

MEMORANDUM ON THE OBJECTS OF THE PRESERVATION AND DEVELOPMENT OF AGRICULTURAL LAND BILL, 2020

1. BACKGROUND AND PURPOSE

1.1 Agricultural land is changing rapidly in South Africa and some of the changes are stimulated by government policies while others changes appear to be spontaneous. The consequences of agricultural land changes that are now in progress and changes that may take place in the future inspired the Department of Agriculture, Forestry and Fisheries (“Department”) to consider its policies and legislation on agricultural land. South Africa only consists of approximately 13.4 million hectares which is under cultivation. The 13.4 million hectares includes marginal agricultural land and it is important to conserve agricultural land for agricultural production purposes.

1.2 The Preservation and Development of Agricultural Land Bill, 2020 (“Bill”) seeks to address constitutional gaps that the current legislation is experiencing in view of the country’s development trajectory. It aims to support the South African Government’s objectives and priorities such as the sustainable management and use of natural resources, the provision of effective national regulatory services and risk management systems as well as an increased contribution of the agricultural sector to the country’s economic growth and development.

1.3 The Bill will protect and preserve agricultural land and its productive use to ensure that agricultural land is available and viable for the development of the

agricultural sector. The Bill will promote sustainable farming practises to support the object of the National Development Plan 2030 to revitalise uncultivated agricultural land and to increase the contribution of agriculture to the Gross Domestic Product.

1.4 In accordance with the National Development Plan 2030, the agricultural sector has been identified as one of the important sectors which contribute toward job creation and employment. The Bill will support South Africa's efforts to ensure that agricultural land is actively used to its optimal potential to support long-term food production, which will have a positive impact on the South African economy.

1.5 The Bill will provide a country-wide policy and regulatory framework for the preservation and development of agricultural land, which—

- encourages food production and farming activities on agricultural land in collaboration with other role-players;
- encourages provincial and local spheres of government to enable and promote the use of agricultural land farming purposes and compatible uses in their policies, legislation and other relevant administrative and planning frameworks and procedures;
- through the establishment of a national framework, will promote and encourage viable farming units from a long-term economic, environmental and social perspective;
- discourages and prohibits the subdivision of especially high potential cropping and grazing land that results in the fragmentation of such land, a reduction in agricultural productivity, and land degradation;

- encourages, where permanent impacts do arise from the approved development, mitigation measures to address the lost agricultural productive capacity; and
- promotes and encourages long-term, viable farming units from an economic, environmental and social perspective.

2. **SUMMARY OF THE BILL**

The Bill consists of seven chapters with 39 clauses.

2.1 **CHAPTER 1**

2.1.1 **Clause 1: Definitions**

This clause sets out the key definitions for the Act, including definitions which pertain to agricultural areas, agricultural land, food security and the national agro-eco information system.

2.1.2 **Clause 2: Objects of Act**

This clause sets out the objects of the Bill.

2.1.3 **Clause 3: Application of Act**

This clause provides that the Bill will be applicable to all agricultural land in the Republic and that it binds all organs of state in all spheres of government.

2.2 CHAPTER 2

2.2.1 Clause 4: Principles

This clause provides for the principles underpinning the Bill.

2.2.2 Clause 5: Agricultural land evaluation and classification

This clause authorises the Minister to establish evaluation and classification systems to appraise agricultural land and to spatially delineate agricultural areas.

2.2.3 Clause 6: Preparation of provincial agricultural sector plans

This clause sets the national criteria and guidelines for compiling and preparing provincial agricultural sector plans.

2.2.4 Clause 7: Purpose of provincial agricultural sector plans

This clause sets out the purpose of provincial agricultural sector plans.

2.2.5 Clause 8: Content of provincial agricultural sector plans

This clause prescribes the information that must be contained in provincial agricultural sector plans.

2.2.6 Clause 9: Status of provincial agricultural sector plans

This clause provides the status of provincial agricultural sector plans.

2.2.7 Clause 10: Compliance with provincial agricultural sector plans

This clause provides for the MECs to monitor compliance with provincial agricultural sector plans.

2.2.8 Clause 11: Declaration of protected agricultural areas

This clause provides for the declaration of national and provincial protected agricultural areas by both the Minister and the MEC.

2.2.9 Clause 12: Procedure to declare protected agricultural areas

This clause outlines the procedure for declaring protected agricultural areas.

2.2.10 Clause 13: Review, withdrawal and amendment of protected agricultural areas

This clause empowers the Minister and the MEC to review, withdraw and amend the protected agricultural areas every five years, where necessary.

2.3 CHAPTER 3

2.3.1 Clause 14: General objectives of agro-ecosystem management

This clause provides the general objectives of agro-ecosystem management.

2.3.2 Clause 15: Agro-ecosystem authorisations

This clause provides for applications for agro-eco-system authorisations.

2.3.3 Clause 16: Listing of activity and agricultural area

This clause provides for the listing of activities which may not commence without an agro-ecosystem authorisation and agricultural areas in which listed activities may not commence without an agro-ecosystem authorisation.

