules and standards for inspection and copying at all reasonable times by any member of the public at his or her own expense.

(2) The Council may by notice in the *Government Gazette*:–

(a) in exceptional circumstances, exempt an administrator, a rule or a group or class of rules from the application of this section, to the extent necessary; or

(b) in order to promote efficient administration, permit an administrator to vary the requirements in subsection (1)*(a)*, in a manner specified in the notice,

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33 It has been suggested that this provision should not be enacted unless (and until) the amount of work and money required to prepare and publish the national register and national index has been assessed. Clause 22(2) allows for a delay in the commencement of this provision.

provided that any such exemption or permission must be compatible with the right of persons to access to all current rules and standards.[34]

CHAPTER 6: ADMINISTRATIVE REVIEW COUNCIL[35]

Establishment of Council[36]

14. (1) There is hereby established an Administrative Review Council consisting of:–

(a) a Chairperson nominated by the Chief Justice;

(b) the Director-General: Justice or a Deputy Director-General in the Department of the Justice nominated by the Director-General;

(c) the Director-General: Public Service and Administration or a Deputy Director-General in the Department of Public Service and Administration nominated by the Director-General;

(d) a member of the Public Service Commission;[37]

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34 Sections 101(3), 140(3) and 195(1)(g) of the Constitution suggest that a proviso of this nature is required.

35 The Department of Justice has indicated that there will probably be insufficient funds to establish the Council (it now estimates the cost to be about R980 000 per annum), and has questioned the need for a separate organization with its own budget and staff. It has been suggested that consideration be given to the establishment of a unit within the SALC (or Human Rights Commission) to perform the functions of the Council, and that donor funding be sought for the expenditure associated with establishing the unit and its initially heavy workload (cf. clause 15). Although the SALC will investigate the feasibility of the Department's proposal (which would require an amendment to the SALC's founding Act), it considers the Council/unit as one of the keys to harmonizing the constitutional requirements of administrative justice and efficient administration and, hence, to the success of the Bill. If this capacity is not created, the Bill cannot work.

36 Some respondents have suggested that qualifications for appointment be specified. Others have asked for nominations by members of the public. Yet others have suggested that members be appointed to represent specific interest groups (e.g. local authorities).

37 The Public Service Commission has been included in view of the possible overlap between certain of the functions of the Council and those of the Commission.

(e) the Public Protector or a senior member of the staff of the Public Protector nominated by him or her; and

(f) not fewer than four nor more than eight other suitably qualified persons appointed by the President in consultation with the Chief Justice and after consultation with the National Council of Provinces.

(2) The members of the Council:–

(a) hold office for the period, not exceeding three years, specified in their instruments of nomination or appointment; and

(b) may be re-appointed.

(3) The President may, on the grounds of misconduct, incapacity or incompetence, remove from office:

(a) the Chairperson, in consultation with the Chief Justice; and

(b) the members of the Council appointed in terms of subsection (1)*(f)*, in consultation with the Chairperson.[38]

Functions of the Council

15. In addition to the functions conferred on the Council by this Act or any other law, the Council must:–

(a) inquire into the law and practice relating to:-

(i) internal complaints procedures;

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38 Persons who are ex officio members of the Council in terms of clause 14(1)(b), (c), (d) and (e) remain members for as long as they hold the relevant office. Nominee members may be substituted by the person who nominated them.

(ii) internal administrative appeals; and

(iii) the review by courts of administrative action,

and make its first recommendations to the Minister of Justice within two years after the date of the commencement of this Act as to any improvements that might be made, and for this purpose every organ of state must furnish the Council with details of its internal complaints procedures and internal administrative appeals within 180 days after the date of commencement of this Act;

(b) inquire into the law, rules and standards for administrative action by organs of state and:-

(i) formulate and publish in the *Government Gazette* within two years after the date of commencement of this Act a code of good administrative conduct, including a statement of executing authorities' fiduciary obligations, which is binding on all administrators;[39] and

(ii) make recommendations to the Minister of Justice, the Minister of Public Service and Administration and the relevant executing authorities as to any other improvements aimed at ensuring that administrative action conforms to the rights to administrative justice in section 33 of the Constitution and the other provisions in the Bill of Rights and the basic values and principles governing public administration in section 195(1) of the Constitution;[40]

(c) inquire into the appropriateness[41] of establishing:–

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39 Non-compliance with the code of conduct is a ground of review: see the definition of "law" in clause 7(2)(b) of the Bill.

40 These functions of the Council support the powers of the Public Service Commission set out in section 196(4) of the Constitution.

41 This inquiry will be guided by a number of competing considerations, including potential overlaps or interactions with the state institutions supporting constitutional democracy established by Chapter 9 of the Constitution.

(i) independent and impartial tribunals, in addition to the courts, to review administrative action; and

(ii) specialised administrative tribunals, including a tribunal with general jurisdiction over all organs of state or a number of organs of state, to hear and determine appeals against administrative action,

and make its first recommendations to the Minister of Justice within two years after the date of the commencement of this Act;

(d) inquire into the appropriateness of:–

(i) requiring administrators from time to time to consider the continuance of standards administered by them; and

(ii) prescribing measures for the automatic lapsing of rules and standards,

and make its first recommendations to the Minister of Justice within three years after the date of the commencement of this Act; and

(e) initiate, conduct and co-ordinate programmes for educating the public at large and the members and employees of administrators regarding the contents of this Act and the provisions of the Constitution relevant to administrative action.[42]

Meetings

16. (1) The Council must hold such meetings as are necessary for the performance of its functions, but must meet at least once every three months.

(2) The Chairperson or, in his or her absence, a member of the Council elected by the members present, must preside at a meeting of the Council.

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42 The aim of this provision is to make administrative law accessible.

(3) The Council meets at the times and places determined by itself. However, the first meeting of the Council must be held at a time and place determined by the Minister of Justice.

(4) The Chairperson may at any time convene a special meeting of the Council, and he or she must determine the time and place of the meeting.

(5) The quorum for a meeting of the Council is the majority of its members.

(6) A decision of the Council must be taken by resolution of the majority of the members present at any meeting of the Council, and, in the event of an equality of votes, the person presiding has a casting vote in addition to his or her deliberative vote.

(7) Subject to the approval of the person presiding, any person may attend or take part, but may not vote, in a meeting of the Council.

(8) When the Council is in session, a member may not take part in the discussion of, or may not participate in the making of a decision on, any matter in which he or she directly or indirectly has a material interest, unless he or she first declares the nature, extent and particulars of that interest: Provided that the Council may require that any member who declares that he or she has such an interest recuse himself or herself from its proceedings regarding such matter.

(9) A decision taken by the Council at a time when any member of the Board contravened the provisions of subsection (8), will not be invalid if the decision was taken by a majority of the members of the Council.

(10) Any member of the Council who contravenes the provisions of subsection (8) will be guilty of an offence and on conviction liable to a fine or imprisonment for a period not exceeding 12 months.

(11) The minutes of meetings of the Council and any committees appointed in terms of section 17 must be signed by the person who chairs the next meeting.

Committees

17. (1) The Council may appoint one or more committees which may, subject to the instructions of the Council, perform those functions of the Council which the Council may determine.

(2) A committee may consist of both members and non-members of the Council, but at least one member of the Council must serve on each committee.

(3) The Council may at any time dissolve or reconstitute a committee.

(4) If a committee consists of more than one member, the Council must designate a chairperson of the committee.

(5) The Council is not absolved from the performance of any function entrusted to any committee in terms of this section.

Staff

18. The administrative staff required for the proper performance of the Council's functions must be appointed or employed subject to the laws governing the public service.

Engagement of persons to perform services in specific cases

19. (1) The Council may, in consultation with the Director-General: Justice, on behalf of the State engage, under agreements in writing, persons having suitable qualifications and experience to perform services in specific cases.

(2) The terms and conditions of service of a person engaged by the Council under subsection (1) are as determined from time to time by the Minister of Justice in consultation with the Minister of Finance.

Expenditure by Council

20. (1) The expenses incurred in connection with:–

(a) the performance of the functions of the Council;

(b) the remuneration and other conditions of service of members of the staff of the Council; and

(c) the engagement of persons to perform services in specific cases,

must be defrayed out of monies appropriated by Parliament for that purpose.

(2) The Department of Justice must, in consultation with the Chairperson, prepare the necessary estimate of revenue and expenditure of the Council.

(3) Subject to the Public Finance Management Act, 1999 (Act 1 of 1999), the Director-General: Justice:–

(a) is charged with the responsibility of accounting for State monies received or paid out for or on account of the Council; and

(b) must cause the necessary accounting and other related records to be kept.

(4) The records referred to in subsection (3)*(b)* must be audited by the Auditor-General.

Reporting

21. (1) The Council must annually, not later than the first day of March, submit to the Minister of Justice a report on its activities during the previous year.

(2) The report referred to in subsection (1) must be laid upon the Table in Parliament within 14 days after it was submitted to the Minister, if Parliament is then in session, or if Parliament is not then in session, within 14 days of the commencement of the next ensuing session.

