INTRODUCTION

Adequate and up-to-date legal instruments, relevant and appropriate policies and well structured administrative frameworks are imperative for good management of World Heritage Sites. This applies to all sites, including Robben Island. For the effective protection of the World Heritage status of Robben Island it is important for the State Party to put in place legislation to supplement conventions, in order to provide a legally sound framework within which to conserve the cultural and natural heritage of the Island. In South Africa, however, if there is any cause for concern, it is that there are many laws and bodies vested with the responsibility of ensuring heritage management, and that there is a need to ensure that their roles are not competitive, but complementary.

The bodies responsible for heritage management and whose authority does impact on Robben Island include South African Heritage Resources Agency (SAHRA), Department of Environmental Affairs and Tourism (DEAT), and Department of Arts and Culture (DAC), among others. In addition, RIM’s legal obligations in respect of the management and maintenance of the Island arise from international conventions, the common law, the South African Constitution and various domestic statutes, which include the following:

- Public Finance Management Act 1 of 1999;
- National Environment Management Act 107 of 1998;
- World Heritage Convention Act of 49 of 1999;
- World Heritage Convention of 1972;
- World Heritage Operational Guidelines revised in 2002;
- The South African Constitution 108 of 1996;
- Municipal By-Laws and Provincial legislation.

There are also constitutional obligations and major pieces of national legislation that are particularly relevant to RIM’s managerial processes and operations; and there are Municipal By-Laws that may impact on RIM and its regular operations.

This chapter provides a snapshot of the primary pieces of legislation that RIM needs to comply with for it to operate lawfully. It also illustrates how Robben Island makes use of the legislation to drive the agenda of the WHS.

As a point of departure it is important to bear in mind that, just like the history of RIWHS and because of the various facets of the WHS, it stands to reason that the legal framework is also layered. The basis for this statement is derived from the fact that the WHS is an organ of State, a public entity, a site with cultural and natural significance, a national museum, a declared cultural institution, declared a national heritage site; an educational institution; an archive, a mariner, an employer, and a tourist destination. These various layers can be represented by the following diagram.

TRANSFORMATION OF SOUTH AFRICAN HERITAGE LEGISLATION

The South African law pertaining to the protection of heritage has undergone a transformation in the last decade. The reasons for this transformation may be attributed to the political transformation of South Africa, which led to the crafting of a new Constitution and consequently the drafting of the 1996 White Paper on the Arts, Culture and Heritage which outlined a new policy and vision for heritage in South Africa. For the strategy to be implemented, new legislation based on these transformed principles needed to be put in place, as the earlier legislation did not accurately reflect the cultural heritage conservation priorities of the State Party.

National Legislation

The South African Constitution Act 108 of 1996

The Constitution is the supreme law of the Republic of South Africa. Law or conduct inconsistent with it is invalid, and the obligations imposed by it must be fulfilled. (Section 2)

The new Constitution gives concurrent powers to national and provincial government for cultural matters, and so new legislation was needed to spell out the responsibilities of heritage authorities at national and provincial level. By virtue of RIM being a National Heritage Site, museum and WHS, only SAHRA has jurisdiction as the custodian of the National Estate. However, because the Constitution also gives the national and provincial government (in this case the Western Cape provincial government) concurrent jurisdiction, the provincial authorities may wish to pass legislation regulating heritage affairs. Currently there is one piece of provincial legislation, the Culture Promotion Act of 1983 (and hence it is pre-Constitution legislation), which is of relevance. This will be discussed later. These pieces of legislation do not conflict with one another and any legislation passed in the future will take place with the principles of co-operative governance, as set out in the Constitution itself.
The State and all its citizens are bound by the provisions of the Constitution, which is the foundational legislative instrument against which all other laws and conduct may be tested. RIM is an organ of the State as defined in the Constitution. As such it must adhere to the principles of co-operative governance and must apply the values and principles applicable to public administration.1 The rights in the Bill of Rights, particularly the right to just administrative action, may also be applied both by and against RIM in respect of its management and operation of the site. Thus, RIM is bound by these standards, which our Courts have enforced against various public entities in the past.

World Heritage Convention Act 49 of 1999

In 1997 South Africa ratified the UNESCO Convention Concerning the Protection of the World Cultural and Natural Heritage, 1972 (the World Heritage Convention) and enacted the World Heritage Convention Act (WHCA) to incorporate this Convention into South African law. The Act is administered by DEAT.

