

REPUBLIC OF SOUTH AFRICA

**DRAFT PRESERVATION AND DEVELOPMENT OF AGRICULTURAL LAND
FRAMEWORK BILL**

*(As introduced in the National Assembly (proposed section 75))
(The English text is the official text of the Bill)*

(MINISTER OF AGRICULTURE, FORESTRY AND FISHERIES)

[B XX—2013]

DRAFT BILL

To provide for definitions of terms used in the Act; to provide for the objects of the Act; to provide for the custodianship of agricultural land; to provide for the application of the Act and the guiding principles of interpretation and implementation of the Act; to provide for agricultural regulation pertaining to subdivision and rezoning applications on high potential cropping land and on medium potential agricultural land, respectively; to provide for Protected Agricultural Areas; to provide for the use of agricultural land; to provide for other applications on agricultural land; to provide for the duties of the Surveyor-General and the Registrar of Deeds in the application of the Act; to provide for the registration of servitudes on agricultural land; to provide for the National Agricultural Land Register and other systems; to provide for Agro-ecosystem Reports; to provide for the institutional framework, and, more specifically, the Intergovernmental Committee on the Preservation and Development of Agricultural Land, the Preservation and Development of Agricultural Land Framework Act National, Provincial and Municipal Internal Technical Committees and the Agricultural Land National Advisory Commission, as well as the Agricultural Land Review Board; to provide for the settlement of disputes regarding agricultural land; to provide for provincial and municipal responsibilities, guiding principles, minimum provincial norms and standards, and coordinated planning and development; to provide for general and miscellaneous matters; and to provide for matters connected therewith.

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CHAPTER 1 INTERPRETATION AND APPLICATION

Definitions

1. In this Act, unless the context indicates otherwise –

“**advertise**” means to distribute to members of the public or bringing to their notice in any other manner any written, illustrated, visual or other descriptive material or oral statement, communication, representation or reference;

“**agriculture**” means the science, art, practice or occupation concerned with the active production of useful plants, fungi or animals for –

- (a) food;
- (b) fibre;
- (c) bio-fuel; or
- (d) other,

production with the primary purpose to sustain life, and in varying degrees the preparation and marketing of the resulting products;

“**agricultural enterprise**” means an institutional unit in its capacity as a producer of agricultural goods and services with –

- (a) autonomy in respect of financial and investment decision-making; and
- (b) authority and responsibility for allocating resources for the production of agricultural goods and services,

with the following divisions:

- (i) crop and rangeland production;
- (ii) animal production;
- (ii) forestry and logging; and
- (iii) fishing and aquaculture;

“Agro-ecosystem Report” means an assessment contemplated in section 81;

“agricultural land” means all land in the jurisdiction of the Republic, excluding land –

- (a) in a proclaimed township;
- (b) with regard to which an application for declaration as a township had been submitted in accordance with applicable township establishment legislation prior to the date of commencement of this Act: Provided that such application is approved;
- (c) which, immediately prior to the date of commencement of this Act, was formally zoned for non-agricultural purposes by any sphere of government or any public entity; or
- (d) which the Minister, after consultation with other relevant Ministers and MECs concerned, within the provisions established in this Act, excludes by means of a notice in the *Gazette*;

“Agricultural Land National Advisory Commission” means the national Advisory Commission established in accordance with section 92;

“Agricultural Land Review Board” means the Review Board established in accordance with section 125;

“agricultural land use zones” means zones, based on the –

- (a) agricultural potential;
- (b) agricultural capability;
- (c) agricultural suitability;
- (d) conservation status;
- (e) use; and
- (f) location,

demarcated on a map of a suitable scale;

“agricultural potential” –

- (a) is a measure of potential productivity per unit area and unit time achieved with specified management inputs; and
- (b) for a given crop or veld type and level of management, is largely determined by the interaction of climate, soil and terrain;

“agricultural purposes” means purposes normally or otherwise reasonably associated with the use of land for agricultural activities, including the use of land for structures, buildings and dwelling units reasonably necessary for, or related to, the use of the land for agricultural activities;

“Agricultural Sector Plan” means a formal agreement at provincial level on the social, economic and environmental goals pertaining to the sustainable development and growth of the agricultural sector, based on Spatial Agricultural Plans per one or more local municipalities and developed with the full participation of the farming community, community organisations and the general public;

“agricultural specialist” means a person appropriately qualified, experienced, registered with the South African Council for Natural Scientific Professions, and able to undertake and interpret Agro-ecosystem Reports and to evaluate applications submitted in terms of the Act;

“agri-village” means an area especially zoned for purposes of housing for farmers actively engaged in agricultural production practices in a demarcated surrounding or adjacent area, and related agricultural infrastructure, of which the extent is limited and based on the long-term sustainable production potential of the demarcated agricultural production area;

“agro-ecosystem” means a dynamic association of crops, pastures, veld types, livestock, other fauna and flora, atmosphere, soils, and water that is contained within larger landscapes that include terrain features, drainage networks and rural communities;

“applicant” means any person, whether natural or juristic, who applies for the subdivision or rezoning of agricultural land;

“assignment” means the permanent transfer of –

(a) a power, duty, role or function from the functional domain of national government to one or more provincial governments; and

(b) the administration of a matter listed in Schedule 4 (Part A) of the Constitution,

and **“assign”** has a corresponding meaning;

“best available agricultural land” means agricultural land with the highest agricultural potential within a specific municipality, excluding high potential cropping land;

“building” means any building erected or used for any purpose whatsoever, and includes any other structure, whether of a temporary or permanent nature and irrespective of the materials used in the erection thereof, so erected or used;

“Chief Surveyor-General” means the Chief Surveyor-General appointed in terms of section 2 of the Land Survey Act, 1997 (Act No. 8 of 1997);

“classification” with regard to land means the classification of land on the grounds of agricultural potential, agricultural capability, agricultural suitability, conservation status, use and location;

“citizen” means a –

- (a) person who is a South African citizen in terms of the provisions of the South African Citizenship Act, 1949 (Act No. 44 of 1949);
- (b) person with permanent residence status in terms of the Immigration Act, 2002 (Act No. 13 of 2002); and
- (c) juristic person or trust with certain thresholds of foreign involvement, except where the context indicates otherwise;

“commercial” with regard to farming means the large-scale or intensive production of crops and livestock primarily for national food security and the market, the main objective of which is to achieve higher profits through –

- (a) economies of scale;
- (b) specialisation;
- (c) introduction of capital-intensive farming techniques;
- (d) labour-saving technologies;
- (e) maximisation of crop and livestock yields in a sustainable manner; and
- (f) a high level of technical knowledge and management inputs;

“communal land” means land held by a group of people who, in accordance with a system of communal tenure or a statutory form of such tenure, holds secure and exclusive collective rights to own, manage, lease or use land and natural resources, referred to as common pool resources, including land used for –

- (a) crop and rangeland production;

- (b) animal production;
- (c) forestry and logging; and
- (d) fishing and aquaculture;

“**Constitution**” means the Constitution of the Republic of South Africa, 1996;

“**court**” means a court as contemplated in section 166 of the Constitution;

“**day**” means a working day;

“**Deeds Registries Act**” means the Deeds Registries Act, 1937 (Act No. 47 of 1937);

“**Department**” means the national Department responsible for agriculture, forestry and fisheries, and “**departmental**” has a corresponding meaning;

“**Director-General**” means the Director-General of the Department;

“**district municipality**” means a Category C municipality envisaged in section 155(1)(c) of the Constitution;

“**Environmental Impact Assessment**” means the environmental impact assessment as defined in the National Environmental Management Act, 1998 (Act No 107 of 1998);

“**farmer**” means a person or entity who uses agricultural land for agricultural purposes, but does not include a farm worker;

“**farming system**” means a collection of components which –

- (a) are united by some form of interaction and interdependence; and
- (b) operate within a prescribed boundary,

to achieve a specified agricultural objective on behalf of the beneficiaries of the system;

“**financial year**” means a year ending 31 March;

“**food**” means any substance –

- (a) consumed to provide nutritional support to the body; and

(b) usually of plant or animal origin, containing essential nutrients, such as carbohydrates, fats, proteins, vitamins, or minerals in order to produce energy, maintain life, or stimulate growth;

“food security” means physical, social and economic access by all people, at all times, to sufficient, safe and nutritious food which meets their dietary needs and food preferences for an active and healthy life, and has the following four dimensions:

- (a) adequate availability of;
- (b) access to;
- (c) utilisation of; and
- (d) stability of,

an affordable food supply;

“formally proclaimed protected areas or conservation areas” means areas proclaimed as such in accordance with the Environment Conservation Act, 1989 (Act No. 73 of 1989), Marine Living Resources Act, 1998 (Act No. 18 of 1998), Mountain Catchment Areas Act, 1970 (Act No. 63 of 1970), National Environmental Management: Protected Areas Act, 2003 (Act No. 57 of 2003), National Forests Act, 1998 (Act No. 84 of 1998), National Heritage Resources Act, 1999 (Act No. 25 of 1999), National Key Points Act, 1980 (Act No. 102 of 1980), National Parks Act, 1976 (Act No. 57 of 1976), and National Water Act, 1998 (Act No. 36 of 1998);

“fragmentation of agricultural land” means the subdivision or change in the scheduled use of agricultural land that reduces the economic, environmental, social and logistical efficiency and viability of a farming system and agro-ecosystem;

“Gazette” means the *Government Gazette*;

“grazing land” means all agricultural land having plant material harvestable by grazing or browsing by livestock without reference to land tenure, other land uses, management, or treatment practices;

“high potential cropping land” –

- (a) means land best suited to, and capable of, consistently producing acceptable levels of goods and services for a wide range of agricultural enterprises in a sustainable manner, taking into consideration expenditure of energy and economic resources; and

(b) includes –

- (i) land capability class I land;
- (ii) land capability class II land;
- (iii) land capability class III land;
- (iv) unique agricultural land;
- (v) irrigated land; and
- (vi) land suitable for irrigation;

“human activities” means a series of activities undertaken to produce one or more goods or services;

“HoD” means the head of a provincial Department responsible for agriculture;

“Intergovernmental Committee” means the Intergovernmental Committee on the Preservation and Development of Agricultural Land established in accordance with section 82;

“Integrated Development Plan” means the plan contemplated in section 25 of the Municipal Systems Act;

“Intergovernmental Relations Framework Act” means the Intergovernmental Relations Framework Act, 2005 (Act No. 13 of 2005);

“irrigated land” means areas artificially provided with water, other than rain, for improving pasture or crop production;

“irrigable” with regard to soil means soil with suitable chemical and physical characteristics so as to be able to accept the supplementation of rain water by means of a suitable irrigation system, with water of an acceptable quality, without resulting in soil and environmental degradation;

“land” means immovable, corporeal or incorporeal, land, and includes shares, rights, title or an interest in land;

“land capability” means the most intensive long-term use of land for purposes of rainfed farming, determined by the interaction of climate, soil and terrain;

“land capability classes” means capability classes I, II, III, IV, V, VI, VII and VIII;

“land capability class I land” means land –

- (a) that has a very high potential for intensive crop production;
- (b) with few permanent limitations that restrict its use;
- (c) which may be used safely and profitably for cultivated crops;
- (d) of which the soils –
 - (i) are nearly level and deep;
 - (ii) hold water well;
 - (iii) are generally well drained;
 - (iv) are easily worked;
 - (v) are either fairly well supplied with plant nutrients or are highly responsive to inputs of fertilizer; and
 - (vi) when used for crop production, needs ordinary management practices to maintain productivity; and
- (e) which has a local climate favourable for growing many of the common field crops;

“land capability class II land” means land –

- (a) with some permanent limitations that reduce the degree or intensity of crop production but is nevertheless of high potential;
- (b) which requires moderate conservation practices;
- (c) which may be used for cultivated crops, but with less latitude in the choice of crops or management practices than land capability class I land;
- (d) with few limitations; and
- (e) the production and conservation practices of which are easy to apply;

“land capability class III land” means land –

- (a) with severe permanent limitations that restricts the choice of alternative uses and the intensity of crop production;
- (b) which is of moderate potential;
- (c) which requires special conservation practices;
- (d) which may be used for cultivated crops, but has more restrictions than land capability class II land;
- (e) when used for cultivated crops, the conservation practices of which are usually more difficult to apply and to maintain; and

(f) of which the number of practical alternatives for average farmers is less than that for soils in land capability class II;

“land capability class IV land” means land –

- (a) with very severe permanent limitations that restrict the choice of alternative uses and the potential for crop production;
- (b) which requires very careful management;
- (c) which may be used for cultivated crops, but more careful management is required than for land capability class III land and conservation practices are more difficult to apply and maintain;
- (d) with restrictions to land use which are greater than those in land capability class III land; and
- (e) on which the choice of plants is more limited;

“land capability class V land” means land –

- (a) that is unsuitable for the cultivation of annual crops;
- (b) with a slight erosion hazard under natural veld, established pastures, forestry or special crops that provides adequate cover;
- (c) which may be tilled for the establishment of pastures, forestry and special crops; and
- (d) which has one or more of the following limitations which are impractical to remove:
 - (i) wetness or frequently flooded;
 - (ii) stoniness or rockiness; or
 - (iii) climatic limitations;

“land capability class VI land” means land –

- (a) which has permanent limitations that make it generally unsuited to cultivation and limit its use largely to natural grazing, browsing, afforestation or game farming; and
- (b) which has continuing limitations that cannot be corrected, including –
 - (i) steep slope;
 - (ii) severe erosion hazard;
 - (iii) effects of past erosion;
 - (iv) stoniness;
 - (v) shallow rooting zone;
 - (vi) excessive wetness or flooding;

- (vii) low water-holding capacity;
- (viii) salinity;
- (ix) sodicity; or
- (x) unfavourable climate;

“land capability class VII land” means land with –

- (a) very severe permanent limitations that make it unsuited to cultivation and that restrict its use largely to natural grazing, browsing, afforestation or game farming; and
- (b) restrictions that are more severe than those for land capability class VI land because of one or more continuing limitations that cannot be corrected, such as –

- (i) very steep slopes;
- (ii) erosion;
- (iii) shallow soil;
- (iv) stones;
- (v) wet soil;
- (vi) salinity;
- (vii) sodicity; or
- (viii) unfavourable climate;

“land capability class VIII land” means land with limitations that –

- (a) preclude its use for commercial agricultural production;
- (b) restrict its use to recreation, wildlife, extensive game farming, water supply or aesthetic purposes; and
- (c) cannot be corrected as a result of, amongst others, the effects of one or more of the following:

- (i) erosion or erosion hazard;
- (ii) severe climate;
- (iii) wet soil;
- (iv) stones;
- (v) low water-holding capacity;
- (vi) salinity; or
- (vii) sodicity;

“land cover” means the observed physical cover, as seen from the ground or through remote sensing, including the –

- (a) vegetation, whether natural or planted;
- (b) human constructions, including buildings and roads; and
- (c) water bodies,

which occurs at the earth's surface;

"landowner" means the person in whose name land or a right in, or to, land is registered in accordance with the Deeds Registries Act, 1937 (Act No. 47 of 1937);

"land potential" means the range of possible beneficial uses of land;

"land use" means a series of human activities which are directly related to the land, making use of its resources, or having an impact on it;

"land use official" means the –

- (a) departmental official duly assigned by the Director-General to one or more provinces; or
- (b) official of the provincial Department concerned, duly assigned by the HoD concerned,

who is responsible to process applications for the subdivision or rezoning of agricultural land as contemplated in sections 7 and 31;

"livestock" means any population or breed of domesticated, semi-domesticated or captive wild animals raised in an agricultural setting to produce commodities;

"MEC" means a Member of the Executive Council of a Province responsible for agriculture;

"MEC's delegate" means a senior official in the provincial Department to whom the MEC has delegated his or her powers, activities and duties related to the administration of this Act, in full or partially, by means of a formal letter;

"medium potential agricultural land" means all land available for agricultural production purposes –

- (a) excluding high potential cropping land; and
- (b) including land capability classes IV, V, VI, VII and VIII land;

"Minister" means the Minister responsible for agriculture, unless stated otherwise;

“Minister’s delegate” means a senior official in the Department to whom the Minister has delegated his or her powers, activities and duties related to the administration of this Act, in full or partially, by means of a formal letter;

“municipal manager” means a person appointed in terms of section 82 of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998);

“Municipal Systems Act” means the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000);

“municipality” when referred to as –

(a) an entity, means a municipality as described in section 2 of the Municipal Systems Act; and

(b) a geographical area, means a municipal area determined in the Local Government: Municipal Demarcation Act, 1998 (Act No. 27 of 1998),

and includes the Municipal Council;

“natural agricultural resources” means the natural resource base upon which the agricultural economy depends –

(a) including the soil, water resources, agro-climate, and natural vegetation occurring on agricultural land; and

(b) excluding invasive alien plants, weeds and bush encroachers;

“natural agricultural resources assessment” means the description and interpretation of the characteristics of, and assessment of, the potential, capability, suitability and conservation status of the natural agricultural resources for purposes of agricultural production and development;

“optimal agricultural use” means the maximum productivity per unit area and unit time achievable by the best suited or adapted farming enterprise in a sustainable manner with minimum negative impacts on the natural agricultural resources;

“PD-ALFA Municipal Internal Technical Committee” means the Preservation and Development of Agricultural Land Framework Act Municipal Internal Technical Committee established in accordance with section 119;

“PD-ALFA National Internal Technical Committee” means the Departmental Preservation and Development of Agricultural Land Framework Act National Internal Technical Committee established in accordance with section 104;

“PD-ALFA Provincial Internal Technical Committee” means the Preservation and Development of Agricultural Land Framework Act Provincial Internal Technical Committee established in accordance with section 112;

“person” includes a community and a juristic person;

“prescribed” means prescribed by or under this Act;

“prescribed form” means a form prescribed by –

- (a) regulation; or
- (b) the Registrar;

“permanent residence permit” means a permit for permanent residence in South Africa, as defined in the Immigration Act, 2002 (Act No. 13 of 2002);

“Protected Agricultural Area” –

- (a) means an agricultural land use zone, protected for purposes of –
 - (i) food production; and
 - (ii) ensuring that high potential and best available agricultural land are protected against non-agricultural land uses in order to promote long-term agricultural production and food security;
- (b) includes all areas demarcated as such in accordance with section 53; and
- (c) may include high potential cropping land and medium potential agricultural land;

“provincial Department” means the provincial department responsible for agriculture;

“Provincial Gazette” means the official *Gazette* of the province concerned;

“Public Service Act” means the Public Service Act, 1994 (Proclamation No. 103 of 1994);

“rainfed farming” means agricultural practices relying exclusively on rainfall as its source of water;

“Registrar” means the Registrar of the National Agricultural Land Registry, appointed as contemplated in section 71;

“Registrar of Deeds” means a registrar of deeds who is in charge of the deeds registry in respect of which he or she has been appointed as contemplated in the Deeds Registries Act;

“renewable energy” means renewable energy sources that include, but are not limited to, bio- fuels and hydro, wind and solar energy sources;

“Republic” means the Republic of South Africa;

“rezoning” means a change in land use from the scheduled land use purpose of agriculture to another scheduled land use purpose;

“right” in relation to agricultural land, does not include any right to minerals or a prospecting or mining right as contemplated in the Minerals and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002);

“right to farm” means the –

- (a) entitlement of farmers to farm with an agricultural enterprise of their choice; and
- (b) protection of farmers against adjacent land use decisions and local government laws that would unreasonably interfere with their normal farming practices;

“SACNASP” means the South African Council for Natural Scientific Professions, established in accordance with section 2 of the Natural Scientific Professions Act, 2003 (Act No. 27 of 2003);