CHAPTER 7: GENERAL

Short title and commencement

22. (1) This Act is called the Administrative Justice Act, 1999, and comes into force as soon as possible on a date determined by the President by proclamation.

(2) The President may set later dates for the commencement of sections 11, 12 and 13 of this Act.[43]

43 These provisions may commence later than the rest of the Act if this is necessary to allow organs of state to do the required preparation and to apply for exemptions, etc.

ANNEXURE B

MEDIA ADVERTISEMENTS FOR PUBLIC PARTICIPATION

A. THE FOLLOWING ADVERTISEMENT WAS PUBLISHED IN THE SUNDAY TIMES ON 7 FEBRUARY 1999 AND IN THE EP HERALD ON 12 FEBRUARY 1999

PUBLICATION OF DISCUSSION PAPER 81
ON ADMINISTRATIVE JUSTICE
AND REGIONAL WORKSHOPS

The SA Law Commission announces that its Working Committee has approved the publication of Discussion Paper 81 for general information and comment. The Discussion Paper originates from the Commission's urgent investigation into administrative law, the aim of which is to give effect to the provisions of section 33 of the Constitution of 1996, by adopting a National Administrative Justice Act before 4 February 2000.

The Commission invites comments from all interested parties who have an interest in this investigation. Discussion Paper 81 (which includes a draft Bill) is available at the Commission's Web site at:

http://www.law.wits.ac.za/salc/discussn/discussn.html

Copies of the Discussion Paper may also be obtained from the Commission.

The closing date for comment on the Discussion Paper is 31 March 1999.

The Commission also announces that it will be conducting a number of **regional workshops.** These are to inform interested parties on the recommendations and the draft Bill contained in the Discussion Paper and to facilitate discussion on these recommendations and proposed provisions.

The Commission therefore extends an invitation to all individuals, organisations and institutions who have an interest in the topic to indicate whether they wish to participate in this debate by attending these regional workshops which will be presented in the period **31 May 1999 to 4 June 1999** in Pretoria (31 May), Durban (2 June) and Cape Town (4 June 1999). If there is sufficient interest, an additional workshop will be hosted in the Eastern Cape on 3 June 1999.
Individuals, organisations and institutions who wish to attend these workshops are requested to contact the Commission on or before 8 March 1999.

Comments on the Discussion Paper and correspondence should be addressed to: The Secretary, South African Law Commission, Private Bag X 668, PRETORIA, 0001

You are welcome to contact Mr Pierre van Wyk (SALC) or Mr Rainer Pfaff (GTZ), both on (012) 322 6440, fax: (012) 320 0936; or e-mail: pvwyk@salawcom.org.za or pfaff@salawcom.org.za

B. ANNOUNCEMENT ON THE COMMISSION'S WEB PAGE[44]

Timetable for regional workshops

The SA Law Commission announced in February 1999 that its Working Committee had approved the publication of Discussion Paper 81 for general information and comment. It was explained at the time

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44 http://www.law.wits.ac.za/salc/discussn/dpadminworkshops.html

that the Discussion Paper originates from the Commission's urgent investigation into administrative law, the aim of which is to give effect to the provisions of section 33 of the Constitution of 1996, by adopting a National Administrative Justice Act before 4 February 2000. It was also announced that the Commission will be conducting a number of regional workshops.

These workshops are to inform interested parties on the recommendations and the draft Bill contained in the Discussion Paper and to facilitate discussion on these recommendations and proposed provisions.

The Commission extended an invitation to all individuals, organisations and institutions who have an interest in the topic to indicate whether they wish to participate in this debate by attending these regional workshops. The dates and venues announced at the time were as follows: 31 May 1999 (Pretoria), 2 June 1999 (Durban), 3 June (Eastern Cape) and 4 June 1999 (Cape Town).

The project committee on administrative justice decided to change its workshop timetable in view of the elections overlapping with the week of the planned workshops.

The new dates and the venues for the workshops are as follows:

8 June 1999, in Pretoria at the Commission's offices in the Sanlam Center, on the corners of Schoeman, Andries and Pretorius Streets, on the 12 th floor;

9 June 1999, in Durban at the Garden Court Holiday Inn, 167 Marine Parade;

10 June 1999, in East London at the Regent Hotel, 22 Esplanade, Beachfront;

11 June 1999, in Cape Town at the Movenpick Arthur's Seat Hotel, Sea Point.

Individuals, organisations and institutions who wish to attend these workshops are requested to contact Pierre van Wyk on tel: (012) 322 6440; fax: (012) 320 0936 or (012) 322 7559; or e-mail: pvwyk@salawcom.org.za on or before 12 May 1999.

ANNEXURE C

LIST OF BODIES OR PERSONS SPECIFICALLY INVITED TO ATTEND THE REGIONAL WORKSHOPS

A. PRETORIA

1. Mr WR Jardine: Director-General: Department of Arts, Culture, Science and Technology;
2. Mrs B Njobe-Mbuli: Director-General: Department of Agriculture;
3. Mr AA Ngcaba: Director-General: Department of Communications;
4. Mr Z Titus: Director-General: Department of Constitutional Development;
5. Dr NC Manganyi: Director-general: Department of Education;
6. Ms M Ramos: Director-General: Department of Finance;
7. Ms JS Selebi: Director-General: Department of Foreign Affairs;
8. Dr Ayanda Ntsaluba: Director-General: Department of Health;
9. Ms M Nxumalo-Nhlapo: Director-General: Department of Housing;
10. Mr AS Mokoena: Director-General: Department of Home Affairs;
11. Mr V Pikoli: Acting Director-General: Department of Justice;
12. Mr Sipho M Pityana: Director-General: Department of Labour;
13. Mr G Budlender: Director-General: Department of Land Affairs;
14. Dr Sizakele W Sigxashe: Director-General: National Intelligence Agency;
15. Adv Sandile Nogxina: Director-General: Department of Mineral and Energy Affairs;
16. Mr MP Ncholo: Director-General: Public Service and Administration;
17. Ms Angela Bester: Director-General: Office of the Public Service Commission;
18. Prof Jakes Gerwel: Director-General: Office of the President;
19. Commissioner JG Fivaz: National Commissioner: SA Police Service;
20. Mr SK Shezi: Director-General: Department of Public Works;
21. Mr M Tyamzashe: Director-General: Department of Sport and Recreation;
22. Lieutenant-general Siphiwe Nyanda: Chief SA National Defence Force;
23. Lt-general R Otto: Chief of the SA Army;
24. Vice-admiral RC Simpson-Anderson: Chief of the SA Navy;
25. Lt-general W Hechter: Chief of the SA Airforce;
26. Lt-general DT Masuku: Surgeon General;
27. Mr S Baqwa: Public Protector;
28. Mr B Ngcuka: National Director of Public Prosecutions;
29. Mr AP de Vries: Director of Public Prosecutions Johannesburg;
30. Dr JA van S d'Oliveira: Deputy National Director of Public Prosecutions;
31. Dr Silas Ramaite: Office of the Director of Public Prosecutions: Pretoria;
32. Mr HW Moldenhauer: Chief Magistrate: Pretoria;
33. Mrs S van der Walt: Chief Magistrate: Pretoria North;
34. Mr Charles Pillay: Legal Resources Centre: Johannesburg;
35. Mr Hawthorn: Legal Resources Centre: Johannesburg;
36. Mr Bongani Majola: Legal Resources Centre: Johannesburg;

37. Dr ZZR Rastomjee: Department of Trade and Industry;
38. Mr G Boshoff: Department of Sport and Recreation;
39. Mr A Tredoux: Department of Home Affairs;
40. Mr CE Kritzinger: Department of Home Affairs;
41. Mr S Ramasala: Department of Health;
42. Mr Selby Nyathi: Head: Legal section: Department of Mineral and Energy Affairs;
43. Mr U Bunsee: Department of Labour;
44. Mr H Rademeyer: Department of Agriculture;
45. Dr F Hanekom: Department of Environmental Affairs and Tourism;
46. Mr PKM Retief: Department of Environmental Affairs and Tourism;
47. Mr TMJ Maseko: Superintendent-General: Education;
48. Ms ME Metcalfe: MEC Education: Gauteng;
49. Ms SJ Lapping: Department of Education;
50. Ms L Abrahams: Department of Welfare;
51. Mr Billy Lesedi Masethla: SA Secret Service;
52. Mr C Gassiep: Department of State Expenditure;
53. Ms AM Lukhaimane;
54. Dr MS Motshega: Gauteng Legislature;
55. Mr Greg Alley: Education Gauteng: Legal Services;
56. Prof Stan Sanweni: Chairperson Public Service Commission;
57. Mr JS Vilakazi, Commissioner: Public Service Commission;
58. Ms OR Ramsingh, Acting Deputy Director-General: Public Service Commission;
59. Ms Annele Kruger : Public Service Commission:
60. Khosi Sibeko: Regional Director: Black Sash;
61. The Director: Transvaal Law Society;
62. Mr Justice Landman: Labour Court;
63. Ms Nalini Bagrath: Human Rights Commission;
64. Mr Jerry Nkeli: Commissioner: Human Rights Commission;
65. Mr Jody Collapen: Commissioner: Human Rights Commission;
66. Mr R Kitshoff: Department of Public Service and Administration;
67. Mr SWM Bapela: Department of Public Service and Administration;
68. Ms TD Lenzie: Legal Administration Officer: Defence Secretariat;
69. Adv LN Mtshali: Defence Secretariat;
70. Mr Ajay Makka: Legal Resources Centre;
71. Mr Gift Buthelezi: Department of State Expenditure;
72. Ms Sybilla Hilzinger-Maas: Department of Education: Johannesburg;
73. Mr Thomas Böhnke: Friedrich-Naumann Foundation;
74. Councillor: R Ramathebane: Gauteng Association for Local Authorities;
75. Councillor Des Dussip: Gauteng Association for Local Authorities;
76. Councillor: R Chiya: Gauteng Association for Local Authorities;
77. Councillor: Prof P van Niekerk: Gauteng Association for Local Authorities;
78. Ms M Coetzer: Gauteng Association for Local Authorities;
79. Mr H Nel: Gauteng Association for Local Authorities;

