OFFICE OF THE PRESIDENT

No. 1654.
20 October 1995

NO. 89 OF 1995: LOCAL GOVERNMENT TRANSITION ACT SECOND AMENDMENT ACT, 1995.

It is hereby notified that the President has assented to the following Act which is hereby published for general information:-

GENERAL EXPLANATORY NOTE:

** ** Words between asterisks indicate omissions from existing enactments.

<< >> Words between pointed brackets indicate insertions in existing enactments.

ACT

To amend the Local Government Transition Act, 1993, so as to define or further define certain expressions; to extend the application of the said Act throughout the Republic; to make other provision in respect of the term of office of members of the Provincial Committees for Local Government and the filling of vacancies in and the conditions of service of members of the said Committees; to further regulate the procedure in respect of meetings of the said Committees; to make provision for the referral of certain questions for decision to the Special Electoral Court by the said Committees; to make further provision in respect of the functions of a negotiating forum; to provide for the establishment, constitution, procedures and functions of one or more arbitration committees as well as for the referral of matters to be decided by such committees; to empower Administrators to act in cases where a negotiating forum has not been established or recognized; to provide for the reviewing by Administrators of certain delimitations or determinations made by them; to provide that Administrators shall strive towards substantial uniformity in regard to the content of certain regulations; to make provision for the establishment of transitional rural local government; to extend Administrators' powers to issue proclamations to regulate the transition of local government, including the establishment of a body to assist any local government body, transitional council or transitional metropolitan substructure which may be affected by the provisions of any such proclamation; to empower an Administrator under certain circumstances to exercise or perform a power or function in a province other than that for which he or she has been appointed; to empower an Administrator to act where a Local Government Demarcation Board fails to furnish him or her with its recommendations within a reasonable time; to make provision that delegations made by a former administrator before the commencement of the said Act continue in force; to provide for the review within a certain period of the appointment or promotion of any person or the award of a term or condition of service which occurred after the commencement of the said Act; to repeal the power granted to the President to amend the said Act by way of proclamation; to provide for the validation of certain proclamations; to further regulate the qualifications for nomination as a member of a transitional council or transitional metropolitan substructure; to further regulate the eligibility of a person to vote in local government elections; to make provision that members of certain transitional councils may be elected instead of nominated; and to repeal certain laws; and to provide for matters connected therewith.

(Afrikaans text signed by the President.)
(Assented to 20 October 1995.)

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

Amendment of section 1 of Act 209 of 1993

1. (1) Section 1 of the Local Government Transition Act, 1993 (hereinafter referred to as the principal Act), is hereby amended-

(a) by the substitution in subsection (1) for the definition of "Administrator" of the following definition:

" <<'Administrator', in so far as this Act is applied in or in regard to a particular province, means a competent authority within the jurisdiction of the government of that particular province designated by the Premier of that province;>>";

(b) by the deletion in subsection (1) of paragraph (a) of the definition of "local government body";

(c) by the insertion in subsection (1) after paragraph (j) of the definition of "local government body" of the following paragraph:

"<<(jA) any other local government body established by or under any law in force in an area which forms part of the national territory referred to in section 1 of the Constitution;>>";

(d) by the substitution in subsection (1) for the definition of "Minister" of the following definition:

" 'Minister' means the Minister **of Local Government** <<for Provincial Affairs and Constitutional Development>>;";

(e) by the substitution in subsection (1) for the definition of "province" of the following definition:

" <<'province' means a province mentioned in section 124(1) of the Constitution;>>";

(f) by the insertion in subsection (1) after the definition of "province" of the following definition:

" <<'provincial administration' means the provincial administration established for a province by the Public Service Act, 1994 (Proclamation No. 103 of 1994);>>"; and

(g) by the deletion in subsection (1) of the definition of "Self-governing Territory".

(2) Subsection (1) shall be deemed to have come into operation on 15 July 1994.

Substitution of section 2 of Act 209 of 1993

2. (1) The following section is hereby substituted for section 2 of the principal Act:

"Application of this Act

2. <<(1) This Act shall apply throughout the Republic.

(2) In the event of a conflict between this Act and any other law in force in a territory in which this Act did not apply before 27 April 1994, this Act shall prevail.>>".

(2) Subsection (1) shall be deemed to have come into operation on 15 July 1994.