The general objectives of the WHCA include:

- To promote, manage, oversee, market and facilitate tourism and related development in connection with World Heritage Sites in accordance with applicable law, the Convention and the Operational Guidelines for the Implementation of the Convention (Operational Guidelines), so as to maintain the cultural and ecological integrity of the sites;
- To ensure that the cultural and natural heritage of South Africa is protected, conserved and represented;
- To encourage investment, innovation and job creation in connection with World Heritage Sites;
- To promote the development of sustainable projects in connection with World Heritage Sites;
- To promote empowerment and advancement of historically disadvantaged people in projects related to World Heritage Sites.2

The WHCA contains a number of principles which are applicable to the actions of all organs of State and authorities in relation to World Heritage Sites. The principles should be read in conjunction with principles contained in other legislation relevant to the environment, including those in the National Heritage Resources Act and the National Environmental Management Act. RIM’s Objects of Council also expressly recognises these principles as containing key guidelines for the management of RIM.

The Act stipulates various duties and powers of SAHRA. The most significant of these is to ensure that RIM has an ICMP in place.

Public Finance Management Act 1 of 1999, as amended by Act 29 of 1999 (PFMA)

As a public entity, the WHS must comply with the legislation that regulates public entities. The main legislation in this regard are the Public Finance Management Act and its Treasury Regulations, Promotion of Access to Information Act 2 of 2000, and Promotion of Administrative Justice Act 3 of 2000.

The PFMA is one of the most important Acts passed by the first democratic government in South Africa. The Act promotes the objective of good financial management in order to maximise service delivery through the effective and efficient use of the limited resources.

The key objectives of the Act may be summarised as being:

- To modernise the system of financial management in the public sector;
- To enable public sector managers to manage, but at the same time be held more accountable;
- To ensure the timely provision of quality information;
- To eliminate the waste and corruption in the use of public assets.

The PFMA adopts an approach to financial management that focuses on outputs and responsibilities rather than the rule-driven approach of the previous Exchequer Acts. The Act is part of a broader strategy to improve financial management in the public sector.4

The PFMA gives effect to section 216(1) of the Constitution. This requires national legislation to establish a national treasury and prescribes measures to ensure transparency and expenditure control in each sphere of government, by introducing:

- Generally recognised accounting practice;
- Uniform expenditure classifications;
- Uniform treasury norms and standards.

RIM has made every effort to establish internal mechanisms aimed at complying with the PFMA. To meet the obligations of this legislation RIWHS has restructured its Finance Department by appointing a Chief Financial Officer, establishing an Internal Audit Department, and introducing a Supply Chain Unit that ensures that fairness prevails when RIWHS procures services.

Promotion of Access to Information Act 2 of 2000

This Act grants the right of access to information and generally promotes transparency, accountability and effective governance of all public and private bodies. This is referred to in section 32 of the Constitution which says, ‘Everyone has the right of access to any information held by the state; and any information that is held by another person and that is required for the exercise or protection of any rights’. However, this right of access is not universal and should be balanced with the right to privacy which is also entrenched in the Constitution.


This Act is aimed at giving effect to section 33 of the Constitution which states:

33. Just administrative action

1. Everyone has the right to administrative action that is lawful, reasonable and procedurally fair.
2. Everyone whose rights have been adversely affected by administrative action has the right to be given written reasons.
3. National legislation must be enacted to give effect to these rights, and must:
a) provide for the review of administrative action by a court or, where appropriate, an independent and impartial tribunal;
b) impose a duty on the state to give effect to the rights in subsections (1) and (2); and promote an efficient administration.

Further, as a national museum and cultural institution the WHS must comply with the following other pieces of national legislation:

- Cultural Institutions Act 119 of 1998;
- National Heritage Resources Act 25 of 1999;
- Culture Promotion Act 35 of 1983.

As mentioned above, the RIMHS is both a cultural and natural site and as such, there are significant pieces of legislation that regulate the conservation and preservation of the environment. These include, among others:

- National Environmental Management Act 109 of 1998;
- Environmental Conservation Act 73 of 1989;
- National Environmental Management: Biodiversity Act 10 2004;
- National Environmental Management: Protected Areas Act 57 of 2003;
- Conservation of Agricultural Resources Act 43 of 1983;
- National Water Act 36 of 1988;
- Wreck and Salvage Act 94 of 1996;
- Disaster Management Act 57 of 2002;
- Sea Birds and Seals Protection Act 46 of 1973;

**The Cultural Institutions Act 119 of 1998**

This Act provides for the declaration of certain institutions as declared cultural institutions under the control of Councils, and provides for the payment of grants and subsidies to certain cultural institutions or museums. It also establishes a national museums division. In terms of this Act the RIMHS was declared as a declared cultural institution and as such receives a subsidy from DAC.