“sale” includes a sale subject to a suspensive condition, and **“sold”** has a corresponding meaning;

“**SALGA**” means the South African Local Government Association recognised in terms of the Organised Local Government Act, 1997 (Act No. 52 of 1997), as the national organisation representing municipalities;

“**scheduled land use purposes**” means, in respect of applications for the rezoning of agricultural land, one or more of the following:

- (a) agricultural purposes, with sub-categories as prescribed;
- (b) business purposes;
- (c) commercial purposes;
- (d) community purposes;
- (e) conservation purposes;
- (f) educational purposes;
- (g) government purposes;
- (h) industrial purposes;
- (i) institutional purposes;
- (j) mining purposes;
- (k) public purposes;
- (l) recreational purposes;
- (m) residential purposes;
- (n) transport purposes; and
- (o) any other purpose as may be prescribed;

“**scheme**” in Chapter 9 means –

- (a) an agreement, arrangement, understanding or promise, whether expressed or implied and whether or not enforceable, or intended to be enforceable, by legal proceedings; and
- (b) a plan, proposal, action, course of action or course of conduct, whether unilateral or otherwise;

“**Scientific Report**” means a scientific or technical report on the –

- (a) potential;
- (b) capability;
- (c) suitability;
- (d) state; and
- (e) use,

of the natural agricultural resources, as compiled by agricultural scientist registered with SACNASP;

“servitude” means a right that a person has over property belonging to another person by agreement between them, in accordance with –

- (a) procedures laid down in the Deeds Registries Act; or
- (b) an order of court;

“smallholder” with regard to farming means an independent small farming unit managed by a farmer or farmers, as the case may be –

- (a) with a higher level of technical knowledge and better receptivity to improved technology than subsistence farmers; and
- (b) who tend to –
 - (i) specialise in a specific agricultural enterprise; and
 - (ii) market their production surplus;

“state land” means –

- (a) unalienated land in respect of which no title deed has been issued; or
- (b) land which is –
 - (i) registered in the name of; or
 - (ii) held in trust by,
an entity within the national, provincial or local spheres of government or a state-owned enterprise;

“subdivision” means the process, instance, or state of agricultural land being divided into smaller pieces, by creating a boundary, for purposes of a change in –

- (a) ownership; or
- (b) land use rights;

“subsistence” with regard to farming means a farming system where the food and goods produced are predominantly consumed by the farm family and there is little or no surplus for sale;

“sustainable agriculture” means –

- (a) farming practices that –
 - (i) conserve land, water, plant and animal genetic resources; and
 - (ii) are environmentally non-degrading, technically appropriate, economically viable, and socially acceptable; and

(b) an integrated system of plant and animal production practices having an agro-ecosystem site-specific application that complements ecological and biodiversity conservation and meets present needs without compromising the ability to meet future needs to –

- (i) satisfy human food and fibre needs;
- (ii) enhance environmental quality and the natural resource base upon which the agricultural economy depends;
- (iii) make the most efficient use of non-renewable resources and on-farm resources and integrate, where appropriate, natural biological cycles and controls;
- (iv) sustain the viability of a farming unit; and
- (v) enhance the quality of life for farmers and society as a whole;

“unique agricultural land” means land –

- (a) other than land capability classes I, II and III land, that is important to agriculture and used for the production of specific high potential agricultural enterprises; and
- (b) with the special combination of location, terrain features, climate and soil properties to economically produce sustained high quality or high yields of a specific crop when treated and managed according to acceptable farming methods;

“urban agricultural zone” means an agricultural land use zone within, transacted by, or adjacent to, an urban area;

“veld type” means a unit of vegetation of which the range of variation is small enough to permit the whole of it to have the same farming potentialities;

“viable farming unit” means an area where sustainable agriculture is practiced, that is economically viable and generates sufficient revenue from its agricultural production operations to cover –

- (a) all variable and fixed costs of production;
- (b) all appropriate family living expenses; and
- (c) capital replacement costs;

“water licence” means a general authorisation or licence issued under the National Water Act, 1998 (Act No. 36 of 1998).

Objects

2. The objects of the Act are to –

- (a) regulate the subdivision, rezoning and protection of agricultural land;
- (b) preserve and develop agricultural land by –
 - (i) encouraging –
 - (aa) farming on agricultural land in collaboration with other role players; and
 - (bb) provincial and local government to enable and promote the use of agricultural land for farming purposes and compatible uses in their policies, legislation, Integrated Development Plans, Spatial Development Frameworks and other relevant administrative frameworks and procedures;
 - (ii) discouraging or prohibiting –
 - (aa) land uses unrelated to agriculture from taking place on agricultural land, including urban and other non-agricultural developments that are likely to create conflict with established or proposed Protected Agricultural Areas; and
 - (bb) subdivision and rezoning of agricultural land that results in fragmentation of farming systems, reduced agricultural productivity and land degradation;
 - (iii) encouraging the mitigation of lost productive capacity of agricultural land if permanent impacts cannot be avoided and arise from development; and
 - (iv) promoting and encouraging long-term, viable farming units from an economic, environmental and social perspective;
- (c) implement a uniform, coordinated, cross-cutting national framework, including national norms and standards for the submission, consideration and approval or rejection of applications for the subdivision or rezoning of agricultural land to ensure coordinated, intergovernmental relations;
- (d) build capacity in all three levels of government with regard to the consideration and execution of rezoning applications;
- (e) ensure the sustainable use of the natural agricultural resources and maintain the agricultural landscape through the prohibition or discouragement of land use changes from agriculture to other forms of development;
- (f) establish a framework that, in appropriate cases, facilitates concurrent land uses on agricultural land, such as renewable energy projects, without jeopardising long-term food security and natural resource integrity;
- (g) protect the right to farm and to strengthen the rights of farmers to protect and manage agricultural land;

- (h) establish formal structures at local, provincial and national levels to provide a basis for participation and to ensure transparency in, and accountability for, land use decisions that affect the availability and sustainable use of agricultural land;
- (i) ensure that a minimum threshold of high potential cropping land available for agricultural production purposes is determined by the Department so as to maintain and increase food production and the potential productivity of the land concerned;
- (j) demarcate Protected Agricultural Areas to ensure that high potential and best available agricultural land are protected against non-agricultural land uses in order to promote long-term agricultural production;
- (k) encourage well-functioning intergovernmental relations and establish intergovernmental dispute resolution mechanisms; and
- (l) establish an incentive-based regulatory regime that is linked to enforcement to actively promote the preservation and optimal agricultural use of agricultural land for agricultural production.

Custodianship

3.(1) Agricultural land is the common heritage of all the people of South Africa and the Department is the custodian thereof for the benefit of all South Africans.

(2) As the custodian of the nation's agricultural land, the Department, acting through the Minister, Intergovernmental Committee or MECs concerned, as the case may be, may approve, reject, control, administer and manage any rezoning or subdivision of agricultural land.

(3) The Minister, Intergovernmental Committee and MECs concerned, as the case may be, must ensure the sustainable development and preservation of South Africa's agricultural land within a framework of national agricultural policy, norms and standards while promoting economic and social development and food security.

Application and guiding principles for interpretation and implementation of Act

4.(1) This Act –

- (a) applies to all agricultural land and farming systems, including –
 - (i) land used for commercial, smallholder and subsistence farming; and
 - (ii) privately-owned, state, public and communal land; and
- (b) does not apply to land –

- (i) used for non-agricultural purposes immediately prior to the date of commencement of this Act: Provided that all conditions imposed by the Government are complied with and that the necessary authorisations for its current use had been obtained prior to the date of commencement of this Act; and
- (ii) already approved at the commencement date of this Act for development.

(2) An applicant applying for the subdivision or rezoning of agricultural land, whether in terms of –

- (a) this Act;
- (b) the Development Facilitation Act, 1995 (Act No. 67 of 1995); or
- (c) any other legislation,

must comply with the provisions of, and processes contemplated in, this Act.

(3) This Act must be interpreted and implemented within the context of –

- (a) the Constitution;
- (b) national framework policy and legislation;
- (c) national norms and standards;
- (d) transversal provincial policy and legislation; and
- (e) relevant international, regional and bi-national conventions, treaties and agreements ratified by the Republic of South Africa.

CHAPTER 2

AGRICULTURAL REGULATION

Part I: Subdivision and rezoning applications on high potential cropping land

Prohibition on subdivision of high potential cropping land

5. The subdivision of high potential cropping land is prohibited, unless approved by the Minister in accordance with section 12(4).

Prohibition on rezoning of high potential cropping land

6. The rezoning, with associated subdivision if required, of high potential cropping land is prohibited, unless approved by the Intergovernmental Committee in accordance with section 12(5).

Application for consent regarding high potential cropping land

7.(1) An applicant applying for the subdivision or rezoning of high potential cropping land must submit his or her application in the prescribed form to the provincial Department concerned.

(2) An applicant who has submitted an application for the –

- (a) establishment of a township or the extension thereof;
- (b) zoning or rezoning; or
- (c) intended land use change from one scheduled land use to another scheduled land use,

which involves or partly involves or may potentially impact on high potential cropping land to the municipality concerned, must also –

- (i) submit his or her application in the prescribed form to the provincial Department concerned for the processing and making of recommendations; and
- (ii) comply with the provisions of this Act.

Submission of documentation by applicant relating to high potential cropping land

8. The applicant must, together with his or her application on the prescribed form, submit –

- (a) an Agro-ecosystem Report contemplated in section 81 –
 - (i) compiled by a SACNASP registered agricultural scientist; and
 - (ii) which comprises a –
 - (aa) general area description;
 - (bb) natural agricultural resources assessment, which must include information on the soil, terrain, vegetation, water and agro-climate at an appropriate scale; and
 - (cc) agro-ecosystem impact assessment, which must include information on the production, ecological and socio-cultural services;
- (b) documentation and baseline information on adjacent land parcels;
- (c) information dealing with the clear categorisation of the area concerned;
- (d) any other documentation that may be prescribed; and
- (e) any other information that may be requested in writing.

Disclosure of intended future land use change relating to high potential cropping land

9. An applicant contemplated in section 7 must, at the time of such application, also disclose any intended future land use change on the high potential cropping land concerned, if any, such as –

- (a) an intended future land use change that can impact negatively on the agro-ecosystem;
- (b) an intended future land use change to mining in order to prospect; or
- (c) the assembling of land parcels for –
 - (i) future non-agricultural developments; or
 - (ii) any other non-agricultural uses.

Inputs by municipality relating to high potential cropping land

10.(1) The provincial Department to which an application was submitted as contemplated in section 7, must send a copy of such application and all supporting documentation to the –

- (a) local municipality and district municipality; or
- (b) metropolitan municipality,

concerned, as the case may be, within a period of 5 days after receipt of the complete application from the applicant.

(2) The municipalities contemplated in subsection (1) must –

- (a) consider the application and supporting documents, taking into account the following:
 - (i) the Integrated Development Plan;
 - (ii) the Spatial Development Framework;
 - (iii) the Local Economic Development plan;
 - (iv) the Land Use Management Scheme; and
 - (v) any other planning frameworks applicable to the area concerned; and
- (b) consult with traditional governance structures in the event that the application involves land occupied by a traditional community as contemplated in section 11.

(3) The municipalities contemplated in subsection (1) must –

- (a) make a written recommendation in respect of the application; and
- (b) submit the recommendation contemplated in paragraph (a), together with any other written inputs, to the provincial Department concerned.

(4) The recommendation by the municipalities contemplated in subsection (3) is not required in the event that the Intergovernmental Committee approves the application as contemplated in section 13.

(5)(a) In the event that the municipality concerned lacks sufficient capacity to fulfil its functions as contemplated in this Act, the provincial Department concerned, in consultation with the municipal manager, must execute such functions: Provided that the municipality concerned must comply with the provisions of subsection (3).

(b) In the event that no recommendation is forthcoming from the municipality concerned after intervention by the provincial Department, the provincial Department must keep a record thereof and proceed with the application.

(6) In the event that the municipality concerned does not submit its inputs to the provincial Department within a period of twenty days after receipt of the documents contemplated in subsection (1), the provincial Department is not obliged to consider its inputs.

Input by traditional governance structures regarding high potential cropping land occupied by traditional community

11. In the event that an application concerns high potential cropping land occupied by a traditional community, the following officially recognised traditional governance structures as contemplated in the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), must be consulted by the municipality concerned:

- (a) king or queen, in the event that the traditional community concerned pays allegiance to such king or queen;
- (b) principal traditional leader, in the event that the traditional community concerned pays allegiance to such principal traditional leader;
- (c) senior traditional leader; and
- (d) kingship or queenship council, principal traditional leader council, traditional council, or sub-traditional council, as the case may be.

Processing of applications on high potential cropping land

12.(1) The following process must be adhered to once an application has been received by the land use official of the provincial Department concerned:

- (a) in the event that the application is incomplete, the –
 - (i) rejection of the application; and

- (ii) returning of the application to the applicant with a covering letter indicating the outstanding information or documentation, as the case may be, within 5 days; or
- (b) in the event that the application is complete, the –
 - (i) capturing of the application in the Agricultural Land Register and sending of a notice of receipt to the applicant within 5 days;
 - (ii) requesting and management of any additional documentation, reports and assessments by the land use official of the provincial Department, including –
 - (aa) the Agro-ecosystem Report contemplated in section 81;
 - (bb) the Scientific Report;
 - (cc) information contained in the National Agricultural Land Register;
 - (dd) inputs and recommendations received from the Municipal Council concerned, regarding the approval or rejection of the application and possible conditions;
 - (ee) the impact of the proposed application on adjacent land; and
 - (ff) any other information that may be requested in writing;
 - (iii) compilation of the submission to the Provincial Internal Technical Committee by the land use official of the provincial Department, which submission must include the documents and information contemplated in sub-paragraph (ii);
 - (iv) evaluation of the application and the making of a recommendation by the Provincial Internal Technical Committee; and
 - (v) compilation of the submission to the National Internal Technical Committee by the land use official of the provincial Department, which submission must include the documents and information contemplated in sub-paragraphs (ii) and (iv).

(2) The provincial Department must refer the application and submission contemplated in subsection (1)(b)(v) to the departmental land use official allocated by the Department to the province concerned within 35 days from the date received.

(3) The National Internal Technical Committee, when evaluating the application and making recommendations to the Minister or the Intergovernmental Committee, as the case may be, regarding the approval or rejection of the application and possible conditions, must take into account the following:

- (a) the documents and information contemplated in subsection (1);
- (b) the National Spatial Plans;
- (c) proposed mitigation of the loss of agricultural land;

- (d) any other planning frameworks applicable to the area concerned; and
- (e) the fact that existing developments in the area concerned may not be viewed as a precedent, and must rather indicate the stricter implementation of the Act to protect the resource base in the area concerned.

(4)(a) The Minister must consider the application, comply with the provisions of section 16 and may approve or reject an application for the subdivision of high potential cropping land.

(b) In the event the Minister approves an application as contemplated in paragraph (a), he or she may impose any reasonable conditions.

(c) The Minister or his or her delegate must sign off on the decision.

(5) In the event that the application concerns the rezoning, with associated subdivision if required, of high potential cropping land, rezoning may only be approved if –

(a) the application relates to land reform: Provided that the Minister and the Minister responsible for land reform must recommend and refer the application to the Intergovernmental Committee for its approval or rejection; or

(b) exceptional circumstances exist: Provided that the Minister must refer the application to the Intergovernmental Committee for its approval or rejection.

(6) In addition to the provisions of sections 13(4) and 16, the Intergovernmental Committee must, when considering an application contemplated in subsection (6), take into account whether –

(a) the proposed application is in the national interest;

(b) there are any alternative options available; and

(c) the applicant is able to prove that the rezoning will –

(i) not negatively affect food security; and

(ii) generate more long-term economic and social benefits for the municipality concerned, province concerned and the country as a whole than those that would be generated by agricultural activities on the land concerned in the event that the application is refused.

(7) In the event that the Intergovernmental Committee approves an application contemplated in subsection (5), it –

(a) may impose any reasonable conditions; and

(b) must support its decision by –

(i) a well-motivated, clear and logical exposition of the factors considered;

(ii) the reasons for the decision; and

(iii) the possible implications for the objects of this Act as contemplated in section 2.

(8)(a) The departmental land use official must compile and verify the notice of decision.

(b) The supervisor of the departmental land use official must check the notice of decision contemplated in paragraph (a).

(c) The –

(i) departmental land use official;

(ii) departmental land use official's supervisor;

(iii) Chairperson of the National Internal Technical Committee, or Secretary or Chairperson of the Intergovernmental Committee, as the case may be; and

(iv) Minister's delegate,

must sign the decision letter.

(d) The Registrar must file and record the decision, reasons and documentation on the Agricultural Land Register.

(e) The departmental land use official must submit copies of the documents contemplated in paragraph (d) to the provincial Department concerned.

(f) The supervisor of the departmental land use official must send the decision letter to the applicant and the provincial Department concerned within 35 days from the date received.

(9) An interested party may, if he or she is of the opinion that a decision by the Intergovernmental Committee or the Minister, as the case may be, is not rational, apply for a review of the decision to the Agricultural Land Review Board in accordance with the provisions of Part VI of Chapter 6.

(10) All approvals and conditions, if any, must be registered against the title deed of the land concerned.

Exceptional circumstances relating to high potential cropping land

13.(1) Only the Intergovernmental Committee may approve an application concerning the rezoning, with associated subdivision if required, of high potential cropping land.

(2) The Intergovernmental Committee may only approve an application contemplated in subsection (1) in the circumstances set out in section 12(5): Provided that the Intergovernmental Committee, if it approves such application, must –

(a) be of the view that exceptional circumstances as contemplated in subsection (3) exist;

(b) ensure that the requirements as set out in this Act have been complied with by the

–

(i) applicant;

(ii) municipalities concerned;

(iii) provincial Department concerned; and

(iv) Department; and

(c) impose stringent conditions in order to ensure that the remainder of the land concerned can still be used optimally for food production purposes.

(3) For purposes of this Act, “**exceptional circumstances**” has the following meanings:

(a) the Agro-ecosystem Report indicates that the approval of the application will not impact negatively on surrounding agricultural activities: Provided that this paragraph also applies to land capability class IV land for an interim period of 5 years from the date of commencement of this Act;

(b) the proposed rezoning will not have a negative effect on agricultural production: Provided that the remainder of the land concerned is still able to be used optimally for agricultural purposes;

(c) specific long-term benefits associated with the rezoning of agricultural land outweigh the cumulative loss of agricultural land; and

(d) the proposed rezoning constitutes a change in category of agriculture as a scheduled land use purpose: Provided that such change does not impact negatively on food production.

(4) The Intergovernmental Committee must take the following into account when considering an application contemplated in subsection (1):

(a) the Agro-ecosystem Report;

(b) the benefits of the proposed rezoning;

(c) the negative impacts of the proposed rezoning, including long-term external costs;

(d) the effect of the proposed rezoning on long-term food security;

(e) the recommendation by the –

(i) Municipal Council;

(ii) Provincial Internal Technical Committee;

(iii) National Internal Technical Committee;

(iv) Minister; and

(v) if applicable, the Minister responsible for land reform;

- (f) the outcome of the consultations contemplated in section 14;
- (g) proposed mitigation for the loss of agricultural land; and
- (h) any other relevant factors.

(5) In the event that an application for the rezoning of high potential cropping land involves proposed –

- (a) prospecting;
- (b) mining;
- (c) energy sources including hydraulic fracturing; or
- (d) renewable energy, such as hydro, wind and solar energy,

the applicant must submit the Agro-ecosystem Report contemplated in subsection (4)(a): Provided that such Agro-ecosystem Report must also comply with the provisions of subsection (6).

