
GENERAL NOTICE

NOTICE 964 OF 2013

The Minister for Rural Development and Land Reform hereby publishes The Land Management Commission Bill, 2013 and Explanatory Memorandum, for public comment.

Members of the public are invited to submit written comments within 30 calendar days of the publication of this notice to the following address:

By post to: The Director-General, Rural Development and Land Reform

Attention: Mr Fanie Louw

Private Bag X833

PRETORIA

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By fax to: 012-324 2118

By e-mail to: LMC2013@ruraldevelopment.gov.za or
SLLouw@ruraldevelopment.gov.za.

Hand delivered to: 184 Jeff Masemola Street, Pretoria (Old Building).

Comments received after the closing date will not be considered.

REPUBLIC OF SOUTH AFRICA

THE LAND MANAGEMENT COMMISSION BILL

*(As introduced in the National Assembly (proposed section 75); explanatory
summary of Bill published in Government Gazette No. of) (The English text
is the official text of the Bill)*

(MINISTER FOR RURAL DEVELOPMENT AND LAND REFORM)

[B - 2013]

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BILL

To establish the Land Claims Commission; to provide for the composition; appointment; qualification and remuneration of members of the Land Management Commission; to provide for the functions and powers of the Land Management Commission; to provide for the delegation of powers by the Minister and the Land Management Commission; to provide for the submission of information of state land to the Land Management Commission; to provide for the adjudication of disputes in respect of which two or more title deeds have been issued in respect of the same land parcel; to provide for the administrative assistance to the Land Management Commission; to make provision for support to the Land Management Commission; and to provide for matters connected therewith.

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

ARRANGEMENT OF SECTIONS

CHAPTER 1

INTERPETATION AND OBJECTS OF ACT

1. Definitions
2. Objects of this Act

CHAPTER 2

LAND MANAGEMENT COMMISSION

3. Establishment of Land Management Commission
4. Composition of Commission
5. Qualification and vacation of office of members of Commission
6. Remuneration for members of Commission
7. Functions of Commission
8. Powers of Commission
9. Delegation of powers
10. Submission of information on state land

CHAPTER 3**DISPUTES IN RESPECT OF LAND**

- 11. Multiple ownership of land
- 12. Investigations by Commission
- 13. Findings of Commission

CHAPTER 4**ADMINISTRATIVE AND OTHER MATTERS**

- 14. Administrative assistance to Commission
- 15. Support to Commission
- 16. Offences and penalties
- 17. Regulations
- 18. Amendment of laws
- 19. Short title

CHAPTER 1
INTERPRETATION AND OBJECTS OF ACT

Definitions

1. (1) In this Act, unless the context indicates otherwise—

"Chief Executive Officer" means the Chief Executive Officer of the Commission appointed in terms of section 14;

"Commission" means the Land Management Commission established by section 3;

"department" means a department as defined in section 1 of the Public Service Act, 1994 (Proclamation No. 103 of 1994);

"Land Claims Court" means a Land Claims Court established by section 22 of the Restitution of Land Rights Act, 1994 (Act No. 22 of 1994);

"Minister" means the Minister for Rural Development and Land Reform;

"prescribe" means prescribe by regulation in terms of section 17; and

"state land" means land which is vested in the national government or relevant provincial government as defined in the Constitution of the Republic of South Africa, 1996 and any other land which after the commencement of the said section was acquired by an organ of state.

Objects of this Act

2. The objects of this Act are to establish the Land Management Commission to—

- (a) maintain and establish a government data base of all state land registered in the name of a department including any surveyed unregistered state land; and
- (b) adjudicate land ownership disputes in respect of which two or more title deeds have been issued on the same land parcel.

CHAPTER 2**LAND MANAGEMENT COMMISSION****Establishment of the Land Management Commission**

3. (1) There is hereby established a juristic person called the Land Management Commission.

(2) The Commission—

- (a) must perform the functions provided for in this Act; and
- (b) is accountable to the Minister.

Composition of Commission

4. (1) The Commission consists of a chairperson, deputy chairperson and four other members, appointed in writing by the Minister, and must be composed as follows:

(a) The chairperson of the Commission must be a retired judge of the High Court appointed by the President on the recommendation of the Minister in consultation with the Minister of Justice and Constitutional Development;

(b) the Chief Registrar of Deeds, appointed in terms of section 2 of the Deeds Registries Act, 1937 (Act No. 47 of 1937), and the Chief Surveyor-General appointed in terms of section 2 of the Land Survey Act, 1997 (Act No. 8 of 1997), who must be *ex officio* members of the Commission;

(c) three other persons appointed by the Minister one of whom must be appointed as deputy chairperson; and

(d) the Minister may, in addition to the members contemplated in in this subsection, designate one or more persons to serve as a member or members of the Commission.