Amendment of section 3 of Act 209 of 1993

3. (1) Section 3 of the principal Act is hereby amended-

(a) by the substitution for subsection (5) of the following subsection:

"(5) (a) A member of the Committee shall hold office as a member **during the pleasure of the Transitional Executive Council, and, at the establishment of a provincial government for the province concerned in terms of the Constitution of the Republic of South Africa, 1993, during the pleasure of the Executive Council of that provincial government** <<at the Minister's pleasure>>.

(b) Any vacancy in the membership of the Committee <<arising for any reason>> shall be filled by a person appointed by the **Transitional Executive Council in accordance with the provisions of subsection (2): Provided that if any vacancy occurs when the Transitional Executive Council is not in existence, it shall be filled by a person appointed by the Executive Council of the province concerned** <<Minister in consultation with the Minister of Justice and after consultation with the Premier of the province concerned:>> Provided **further** that any person so appointed shall have knowledge of matters concerning local government and shall reside within the province concerned."; and

(b) by the substitution for paragraph (a) of subsection (8) of the following paragraph:

"(a) The conditions of service, remuneration, allowances and other benefits of the members of the Committee shall be deter-mined by the Administrator **with the concurrence of** <<subject to such norms and standards as may be determined by>> the Minister of Finance.".

(2) (a) Paragraph (a) of subsection (1) shall be deemed to have come into operation on 7 June 1995.

(b) Paragraph (b) of subsection (1) shall be deemed to have come into operation on 15 July 1994.

Amendment of section 4 of Act 209 of 1993

4. (1) Section 4 of the principal Act is hereby amended-

(a) by the substitution for paragraph (b) of subsection (2) of the following paragraph:

"(b) On receipt of a notice referred to in paragraph (a), a meeting of the Committee shall be held **as soon as practicable** <<within a period determined by the Administrator>> for the purpose of furnishing the Administrator with the written decision of the Committee in regard to the exercise of a power or the performance of a duty referred to in paragraph (a): <<Provided that where such meeting cannot be held as determined, the members of the Committee shall consider the notice individually and shall without unreasonable delay furnish the chairperson of the Committee in writing with his or her decision in regard to the exercise of a power or the performance of a duty referred to in paragraph (a), in which case the decision of the majority of the members shall constitute the decision of the Committee>>."; and

(b) by the addition of the following subsection:

"<<(4)(a) Any question relating to the exercise of a power or the performance of a duty by the Administrator or the Committee as contemplated in this Act or its objects, or the failure to exercise such power or perform such duty properly, expeditiously or at all, and which may negatively affect an election in terms of this Act, may be referred to the Chairperson of the Special Electoral Court by at least

one half of the members of the Committee.

(b) A referral contemplated in paragraph (a) shall be in writing and set out the reasons therefor.

(c) If the Special Electoral Court is prima facie of the opinion that the question is one referred to in paragraph (a), that Court shall as soon as practicable consider the matter and give its decision, having due regard to any matter that the Court may deem relevant for its decision.

(d) The Special Electoral Court may make such decisions and give such orders or directions as it may consider appropriate in the circumstances, including-

(i) an order for compliance with any provision of this Act, subject to the directions of the Court, including timeframes;

(ii) an order setting aside any decision; and

(iii) an order, where appropriate, that a matter shall be referred to it in terms of subsection (3).>>".

(2) Paragraph (a) of subsection (1) shall be deemed to have come into operation on 30 November 1994.

Amendment of section 7 of Act 209 of 1993

5. (1) Section 7 of the principal Act is hereby amended-

(a) by the addition in subsection (1) to the proviso to paragraph (i) of the proviso to paragraph (c) of the following paragraph:

"<<(dd) to be responsible for the preparation for and the conducting of the election contemplated in section 9(1) within its area of competence and for this purpose using the financial and other resources of its component local government bodies in addition to the financial resources referred to in paragraph (ccc) of the proviso to paragraph (bb) of the proviso to paragraph (i) of the proviso to subsection (1)(c).>>";

(b) by the substitution for the words following on paragraph (c) of subsection (1) of the following words:

"and shall submit any agreement reached to the Administrator **within a period of 90 days after the date of commencement of this Act or within such extended period as the administrator may allow** <<before or on 30 November 1994>> whereupon the Administrator shall, <<within a period of 45 days>>, exercise the powers conferred upon him or her by section 10(1) incorporating the provisions of such agreement in the proclamation contemplated in the said section";

(c) by the substitution for subsection (2) of the following subsection:

"(2) (a) Where an agreement as contemplated in subsection (1) is not submitted to the Administrator **within the period referred to in that subsection, or within such extended period as the Administrator may allow** <<before or on 30 November 1994>>, the Administrator shall **within a period of 30 days, facilitate a process of independent mediation, the result of which shall be referred to the forum for a decision.