This Act also provides for the establishment of a Council whose members are tasked with the control, management and direction of the cultural institution, subject to the provisions of the Cultural Institutions Act. Further, the Act provides a number of key principles that should be read and applied in conjunction with principles contained in other relevant legislations, including those on environment in the Heritage Resources Act. The Council of RIMHS have recognised and incorporated these principles into their operations. These include the following:

- To formulate policy;
- To hold, preserve and safeguard all movable and immovable property of whatever kind placed in the care of, or loaned, or belonging to the institution concerned;
- To receive, hold, preserve and safeguard all specimens, collections or other movable property placed under its care and management;
- To raise funds for the institution.

All these principles conform to the World Heritage Convention, the Operational Guidelines for the Implementation of the World Heritage Convention, as well as the spirit of the Convention that calls for universal access to all World Heritage Sites, a principle that Robben Island subscribes to and is engrained within this ICMP.

Further, World Heritage Sites need to act as economic engines within their locales for local economic development and job creation and they need to address issues of empowerment, particularly for the historically disadvantaged persons. This is well captured in the ICMP. RIMHS has endeavoured to contribute towards the achievements of these principles through, among others:

- The employment and retention of ex-political prisoners in various capacities, including that of prison tour guides, as well as in the highest positions, such as the Chief Executive Office (CEO) and the Chief Operations Officer (COO) of the organisation;
- The use of Robben Island as a space of healing for ex-political prisoners who are from both within and without Robben Island prison. The present ICMP stresses the use of the WHS as a place of healing and removal of trauma from which many still suffer;
- The involvement of the community in various job creation and economic empowerment activities, such as in the clearing of alien and invasive plants. This is an area that still needs work, but the present ICMP has identified various actions to be taken;
- The hosting of the Spring School every year, for the last seven years, has seen student representatives from all over South Africa and from Namibia come to the WHS to engage with each other and with artist from various fields. This one-week exercise exposes students to the world of conservation and use of heritage, and instils in them heritage activism;
- The Robben Island Travelling Theatre, otherwise popularly known as RIM Road Show, has been able to share with communities in South Africa and beyond, the story of Robben Island, its experiences, and what it stands for today.

**National Heritage Resources Act 25 of 1999 (NHRA)**

The NHRA replaced the National Monuments Act and is a prime example of legislation that was introduced as part of the transformation of the legislation pertaining to heritage. The NHRA aims to promote good management of the national estate by *inter alia* introducing a system of managing heritage resources (of any place or object of cultural significance) and to enable and encourage communities to nurture and conserve their legacy so that it may be bequeathed to future generations.

The NHRA allows for the grading of sites on the basis of local, provincial and national importance. RIM is a Grade 1 Site – this means that RIM has been recognised as a heritage resource with exceptional qualities that it is of special national significance (section 7).
Further, as a declared heritage site, RIM must:

- Maintain the site according to a minimum standard and according to a procedure prescribed by SAHRA;
- Obtain a permit for any alteration to, damage, destruction, relocation, subdivision or changing of planning status of the site.\(^3\)

The NHRA contains various provisions that provide for heritage resources to obtain SAHRA’s permission, especially if the heritage resource wishes to destroy, damage, deface, excavate, alter, remove from its original position, subdivide or change the planning state of a National Heritage Site.

The NHRA creates a mechanism for the conclusion of heritage agreements between itself and heritage sites, so as to strengthen and streamline the roles of SAHRA and the heritage resource in relation to the heritage resource. To give effect to this provision RIM and SAHRA have signed a Memorandum of Understanding (MOU), which sets out each party’s current roles and responsibilities and which establishes a Heritage Advisory Committee (HAC).

HAC consists of representatives from RIM, SAHRA, DPW, the Heritage Western Cape, and the City of Cape Town (Heritage Resources Section). HAC’s functions include:

- Monitoring RIM’s implementation of the ICMP (required under NHRA);
- Advising on the efficient and integrated management of the heritage resources of Robben Island.

**Culture Promotion Act 35 of 1983 (CPA)**

This is a provincial piece of legislation. The CPA provides for the preservation, development, fostering and extension of culture in South Africa by:

- Planning, organising, co-ordinating and providing facilities for the utilisation of leisure and for non-formal education;
- Developing and promoting cultural relations with other countries;
- Establishing regional councils for cultural affairs;
- Confering certain powers upon Ministers in order to achieve these objects and by providing for matters connected therewith.

