

REPUBLIC OF SOUTH AFRICA

CASTLE MANAGEMENT ACT REPEAL BILL

*(As introduced in the National Assembly (proposed section 75); explanatory summary of
Bill published in Government Gazette No. 30803 of 22 February 2008)
(The English text is the official text of the Bill)*

(MINISTER OF DEFENCE)

[B 9—2008]

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BILL

To repeal the Castle Management Act, 1993; to disestablish the Castle Control Board; and to provide for matters connected therewith.

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

Definition

1. In this Act, unless the context indicates otherwise—
 - “**Board**” means the Castle Control Board established by section 2 of the Castle Management Act, 1993 (Act No. 207 of 1993); 5
 - “**civilian staff**” means the Executive Director and other staff referred to in section 13(1) of the Castle Management Act, 1993;
 - “**Council**” means the Council as defined in section 1 of the Cultural Institutions Act; 10
 - “**Cultural Institutions Act**” means the Cultural Institutions Act, 1998 (Act No. 119 of 1998).

Disestablishment of Board

2. (1) The Board is hereby disestablished.
 - (2) Despite subsection (1), the Board must continue to operate until a Council 15 contemplated in section 5(1) of the Cultural Institutions Act is established.

Transitional provisions

3. (1) When this Act takes effect—
 - (a) all assets, rights, liabilities and obligations of the Board vest in the Council; 20
 - and
 - (b) all the civilian staff of the Board must be transferred to the Council in accordance with section 197 of the Labour Relations Act, 1995 (Act No. 66 of 1995).
- (2) The Registrar of Deeds must make the necessary entries or endorsements for the transfer of any property contemplated in subsection (1). 25
- (3) For the purposes of the Income Tax Act, 1962 (Act No. 58 of 1962), no change of employer must be regarded as having taken place when the employees contemplated in subsection (1) take up employment at the Council.

Repeal of law

4. The Castle Management Act, 1993 (Act No. 207 of 1993), is hereby repealed. 30

Short title and commencement

5. This Act is called the Castle Management Act Repeal Act, 2008, and shall come into operation on a date fixed by the President by proclamation in the *Gazette*.

MEMORANDUM ON THE OBJECTS OF THE CASTLE MANAGEMENT ACT REPEAL BILL, 2008

1. BACKGROUND

1.1. On 1 December 1921, the Government of the Union of South Africa (the Union), as it was then called (read Government of the Republic of South Africa) assumed responsibility for the land defences of the Union and for any military measures which it may be necessary to take for the defence and security of the Union. Consequently, the Government of the United Kingdom transferred to the then Government of the Union all the rights, title and interests in or to certain lands and interests in land situate in the Union, together with buildings on such lands.

1.2. Among the land so transferred to the Union was land occupied by the Castle of the Cape of Good Hope, the outworks and certain land beyond, together with all and whatever buildings and fortifications erected thereon ("the Castle"), as more fully set out in the Schedule to the Defence Endowment Property and Account Act, 1922 (Act No. 33 of 1922).

1.3. The Castle in particular was transferred to and accepted by the Union for the exclusive use and benefit of the defence force organisations and establishments and land defences of the Union. The Castle is currently being administered by the Castle Control Board, hereinafter referred to as "the Board", under the provisions of the Castle Management Act, 1993 (Act No. 207 of 1993), hereinafter referred to as "the Act". The object of the Board under the Act, *inter alia*, is to preserve and protect the military and cultural heritage of the Castle and optimise its tourism potential and accessibility to the public.

1.4. Protection of cultural heritage, including military heritage and preservation of national memory, is the core business of the Department of Arts and Culture, under the direction of the responsible Minister. The Act, in as far as it imposes this responsibility on the Minister of Defence, has entrusted to the Minister of Defence, powers and functions that legitimately belong to the Minister of Arts and Culture. The Ministry and Department of Defence are neither structured nor capacitated to execute these functions and powers. In order to rectify this, it is necessary that the Act be repealed in its entirety and the Board be disestablished, so as to allow the Minister of Arts and Culture to assume responsibility for the management and administration of the Castle under the Cultural Institutions Act, 1998 (Act No. 119 of 1998), hereinafter referred to as the "Cultural Institutions Act".

1.5. Section 3(1) of the Cultural Institutions Act empowers the Minister of Arts and Culture, by notice in the Gazette, to declare any institution as from a date specified in that notice to be subjected to the Act. It is envisaged that the Castle will be declared as a cultural institution in terms of section 3(1) of the Cultural Institutions Act and be administered under the Cultural Institutions Act. The Minister of Arts and Culture has indicated and confirmed his willingness to accept this responsibility as indicated above.

1.6. In line with the above, the Bill has been prepared and approved by Cabinet for introduction in Parliament.

2. ORGANISATIONAL AND PERSONNEL IMPLICATIONS

2.1 The Bill provides for the transfer of the management and administration of the Castle to the Department of Arts and Culture. This will necessitate the transfer of the civilian employees of the Board to the Council contemplated in section 5(1) of the Cultural Institutions Act. The Castle staff currently comprises of twenty-two members of whom fourteen (14) are remunerated by the Department of Defence and eight (8) are contract workers appointed by the Castle Control Board (as at 31 March 2006). The exact number of staff to be transferred with the Castle will be determined after the work of the joint Task Team has been finalised.

3. FINANCIAL IMPLICATIONS FOR STATE

The Castle is self-sufficient and its activities are funded from the profits of its business operations.

4. CONSTITUTIONAL IMPLICATIONS

None.

5. VULNERABLE GROUPS

None.

6. CONSULTATION

The Department and Ministry of Arts and Culture have been consulted on this matter and they agree on the approach adopted. A joint Task Team will be established between the Department of Arts and Culture (DAC) and the Department of Defence (DOD) to manage the practicalities of the transfer. The Department of Defence is in contact with the Castle Control Board regarding the developments around the transfer. Further consultations are envisaged between the two Departments and the Office of the State Law Adviser (DOJ) once the transfer and the Bill have been approved.

7. PARLIAMENTARY PROCEDURE

7.1 The State Law Advisers and the Department of Defence are of the opinion that this Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution since it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.

7.2 The State Law Advisers are of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.