2.3.4 Clause 17: Procedure for listing an activity and agricultural area

This clause provides the procedure for listing activities and agricultural areas.

2.3.5 Clause 18: Procedure for delisting an activity or agricultural area

This clause prescribes the procedure for delisting or amending an activity or agricultural area.

2.3.6 Clause 19: Identification of competent authority

This clause provides for the identification of the competent authority responsible for granting agro-ecosystem authorisations.

2.3.7 Clause 20: Considerations of applications by competent authority

This clause provides for the consideration of agro-ecosystem authorisation applications by competent authorities.

2.4 CHAPTER 4

2.4.1 Clause 21: Establishment of committees

This clause provides for the establishment of an advisory committee and technical committees.

2.4.2 Clause 22: Appointment of technical and other advisors

This clause provides for the appointment of technical and other advisors.

2.4.3 Clause 23: Performance assessment framework

This clause provides that the Minister must publish a monitoring, evaluation and assessment framework on the administration of the envisaged Act.

2.5 CHAPTER 5

2.5.1 Clause 24: Establishment of national agro-eco information system

This clause provides for the establishment, operation and maintenance of a national agro-eco information system.

2.5.2 Clause 25: Objectives of national agro-eco information system

This clause provides for the objectives of the national agro-eco Information system.

2.5.3 Clause 26: Content of national agro-eco information system

This clause provides for the scope of the national agro-eco information system.

2.6 CHAPTER 6

2.6.1 Clause 27: Right to appeal

This clause provides an appeal process for any person aggrieved by the decision of a competent authority in respect of an application for an agro-ecosystem authorisation.

2.6.2 Clause 28: Establishment and composition of Appeal Board

This clause provides for the establishment and composition of the Appeal Board.

2.6.3 Clause 29: Investigation and consideration by Appeal Board

This clause provides for the investigation and consideration of appeals by the Appeal Board.

2.6.4 Clause 30: Consideration of appeal by Minister

This clause gives the Minister authority to consider an appeal and to make a decision.

2.6.5 Clause 31: Compliance inspections

This clause makes provision for the appointment of an official or any other person, as an inspector to investigate any non-compliance with the envisaged Act.

2.6.6 Clause 32: Contravention directives

This clause provides for the issuing of contravention directives to persons who contravene the envisaged Act.

2.6.7 Clause 33: Investigation and gathering of data on agricultural land

This clause provides for the investigation and gathering of data on agricultural land.

2.7 CHAPTER 7

2.7.1 Clause 34: Delegations

This clause authorises the Minister and the Director-General to delegate certain powers or duties under the Act.

2.7.2 Clause 35: Regulations

This clause authorises the Minister to make regulations. The Regulations may provide that failure to comply therewith constitutes a criminal offence and may prescribe penalties for such offences.

2.7.3 Clause 36: Offences

This clause provides for criminal offences.

2.7.4 Clause 37: Penalties

This clause prescribes penalties for certain offences.

2.7.5 Clause 38: Amendment of laws

This clause amends the Subdivision of Agricultural Land Repeal Act, 1998 (Act No. 64 of 1998), to the extent reflected in the Schedule.

2.7.6 Clause 39: Short title and commencement

This clause provides the short title and commencement of the envisaged Act.

2.8 SCHEDULE

The Schedule provides for the insertion of a section in the Subdivision of Agricultural Land Repeal Act, 1998 (Act No. 64 of 1998) ("SALRA"), which makes provision for transitional arrangements in respect of any application, appeal or other process in terms of the Subdivision of Agricultural Land Act, 1970 (Act No. 70 of 1970) ("SALA"), to be continued as if the SALA had not been repealed. Furthermore, it provides that any consent granted or deemed to have been granted in terms of the SALA remains valid for the specified period, or if not specified then for a period of five years from the date of the commencement of the SALRA.

3. CONSULTATION

3.1 At the initial stage, stakeholders (e.g. National Departments, Provincial Departments, local government, individual farmers and the industry bodies) were consulted.

3.2. The Bill was published in the *Gazette* for public comment.

3.3. Public consultations were held in the Provinces, and the following stakeholders attended:

- Anglo Gold Ashanti;
- Chamber of Mines;
- PE CLAASSEN TRP(SA);
- Ezemvelo KZN Wildlife;

- Environmental Wild Trust;
- Kwanalu Grainco;
- SAPI KZN;
- AGRI SA;
- The Bank Association South Africa;
- Subsolar Energy;
- Tongaat Hulletts;
- South African Wind Energy Association;
- South African Association of Consulting Professional Planners;
- Plankonsult KZN;
- Henk Wolmarans LSB Group;
- South African Property Owners Association;
- Biowatch SA;
- TAU SA;
- South African Geomatics Institute;
- South African National Biodiversity Institute;
- Ezemvelo KZN wildlife;
- University of Free State;
- Surveyor General WC;
- Overstrand Municipality;
- Theewaterskloof Municipality;
- eThekweni Municipality;
- KZN COGTA;
- ESKOM;
- Centre for Environmental Rights;

- Tshwane Municipality;
- Stellenbosch Municipality;
- City of Cape Town;
- South African Wind Energy Association; and
- South African Sugar Association.