RIWHS has endeavoured to contribute towards the achievements of the objects of the CPA through, among others:

- Entering into co-operation agreements with other museums and/or cultural institutions for exchange programmes;
- Entering into co-operation agreements with other countries, such as Norway, in order to develop and promote cultural relations with other countries;
- Curating and hosting exhibitions;
- Conducting the Robben Island Training Models as part of the Postgraduate Heritage Studies course;
- Hosting Spring School activities;
- Hosting Nation Building Youth Camps;
- Hosting The Young Readers Academy;
• Hosting Artist in Residency Programme;
• Hosting the Annual RIM Seminar Programme;
• Hosting special events.

National Archives of South Africa Act 43 of 1996
Robben Island is an institution which has a rich archive both in the Island and at UWC-Robben Island Mayibuye Archive, which is a resource both at national and international level. The WHS is therefore required to comply with the abovementioned Act. This Act provides for:

• A National Archives and Record Service;
• The proper management and care of the records of governmental bodies;
• The preservation and use of a national archival heritage;
• To provide for matters connected therewith.

National Environmental Management Act 107 of 1998 (NEMA)
As a natural site, there is a plethora of environmental laws that RIM needs to comply with. The most significant of these is the National Environmental Management Act, 1998.

The Constitution entrenches the fundamental right of every person to an environment ‘ … which is not detrimental to his / her health or wellbeing’. It further affords to everyone a right:

• to an environment that is not harmful to their health or wellbeing; and to have the environment protected for the benefit of present and future generations, through reasonable legislative and other measures that:
• prevent pollution and economical degradation;
• promote conservation; and
• secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.

NEMA is intended to integrate environmental management countrywide, by establishing principles to serve as a general framework for environmental matters and providing guidelines for the interpretation, administration and implementation of this Act and any other environmental law. In essence this legislation is the cornerstone of general environmental law and environmental management and governance.

NEMA imposes duties upon government departments and State organs, so as to realise the constitutional environmental right and co-operative environmental governance. The Act also imposes duties on all parties regarding the prevention of damage to the environment. These duties include:

• Referring to the principles set out in NEMA when exercising any function, or when taking any decision in terms of NEMA or any other statutory provision, concerning the environment.

Finally, it should be noted that there is currently a law reform process that is moving toward incorporating Environmental Impact Assessment Regulations into NEMA, At that time, the remaining sections of the Environmental Conservation Act will be repealed.

National Environmental Management: Biodiversity Act 10 of 2004 (NEMBA)

NEMBA was enacted for the following reasons:

• To provide for the management and conservation of South Africa’s biodiversity within the framework of NEMA;
• To protect species and ecosystems that warrant national protection;
• To ensure the sustainable use of indigenous biological resources;
• To ensure fair and equitable sharing benefits arising from bio-prospecting involving indigenous biological resources;
• To establish a South African National Biodiversity Institute, and for matters connected therewith.

The Biodiversity Act also contains provisions regarding alien and invasive species. The Act requires a permit be obtained before certain identified alien or invasive species may be retained within South Africa.

The Biodiversity Act and the NHRA create a more complex picture in terms of RIM’s management of certain plant species. If a plant is deemed to be an alien and invasive species under the Biodiversity Act, RIM must decide whether it wishes to retain the plant (and therefore apply for a permit under the Biodiversity Act) or whether it wishes to remove the plant (and therefore apply for a removal permit under the NHRA).

To create a greener Robben Island, the authorities of the time planted more that 20 000 trees, including Eucalyptus, Manatoka, Cyprus and Rooikrans trees, which are exotic species. According to NEMBA and other legislation (for example, Conservation of Agricultural Resources Act CARA) these trees should be removed. The uncontrollable growth of especially the Rooikrans is creating a fire risk on the Island, but at the same time provides shade and protection for the thriving colony of African Penguins of Robben Island.
To meet the objectives of the relevant legislation, the Environmental Management Plan for RIM indicates that RIM will:

- Reduce the fire risk by removing some of the exotic vegetation;
- Ensure that habitat for the successful breeding of endangered bird species would remain;
- Maintain historically important avenue of trees for as long as possible.

This demonstrates the complexities involved in managing the Island’s natural heritage.

Conservation of Agricultural Resources Act 43 of 1983 (CARA)

CARA and the regulations promulgated under it, provide for the conservation of natural agricultural resources by, among other things, the combating of invasive plant species, which are identified in the regulations. The obligations contained in CARA may conflict with those under the NHRA and the WHCA in so far as the protection of the site as a heritage resource may be required to protect invasive plant species that are deemed to be part of the heritage resource.

