South African
Law Reform Commission

Ref: 7/2/1/125 SALRC
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Black Lawyers Association, Gauteng Society of Advocates, General Council of the Bar of South Africa, Law Society of South Africa, Legal Aid South Africa, National Association of Democratic Lawyers, National Bar Council of South Africa

Dear Sirs / Madams

REQUEST FOR COMMENTS: SA LAW REFORM COMMISSION: PROJECT 125: PRESCRIPTION PERIODS: REVISED DISCUSSION PAPER 147

INTRODUCTION

The SA Law Reform Commission (Commission) is an independent statutory body mandated in terms of section 4 of the South African Law Reform Commission Act, 1973 (Act 19 of 1973) to research all branches of the law of South Africa, to study and investigate such laws and to make recommendations for the development, improvement, modernization or reform thereof. The Secretariat of the Commission is a chief directorate resorting under the branch: Legislative Development: Department of Justice and Constitutional Development.

In line with its powers, the Commission has, over the years, been engaged in the investigation of various aspects of prescription, a law aimed at promoting certainty and finality, the timeous exercise of rights and the prompt adjudication of disputes.

Long regarded as a complex area of the law, prescription, in addition, embodies a system that is inherently limiting of rights. Its effect on ordinary people thus, living in a country where poverty and illiteracy prevail, where cultural and language barriers are pronounced and where mobility is hampered by geographical isolation in outlying rural areas, informal settlements and townships serviced by underdeveloped infra-structure and unreliable transport, is profound.

Locating avenues for reform therefore required a radical shift in thinking, so that, even within the confines of its limitations; prescription was capable of functioning as a credible vehicle of transformation, able to meaningfully translate the constitutional values of human dignity, the achievement of equality and the advancement of fundamental human rights.

With this in mind, the Commission releases Revised Discussion Paper 147 on Project 125: Prescription Periods, setting out its **preliminary recommendations** for law reform, being the following, in principal:

1. prohibiting the recovery of prescribed debt, in keeping with the principle of extinction;
2. increasing the general prescription period from three to four years;
3. suspending the running of prescription in instances where creditors are unable to access the courts due to adverse socio-economic circumstances, including poverty and illiteracy;
4. compelling the operation of all notice provisions in line with the Institution of Legal Proceedings against certain Organs of State Act, 2002 (Act 40 of 2002), and providing for the repeal or amendment of principles that enable them to operate harshly;
5. compelling the operation of limitation and prescription provisions contained in certain enactments in line with the more beneficial *"prescription of debts"* regime of the Prescription Act; and
6. circumscribing the operation of remaining limitation provisions, by, amongst other things, diluting their harsh effect and incorporating into their scheme, elements that have a more beneficial impact on the rights of creditors.

REQUEST FOR COMMENTS

The Commission invites comments on the preliminary proposals presented in the Revised Discussion Paper and proposed draft Bills. To this end, it will be appreciated if the paper is distributed by each group amongst its members.

In addition to obtaining individual inputs, the Commission envisages holding one or more public workshops. Further to this, the researcher welcomes opportunities to engage one-on-one with designated officials should further clarity be required on some of the preliminary recommendations made.

CLOSING DATE FOR COMMENTS

The closing date for comments is **30 April 2018**. All comments and representations must be sent to Ms Theresa Häderli at the following address:

The Secretary
South African Law Reform Commission
Private Bag X668
Pretoria
0001
E-mail: THaderli@justice.gov.za
Tel.: 012 622 6329

The comments received will be used to develop a Report with final recommendations and draft Bills for submission to the Minister of Justice and Correctional Services, who decides whether the draft Bills will be tabled in parliament.

The Revised Discussion Paper is available at the following site: http://www.justice.gov.za/salrc/dpapers.htm on the Internet. Hard copies can also be obtained on request, free of charge, and in this regard, Mr Jacob Kabini may be contacted at Jakabini@justice.gov.za or 012 622 6327.

Yours sincerely

MR TN MATIBE
SECRETARY: SA LAW REFORM COMMISSION
Date:

16/02/2018