80. Mr G Erasmus: Gauteng Association for Local Authorities
81. Mr J van der Merwe: Gauteng Association for Local Authorities
82. Ms Marie-Lou Roux: Habit Board;
83. Mr Jake Maseka: President, the Law Society of Bophuthatswana;
84. Mr M Mokgale: the Law Society of Bophuthatswana;
85. Mr TP Moloto: the Law Society of Bophuthatswana;
86. Mrs Jamela Monica Mabuza: National Dep of Sport & Recreation;
87. Adv Mannya: Gauteng Provincial Government;
88. Adv Rammutla: Gauteng Provincial Government;
89. Mr Sithole: Gauteng Provincial Government;
90. Ms A Smit: Gauteng Provincial Government;
91. Mr H Groenewald: Department of Health;
92. Adv Louis Kok: SAPS: Constitutional Litigation and Comparative Law;
93. Adv Gert Joubert: SAPS: Constitutional Litigation and Comparative Law;
94. Assistant Commissioner: Victor Nolutshungu: SAPS: Constitutional Litigation and Comparative Law;
95. Mr MC Weldhagen: SA Police Services: Legal services Gauteng;
96. Mr W Hanekom: National Intelligence Agency;
97. Dr Marius Ackermann: National Intelligence Agency;
98. Mrs Alberts: National Intelligence Agency;;
99. Mr Arno Botha: SA Law Society;
100. Col H Luüs: Office of the Adjutant General;
101. Major Pieter Brits: Office of the Surgeon General;
102. Ms Jane O'Connor: Public Accountants' & Auditors' Board;
103. Mr B Groenewald: City Council of Potchefstroom;
104. Adv A Becker: Investigating Directorate: Serious Economic Offences;
105. Mrs S Camerer: Member of Parliament;
106. Mr P van Vuuren: SAPS: Office of the National Disciplinary Officer;
107. Mr A Beukes: SAPS: Office of the National Disciplinary Officer;
108. G Mgidlana: Director, Parliamentary Operations: Gauteng Legislature;
109. Ms N Cawe: Director, Parliamentary Operations: Gauteng Legislature;
110. Mr N Sello: Advisor: Gauteng Legislature;
111. Mr T Nage: Gauteng Legislature;
112. Ms L Govender: Gauteng Legislature;
113. Mr J Moloi: State Attorney: Pretoria;
114. Mr M Tshongweni: Department of Communications;
115. Mr CX Paxton: Department of Correctional Services;
116. Mr A Lessing: Department of Correctional Services;:
117. K Pillay: State Attorney: Johannesburg;
118. Mr Colin Brocker: Department of Land Affairs;
119. Adv Beukes: Department of Arts, Culture, Science & Technology;
120. Mr J Viljoen: Department of Arts, Culture, Science & Technology;
121. Dr CR Botha: Rooth & Wessels Inc;

122. Mr Pierre Retief: Department of Environmental Affairs & Tourism;
123. Ms M Rangatta: Department of Labour;
124. Adv KR Malatji: Department of Home Affairs;
125. Mr MS Maboa: Magistrate: Pretoria North;
126. Mr Ailwei Mulaudzi: Department of Public Works;
127. Adv HP Rademeyer: Department of Agriculture;
128. Mr HMS Msimang: The Law Society of the Transvaal;
129. Mr J Meyer: SAPS Legal Services: Johannesburg;
130. Mr T van Tonder: SAPS Legal Services: Johannesburg;
131. Mr R Mulder: SAPS Legal Services: Johannesburg;
132. Mr E van der Walt: SAPS Legal Services: Johannesburg;
133. Mr J Barnard: SASS Legal Section;
134. Mr J Klaaren: University of the Witwatersrand;
135. Mr R Sutherland: Chairperson: Johannesburg Bar Council;
136. Mr Peter Leon: Webber Wentzel Bowens;
137. Mr Carveth Geach: Webber Wentzel Bowens;
138. Mr Anthony Gotz: Webber Wentzel Bowens;
139. Ms Christeleen van der Walt: Webber Wentzel Bowens;
140. Ms Sharyn Zall: Webber Wentzel Bowens;
141. Mr Matthew Marwick: Webber Wentzel Bowens;
142. Lalashe Lundell: Legal Resources Centre;
143. Kamesh Pillay: Legal Resources Centre;
144. Patrick Pringle: Legal Resources Centre;
145. Mr R Thatcher: Department of Housing;
146. Des Ketani: Department of Finance;
147. Dr PJ Bouwer: Department of Constitutional Development;
148. Mr RK Sizani: Department of Constitutional Development;
149. Mr JB Skosana: Department of Constitutional Development;
150. Adv E Boshoff: Department of Education;
151. Mr J Nkuna: Department of Education;
152. Adv K Mathipa: Department of Water Affairs and Forestry;
153. Adv Albert Hoffman: Department of Foreign Affairs;
154. Mr C Schoeman: Technicon RSA;
155. Ms Liesl Gerntholtz: Gender Commission;
156. Adv Leon Bekker: Pretoria Bar;
157. Prof I Vorster: Dean: Faculty of Law: University of Potchefstroom;
158. Prof L Olivier: Acting Dean: Faculty of Law: Rand Afrikaans University;
159. Prof J Neethling: Dean: Faculty of Law: University of South Africa;
160. Prof DH van Wyk: Department of Public Law: University of South Africa;
161. Prof EJ van der Westhuizen: University of South Africa;
162. Prof Valiant Clapper: University of South Africa;
163. Prof DG Kleyn: Dean: Faculty of Law: University of Pretoria;
164. Dr DJ Fourie: University of Pretoria;

165. Mr Deon König: University of Pretoria;
166. Prof NL Roux: University of Pretoria;
167. Prof S Vil-Nkomo: University of Pretoria;
168. Prof PA Brynard: University of Pretoria;
169. Prof Y Burns: University of South Africa;
170. Prof E Bray: University of South Africa;
171. Mrs Southwood: University of South Africa;
172. Prof Gretchen Carpenter: University of South Africa;
173. Ms J Wessels: Justice College;
174. Ms K McKenzie: Justice College;
175. Ms O Geldenhuys: Justice College;
176. Mr A Burger: Justice College;
177. Mr T Rudolph: Justice College;
178. Mr P Rammuki: Justice College;
179. Witness Ndou: Justice College;
180. Mr Maarten Schoeman: Justice College;
181. Ms M Malete: Justice College;
182. Mr Harry van Nieuwenhuizen: Sheriff Witbank;
183. Mr Frans Palm: Municipality Edenvale;
184. Mr Dikoko: South African Local Government Association;
185. Mr Mandla Maseko: Council for Conciliation Mediation and Arbitration;
186. Mr Anton de Klerk: Afrikaans Chamber of Commerce;
187. Mr Salie de Swardt: Afrikaans Chamber of Commerce;
188. Mr Leon Porter: Afrikaans Chamber of Commerce;
189. Ms Glynn Mohlabi: Law Clinic: Lawyers for Human Rights: Pietersburg;
190. Mrs Nyathi: Department of Minerals & Energy Affairs;
191. Mr C Brand: Edward Nathan & Friedland Inc, Attorneys;
192. Ms Lisa Thornton: Edward Nathan & Friedland Inc, Attorneys;
193. Mr Hardley Dikgale: South African Telecommunications Regulatory Authority;
194. Mr N Diko: South African Telecommunications Regulatory Authority;
195. Ms T Cohen: ISPA;
196. Ms F Rawat: Gauteng Provincial Government: Labour Relations;
197. Ms Kate Farina: SASOL;
198. Mr Carlo Germeshuys;
199. Mr Johann Labuschagne: Department of Justice: Cape Town;
200. Mr Lawrence Bassett: Department of Justice.