(6) The Agro-ecosystem Report contemplated in subsection (5) must, in addition to the requirements set out in section 81, also indicate what the –

- (a) effect of the proposed actions referred to in subsection (5)(a) to (d) will be on the –
 - (i) land concerned;
 - (ii) surrounding area;
 - (iii) current and future potential agricultural use of the land contemplated in subparagraphs (i) and (ii);
 - (iv) surface water; and
 - (v) subterranean water and soil-water hydrology; and
- (b) offsite impacts and long-term external costs will be on the land contemplated in paragraphs (a)(i) and (a)(ii).

(7) A negative Agro-ecosystem Report results in the non-utilisation of any right relating to the actions referred to in subsection (5)(a) to (d) issued by any other national or provincial government department or a municipality.

- (8)(a) An applicant contemplated in subsection (5) must also submit a rehabilitation plan.
- (b) The Intergovernmental Committee must evaluate the effectiveness of the proposed rehabilitation plan contemplated in paragraph (a) in order to determine whether the land could revert to productive long-term agricultural use after the proposed actions referred to in subsection (5)(a) to (d) have ceased.

Consultation regarding high potential cropping land

14. The Intergovernmental Committee, when considering an application for the rezoning, with associated subdivision if required, of high potential cropping land, must, prior to approving or rejecting the application as contemplated in section 12(8), consult with relevant

–

- (a) national government departments;
- (b) provincial government departments;
- (c) municipalities; and
- (d) parties that –
 - (i) have a direct interest; and
 - (ii) may be affected if the application were to be approved.

Deviation from approach contemplated in Act regarding high potential cropping land

15.(1) The Minister, when considering an application for the subdivision of high potential cropping land, may consider deviating from the approach contemplated in this Act relating to the subdivision of high potential cropping land for any of the following reasons:

- (a) a positive Agro-ecosystem Report;
- (b) the Agro-ecosystem Report indicates that the –
 - (i) land concerned was erroneously classified as high potential cropping land; and
 - (ii) approval of the application will not impact negatively on surrounding agricultural activities: Provided that this paragraph also applies to land capability class IV land for an interim period of 5 years from the date of commencement of this Act;
- (c) the proposed subdivision or rezoning will increase agricultural production: Provided that all subdivisions concerned must still be viable farming units and able to be used optimally for agricultural purposes in a long-term sustainable manner; and
- (d) specific benefits associated with the subdivision of agricultural land outweigh the cumulative loss of agricultural land: Provided that this is only taken into account in exceptional circumstances.

(2) Trade-offs between conflicting policies and policy objectives are subject to –

- (a) short-term policy objectives with short-term benefits not being permitted to override long-term policy objectives with long-term benefits; and
- (b) where the situation contemplated in paragraph (a) cannot be avoided, the opportunity cost of the decision being made explicit and factored into the decision.

Trade-offs and mitigation of loss of high potential cropping land

16.(1) In the event that permanent impacts are likely to arise from the approved subdivision or rezoning of high potential cropping land, mitigation by means of enabling agricultural production in other areas is required to address the lost productive capacity of the land, including the introduction of irrigation in the event that the –

- (a) production potential of the area concerned will be improved;
- (b) soils are irrigable;
- (c) water is available and of acceptable quality;
- (d) infrastructure is available or funded; and
- (e) required water rights are available and approved.

(2) Mitigation may only be a final resort after all attempts to reasonably avoid the impacts of the development have been exhausted by the applicant.

(3) The Minister or the Intergovernmental Committee, as the case may be, must evaluate the trade-off against a set of criteria in terms of production potential, locality, applicable area and size, marketing and accessibility of produce to the community.

(4) The Minister must, within a period not exceeding 6 months after the date of commencement of this Act, by notice in the *Gazette*, publish the set of criteria contemplated in subsection (3).

Water license rights on high potential cropping land

17.(1) In the event that an application for subdivision or rezoning of high potential cropping land is granted, all existing agricultural water licences, if any, must be retained for agricultural production purposes.

(2) Any changes or reallocations of existing agricultural water licences must be done by the Minister responsible for water in accordance with the provisions of the National Water Act, 1998 (Act No, 36 of 1998), in consultation with the Minister.

(3) An applicant must, together with his or her application for the subdivision or rezoning of agricultural land, indicate, by means of accompanying documentation –

- (a) whether a water licence in respect of the land concerned had been issued; and

(b) if such licence had been issued, whether an application for the reallocation of such licence to the person or persons who will own the land if the subdivision or rezoning application is approved, has been submitted to the Department responsible for water.

(4) A potential positive outcome in respect of an application is subject to formal confirmation by the Department responsible for water that the water licence will be allocated –

(a) to the person or persons contemplated in subsection (3)(b); and

(b) on condition that it must be used for agricultural purposes.

(5) The provincial Department must assist with monitoring and ensuring that the water licence is so utilised for agricultural purposes.

(6) In the event that a person does not comply with the requirements contemplated in subsection (4)(b), the Minister or the Intergovernmental Committee, as the case may be, may cancel the approval concerned.

Application for land reform purposes on high potential cropping land

18. In the event that an application for subdivision or rezoning of high potential cropping land involves land reform, the provisions of section 12(5)(a) apply.

Application regarding high potential cropping land located within, bisected by, or in close proximity to urban areas

19.(1) The provincial Department concerned must, in principle, oppose an application for the development of high potential cropping land located within, bisected by or in close proximity to the provincial urban edge if such development does not support or promote urban agriculture: Provided that urban agricultural zones for intensive food production practices may be considered subject to stringent conditions to ensure –

(a) optimal productivity; and

(b) that such practices are not used as a stepping stone for other forms of development or change in the scheduled land use.

(2) An application contemplated in subsection (1) must be accompanied by an Agro-ecosystem Report, which assessment must, in addition to the requirements set out in section 81 –

(a) specify any factors that may prevent the land from being used for agricultural purposes; and

(b) clarify why the factors contemplated in paragraph (a) cannot be mitigated in accordance with the provisions of section 16 through changes in management or other measures, such as strengthening the safety and security, or the choice of crops grown.

Application regarding construction and expansion of roads on high potential cropping land

20.(1) In the event that an application concerns the construction or expansion of a road on high potential cropping land outside a Protected Agricultural Area, an applicant must submit an Agro-ecosystem Report for –

(a) route determinations of national and provincial roads;

(b) the design, construction and rehabilitation of associated infrastructure and facilities; and

(c) the construction or expansion of roads,

in addition to the requirements set out in section 81 of this Act.

(2) In the event that planned national roads will traverse high potential cropping land or Protected Agricultural Areas, the Intergovernmental Committee must consider such application as contemplated in section 12(6)(b).

Application regarding corridor development on high potential cropping land

21. In the event that planned corridor development will traverse high potential cropping land or Protected Agricultural Areas, the Intergovernmental Committee must consider such application as contemplated in section 12(5)(b).

Application regarding farm-related industries on high potential cropping land

22.(1) In the event that an application for subdivision or rezoning concerns high potential cropping land and relates to farm-related industries, the following factors must be taken into account:

(a) economic viability;

(b) the possible appropriateness of the economies of scale perspective; and

(c) the long-term sustainable use of the natural agricultural resources.

(2) The Minister may consider –

- (a) urban agricultural zones for intensive food production practices; and
- (b) subdivision for farm-related industries,

subject to stringent conditions.

Applications regarding agri-villages on high potential cropping land

23.(1) In the event that an application for an agri-village concerns high potential cropping land, the following factors must be taken into account:

- (a) placement of the agri-village on suitable medium potential land;
- (b) long-term economic and social viability;
- (c) the possible appropriateness of the economies of scale perspective; and
- (d) the long-term sustainable use of the natural agricultural resources in the demarcated and associated production area.

(2) The Minister may consider –

- (a) agri-village zones for intensive food production practices; and
- (b) subdivision for agri-villages,

subject to stringent conditions.

Verification or reclassification of agricultural potential

24.(1) An applicant may, together with his or her application for subdivision or rezoning of high potential cropping land, apply for reclassification of the land concerned –

- (a) for verification purposes; or
- (b) in instances where scale issues have resulted in the inaccurate classification of tracts of land.

(2) An application contemplated in subsection (1) must be accompanied by an Agro-ecosystem Report, which must provide data, in the prescribed format on the –

- (a) topography and hydrology of the site;
- (b) type and characteristics of the soil;
- (c) agro-climate;
- (d) water availability, including the quantity and quality of the water for purposes of irrigation;
- (e) size of the land concerned; and

(f) classification of neighbouring land use: Provided that the Agro-ecosystem Report must demonstrate whether the classification of the neighbouring land use renders the land agriculturally non-viable,

in addition to the requirements as set out in section 81 of this Act.

Application regarding high potential cropping land outside Protected Agricultural Areas

25. All land identified as high potential cropping land located outside Protected Agricultural Areas is subjected to the same norms and standards applicable to high potential cropping land within Protected Agricultural Areas.

Compliance with agricultural planning principles

26. The Minister, in consultation with the MECs concerned must, within a period not exceeding 6 months after the date of commencement of this Act, by notice in the *Gazette*, publish planning and developmental guidelines for the long-term sustainable and optimal use of high potential cropping land.

Power to suspend or cancel approvals relating to high potential cropping land

27.(1) In the event of non-compliance, in full or in part, with any condition imposed as contemplated in sections 12(5)(b) or 12(8)(a), as the case may be, the Minister or the Intergovernmental Committee, as the case may be, may –

- (a) suspend; or
- (b) cancel,

approvals relating to high potential cropping land: Provided that –

- (i) notice of the intention of suspension or cancellation, as the case may be; and
- (ii) an opportunity to respond,

must be given to the applicant or entity whose application was approved subject to conditions.

(2) Any action taken in terms of this section does not preclude the institution of criminal proceedings and the imposition of a sentence on conviction as contemplated in sections 158 and 159 of this Act.

Conditions binding on successors and occupiers

28. Any condition imposed as contemplated in sections 12(5)(b) or 12(8)(a), as the case may be, is binding on all –

- (a) successors in title of the applicant or entity whose application was approved subject to conditions; and
- (b) occupiers of the land in respect of which approval subject to conditions has been granted.

Part II: Subdivision and rezoning applications on medium potential agricultural land

Restriction or prohibition on subdivision of medium potential agricultural land

29. The subdivision of medium potential agricultural land is prohibited, unless approved by the MEC in accordance with section 36(8).

Restrictions or prohibition on rezoning of certain medium potential agricultural land

30.(a) The rezoning, with the associated subdivision if required, of medium potential agricultural land is prohibited, unless approved by the MEC.

(b) The rezoning of land of capability class IV is prohibited for an interim period of 5 years from the date of commencement of this Act, unless approved by the Minister and MEC.

Application for consent relating to medium potential agricultural land

31.(1) An applicant applying for the subdivision or rezoning of medium potential agricultural land must submit his or her application in the prescribed form to the provincial Department concerned.

(2) An applicant who has submitted an application for the –

- (a) establishment of a township or the extension thereof;
- (b) zoning or rezoning; or
- (c) intended land use change from one scheduled land use to another scheduled land use,

which involves or partly involves or may potentially impact on medium potential agricultural land to the municipality concerned, must also –

- (i) submit his or her application in the prescribed form to the provincial Department concerned for the processing and making of recommendations; and
- (ii) comply with the provisions of this Act.

Submission of documentation by applicant regarding medium potential agricultural land

32.(1)The applicant must, together with his or her application on the prescribed form, submit

–

- (a) an Agro-ecosystem Report as contemplated in section 81 –
 - (i) compiled by a SACNASP registered agricultural scientist; and
 - (ii) which comprises a –
 - (aa) general area description;
 - (bb) natural agricultural resources assessment, which must include information on the soil, terrain, vegetation, water and agro-climate at a scale of 1:20 000; and
 - (cc) agro-ecosystem impact assessment, which must include information on the production, ecological and socio-cultural services;
- (b) documentation and baseline information on adjacent land parcels;
- (c) information dealing with the clear categorisation of the area concerned;
- (d) any other documentation that may be prescribed; and
- (e) any other information that may be requested in writing.

(2) In the event that the Provincial Internal Technical Committee is of the opinion that the Agro-ecosystem Report contemplated in subsection (1)(a) is –

- (a) deficient; or
- (b) suspect,

it must request that an independent Agro-ecosystem Report be conducted by a SACNASP registered agricultural scientist to evaluate the agricultural production potential of the land relative to the subdivision or rezoning.

Disclosure of intended future land use change on medium potential agricultural land

33. The provisions of section 9 apply with the necessary changes to applications relating to medium potential agricultural land.

Inputs by municipality relating to medium potential agricultural land

34.(1) The provincial Department to which an application was submitted as contemplated in section 31, must send a copy of such application and all supporting documentation to the –

(a) local municipality and district municipality; or
(b) metropolitan municipality,
concerned, as the case may be, within a period of 5 days after receipt thereof by the applicant.

(2) The municipalities contemplated in subsection (1) must –

(a) consider the application and supporting documents, taking into account the following:

(i) the Integrated Development Plan;

(ii) the Spatial Development Framework;

(iii) the Local Economic Development Plan;

(iv) the Land Use Management Scheme; and

(v) any other planning frameworks applicable to the area concerned; and

(b) consult with traditional governance structures in the event that the application involves land occupied by a traditional community as contemplated in section 35.

(3) The municipalities contemplated in subsection (1) must –

(a) make a written recommendation in respect of the application; and

(b) submit the recommendation contemplated in paragraph (a), together with any other written inputs, to the provincial Department concerned.

(4)(a) In the event that the municipality concerned lacks sufficient capacity to fulfil its functions as contemplated in this Act, the provincial Department concerned, in consultation with the municipal manager, must execute such functions, after which the Municipal Council must still make a recommendation to the provincial Department.

(b) In the event that no recommendation is forthcoming from the municipality concerned after intervention by the provincial Department, the provincial Department must keep a record thereof and proceed with the application.

(5) In the event that the municipality concerned does not submit its inputs to the provincial Department within a period of twenty days after receipt of the documents contemplated in subsection (1), the provincial Department is not obliged to consider its inputs.

Input by traditional governance structures regarding medium potential agricultural land occupied by traditional community

35. The provisions of section 11 apply with the necessary changes to medium potential agricultural land.

Processing of applications relating to medium potential agricultural land

36.(1) The following process must be adhered to once an application has been received by the land use official of the provincial Department concerned:

- (a) in the event that the application is incomplete, the –
 - (i) rejection of the application; and
 - (ii) returning of the application to the applicant with a covering letter indicating the outstanding information or documentation, as the case may be, within 5 days; or
- (b) in the event that the application is complete, the –
 - (i) capturing of the application in the Agricultural Land Register and sending of a notice of receipt to the applicant within 5 days;
 - (ii) requesting and management of any additional documentation, reports, assessments and site visits, if applicable, by the land use official of the provincial Departmental, including –
 - (aa) the Agro-ecosystem Report contemplated in section 81;
 - (bb) the Scientific Report;
 - (cc) information contained in the National Agricultural Land Register;
 - (dd) inputs received from the Municipal Council concerned, taking into account a recommendation by the Municipal Internal Technical Committee regarding the approval or rejection of the application and possible conditions;
 - (ee) the impact of the proposed application on adjacent land;
 - (ff) any additional information requested in writing; and
 - (gg) inputs from parties that have a direct interest and may be affected if the application were to be approved; and
 - (iii) compilation of the submission to the Provincial Internal Technical Committee by the land use official of the provincial Department, which submission must include the documents and information contemplated in sub-paragraph (ii).

(2) The Provincial Internal Technical Committee, when evaluating the application and making recommendations, must take into account the following:

- (a) the Provincial Spatial and Development Plans;
- (b) the Agro-ecosystem Report;
- (c) Scientific Reports;

- (d) Agricultural Sector Plans;
- (e) any other planning frameworks applicable to the area concerned;
- (f) inputs received from the municipalities contemplated in section 34;
- (g) the fact that existing developments in the area concerned may not be viewed as a precedent, and must rather indicate the stricter implementation of the Act to protect the resource base in the area concerned; and
- (h) national transversal norms and standards.

(3) Subject to the provisions of subsection (4), the Provincial Internal Technical Committee must submit its recommendation regarding the approval or rejection of the application and possible conditions, together with the application, supporting documentation, and all other relevant documentation to the MEC for approval or rejection within 35 days.

(4) Notwithstanding the provisions of subsection (3), consensus approval is required for rezoning applications, with associated subdivision if required, by the –

- (a) MEC concerned, acting on the recommendation of the Provincial Internal Technical Committee regarding the approval or rejection of the application and possible conditions; and
- (b) Minister, acting on the recommendation of the National Internal Technical Committee regarding the approval or rejection of the application and possible conditions,

for applications on land capability class IV land: Provided that the provisions of section 41 apply for an interim period of 5 years from the date of commencement of this Act.

(5) In the event that consensus approval is required as contemplated in subsection (4), the MEC concerned must submit his or her approval, together with his or her reasons and conditions relating to the purpose for, or manner in which, the land concerned may be used, the application, supporting documentation, and all other relevant documentation to the Minister for approval or rejection within forty days after the application has been received by the provincial Department.

(6) The National Internal Technical Committee, when considering an application contemplated in subsection (4) and making a recommendation to the Minister regarding the approval or rejection of the application and possible conditions, must take the following into account:

- (a) the Scientific Report;
- (b) the National Spatial Plans;

- (c) the Agro-ecosystem Report;
- (d) the information contained in the National Agricultural Land Register; and
- (e) any other planning frameworks applicable to the area concerned.

(7)(a) In the event that the Minister, when considering the application as contemplated in subsection (5), is not satisfied that the land may be used for non-agricultural purposes, he or she must consult with the MEC concerned.

(b) The Minister may, in his or her sole discretion, approve or reject the application.

(8)(a) The MEC must consider and may approve or reject an application for the subdivision of medium potential agricultural land.

(b) In the event that the MEC approves an application he or she may impose any reasonable conditions.

(c) The MEC or his or her delegate must sign off on every decision relating to the subdivision or rezoning of medium potential agricultural land.

(9)(a) The departmental land use official or the land use official of the provincial Department, as the case may be, must compile the notice of decision.

(b) The supervisor of the departmental land use official or the land use official of the provincial Department, as the case may be, must check the notice of decision contemplated in paragraph (a).

(c) The –

(i) departmental land use official and his or her supervisor or land use official of the provincial Department, as the case may be, and his or her supervisor;

(ii) Chairperson of the National Internal Technical Committee or Provincial Internal Technical Committee, as the case may be; and

(iii) Minister's or MEC's delegate, as the case may be,

must sign the decision letter.

(d) The departmental land use official or the land use official of the provincial Department, as the case may be, must file and record the decision, reasons for decision and documentation on the Agricultural Land Register.

(e) The supervisor of the departmental land use official or the land use official of the provincial Department, as the case may be, must send the decision letter to the applicant and the department or the provincial Department concerned, as the case may be.

(10) An interested party may, if he or she is of the opinion that a decision by the MEC or Minister, as the case may be, is not rational, apply for a review of the decision to the Agricultural Land Review Board in accordance with the provisions of Part VI of Chapter 6.

(11) All approvals and conditions, if any, must be registered against the title deed of the land concerned.

Consultation regarding medium potential agricultural land

37. The MEC, when considering an application for the subdivision or rezoning, with associated subdivision if required, of medium potential agricultural land, must, prior to approving or rejecting the application, consult with relevant –

- (a) national government departments;
- (b) provincial government departments;
- (c) municipalities; and
- (d) parties that –
 - (i) have a direct interest; and
 - (ii) may be affected if the application were to be approved.

