

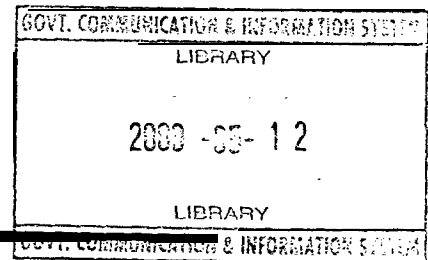
REPUBLIC OF SOUTH AFRICA

LAND AFFAIRS GENERAL AMENDMENT BILL

(As amended by the Portfolio Committee on Agriculture and Land Affairs (National Assembly)) (The English text is the official text of the Bill)

(MINISTER FOR AGRICULTURE AND LAND AFFAIRS)

[B 64D—99]



REPUBLIEK VAN SUID-AFRIKA

ALGEMENE WYSIGINGSWETSONTWERP OP GRONDSAKE

(Soos gewysig deur die Portefeuljekomitee oor Landbou en Grondskape (Nasionale Vergadering)) (Die Afrikaanse teks is die amptelike vertaling van die Wetsontwerp)

(MINISTER VIR LANDBOU EN GRONDSAKE)

[W 64D—99]

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Words underlined with a solid line indicate insertions in existing enactments.

To amend the Deeds Registries Act, 1937, so as to provide for the deeds registries regulations board to make regulations regarding the manner in which the payment of the fees of office may be enforced; to amend the KwaZulu Land Affairs Act, 1992, so as to validate certain acts purporting to have been performed in terms of that Act; to amend the Provision of Land and Assistance Act, 1993, so as to provide for the amendment, withdrawal and lapsing of conditions; to amend the Restitution of Land Rights Act, 1994, so as to exclude issues concerning the definition of “occupier” from section 22 of the Act; and to provide for the secondment of judges and appointment of acting judges to the Land Claims Court; to amend the Land Reform (Labour Tenants) Act, 1996, so as to extend the date upon which the right contemplated in the proviso to section 16(1) lapses; to authorise the Land Claims Court to issue an order where in proceedings before it, it is averred that the person sought to be evicted is a labour tenant, but it is subsequently not proved that such a person is a labour tenant; and to exempt awards of land certified by the Director-General from laws regulating the subdivision of land; to amend the Extension of Security of Tenure Act, 1997, so as to require the submission of a report to the Court for the purposes of section 9(2)(c); to extend the period for the review by the Land Claims Court of eviction orders by magistrates’ courts pending the review thereof by the Land Claims Court; and to recognise the jurisdiction of the magistrate’s court for purposes of section 20(2) of the said Act; to amend the Transformation of Certain Rural Areas Act, 1998, so as to insert a procedure whereby the registrar of deeds may endorse a title deed in the event of land vesting in a municipality in terms of section 2 of the said Act; and to provide for matters connected therewith.

Amendment of section 10 of Act 47 of 1937, as amended by section 5 of Act 43 of 1957, section 5 of Act 43 of 1962, section 4 of Act 87 of 1965, section 4 of Act 3 of 1972, section 2 of Act 92 of 1978, section 5 of Act 27 of 1982, section 3 of Act 62 of 1984, section 5 of Act 14 of 1993, section 3 of Act 170 of 1993 and section 68 of Act 67 of 1995

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“(b) the fees of office (if any) to be charged in respect of any act, matter or thing required or permitted to be done in or in relation to a deeds registry, including any report made to the court by the registrar **[in connection with any application or action to which he is not a party]** in terms of this Act and the manner in which the payment of the fees may be enforced, which may include the suspension of lodgement or lodgement facilities for deeds or any other document by any person in default of payment of such fees.” 5

Amendment of section 39 of Act 11 of 1992, as amended by section 1 of Act 48 of 1998

2. (1) Section 39 of the KwaZulu Land Affairs Act, 1992, is hereby amended by the substitution for subsection (3) of the following subsection: 10

“(3) Anything purporting to have been done in terms of this Act on or after 27 April 1994 and prior to the commencement of the KwaZulu Land Affairs Amendment Act, 1998 (Act No. 48 of 1998), and which could have been done in terms of this Act **[by any Premier or any member of the Executive Council of the province of KwaZulu-Natal or any employee of the provincial administration of that province]** had this Act been assigned **[to the provincial executive or an authority within the provincial executive of that province]** as contemplated in the Constitution or had any power by or under this Act been delegated as contemplated in section 2 of the Land Administration Act, 1995 (Act No. 2 of 1995), is hereby deemed to have been done validly in terms of this Act.”. 15 20

(2) Subsection (1) shall be deemed to have come into operation on 11 September 1998.