B. DURBAN

201. Mr M Ndaba: Department of Correctional Services;
202. Mr Zama Mbhele: Department of Correctional Services;
203. Mr VSV Ntshangase: Magistrate Pietermaritzburg;
204. Mr SF van Niekerk: Magistrate: Pietermaritzburg;

205. Mr MNP Mtshali: Magistrate Pietermaritzburg;
206. Mrs JH Bothma: Magistrate Pietermaritzburg;
207. Mr MI Mkhize: Chief Magistrate Durban;
208. Mr B Williams: Magistrate: Durban;
209. The Durban Metropolitan Council;
210. Mr JM Paley: Durban Metro: Legal Services;
211. Dr MAM Jarvis: Acting Permanent Secretary: Education and Culture;
212. Mr Mike Lotter: Legal Officer: Department of Education;
213. Mr AE Stevens: Legal Officer: Department of Education
214. Mr KCD Harie: KwaZulu Natal Local Government Association;
215. Dr VT Zulu: MEC Education;
216. Mr R Raubenheimer: Department of Traditional and Environmental Affairs;
217. Mr J von Klemperer: Chairperson: Natal Law Society;
218. Mr JA Ploos van Amstel: Chairperson: Society of Advocates of Natal;
219. Mr Delport: Regional Director: Department of Home Affairs;
220. Mr Lombaard: Regional Director: Department of Public Works;
221. Mr C Coetzee: Nature Conservation;
222. Mr G Modali: Social Welfare and Population Development;
223. Mr Harris: Social Welfare and Population Development;
224. Mr De Fortier: Department of Labour;
225. Mr Agenbag: Regional Director: South African Revenue Service;
226. Mr DS McAllister: South African Revenue Service;
227. Mr Wayne Broughton: South African Revenue Service;
228. Sagree Chetty: South African Revenue Service;
229. Mr MH Marais: South African Revenue Service;
230. Lt Rothman: SA Defence Force Natal Command;
231. The Commanding Officer: Navy: Durban;
232. Director: FE Terblanche: SA Police Service: Legal Services;
233. Mr MFM Winkelman: SA Police Service;
234. Mr TP Reed: SA Police Service;
235. Mr B Gumede: Street Law Programme;
236. Ms Munira Osman: Campus Law Clinic;
237. Mr Bethuel Ngwenya: Campus Law Clinic;
238. Mr Mdhladhla: Legal Resources Centre: Durban;
239. Mr A Meiscke-Elliott: Legal Link;
240. Mr R Manjoo: KZN Network;
241. Prof M Cowling: University of Natal: Legal Advice Centre;
242. Prof Mowatt: Dean, Faculty of Law: University of Durban-Westville;
243. Mr Karthy Govender: University of Durban-Westville;
244. Prof JBK Kaburise: Department of Public Law: University of Durban-Westville;
245. Mr M Reddi: Department of Public Law: University of Durban-Westville;
246. Mr S Pather: Department of Public Law: University of Durban-Westville;
247. Prof FN Zaal: Department of Private Law: University of Durban-Westville;

248. Prof V Jaichand: Department of Private Law: University of Durban-Westville;
249. Prof S Nadesen: Department of Public Law: University of Durban-Westville;
250. Prof M Wallis: Department of Public Administration: University of Durban-Westville;
251. Mr Warren Freedman: University of Natal: Pietermaritzburg;
252. Mr Michael Kidd: University of Natal: Pietermaritzburg;
253. Robin Pennefather: University of Natal; Pietermaritzburg;
254. Prof PJ Schwikkard: University of Natal: Pietermaritzburg;
255. Prof J Burchell: University of Natal: Pietermaritzburg;
256. Ms Brenda Grant: University of Natal: Pietermaritzburg;
257. Ms Sara Horner: University of Natal;
258. Prof I Gering: Department of Public Law: University of Durban-Westville;
259. Adv Ann Strode: Lawyers for Human rights: Pietermaritzburg;
260. Adv Ann Skelton: Lawyers for Human rights: Pietermaritzburg;
261. Mr Zacks Mbele: Black Sash: Durban
262. Ms Ashnie Padareth: Black Sash: Pietermaritzburg;
263. Mrs Marie-Therese Naidoo: Black Sash: Durban;
264. Mr Krish Govender: State Attorney: Durban
265. Mr M I Mkhize: Magistrate Durban;
266. Adv V Soni: Society of Advocates of Natal;
267. Adv M Govindasamy: Society of Advocates of Natal;
268. Capt R J Zanders: SA Maritime Safety Authority;
269. Mrs G L Labuschagne: SA Maritime Safety Authority;
270. Maj Michael Halley: Natal Command;
271. Maj Ivan Silson: Natal Command;
272. Capt Stuart Hardy: Natal Command;
273. Lt Cmdr Henny Smal: Natal Command;
274. Lt (San) Aniel Singh: Natal Command;
275. Mr Gert Roos: Department of Local Government and Housing;
276. Mr RJ Purshotam: Legal Resources Centre: Durban;
277. Mr Musa Mbonambi: Community Resource Centre Durban;
278. Prof S S Luthuli: University of Zululand;
279. Ms Love Joy Shezi: National Association for People With Aids (NAPWA);
280. Mr Sungelo Dlamini: NAPWA;
281. Ms Portia Joyce: NAPWA;
282. Ms Desiree Booysen: NAPWA;
283. Ms Virginia Storm;
284. Adv A Viljoen: Office of the Family Advocate;
285. Adv S Singh: Office of the Family Advocate;
286. Mr David Gush: Natal Law Society;
287. Patricia Strydom;
288. Mr N Haniff: ML Sultan Technicon;
289. Mr N Baldaw: Durban Chamber of Commerce and Industry;

290. Adv NC Gey van Pittius: Deputy Director of Public Prosecutions;
291. Ms NV Sigila: Office of the Director of Public Prosecutions KwaZulu Natal;
292. Mrs E van Zyl: Office of the Director of Public Prosecutions KwaZulu Natal;
293. Mr John Peacock: Attorneys Geyser, Liebetrau, Du Toit and Louw Incorporated;
294. Mr VS Budhai: Department of Home Affairs;
295. Dr Badell: Regional Director: Department of Health;
296. Mr C Gaze: Customs;
297. Mr WE Delport: Department of Home Affairs;
298. Ms Karen Stone: Human Rights Commission: Durban;
299. Ms Nelisiwe Nkabinde: Human Rights Commission: Durban;

C. EAST LONDON

300. Mr Anton Killian: SA Police Service;
301. Mr EW Booth: SA Police Service: Legal Services;
302. Adv PHS Zilwa: Society of Advocates of Transkei;
303. Mr JH Coetzee: Deputy State Attorney: Port Elizabeth;
304. Mr WC Breytenbach Senior Assistant State Attorney: PE;
305. Mr JW Eksteen: Eastern Cape Society of Advocates;
306. Adv JT Whitehead: Grahamstown;
307. Mr WJ Human: Senior Assistant State Attorney: Port Elizabeth;
308. Mr GM Nettleton: Attorney : Grahamstown;
309. Mr SG Poswa: Human Rights Commission Port Elizabeth;
310. Ms Veera Mpongoshe: Department of Welfare;
311. Ms W Badi: Welfare Bisho;
312. Mr MA Manikiwane: Welfare Bisho;
313. Ms Madyibi: Deputy Permanent Secretary of Welfare: Bisho;
314. Mr R Faltain: Service Office Social Services;
315. Mr T Nokele: Department of Health;
316. Dr Sibeko: Department of Health;
317. Judge WH Heath: Special Investigating Unit;
318. Adv GW Visagie: Special Investigating Unit;
319. Mrs S Koen: Department of Health;
320. Mrs V Mgudlwa: Department of Health;
321. Mr Mtimkulu: Department of Health;
322. Mr Monde Maqula: Department of Economic Affairs, Environment & Tourism;
323. Mr L Els: Department of Economic Affairs, Environment & Tourism;
324. Mr J de Bruyn: Department of Economic Affairs, Environment & Tourism;
325. Mr J Kapp: Department of Economic Affairs, Environment & Tourism;
326. Ms P Mzazi: Department of Economic Affairs, Environment & Tourism;
327. Mr N Scarr: Department of Economic Affairs, Environment & Tourism;
328. Mr L Myataza: Department of Home Affairs;
329. Mr Farouk Amod: Department of Finance and Provincial Expenditure;