Consensus approval relating to medium potential agricultural land

38. Consensus approval by the Minister and the MEC, as contemplated in section 36(4), is required in instances where the application for rezoning involves land capability class IV land for an interim period of 5 years from the date of commencement of this Act.

Deviation from approach contemplated in Act regarding medium potential agricultural land

39.(1) The MEC or the MEC and the Minister, as the case may be, must, when considering a deviation from the approach contemplated in this Act regarding medium potential agricultural land, take into account whether –

- (a) the Agro-ecosystem Report contains a positive recommendation;
- (b) the Agro-ecosystem Report indicates that –
 - (i) the land must be reclassified as medium potential agricultural land as it was erroneously classified as high potential cropping land; and

- (ii) the approval of the application will not impact negatively on surrounding agricultural activities;
- (c) the proposed subdivision will not decrease agricultural production: Provided that the remainder of the land concerned must still be able to be used optimally for agricultural purposes; and
- (d) specific benefits associated with the subdivision or rezoning of agricultural land outweigh the loss of agricultural land: Provided that this is only taken into account in exceptional circumstances.

(2) Trade-offs between conflicting policies and policy objectives are subject to –

- (a) short-term policy objectives with short-term benefits not being permitted to override long-term policy objectives with long-term benefits; and
- (b) where the situation contemplated in paragraph (a) cannot be avoided, the opportunity cost of the decision being made explicit and factored into the decision.

Trade-offs and mitigation of loss of medium potential agricultural land

40.(1) In the event that permanent impacts arise from the approved subdivision or rezoning of medium potential agricultural land, mitigation by means of enabling agricultural production in other areas is required to address the lost productive capacity of the land.

(2) Mitigation may only be a final resort after all attempts to reasonably avoid the impacts of the development have been exhausted by the applicant.

(3) The –

- (a) MEC; or
- (b) MEC and Minister,

as the case may be, must evaluate the trade-off against a set of criteria in terms of production potential, locality, applicable area and size, marketing and accessibility of produce to the community.

(4) The Minister must, within a period not exceeding 6 months after the date of commencement of this Act, by notice in the *Gazette*, publish the set of criteria contemplated in subsection (3).

Application for land reform purposes on medium potential agricultural land

41.(1) In the event that an application for the subdivision or rezoning of medium potential agricultural land involves land reform, an applicant must submit an application in the normal prescribed format to the provincial Department.

(2) Any application contemplated in subsection (1) must be approved by the MEC concerned, acting on the recommendation of the Provincial Internal Technical Committee.

Application regarding medium potential agricultural land in Protected Agricultural Area

42.(1) The provincial Department concerned may make a recommendation to the Minister on the use of medium potential agricultural land in a Protected Agricultural Area: Provided that the land concerned will be used –

- (a) in a manner that is compatible with the strategic objectives of the Protected Agricultural Area; or
- (b) for the rational development of agricultural infrastructure.

(2) Any application for rezoning of medium potential agricultural land in a Protected Agricultural Area which constitutes a change in sub-category of agriculture as a scheduled land use purpose must be accompanied by an Agro-ecosystem Report contemplated in section 81, and any additional information which may be prescribed from time to time.

(3) The Provincial Internal Technical Committee may make a recommendation to the Minister on the subdivision or rezoning of medium potential agricultural land in a Protected Agricultural Area for non-agricultural purposes: Provided that such subdivision or rezoning –

- (a) must contribute in a sustainable manner to the viability of the affected agricultural enterprise; and
- (b) may not –
 - (i) impact negatively on surrounding agricultural land use;
 - (ii) have a negative agricultural opportunity cost with respect to the land concerned or the surrounding land; and
 - (iii) have negative social, socio-economic and other environmental impacts that outweigh the benefits to be obtained through the proposed development, including –
 - (aa) impacts arising from the development of infrastructure to serve the change contemplated in subsection (2); and
 - (bb) the risk of future development pressure as a result of such change.

(4) The Minister, acting in consultation with the provincial Department concerned, must prevent further fragmentation and encourage the consolidation of land in Protected Agricultural Areas in the event that it would serve the interests of economies of scale and significantly increase production.

(5) In the event that an application concerns the construction or expansion of a road in a Protected Agricultural Area, an applicant must submit an Agro-ecosystem Report for –

- (a) route determinations of national and provincial roads;
- (b) the design, construction and rehabilitation of associated infrastructure and facilities;
- and
- (c) the construction or expansion of roads,

in addition to the requirements set out in section 81 of this Act.

(6) With regard to an application contemplated in subsection (5), the provincial Department concerned may –

- (a) not recommend route determinations or other applications that will lead to increased thoroughfare and the further fragmentation and inappropriate development of the Protected Agricultural Area; and
- (b) recommend applications that are designed to improve agricultural infrastructure: Provided that this does not lead to increased thoroughfare and the further fragmentation and inappropriate development of the relevant Protected Agricultural Area.

Application regarding medium potential agricultural land located within, bisected by, or in close proximity to urban areas

43.(1) The provincial Department concerned may recommend the development of medium potential agricultural land within, bisected by or in close proximity to the provincial urban edge if such development does not reduce the agricultural potential of adjacent agricultural land.

(2) An application contemplated in subsection (1) must be accompanied by an Agro-ecosystem Report, which assessment must, in addition to the requirements set out in section 81 –

- (a) specify any factors that may prevent the land from being used for agricultural purposes; and

(b) clarify why the factors contemplated in paragraph (a) cannot be mitigated in accordance with section 40 through changes in management or other measures, such as strengthening the safety and security or the choice of crops grown, livestock production or agricultural enterprise.

Application regarding corridor development on medium potential agricultural land

44. In the event that an application for the subdivision or rezoning of medium potential agricultural land involves planned corridor development, the process contemplated in sections 31 and 36 must be adhered to.

Application for urban or industrial development within provincial growth and development corridors on medium potential agricultural land

45.(1) Provincial Departments may consider urban and industrial development of medium potential agricultural land within provincial growth and development corridors: Provided such developments do not –

- (a) take place on land situated in Protected Agricultural Areas;
- (b) reduce the agricultural potential of adjacent land; or
- (c) impact negatively on agricultural activities on adjacent agricultural land.

(2) An application contemplated in subsection (1) must be accompanied by an Agro-ecosystem Report in addition to any other requirements in terms of any laws.

Application regarding farm-related industries on medium potential agricultural land

46.(1) In the event that an application for subdivision or rezoning concerns medium potential agricultural land and relates to farm-related industries, the following factors must be taken into account:

- (a) economic viability; and
- (b) the possible appropriateness of the economies of scale perspective.

(2) The MEC, or the Minister and the MEC, as the case may be, may consider –

- (a) urban agricultural zones for intensive food production practices; and
- (b) subdivision for farm-related industries,

subject to stringent conditions.

(3) In the event that an application for the subdivision of medium potential agricultural land concerns intensive agricultural enterprises, such as feedlots and hydroponics, the MEC, or the Minister and the MEC, as the case may be, may only consider such application if the –

- (a) remainder of the land concerned can still optimally be used for agricultural purposes; and
- (b) land remains agricultural land and no non-agricultural uses are permitted.

Applications regarding agri-villages on medium potential agricultural land

47.(1) In the event that an application for an agri-village concerns medium potential agricultural land, the following factors must be taken into account:

- (a) placement of the agri-village on suitable low potential land;
- (b) long-term economic and social viability;
- (c) the possible appropriateness of the economies of scale perspective; and
- (d) the long-term sustainable use of the natural agricultural resources in the demarcated and associated production area.

(2) The MEC may consider –

- (a) agri-village zones for farming practices; and
- (b) subdivision for agri-villages,

subject to stringent conditions.

Effect of proposed prospecting, mining, energy sources and renewable energy on medium potential agricultural land

48.(1) In the event that an application for subdivision or rezoning of medium potential agricultural land involves proposed –

- (a) prospecting;
- (b) mining;
- (c) energy sources including hydrological fracturing; or
- (d) renewable energy such as bio-fuels and hydro, wind and solar energy,

the applicant must ensure that an Agro-ecosystem Report as contemplated in section 81 be conducted and submit such assessment together with his or her application for subdivision or rezoning.

(2) The Agro-ecosystem Report contemplated in subsection (1) must indicate what the effect of the proposed actions referred to in subsection (1)(a) to (d) will be on the –

- (a) land concerned;
- (b) surrounding area;
- (c) current and future potential agricultural use of the land contemplated in paragraphs (a) and (b);
- (d) surface water; and
- (e) subterranean water and soil-water hydrology.

(3) The Agro-ecosystem Report contemplated in subsection (1) must indicate what the impact of acid –

- (a) mine water; and
- (b) rain,

will be on the land contemplated in subsection (2)(a) and (b).

(4) A negative Agro-ecosystem Report must result in the non-utilisation of any right relating to the actions referred to in subsection (1)(a) to (d) issued by another national Department.

(5) An applicant contemplated in subsection (1) must also submit a rehabilitation plan drafted by a SACNASP registered specialist.

(6) The Provincial Internal Technical Committee, National Internal Technical Committee, or both, as the case may be, must evaluate the rehabilitation plan contemplated in subsection (5) in order to determine whether the land could revert to productive agricultural use after proposed actions referred to in subsection (1)(a) to (d) have ceased.

(7)(a) The MEC, or the Minister and the MEC, as the case may be, may only consider an application contemplated in subsection (1) if there will be no or very limited impact on existing agricultural activities.

(b) The MEC, or the Minister and the MEC, as the case may be, must impose stringent conditions if an application contemplated in subsection (1) is approved in order to ensure that the remainder of the land concerned can still be used optimally for food production purposes.

Verification or reclassification of agricultural potential of medium potential agricultural land

49.(1) An applicant may, together with his or her application for subdivision or rezoning of medium potential agricultural land, apply for reclassification of the land concerned –

- (a) for verification purposes; or
- (b) in instances where scale issues have resulted in the inaccurate classification of tracts of land.

(2) An application contemplated in subsection (1) must be accompanied by an approved Agro-ecosystem Report, which must provide data, in the prescribed format on the –

- (a) topography and hydrology of the site;
- (b) type and characteristics of the soil;
- (c) water availability, including the quantity and quality of the water for purposes of irrigation;
- (d) size of the land concerned; and
- (e) classification of neighbouring land use,

in addition to the requirements as set out in section 81 of this Act.

Compliance with agricultural planning principles

50. The provisions of section 26 apply with the necessary changes to medium potential agricultural land.

Power to suspend or cancel approvals and conditions

51.(1) In the event of non-compliance, in full or in part, with any condition imposed as contemplated in sections 36(8)(b), the MEC may –

- (a) suspend; or
- (b) cancel,

approvals relating to medium potential agricultural land: Provided that –

- (i) notice of the intention of suspension or cancellation, as the case may be; and
- (ii) an opportunity to respond,

must be given to the applicant or entity whose application was approved subject to conditions.

(2) Any action taken in terms of this section does not preclude the institution of criminal proceedings and the imposition of a sentence on conviction as contemplated in section 159 of this Act.

Conditions binding on successors and occupiers

52. The provisions of section 28 apply with the necessary changes to medium potential agricultural land.

Part III: Protected Agricultural Areas

Protected Agricultural Areas

53.(1) All areas of predominantly high potential cropping land must be proclaimed as Protected Agricultural Areas as contemplated in subsection (2).

(2) The Agricultural Land National Advisory Commission must, after consultation with the Department and the provincial Department or provincial Departments concerned, as the case may be, advise the Minister on the demarcation and designation of high potential cropping land as Protected Agricultural Areas for purposes of crop production.

(3) Any application for the rezoning of land in a Protected Agricultural Area for crop production from existing agricultural to a non-agricultural use must be considered for approval by the Intergovernmental Committee.

(4) An MEC may demarcate and designate medium potential agricultural land as a Protected Agricultural Area for purposes of animal production.

(5) The MEC concerned –

(a) must consider; and

(b) may approve, subject to any conditions that he or she may impose,

any application for the rezoning of land demarcated and designated as contemplated in subsection (4) to a non-agricultural use.

(6) The Minister, in consultation with the MECs concerned, must, within a period not exceeding 6 months after the date of commencement of this Act, by notice in the *Gazette*, publish a binding framework for the procedure for declaring Protected Agricultural Areas and the inviolability of such areas.

(7) The Minister or the MEC, as the case may be, must within a period not exceeding 12 months after the date of commencement of this Act, by notice in the *Gazette*, publish a map of suitable scale clearly demarcating the boundaries of the Protected Agricultural Areas.

(8) Land demarcated as Protected Agricultural Areas must be registered against the title deeds of the land concerned.

(9) Land demarcated as Protected Agricultural Areas must be indicated as such on the maps published by Surveyor-General.

Part IV: Use of agricultural land

Optimal agricultural use of agricultural land

54.(1) A farmer must –

- (a) actively use and develop the agricultural land concerned to its optimal agricultural potential, with due regard to the farming enterprise concerned; and
- (b) protect the agricultural land concerned from non-sustainable agricultural activities and non-agricultural activities.

(2) Any activity by a farmer that –

- (a) is intended to circumvent; or
- (b) results in the circumvention of,

his or her obligations contemplated in subsection (1), in order to obtain approval for subdivision or rezoning results in the refusal of any application for subdivision or rezoning of the agricultural land concerned.

(3) In the event that –

(a) agricultural land is –

- (i) not used for active agricultural production on a continuous basis over a period of at least 3 years; or
- (ii) used in a manner significantly below the land's optimal production potential for the practiced farming enterprise or enterprises, as the case may be, taking into account the prevailing local climatic conditions and sustainable land management, rehabilitation and restoration practices;

(b) any activity on the agricultural land concerned results in or may result in significant degradation; or

(c) agricultural land is not used at all for agricultural purposes for 3 consecutive years, the Minister may consider the agricultural land concerned for expropriation at a lower price than would be paid for similar land in the same geographical area which is used optimally for agricultural purposes as contemplated in section 65: Provided that such expropriation is

subject to a due process compliant with the constitutional, statutory and common law norms pertaining to notice and expropriation.

(4) The Minister, in consultation with the MECs concerned must, within a period not exceeding 6 months after the date of commencement of this Act, by notice in the *Gazette*, publish guidelines for the best or optimal agricultural use of agricultural land.

Use of high potential cropping land contrary to objects of Act

55.(1) The use of high potential cropping land is in principle limited to the production of food and food crops for human consumption.

(2) The conversion of the use of high potential cropping land to –

- (a) ecotourism-related game farming; or
- (b) other agricultural production initiatives,

is prohibited where such conversion will result in a decrease in, or cessation of, the production of food and food crops.

Rights and obligations of, and incentives for, landowners

56.(1) Landowners and users of agricultural land have the right to farm, which includes the right to be protected against –

- (a) nuisance complaints about farming practices including noise, odours, extended hours of operation, visual impact and intensive farming operations;
- (b) crop and irrigation spraying due to urban encroachments;
- (c) pollutants from adjacent scheduled land uses entering farm water sources, competition for water and development that will negatively impact on the recharge of groundwater;
- (d) flooding or soil erosion caused by storm water runoff of adjacent scheduled land uses;
- (e) spreading of weeds due to the lack of urban weed control;
- (f) introduction of pests and diseases from adjacent scheduled land uses; and
- (g) restrictions on the movement of farm vehicles and equipment due to physical barriers and urban traffic.

(2) The Minister may, with the concurrence of the Minister responsible for finance, by notice in the *Gazette*, establish a scheme in terms of which assistance, out of moneys appropriated

by Parliament for this purpose, may be granted to landowners and land users by means of the payment of incentives in respect of the –

- (a) preservation of agricultural land for purposes of food production;
- (b) promotion of a specific agricultural enterprise within a specific geographical region for purposes of food security;
- (c) promotion of the optimal utilisation of high potential cropping land for purposes of food production; and
- (d) performance or non-performance of any activity which the Minister may deem necessary or expedient in order to achieve the objects of this Act.

(3)(a) Different schemes may be established in respect of different geographical areas.

(b) The provisions of a scheme may differ in respect of different geographical areas in such respects as the Minister may determine.

(4) The Minister may in a notice by which a scheme is established –

- (a) set out the objects of the scheme;
- (b) identify the areas in, and the periods during, which the scheme will apply;
- (c) set out the acts in respect of which assistance may be rendered under the scheme;
- (d) set out the basis for the determination of incentives which may be paid under the scheme;
- (e) set out the requirements which have to be complied with in order to qualify for assistance under the scheme;
- (f) determine the procedure with regard to the lodging of an application in terms of the scheme;
- (g) require that particular reports with regard to the progress and completion of the act concerned must be submitted at specified times;
- (h) set out the conditions on which assistance may be rendered under the scheme; and
- (i) provide generally for any other matter which, in the opinion of the Minister, is necessary or expedient in order to promote or achieve the objects of the scheme: Provided that the generality of this paragraph is not limited by paragraphs (a) to (h).

(5) Any person who –

- (a) after his or her application for participation in a scheme has been approved, refuses or fails to comply with the provisions of the scheme; or
- (b) refuses or fails to satisfy the conditions on which assistance has been rendered in terms of a scheme or are in terms of a scheme deemed to have been so rendered,

is guilty of an offence.

Part V: Other applications

Lease agreements

57.(1) The Minister, acting on a recommendation of the National Internal Technical Committee regarding the approval or rejection of the application and possible conditions, must consent in writing before any lease agreement is entered into if the lease agreement in respect of high potential cropping land is entered into for –

- (a) a period of 10 years or longer; or
- (b) the duration of the natural life of the lessee or any other person mentioned in the lease, or if the agreement is renewable from time to time at the will of the lessee, either by the extension of the original or by entering into a new lease, indefinitely or for periods totalling not less than 10 years.

(2) The Minister or his or her delegate must sign off on every decision contemplated in subsection (1).

(3) The MEC, acting on the recommendation of the Provincial Internal Technical Committee, must consent in writing before a lease agreement contemplated in subsection (1) is entered into on medium potential agricultural land.

(4) The parties to any proposed lease agreement as contemplated in this section must submit a fully completed application in the prescribed format to the Department or the provincial Department concerned, as the case may be.

(5) The Minister or the MEC concerned, as the case may be –

- (a) must decide upon the application contemplated in subsection (4) within a period not exceeding 3 months after the date on which the application was received in accordance with subsection (4);
- (b) may impose any conditions he or she may deem appropriate; and
- (c) must inform the parties to the proposed lease agreement in writing of his or her decision.

(6)(a) Compliance with the provisions of subsections (1), (2), (3) and (4) is a prerequisite for the validity of the lease agreement.

(b) Non-compliance with the conditions contemplated in subsection (5)(b) results in the termination of the lease agreement.

Selling or advertising for sale of portion of agricultural land

58.(1) The Minister, acting on a recommendation of the National Internal Technical Committee regarding the approval or rejection of the application and possible conditions, must consent in writing before any portion of high potential cropping land, whether surveyed or not, is sold or advertised for sale for non-agricultural purposes.

(2) The Minister or his or her delegate must sign off on every decision contemplated in subsection (1).

(3) The MEC, acting on the recommendation of the Provincial Internal Technical Committee, must consent in writing before any portion of medium potential agricultural land, whether surveyed or not, is sold or advertised for sale for non-agricultural purposes.

(4) The owner of agricultural land who intends to sell or advertise for sale a portion of such land as contemplated in this section, must submit a fully completed application in the prescribed format to the Minister or the MEC concerned, as the case may be.

(5) The Minister or the MEC concerned, as the case may be –

(a) must decide upon the application contemplated in subsection (4) within a period not exceeding 3 months after the date on which the application was received in accordance with subsection (4);

(b) may impose any conditions he or she may deem appropriate; and

(c) must inform the owner as contemplated in subsection (4) in writing of his or her decision.