(2) Members of the Commission, other than the Chairperson, are appointed on a part time basis, for a period of five years, which is renewable for a further period of not more than five years.

(3) Whenever it is necessary to appoint a member in terms of subsection (1)(c) and (d), the Minister must by notice, in two newspapers circulating nationally and in the *Gazette*, invite all interested persons to submit, within a

specified period of time and in a manner mentioned in the notice, written nominations of people to be appointed as members of the Commission .

(4) The nomination must be supported by—

- (a) personal details of the nominee;
- (b) particulars of qualifications, experience in land

administration, or related matters or skills which may make the nominee suitable for appointment; and

(c) any other information that may be mentioned in the notice referred to in subsection (3).

(5) The deputy chairperson of the Commission must act as chairperson in the absence of the chairperson of the Commission.

(6) (a) If a member of the Commission contemplated in subsections (1)(c), or (d) dies or vacates his or her office before the expiry of the period for which he or she was appointed, a suitable person must be appointed to fill the vacancy for the unexpired term for which that member had been appointed; and

(b) The provisions of subsections (3) and (4) apply to the filling of a vacancy in terms of paragraph (a).

(7) (a) Subject to the provisions of the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000), the Minister may remove a member of the Commission on the grounds of misconduct, incapacity, incompetence; or if the member no longer meets any of the requirements listed in section 5.

(b) A decision to remove a member of the Commission on the grounds of misconduct or incompetence must be based on a finding to that effect by an investigation committee appointed by the Minister; and

(c) The Minister may suspend a member of the Commission who is under investigation in terms of paragraph (b).

Qualification and vacation of office of member of Commission

5. (1) A member of the Commission must be a person who—

- (a) is a South African citizen or a holder of a permanent resident permit;
- (b) is ordinarily resident in the Republic of South Africa;
- (c) is not insolvent;
- (d) has not been declared by a court of law to be mentally incompetent or is detained in terms of the Mental Health Care Act, 2002 (Act No. 17 of 2002);
- (e) has not been convicted, whether in the Republic of South Africa or elsewhere, of an offence involving dishonesty and for which he or she was 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;
- (f) has not been removed from an office of trust on account of improper conduct;
- (g) is not a political office bearer at the national, provincial or municipal sphere of government; or
- (g) is a fit and proper person to be appointed.

(2) A member of the Commission must vacate his or her office, if such member—

- (a) no longer meets any of the requirements listed in subsection (1);
- (b) resigns by written notice to the Minister;
- (c) is incapable of performing his or her duties due to ill health;
- (d) has been removed from office in terms of section 4(7); or
- (e) has, without the leave of the Commission, been absent from three or more consecutive meetings of the Commission.

Remuneration of members of Commission

6. The members of the Commission who are not in the full-time service of the State, must be paid such remuneration and allowances, as the Minister with the concurrence of the Minister of Finance may determine, taking into account—

- (a) the roles, duties and responsibilities of the different members;
- (b) affordability in relation to the responsibilities of the different members;
- (c) whether a member has been appointed in a full time or part time capacity; and
- (d) the level of expertise and experience required for a member.

Functions of Commission

7. (1) The functions of the Commission are to—

- (a) establish and maintain a database of all state land which appear in any Deeds Registry as being registered in the name of any department including any surveyed unregistered state land;

- (b) adjudicate land ownership disputes in respect of which two or more title deeds have been issued on the same land parcel; and
- (c) advise the Minister and any other minister on ownership relating to state land and land in communal areas.

(2) The information that must be reflected in the database referred to in subsection (1)(a), must be as prescribed.

Powers of Commission

8. The Commission may do all that is necessary or expedient to perform its functions effectively in order to give effect to the objects of the Act, which includes the power to—

- (a) collect and disseminate relevant information;
- (b) determine the manner of convening meetings, the procedure at meetings, the quorum for meetings and the manner in which minutes of meetings must be kept;
- (c) obtain, by agreement the services of any person or institution, including an organ of state, for the performance of any specific act or function;
- (d) request the Minister to second a person in the employ of the Department of Rural Development and Land Reform to assist the Commission in the performance of any act or function; and
- (e) deal with matters that are incidental to the exercise of any of its powers.