330. Mrs SM Badenhorst: Department of Finance and Provincial Expenditure;
331. Prof JR Midgley: Dean: Faculty of Law: Rhodes University;
332. Prof C van Loggerenberg: Dean: Faculty of Law: University of Port Elizabeth;
333. Ms Marita Carnelly: Faculty of Law: University of Port Elizabeth;
334. Mr JC Coltmans: Attorney;
335. Ms Mcwabeni: Department of Correctional Services;
336. Ms Lee-Ann Scheepers: Department of Correctional Services;
337. EN Khumalo: Department of Education;
338. M Sanqu: Department of Education;
339. T Pityana: Department of Education;
340. T Poswa: Department of Education;
341. Mr M Ngcingwane: Magistrate Queenstown;
342. Mr P Makaula: Magistrate Ntabetemba;
343. Mrs Quma: Magistrate Whittlesea;
344. Mr Meyer: Magistrate Uitenhage;
345. Mr F Goosen: Magistrate King William's Town;
346. Mr WL Erasmus: Magistrate Peddie;
347. Mr TC Mabaso: Magistrate Zwelitsha;
348. Mr V Gqiba: Magistrate Mdantsane;
349. Mr SVZ Stander: Magistrate East London;
350. Mr MAP Mdalane: Magistrate East london;
351. Ms Botha: Magistrate Middleburg;
352. Mrs Meyburgh: Magistrate Cradock;
353. Mr Strauss: Magistrate Grahamstown;
354. Mr LV Makaba; Magistrate Port Elizabeth;
355. Mr J Mbude: Magistrate Port Elizabeth;
356. Ms Rosemary Smith: Black Sash;
357. Ms Debbie Mattheus: Black Sash;
358. Ms Zola Dabula: Black Sash;
359. Adv Les Roberts: Director of Public Prosecutions: Grahamstown;
360. Mr Mark Euijen: Legal Resources Centre;
361. Mr JC Robertson: Dean: Faculty of Law: University of Fort Hare;
362. Mr J Kirkland: Office of the State Law Advisers;
363. Mr M Mlisana: Office of the State Law Advisers;
364. Mr N Mngxaso: Office of the State Law Advisers;
365. Mr M Mavuso: Office of the State Law Advisers;
366. Ms Z Fanara: Office of the State Law Advisers;
367. Mr Joseph Lukwago-Mugerwa: Department of Economic Affairs, Environment & Tourism;
368. Mr A Bramdav: Department of Economic Affairs, Environment & Tourism;
369. Ms N Ngqangashe: Department of Economic Affairs, Environment & Tourism;
370. Mr ZM Gebeda: Department of Agriculture & Land Affairs;
371. Mr Nobatana: Department of Agriculture & Land Affairs;

372. Ms Mdledle: Department of Agriculture & Land Affairs;
373. Ms Malghas: Department of Agriculture & Land Affairs;
374. Mr M Mboya: Department of Public Works;
375. P Gqirana: Department of Public Works;
376. R Ncutshungu: Department of Public Works;
377. Mr Farouk Amod: Department of Finance and Prov Expenditure;
378. Mr JC Coltmans; Attorney Grahamstown;
379. Ms Sarah Sethon: Department of Land Affairs East London;
380. Eastern Cape Local Government Association;
381. Mr Hinxa: Regional office: Department of Justice;
382. Mr M Langenhoven: Regional Office: Department of Justice;
383. Attorney Bharat Hansjee; University of Fort Hare;
384. Mr Clive Plasket: Rhodes University;
385. Mr Francisco Khoza: Rhodes University;
386. Ms Annie Chimmusoro: University of Fort Hare;
387. Mr Bharat: University of Fort Hare;
388. Mr D Tabata: Attorney King William's Town;
389. Mr L Nazo; Mayor Est London;
390. Magistrate PR Rothman;
391. Lawyers for Human Rights: Umtata Office;
392. Ms Sonja Dippenaar: Eastern Cape Local Government Association;
393. Adv LJ Langeveld: Director Public Prosecutions: Bisho;
394. Ms Lulu Sizani: Office of the Speaker: Eastern Cape Provincial Legislature;
395. Mr MH Mdleleni: Office of the Speaker: Eastern Cape Provincial Legislature;

D. CAPE TOWN

396. Mr E Palmer: Parliament of the Republic of South Africa;
397. The Director-General: The Western Cape Province;
398. The MEC Education: Western Cape;
399. Mr FW Kahn: Director Public Prosecutions Cape of Good Hope;
400. Mr J van Reenen: Chief Magistrate: Wynberg;
401. The Cape Bar Council;
402. Mr JJ Olivier: Chief Magistrate Goodwood;
403. Mr AJ Jooste: Chief Magistrate: Cape Town;
404. Mr SJ Verwey: Magistrate Belville;
405. Lawyers for Human Rights: Stellenbosch Office;
406. Ms S Traut : Parliament of the Republic of South Africa:
407. Mr B O'Connell: Superintendent-General: Education: Western Cape Province;
408. Mr F Soltau: Department of Public Law: University of Cape Town;
409. Mr AP Stemmet: Board of Sheriffs: Cape Town;

410. Prof J Glazewski: Environmental Law Unit: University of Cape Town;
411. Mr Wouter van Warmelo: Ex-Executive Officer Habitat Board;
412. Mr Joseph Adrianse: SANCO;
413. Mr Gary Munayse: SACCAWU;
414. Mr Olusegun Abdulrasaq: Refugee Forum;
415. Ms Heidi Hendricks: Manenberg Peoples Centre;
416. Mawushe Narwele: New Women's Movement;
417. Andile Tembani : Disabled People of South Africa;
418. Jean Bakunduze : Refugee Forum;
419. Ms Charmain Govender: Women on Farms;
420. Mr John Brown : SAMWU;
421. Mr Simon Kimani : Refugee Committee;
422. Mr Rikky Minyuku: Nadel;
423. Mr Michael Blake: Nadel;
424. Mrs Louw : Department of Education;
425. Mr J de Lange : Chairperson: Justice Portfolio Committee;
426. Adv SP Holomisa: Member of Parliament;
427. Ms Fatima Chohan-Khota: Member of Parliament;
428. Mr NJ Mahlangu: Member of Parliament;
429. Mr L Landers: Member of Parliament;
430. Dr Corne Mulder: Member of Parliament;
431. Mr Douglas Gibson: Member of Parliament;
432. Mr MA Mzizi: Member of Parliament;
433. Mr Farouk Cassiem: Member of Parliament;
434. Mrs D Govender: Member of Parliament;
435. Dr FJ van Heerden: Member of Parliament;
436. Mr Willem L Fourie: Member of Parliament;
437. Mr Roelie Groenewald: Member of Parliament;
438. Mrs Sheila Camerer: Member of Parliament;
439. Mr Prince Madikizela: Member of Parliament;
440. Ms Priscilla Jana: Member of Parliament;
441. Mr Dirk Bakker: Member of Parliament;
442. Imam Gassan Solomon: Member of Parliament;
443. Ms L Ngwane: Member of Parliament;
444. Ms N Botha: Member of Parliament;
445. Mr BG Molewa: Member of Parliament;
446. Mr Andries Nel: Member of Parliament;
447. Mr Willie Hofmeyr: Member of Parliament;
448. Mr Louis Green: Member of Parliament;
449. Adv Ronel Berg;

450. Mr A Malan: Department of Correctional Services;
451. Mr A Bowah: Department of Correctional Services;
452. General Van Zyl: Commanding Officer: Western Cape Command;
453. Mr Willie Brits: Office of the Auditor-general;
454. Ms R Wentzel : Department of Labour;
455. Ms Carol Levendal : Department of Labour;
456. Ms Loretta Cox : Department of Labour;
457. Mr P Zwarts : Department of Water Affairs & Forestry;
458. Mr John MacRobert: Attorney;
459. Chennells Albertyn: De Villiers Attoneys;
460. Louis de Villiers: De Villiers Attoneys;
461. Ms Maretha Shroyer: De Villiers Attoneys;
462. Ms Karen Shippey: De Villiers Attoneys;
463. Mr Vincent Botto: Investigating Directorate: Serious Economic Offences;
464. Mr Tarental: Investigating Directorate: Serious Economic Offences;
465. Ms Susan Aird : The Law Society of the Good Hope;
466. Mr Stephen Koen : The Law Society of the Good Hope
467. Lieutenant Colonel JE Genis : Western Province Command:
468. Major N Ulrich : Western Province Command:
469. Mr H Smith : Legal Resources Centre: Cape Town;
470. Mr S Kahanovitz : Legal Resources Centre: Cape Town;
471. Mr Achmat Toefy : Legal Resources Centre: Cape Town;
472. Sibongile Ndashe : Legal Resources Centre: Cape Town;
473. Ashraf Mahomed : Legal Resources Centre: Cape Town;
474. Mr V Mtetwa : Department of Minerals & Energy;
475. Mrs Mary Burton: Trustee, Black Sash;
476. Ms Pumla Mncayi : Regional Director: Black Sash;
477. Ms Lauren Nott : Regional Director: Black Sash;
478. Ms Alison Tilley : Black Sash;
479. Ms Ingrid Hale : Black Sash;
480. Ms Patricia Martin: Black Sash;
481. Advocate L Bozalek;
482. Advocate LJ Krige;
483. Advocate J R Whitehead : Cape Bar Council;
484. Advocate RP Hoffman SC : Cape Bar Council;
485. Advocate AJ Musikanth: Member of Cape Bar & of the Arbitration Foundation of SA;
486. Mr H A J Swart, Senior Magistrate Cape Town;
487. Mr GA Oliver: Head of the Office of the Director-General: Western Cape Province;
488. Mr A Searle : Legal Administration Officer: PAWC;
489. Mrs G Smith : Legal Administration Officer :PAWC;