4. IMPLICATIONS FOR NATIONAL GOVERNMENT (OTHER DEPARTMENTS, PUBLIC ENTITIES, ETC)

The Subdivision of Agricultural Land Repeal Act, 1998 (Act No. 64 of 1998) will be promulgated. The Bill has been drafted in alignment with other national legislation.

5. IMPLICATIONS FOR DEPARTMENT

The Bill creates a more effective and efficient tool for the Department to ensure the preservation and maintenance of agricultural land within the Republic.

6. IMPLICATIONS FOR PROVINCIAL GOVERNMENT

6.1 Every entity within the provincial sphere of government must consider the prescribed norms and standards to achieve and measure compliance in terms of the envisaged Act to support DAFF's mandate.

6.2 Provincial Departments must provide the administrative capacity, financial, infrastructure and other forms of resource support, training and support required by

the formal structures established on provincial level, for the execution of their powers, the performance of their functions and the carrying out of their duties in terms of the envisaged Act.

7. IMPLICATIONS FOR LOCAL GOVERNMENT

Every entity within the local sphere of government must consider the prescribed norms and standards to achieve and measure compliance in terms of the envisaged Act to support the Department's mandate.

8. FINANCIAL IMPLICATIONS

The envisaged Act will have financial implications for the State, in that it will require the appointment of nine additional scientists and nine administrative staff to the current post establishment. The envisaged Act will also require a once-off cost for the development of norms, standards, criteria, regulations, manuals and training materials and the national agro-eco information system. The financial implications are outlined below:

Item	Cost
Additional annual Administrative cost	
Additional personnel capacity: Scientific and administrative support	R12 500 000
Additional goods and services to conduct field surveys	R5 000 000
Once-off cost	
For developing Norms, Standards, criteria, regulations, manuals and training materials, national agro-eco information system	R50 000 000

These funds will have to be secured in addition to the existing MTEF allocation.

9. PARLIAMENTARY PROCEDURE

9.1 The State Law Advisers and the Department are of the opinion that this Bill must be dealt with in accordance with the procedure established in section 76 of the Constitution of the Republic of South Africa, 1996 ("Constitution").

9.2 Chapter 4 of the Constitution specifies the manner in which legislation must be enacted by Parliament. It prescribes different procedures for Bills, including ordinary Bills not affecting provinces (section 75 procedure), and ordinary Bills affecting provinces (section 76 procedure). The determination of the procedure to be followed in processing the Bill is referred to as tagging.

9.3 In terms of section 76(3) of the Constitution, a Bill must be dealt with in accordance with section 76 if it falls within a functional area listed in Schedule 4. Schedule 4 to the Constitution lists functional areas of concurrent national and provincial legislative competence. In the Constitutional Court judgment of ***Ex-Parte President of the Republic of South Africa In Re: Constitutionality of the Liquor Bill***¹ ("**Liquor Bill** judgment"), Cameron AJ held the following:

"[27] It must be borne in mind that section 76 is headed 'ordinary Bills affecting provinces'. This is my view, a strong textual indication that section 76(3) must be understood as requiring that any Bill whose provisions in substantial measure fall within a functional area listed in Schedule 4 be dealt with under section 76.

¹ (CCT/12/99) [1999] ZACC 15.

...

[29] *Once a Bill falls within a functional area listed in Schedule 4, it must be dealt with not in terms of section 75, but by either the section 76 (1) or the section 76(2) procedure...*".

9.4 Following the ***Liquor Bill*** judgment, the Constitutional Court in the judgment of ***Tongoane and Others vs Minister for Agriculture and Land Affairs and Others***² ("***Tongoane*** judgment") confirmed the following:

"[59] *...the tagging test focuses on all the provisions of the Bill in order to determine the extent to which they substantially affect functional areas listed in Schedule 4, and not on whether any of its provisions are incidental to its substance.*".

9.5 Furthermore, the Constitutional Court held that:

"[66] *...procedural safeguards are designed to give more weight to the voice of the provinces in legislation substantially affecting them...they are fundamental to the role of the NCOP in ensuring that provincial interests are taken into account in the national sphere of government...*".

9.6 As the Court held in the ***Tongoane*** judgment, a Bill must be tagged as a section 76 Bill if its provisions in substantial measure deal with a Schedule 4 functional area. We are therefore of the view that the Bill should be classified as a

² 2010 (8) BCLR 741 (CC).

section 76 Bill, which is an ordinary Bill affecting province, as its provisions in a substantial measure fall within a functional area listed in Schedule 4 to the Constitution, namely "Agriculture."

9.7 The State Law Advisers are of the opinion that it is not necessary to refer the Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain any provisions which may have an impact upon customary law or customs of traditional communities.