(6)(a) Compliance with the provisions of subsections (1), (2), (3) and (4) is a prerequisite for the validity of the sale agreement.

(b) Non-compliance with the conditions contemplated in subsection (5)(b) results in the automatic termination of the sale agreement.

Selling or granting of right to land or portion of agricultural land

59.(1) The Minister, acting on a recommendation of the National Internal Technical Committee regarding the approval or rejection of the application and possible conditions, must consent in writing before –

- (a) a right to a portion of high potential cropping land is –
 - (i) sold or granted for a period exceeding 10 years or for the natural life of any person or to the same person for periods totalling more than 10 years; or
 - (ii) advertised for sale or with a view to any such granting contemplated in subparagraph (i);
- (b) any share block scheme, sectional title scheme or fractional title scheme on high potential cropping land is established;
- (c) any undivided shares in high potential cropping land may be registered; and
- (d) the registration of *habitat* in respect of high potential cropping land.

(2) The Minister or his or her delegate must sign off on every decision contemplated in subsection (1).

(3) The MEC, acting on the recommendation of the Provincial Internal Technical Committee, must consent in writing before any transaction contemplated in subsection (1) is entered into on medium potential agricultural land.

(4) The parties to any transaction contemplated in subsection (1), must submit a fully completed application in the prescribed format to the Minister or the MEC concerned, as the case may be.

(5) The Minister or the MEC concerned, as the case may be –

- (a) must decide upon the application contemplated in subsection (4) within a period not exceeding 3 months after the date on which the application was received in accordance with subsection (4);
- (b) may impose any conditions he or she may deem appropriate; and
- (c) must inform the parties to the transaction in writing of his or her decision.

(6)(a) Compliance with the provisions of subsections (1), (2), (3) and (4) is a prerequisite for the validity of the transaction.

(b) Non-compliance with the conditions contemplated in subsection (5)(b) results in the automatic termination of the transaction.

Acquisition and registration of agricultural land by foreigner

60.(1) The Minister, acting on a recommendation of the National Internal Technical Committee regarding the approval or rejection of the application and possible conditions, must consent in writing to the acquisition and registration of any agricultural land, whether high potential cropping land or medium potential agricultural land, by any –

- (a) person who is not a South African citizen or who does not have a valid permanent residence permit; or
- (b) trust or other legal entity where the majority shareholding is held by persons who are not South African citizens or who do not have valid permanent residence permits.

(2) The Minister or his or her delegate must sign off on every decision contemplated in subsection (1).

(3) The person or entity contemplated in subsection (1), as the case may be, must submit a fully completed application in the prescribed format to the Minister.

(4) The Minister –

- (a) must decide upon the application contemplated in subsection (3) within a period not exceeding 3 months after the date on which the application was received in accordance with subsection (3);
- (b) may impose any conditions he or she may deem appropriate; and
- (c) must inform the person or entity contemplated in subsection (1), as the case may be, in writing of his or her decision.

(5)(a) Compliance with the provisions of subsections (1), (2), and (3) is a prerequisite for the validity of the transaction contemplated in subsection (1).

(b) Non-compliance with the conditions contemplated in subsection (4)(b) results in the automatic termination of the transaction contemplated in subsection (1).

Consolidation of agricultural land

61.(1) The Minister, acting on a recommendation of the National Internal Technical Committee regarding the approval or rejection of the application and possible conditions, must consent in writing to any consolidation of high potential cropping land.

(2) The MEC, acting on a recommendation of the Provincial Internal Technical Committee regarding the approval or rejection of the application and possible conditions, must consent in writing to any consolidation of medium potential agricultural land.

(3) The Minister or the MEC concerned, as the case may be, or his or her delegate must sign off on every decision contemplated in subsection (1).

(4) An applicant applying for the consolidation of high potential cropping land as contemplated in subsection (1) or (2), as the case may be, must submit a fully completed application in the prescribed format to the Minister or the MEC concerned.

(5) The Minister or the MEC, as the case may be –

(a) must decide upon the application contemplated in subsection (4) within a period not exceeding 3 months after the date on which the application was received in accordance with subsection (4);

(b) may impose any conditions he or she may deem appropriate; and

(c) must inform the person or entity contemplated in subsection (4), as the case may be, in writing of his or her decision.

(6)(a) Compliance with the provisions of subsections (1), (2), (3) and (4) is a prerequisite for the validity of the transaction contemplated in subsection (1) and (2).

(b) Non-compliance with the conditions contemplated in subsection (5)(b) results in the automatic termination of the transaction contemplated in subsection (1) or (2).

Succession

62. In the event that the Minister or the MEC, as the case may be, does not consent, as contemplated in this Act, to the –

(a) subdivision of any particular agricultural land in accordance with any testamentary disposition or intestate succession; or

(b) vesting of any undivided share in such land in accordance therewith,

and no agreement is reached as to a subdivision or vesting in respect of which the Minister or MEC, as the case may be, grants his or her consent, the executor of the estate concerned must –

(i) realise the land or undivided share concerned, as the case may be; and

(ii) dispose of the nett proceeds thereof in accordance with the said testamentary disposition or intestate succession, as the case may be.

Part VI: General powers of Minister

Minister may investigate occurrence, nature and extent of agriculture

63. The Minister may instruct the Agricultural Land National Advisory Commission to investigate and submit a report on matters relating to the occurrence, nature and extent of agriculture in the Republic, a specific province or a municipal area.

Minister's power to direct submission of specified information or data

64. The Minister may, in writing in the prescribed format, for statistical purposes, in accordance with the Statistics Act, 1999 (Act No. 6 of 1999), require any person performing any farming activity on agricultural land to provide information relating to such activity.

Minister's power to acquire, expropriate and alienate property for purposes of agricultural production

65.(1) The Minister may purchase or, subject to compensation, expropriate any agricultural land for purposes of agricultural production under this Act, as contemplated in section 54, if that purpose is a public purpose or is in the public interest.

(2) The Expropriation Act, 1975 (Act No. 63 of 1975) applies to all expropriations under this Act and any reference to the Minister of Public Works in that Act must be read as a reference to the Minister for purposes of such expropriation.

(3) Notwithstanding the provisions of subsection (2), the amount of compensation and the time and manner of payment must be determined in accordance with section 25(3) of the Constitution, and the owner of the property in question must be given a hearing before any property is expropriated.

(4) The Minister may, subject to conditions that may be imposed by him or her, sell, transfer, dispose of, lease or otherwise alienate any land purchased or expropriated in accordance with this section.

(5) Nothing in this section prevents any organ of state to transfer the ownership of land vesting in such organ of state to the Minister, in which event the provisions of subsection (4) apply with the necessary changes.

CHAPTER 3

SURVEYOR-GENERAL AND REGISTRAR OF DEEDS

Duties of Surveyor-General in application of Act

66.(1) The Surveyor-General must, in addition to his or her powers, functions and duties under the Land Survey Act, 1997 (Act No. 8 of 1997), exercise all the powers, perform all the functions and carry out all the duties required to give effect to the provisions of this Act.

(2) The Minister may appoint other qualified persons in accordance with the Public Service Act as necessary to assist the Surveyor-General in exercising his or her powers, performing his or her functions and carrying out his or her duties in terms of subsection (1).

(3) The Surveyor-General may delegate his or her powers, functions and duties under this Act to a public servant appointed to his or her office.

(4) The Surveyor-General must prepare and submit an annual report on the administration of this Act during the year in question, to the Minister.

(5) The Minister must table the report referred to in subsection (4) in Parliament within a period not exceeding 3 months after the end of the financial year concerned.

Duties of Registrar of Deeds in application of Act

67.(1) The Registrar of Deeds must, in addition to his or her powers, functions and duties under the Deeds Registries Act, exercise all the powers, perform all the functions and carry out all the duties required to give effect to the provisions of this Act.

(2) The Minister may appoint other qualified persons in accordance with the Public Service Act as necessary to assist the Registrar of Deeds in exercising his or her powers, performing his or her functions and carrying out his or her duties in terms of subsection (1).

(3) The Registrar of Deeds may delegate his or her powers, functions and duties under this Act to a public servant appointed to his or her office.

(4) The Registrar of Deeds must prepare and submit an annual report on the administration of this Act during the year in question, to the Minister.

(5) The Minister must table the report referred to in subsection (4) in Parliament within a period not exceeding 3 months after the end of the financial year concerned.

Registration of servitudes

68. A servitude may only be registered by the Registrar of Deeds with the prior written consent of the Intergovernmental Committee, Minister, Minister and MEC, or MEC, as the case may be: Provided that such prior written consent is not required in the case of a –

- (a) right of way, aqueduct, pipe line or conducting of electricity with a width not exceeding 15 metres;
- (b) servitude which is supplementary to a servitude referred to in paragraph (a), and which has a servitude area not exceeding 225 square metres which adjoins the area of the last-mentioned servitude; and
- (c) usufruct over the whole of agricultural land in favour of one person or in favour of such person and his spouse or the survivor of them if they are married in community of property,

in which event the Registrar must register the servitude concerned on submission of the documentation as required by law.

CHAPTER 4

NATIONAL AGRICULTURAL LAND REGISTER AND OTHER SYSTEMS

Establishment of National Agricultural Land Register

69.(1) The Minister must –

- (a) in consultation with the provincial Departments; and
- (b) within a period not exceeding 6 months after the date of commencement of this Act,

by notice in the *Gazette*, establish the National Agricultural Land Register, of which the Department is the custodian.

(2) The Minister must ensure that the National Agricultural Land Register is fully operational as soon as is reasonably possible after the date of commencement of this Act, but no later than 12 months after the date of commencement of this Act.

(3)(a) All governmental, semi-governmental and public entities in possession of spatial datasets and other information relating to agricultural land potential must ensure that such

information is made accessible to the Department within 6 months from the date of commencement of this Act.

(b) The Registrar, or, in the event that the Registrar has not yet been appointed as contemplated in section 71, the Department, must incorporate the information contemplated in paragraph (a) in the National Agricultural Land Register as soon as it is established.

Objectives of National Agricultural Land Register

70. The objectives of the National Agricultural Land Register are to provide –

- (a) and store geo-referenced data and information for the development, protection, sustainable use and management of natural agricultural resources and agricultural land;
- (b) information for the development and implementation of this Act;
- (c) for the online lodging and tracking of applications; and
- (d) information to government, land users and the public –
 - (i) for research and development;
 - (ii) for planning at a national, provincial and local level;
 - (iii) for Agro-ecosystem Reports;
 - (iv) on the status of natural agricultural resources; and
 - (v) on the use of agricultural land.

Appointment of Registrar of National Agricultural Land Register

71. The Minister must appoint a Registrar of the National Agricultural Land Register who –

- (a) must be in charge of the National Agricultural Land Register; and
- (b) may issue directives relating to practice, procedural, formalities and fees by notice in the *Gazette*.

Application of Register

72.(1) The National Agricultural Land Register is an electronic-based, geo-referenced register of all agricultural land, whether –

- (a) public;
- (b) private; or
- (c) in the former homelands and TBVC States.

(2) The purpose of the National Agricultural Land Register is to audit and track the use, protection, alteration and loss of agricultural land in the Republic.

Contents of Register

73.(1)(a) The Minister, in consultation with the MECs concerned, must, within a period not exceeding 6 months after the date of commencement of this Act, by notice in the *Gazette*, publish a binding framework for the design, establishment, operation and maintenance of the National Agricultural Land Register.

(b) The binding framework contemplated in paragraph (a) must incorporate the information required as contemplated in this section.

(2) The National Agricultural Land Register must contain the following information:

(a) spatial information on all agricultural land, including –

- (i) demarcation of high potential cropping areas;
- (ii) demarcation of medium potential agricultural land;
- (iii) key production information; and
- (ii) key socio-economic information;

(b) per piece of agricultural land –

- (i) the ownership of agricultural land, including the nationality and gender of the landowner, and any other information as may be prescribed by the Minister from time to time;
- (ii) the characteristics of agricultural land, including –
 - (aa) land cover;
 - (bb) land capability class; and
 - (cc) land suitability class;
- (iii) current agricultural or other land use;
- (iv) environmental encumbrances;
- (v) water licenses; and
- (vi) other natural resource-related information;

(c) data on protected areas and areas earmarked as protected areas;

(d) derived agricultural land use zones;

(e) information contemplated in subsection (4); and

(f) any other information or data as is reasonably required by the Registrar.

(3) In addition to the information contemplated in subsection (2), the data relating to –

(a) the national land audit conducted by the Department responsible for land reform;
and
(b) current and future data collection processes related to land ownership,
must be incorporated in the National Agricultural Land Register.

(4) Every provincial Department must –

(a) provide information on –

(i) relevant spatial datasets;
(ii) the extent of agricultural land lost to –

(aa) mining;

(bb) formal urban residential developments;

(cc) informal urban residential developments; and

(dd) industrial developments;

with or without a rezoning application having been either submitted or approved;

and

(b) obtain integrated datasets of different sources, including municipal and farm level.

(5) The Registrar may require in writing that any person must, within a reasonable time or on a regular basis, provide him or her with any data, information, documents, samples or materials reasonably required for the –

(a) purposes of any national monitoring network or national information system in respect of agricultural land;

(b) management and protection of natural agricultural resources;

(c) spatial demarcation of water management areas; and

(d) allocation of water rights.

Updating of Register

74. The Registrar must update the National Agricultural Land Register on a continuous basis, but no less than 3 times per year.

Establishment of application, tracking and reporting system

75.(1) The Minister must establish an online application, tracking and reporting system within 12 months after the date of commencement of this Act.

(2) The system contemplated in subsection (1) must be linked to the National Agricultural Land Register and must provide for the following categories of integrated and geo-referenced information:

- (a) ownership and tenure data;
- (b) cadastral and orientation data;
- (c) agricultural land use zones and Protected Agricultural Areas;
- (d) agricultural sector plans;
- (e) agricultural Spatial Development Plans;
- (f) current land use and land use systems on agricultural land;
- (g) applicable policies, legislation and Regulations; and
- (h) forms, procedures, guidelines and technical and scientific reports.

(3) The records of the electronic database contemplated in subsection (1) must provide the following information:

- (a) typology of applications;
- (b) refusals of applications;
- (c) unconditional approvals of applications;
- (d) approvals of applications with conditions;
- (e) area and size of the land concerned;
- (f) trends on the use of agricultural land;
- (g) impact of subdivision and rezoning on the various land capability classes on district, provincial and national level; and
- (h) data to monitor compliance, effectiveness and efficiency.

Establishment of agro-ecosystem assessment and evaluation system and methods

76.(1) The Minister must establish a system and methods for the assessment and evaluation of agro-ecosystem services, within 12 months after the date of commencement of this Act.

(2) The purpose of the system and methods contemplated in subsection (1) is to provide the appropriate information framework for the –

- (a) consideration of development options;
- (b) assessment of the short and long-term impact of development proposals on agriculture; and
- (c) making of informed decisions on applications for the subdivision or rezoning of agricultural land,

by the Intergovernmental Committee, Minister, or MEC concerned, as the case may be.

Data collection processes

77. The Registrar must ensure that all data collection processes contemplated in this Act comply with the National Spatial Information Framework and any norms and standards determined in respect of such framework.

Information-sharing

78.(1) The Registrar of Deeds must note –

- (a) the detailed categorisation of agricultural land, including its –
 - (i) agricultural potential; and
 - (ii) land capability class; and
- (b) water licences as contemplated in section 17,

at deed level within the Deeds Registry.

(2) The information in the Deeds Registry contemplated in subsection (1) must be linked to the National Agricultural Land Register.

Access to information in Register

79.(1) The Registrar must, on conditions and upon payment of the fees prescribed by him or her, permit any person to –

- (a) inspect the National Agricultural Land Register and other public records in his or her registry; and
- (b) make copies of those records or extracts from those registers and to obtain such other information concerning agricultural land or other documents that is registered or filed in the registry.

(2) Notwithstanding anything to the contrary in any other law contained, no person, including the State, is exempted from the payment of the prescribed fees referred to in subsection (1).

Responsibilities of national, provincial and local government

80. (1) Every entity within the national, provincial and local spheres of government and every state-owned enterprise must provide all relevant information relating to agricultural land when requested in writing by the Registrar.

(2) All entities as contemplated in subsection (1) must consider the information within the National Agricultural Land Register during the development and review of all spatial development frameworks and spatial plans.

(3) All provincial Departments must, within a period not exceeding 12 months after the date of commencement of this Act, provide the Registrar with the –

- (a) Agricultural Sector Plans for their respective provinces; and
- (b) Spatial Agricultural Plans for each of the local municipalities within their respective provinces.

(4) All provincial Departments must, at the end of each financial year, provide the Registrar with an updated version of the Agricultural Sector Plans and Spatial Agricultural Plans contemplated in subsection (3).

(5) The Minister, in consultation with the MECs concerned, must, within a period not exceeding 6 months after the date of commencement of this Act, by notice in the *Gazette*, publish a binding framework for the contents of the –

- (a) Agricultural Sector Plans; and
- (b) Spatial Agricultural Plans.

CHAPTER 5

AGRO-ECOSYSTEM REPORTS

Contents of Agro-ecosystem Report

81.(1)(a) The Minister, in consultation with the MECs concerned, must, within a period not exceeding 6 months after the date of commencement of this Act, by notice in the *Gazette*, publish a binding framework for the contents of an Agro-ecosystem Report per scheduled land use.

(b) The binding framework contemplated in paragraph (a) must incorporate the information required as contemplated in subsection (2).

(2) An Agro-ecosystem Report must contain the following information as a minimum:

- (a) the nature of the proposed use of the land;
- (b) planning and land use frameworks and the alignment and compliance or non-compliance, as the case may be, with –
 - (i) municipal frameworks and plans;

- (ii) agricultural land use zones;
- (iii) the Municipal-wide Area Spatial Agricultural Plan; and
- (iv) the Provincial Agricultural Growth Strategy;
- (c) natural agricultural resources, including –
 - (i) soil;
 - (ii) terrain;
 - (iii) natural vegetation;
 - (iv) agro-climate; and
 - (v) water and water sources;
- (d) agricultural land capability;
- (e) agricultural land suitability;
- (f) on- and off-farm agricultural infrastructure;
- (g) current agricultural enterprises and uses; and
- (h) agro-ecosystem impact assessment of proposed change, including –
 - (i) production services, including –
 - (aa) food, fibre and feed production;
 - (bb) water;
 - (cc) land availability; and
 - (dd) land use capability;
 - (ii) ecological services, including –
 - (aa) water;
 - (bb) soil;
 - (cc) biodiversity; and
 - (dd) agro-climate; and
 - (iii) socio-cultural services, including –
 - (aa) knowledge;
 - (bb) conflict;
 - (cc) livelihoods;
 - (dd) net farm income;
 - (ee) marketing opportunities; and
 - (ff) on- and off-farm infrastructure and services.

(3) An Agro-ecosystem Report must be compiled by a SACNASP registered agricultural scientist.

INSTITUTIONAL FRAMEWORK

Part I: Intergovernmental Committee on the Preservation and Development of Agricultural Land

Establishment of Intergovernmental Committee on the Preservation and Development of Agricultural Land

82. The Intergovernmental Committee on the Preservation and Development of Agricultural Land is hereby established as a national intergovernmental forum to promote and facilitate intergovernmental relations on the preservation of agricultural land.

Powers, functions and duties of Intergovernmental Committee

83.(1) The Intergovernmental Committee established in section 82 is a consultative forum for the Minister and must –

(a) ensure high-level discussion and cooperation by specific national government departments and provincial departments responsible for, or involved in, the preservation, development and sustainable use of agricultural land; and

(b) consider applications in the prescribed format and in accordance with the prescribed processes for the rezoning of –

(i) high potential cropping land as contemplated in section 12; and

(ii) land in a Protected Agricultural Area from existing agricultural to non-agricultural use as contemplated in section 53(3).