Amendment of section 2 of Act 126 of 1993, as substituted by section 2 of Act 26 of 1998 25

3. Section 2 of the Provision of Land and Assistance Act, 1993, is hereby amended by the substitution for subsection (3) of the following subsection:

“(3) The Minister may by notice in the *Gazette*—
(a) impose conditions for the use of the land designated under subsection (1); and
(b) amend, withdraw or provide for the lapsing of any condition contemplated in paragraph (a).” 30

Amendment of section 22 of Act 22 of 1994, as amended by section 1 of Act 84 of 1995, section 10 of Act 78 of 1996 and section 13 of Act 63 of 1997

4. Section 22 of the Restitution of Land Rights Act, 1994, is hereby amended by the substitution in subsection (1) for paragraph (cC) of the following paragraph: 35

“(cC) to determine any matter involving the interpretation or application of this Act or the Land Reform (Labour Tenants) Act, 1996 (Act No. 3 of 1996), with the exception of matters relating to the definition of ‘occupier’ in section 1(1) of the Extension of Security of Tenure Act, 1997 (Act No. 62 of 1997).” 40

Insertion of section 26A in Act 22 of 1994

5. The following section is hereby inserted in the Restitution of Land Rights Act, 1994, after section 26:

“Secondment of judges and appointment of acting judges to Land Claims Court 45

26A. (1) Notwithstanding sections 22(3), (4), (5), (6), (7), (8) and (9), 23, 25 and 26, the Minister of Justice must, after consultation with the Minister, at the expiry of the fixed term contemplated in section 22(5) 45

cause such number of judges of the High Court as may be necessary to be seconded to serve as judges of the Court.

(2) The Minister may request the Minister of Justice to appoint an acting judge of the Court in accordance with section 175(2) of the Constitution for such period as may be necessary.

(3) The President of the Republic shall, after consultation with the Minister of Justice, designate one of the seconded judges or an acting judge appointed under subsection (2), to act as President of the Court.

(4) Proceedings in which—

(a) a seconded judge or acting judge has participated and which have not been disposed of during the secondment or the term of service or, having been disposed of before or after such secondment or term, are reopened; or

(b) a judge of the Court appointed under section 22 has participated and which have not been disposed of at the expiry of the fixed term contemplated in subsection (1) or, having been disposed of before or after such expiry, are reopened,
must be disposed of by that judge.”.

Amendment of section 13 of Act 3 of 1996, as substituted by section 34 of Act 63 of 1997

6. Section 13 of the Land Reform (Labour Tenants) Act, 1996, is hereby amended by the substitution in subsection (1A) for the words preceding paragraph (a) of the following words:

“[If] With the exception of issues concerning the definition of ‘occupier’ in section 1(1) of the Extension of Security of Tenure Act, 1997 (Act No. 62 of 1997), if an issue arises in a case in a magistrate’s court or a High Court which requires that court to interpret or apply this Act and—”.

Amendment of section 16 of Act 3 of 1996

7. Section 16 of the Land Reform (Labour Tenants) Act, 1996, is hereby amended by the substitution in subsection (1) for the proviso of the following proviso:

“Provided that the right to apply to be awarded such land, rights in land and servitudes shall lapse if no application is lodged with the Director-General in terms of section 17 [within four years of the commencement of this Act] on or before 31 March 2001.”.

Amendment of section 33 of Act 3 of 1996, as amended by section 42 of Act 63 of 1997, section 5 of Act 61 of 1998 and section 13 of Act 18 of 1999

8. Section 33 of the Land Reform (Labour Tenants) Act, 1996, is hereby amended by the insertion in subsection (1) after paragraph (eA) of the following paragraph:

“(eB) in proceedings for the eviction of a person averred to be a labour tenant where it is not proved that such person is a labour tenant, make such order as it deems just.”.

Substitution of section 40 of Act 3 of 1996, as substituted by section 45 of Act 63 of 1997

9. The following section is hereby substituted for section 40 of the Land Reform (Labour Tenants) Act, 1996:

“Non-application of certain laws

40. If the Court or an arbitrator orders, or if the Director-General certifies in terms of section 18(5), that any land or right in land or servitude be

awarded to an applicant, the land in question shall not be subject to [the provisions of the Subdivision of Agricultural Land Act, 1970 (Act No. 70 of 1970), or] any [other] law regulating the subdivision of land.”.

