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**NATIONAL ARCHIVES AND RECORDS SERVICE OF SOUTH AFRICA
NASIONALE ARGIEF EN REKORDDIENS VAN SUID-AFRIKA
DIAKHAEFE TŠA BOSETŠHABA TŠA AFRIKA BORWA
INQOLOBANE YOKUGCINA AMAGUGU KAZWELONKE ENINGIZIMU AFRIKA**

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TO HEADS OF PROVINCIAL ARCHIVES SERVICES
TO ALL MUNICIPAL MANAGERS

10 February 2006

Circular 2 of 2006

**INCORRECT INFORMATION CONVEYED AT AN INSTITUTE OF MUNICIPAL ADMINISTRATION OF
SOUTH AFRICA (IMASA) CONFERENCE FROM 11-15 APRIL 2005 REGARDING SECTION 13 OF
THE NATIONAL ARCHIVES AND RECORDS SERVICE ACT, 1996 VERSUS SECTIONS 14-16 OF
THE ELECTRONIC COMMUNICATIONS AND TRANSACTIONS ACT, 2002**

1. The Western Cape Provincial Archives Service, after receiving numerous enquiries from municipalities about statements made at the IMASA conference from 11-15 April 2005, brought to my attention that remarks were allegedly made to the effect that the electronic records management requirements of the National Archives and Records Service and provincial archives services are "outdated" and not applicable to the management of electronic records of local authorities.
2. The National Archives and Records Service has been mandated in terms of section 13 of the National Archives and Records Service of South Africa Act, 1996 to regulate the records

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**Departement van Kuns en Kultuur
Lefapha la Botsweretshi le Setso
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Ndzawulo ya Vutshila ni Mfuwo**

management practices of governmental bodies. The National Archives and Records Service has also been mandated in terms of section 3(g) of the National Archives and Records Service of South Africa Act, 1996 to set the broader records management framework within which the provincial archives services operate.

3. The National Archives and Records Service obtained a legal opinion in 2004 (ref. 239/2004) regarding the relationship between the National Archives Act, 1996 and the Electronic Communications and Transactions Act, 2002 from the State Law Advisor who expressed the following opinion:

"Section 3 of the Act provides that the ECT Act **does not** take preference over any other legislation or common law rules relating to electronic transactions or data messages that were in existence at the stage when the ECT Act came into operation. In other words if the [National Archives and Records Service] Act contains provisions which deal with electronic transactions or data messages those provisions will still apply for the purposes of the Act except if they are in conflict with the ECT Act in which case the latter Act will prevail. (See Steyn, **Die Uitleg van Wette**, Vyfde Uitgawe, at p. 188.)"

4. The National Archives and Records Service requires governmental bodies to generate and manage authentic and reliable electronic records from the moment that they are created until they are either destroyed or transferred into archival custody in terms of a written disposal authority issued by the National Archivist or the Provincial Archivists in provinces in which provincial archives legislation was enacted. To further this aim, the NARS endorses the South African Standard *SANS 15801 Electronic Imaging – Information Stored Electronically – Recommendations for Trustworthiness and Reliability*.
5. The Electronic Communications and Transactions Act promotes legal certainty and confidence in respect of electronic communications and transactions, and in terms of sections 11-16, requires private and public bodies to generate and maintain authentic and reliable data messages (records) that have evidential weight because of their proven integrity. South African National Standard *SANS 15801 Electronic Imaging - Information Stored Electronically – Recommendations for Trustworthiness and Reliability* was adopted by Standards South Africa to support the integrity requirements of the Electronic Communications and Transactions Act.
6. The National Archives and Records Service Act and the Electronic Communications and Transactions Act do not contradict each other and in fact complement each other with regard to proving the integrity of electronic records.
7. Regarding the alleged statement that the National Archives and Records Service's electronic records management requirements are "outdated" I wish to inform you that the National Archives and Records Service's electronic records management requirements are benchmarked against

international best practice and standards and that they are considered to be in line with the requirements of the international archival and records management community.

8. Your continued application of the National Archives and Records Service's, or provincial archives service's where applicable, requirements for the management of electronic records to ensure that the national archival heritage is protected and preserved would be appreciated.

Dr GA Dominy
NATIONAL ARCHIVIST