(2) The Intergovernmental Committee functions in accordance with the provisions of the Intergovernmental Relations Framework Act.

Recommendations by Minister and Minister responsible for land reform

84. The Intergovernmental Committee must consider applications for rezoning of high potential cropping land for land reform purposes, subject to the recommendations of the Minister and the Minister responsible for land reform.

Factors to be considered by Intergovernmental Committee

85. When considering an application for rezoning as contemplated in section 83(1)(b), the Intergovernmental Committee must, when considering an application on high potential cropping land, have due regard to –

- (a) the consensus recommendation by the Minister and the Minister responsible for land reform and the factors contemplated in section 12(6) in the event that the application is for land reform purposes;
- (b) the circumstances and factors contemplated in sections 12(6) and 13 in the event that exceptional circumstances exist;
- (c) the outcome of consultations as contemplated in section 14; and
- (d) trade-offs as contemplated in section 16.

Composition of Intergovernmental Committee

86.(1) The Intergovernmental Committee comprises the –

- (a) Minister;
- (b) Minister responsible for trade and industry;
- (c) Minister responsible for environmental affairs;
- (d) Minister responsible for mineral resources;
- (e) Minister responsible for land reform;
- (f) Minister responsible for water affairs;
- (g) Chairperson of the National Planning Commission;
- (h) Deputy Minister;
- (i) Deputy Minister responsible for land reform, in cases involving land reform; and
- (j) MEC of the provincial Department in whose jurisdictional area the land in respect of which an application is received.

(2) The Minister is the Chairperson of the Intergovernmental Committee: Provided that if the Minister is unavailable for a meeting, the Deputy Minister must act as Chairperson for that meeting.

(3) The Minister may invite any person with particular expertise to a meeting of the Intergovernmental Committee or of a sub-committee.

Meetings of Intergovernmental Committee and quorum

87.(1) The Intergovernmental Committee –

- (a) must meet –
 - (i) on a regular basis; and
 - (ii) when called by the Chairperson; and
- (b) may determine its procedure at meetings.

(2) The Minister must, within a period not exceeding 6 months after the date of commencement of this Act, determine a framework for the inclusion of suggestions in the agenda.

(3) The quorum for both a meeting of the Intergovernmental Committee and a decision taken at that meeting is 7.

(4) In the event of an equality of votes, the Chairperson of the Intergovernmental Committee has a casting vote in addition to his or her deliberative vote.

Sub-committees of Intergovernmental Committee

88. The Intergovernmental Committee may establish sub-committees from its members to assist in the performance of its functions.

Remuneration of attendees of Intergovernmental Committee

89.(1) The Minister must from time to time, in consultation with the Minister responsible for finance, determine the criteria for –

- (a) payment of honoraria; and
- (b) the reimbursement of expenses incurred,

of persons who are not employed in terms of the Public Service Act and who attended meetings on invitation by the Minister as contemplated in section 86(3).

(2) A determination under subsection (1) must be published in the *Gazette*.

Reports of Intergovernmental Committee

90.(1) The Intergovernmental Committee must submit an annual report on its meetings and recommendations during the financial year concerned, to the Minister.

(2) The Minister must submit the report referred to in subsection (1) to the President's Coordinating Council within a period not exceeding 3 months after the end of the financial year concerned.

Administrative support to Intergovernmental Committee

91. The Department, in cooperation with the provincial Departments, must provide the administrative capacity and financial, infrastructural and other forms of resource support required by the Intergovernmental Committee and sub-committees for the execution of their powers, the performance of their functions and the carrying out of their duties as contemplated in this Act.

Part II: Agricultural Land National Advisory Commission

Establishment of Agricultural Land National Advisory Commission

92. The Agricultural Land National Advisory Commission is hereby established.

Powers, functions and duties of Agricultural Land National Advisory Commission

93.(1) The Agricultural Land National Advisory Commission is a body established to advise the Minister on matters of a strategic nature concerning the sustainable use and development of agricultural land and the natural agricultural resources.

(2) In performing the functions referred to in subsection (1), the Commission must –

- (a) advise the Minister –
 - (i) regarding any matter referred to it by the Minister; and
 - (ii) on any matter considered to be necessary or expedient for achieving the purpose of this Act;
- (b) submit reports to the Minister as contemplated in section 63;
- (c) monitor trends in changes in land use;
- (d) recommend appropriate corrective interventions;
- (e) evaluate policies and strategies regarding the preservation, development and sustainable use of agricultural land and make recommendations to the Minister in this regard;
- (f) evaluate the Agricultural Sector Plans as submitted by the provincial Departments and make recommendations to the Minister in this regard;
- (g) after consultation with the Department and the provincial Departments concerned, advise the Minister on –
 - (i) the demarcation and designation of specific agricultural land as Protected Agricultural Areas; and
 - (ii) amendments to the demarcation and designation of Protected Agricultural Areas; and

(h) the desirability of establishing a specific incentive scheme, and the provisions of any such scheme.

Composition of Agricultural Land National Advisory Commission

94.(1) The Agricultural Land National Advisory Commission comprises of –

(a) officials of the Department directly related to, and responsible for, the planning, development and sustainable use of natural agricultural resources, which must include –

- (i) an official at the level of Deputy Director General;
- (ii) the Chairperson of the PD-ALFA National Internal Technical Committee; and
- (iii) officials to whom the administration of other laws dealing with natural agricultural resources have been allocated; and

(b) representatives of other role-players identified and appointed by the Minister and who are appropriately designated in writing by their institutions, which must include –

- (i) the Chairperson of the National Planning Commission;
- (ii) the Department responsible for the environment;
- (ii) the Department responsible for water;
- (iii) the Department responsible for land reform;
- (iv) organised agriculture at national level; and
- (v) institutions that can provide applicable scientific and technological advice, including the –

- (aa) Agricultural Research Council;
- (bb) Council for Science and Industrial Research; and
- (cc) South African National Space Agency;

(c) representatives of other role-players identified by the Minister and who are appropriately designated in writing by their institutions; and

(d) other experts, in their personal capacity, possessing academic training, expertise and experience related to the subject matter of this Act, as identified by the Minister.

(2) Before appointing persons contemplated in subsection (1), the Minister must –

(a) invite nominations from –

- (i) organised agriculture, non-governmental organisations and community-based organisations in a manner that he or she may consider appropriate; and
- (ii) others by notice in the *Gazette* and at least 2 nationally distributed newspapers and on the radio, specifying a period within which nominations must be submitted; and

(b) stipulate in such notice, the procedure to be adopted regarding such nominations.

(3) The Minister must designate in writing the Chairperson and Vice-Chairperson of the Agricultural Land National Advisory Commission.

(4) Each member of the Agricultural Land National Advisory Commission must designate, with the concurrence of the Minister and the organisation or person who nominated him or her, an alternate to take his or her place if he or she is unable to attend a meeting of the Commission.

(5) In the event that any member of the Agricultural Land National Advisory Commission or his or her spouse has a direct or indirect financial interest in any matter before the Commission, he or she –

(a) must disclose such interest; and

(b) may not take part in any discussion regarding such matter.

Disqualification of members

95. No person may be appointed as member of the Agricultural Land National Advisory Commission –

(a) unless he or she –

(i) is a South African citizen; and

(ii) resides in the Republic permanently; and

(b) if he or she –

(i) is a member of Parliament, any provincial legislature or any Municipal Council;

(ii) is an unrehabilitated insolvent;

(iii) has been declared to be of unsound mind by a court of the Republic; or

(iv) has been convicted of an offence committed after the date of commencement of the Constitution, and sentenced to imprisonment without the option of a fine, unless the person has received a grant of amnesty or a free pardon before the date of his or her appointment.

Vacation of office

96. A member of the Agricultural Land National Advisory Commission must vacate his or her office if the Minister terminates such term of office for good reason, or he or she –

- (a) can no longer perform his or her duties on the Agricultural Land National Advisory Commission;
- (b) becomes disqualified as contemplated in section 95;
- (c) is absent from more than 2 consecutive meetings of the Agricultural Land National Advisory Commission without the leave of the Chairperson;
- (d) resigns by way of written notice to the Minister;
- (e) repeatedly fails to perform the duties of office efficiently;
- (f) is withdrawn by the nominating body; or
- (g) becomes a political office bearer.

Term of office and filling of vacancies

97.(1) A member of the Agricultural Land National Advisory Commission holds office for a period of 5 years.

(2) At the expiry of the term of office, a member may be reappointed for another 1 term after the initial appointment term.

(3) The Minister may –

- (a) fill a vacant position in the Agricultural Land National Advisory Commission; and
- (b) for purposes of appointing the replacement, invite nominations from the sector or organisation that nominated the original member.

(4) The replacement member must serve for the balance of the term of the person he or she replaces.

Meetings of Agricultural Land National Advisory Commission

98.(1) The Agricultural Land National Advisory Commission must –

- (a) meet –
 - (i) on a regular basis; and
 - (ii) when called by the Chairperson; and
- (b) determine its own procedures by compiling rules in respect of the –
 - (i) calling of meetings;
 - (ii) procedures at meetings; and
 - (iii) frequency of meetings: Provided that at least 2 meetings must be called annually.

(2) The quorum for a meeting of Agricultural Land National Advisory Commission is 60% of its appointed members.

(3) The decision of the majority of the members present at any meeting constitutes a decision of the Agricultural Land National Advisory Commission.

(4) In the event of an equality of votes, the Chairperson has a casting vote in addition to his or her deliberative vote.

(5) The meetings of the Agricultural Land National Advisory Commission must be open to the public and all documents considered or produced by the Commission must be available for inspection by the public.

(6) The Department must ensure that the Agricultural Land National Advisory Commission meets on a regular basis and –

- (a) executes the powers;
- (b) performs the functions; and
- (c) carries out the duties,

provided for in this Act, effectively and efficiently.

Sub-committees of Agricultural Land National Advisory Commission

99. The Agricultural Land National Advisory Commission may appoint sub-committees from its members to assist in the performance of its functions: Provided that a sub-committee may co-opt a person or persons with the specialised knowledge or experience required for the effective performance of the functions of such sub-committee.

Funding of Agricultural Land National Advisory Commission

100. The Minister must, with the concurrence of the Minister responsible for finance, make available funds for the functioning of the Agricultural Land National Advisory Commission for purposes other than the payment of remuneration referred to in section 101, from –

- (a) money appropriated by Parliament for this purpose; and
- (b) funds obtained from donations or grants.

Remuneration of members of Agricultural Land National Advisory Commission, sub-committees and co-opted members

101. Members of the Agricultural Land National Advisory Commission, members of sub-committees and co-opted members may be paid such remuneration and allowances for their services as the Minister may determine by notice in the *Gazette*, with the concurrence of the Minister responsible for finance.

Reports of Agricultural Land National Advisory Commission

102.(1) The Agricultural Land National Advisory Commission must submit an annual report on the work of the Commission, including the following:

- (a) the work plan for the next year;
- (b) information and recommendations submitted; and
- (c) financial report and budget,

to the Minister.

(2) The Minister must table the report referred to in subsection (1) in Parliament within a period not exceeding 3 months after the end of the financial year concerned.

Administrative support to Agricultural Land National Advisory Commission

103.(1) The Department must provide the administrative capacity, financial, infrastructural and other forms of resource support and training and support required by the Agricultural Land National Advisory Commission and sub-committees for the execution of their powers, the performance of their functions and the carrying out of their duties as contemplated in this Act.

(2) The Director General may –

- (a) designate as many officers and employees as he or she may deem necessary; and
- (b) engage persons on contract,

to assist the Commission in the performance of its work.

Part III: Preservation and Development of Agricultural Land Framework Act National Internal Technical Committee

Establishment of Preservation and Development of Agricultural Land Framework Act National Internal Technical Committee

104.(1) The Preservation and Development of Agricultural Land Framework Act National Internal Technical Committee is hereby established.

(2) The Minister may dissolve the PD-ALFA National Internal Technical Committee on such terms and conditions as he or she deems fit: Provided that a new PD-ALFA National Internal Technical Committee must be established and convened within 30 calendar days after such dissolution.

Powers, functions and duties of PD-ALFA National Internal Technical Committee

105.(1) The PD-ALFA National Internal Technical Committee must, on matters pertaining to the preservation, development and sustainable use of agricultural land –

- (a) evaluate and make recommendations to the Minister on applications for the rezoning or subdivision of high potential cropping land as contemplated in section 12(3);
- (b) evaluate and make recommendations to the Minister on applications for the rezoning of class IV medium potential agricultural land for an interim period of 5 years from the date of commencement of this Act;
- (c) make recommendations to the Minister in applications relating to –
 - (i) lease agreements on high potential cropping land as contemplated in section 57;
 - (ii) the selling or advertising for sale of a portion of high potential cropping land as contemplated in section 58;
 - (iii) the selling or granting of a right to land or a portion of high potential cropping land as contemplated in section 59;
 - (iv) the acquisition and registration of any agricultural land by a foreigner as contemplated in section 60; and
 - (v) the consolidation of high potential cropping land as contemplated in section 61;
- (d) recommend conditions applicable to instances where applications contemplated in paragraphs (a), (b) and (c) are granted;
- (e) recommend the purchase or expropriation of agricultural land as contemplated in section 65;
- (f) monitor trends and, where applicable, recommend appropriate corrective interventions;
- (g) consider and make recommendations on policy to meet the objectives of this Act;
- (h) monitor –

- (i) compliance with the provisions of this Act and evaluate the impact of both compliance and non-compliance; and
 - (ii) the outcome and impact of the advice provided to the Minister; and
- (i) foster and promote –
- (i) awareness; and
 - (ii) a full understanding,
- of the need for, and aims of, a policy pertaining to the preservation, development and sustainable use of agricultural land.

(2) The PD-ALFA National Internal Technical Committee must promote and safeguard the coordination of information on measures pertaining to the preservation, development and sustainable use of agricultural land.

(3) Although the PD-ALFA National Internal Technical Committee is not an executive decision-making body, the Committee –

- (a) must advise the Minister;
- (b) must make recommendations; and
- (c) may adopt resolutions to the Minister,

on matters provided for in this Act, in terms of agreed procedures.

(4) The Minister must, when –

- (a) considering applications contemplated in Parts I, II and V of Chapter 2; and
- (b) making recommendations or decision pertaining to matters provided for in this Act,

consider, but is not bound by, any advice rendered, recommendations made or resolutions adopted by the PD-ALFA National Internal Technical Committee.

Internal procedures of PD-ALFA National Internal Technical Committee

106.(1) The PD-ALFA National Internal Technical Committee must adopt rules to govern its internal procedures, including –

- (a) terms of reference;
- (b) the functions of the Chairperson;
- (c) procedures for the designation of a person to preside at a meeting in the absence of the Chairperson;
- (d) procedures for its functioning;
- (e) procedures for recording its decisions;
- (f) the frequency of meetings and the manner in which meetings must be convened;

- (g) procedures for the adoption of resolutions or recommendations;
- (h) procedures for the settlement of intergovernmental disputes –
 - (i) between the parties; or
 - (ii) that are referred to the Committee for settlement; and
- (i) procedures for the amendment of its internal rules.

(2) The internal rules to be adopted must be consistent with the Intergovernmental Relations Framework Act and any other applicable legislation.

(3) A person participating in the PD-ALFA National Internal Technical Committee and his or her representative must adhere to the provisions of the internal rules of the Committee.

Composition of PD-ALFA National Internal Technical Committee

107.(1) The PD-ALFA National Internal Technical Committee comprises the following permanent members:

- (a) the Director of the Directorate in the Department responsible for the administration of this Act;
- (b) the Director of the Directorate in the Department responsible for crop production;
- (c) the Director of the Directorate in the Department responsible for irrigation;
- (d) the Registrar of the National Agricultural Land Register;
- (e) the supervisor of the land use official allocated by the Department for the province in which the land in respect of which an application is received, is located;
- (f) the land use official allocated by the Department for the province in which the land in respect of which an application is received, is located; and
- (g) 3 appropriately trained and experienced departmental officials who must be SACNASP registered.

(2) The Minister must designate in writing the Chairperson and Vice-Chairperson of the PD-ALFA National Internal Technical Committee.

Meetings of PD-ALFA National Internal Technical Committee and quorum

108.(1) The PD-ALFA National Internal Technical Committee –

- (a) must –
 - (i) meet –
 - (aa) on a regular basis; and

- (bb) when called by the Chairperson; and
 - (ii) determine its procedures at meetings; and
- (b) may –
- (i) invite other government employees with particular expertise to attend or participate in its meetings; and
 - (ii) appoint sub-committees from its members to assist in the performance of its functions.

(2) The quorum for both a meeting of PD-ALFA National Internal Technical Committee and the making of a recommendation at such meeting is 7 of its permanent members as contemplated in section 107(1).

(3) In the event of an equality of votes, the Chairperson has a casting vote in addition to his or her deliberative vote.

(4) The Department must ensure that the PD-ALFA National Internal Technical Committee meets on a regular basis and –

- (a) executes the powers;
- (b) performs the functions; and
- (c) carries out the duties,

provided for in this Act, effectively and efficiently.

Sub-committees of PD-ALFA National Internal Technical Committee

109. The PD-ALFA National Internal Technical Committee may establish sub-committees to assist in the performance of its functions.

Reports of PD-ALFA National Internal Technical Committee

110.(1) The PD-ALFA National Internal Technical Committee must submit an annual report regarding its activities and the related outcomes and impact thereof, achieved during the year in question, to the Minister.

(2) The Minister must table the report referred to in subsection (1) in Parliament within a period not exceeding 3 months after the end of the financial year concerned.

Administrative support to PD-ALFA National Internal Technical Committee

111. The Department must provide the administrative capacity, financial, infrastructural and other forms of resource support and training and support required by the PD-ALFA National Internal Technical Committee and sub-committees for the execution of their powers, the performance of their functions and the carrying out of their duties as contemplated in this Act.

Part IV: Preservation and Development of Agricultural Land Framework Act

Provincial Internal Technical Committees

Establishment of Preservation and Development of Agricultural Land Framework Act Provincial Internal Technical Committees

112.(1) The Preservation and Development of Agricultural Land Framework Act Provincial Internal Technical Committees are hereby established for each province.

(2) The MEC may dissolve a PD-ALFA Provincial Internal Technical Committee on such terms and conditions as he or she deems fit: Provided that a new PD-ALFA Provincial Internal Technical Committee must be established and convened within 90 calendar days after such dissolution.

Powers, functions and duties of PD-ALFA Provincial Internal Technical Committees

113. The PD-ALFA Provincial Internal Technical Committees must, on matters pertaining to the preservation, development and sustainable use of agricultural land –

- (a) evaluate and make recommendations to the MEC relating to –
 - (i) the Agricultural Sector Plan; and
 - (ii) the spatial agricultural plans for each local municipality;
- (b) after consultation with interested and affected parties concerned advise the MEC on –
 - (i) the demarcation and designation of specific agricultural land as Protected Agricultural Areas; and
 - (ii) amendments to the demarcation and demarcation of Protected Agricultural Areas;
- (c) evaluate and make recommendations on applications for the subdivision or rezoning of medium potential agricultural land as contemplated in sections 12, 36(2), 36(3), 36(4) and 42(3);
- (d) make recommendations to the MEC in applications relating to –

- (i) lease agreements on medium potential agricultural land as contemplated in section 57(3);
 - (ii) the selling or advertising for sale of a portion of medium potential agricultural land as contemplated in section 58(3);
 - (iii) the selling or granting of a right to land or a portion of medium potential agricultural land as contemplated in section 59(3); and
 - (iv) the consolidation of medium potential agricultural land as contemplated in section 61;
- (e) recommend conditions applicable to instances where applications contemplated in paragraphs (c) and (d) are granted;
- (f) make a recommendation on the subdivision or rezoning of medium potential agricultural land in Protected Agricultural Areas for non-agricultural purposes as contemplated in section 42(3);
- (g) monitor trends in changes in land use;
- (h) recommend appropriate corrective interventions;
- (i) evaluate policies and strategies regarding the preservation, development and sustainable use of agricultural land in that province; and
- (j) make recommendations to the MEC in this regard.