Amendment of section 9 of Act 62 of 1997, as amended by section 28 of Act 61 of 1998

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10. Section 9 of the Extension of Security of Tenure Act, 1997, is hereby amended by the addition of the following subsection:

“(3) For the purposes of subsection (2)(c), the Court must request a probation officer contemplated in section 1 of the Probation Services Act, 1991 (Act No. 1161 of 1991), or an officer of the department or any other officer in the employment of the State, as may be determined by the Minister, to submit a report within a reasonable period—

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(a) on the availability of suitable alternative accommodation to the occupier;

(b) indicating how an eviction will affect the constitutional rights of any affected person, including the rights of the children, if any, to education;

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(c) pointing out any undue hardships which an eviction would cause the occupier; and

(d) on any other matter as may be prescribed.”.

Amendment of section 19 of Act 62 of 1997, as amended by section 28 of Act 61 of 1998

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11. Section 19 of the Extension of Security of Tenure Act, 1997, is hereby amended—

(a) by the substitution in subsection (3) for the words preceding paragraph (a) of the following words:

“Any order for eviction by a magistrate’s court in terms of this Act, in respect of proceedings instituted on or before [31 December 1999] a date to be determined by the Minister and published in the Gazette, shall be subject to automatic review by the Land Claims Court, which may—”; and

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(b) by the insertion after subsection (4) of the following subsection:

“(5) Any order for eviction contemplated in subsection (3) shall be suspended pending the review thereof by the Land Claims Court.”.

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Amendment of section 20 of Act 62 of 1997, as amended by section 29 of Act 61 of 1998

12. Section 20 of the Extension of Security of Tenure Act, 1997, is hereby amended by the substitution for subsection (2) of the following subsection:

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“(2) Subject to [the provisions of section] sections 17(2) and 19(1), the Land Claims Court shall have the powers set out in subsection(1) to the exclusion of any court contemplated in section 166(c), (d) or (e) of the Constitution.”.

Amendment of section 2 of Act 94 of 1998

13. Section 2 of the Transformation of Certain Rural Areas Act, 1998, is hereby amended by the addition of the following subsection, the existing section becoming subsection (1):

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“(2) If the ownership of all the land held under a title deed vests in a municipality in terms of subsection (1), the registrar of deeds concerned must make such alterations and entries in his or her registers and such endorsements on any such title deed in terms of the second proviso to section 16 of the Deeds Registries Act, 1937 (Act No. 47 of 1937), as are necessary to give effect to such vesting.”.

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Short title

14. (1) This Act shall be called the Land Affairs General Amendment Act, 2000.

(2) Section 11(a) shall be deemed to have come into operation on 1 January 2000.

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MEMORANDUM ON THE OBJECTS OF THE LAND AFFAIRS GENERAL AMENDMENT BILL

1. The Bill seeks to amend the Deeds Registries Act, 1937 (Act No. 47 of 1937), the KwaZulu Land Affairs Act, 1992 (Act No. 11 of 1992), the Provision of Land and Assistance Act, 1993 (Act No. 126 of 1993), the Restitution of Land Rights Act, 1994 (Act No. 22 of 1994), the Land Reform (Labour Tenants) Act, 1996 (Act No. 3 of 1996), the Extension of Security of Tenure Act, 1997 (Act No. 62 of 1997), and the Transformation of Certain Rural Areas Act, 1998 (Act No. 94 of 1998).

2. Clause 1 proposes an amendment to section 10 of the Deeds Registries Act, 1937, so as to empower the deeds registries regulation board to make regulations regarding the recovery of arrears owing by conveyancers to the Deeds Offices.

3. Clause 2 seeks to amend section 39 of the KwaZulu Land Affairs Act, 1992. The Act was amended in 1998 in order to validate certain acts purporting to have been performed by the KwaZulu-Natal provincial government in terms of the KwaZulu Land Affairs Act, 1992. However, that validation only referred to those provisions of the Act that were assigned to the province and not to the powers that were delegated to it in September 1998, in terms of section 2 of the Land Administration Act, 1995 (Act No. 2 of 1995). The clause seeks to validate acts done under the latter powers.

