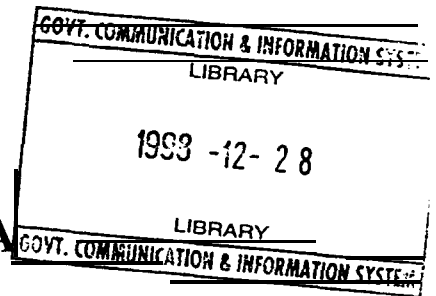




REPUBLIC OF SOUTH AFRICA



GOVERNMENT GAZETTE

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OFFICE OF THE PRESIDENT

KANTOOR VAN DIE PRESIDENT

No. 1214.

28 September 1998

No. 1214.

28 September 1998

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

No. 61 of 1998: Land Affairs General Amendment Act, 1998.

Hierby word bekend gemaak dat die Waarnemende President sy goedkeuring geheg het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

No. 61 van 1998: Algemene Wysigingswet Op Grondsake, 1998.

GENERAL EXPLANATORY NOTE:

- [] Words in bold type in square brackets indicate omissions from existing enactments.
- Words underlined with a solid line indicate insertions in existing enactments.
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ACT

To amend the Upgrading of Land Tenure Rights Act, 1991, so as to make the Act applicable throughout the Republic; to amend the Restitution of Land Rights Act, 1994, so as to provide for the secondment of officers to the Land Claims Commission; to further regulate mediation and negotiation; and to extend the cases in respect of which money may be granted for the development of land; to amend the Land Reform (Labour Tenants) Act, 1996, so as to authorise the Land Claims Court to determine whether a person is a labour tenant or not; to amend the Communal Property Associations Act, 1996, so as to make further provision for delegation; to amend the Interim Protection of Informal Land Rights Act, 1996, so as to authorise the Minister of Land Affairs to extend the application of the provisions of that Act; to amend the Land Survey Act, 1997, so as to rectify a difference between the English and Afrikaans texts; and to make provision for the division of survey related responsibilities between the Chief Surveyor-General and the Chief Director: Surveys and Mapping; to amend the Extension of Security of Tenure Act, 1997, so as to extend the definition of “court” also to include a Special Tribunal established under section 2 of the Special Investigating Units and Special Tribunals Act, 1996; and to regulate the powers of a Special Tribunal and a Special Investigating Unit in relation to this Act; and to rectify differences between the English and Afrikaans texts; and to effect certain textual improvements; and to provide for matters connected therewith.

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

Insertion of section 25A in Act 112 of 1991

1. The Upgrading of Land Tenure Rights Act, 1991, is hereby amended by the insertion of the following section after section 25:

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“Application of Act

25A. As from the coming into operation of the Land Affairs General Amendment Act, 1998, the provisions of this Act, excluding sections 3, 19 and 20, shall apply throughout the Republic.”

Substitution of section 8 of Act 22 of 1994

2. The following section is hereby substituted for section 8 of the Restitution of Land Rights Act, 1994:

“Performance of work of Commission

8. (1) The [administrative] work incidental to the performance of the functions of the Commission shall be performed by officers appointed and seconded to the Commission in terms of the provisions of [section 15(3)(a) of] the Public Service Act, 1994 (Proclamation No. 103 of 1994), and designated in general or for a specific purpose by the Minister after consultation with the Commission. 5 10

(2) In making a designation in terms of subsection (1), the Minister and the Commission shall seek to ensure that the staff of the Commission shall be broadly representative of the South African population.

(3) Designated officers shall perform their functions under the control and supervision of the Chief Land Claims Commissioner or regional land claims commissioner, as the case may be.”. 15

Amendment of section 35A of Act 22 of 1994, as inserted by section 26 of Act 63 of 1997

3. Section 35A of the Restitution of Land Rights Act, 1994, is hereby amended by the substitution in subsection (1) for the words preceding paragraph (a) of the following words: 20

“(1) If at any stage during proceedings under this Act or any other Act conferring jurisdiction upon the Court it becomes evident that there is any issue which might be resolved through mediation and negotiation, the Court may make an order—”.