490. Advocate RJ Vincent : Senior State Law Advisor : PAWC;
491. Advocate C Mare: State Law Advisor :PAWC;
492. Mr R Henny, Magistrate Wynberg;
493. Mr C Joshua, Provincial Head : Community Safety;
494. Advocate E Pretorius, Chief Director: Community Safety;
495. Mr DG Steyn: Chief Director: Community Safety;
496. Mr CJ Pietersen: Director: Community Safety;
497. Advocate TD Potgieter;
498. Advocate P Volmink;
499. Mr Waddilove;
500. Ms Fatimah Essop: Attorney: Women's Legal Centre;
501. Mr M Foreman: City Council of Cape Town;
502. Ms Marigold Kokosky: City Council of Cape Town;
503. Ms Brenda Finnan: City Council of Cape Town;
504. Mr L Barchard: City Council of Cape Town;
505. Prof JSA Fourie: Dean: Faculty of Law: University of Stellenbosch;
506. Mr HJ de Waal: Faculty of Law: University of Stellenbosch;
507. Prof LM du Plessis: Faculty of Law: University of Stellenbosch;
508. Ms Bronwyn Marriot: Faculty of Law: University of Cape Town;
509. Mr Konraad Rademeyer: Faculty of Law: University of Cape Town;
510. Ms S Liebenberg: Community Law Centre: University of the Western Cape;
511. Ms Karrisha Pillay: Community Law Centre: University of the Western Cape;
512. Prof S Burman: Faculty of Law: University of Cape Town;
513. Advocate A Katz;
514. Mr J Redpath: Parliament Analyst: SA Institute of Race Relations;
515. Loretta Feris;
516. Dr J Kuye: Department of Political Studies: University of Cape Town;
517. Mr Gatian Lungu: University of the Western Cape;
518. Dr Chisepo Mphaisha: University of the Western Cape;
519. Mr Ivan Meyer: University of Stellenbosch;
520. Prof E Schwella: University of Stellenbosch;
521. Prof W Fox: University of Stellenbosch;
522. Prof APJ Burger: University of Stellenbosch;
523. Prof Darcy du Toit: Dean: Faculty of Law: University of the Western Cape;
524. Prof F Cloete: University of Stellenbosch;
525. Dr F Uys: University of Stellenbosch;
526. Mr A van Rooyen: University of Stellenbosch;
527. Mr I Davids: University of Stellenbosch;
528. Prof WJO Jeppe: University of Stellenbosch;
529. Mr J de Ville: University of the Western Cape;

530. Mr Orlando Hohls: University of the Western Cape;
531. Mr Nazeem Ismail: University of the Western Cape;
532. Prof I Fredericks: Department of Public Law: University of the Western Cape;
533. Mr A du Plessis: Afrikaans Chamber of Commerce;
534. Mr Jan-Louis Raath: Afrikaans Chamber of Commerce;
535. Mr Len Venter: Afrikaans Chamber of Commerce;
536. Mr Ken Warren: SA Chamber of Business;
537. Paula Proudlock: Human Rights Committee;
538. Mr D Tilton: SACC Public Policy:
539. Rev M Damon , Co-ordinator of the SACC Public Policy:
540. Mr G De Kock: Old Mutual;
541. Advocate B Downer: Office of the Director of Public Prosecutions: Cape of Good Hope;
542. Ms Victoria Mayer: Legislation Monitor: Human Rights Commission;
543. Ms Gaile Moosmann: Parliamentary Monitoring Group;
544. Ms Jill Claassen: Parliamentary Monitoring Group;
545. Mr R Ramathibane: SA Local Government Association;
546. Ms G Klopp: J Kotze's Attorneys:
547. Mr Wilken: State Attorney;
548. Mr FC Els: State Attorney;
549. Mr NR Kaschula: Department of Education;
550. Mr CJ Fourie: Western Cape Department of Education;
551. Mr GJ Elliot: Western Cape Department of Education;
552. Ms Desiree Le Roux: Manager: Procedural Services: National Council of Provinces;
553. Dr CP du Plessis: Western Cape Local Government Association;
554. Dr Mayekiso: Director: Environmental Affairs and Tourism;
555. Ms Mgxashe: Regional Director: Home Affairs;
556. Mr Aldridge: Regional Director: Trade and Industry.

ANNEXURE D

LIST OF RESPONDENTS WHO RESPONDED IN WRITING

1. Mr RE Laue, Magistrate Durban;
2. Mr PKM Retief: Department of Environmental Affairs and Tourism;
3. Mr JM Paley: Durban Metro: Legal Services Department;
4. Mr BC Harker;
5. Mr Andrew Henderson: Attorney, High Court of South Africa;
6. Ms Hazel Bowen: National President: South African Association of Women Graduates;
7. Prof TW Bennett: Head of the Department of Public Law: University of Cape Town;
8. Advocate Seth Abrahams;

9. National Department of Sport and Recreation;
10. Judge Roger Errera, Conseil D'Etat, France;
11. Mr Justice Landman, Labour Court, Johannesburg;
12. Mr Philip Harrison, Director of Research, Australian Administrative Review Council;
13. Mr Rainer Pfaff: German Technical Cooperation (GTZ) *Deutsche Gesellschaft für Technische Zusammenarbeit GmbH*;
14. Prof Dr J Schwarze: Institute for Public Law, Albert Ludwigs University, Freiburg, Germany;
15. Prof Dr J Frohwein: University of Heidelberg, Germany;
16. Mr LR Norval: The South African Institute of Chartered Accountants;
17. Prof XJ Philippe: University of Aix-Marseilles, seconded to the University of the Western Cape;
18. Mr PJ Birkinshaw;
19. Ms Patricia Martin: Black Sash Trust: National Office;
20. Prof Stan Sangweni: Public Service Commission;
21. M Bham: Northern Province Legal Services;
22. Mrs E Raubenheimer: Technicon SA;
23. Ms PJ O'Connor: Public Accountants' and Auditors' Board;
24. Mr Ailwei Mulaudzi: Department of Public Works;
25. Mr Paul Gray: The Cape Environmental Trust;
26. Ms Marie-Lou Roux: Habitat Council;
27. Mr G Roos: Province of KwaZulu-Natal: Department of Local Government and Housing;
28. Ms Victoria Mayer: South African Human Rights Commission;
29. Mr CH Paxton: Department of Correctional Services;
30. Mr M Rangata: Department of Labour;
31. Mr RE Robertson; Dean: Faculty of Law: University of Fort Hare;
32. Mrs L Garlipp: Department of Water Affairs & Forestry;
33. Mr J Klaaren: Faculty of Law and Centre for Applied Legal Studies: University of the Witwatersrand;
34. Ute Klamert: GTZ: Provincial Administration Programme;
35. Ms Sandra Liebenberg: Community Law Centre University of the Western Cape;
36. Judge WH Heath: Heath Special Investigating Unit;
37. Advocate Gilbert Marcus SC: Society of Advocates of SA: Johannesburg Bar Council;
38. Advocate C Maré, State Law Advisor, Western Cape Provincial Administration;
39. Afrikaanse Handelsinstituut (Afrikaans Chamber of Commerce);
40. Prof Dawid van Wyk: Department of Public Law: University of South Africa;
41. Free State Local Government Association;
42. Mr G Budlender: Director-General: Department of Land Affairs;

43. Mr Ken Morrison, Ms Marissa Jacobs, Ms Shereen Ebrahim and Liesl Gerntholtz: Commission on Gender Equality;
44. Mr Peter Leon, Attorneys Webber Wentzel Bowens;
45. Mr Les Barchard: Cape Metropolitan Council;
46. IBA;
47. Ms Justine White and Ms Lisa Thornton: Edward Nathan Friedland Attorneys on behalf of the South African Telecommunications Regulatory Authority;
48. Advocate AL Becker: The Investigating Directorate: Serious Economic Offences;
49. Dr CP du Plessis: Western Cape Local Government Association;
50. Mr HP Rademeyer: National Department of Agriculture;
51. Advocate PC van der Bijl SC: The General Council of the Bar of South Africa;
52. Mr Jeets Hargovan: Mpumalanga Provincial Government;
53. Mr J Kirkland: State Law Adviser Eastern Cape;
54. Mr Johann Nortjé: The Legal Department South African Police Service: Western Cape;
55. The Chief Directorate: Legislation Development: Department of Justice;
56. The Judicial Officers' Association of South Africa.