(b) Where the forum arrives at a decision taken by the required majority contemplated in subsection (3), the Administrator shall

exercise the powers conferred upon him or her by section 10(1), incorporating the provisions of such decision in the proclamation contemplated in the said section.

(c) Where the forum is unable to arrive at a decision as contemplated in paragraph (b), the Administrator shall-

(i) in the case of any local government body in the area of the forum concerned which, in terms of Board Notice No. 127 of 1993 of the Board on the Remuneration and Service Benefits of Town Clerks, as published in Government Gazette No. 15250 of 12 November 1993, is classified as a grade 8 local authority or lower, determine that the option referred to in paragraph (c) of subsection (1) shall be applied to such local government body; and

(ii) in the case of any local government body in the area of the forum concerned which in terms of Board Notice No. 127 of 1993 of the Board on the Remuneration and Service Benefits of Town Clerks, as published in Government Gazette No. 15250 of 12 November 1993, is classified as a grade 9 local authority or higher** <<before or on 21 December 1994 refer the matter to an arbitration committee referred to in subsection (2A).

(b) The arbitration committee concerned shall consider the matter and before or on 12 January 1995 in writing notify the Administrator of the decision of the committee, whereupon the Administrator shall, within a period of 30 days, exercise the powers conferred upon him or her by section 10(1), incorporating the decision of the arbitration committee in the proclamation contemplated in the said section: Provided that where a decision of the arbitration committee is not submitted to the Administrator within the period referred to in this paragraph or where the arbitration committee notifies the Administrator within such period in writing that it cannot, for any reason, come to a decision, the Administrator shall-

(i) after due consideration of the negotiation process which took place in the forum; and

(ii) in order to obtain a result which would, in the circumstances of that particular case, best give effect to the objects of this Act, forthwith>> determine that the option referred to in paragraph (b) or (c) of subsection (1) shall be applied to **such local government body** <<the local government bodies in the area of the forum>>, and shall, <<within a period of 30 days>>, exercise the powers conferred upon him or her by section 10(1), incorporating the provisions of such determination in the proclamation contemplated in the said section.";

(d) by the insertion after subsection (2) of the following subsection:

"<<(2A) (a) There is hereby established for each province one or more committees as determined by the Administrator to be known as an arbitration committee or as arbitration committees.

(b) An arbitration committee shall consist of four members appointed by the Administrator of whom two shall be broadly representative of the statutory component of forums in the province concerned and the other two shall be broadly representative of the non-statutory component of forums in the province concerned.

(c) (i) An arbitration committee shall appoint a chairperson who shall determine the times and places for meetings of the committee.

(ii) The majority of the members of a committee shall form a quorum

for a meeting.

(iii) The decision of the majority of the members of a committee present at any meeting thereof, shall be a decision of the committee.

(iv) A committee may make rules in relation to the holding of and procedures at meetings of the committee.

(d) The administrative work incidental to the performance of the functions of an arbitration committee shall be performed by officers of the respective provincial administrations designated for that purpose by the Director-General concerned.>>"; and

(e) by the substitution for subsection (3) of the following subsection:

"(3) Any agreement contemplated in subsection (1) shall be approved **and any decision contemplated in subsection (2) shall be taken** by a concurrent majority of two-thirds of both the statutory and non-statutory components of the forum: Provided that any such agreement **or decision** relating to the application of the option referred to in paragraph (b) of subsection (1) to any local government body within the area of the forum concerned which, in terms of Board Notice No. 127 of 1993 of the Board on the Remuneration **of** <<and>> Service Benefits of Town Clerks, as published in Government Gazette No. 15250 of 12 November 1993, is classified as a grade 8 local authority or lower, shall only be approved **or taken** by a concurrent majority of four-fifths of both the statutory and non-statutory components of the forum.".

(2) Subsection (1) shall be deemed to have come into operation on 30 November 1994.

Insertion of section 7A in Act 209 of 1993

6. (1) The following section is hereby inserted in the principal Act after section 7:

"Powers of Administrator if forum is not established or recognized

<<7A. If a forum for any area has for any reason whatsoever not been established or recognized as contemplated in section 6 on 30 November 1994, the Administrator may, notwithstanding anything to the contrary contained in this Act, forthwith determine that the option referred to in paragraph (b) or (c) of section 7(1) shall be applied to the local government bodies in any such area and shall, within a period of 30 days of such determination, exercise the powers conferred upon him or her by section 10(1), incorporating the provisions of such determination in the proclamation contemplated in the said section.>>".