Amendment of section 42C of Act 22 of 1994, as inserted by section 30 of Act 63 of 1997

4. Section 42C of the Restitution of Land Rights Act, 1994, is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) The Minister may from money appropriated by Parliament for this purpose and on such conditions as he or she may determine, grant an advance or a subsidy for the development or management of, or to facilitate the settlement of persons on, land which is the subject of an order of the Court in terms of this Act or an award in terms of section 42D, to— 30 35

- (a) any claimant to whom restoration or the award of a right in land has been ordered;
- (b) any person who has waived any or all of his or her rights to relief in terms of section 42D;
- (c) any person resettled as a result of [the] an order of the Court.”. 35

Amendment of section 33 of Act 3 of 1996, as amended by section 42 of Act 63 of 1997

5. Section 33 of the Land Reform (Labour Tenants) Act, 1996, is hereby amended by the insertion of the following subsection after subsection (2): 40

“(2A) At the instance of any interested person, including a person who avers that he or she is a labour tenant, irrespective as to whether or not such person has lodged an application in terms of section 17, the Court may determine whether a person is a labour tenant.”. 45

Amendment of section 15 of Act 28 of 1996

6. Section 15 of the Communal Property Associations Act, 1996, is hereby amended by the substitution for paragraph (b) of subsection (1) of the following paragraph:

“(b) authorise any such officer to perform any duty assigned to him or her by or under this Act [except the duty referred to in section 6(2)];” 50

Amendment of section 5 of Act 31 of 1996

7. Section 5 of the Interim Protection of Informal Land Rights Act, 1996, is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) The provisions of this Act shall lapse on 31 December 1997: Provided that the Minister may [**at any time before such provisions lapse,**] from time to time by notice in the *Gazette* extend the application of such provisions for a period of not more than 12 months at a time: Provided further that any such notice shall be laid upon the Table of Parliament, and if Parliament by resolution disapproves of such notice, such notice shall cease to be of force and effect, but without prejudice to the validity of anything done in terms of such notice before it so ceased to be of force and effect.”.

Amendment of section 1 of Act 8 of 1997

8. Section 1 of the Land Survey Act, 1997, is hereby amended—

- (a) by the insertion after the definition of “approve” of the following definition:
 “ ‘Chief Director’ means the Chief Director: Surveys and Mapping, appointed in terms of section 2A;”; and
- (b) by the substitution for the definition of “trigonometrical station” of the following definition:
 “ ‘trigonometrical station’ means any survey station, including a town survey mark, erected by or under direction of the Chief [**Surveyor-General**] Director as part of the national control survey system and for which he or she has published, or intends to publish, official co-ordinate values, and includes such other stations as may be prescribed.”.

Amendment of section 2 of Act 8 of 1997

9. Section 2 of the Land Survey Act, 1997, is hereby amended by the substitution in the Afrikaans text for subsection (2) of the following subsection:

“(2) Behoudens die voorskrifte van die Minister, oefen die Hooflandmeter-generaal die bevoegdhede uit en verrig die [**werksaamhede**] pligte wat by hierdie Wet of enige ander wet aan die Hooflandmeter-generaal verleen of toegewys word.”.

Insertion of section 2A in Act 8 of 1997

10. The following section is hereby inserted in the Land Survey Act, 1997, after section 2:

“Appointment, powers and functions of Chief Director

2A. (1) The Minister shall, subject to section 50 and the Public Service Act, 1994 (Proclamation No. 103 of 1994), appoint an officer, who shall be a person registered in terms of section 20 of the Professional and Technical Surveyors’ Act, 1984 (Act No. 40 of 1984), to be styled the Chief Director: Surveys and Mapping.

(2) The Chief Director shall, subject to the directions of the Minister, exercise the powers and perform the duties conferred upon or assigned to the Chief Director by this Act or any other law.”.

Amendment of section 3 of Act 8 of 1997

11. Section 3 of the Land Survey Act, 1997, is hereby amended—

- (a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:
 “(1) The Chief Surveyor-General shall be in charge of such [**geodetic, topographical and**] cadastral surveying and land information services in the Republic as the Minister may direct and, subject to this Act, shall—”;
 and
- (b) by the substitution for paragraph (b) of subsection (1) of the following paragraph:

“(b) conduct such [trigonometrical, topographical, geodetic and other relevant survey operations] cadastral survey related re-search as may be required;”.