Composition of PD-ALFA Provincial Internal Technical Committees

114.(1) The PD-ALFA Provincial Internal Technical Committees each comprise of the following officials of the provincial Departments concerned as permanent members:

- (a) the Senior Manager responsible for the administration of this Act;
- (b) the Senior Manager responsible for land use planning and assessment of natural agricultural resources;
- (c) the Senior Manager responsible for crop production;
- (d) the Senior Manager responsible for animal production;
- (e) the supervisor of the land use official;
- (f) the land use official; and
- (g) at least 3 appropriately trained and experienced officials who must be registered with a relevant council: Provided that 1 or more of the officials is registered with SACNASP.

(2) The MEC of a province must designate in writing the Chairperson and Vice-Chairperson of the PD-ALFA Provincial Internal Technical Committee.

Meetings of PD-ALFA Provincial Internal Technical Committees and quorum

115.(1) The provisions of sections 108(1) to (3) apply to PD-ALFA Provincial Internal Technical Committees, with the necessary changes.

(2) Each provincial Department must ensure that the PD-ALFA Provincial Internal Technical Committee concerned meets on a regular basis and –

- (a) executes the powers;
- (b) performs the functions; and
- (c) carries out the duties,

provided for in this Act, effectively and efficiently.

Sub-committees of PD-ALFA Provincial Internal Technical Committees

116. The PD-ALFA Provincial Internal Technical Committees may establish sub-committees from its members to assist in the performance of their functions.

Reports of PD-ALFA Provincial Internal Technical Committees

117.(1) The PD-ALFA Provincial Internal Technical Committees must submit annual reports regarding their activities and the related outcomes and impact thereof, achieved during the year in question, to the MEC concerned.

(2) The MEC must table the report referred to in subsection (1) in Parliament within a period not exceeding 3 months after the end of the financial year concerned.

Administrative support to PD-ALFA Provincial Internal Technical Committees

118. Provincial Departments must provide the administrative capacity, financial, infrastructural and other forms of resource support and training and support required by the PD-ALFA Provincial Internal Technical Committees and sub-committees concerned for the execution of their powers, the performance of their functions and the carrying out of their duties as contemplated in this Act.

Part V: Preservation and Development of Agricultural Land Framework Act Municipal Internal Technical Committees

Establishment of Preservation and Development of Agricultural Land Framework Act Municipal Internal Technical Committees

119.(1) The Preservation and Development of Agricultural Land Framework Act Municipal Internal Technical Committees are hereby established for each metropolitan, local and district municipality.

(2) The municipal manager of the municipality concerned may dissolve a PD-ALFA Municipal Internal Technical Committee on such terms and conditions as he or she deems fit: Provided that a new PD-ALFA Municipal Internal Technical Committee must be established and convened within 30 calendar days after such dissolution.

Powers, functions and duties of PD-ALFA Municipal Internal Technical Committees

120.(1) The PD-ALFA Municipal Internal Technical Committees must, on matters pertaining to the preservation, development and sustainable use of agricultural land in its area of jurisdiction concerned –

- (a) evaluate and make recommendations to the Municipal Council concerned on applications for the rezoning or subdivision of high potential cropping land as contemplated in section 12(2);
- (b) evaluate and make recommendations to the Municipal Council concerned on applications for the rezoning or subdivision of medium potential agricultural land as contemplated in section 36(1)(b); and
- (c) determine conditions applicable to instances where applications contemplated in paragraphs (a) and (b) are granted and impact on municipal functions.

(2) The PD-ALFA Municipal Internal Technical Committees must promote and safeguard the coordination of information on measures pertaining to the preservation, development and sustainable use of agricultural land in the area of jurisdiction concerned.

(3) PD-ALFA Municipal Internal Technical Committees may adopt resolutions or make recommendations to the municipal manager concerned, in terms of agreed procedures.

Composition of PD-ALFA Municipal Internal Technical Committees

121.(1) Each PD-ALFA Municipal Internal Technical Committee comprises the following permanent members:

- (a) the municipal manager of the municipality concerned;

- (b) a senior official responsible for spatial planning within the municipality;
- (c) a senior land use official allocated by the HoD for the province; and
- (d) 2 appropriately trained and experienced municipal officials involved in spatial planning within the municipality.

(2) The municipal manager of the municipality must designate in writing the Chairperson and Vice-Chairperson of the PD-ALFA Municipal Internal Technical Committee for the municipality concerned.

Meetings of PD-ALFA Municipal Internal Technical Committees and quorum

122.(1) The provisions of sections 108(1) to (3) apply to meetings of PD-ALFA Municipal Internal Technical Committees, with the necessary changes.

(2) Each Municipal Council must ensure that the PD-ALFA Municipal Internal Technical Committee concerned meets on a regular basis and –

- (a) executes the powers;
- (b) performs the functions; and
- (c) carries out the duties,

provided for in this Act, effectively and efficiently.

Reports of PD-ALFA Municipal Internal Technical Committees

123.(1) The PD-ALFA Municipal Internal Technical Committees must each submit an annual report regarding its activities and the related outcomes and impact thereof, achieved during the year in question, to the municipal manager concerned.

(2) The municipal managers must table the reports referred to in subsection (1) in their Municipal Councils within a period not exceeding 3 months after the end of the financial year concerned.

Administrative support to PD-ALFA Municipal Internal Technical Committees

124. Each municipality must provide the administrative capacity, financial, infrastructural and other forms of resource support and training and support required by the PD-ALFA Municipal Internal Technical Committee and sub-committees concerned, for the execution of their

powers, the performance of their functions and the carrying out of their duties as contemplated in this Act.

Part VI: Agricultural Land Review Board

Establishment of Agricultural Land Review Board

125.(1) The Agricultural Land Review Board is hereby established.

(2) The Agricultural Land Review Board is an independent body which may review decisions by the Minister, MEC or Intergovernmental Committee, as the case may be, pertaining to –

- (a) applications contemplated in Parts I, II and V of Chapter 2 of this Act; and
- (b) conditions applicable to instances where applications contemplated in paragraph (a) are approved.

(3) The Agricultural Land Review Board has jurisdiction in all the provinces of the Republic and may conduct hearings anywhere in the Republic.

(4) Nothing in this Part must be interpreted to prejudice or derogate from the constitutional right of an interested party to gain access to a court of law regarding a matter provided for in this Act.

(5) Any party to an application for the rezoning or subdivision of agricultural land who holds the view that the person or entity responsible for accepting or rejecting such application –

- (a) does not comply with the timeframes contemplated in this Act; or
- (b) is unreasonably delaying a decision on an application,

may approach a court with an application to comply with the relevant prescripts or any further or alternative relief.

Composition of Agricultural Land Review Board

126.(1) The Agricultural Land Review Board consists of a Chairperson, a Deputy Chairperson and 3 other members.

(2) The Chairperson of the Agricultural Land Review Board must have at least –

- (a) an LLB degree conferred by a South African University; and
- (b) 15 years' legal experience as a –
 - (i) judge, prior to his or her retirement;

- (ii) senior advocate in private practice; or
- (iii) legal academic with professorial status employed at a South African University.

(3) The Deputy Chairperson and the other 3 members must have at least –

- (a) an appropriate Honours degree conferred by a South African University; and
- (b) 15 years' experience in agriculture, agricultural land use planning, agricultural resource management or related fields of knowledge:

Provided that the persons contemplated in this subsection may, for the last 10 years, not have been employed in any one or more of the three spheres of government or in an organ of state, excluding a higher education institution.

(4) The Minister must appoint the Chairperson, the Deputy Chairperson and the other members of the Agricultural Land Review Board.

(5)(a) The Chairperson and the Deputy Chairperson may be appointed in a full-time or part-time capacity.

(b) The other members must be appointed in a part-time capacity.

Remuneration of members of Agricultural Land Review Board

127.(1) The Minister must determine the employment conditions and the remuneration of the Chairperson, the Deputy Chairperson and all other members of the Agricultural Land Review Board in consultation with the Minister responsible for finance.

(2) A determination under subsection (1) must be published in the *Gazette*.

Administrative support to Agricultural Land Review Board

128.(1) Administrative support to the Agricultural Land Review Board must be provided by officials of the Department designated by the head of the department, subject to the laws pertaining to the secondment of officers in the Public Service.

(2) The expenditure of the Agricultural Land Review Board must be defrayed out of money appropriated by Parliament for that purpose.

Liability of members of Agricultural Land Review Board

129. The Agricultural Land Review Board, the Chairperson, the Deputy Chairperson or any other member is not personally liable for an act or omission committed in good faith while performing a function in terms of this Act.

Submission of review applications to Agricultural Land Review Board

130.(1) Following a decision by the Intergovernmental Committee, Minister, MEC, or Minister and MEC, as the case may be, regarding an application for the rezoning or subdivision of agricultural land as contemplated in this Act, any person or entity who has a direct interest in such decision may submit an application in writing in the prescribed format to the Agricultural Land Review Board to have such decision reviewed.

(2) An application for review must be submitted within 30 days after –

- (a) notice of the decision is sent to the applicant; or
- (b) reasons for the decision are given,

whichever occurs last.

(3) The Chairperson must, within 3 months after his or her appointment, develop rules to govern the procedure of the Agricultural Land Review Board, including the procedure and timeframes for lodging and opposing an application for a review and the hearing thereof by the Agricultural Land Review Board.

(4) The procedure of the Agricultural Land Review Board contemplated in subsection (3) must be –

- (a) revised on a bi-annual basis; and
- (b) approved and published by the Minister in the *Gazette*.

Decisions of Agricultural Land Review Board

131. A decision of the Agricultural Land Review Board –

- (a) is final; and
- (b) must, together with the reasons for the decision, be communicated in writing to all the parties involved in the review application.

Appeals from decisions of Agricultural Land Review Board

132.(1) A party to a matter in which the Agricultural Land Review Board has given a decision on review under section 131, may appeal to a High Court against that decision.

(2) The appeal must be noted in writing within 21 days after the decision of the Agricultural Land Review Board has been communicated in accordance with section 131(b) to all the parties involved in the review application.

(3) The notice of appeal must –

(a) set out the grounds for the appeal;

(b) be lodged with the relevant High Court and with the Agricultural Land Review Board; and

(c) be served on every party to the matter.

(4) The appeal must be conducted as if it were an appeal from a magistrate's court to a High Court.

CHAPTER 7

SETTLEMENT OF DISPUTES REGARDING AGRICULTURAL LAND

Duty to avoid intergovernmental disputes

133.(1) All organs of state must make every reasonable effort to –

(a) avoid intergovernmental disputes when exercising their statutory powers; and

(b) settle intergovernmental disputes without resorting to judicial proceedings.

(2) Any formal agreement between 2 or more organs of state in different government departments or municipalities regulating the exercise of statutory powers or performance of statutory functions, including any implementation protocol or agency agreement, must include dispute settlement mechanisms or procedures that are appropriate to the nature of the agreement and the matters that are likely to become the subject of a dispute.

Declaring disputes

134.(1) An organ of state that is a party to an intergovernmental dispute with another government department, municipality or organ of state may declare the dispute a formal intergovernmental dispute by notifying the other party of such declaration in writing.

(2) Before declaring a formal intergovernmental dispute the organ of state in question must,

in good faith, make every reasonable effort to settle the dispute, including the initiation of direct negotiations with the other party or negotiations through an intermediary.

Consequences of declaring disputes

135.(1) Once a formal intergovernmental dispute has been declared as contemplated in section 134, the parties to the dispute must promptly convene a meeting between themselves, or their representatives, to –

- (a) determine the nature of the dispute, including –
 - (i) the precise issues that are in dispute; and
 - (ii) any material issues which are not in dispute;
- (b) identify any mechanisms or procedures, other than judicial proceedings, that are available to the parties to assist them in settling the dispute, including any mechanism or procedure provided for in legislation or any agreement between the parties;
- (c) agree on an appropriate mechanism or procedure to settle the dispute, subject to subsection (2); and
- (d) designate a person to act as facilitator.

(2) Where a mechanism or procedure is specifically provided for in other legislation or in an agreement between the parties, the parties must make every reasonable effort to settle the dispute in terms of such mechanism or procedure.

National dispute resolution

136.(1) In the event that the parties to a dispute fail to convene the meeting contemplated in section 135(1), the Minister may convene the meeting if –

- (a) a national organ of state is involved in the dispute;
- (b) the dispute is between different provinces or provincial organs of state from different provinces; or
- (c) the dispute is between organs of state from different government departments or municipalities that do not fall under paragraph (a) or (b), or section 137.

(2) In the event that the parties fail to attend a meeting convened by the Minister, or to designate a facilitator as contemplated in section 135(1)(d), the Minister may designate a facilitator on behalf of the parties.

Provincial dispute resolution

137.(1) In the event that the parties to a dispute in a province fail to convene a meeting as contemplated in section 135(1), the MEC responsible for local government in the province concerned may convene the meeting if the dispute is between –

- (a) a provincial organ of state and a municipality or a municipal organ of state in the province; or
- (b) local governments or municipal organs of state from different municipalities in the province.

(2) If the parties fail to attend a meeting convened by the MEC or to designate a facilitator as contemplated in section 135(1)(d), the MEC may designate a facilitator on behalf of the parties.

Role of facilitator

138.(1) A person designated as facilitator must –

- (a) assist the parties to settle the dispute in any manner necessary; and
- (b) submit to the Minister or the MEC responsible for local government in the province concerned, as the case may be –
 - (i) an initial report concerning –
 - (aa) the nature of the dispute and the precise issues that are in dispute;
 - (bb) the mechanism or procedure to be used to settle the dispute; and
 - (cc) any other matters that may be prescribed; and
 - (ii) progress reports containing such information as may be prescribed by regulation in terms of section 165.

(2) A report referred to in subsection (1)(b) must be submitted to the –

- (a) Minister, if the report concerns a dispute referred to in section 136(1); or
- (b) MEC, if the report concerns a dispute referred to in section 137(1).

(3) If a dispute referred to in subsection (2)(b) affects the national interest, the Minister may request the facilitator to also submit a report to the Minister.

Judicial proceedings

139.(1) No government department or organ of state may institute judicial proceedings in order to settle an intergovernmental dispute unless the dispute has been declared a formal

intergovernmental dispute in accordance with section 134 and all efforts to settle the dispute in terms of this Chapter were unsuccessful.

(2) All negotiations in accordance with section 134, meetings in accordance with section 135 and reports in accordance with section 138 are privileged and may not be used in any judicial proceedings as evidence by, or against, any of the parties to an intergovernmental dispute.

CHAPTER 8

PROVINCIAL AND MUNICIPAL RESPONSIBILITIES, GUIDING PRINCIPLES, MINIMUM PROVINCIAL NORMS AND STANDARDS, AND COORDINATED PLANNING AND DEVELOPMENT

Responsibilities of provincial Departments

140.(1) Every provincial Department, with the assistance of the Department, must implement a coherent approach to coordinated planning and development relating to agricultural land and its optimal agricultural use in each province, and establish systems –

- (a) of agricultural land use planning and Regulations;
- (b) of land use zoning for agricultural land;
- (c) to regulate agricultural land conversions; and
- (d) to provide for inputs by farmers.

(2) Every provincial Department must –

- (a) recommend the establishment and demarcation of Protected Agricultural Areas to the Agricultural Land National Advisory Commission, which must advise the Minister as contemplated in section 53;
- (b) recommend the establishment and demarcation of Protected Agricultural Areas to the Provincial Internal Technical Committee, with regard to medium potential agricultural land, which must advise the MEC as contemplated in section 53;
- (c) ensure that the Protected Agricultural Areas and their delineation are integrated into the planning frameworks of all the municipalities concerned;
- (d) develop provincial statutory planning frameworks in respect of high potential cropping land which must comprise at least the following:
 - (i) the integration of the protection of high potential cropping land and Protected Agricultural Areas within the provincial spatial development plan concerned; and
 - (ii) the requirement that municipalities must incorporate within their five year and annual Integrated Development Plans sections on provincial agricultural growth

and development strategies, agricultural spatial planning, high potential cropping land, Protected Agricultural Areas, and classification of agricultural land as outlined in their Spatial Development Plans: Provided that in the event that there is no high potential cropping land in the area of jurisdiction of the municipality concerned, the best available agricultural land must be protected;

(e) adopt annual provincial agricultural spatial planning frameworks aimed at the protection of agricultural land and which must be binding on all relevant parties;

(f) draft and implement medium-term strategies on the protection of high potential cropping land with a specific focus on the proactive use of high potential cropping land in the Protected Agricultural Areas, if any, to ensure food security;

(g) draft and implement provincial monitoring and evaluation frameworks to track progress of the achievement of the results of protecting high potential cropping land; and

(h) facilitate processes to ensure that high potential cropping land is utilised for active agricultural production and agricultural development purposes.

(3) Every provincial Department must, when preparing provincial strategic plans –

(a) include an evaluation of alternative forms of development;

(b) give significant weight to those strategies which minimise the impacts on high potential cropping land, such as the maintenance and development of agricultural production and processing close to the population centres; and

(c) give increased attention to the protection of agricultural land within the urban edge and the promotion of urban agriculture.

(4) Every provincial Department must –

(a) by way of its Provincial Internal Technical Committee, evaluate, and make recommendations regarding applications for rezoning or subdivision as contemplated in section 36(2); and

(b) make suggestions to municipalities and other stakeholders regarding assistance to ensure the proactive utilisation of the land concerned.

Factors to be considered by provincial Departments

141. The Minister, in consultation with the MECs concerned, must, within a period not exceeding 6 months after the date of commencement of this Act, by notice in the *Gazette*, publish a minimum list of factors that must be complied with by provincial Departments when carrying out their responsibilities as contemplated in section 140 of this Act.

Responsibilities of municipalities

142. Every municipality must –

- (a) in consultation with the Provincial Department concerned, align and integrate, on a continuous basis, all agricultural land in their Municipal Spatial Development Plans as part of their Integrated Development Plan processes;
- (b) earmark land for agricultural production;
- (c) ensure that –
 - (i) the classification of agricultural land and demarcated Protected Agricultural Areas, as formulated by the Department or the provincial Department, are incorporated into all municipal spatial, land use and planning documents, strategies and frameworks;
 - (ii) Protected Agricultural Areas and their delineation are integrated into all municipal planning frameworks; and
 - (iii) all land identified as high potential cropping land located outside formally proclaimed Protected Agricultural Areas are subject to the same norms and standards applicable to high potential cropping land within formally proclaimed Protected Agricultural Areas; and
- (d) consider, and make recommendations regarding applications for rezoning or subdivision of agricultural land as contemplated in sections 10 and 34.

Factors to be considered by municipalities

143. The Minister, in consultation with the MECs concerned, and after consultation with SALGA, must, within a period not exceeding 6 months after the date of commencement of this Act, by notice in the *Gazette*, publish a minimum list of factors that must be complied with by municipalities when carrying out their responsibilities as contemplated in section 142.