Delegation of powers

9. (1) The Minister may delegate any of his or her powers in terms of this Act, excluding the power to appoint members of the Commission and the power make regulations, to the Director-General or any other suitably qualified official of the Department.

(2) The Commission may delegate any of its powers to a particular member of the Commission or to the Chief Executive Officer of the Commission.

(3) A delegation in terms of subsection (2) must be in writing and is subject to any conditions and directions the Commission may impose.

(4) The Minister or the Commission may confirm, vary or revoke any decision taken in consequence of a delegation or instruction.

Submission of information on state land

10. The accounting officer of a department that has state land registered in the name of that department, must submit to the Commission—

- (a) details of all state land registered in the name of that department within 90 days of the commencement of this Act;
- (b) details of all acquisitions and disposals of state land on dates determined by the Commission; and
- (c) any other information as may be prescribed.

CHAPTER 3**DISPUTES IN RESPECT OF LAND****Multiple ownership of land**

11. (1) If two or more persons claim ownership of land in respect of which a title deed has been issued, and both persons have registered title deeds in respect of that land, that person or persons may, notwithstanding the provisions of section 6 of the Deeds Registries Act, 1937 (Act No. 47 of 1937), lodge an application with the Commission to investigate and make a finding on the matter.

(2) The finding made by the Commission in terms of subsection (1) is subject to confirmation by the Land Claims Court.

(3) An application in terms of subsection (1) must be in writing and must contain—

- (a) identity and contact details of the two persons who have registered title deeds in respect of the land in question;
- (b) certified copies of the title deed or deeds in respect of the land;
- (c) sworn or solemnly affirmed declarations by the applicant setting out the details history and process in acquiring the title deed;
- (d) any further information in support of the application; and
- (e) any other information the Commission may deem necessary.

(3) If the application contemplated in subsection (1) is lodged by only one of the persons, who have registered title deeds in respect of the land in question, the Commission must provide the other person with copies of the

documents contemplated in subsection (2) and afford such person a reasonable opportunity to submit any documents he or she wishes the Commission to consider in deciding the matter.

Investigation by Commission

12. (1) The Commission may conduct an investigation in respect of an application made in terms of section 11.

(2) If the Commission decides to conduct an investigation, it may conduct the investigation itself, or designate one or more members of the Commission or other persons appointed as an investigation committee to conduct an investigation on its behalf.

(3) The investigation committee must consist of:

- (a) A person qualified in law and who has at least five years experience in the legal profession; and
- (b) two persons with specialised knowledge of matters concerning land ownership.

(4) The investigation committee must at the request of the Commission—

- (a) investigate a matter;
- (b) obtain evidence to determine the rightful owner of the land in question; and
- (c) report and make recommendations to the Commission.

(5) For purposes of an investigation the Commission or the investigation committee may—

- (a) by written notice summon a person, who in its opinion has information which is material to the investigation, to appear before the Commission or investigation committee to—
 - (i) give evidence; or
 - (ii) produce a document available to that person as specified in the summons;
- (b) administer an oath or affirmation to that person;
- (c) question that person, or have such person questioned by a person designated by the Commission or by the investigation committee; or
- (d) retain for a reasonable period a document produced in terms of paragraph (a)(ii).

(6) The Commission must issue to the investigation committee authorised under subsection (3) proof in writing of their authorisation.

(7) The investigation committee must, at the request of a person it is investigating under this section, produce proof issued in terms of subsection 6 to that person.

Findings of Commission

13. (1) The Commission must—
- (a) after the provisions of section 11 have been complied with, consider the application and, with due regard to the result of an investigation conducted in terms of section 12, make a finding on who the owner of the land is; and
 - (b) inform the parties who have a direct interest in the matter of its decision in terms of paragraph (a).

(2) A decision of the Commission is subject to confirmation by the Land Claims Court.

(3) A decision of the Commission may be taken on review or appeal only to the Land Claims Court.

CHAPTER 4

ADMINISTRATIVE AND OTHER MATTERS

Administrative assistance to Commission

14. (1) The Minister must, with the concurrence of the Commission and subject to the laws governing the public service, second staff from the Department of Rural Development and Land Reform as he or she considers necessary, to discharge the administrative work of the Commission.