(2) Subsection (1) shall be deemed to have come into operation on 30 November 1994.

Amendment of section 8 of Act 209 of 1993

7. (1) Section 8 of the principal Act is hereby amended-

(a) by the substitution for paragraph (a) of subsection (2) of the following paragraph:

"(a) the written representations of **any** <<a>> transitional council or transitional metropolitan substructure, <<if any,>> which <<is established at that stage and which>> may be affected;"; and

(b) by the addition of the following subsection:

"<<(4) (a) Any delimitation or determination made in terms of subsection (2) may from time to time, but not later than a date three months prior to the day determined by the Minister as contemplated in section 9(1), be reviewed by the Administrator.

(b) The provisions of subsections (2) and (3) shall apply mutatis mutandis to a delimitation and determination as a result of a review contemplated in paragraph (a)>>.".

(2) Subsection (1) shall be deemed to have come into operation on 30 November 1994.

Amendment of section 9 of Act 209 of 1993

8. (1) Section 9 of the principal Act is hereby amended-

(a) by the substitution for subsection (3) of the following subsection:

"(3) Regulations made under subsection (2)(a) may prescribe penalties for any contravention thereof or a failure to comply therewith, of a fine, or imprisonment for a period not exceeding **two** <<five>> years."; and

(b) by the insertion after subsection (3) of the following subsection:

"<<(3A) (a) The respective Administrators shall, as far as is practicable, having regard to special circumstances prevailing within each province, strive towards substantial uniformity in respect of the content of the regulations made under subsection (2)(a) and shall, to this end, before the publication of the regulations, consult with one another and reach agreement at a meeting between the Minister and the Administrators or their representatives.

(b) Where an Administrator fails to make the regulations referred to in subsection (2)(a) within a period agreed upon at the meeting contemplated in paragraph (a), the Minister may exercise the powers conferred upon that Administrator by subsection (2)(a) and the provisions of subsections (3) and (4) shall apply mutatis mutandis to the exercise of such powers by the Minister.>>".

(2) (a) Paragraph (a) of subsection (1) shall be deemed to have come into operation on 31 March 1995.

(b) Paragraph (b) of subsection (1) shall be deemed to have come into operation on 2 February 1994.

Insertion of Part VA in Act 209 of 1993

9. (1) The following part is hereby inserted in the principal Act after Part V:

"PART VA

RURAL LOCAL GOVERNMENT

Definitions

<<9A. In this Part, unless the context indicates otherwise-

'district council' means a services council, sub-regional council, regional council or district council referred to in section 10(3)(i);

'interest group' means-

(a) farmers, landowners or levy payers;

(b) farm labourers;

(c) women; and

(d) traditional leaders;

'remaining area' means any area which is situate within that part of the area of a district council which does not form part of the area of jurisdiction or area of a transitional local council, a transitional representative council or a transitional rural council;

'transitional representative council' means a transitional representative council referred to in section 9B(4)(a);

'transitional rural council' means a transitional council for a rural area of local government referred to in section 10(3)(iA).>>

Powers of Administrator relating to rural local government

<<9B. (1) The Administrator may make such arrangements relating to the establishment of district councils, transitional representative councils and transitional rural councils as are necessary or expedient for the effective carrying out or furtherance of the provisions and objects of this Part, including-

(a) the delimitation of the area of a transitional representative council after due consideration of the advice and written recommendations of the Board; and

(b) the determination of the number of members of a district council or a transitional representative council.

(2) Without derogating from the generality of the power conferred by subsection (1), but subject to the provisions of this Part, the arrangements contemplated in that subsection may include the exercise of the powers conferred upon the Administrator by sections 9 and 10.

(3) Without derogating from the generality of the power conferred by section 9, a proclamation contemplated in that section may, in respect of rural local government, provide for-

(a) the qualifications for election or nomination as members of a district council or a transitional representative council, their election or nomination and periods of office, the vacating of their offices, and the filling of casual vacancies in such council; and

(b) the election of a chairperson, a vice-chairperson or an acting chairperson of a district council or a transitional representative council.