National Environmental Management: Protected Areas Act 57 of 2003 (NEMPAA)

NEMPAA creates a national system of protected areas in order to protect biodiversity in the country. This statute deems all World Heritage Sites to be protected areas as defined in the Act. However, only certain sections of the Act apply to World Heritage Sites. Those provisions that do apply, generally prohibit most persons from entering or residing on the site without the written permission of the management authority. The statute also permits RIM to engage or permit commercial activities on the site, providing the activity does not negatively affect the integrity of the site’s ecological systems and providing RIM has systems to monitor the impact of such activities.

Regulations promulgated under the NEMPAA, however, require that any such commercial activities may occur only in areas designated for such development in a management plan and after RIM has produced an environmental impact report on such activities. The regulations further require that RIM issue express permission before anyone conducts tours, films and simultaneously transmits photographic images, or the sells or hires goods.

The regulations also expressly empower ‘management authorities’ to control access to heritage resource sites such as RIM, by preventing public access in certain circumstances, by establishing and charging access fees, and by designating access points to the sites. These same regulations require a permit for a fairly wide range of activities relating to nature conservation and biodiversity management, including:

- Construction of buildings or other improvements;
- Activities that could effect threatened or protected species or propagate alien or listed invasive species;
- Scientific research;
- The removal of soil, wood, coral or like entities.

Prohibited activities include polluting and littering.

To give effect to many of the issues raised in the Act, RIM has developed a series of policies that ensures compliance to the Act. The policies include, among others:

- Housing policy;
- Filming and photography policy;
- Environmental Policy.

National Water Act 36 of 1998

The National Water Act controls pollution of water sources, regulates water use, use charges, the protection of water resources, and the granting of licences to use water. The National Water Act is important, as water is a limited resource in South Africa. This Act creates a hierarchy of water requirements, the first being the maintenance of a reserve needed to maintain the natural environment. Water users are invited to apply for licences in respect of a particular water use and the procedures for this application are set out in the National Water Act. The licence then may or may not be issued, or may be issued subject to conditions, including conditions governing permissible levels of chemicals in discharged wastewater.

The supply of water has been, and remains, a key factor in the development of Robben Island. According to this statute, the national government has the overall responsibility for, and authority over, the nation’s water resources and their use. Furthermore the Act recognises that:

- The ultimate aim of water resource management is to achieve the sustainable use of water for the benefit of all users;
- The protection of the quality of water resources to ensure sustainability of the nation’s water resources.

This statute also seeks to regulate water use, setting out various types of licensed and unlicensed uses of water. Water use under the Act includes storing water, impeding or diverting the flow of a watercourse, and disposing or discharging of waste in a manner that may detrimentally impact a water resource. While RIM activities generally will not require licensing under this statute, it has obtained a conditional licence through DPW in respect of operating a marine sewer outfall to dispose of its sewage. This is a permitted activity and as such is regulated under strict conditions. Regular monitoring is done to ensure compliance.
Maritime Zones Act 15 of 1994 (MZA)
The MZA is enacted to regulate marine pollution. RIWHS needs to take such measures as are necessary against any vessel or aircraft in order to protect the one-nautical-mile around Robben Island from pollution or the threat of pollution.

Disaster Management Act 57 of 2002
The World Heritage Convention’s reporting requirements specifically require comments to be made on the degree to which the property is threatened by particular problems and risks. Robben Island’s isolated location makes it vulnerable to a whole range of risks that do not apply on the mainland.

The UN’s International Strategy for Disaster Reduction (ISDR) was launched in 2000. Traditionally the focus of disaster management was on preparedness for response (for example, fire brigade, ambulances and sea rescue). There is now a shift in thinking with increased emphasis placed on risk, and an acceptance that disaster, development and environmental problems are inextricably linked.

The Disaster Management Act No 57 provides for an integrated and co-ordinated disaster management policy that focuses on preventing or reducing the risk of disasters, mitigating the severity of disasters, emergency preparedness, rapid and effective response to disasters, and post-disaster recovery.

Each municipality is required to prepare Disaster Management Plans, which should be co-ordinated and aligned with other organs of State and institutional role-players. RIM will strive to align its Disaster Management Plan with that of the City of Cape Town. Currently there is a management Disaster Committee comprised of the South African Police Services, DPW and representatives of Robben Island Management, that meets every two months to evaluate risk preparedness.

Sea Birds and Seals Protection Act 46 of 1973
The Sea Birds and Seals Protection Act provides for control over certain islands and rocks, for the protection and control of the capture and killing of sea birds and seals, and for the disposal of the products of sea birds and seals.