ADDENDUM TO ANNEXURE D

CHART INDICATING AREAS OF SPECIFIC COMMENT TO WHICH RESPONDENTS COMMENTED

Key to definitions clause as contained in the Bill proposed in Discussion Paper 81:
Clause 1(e) defined "court"; clause 1(l) defined "qualified litigant", clause 1(m) defined "rules" and 1(o) defined standards

Respondent	clse1	clse 2	clse 3	clse 4	clse 5	clse 6	clse 7	clse 8	clse 9	clse 10	clse 11	clse 12	clse 13	clse 14	clse 15	clse 16	clse 17	clse 18	clse 19	clse 20	clse 21	clse 22	clse 23	clse 24	clse 25
1. Magistrate Laue	1(e)			X								X					X								
2. Environmental Affairs & Tourism						X			X			X		X		X	X	X	X	X	X	X	X	X	
3. Durban Metro	1(a) 1(m) 1(o)				X		X		X	X	X	X	X		X	X	X	X	X							
4. Mr Harker													X													
5. Mr A Henderson	X																									
6. SA Association of Women Graduates																										
7. Prof Bennett													X													
8. Seth Abrahams				X																						
9. Dept of Sport & Recreation	X								X	X	X	X	X													
10. Judge Roger Errera	1(a)(i) 1(l)			X	X			X			X		X		X			X								

Respondent	clse 1	clse 2	clse 3	clse 4	clse 5	clse 6	clse 7	clse 8	clse 9	clse 10	clse 11	clse 12	clse 13	clse 14	clse 15	clse 16	clse 17	clse 18	clse 19	clse 20	clse 21	clse 22	clse 23	clse 24	clse 25
11. Judge Landman	1(e)																								
12. Philip Harrison																	X			X		X			
13. R Pfaff					X	X												X							
14. Prof Schwarze				X																					
15. Prof Frohwein					X																				
16. SA Institute of Chartered Accountants	1(e)				X												X								
17. Prof Philippe	1(m) 1(o)			X		X	X		X		X			X		X		X							
18. PJ Birkinshaw				X				X			X														
19. Black Sash	1(a) 1(e) 1(m) 1(o)			X	X	X	X		X				X		X	X		X							
20. Public Service Commission													X				X								
21. Northern Prov Legal Services					X									X											
22. Mrs E Raubenheimer	1(e)				X																				

Respondent	clse 1	clse 2	clse 3	clse 4	clse 5	clse 6	clse 7	clse 8	clse 9	clse 10	clse 11	clse 12	clse 13	clse 14	clse 15	clse 16	clse 17	clse 18	clse 19	clse 20	clse 21	clse 22	clse 23	clse 24	clse 25
23. Public Accountants' & Auditors' Board	1 (b) (ii) 1(a) 1(m)			X	X				X		X	X				X									
24. Dept of Public Works																									
25. Cape Environment Trust																									
26. Habitat Council																		X							
27. KZN Dept of Local Government & Housing	1(a)			X						X	X	X	X	X	X			X							
28. SA Human Rights Commission	1(a) 1(m)	X	X	X	X	X			X		X	X			X		X	X	X	X	X	X	X	X	
29. Dept of Correctional Services	1(m)	X							X																
30. Dept of Labour		X																							
31. Mr RE Robertson																									
32. Dept of Water Affairs and Forestry	1(m) 1(o)	X		X	X	X					X	X		X	X										

Respondent	clse 1	clse 2	clse 3	clse 4	clse 5	clse 6	clse 7	clse 8	clse 9	clse 10	clse 11	clse 12	clse 13	clse 14	clse 15	clse 16	clse 17	clse 18	clse 19	clse 20	clse 21	clse 22	clse 23	clse 24	clse 25
33. Mr J Klaaren	1(a) 1(m) 1(e)	X		X	X				X	X	X	X			X	X									
34.Ute Klamert: GTZ						X		X	X						X			X							
35. Community Law Centre UWC				X							X														
36. Judge WH Heath	1(e)			X	X		X																		
37. Society of Adv of SA: Jhb Bar Council				X		X	X																		
38. Adv Maré: Western Cape Provincial Government	1(a)(i) 1(e) 1(m) 1(l) 1(o)		X	X	X				X	X	X	X	X		X	X	X		X	X		X			
39. Afrikaanse Handelsinstituut				X	X	X		X			X		X				X								
40. Prof D van Wyk				X	X												X	X				X	X		X
41. Free State Local Government Association	1(a) 1(m) 1(o)									X	X	X	X	X	X										
42. Dept of Land Affairs	1(m) 1(o)									X	X	X	X	X	X										

Respondent	clse 1	clse 2	clse 3	clse 4	clse 5	clse 6	clse 7	clse 8	clse 9	clse 10	clse 11	clse 12	clse 13	clse 14	clse 15	clse 16	clse 17	clse 18	clse 19	clse 20	clse 21	clse 22	clse 23	clse 24	clse 25
43. Commission on Gender Equality					X	X	X										X								
44. Peter Leon	1(a) 1(e)			X	X	X			X																
45. Cape Town Municipality	1(a) 1(m) 1(o)			X					X	X	X	X	X	X	X	X									
46. IBA				X	X					X	X	X	X	X	X	X	X		X						
47. South African Telecommuni-cations Regulatory Authority	1(o)				X					X	X	X	X	X	X	X									
48. Western Cape Local Government Organisation	1(a) 1(m) 1(o)			X					X	X	X	X	X	X	X	X									
49. Investigating Directorate: Serious Economic Offences	1(a)		X			X	X								X										
50. Department of Agriculture									X	X	X	X													

Respondent	clse 1	clse 2	clse 3	clse 4	clse 5	clse 6	clse 7	clse 8	clse 9	clse 10	clse 11	clse 12	clse 13	clse 14	clse 15	clse 16	clse 17	clse 18	clse 19	clse 20	clse 21	clse 22	clse 23	clse 24	clse 25
51. General Council of Bar of South Africa	1(a) 1(e) 1(l) 1(m) 1(o)	X	X	X		X	X	X	X	X	X	X			X	X		X	X						
52. Mpumalanga Provincial Government	1(a) 1(e)		X	X	X	X			X				X		X			X					X		
53. Mr J Kirkland	1(a) 1(l)		X	X	X																				
54. SA Police Service: Western Cape	1(a) 1(l) 1(m)			X												X									
55. Department of Justice					X		X		X	X	X			X	X	X	X		X	X					X

Respondent	Additional comments
1. Laue	Linked to section 33(3) constitutional imperative are item s16(6)(a) & (b) of schedule 6 of the Constitution. Any extension of the constitutional jurisdiction of magistrates' courts should result in extension of their power to review administrative action.
3. Durban Metro	Introduce procedural framework for legislative powers assigned by central government to provincial or local government and from provincial to local government.
4. Harker	Include common law principles and add of criminal sanctions, and note clauses in contracts which violate individual freedoms and rights.

6. SA Association of Women Graduates	Make provision for the inclusion of Administrative Appeals Tribunal and the establishment of an Administrative Review Board.
16. R Pfaff	Make provision for internal appeals.
17. Prof Schwarze	Make provision for internal control mechanisms.
18. Prof Frohwein	Make provision for internal control mechanisms.
19. Black Sash	Establish non-litigious, internal complaint resolution mechanisms, construct a body of concrete principles and procedures to be complied with by administrative bodies. The Bill fails to deal with delegation of authority. Application cases should be dealt with as an independent category of administrative action as so far as the right to a hearing is concerned.
20. Public Service Commission	One cannot ignore the overlap of functions in the absence of co-ordination between the Administrative Review Council and the Public service Commission. How does one minimise the possible overlap and duplication? All internal remedies should be exhausted before resorting to the provisions of the Bill. Will the possibility of instituting independent and specialised tribunals to hear and determine appeals include that of appeals emanating from misconduct and inefficiency?
25. Cape Environment Trust	Establish an Administrative Appeals Tribunal.
26. Habitat Council	Establish an Administrative Appeals Tribunal.
27. KZN Dept of Local Government & Housing	The Bill should provide for the recognition of existing specialist tribunals with a proven track record subject to certain criteria.
29. Dept of Correctional Services	Make provision that a person must exhaust all internal remedies provided by other statutes before making use of procedures envisaged in the Bill.
31. Mr RE Robertson	Make provision for tribunal of legal experts which does not involve legal costs for complainants.
33. Mr J Klaaren	Identify topics such as provision for advisory committees, review of administrative regulations by parliamentary committees, institutional complaint mechanisms, and review of administrative action by the President's Office and start debate. Perhaps the Bill should contain a list of topics to be researched and legislation to be drafted by the Administrative Review Council.
34.Ute Klamert: GTZ	Make provision for a internal review process

37. Community Law Centre UWC	Make provision for non-litigious fora and external appeal procedures. There is large potential for creating linkages
36. Judge WH Heath	Supports a wide right of appeal against administrative action. Provision must be made for new evidence which can be presented by either parties and/or called by the Presiding Officer. This is a specialised part of the law and special courts should be created to entertain these matters. The legislation is going to lead to a very large number of applications. The present courts will not be able to deal with the applications and this will lead to long delays which will effectively lead to non-protection of the fundamental rights for which protection is sought.
38. Adv Maré: Western Cape Provincial Government	Consider the limitation of the fundamental right to just administrative action.
39. Afrikaanse Handelsinstituut	A clause should be included in the Bill confirming that the provisions of the Bill do not minimise the constitutional rights enumerated in sections 33(1) and (2) of the Constitution. Concern is expressed that the effect of the Bill on relevant judgements, eg the Traub case, have not been addressed in the Bill.
42. Dept of Land Affairs	Give consideration to an incremental legislative process for a period of say 5 years, introducing the core requirements of administrative justice. Which exceptions, if any, apply to Cabinet matters. There must be a great deal of international learning on these latter matters, should be dealt with in the Bill, made available by the Commission and recommendations be made on them. There would seem to be a good deal of overlap between the Open Democracy Bill and the Administrative Justice Bill and there would seem to be a need for the harmonisation of the two Bills. The way in which the principles involved in the Bill are translated into it should be the subject of a searching examination of their practical effect, if they are not to become another example of the finest intentions going awry in the implementation.
50. Investigating Directorate: Serious Offences	Various Acts (eg the Income Tax Act, the National prosecuting Authority Act, etc) make provision for confidentiality regarding information gathered in the course of the activities of various State organs. The breach o this confidentiality is often a criminal offence, and punishable as such. Serious consideration should be given should be given to the question of what affect the proposed Bill will have on administrative action taken by State organs due to confidential information gleaned during the course of investigations.
55. SA Police Service: Western Cape	An internal review/appeal procedure will facilitate/prevent a floodgate of litigation. The courts should be the last recourse. The absence of internal review/appeal structures in the Bill will most definitely limit/restrict the nature and extent of a person's right to fair administrative action as access to litigation is unaffordable to the majority of people in this country.