(4) Without derogating from the generality of the power conferred by section 10, a proclamation contemplated in that section may, in respect of rural local government, provide for-

(a) the establishment of, and the delimitation of the area of, a transitional representative council, and the convening of and procedure and quorum at meetings thereof;

(b) the payment of transport and subsistence allowances to members of a transitional representative council; and

(c) the dissolution of any transitional rural council or the conversion of any such council into a transitional representative council.>>

Transitional representative councils

<<9C. (1) A transitional representative council shall consist of-

(a) members elected in accordance with a system of proportional representation; and

(b) if the Administrator considers it desirable, members nominated by interest groups recognized by the Administrator.

(2) At least one member shall be nominated by each interest group by virtue of subsection (1)(b): Provided that-

(a) no single interest group shall nominate a number of members which exceeds 10 per cent of the total number of members to be elected and nominated in respect of the relevant transitional representative council;

(b) the total number of members nominated by interest groups shall not exceed 20 per cent of the total number of members to be elected and nominated in respect of the relevant transitional representative council.

(3) A transitional representative council shall be vested and charged with the following powers and duties, namely-

(a) subject to the provisions of section 9D(1)(b)(i), to elect from among its members a person or persons to represent the council on the district council in question;

(b) to secure, through the said person or persons, the best services possible for the inhabitants of its area;

(c) to serve as the representative body of its area-

(i) in respect of any benefits resulting from the reconstruction and development programme; and

(ii) in the development of a democratic, effective and affordable system of local government; and

(d) in general, to represent the inhabitants of its area in respect of any matter relating to rural local government.>>

Framework for rural local government

<<9D. (1) The following principles shall apply in respect of rural local government, namely-

(a) provision shall be made for the division of the whole area of each province into areas of jurisdiction of transitional metropolitan councils, if any, and areas of district councils;

(b) a district council shall consist of-

(i) members elected as prescribed by regulation under section 12 by transitional local councils, transitional representative councils or transitional rural councils, the areas of jurisdiction or areas of which are situate within the area of such district council; and

(ii) in the case where there is a remaining area, members elected or

elected and nominated from such area in accordance with a ratio based on the inhabitant numbers of the area of such district council in relation to such numbers of the remaining area;

(c) the provisions of paragraph (b)(ii) shall cease to apply in respect of any remaining area with effect from the date upon which such area is included within the area of jurisdiction of a local government established by or under legislation contemplated in section 245(2) of the Constitution, or the date upon which a period of six months has elapsed from the polling day or polling period for elections in terms of this Act, whichever is the later date;

(d) district councils, transitional local councils, transitional representative councils and transitional rural councils shall be utilized with a view to developing a democratic, effective and affordable system of local government.

(2) The members referred to in subsection (1)(b)(ii) shall-

(a) be elected in accordance with a system of proportional representation; and

(b) if the Administrator considers it desirable, be nominated by interest groups recognized by the Administrator.

(3) At least one member shall be nominated by each interest group by virtue of subsection (2)(b): Provided that-

(a) no single interest group shall nominate a number of members which exceeds 10 per cent of the total number of members to be elected and nominated in respect of the relevant remaining area;

(b) the total number of members nominated by interest groups shall not exceed 20 per cent of the total number of members to be elected and nominated in respect of the relevant remaining area.

(4) In the delimitation of the area of any transitional representative council and the area of jurisdiction of any transitional rural council, preference shall be given to a delimitation which has the effect that the said area or area of jurisdiction is situate within the boundaries of a magisterial district.>>

Construction of this Part

<<9E. The provisions of this Part shall apply in addition to, and not in substitution for, the other provisions of this Act.>>".

(2) Subsection (1) shall be deemed to have come into operation on 30 June 1995.

Amendment of section 10 of Act 209 of 1993

10. (1) Section 10 of the principal Act is hereby amended-

(a) by the substitution for paragraphs (b) and (c) of subsection (1) of the following paragraphs, respectively:

"(b) provide in any such enactment for the amendment or repeal of **any** <<a>> law <<in force in or in a part of that province>>, including **any** <<an>> Act of Parliament or **the legislative assembly of any Self-governing Territory** <<any provision of such a law>>, in so far as it relates to any such matter and applies in **the** <<or in such part of that>> province; and

(c) provide in any such enactment that any law, including any Act of Parliament, or **the legislative assembly of a Self-governing Territory** any provision of such a law, pertaining to local government affairs shall, subject to the adjustment or amendment of such law or provision as he or she may make in such enactment, apply to any local government body, transitional council, or transitional metropolitan substructure referred to in section 16, or to any category of such local government bodies, transitional councils or transitional metropolitan substructures, <<in that province or a part thereof>>,";