One hundred and forty eight (148) bird species have been sighted and recorded on Robben Island, 78 of these are resident on the Island. Robben Island is an important breeding area for a number of endangered bird species, for example, African Penguins, Hartlaub’s Gulls, and Bank Cormorants. Robben Island ensures conservation and protection of these bird species by implementing its Environmental Management Plan.

Marine Living Resources Act 18 of 1998 (MLRA)
The objectives and principles of the MLRA deal with:

- The utilisation, conservation and management of marine living resources;
- Protection of whole ecosystems;
- Preservation of marine biodiversity;
- Minimising marine pollution;
- Compliance with international law and agreements;
- Restructuring the fishing industry.

The guiding principle of the Act is that all the natural marine living resources of South Africa, as well as the environment in which they exist, are a national asset and the heritage of all South Africa’s people that must be managed and developed for the benefit of present and future generations.

Provision is made for conservation of the marine ecosystem, the long-term utilisation of marine resources, and the control of marine resources in a fair and controlled manner. Licensing, rights of access, seasons, fishing and other matters are dealt with in terms of regulations made under the MLRA.

The one-nautical-mile surrounding Robben Island contains natural marine living resources such as abalone. Under the MLRA the Minister is expected to determine the total allowable catch. The total allowable catch for abalone for RIWHS is limited to 20 tons. The environmental policy of RIM allows for people to access certain resources if they are in possession of the required permits.

Dumping at Sea Control Act 73 of 1980
This Act provides for the control of dumping of substances in the sea. It gives legal effect in South Africa to an international convention – the London Convention for the Prevention of Marine Pollution by Dumping of Wastes and other Matter, 1972. ‘Dump’ means deliberately disposing of any substance at sea from any vessel, aircraft, platform or other human-made structure, or by incinerating or depositing in the sea. However, it does not include the disposal at sea of any substance incidental to, or derived from, normal operations of a vessel. Nor does it include legally depositing at sea any substance for a purpose other than its mere disposal. RIWHS employs best conservation practices and complies with the legislation.

Educational Legislation
As an educational institution RIM jointly offers a Postgraduate Diploma in Museum and Heritage Studies with two universities. The Diploma is aimed at training heritage professionals to increase the capacity of heritage management on the continent. To ensure that further education and training is regulated and that certain standards are applied and maintained, the South Africa legislature have introduced the Further Education and Training Act 58 of 1998 and General and Further Education and Training Quality Assurance Act 58 of 2001. The Diploma is currently accredited in terms of the latter Act.
RIM, with the Department of Education, also manages schools for pre-school and primary school learners, located on Robben Island. The organisation and governance of schools is regulated by the South African Schools Act 84 of 1996. The objective of this Act is to provide a strong foundation for the protection and advancement of the country's diverse cultures and languages. Section 6 of this Act empowers school governing bodies to determine the language policy of schools within guidelines set nationally and on a provincial level. RIM ensures compliance with the legislation and in so doing, ensures the preservation of the school by liaising with the Department of Education regarding various matters pertaining to the school. RIM supports the Department of Education’s language in education policy and learners are taught in English, Afrikaans and isiXhosa.

**Maritime Law**
RIM transports visitors to the Robben Island by way of vessels, which means that it is a mariner and is therefore subject to the Maritime Law of South Africa. Admiralty Law in South Africa is governed by the Admiralty Jurisdiction Regulation Act 1983 which in essence provides for South African Courts to hear any maritime claim, irrespective of where the claim arose, the flag of the ship, or the nationality of the litigants.

The Merchant Shipping Act 57 of 1951 provides that RIM may limit its liability in respect of its passengers to a certain amount. Robben Island employs this provision of the Act and ensures that its visitors are informed of this indemnity, which appears on the ticket required to board the vessel.

The Ships Registration Act 58 of 1998 requires ships to be registered and failure to do so, may lead to penalties imposed on RIM. It also outlines guidelines pertaining to the naming of a ship. This will be of particular importance and will be taken into account with the new ferry that is currently under construction.

The South African Maritime Safety Authority Act 1998 established the South African Maritime Safety Authority (the Authority). The objectives of the Authority are: to ensure safety of life and property at sea; to prevent and combat pollution of the marine environment by ships; and to promote the Republic’s maritime interests. The Marine Pollution (Intervention) Act 64 of 1987 gives effect to the International Convention Relating to Intervention on the High Seas in cases of Oil Pollution Casualties, and to the Protocol relating to Intervention on the High Seas in cases of Marine Pollution by Substances other than Oil 1973; and to provide for matters incidental thereto.