Insertion of section 3A in Act 8 of 1997

12. The following section is hereby inserted in the Land Survey Act, 1997, after section 3: 5

“Duties of Chief Director

3A. (1) The Chief Director shall be in charge of such geodetic and topographical surveying and geospatial information services in the Republic as the Minister may direct and, subject to this Act, shall— 10

(a) promote and control all matters connected with those surveys and services;

(b) conduct such geodetic, topographical and other relevant survey operations as may be required;

(c) acquire such aerial photography or other remotely sensed imagery as may be required; 15

(d) establish and maintain a national control survey system;

(e) prepare, compile and amend such maps and other cartographic representations of geospatial information as may be required; and 20

(f) take charge of and preserve the records of all geodetic and topographical surveys, maps and aerial photography or other remotely sensed imagery.

(2) Any person employed in the office of the Chief Director may, if authorised thereto by the Chief Director, perform any specified act or task which may be performed by the Chief Director in terms of this Act or any other law.”. 25

Amendment of section 6 of Act 8 of 1997

13. Section 6 of the Land Survey Act, 1997, is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) Any land surveyor employed in a Surveyor-General’s office may, if delegated thereto by the Surveyor-General concerned, perform any function which may be performed in terms of this Act or any other law by that Surveyor-General, and a Surveyor-General may delegate any power referred to in subsection (1)(c), (d), (e) and (f) to [an officer] any person employed in his or her office.”. 30

Amendment of section 8 of Act 8 of 1997 35

14. Section 8 of the Land Survey Act, 1997, is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) The Director-General may, by notice in the *Gazette*, prescribe the fees to be charged in respect of any act or matter required or permitted to be performed or dealt with in or in connection with the offices of the Chief Surveyor-General, the Chief Director and the Surveyors-General.”. 40

Amendment of section 10 of Act 8 of 1997

15. Section 10 of the Land Survey Act, 1997, is hereby amended by the substitution for paragraph (d) of subsection (1) of the following paragraph:

“(d) the form and dimensions of beacons and reference marks [and trigonometrical stations], the manner of marking them for identification, and the manner of their construction, erection, protection, maintenance and repair;”. 45

Amendment of section 42 of Act 8 of 1997

16. Section 42 of the Land Survey Act, 1997, is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) The erection and survey of the town survey marks shall for all purposes be deemed to be part of and in continuation of the **[trigonometrical survey operations]** national control survey system referred to in section [3] 3A: Provided that a local authority may at its own cost erect the town survey marks in positions approved by the Chief **[Surveyor-General]** Director.”. 5

Amendment of section 45 of Act 8 of 1997

17. Section 45 of the Land Survey Act, 1997, is hereby amended— 10

(a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

“(1) The Chief Surveyor-General, the Chief Director, a Surveyor-General, any person generally or specially deputed in writing by such officer, or a land surveyor may, for the purpose of performing any functions in terms of this Act or any other law—”; and 15

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

“(2) The Chief Surveyor-General, the Chief Director, a Surveyor-General, any person authorised by such officer, or a land surveyor shall, before exercising any power referred to in subsection (1), give reasonable notice to the owner or occupier of the land concerned of the intention to exercise the power, except when that power is exercised in carrying out any provision of section 26.”. 20

Amendment of section 50 of Act 8 of 1997

18. Section 50 of the Land Survey Act, 1997, is hereby amended by the addition of the following subsection: 25

“(8) The person who holds office as the Chief Director immediately prior to the commencement of the Land Affairs General Amendment Act, 1998, shall be deemed to have been appointed as such under section 2A of this Act.”.

Substitution of words “Chief Surveyor-General” in Act 8 of 1997 30

19. The Land Survey Act, 1997, is hereby amended by the substitution for the words “Chief Surveyor-General”, wherever they occur in sections 42(1), (3) and (4)(a), 43(1) and 44(3), of the words “Chief Director”.

Amendment of section 1 of Act 62 of 1997

20. Section 1 of the Extension of Security of Tenure Act, 1997, is hereby amended— 35

(a) by the substitution for the definition of “court” of the following definition:

“‘court’ means a competent court having jurisdiction in terms of this Act, including a Special Tribunal established under section 2 of the Special Investigating Units and Special Tribunals Act, 1996 (Act No. 74 of 1996);”; 40

(b) by the substitution for paragraph (a) of the definition of “occupier” of the following paragraph:

“(a) a labour tenant in terms of the Land Reform (Labour Tenants) Act, 1996 (Act No. 3 of 1996); **[and]**”; and