Guiding principles for allocation of roles, powers, functions and responsibilities

144. The Minister, in consultation with the MECs concerned, and after consultation with SALGA, must, within a period not exceeding 6 months after the date of commencement of this Act, by notice in the *Gazette*, publish a framework for the allocation of roles, powers, functions and responsibilities related to the processing and consideration of applications for the subdivision or rezoning of agricultural land to provincial Departments and municipalities.

Minimum provincial norms and standards

145.(1) The Minister, in consultation with the MECs concerned, must, within a period not exceeding 6 months after the date of commencement of this Act, by notice in the *Gazette*, publish minimum provincial norms and standards for organs of state in the provincial sphere of government to preserve and develop agricultural land.

(2) The minimum provincial norms and standards contemplated in subsection (1) may include minimum provincial norms and standards on the –

- (a) principles for evaluation of applications at provincial level;
- (b) provincial process regarding applications for the subdivision or rezoning of agricultural land;
- (c) considerations to be taken into account in respect of the applications contemplated in paragraph (b);
- (d) assessment process and tools in respect of applications for the subdivision or rezoning of agricultural land;
- (e) participation of the provincial Departments in municipal planning structures;
- (f) elements of an Agricultural Sector Plan; and
- (g) scope of application of such norms and standards.

(3) The minimum provincial norms and standards contemplated in subsection (1) may be supplemented by detailed, province-specific provincial policies, guidelines and norms and standards for the preservation and development of agricultural land: Provided that the minimum provincial norms and standards contemplated in subsection (1) must be adhered to as a minimum standard.

Budget and implementation framework

146.(1) The Minister –

- (a) must, on an annual basis at the beginning of each financial year, make financial, infrastructural and other forms of resources available for the effective implementation of this Act at national, provincial and local level; and
- (b) may, by notice in the *Gazette*, impose conditions regarding the use of such resources.

(2) The head of the national Department, every head of a provincial Department and every

municipal manager must, on an annual basis at the end of each financial year, submit financial and implementation reports for the financial year concerned, to the Minister.

(3) The Minister must table the reports referred to in subsection (2) in Parliament within a period not exceeding 3 months after the end of the financial year concerned.

(4) The Minister, in consultation with the MECs concerned, must, by notice in the *Gazette* –

- (a) within a period not exceeding 6 months after the date of commencement of this Act, publish a framework for the implementation of national agricultural policies relating to the subject matter of this Act by provincial Departments; and
- (b) thereafter, on a bi-annual basis, publish a revised version of the framework contemplated in this subsection.

Coordinated planning and development

147.(1) The Department and every provincial Department must –

- (a) raise general awareness at local government level of the significance of protecting agricultural land;
- (b) share geo-referenced data on all agricultural land on a continuous basis; and
- (c) ensure that data is refined to a scale suitable for use at municipal and, where applicable, farm level.

(2) National, provincial and local spatial plans must be coordinated.

(3) Provincial Departments must ensure that all planning frameworks –

- (a) are compiled in consultation with the –
 - (i) Department; and
 - (ii) municipalities concerned;
- (b) are aligned to the national planning frameworks; and
- (c) adhere to the minimum provincial norms and standards as contemplated in section 145.

CHAPTER 9

GENERAL AND MISCELLANEOUS PROVISIONS

Avoidance

148.(1) Where –

- (a) a person enters into, commences to carry out or carries out a scheme as defined in section 1, other than a scheme entered into before the commencement of this Act;
- (b) it is concluded that the person who entered into, commenced to carry out or carried out the scheme or any part of the scheme did so for the sole or dominant purpose of avoiding the application of any provision of this Act in relation to any person; and
- (c) the scheme or the part of the scheme has achieved, or apart from this section, would achieve, that purpose,

the Minister may make any order in accordance with this Act that the Minister would have been able to make if the scheme, or the part of the scheme, had not achieved that purpose.

(2) Subsection (1) does not authorise the making of an order prohibiting a person from doing anything that has already been done by the person before the order contemplated in subsection (1) is made.

Non-compliance

149.(1) Non-compliance with any –

- (a) formal, procedural or substantive requirement provided for in; or
- (b) condition imposed in terms of,

this Act, may result in the refusal or cancellation of an approval or conditional approval, as the case may be, granted under the provisions of this Act.

(2) Where any consequential damage is caused due to the non-compliance referred to in subsection (1), the person found to be liable for such damage must –

- (a) pay compensation to the landowner in an agreed amount or an amount determined by a competent court; and
- (b) restore the land to its former agricultural state.

Power to access, inspect and collect specimens for testing

150.(1) The Minister may, in writing, appoint any suitable person as an authorised person to perform the functions contemplated in subsections (3) to (9).

(2) An authorised person must be provided with a certificate of appointment signed by, or on behalf of, the Minister in which the nature of the authorised person's functions is described.

(3) An authorised person may, at any reasonable time and without prior notice, access or cross a property with the necessary persons, vehicles, equipment and material in order to carry out routine inspections of the use of agricultural land under any authorisation.

(4) When executing the inspections referred to in subsection (3), an authorised person may collect specimens reasonably necessary to determine the use of the agricultural land being inspected.

(5) An authorised person may, at any reasonable time and without prior notice, on the authority of a warrant, enter a property with the necessary persons, vehicles, equipment and material, and perform any action necessary to investigate whether –

- (a) this Act or any condition attached to any authorised land use by, or under, this Act is being contravened; or
- (b) any information supplied in connection with the use of land is accurate.

(6) A warrant referred to in subsection (5) must be issued by a judge or a magistrate who has jurisdiction in the area where the property in question is situated, and must only be issued if it appears from information obtained under oath that there are reasonable grounds to believe that –

- (a) this Act or any condition attached to any authorised land use by, or under, this Act is being contravened;
- (b) any information supplied in connection with the use of land is inaccurate; or
- (c) it is necessary to carry out an activity contemplated in subsection (3) and access to that property has been denied.

(7) An authorised person may enter a property without a warrant in the event that –

- (a) a warrant is likely to be issued if applied for; and
- (b) the delay involved in obtaining a warrant is likely to defeat the object of an inspection in terms of subsection (3).

(8) An authorised person entering a property in terms of this section must, at the request of any person on that property, identify himself or herself and present a certificate of appointment as contemplated in subsection (2).

(9) Notwithstanding any provisions contained in this section, an authorised person may not, under any circumstances, enter a dwelling without the consent of the occupier or without a warrant authorising entry.

Issuing of directives, orders, suspensions and instructions

151.(1) An authorised person, as contemplated in section 150(1) may issue a directive to a person whom he or she on reasonable grounds believes –

- (a) has failed to comply with –
 - (i) an obligation under this Act;
 - (ii) conditions imposed in terms of an approved application granted under this Act; or
 - (iii) national or provincial norms and standards contemplated in this Act; or
- (b) is engaging in an activity in a manner that is inconsistent with this Act.

(2) A directive contemplated in subsection (1) must set out –

- (a) the particulars of the person to whom the notice applies;
- (b) the provision, condition, norm or standard that has not been complied with;
- (c) details of the nature and extent of the non-compliance;
- (d) any steps that are required to be taken and the period within which those steps must be taken;
- (e) the procedure to be followed in lodging an objection to the directive; and
- (f) the applicable sanction that may be imposed in terms of this Act if those steps are not taken.

(3) A person who receives a directive must comply with that directive within the time period stated in the directive, unless the Minister suspends the operation of the directive in terms of subsection (7)(a).

(4) The authorised person may, on good cause shown, vary a directive and extend the period within which the person to whom the directive applies, must comply with the directive.

(5) A directive issued in terms of this section remains in force until –

- (a) it is set aside by the Minister, or a court upon an appeal or review of a decision concerning the directive; or
- (b) the authorised person issues a compliance certificate contemplated in subsection (8).

(6) Any person who receives a directive may, within 30 days or within such longer period as determined in the directive by the Director General, and in writing, make representations to

the Minister to –

- (a) object to the directive; and
- (b) suspend the operation of the directive pending finalisation of the objection.

(7) After considering any representations made in terms of subsection (6) and any other relevant information, the Minister –

- (a) may confirm, modify, suspend or cancel a directive or any part of a directive; and
- (b) must specify the period within which the person who received the directive must comply with any part of the directive that is confirmed or modified.

(8) The authorised person must issue a compliance certificate if the requirements of a directive issued in terms of this section have been satisfied.

(9) In the event that a person fails to comply with –

- (a) a directive without raising an objection; or
- (b) a confirmed or modified directive as contemplated in subsection (7),

the Minister may–

- (i) cancel any conditional approval concerned;
- (ii) issue a final notice of intention to expropriate the land concerned at less than market value; or
- (iii) refer the matter to the National Prosecuting Authority, if the failure to comply constitutes an offence in terms of this Act.

Taxation of underutilised or unused agricultural land

152.(1) The Minister, in consultation with the Minister responsible for finance, must develop taxation strategies with the object to –

- (a) discourage the conversion of agricultural land to other uses; and
- (b) encourage the optimal utilisation of agricultural land for agricultural purposes.

(2) The taxation strategies contemplated in subsection (1) must be prescribed in Regulations.

Payment of duties or fees

153. The Minister may prescribe duties or fees to be paid in respect of any public document drawn up for the purposes of this Act.

Validity of approvals

154.(1) All valid approvals pertaining to the use of land that were issued under the Subdivision of Agricultural Land Act, 1970 (Act No. 70 of 1970), remain valid under this Act and all conditions, if any, subject to which such approval was issued in terms of that Act, are deemed to be conditions imposed by the Minister in terms of Chapter 2 of this Act.

(2) A restrictive condition, in favour of the State, a Minister, a MEC, an officer, the general public or any person, in connection with the use of agricultural land or the manner in which such land may be dealt with, which has by virtue of a permit or similar document contemplated in subsection (1) been noted on the title deed of the land concerned, is for the purposes of the variation or cancellation of that condition, deemed to have been so noted in favour of the Minister.

Right to access court

155. Nothing in this Act must be interpreted to prejudice or derogate from the constitutional right of an interested party to gain access to a court of law: Provided that the procedure relating to the Agricultural Land Review Board contemplated in Part VI of Chapter 6 has first been complied with in the circumstances set out in said Chapter.

Administrative justice

156. The Department, every provincial Department and structure contemplated in this Act, must exercise its powers, perform its functions and carry out its duties in full compliance with the constitutional, national legislative and common law framework relating to administrative justice.

Promotion of access to information

157.(1) The Department, every provincial Department and every structure contemplated in this Act, must comply with the constitutional and national legislative framework that promotes access to information.

(2) The Minister must ensure that an electronic version of this Act and all Regulations made hereunder, and all notices in *Gazettes*, issued in terms of this Act, are –

- (a) maintained and updated on a monthly basis; and
- (b) made available to the public at large for their access and perusal, which may be downloaded electronically in digital format free of charge.

Offences

158.(1) A person is guilty of an offence if he or she wilfully and unlawfully –

- (a) commits an act or an omission which results in the –
 - (i) contravention of; or
 - (ii) failure to comply with,any provision of this Act;
- (b) aids and abets the commission of an act or an omission which results in the –
 - (i) contravention of; or
 - (ii) failure to comply with,any provision of this Act;
- (c) makes a false disclosure on any matter required in terms of this Act, including sections 9, 33, and 94(5); or
- (d) commits and act or an omission to avoid the application of this Act as contemplated in section 148.

(2) A person is guilty of an offence if he or she wilfully and unlawfully obstructs, hinders or opposes, or attempts to so obstruct, hinder or oppose, an authorised person from performing his or her functions contemplated in sections 150(3) to (9).

Penalties

159.(1) Any person convicted of any offence contemplated in section 158, may be sentenced to –

- (a) a fine or in the case of an offence referred to in section –
 - (i) 158(1)(a), to imprisonment for a period not exceeding 5 years;
 - (ii) 158(1)(b), to imprisonment for a period not exceeding 2 years;
 - (iii) 158(1)(c), to imprisonment for a period not exceeding 5 years; and
 - (iv) 158(2), to imprisonment for a period not exceeding 5 years; and
- (b) in the event of a serious or repeated transgression, both a fine and imprisonment.

(2) Any person convicted of the offence of avoidance contemplated in section 158(1)(d), may be sentenced –

- (a) on the first conviction, to a fine or imprisonment of 1 year, or both; or
- (b) in the event of repeated transgressions, to a fine or imprisonment amounting to double the amount or period, or both, as applicable, of the sentence on the previous conviction.

(3) A court may, in an appropriate case –

- (a) order that the land be restored to its previous agricultural state; or
- (b) in the absence of full disclosure of the information required in terms of this Act, order the person concerned to comply with the prescripts of this Act.

Monitoring, evaluation, assessment and reporting

160.(1) The Minister must, within a period not exceeding 6 months after the date of commencement of this Act, by notice in the *Gazette*, publish a monitoring, evaluation and assessment framework to enable the Director General of the Department to ensure that the PD-ALFA National Internal Technical Committee, the Agricultural Land National Advisory Commission and the Agricultural Land Review Board meet on a regular basis and –

- (a) execute their powers;
- (b) perform their functions; and
- (c) carry out their duties,

as contemplated in this Act, effectively and efficiently.

(2) The MEC of each province must, within a period not exceeding 6 months after the date of commencement of this Act, by notice in the Provincial *Gazette* concerned publish a monitoring, evaluation and assessment framework to enable the Head of Department of the respective provincial Departments to ensure that the PD-ALFA –

- (a) Provincial Internal Technical Committees; and
- (b) Municipal Internal Technical Committees,

in the respective provinces and municipalities, meet on a regular basis and –

- (i) execute their powers;
- (ii) perform their functions; and
- (iii) carry out their duties,

as contemplated in this Act, effectively and efficiently.

(3) The Director General of the Department and the Head of the respective provincial Departments must annually report in writing to the Minister or MECs concerned, as the case may be, on compliance with the monitoring, evaluation and assessment frameworks contemplated in subsections (1) and (2) during the year in question.

(4) The Minister and the MECs concerned must table the reports referred to in subsection (3) in Parliament within a period not exceeding 3 months after the end of the financial year concerned.

Delegation and assignment

161.(1) The Minister may, subject to the Constitution, relevant national legislation and such conditions as he or she may determine, in consultation with the MEC concerned, in writing, delegate any power or assign any duty conferred on him or her by or under this Act, other than the power to –

(a) publish a notice as contemplated in sections 16(4), 26, 40(4), 50, 53(6), 53(7), 54(4), 69(1), 71, 73(1)(a), 80(5), 81(1)(a), 94(2), 101, 141, 143, 144, 145(1), 146(1), 146(4), 160 and 165;

(b) establish an incentive scheme as contemplated in section 56(2);

(c) make regulations as contemplated in section 165; and

(d) make determinations as contemplated in sections 87(2), 89(1), 101 and 127,

to the MEC concerned.

(2) Such delegation or assignment, as the case may be, does not prevent the carrying out of the power or duty by the Minister.

(3) The Minister may at any time withdraw or amend, in writing, a delegation or assignment contemplated in subsection (1).

(4) The delegation of any power or the assignment of any duty does not –

(a) divest the Minister of the accountability concerning the exercising or carrying out of the delegated or assigned power or duty; or

(b) prevent a competent authority from exercising that power or duty.

(5) When a MEC exercises a delegated power or an assigned duty, the exercise of the power or the duty has the same force as if it had been exercised by the Minister.

(6) Any activity in the exercise of a delegated power or an assigned duty by a MEC within the scope of the delegation or assignment, remains in force and is not invalid by reason of –

- (a) the Minister electing, subsequent to the activity as contemplated in this item, to exercise that power; or
- (b) a subsequent amendment to, or withdrawal of, the delegation.

(7) All proceedings relating to any delegation or assignment contemplated in this Act must be in writing.

(8) The record of proceedings contemplated in subsection (7), must be available for inspection and copying by any person, at all reasonable times.

Inventory of delegations and assignments

162.(1) The Minister, and at provincial level, every MEC, must establish and maintain an inventory of all delegations and assignments done in accordance with this Act by the Minister.

(2) The inventories contemplated in this section must be available for inspection and copying by any person, at all reasonable times.

(3) The head of the Department and the head of every provincial Department must publish an updated version of the inventory contemplated in this section on the departmental website on the first day of every financial year.

Provincial intervention in functions of municipalities

163.(1) In the event that the metropolitan, district or local municipality concerned, as the case may be, lacks sufficient capacity to fulfil its functions as contemplated in this Act, the provincial Department concerned, in consultation with the municipal manager concerned, must execute such functions, after which the Municipal Council must still make a recommendation to the provincial Department as contemplated in this Act.

(2) In the event that no recommendation is forthcoming from the Municipal Council concerned after intervention by the provincial Department, the provincial Department must keep a record thereof and proceed without the recommendation by the municipality.

Transitional arrangements and savings

164.(1) Anything done or deemed to have been done prior to the date of commencement of this Act under any provision of a law repealed by section 168 and which may or must be done as contemplated in this Act, must be regarded as having been done in accordance with the corresponding provision of this Act.

(2) Any rights accrued or obligations incurred as contemplated in a law repealed by section 168, remain in force, as if that law has not been repealed: Provided that any renewal must be in accordance with the provisions of this Act.

Regulations

165.(1) The Minister must, by notice in the *Gazette*, make Regulations not inconsistent with this Act pertaining to –

- (a) the format of documentation for, and procedures relating to the preparation, submission and consideration of, applications for subdivision and rezoning of land, and other applications, contemplated in Parts I, II and V of Chapter 2;
- (b) the right to farm as contemplated in section 56(1);
- (c) type of, and conditions for, incentive schemes as contemplated in sections 56(3) and 56(4);
- (d) information required in facilitator's reports contemplated in section 138;
- (e) taxation strategies contemplated in section 152; and
- (f) duties and fees contemplated in section 153.

(2) The Minister may, by notice in the *Gazette*, make Regulations not inconsistent with this Act –

- (a) to facilitate the application of this Act;
- (b) pertaining to land use purposes; and
- (c) pertaining to any other matter that is reasonably necessary or expedient to achieve the objects of this Act.

(3) The Minister must, when making Regulations, consider, but is not bound by, any existing spatial demarcation and similar frameworks and plans.

(4) Any amendment to –

- (a) a Schedule to;

- (b) any Regulation in terms of;
- (c) any notice under; or
- (d) practice note in terms of,

this Act, and relating to State revenue or expenditure, must be made in consultation with the Minister responsible for finance.

(5) A Regulation or notice contemplated in this section must be tabled with the Legislature for notification within 14 days after –

- (a) publication in the *Gazette*, if the Legislature is in session; or
- (b) commencement of the next ensuing session, if the legislature is not in session.

(6) Any Regulation or notice contemplated in this section may provide that any person contravening such Regulation or failing to comply therewith, is guilty of an offence and liable on conviction to a fine, or to imprisonment not exceeding 6 months, or both.

Province-specific Regulations

166. The MEC may, by notice in the Provincial *Gazette*, make Regulations not inconsistent with this Act for any matter that may be prescribed as contemplated in this Act, and that –

- (a) may facilitate the application of this Act; or
- (b) is reasonably necessary or expedient to achieve the object of this Act,

in the province concerned.

Act binds State

167. This Act binds the State.

Repeal of laws

168. The laws mentioned in Schedule I are hereby repealed to the extent set out in the second column of the said Schedule.

Short title and commencement

169. This Act is called the Preservation and Development of Agricultural Land Framework Act, 2013, and comes into operation on a date fixed by proclamation in the *Gazette*.

SCHEDULE I
LAWS REPEALED
(Section 168)

<i>Number and year of law</i>	<i>Title</i>	<i>Extent of Repeal</i>
Act No. 70 of 1970	Subdivision of Agricultural Land Act, 1970	The whole