RIM employs best conservation practices to prevent marine pollution, as required by the Act. It gives effect to the various maritime laws by ensuring that:

- The vessels that are used to transport visitors to Robben Island are safe and reliable maritime transport;
- Its crew have the necessary qualifications and training to operate the vessels and are knowledgeable about the various legal requirements;
- It liaises with the Authority where necessary to ensure safety at sea.

**The Tourism Act 72 of 1993**
RIM is also regarded as a tourist destination. The Tourism Act 72 of 1993, as amended, administered by DEAT, governs the tourism industry in South Africa at a national level. This Act makes provision for:

- The promotion of tourism to and in South Africa;
- The further regulation and rationalisation of the;
- Measures aimed at the maintenance and enhancement of the standards of facilities and services hired out or made available to tourists (visitors in the case of Robben Island).

Of importance in the Act are the provisions pertaining to tour guides. The Act provides that tour guides should be trained, registered and comply with the Code of Ethics issued in terms of the Act. RIM ensures that its guides are trained appropriately and registered and that they observe the prescribed Code of Ethics.

**Labour Laws**
As an employer RIWHS must comply with numerous labour laws to ensure sound and fair labour practices. The most important labour legislation are:

- The Labour Relations Act 66 of 1995 which governs how employers and workers should deal with each other;
- Basic Conditions of Employment Act 75 of 1997 which is aimed at regulating various administrative issues relating to employment of employees (for example hours of work, leave and payment);
- Employment Equity Act 55 of 1998 which aims to create an environment of equality and non-discrimination in the workplace. It sets out grounds for non-discrimination and it says no employer can discriminate against an employee on any of these grounds;
- Occupational Health and Safety Act 85 of 1993 which maintains that an employer must make sure that the workplace is safe and healthy, and must not allow any worker to do work which is potentially dangerous.

RIM’s management ensures compliance with all these laws by entering into legally sound and fair employment agreements with its employees, by ensuring that its Human Resources Department keeps abreast of developments within the field of labour law, and by ensuring that it policies are updated to ensure that previously disadvantaged individuals are employed and by so-doing addressing any discriminatory behaviour by employees.

**LOCAL AND PROVINCIAL LEGISLATION**

**Local Government: City of Cape Town: Policies, Strategies and Municipal By-Laws**
Since 2000, Robben Island has been included within the municipal boundaries of the City of Cape Town and as such all by-laws passed by the city are applicable to it. The City of Cape Town Policies and Strategies are also applicable on Robben Island.
However for Robben Island, the most relevant by-laws are the:

- Dumping and Littering: By-law 5894 of June 2002;
- Community Fire Safety: By-law 5832 of February 2002;
- Environmental Health: By-law 6041 of June 2003;
- Limit or Restrict the Use of Water: By-law 5994 of March 2003.

The City of Cape Town’s overarching environmental policy is the Integrated Metropolitan Environmental Policy (IMEP) that was adopted by the City Council in 2001. The principles and approaches in IMEP were developed in accordance with the Constitution and the principles of sustainable development. The City Council has committed itself to ensuring that IMEP is implemented in all activities, plans, programmes and actions undertaken in the performance of its Constitutional and other obligations for service delivery and economic development in the City of Cape Town. IMEP provides for the development of sectoral strategies detailing goals, targets, programmes and actions. Implementation is achieved through the Integrated Development Plan (IDP). Strategies and plans that may be relevant and applicable to Robben Island include the:

- Coastal Zone Strategy;
- Energy Strategy;
- Biodiversity Strategy;
- Water Services Development Plan;

The implementation of any of these Strategies and Plans on Robben Island are first contextualised to the Island situation and then implemented in the spirit of co-operative governance.

GOVERNANCE FRAMEWORK

Governance and Accountability

The RIM Council is the management authority for RIWHS. The Board members are selected by the Minister of Arts and Culture after nominations held in a public process and the term of Council is a minimum of three years. The Council reports to DAC the Minister of Arts & Culture, as well as the Parliamentary Portfolio Committee for Arts & Culture. The RIM Council comprises a Chairperson, Deputy Chairperson and thirteen members selected for their expertise in a variety of backgrounds including legal, financial, heritage, business and government.