(b) by the substitution for paragraph (i) of subsection (3) of the following paragraph:

"(i) the disestablishment of any local government body referred to in paragraph (h) or (i) of the definition of local government body and the establishment of a body to be known as a services council, sub-regional council, <<regional council>> or district council to jointly exercise the powers and perform the duties in relation to certain local government functions for a non-metropolitan area of local government by transitional local councils, local government coordinating committees or local government bodies within such areas, including the delimitation of such an area after due consideration of the advice and written recommendations of the Board, and the constitution, functioning, powers, duties, assets, tights, employees and financing of such body: Provided that such services council, sub-regional council, <<regional council>> or district council shall have the power to levy and claim the regional services levy and the regional establishment levy referred to in section 12(1)(a) of the Regional Services Councils Act, 1985, or section 16(1)(a) of the KwaZulu and Natal Joint Services Act, 1990, as the case may be, which the disestablished local government body referred to in paragraph (h) or (i) of the definition of local government body would, but for its disestablishment, have levied and claimed;";

(c) by the insertion after paragraph (i) of subsection (3) of the following paragraph:

"<<(iA) the establishment of a transitional council for a rural area of local government not failing within the area of jurisdiction of a transitional metropolitan council or a transitional local council, including the delimitation of the area of jurisdiction of such council after due consideration of the advice and written recommendations of the Board, and the constitution, election, functioning, powers, duties, assets, rights, employees and financing of such council;>>"; and

(d) by the addition to subsection (3) of the following paragraph:

"<<(k) the establishment of a body at the request of any local government body, transitional council or transitional metropolitan substructure to assist any such local government body, transitional council or transitional metropolitan substructure which may be affected by the provisions of any proclamation made under subsection (1) to manage the implementation of the provisions of such proclamation, including the constitution, functioning, powers, duties, employees and financing of such body: Provided that the functioning, powers and duties of such body shall in no way derogate from the autonomy and powers of a local government body, transitional council or transitional metropolitan substructure under the applicable laws, including this Act.>>".

(2) (a) Paragraph (a) of subsection (1) shall be deemed to have come into

operation on 15 July 1994.

(b) Paragraphs (c) and (d) of subsection (1) shall be deemed to have come into operation on 30 November 1994.

Insertion of section 10A in Act 209 of 1993

11. (1) The following section is hereby inserted in the principal Act after section 10:

"Exercise or performance of provincial powers and duties outside province

<<10A. (1) The Administrator of a province may, with the approval of the President and after agreement or arrangement with the Administrator of any other province, and after consultation with any negotiating forum or local government body which may be affected, in accordance with such agreement or arrangement exercise any power or perform any duty conferred or imposed on him or her by this Act, in the other province which he or she may exercise or perform in respect of the area of jurisdiction of the province for which he or she is appointed, and for the purpose of the exercise or performance of such power or duty and for the purposes of the provisions of this Act, such other province shall be deemed to constitute part of the province for which he or she is appointed.

(2) A Board established for a province as contemplated in section 11 (1) may, with the consent of the Administrator appointed for that province, granted with the approval of the President, perform any function referred to in section 11(6) in any other province in terms of an agreement or arrangement between the Administrator of that province and the Administrator of such other province, and for the purpose of the performance of that function such other province shall be deemed to constitute part of that province.>>".

(2) Subsection (1) shall be deemed to have come into operation on 30 November 1994.

Amendment of section 11 of Act 209 of 1993

12. (1) Section 11 of the principal Act is hereby amended by the substitution for paragraph (b) of subsection (6) of the following paragraph:

"(b) When the Board makes recommendations to the Administrator as contemplated in paragraph (a), it shall do so-

<<(i)>> within a reasonable time after having been requested to do so; <<or>>

(ii) within a reasonable period determined by the Administrator,>> and <<shall>> take into account the criteria listed in Schedule 6: <<Provided that if the Board fails to furnish the Administrator with its written recommendations within the period referred to in subparagraph (ii) the Administrator may, notwithstanding anything to the contrary contained in this Act, exercise any power or perform any duty conferred or imposed upon him or her by this Act without considering the advice and written recommendations of the Board.>>".

(2) Subsection (1) shall be deemed to have come into operation on 30 November 1994.

Amendment of section 13 of Act 209 of 1993

13. (1) Section 13 of the principal Act is hereby amended by the addition to

paragraph (b) of subsection (6) of the following proviso:

"<<Provided that any delegation of a former administrator which was in force in respect of such an area immediately before the commencement of this Act shall, subject to the provisions of this Act, continue in force for the purpose of the continued administration of such an area, until such delegation is revoked or otherwise is no longer in force in law.>>".