ANNEXURE E

LIST OF PARTICIPANTS IN REGIONAL WORKSHOPS

A. PRETORIA

1. Ms Annele Kruger : Public Service Commission;
2. Khosi Sibeko: Regional Director: Black Sash;
3. Ms Nalini Bagrath: Human Rights Commission;
4. Mr Jerry Nkeli: Commissioner: Human Rights Commission;
5. Mr Jody Collapen: Commissioner: Human Rights Commission;
6. Mr R Kitshoff: Department of Public Service and Administration;
7. Mr SWM Bapela: Department of Public Service and Administration;
8. Ms TD Lenzie: Legal Administration Officer: Defence Secretariat;
9. Adv LN Mtshali: Defence Secretariat;
10. Mr Ajay Makka: Legal Resources Centre;
11. Mr Gift Buthelezi: Department of State Expenditure;
12. Ms Sybilla Hilzinger-Maas: Department of Education: Johannesburg;
13. Mr Thomas Böhnke: Friedrich-Naumann Foundation;
14. Dr Silas Ramaite: Office of the Director of Public Prosecutions: Pretoria;
15. Councillor: R Ramathebane: Gauteng Association for Local Authorities;
16. Councillor Des Dussip: Gauteng Association for Local Authorities;
17. Councillor: R Chiya: Gauteng Association for Local Authorities;
18. Councillor: Prof P van Niekerk: Gauteng Association for Local Authorities;
19. Ms M Coetzer: Gauteng Association for Local Authorities;
20. Mr H Nel: Gauteng Association for Local Authorities;
21. Mr G Erasmus: Gauteng Association for Local Authorities
22. Mr J van der Merwe: Gauteng Association for Local Authorities
23. Ms Marie-Lou Roux: Habit Board;
24. Mr Jake Maseka: President: Law Society of Bophuthatswana;
25. Mr M Mokgale: Law Society of Bophuthatswana;
26. Mr TP Moloto: Law Society of Bophuthatswana;
27. Mrs Jamela Monica Mabuza: National Department of Sport & Recreation;
28. Adv Mannya: Gauteng Provincial Government;
29. Adv Rammutla: Gauteng Provincial Government;
30. Mr Sithole: Gauteng Provincial Government;
31. Ms A Smit: Gauteng Provincial Government;
32. Mr H Groenewald: Department of Health;
33. Adv Louis Kok: SAPS: Constitutional Litigation and Comparative Law;
34. Adv Gert Joubert: SAPS: Constitutional Litigation and Comparative Law;
35. Assistant Commissioner: Victor Nolutshungu: SAPS: Constitutional Litigation and Comparative Law;

36. Dr Marius Ackermann: National Intelligence Agency;
37. Ms Theunissen: National Intelligence Agency;
38. Col H Luüs: Office of the Adjutant General;
39. Ms Jane O'Connor: Public Accountants' and Auditors' Board;
40. Mr B Groenewald: City Council of Potchefstroom;
41. Adv A Becker: Investigating Directorate: Serious Economic Offences;
42. Mrs S Camerer: Member of Parliament;
43. Mr P van Vuuren: SAPS: Office of the National Disciplinary Officer;
44. Mr A Beukes: SAPS: Office of the National Disciplinary Officer;
45. G Mgidlana: Director, Parliamentary Operations: Gauteng Legislature;
46. Ms N Cawe: Director, Parliamentary Operations: Gauteng Legislature;
47. Mr N Sello; Advisor; Gauteng Legislature;
48. Mr T Nage; Gauteng Legislature;
49. Ms L Govender; Gauteng Legislature;
50. Mr JK Moloi; State Attorney; Pretoria;
51. Mr M Tshongweni: Department of Communications;
52. Mr A Lessing: Department of Correctional Services;
53. K Pillay: State Attorney: Johannesburg;
54. Mr Colin Brocker: Department of Land Affairs;
55. Adv Beukes: Dep of Arts, Culture, Science & Technology;
56. Mr J Viljoen: Dep of Arts, Culture, Science & Technology;
57. Dr CR Botha: Rooth & Wessels Inc;
58. Mr Pierre Retief: Department of Environmental Affairs & Tourism;
59. Ms M Rangatta: Department of Labour;
60. Mr KA Templeton: Magistrate Pretoria;
61. Adv KR Malatji: Department of Home Affairs;
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82. Des Ketani: Department of Finance;
83. Dr PJ Bouwer: Constitutional Development;
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85. Mr JB Skosana: Constitutional Development;
86. Adv E Boshoff: Education;
87. Mr J Nkuna: Education;
88. Adv K Mathipa: Department of Water Affairs & Forestry;
89. Mr C Schoeman: Technicon RSA;
90. Ms Liesl Gerntholtz: Gender Commission;
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97. Mr T Rudolph: Justice College;
98. Mr P Rammuki: Justice College;
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100. Mr Maarten Schoeman: Justice College;
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102. Mr Harry van Nieuwenhuizen: Sheriff Witbank;
103. Mr Frans Palm: Municipality Edenvale;
104. Mr Dikoko: SALGA;
105. Mandla Maseko: CCMA;
106. Mr Anton de Klerk: AHI;
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119. Mr Zama Mbhele: Department of Correctional Services;
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122. Mr SF van Niekerk: Magistrate: Pietermaritzburg;
123. Mr MNP Mtshali: Magistrate Pietermaritzburg;
124. Mrs JH Bothma: Magistrate Pietermaritzburg;
125. Mr MI Mkhize: Chief Magistrate Durban;
126. Mr B Williams: Magistrate: Durban;
127. Mr JM Paley: Durban Metro: Legal services;
128. Mr R Raubenheimer: Department of Traditional and Environmental Affairs;
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133. Mr DS McAllister: South African Revenue Service;
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135. Sagree Chetty: South African Revenue Service;
136. Mr MH Marais: South African Revenue Service;
137. Raksha Beechum: South African Revenue Service;
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140. Capt Chirwa: SA Police Service;
141. Supt Goddard: SA Police Service;
142. Mr MFM Winkelman: SA Police Service;
143. Inspector VS Dludla: SA Police Service;
144. Supt A Khan: SA Police Service;
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164. Maj Ivan Silson: Natal Command;
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214. Mr Quma: Magistrate Whittlesea;
215. Mr Meyer: Magistrate Uitenhage;
216. Mr F Goosen: Magistrate King William's Town;
217. Mr WL Erasmus: Magistrate Peddie;
218. Mr TC Mabaso: Magistrate Zwelitsha;
219. Mr S v Z Stander: Magistrate East London;
220. Ms Botha: Magistrate Middleburg;
221. Mr Strauss: Magistrate Grahamstown;
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249. Judge WH Heath: Heath Special Investigating Unit;
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D. CAPE TOWN

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270. Mr Wouter van Warmelo: Ex Executive Officer Habitat Board;
271. Mr Joseph Adrianse: SANCO;
272. Mr Gary Munayse: SACCAWU;
273. Mr Olusegun Abdulrasaq: Refugee Forum;
274. Mr John Brown : SAMWU;
275. Mr Simon Kimani : Refugee Committee;
276. Rikky Minyuku : Nadel;
277. Mr Michael Blake : Nadel;
278. Mrs Louw : Department of Education;
279. Mr J De Lange : Chairperson of the Justice Portfolio Committee;
280. Ms R Wentzel : Department of Labour;
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283. Mr John MacRobert: Attorney;
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286. Ms Susan Aird : The Law Society of the Good Hope;
287. Mr Stephen Koen : The Law Society of the Good Hope;
288. Major N Ulrich : Western Province Command;
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292. Sibongile Ndashe : Legal Resources Centre;
293. Ashraf Mahomed : Legal Resources Centre;
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297. Lauren Nott : Regional Director: Black Sash;
298. Ms Alison Tilley : Black Sash;
299. Ms Ingrid Hale : Black Sash;
300. Patricia Martin: Black Sash;
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302. Adv RP Hoffman SC;
303. Adv AJ Musikanth;
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306. Mr A Searle : Legal Administration Officer: Provincial Administration Western Cape;
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312. Adv TD Potgieter;
313. Adv P Volmink;
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315. Ms Brenda Finnan: City Council of Cape Town;
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352. Mr Arnold Potgieter: SA Police Service;
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