(2) The Minister must, in terms of the laws governing the public service and with the approval of the Commission, appoint a person as the Chief Executive Officer of the Commission, who must—

- (a) exercise the powers and perform functions conferred upon or assigned to the Chief Executive Officer by this Act; and
- (b) subject to the directions of the Commission, perform such work as is incidental to the exercise of the Commission's powers or performance of its functions.

Support to Commission

15. (1) The Minister must, with the concurrence of the Commission, provide support to the Commission so as to enable the Commission to perform all the functions assigned to it, and such support—

(a) may include the provision of—

- (i) infrastructure;
- (ii) human resources as contemplated in section 14;
- (iii) skills development programmes; and
- (iv) administrative systems; and

(b) must include financial support.

(2) For the purposes of subsection (1)(b), the Commission must submit to the Minister, before a date determined by the Minister, annual estimates of expenditure for the next financial year.

Offences and penalties

16. (1) A person commits an offence if that person—

(a) fails to answer a question, or comply with a request or direction in terms of section 12;

(b) after having been summoned in terms of section 12 fails—

- (i) to be present at a meeting of the Commission at a time and place specified in the notice;
- (ii) to remain present until excused; or
- (iii) to produce a document specified in the notice.

(2) Any person convicted of an offence in terms of subsection (1), is liable to imprisonment for a period not exceeding 12 months or to a fine.

Regulations

17. (1) The Minister may, by notice in the *Gazette*, make regulations not inconsistent with this Act regarding—

- (a) any matter necessary to give effect to the administration or implementation of the Act; and
- (b) any matter that he or she is required or permitted to prescribe in terms of this Act.

(2) The Minister must, before making any regulation under subsection (1), publish a draft of the proposed regulation, or any repeal or amendment thereof, by notice in the *Gazette*, calling on interested persons to comment on the draft, in writing, within a period not less than 30 days from the date of publication of the notice.

(3) If the Minister alters the draft regulations as a result of any comment received, he or she needs not publish those alterations before making the regulations.

Amendment of laws

18. The laws mentioned in the Schedule are hereby amended to the extent indicated in the third column thereof.

Short title

19. This Act is called the Land Management Commission Act, 2013 and comes into operation on a date fixed by the President by proclamation in the *Gazette*.

SCHEDULE

LAWS AMENDED BY SECTION 19

No. and year of law	Short title	Extent of amendment
Act 22 of 1994	Restitution of Land Rights Act, 1994	1. Amendment of section 22: (a) by the insertion in subsection (1) after paragraph (cE) of the following paragraph: “(cF) to confirm all findings of the Land Management Commission and to determine a review or appeal of a decision of the Land Management Commission.

EXPLANATORY MEMORANDUM ON THE LAND MANAGEMENT COMMISSION BILL

1. BACKGROUND

- 1.1 The system of separate development inevitably required a multiplicity of institutions to survive until elections in 1994 when South Africa practically had 15 governments. These were the Republic of South Africa (central government); the four Provincial Administrations of the Cape of Good Hope, Natal, Orange Free State and Transvaal; the Republics of Transkei, Bophuthatswana, Venda and Ciskei (TBVC States); Self-Governing Territories (SGTs) of Gazankulu, Lebowa, KaNgwane, KwaNdebele, KwaZulu and QwaQwa. Each one of these governments owned immovable assets or land. Further the South African Native / Bantu / Development Trust (central government controlled entity) owned a substantial amount of land in these and other areas.
- 1.2 A considerable amount of land in the homelands and the former RSA territory was reserved for use by the South African Railways and Harbours (later TRANSNET), South African National Roads Agency Limited as well as the Post Office (South African Post Office SOC Ltd) and Telecommunication Services (Telkom SA Limited). The above entities have, through founding or legal succession legislation, sought to transfer the relevant land to themselves in freehold.
- 1.3 As political parties during pre-democracy negotiations sought to bring all the various forms of government into a single political system, they inevitably had to address and resolve the status of immovable assets that vested in such governments. A mechanism was consequently created in the Constitution to bring certainty regarding the ownership of immovable assets since the forms of governments that emerged after negotiations materially differed in form and in substance from those created by the apartheid system.