The Council is the accounting authority in terms of the PFMA and as such, amidst general duties of ensuring effective, efficient and transparent systems of financial and risk management and internal control22, it also has a fiduciary duty towards RIM. This means that the Council must:

- Exercise the duty of utmost care to ensure reasonable protection of the assets and records of the public entity;
- Act with fidelity, honesty, integrity and in the best interests of the public entity in managing the financial affairs of the public entity;
- On request, disclose to the responsible for that public entity or the legislature to which the public entity is accountable, all material facts, including those reasonably discoverable, which in any way may influence the decisions or actions of the executive authority or that legislature;
- Seek, within the sphere of influence of that accounting authority, to prevent any prejudice to the financial interests of the State.23

The Executive Office and other officials of RIM must ensure that all acts conducted are within the abovementioned framework. The RIM Council has developed its own Objects of Council24, which govern RIM activities in this regard. The RIM Objects of Council contain decision-making principles which are borrowed or derived from the principal statutes that govern decision-making for heritage and conservation / environmental purposes. The Objects require that RIM decision-making management be guided by the principles set out in relevant legislation, and in particular in the:

- Constitution Act 108 of 1996, s. 195, s. 217;
- National Environmental Management Act of 1998, s. 2;
- National Heritage Resources Act of 1999, s. 5;
- World Heritage Convention Act of 1999, s. 4;
Robben Island Museum
Operational Structure

RIM COUNCIL

Company Secretary
PA to Council

CHIEF EXECUTIVE OFFICER

PA to CEO

HERITAGE & MUSEUM
Estates / Capex / Services
Heritage (incl. Environment)
Education
Tours (Conceptualisation)

SUPPORT SERVICES
Chief Finance Officer
Human Resources
Company Secretary
Media Liaison Officer
Risk Management / IT Specialists
Marketing

CHIEF OPERATIONS OFFICER

PA to COO

MARKETING MATERIAL
Shops
Conferencing
Marketing & Branding
Events

FACILITIES MANAGEMENT
Day-to-Day Maintenance
Services (electricity, water, sanitation, roads & building maintenance (NMG, Jetty 1, Post Office, Hospital)

TRANSPORT MANAGEMENT
Rail
Sea
Air
Land

TOURS
Day-to-Day Management
As is evident from the above framework, the RIM structure is made up of a hierarchy of positions and duly assigned responsibilities and functions to ensure the smooth functioning of the organisation. An outline of the functions of strategic positions and committees within the institution are as follows:

- The Council has various sub-committees, the most important being the Executive Committee (Exco). Exco includes the Chief Executive Officer (CEO), the Council Chairperson, Deputy-Chairperson, and two other Council members;
- Regular meetings of the Exco ensure that matters of importance and pressing issues are resolved in a diligent and speedy manner;
- Other sub-committees of the RIM Council are: the Finance Committee (Finco); Audit Committee; Heritage Committee; and Policy and Human Resources Committee;
- The Audit Committee members include two RIM Council members and three independent professional business people;
- While the Council is responsible for the overall process and structure of the governance, each department and every employee is responsible for adherence to good governance practices.

The governance framework is informed by the PFMA, Cultural Institutions Act and King II Report, as well as the following principles:

- Promote informed, transparent and sound decision-making;
- Protect the RIM brand;
- Support the trust and confidence of stakeholders;
- Lead to effectiveness and efficiency;
- Effective financial management;
- Facilitate legal and other compliance.

CONCLUSION

It is clear from this chapter that there is numerous legislation with which RIM must comply and that legislative compliance and effective governance is an integral part of the success of the site. Although the different legislation may pose challenges, they simultaneously ensure that RIM is legally a well-protected site. This protection will be augmented by the legislative reviews currently underway. RIM continues to manage the site in a legally compliant manner aligned with the international developments to ensure that the site is preserved. A key issue arising out of the above discussion is a need for RIM to develop a central compliance manual, which will serve as a dynamic guide for RIM in respect of the various legislative compliance responsibilities. Another key issue is the need for RIM to review the institutional policies currently in place.

ENDNOTES

1 - Constitution, ss. 239, 195 and 41.
2 - World Heritage Convention Act, s. 3.
5 - Cultural Institutions Act, s. 7(3).
6 - NRHA, ss. 25, 44.
7 - NRHA, ss. 5, 6.
8 - NHRA, s. 9.
9 - NHRA, s. 27.
10 - NEMA, s. 2.
11 - NEMA, s. 24.
12 - Protected Areas Act, s. 9.
13 - Protected Areas Act, s. 13 (see Chapters 1 and 2, and also ss. 46 - 53).
14 - Protected Areas Act, s. 46.
15 - Protected Areas Act, s. 50.
17 - Protected Areas Regulations, s. 20. See further ss. 21-22.
18 - Protected Areas Regulations, ss. 8 – 15; 16 – 18.
19 - Protected Areas Regulations, ss. 34, 39, 45, 46.
20 - Protected Areas Regulations, ss. 40 – 42. See also s. 43 for general prohibitions.
21 - S. 3 of the SAMSA Act.
22 - PFMA, s. 51.
23 - PFMA, s. 50.