(2) Subsection (1) shall be deemed to have come into operation on 2 February 1994.

Amendment of section 16 of Act 209 of 1993

14. (1) Section 16 of the principal Act is hereby amended by the insertion after subsection (3) of the following subsection:

"<<(3A) Notwithstanding the provisions of section 10(3)(j), the conclusion or amendment of any contract, the appointment or promotion of any person, or the award of a term or condition of service or other benefit, which occurred since the date of commencement of this Act in respect of any person employed by any local government body, may, within six months of 30 November 1994, be reviewed by a commission appointed by the Administrator and presided over by a judge, and if not proper or justifiable in the circumstances of the case, the commission may reverse or alter the contract, appointment, promotion or award.>>".

(2) Subsection (1) shall be deemed to have come into operation on 30 November 1994.

Substitution of section 16A of Act 209 of 1993

15. (1) The following section is hereby substituted for section 16A of the principal Act:

"Validation of certain proclamations

16A. <<(1) A proclamation issued under section 10(1) and published before 30 June 1995, shall not be invalid merely because-

(a) it was not issued or published within a period or before a date specified in section 7 or 7A;

(b) in the circumstances contemplated in subsection (2)(a) of section 7, a matter had not been referred to an arbitration committee before or on 21 December 1994 as required by the said subsection;

(c) in any case where a matter had been referred to an arbitration committee for its consideration and decision in terms of subsection (2)(b) of section 7, that committee had not notified the Administrator of its decision before or on 12 January 1995 as required by the said subsection;

(d) the provisions of subsection (2)(a) of section 7 requiring the referral of a matter to an arbitration committee for decision in accordance with subsection (2)(b) of that section, or any requirement of the said subsection (2)(b) in so far as it relates to arbitration, was for any reason not complied with by the Administrator prior to making a determination and exercising the powers conferred upon him or her by section 10(1) as contemplated in the said subsection; or

(e) any specific provision of any agreement contemplated in section 7(1) was not incorporated in such proclamation.

(2) The institution of any action in a court of law relating to the

validity of a proclamation contemplated in subsection (1) shall not delay or suspend the implementation or operation of such proclamation.>>".

(2) Subsection (1) shall be deemed to have come into operation on 23 November 1994.

Amendment of Schedule 1 to Act 209 of 1993

16. (1) Schedule 1 to the principal Act is hereby amended by the substitution for subparagraph (3) of paragraph 5 of the following subparagraph:

"(3) Any person <<who is eligible to vote in terms of section 6 of the Constitution, read with section 15 of the Electoral Act, 1993 (Act No. 202 of 1993), and who is ordinarily resident within the area of jurisdiction of one of the participating local government bodies, or under law liable for the payment of assessment rates, rent, service charges or levies to one of the participating local government bodies, may be>> nominated as a member of any transitional council or transitional metropolitan substructure **shall meet the qualifications of a member of one of the participating local government bodies** <<unless-

(a) he or she is a member of the National Assembly, the Senate or a provincial legislature;

(b) he or she is disqualified to be elected as a member of the National Assembly in terms of the Constitution; or

(c) he or she is an employee of one of the participating local government bodies or any other local government body: Provided that the Administrator may exempt any such person if the Administrator is satisfied that such exemption is in the public interest and proof of such exemption accompanies the nomination:

Provided that no person shall be nominated as a member of more than one transitional council or metropolitan substructure.>>".

(2) Subsection (1) shall be deemed to have come into operation on 2 February 1994: Provided that this subsection shall not affect the validity of any agreement reached by a forum in terms of the principal Act or the validity of any proclamation issued by an Administrator in terms of section 10(l) of the principal Act, reached or issued before 30 November 1994 in respect of the members of a transitional local council or transitional metropolitan council and transitional metropolitan substructure.