- 1.4 The mechanism referred to above is provided for in section 239 of the same Constitution (Interim Constitution) and is described as transitional arrangements for assets and liabilities.
- 1.5 Currently, whenever the State expresses a land need for its service delivery objectives, it is often reminded that it has a large property portfolio that it should start with. The true extent of this portfolio and its development potential remains unknown. There is therefore a need for an accurate record of all State land, constant research and analysis on the development potential of the State property portfolio so that assets that are in danger of degradation and total destruction can be timeously identified for corrective action.
- 1.6 In view of every state custodian having constructed their asset registers on the basis of electronic records, weaknesses exist in how custodians define, through policy, what they record in their assets registers hence possibilities exist for registered assets that no custodian is accounting for. There's consequently a need for that single entity that looks at every register land parcel for purposes of pulling together a universal inventory of State immovable assets. This responsibility can only be carried out if coupled with a compulsory disclosure regime on asset movements.
- 1.7 Many of the organizational and management problems confronting the existing management of state and publicly owned land, and the land reform programme reflect the legacy of land dispossession since 1913, subsequent discriminatory socio-economic policies and public investments, and the territorial segregation of society and political authority. Moreover, the democratic state inherited a fragmented state land administration and management system which assigns various land administration functions to the different spheres of government, which remain entrenched in the Constitution of the Republic of South Africa, 1996.

- 1.8 Possibly as a consequence of the existence of multiple approval authorities,. In some instances this affected persons who have passed mortgage bonds over their land parcels.
- 1.9 The challenge outlined above is at a larger scale and may therefore not be efficiently resolved with the existing common law mechanisms. The affected private parties, including government agencies, are generally innocent of circumstances they find themselves in hence there is no just reason to ask them to incur legal costs to reverse the situation. There's therefore a need for an empowering legislation that can create an administrative process for resolving the problem of double registration
- 1.10 In order to deal with the challenges outlined above, new legislation is required to address institutional weaknesses in state land management, and to address those instances where certain land parcels were registered in names of more than one owner.

2. STRUCTURE OF THE BILL

- 2.1 Chapter 1 contains the definitions of the key terms used in the Bill and the objects of the legislative proposals.
- 2.2 Chapter 2 provides for –
 - (a) the establishment of the LMC that must perform the functions provided for in the Bill. It also provides for the LMC to be accountable to the Minister;
 - (b) the composition of the LMC consisting of a chairperson, deputy chairperson and four other members;
 - (c) the members of the LMC will consist of a chairperson who must be a retired judge of the High Court, the Chief Registrar of Deeds, the Chief Surveyor-General and three other members appointed by the Minister. The Minister is

furthermore authorised to designate one or more additional persons to serve as members of the LMC;

- (d) the process to be followed for the appointment of members of the LMC;
- (e) disqualification as member of the C and vacation of office of members of the LMC;
- (f) remuneration of members of LMC;
- (g) the functions of the LMC, which are to -

- (i) establish and maintain a database of all state land registered in any deed registry and vested in the name of any department, including any surveyed unregistered state land;
- (ii) adjudicate land ownership disputes in respect of which two or more title deeds have been issued on the same land parcel; and
- (ii) advise the Minister and any other Minister on ownership relating to state land and land in communal areas.

- (h) the general powers of LMC, which are to -

- (i) collect and disseminate relevant information;
- (ii) determine the manner of convening meetings and the procedure at meetings, the quorum for meetings and the manner in which minutes must be kept;
- (iii) obtain the services of any person or institution, including an organ of state, for the performance of any specific act or function; and
- (iv) request the Minister to second a person to assist the LMC in the performance of any act or function.

- (i) the delegation by the LMC of its powers to member of the Commission or to a person in its employment.

- (j) submission of details of all state land registered in the name of a department, as well as details of all acquisitions and disposals of state land.

2.3 Chapter 3 deals with disputes on land and provides for –

- (a) the lodging of an application to the LMC to investigate and make a finding in cases where two or more persons claim ownership of land in respect of which a title deed has been issued;
- (b) the conduct of investigations by the LMC;
- (c) the LMC to make a finding on who the owner of the land is; and
- (d) the lodging of a review or appeal application to the High Court.

2.4 Chapter 4 deals with administrative and other matters and provides for the –

- (a) secondment of staff members of the Department to discharge the administrative work of the LMC;
 - (b) appointment of a Chief Executive Officer of the LMC;
 - (c) provision of support to the LMC so as to enable it to perform its functions;
 - (d) offences and penalties;
 - (e) Regulations;
 - (f) amendment of laws; and
 - (i) Short title.
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