4. Clause 3 seeks to amend section 2 of the Provision of Land and Assistance Act, 1993. In terms of section 2(3) of the Act, the Minister may, when designating land for purposes of settlement, impose conditions regarding the use of the land. One of the conditions usually imposed is that the land must be held by a legal entity for the benefit of the beneficiaries. However, it is uncertain whether such conditions prohibit the legal entity from selling the land and, if it is sold, whether the new owners are bound by the conditions imposed by the Minister. It is proposed that provision be made for the Minister to amend, withdraw or provide for the lapsing of any such conditions.

5. Section 1(1) of the Extension of Security of Tenure Act, 1997, specifically excludes a labour tenant in terms of the Land Reform (Labour Tenants) Act, 1996, from the definition of "occupier". In order to decide whether or not a person is an occupier, it must first be decided whether or not he or she is a labour tenant, even where no specific allegation in this regard has been made. The only way of deciding whether or not someone is a labour tenant is to apply the Land Reform (Labour Tenants) Act, 1996. The result is that every case in which a party alleges that he or she is an occupier must be transferred to the Land Claims Court in terms of section 13 of the Land Reform (Labour Tenants) Act, 1996, before any oral evidence is led. This is no longer the intention since magistrates' courts and, in certain circumstances, High Courts, now have jurisdiction to hear cases under the Extension of Security of Tenure Act, 1997. It is thus necessary to amend section 13 of the Land Reform (Labour Tenants) Act, 1996, and section 22(1)(cC) of the Restitution of Land Rights Act, 1994, to give effect thereto (clauses 4 and 6).

6. Clause 5 seeks to provide for the secondment of judges and appointment of acting judges to the Land Claims Court.

7. The Department of Land Affairs plans to conduct an extensive communications campaign during the 1999-2000 financial year to inform labour tenants of their right to lodge applications in terms of the Land Reform (Labour Tenants) Act, 1996. The Act at present provides that such applications must be made by 23 March 2000. The Department believes it is advisable to extend this date to the end of March 2001. Clause 7 seeks to achieve this.

8. The Land Reform (Labour Tenants) Act, 1996, does not expressly authorise the Land Claims Court to issue an eviction order where, in proceedings before the Court, it is averred that the person sought to be evicted is a labour tenant, and it is subsequently not proved that such a person is a labour tenant. Clause 8 provides expressly for the issue of such an order.

9. In terms of section 18 of the Land Reform (Labour Tenants) Act, 1996, some applications may be resolved by agreement. Such agreement takes effect if it is certified

by the Director-General. Section 40 of the said Act only provides for orders made by the court or an arbitrator and not for agreements certified by the Director-General. Clause 9 seeks to rectify this.

10. Clause 10 seeks to provide that the court must request the submission of a report to the court for the purposes of section 9(2)(c) of the Extension of Security of Tenure Act, 1997.

11. From the statistics made available to the Department, it appears that magistrates are still experiencing considerable difficulties in applying section 19(3) of the Extension of Security of Tenure Act, 1997. In terms of section 19(3) of that Act any eviction order by a magistrate's court in respect of proceedings instituted before 31 December 1999, must automatically be reviewed by the Land Claims Court. Clause 11 seeks to extend that date to a date determined by the Minister.

12. Clause 12 seeks to amend section 20(2) of the Extension of Security of Tenure Act, 1997, in order to recognise the jurisdiction of the magistrate's court for purposes of that Act expressly.

13. Clause 13 seeks to amend section 2 of the Transformation of Certain Rural Areas Act, 1998, so as to simplify the procedure that allows a registrar of deeds to endorse the change of ownership on the title deeds of all trust land in a township. The registrar of deeds is authorised to endorse the current title deeds to the effect that the land vests in the municipality in question.

DEPARTMENTS/BODIES/PERSONS CONSULTED

The following departments, bodies or persons were consulted:

The Chief Registrar of Deeds.

The KwaZulu-Natal Department of Traditional and Environmental Affairs.

The State Attorney, Cape Town.

IMPLICATIONS FOR PROVINCES

The only province affected by the Bill (clause 2) is KwaZulu-Natal. Apart from validating certain actions in respect of land matters, it does not have other implications for that province.

FINANCIAL IMPLICATIONS FOR STATE

None.

PARLIAMENTARY PROCEDURE

The State Law Advisers and the Department of Land Affairs are of the opinion that this Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution since it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.