(c) by the substitution in the Afrikaans text for paragraph (b) of the definition of “okkupeerder” of the following paragraph: 45

“(b) ’n persoon wat die betrokke grond hoofsaaklik vir industriële, myn-, kommersiële of kommersiële boerderydoeleindes gebruik of beoog om dit aldus te gebruik, **[met inbegrip van]** maar nie ook ’n persoon wat self die grond bewerk nie en geen persoon wat nie ’n lid van sy of haar familie is in diens het of neem nie; en”. 50

Amendment of section 4 of Act 62 of 1997

21. Section 4 of the Extension of Security of Tenure Act, 1997, is hereby amended—

- (a) by the substitution in the Afrikaans text for subsection (3) of the following subsection:

“(3) Indien die persone wat deur ’n ontwikkeling bevoordeel staan te word reeds geïdentifiseer is, word ’n subsidie nie toegeken nie tensy die Minister oortuig is dat die ontwikkeling vir die meerderheid van die betrokke volwassenes aanvaarbaar is.”; 5

- (b) by the substitution in the Afrikaans text for paragraph (a) of subsection (4) of the following paragraph: 10

“(a) ’n provinsiale [**of plaaslike**] regering of ’n munisipaliteit of sodanige persoon of liggaam ’n ontwikkeling fasiliteer, implementeer of onderneem of ooreenkom met ’n derde party om dit te fasiliteer, te implementeer of te onderneem; of”;

- (c) by the substitution for paragraph (b) of subsection (4) of the following paragraph: 15

“(b) the subsidy is paid to the provincial [**or local**] government or a municipality or such person or body to enable it to facilitate, implement or undertake or contract with a third party for the facilitation, implementation or undertaking of a development.”; 20
and

- (d) by the substitution for subsection (7) of the following subsection:

“(7) The provisions of [**the Subdivision of Agricultural Land Act, 1970 (Act No. 70 of 1970),**] any law regulating the subdivision of land shall not apply to land on which a development is undertaken in terms of this Act.”. 25

Amendment of section 7 of Act 62 of 1997

22. Section 7 of the Extension of Security of Tenure Act, 1997, is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) The owner or person in charge [**of land**] may have a trespassing animal usually or actually in the care of an occupier impounded and removed to a pound in accordance with the provisions of any applicable law, if the owner or person in charge has given the occupier at least 72 hours’ notice to remove the animal from the place where it is trespassing and the occupier has failed to do so: Provided that the owner or person in charge may take reasonable steps to prevent the animal from causing damage during those 72 hours.”. 30
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Amendment of section 8 of Act 62 of 1997

23. Section 8 of the Extension of Security of Tenure Act, 1997, is hereby amended by the substitution in subsection (7) for the words preceding paragraph (a) of the following words: 40

“(7) If an occupier’s right to residence has been terminated in terms of this section, or the occupier is a person who has a right of residence in terms of [**section 8(5)**] subsection (5)—”.

Amendment of section 10 of Act 62 of 1997

24. Section 10 of the Extension of Security of Tenure Act, 1997, is hereby amended by the substitution in the Afrikaans text for subsection (2) of the following subsections: 45

“(2) Behoudens die bepalings van subartikel (3), indien geen van die omstandighede in subartikel (1) bedoel van toepassing is nie, kan ’n hof ’n bevel vir die uitsetting verleen slegs indien die hof oortuig is dat geskikte alternatiewe akkommodasie vir die betrokke okkupeerder beskikbaar is. 50

(3) Indien—

- (a) geskikte alternatiewe akkommodasie nie binne ’n tydperk van nege maande na die datum van beëindiging van sy of haar verblyfreg ingevolge artikel 8 vir die okkupeerder beskikbaar is nie; 50
(b) die eienaar of persoon in beheer die woning wat deur die okkupeerder bewoon is, verskaf het; en 55

- (c) die effektiewe voortsetting van enige onderneming van die eienaar of persoon in beheer ernstig benadeel sal word tensy die woning beskikbaar is vir okkupasie deur 'n ander persoon wat in diens is van, of in diens geneem staan te word deur, die eienaar of persoon in beheer,
 kan 'n hof 'n uitsettingsbevel ten opsigte van die okkupeerder en enige ander okkupeerder wat in dieselfde woning as hy of sy woon en wie se toestemming om daar te woon in die geheel van sy of haar verblyfreg afhanklik is, verleen indien dit regverdig en billik is om dit te doen, met inagneming van—
- (i) die pogings wat die eienaar of persoon in beheer en die okkupeerder onderskeidelik aangewend het om geskikte alternatiewe akkommodasie vir die okkupeerder te bekom; en
- (ii) die belange van die partye, met inbegrip van die vergelykende ontbering waaraan die eienaar of persoon in beheer, die okkupeerder en die oorblywende okkupeerders blootgestel sal word indien 'n uitsettingsbevel verleen word of nie verleen word nie.”.