Amendment of Schedule 4 to Act 209 of 1993

17. (1) Schedule 4 to the principal Act is hereby amended-

(a) by the substitution for paragraph 1 of the following paragraph:

"1. Any natural person who is-

(a) **eligible to vote in terms of section 6 of the Constitution of the Republic of South Africa, 1993, read with section 16 of the Electoral Act 1993 (Act No. 202 of 1993); and** <<of or over the age of 18 years;

(b) (i) a South African citizen; or

(ii) permanently resident in the Republic and who is in possession of an identity document contemplated in paragraph 5;

(c) not subject to any disqualification mentioned in section 16 of the

Electoral Act, 1993 (Act No. 202 of 1993); and>>

(b)<<(d)>> ordinarily resident within the area of jurisdiction of a local government, or under law liable for the payment of assessment rates, rent, service charges or levies to the local government concerned, shall be entitled to be included in the voters' roll of that local government and shall thereupon be entitled to vote in an election for members of the council of such local government: Provided that any person shall be entitled to exercise only one vote for any local government: <<Provided further that the exercise of a vote as contemplated in this paragraph may entail the marking of two or three ballot papers representing the proportional and ward components of a vote referred to in paragraphs 7 and 8.>>";

(b) by the substitution for paragraph 5 of the following paragraph:

"5. Identification for voting purposes shall be by production of a voter's eligibility document **as defined** <<referred to in paragraphs (a), (c) and (d) of the definition of 'voter's eligibility document'>> in section 1 of the Electoral Act, 1993.";

(c) by the substitution for subparagraph (a) of paragraph 6 of the following subparagraph:

"(a) he or she is **an elected** <<a>> member of the National Assembly, **or** the Senate <<or a provincial legislature>>;";

(d) by the insertion after paragraph 6 of the following paragraph: nominated

"<<6A. Subject to the provisions of paragraph 8, no person for election as a member of a transitional council or a metropolitan substructure shall be nominated for election as a member of any other transitional council or metropolitan substructure.>>"; and

(e) by the substitution for paragraph 8 of the following paragraph:

"8. Forty per cent of the members of a transitional metropolitan council shall be elected according to the system of proportional representation contemplated in paragraph 7, and sixty per cent of the members shall be **nominated** <<elected as prescribed by regulation under section 12>> by the transitional metropolitan substructures from among their members on a pro rata basis according to the number of registered voters in the areas of jurisdiction of such transitional metropolitan substructures: Provided that each such transitional metropolitan substructure shall be entitled to at least one representative.".

(2) (a) Paragraph (a) of subsection (1) shall be deemed to have come into operation on 1 January 1995.

(b) Paragraphs (b), (c) and (d) of subsection (1) shall be deemed to have come into operation on 30 November 1994.

Substitution of long title of Act 209 of 1993

18. (1) The following long title is hereby substituted for the long title of the principal Act:

"ACT

To provide for revised interim measures with a view to promoting the restructuring of local government, and for that purpose to provide for the establishment of Provincial Committees for Local Government in respect of

the various provinces; to provide for the recognition and establishment of forums for negotiating such restructuring of local government; for the exemption of certain local government bodies from certain provisions of the Act; for the establishment of appointed transitional councils in the pre-interim phase; for the delimitation of areas of jurisdiction and the election of transitional councils in the interim phase; <<for the establishment of transitional rural local government structures>>; for the issuing of proclamations by the Administrators of the various provinces; for the establishment of Local Government Demarcation Boards in respect of the various provinces; and for the repeal of certain laws; and to provide for matters connected therewith.".

(2) Subsection (1) shall be deemed to have come into operation on 30 June 1995.

Repeal of laws, and saving

19. (1) Subject to subsection (2), the laws mentioned in the second column of the Schedule are hereby repealed.

(2) Anything purporting to have been done under or in terms of a law repealed by subsection (1), shall be deemed to have been done under the corresponding provision of the principal Act as amended by this Act.

Short title

20. This Act shall be called the Local Government Transition Act Second Amendment Act, 1995.

SCHEDULE
Laws repealed

Number and year of law	Title
Proclamation No. R. 129, 1994	Assignment of the Local Government Transition Act, 1993, to the Provinces under section 235(8) of the Constitution of the Republic of South Africa, 1993
Act No. 34 of 1994	Local Government Transition Act Amendment Act, 1994
Proclamation No. R. 174, 1994	The Local Government Transition Act Amendment Proclamation, 1994
Proclamation No. R. 35, 1995	The Local Government Transition Act Amendment Proclamation, 1995
Proclamation No. R. 54, 1995	The Local Government Transition Act Second Amendment Proclamation, 1995
Proclamation No. R. 58, 1995	The Local Government Transition Act Third Amendment Proclamation, 1995
Proclamation No. R. 59, 1995	The Local Government Transition Act, Fourth Amendment Proclamation, 1995
Proclamation No. R. 65, 1995	The Local Government Transition Act Fifth Amendment Proclamation, 1995