Amendment of section 11 of Act 62 of 1997

25. Section 11 of the Extension of Security of Tenure Act, 1997, is hereby amended—
- (a) by the substitution for subsection (1) of the following subsection:
- “(1) If it was an express, material and fair term of the consent granted to an occupier to reside on the land in question, that the consent would terminate upon a fixed or determinable date, a court may on termination of such consent by effluxion of time grant an order for eviction of any person who became an occupier of the land in question after 4 February 1997, if it is just and equitable to do so.”;
- (b) by the substitution in the Afrikaans text for subsection (2) of the following subsection:
- “(2) 'n Hof kan in omstandighede anders as dié in subartikel (1) beoog, 'n uitsettingsbevel verleen ten opsigte van enige persoon wat na 4 Februarie 1997 'n okkupeerder geword het indien [**hy**] die hof oortuig is dat dit regverdig en billik is om dit te doen.”; and
- (c) by the substitution for paragraph (d) of subsection (3) of the following paragraph:
- “(d) the reason for the proposed eviction; and”.

Amendment of section 15 of Act 62 of 1997

26. Section 15 of the Extension of Security of Tenure Act, 1997, is hereby amended by the addition of the following subsection, the existing section becoming subsection (1):
- “(2) The owner or person in charge shall beforehand give reasonable notice of any application in terms of this section to the municipality in whose area of jurisdiction the land in question is situated, and to the head of the relevant provincial office of the Department of Land Affairs for his or her information.”.

Amendment of section 17 of Act 62 of 1997

27. Section 17 of the Extension of Security of Tenure Act, 1997, is hereby amended by the insertion of the following subsections after subsection (2):
- “(2A) A Special Tribunal established under section 2 of the Special Investigating Units and Special Tribunals Act, 1996 (Act No. 74 of 1996), may, in proceedings arising out of that Act—
- (a) decide whether a person is an occupier as defined in section 1;
- (b) make an order for eviction under this Act and shall have all powers necessary or reasonably incidental thereto;
- (c) where it finds that a person has unlawfully obtained consent to reside on land under any of the circumstances mentioned in section 2(2)(a) to (g) of the Special Investigating Units and Special Tribunals Act, 1996, exclude such person from the application of the provisions of this Act.

(2B) A Special Investigating Unit established under section 2 of the Special Investigating Units and Special Tribunals Act, 1996 (Act No. 74 of 1996), may investigate any matter relevant to the exercise by a Special Tribunal of the powers mentioned in subsection (2A).”.

Amendment of section 19 of Act 62 of 1997

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28. Section 19 of the Extension of Security of Tenure Act, 1997, is hereby amended by the deletion of the proviso to subsection (3).

Amendment of section 20 of Act 62 of 1997

29. Section 20 of the Extension of Security of Tenure Act, 1997, is hereby amended by the substitution for subsections (3) and (4) of the following subsections, respectively: 10

“(3) If in any proceedings in a High Court at the date of the commencement of this Act that [court] Court is required to interpret this Act, that Court shall stop the proceedings if no oral evidence has been led and refer the matter to the Land Claims Court.

(4) The President of the Land Claims Court may make rules— 15

(a) to govern the procedure in the Land Claims Court in terms of this Act; and
(b) to govern the procedure for the automatic review of orders for eviction in terms of section 19(3).”.

Amendment of section 23 of Act 62 of 1997

30. Section 23 of the Extension of Security of Tenure Act, 1997, is hereby amended by the substitution in the Afrikaans text for paragraph (a) of subsection (5) of the following paragraph: 20

“(a) die persoon wat privaat vervolg dit doen deur middel van ’n persoon wat geregtig is om in die Republiek as ’n advokaat of prokureur te praktiseer; [en]”. 25

Short title

31. This Act shall be called the Land Affairs General Amendment Act, 1998.