

REPUBLIC OF SOUTH AFRICA

LAND AFFAIRS GENERAL AMENDMENT BILL

(As introduced in the National Assembly)

(MINISTER FOR AGRICULTURE AND LAND AFFAIRS)

[B 53—98]

REPUBLIEK VAN SUID-AFRIKA

ALGEMENE WYSIGINGSWETSONTWERP OP GRONDSAKE

(Soos ingedien in die Nasionale Vergadering)

(MINISTER VIR LANDBOU EN GRONDSAKE)

[W 53—98]

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[] Words in bold type in square brackets indicate omissions from existing enactments.

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

To amend the Upgrading of Land Tenure Rights Act, 1991, so as to make the Act applicable throughout the Republic; to amend the Restitution of Land Rights Act, 1994, so as to extend the cases in respect of which money may be granted for the development of land; to amend the Communal Property Associations Act, 1996, so as to make further provision for delegation; to amend the Interim Protection of Informal Land Rights Act, 1996, so as to authorise the Minister of Land Affairs to extend the application of the provisions of that Act; to amend the Land Survey Act, 1997, so as to rectify a difference between the English and Afrikaans texts; and to make provision for the division of survey related responsibilities between the Chief Surveyor-General and the Chief Director: Surveys and Mapping; to amend the Extension of Security of Tenure Act, 1997, so as to rectify differences between the English and Afrikaans texts; and to effect certain textual improvements; and to provide for matters connected therewith.

Insertion of section 25A in Act 112 of 1991

1. The Upgrading of Land Tenure Rights Act, 1991, is hereby amended by the insertion of the following section after section 25: 5

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

2. Section 42C of the Restitution of Land Rights Act, 1994, is hereby amended by the

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

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

Amendment of section 15 of Act 28 of 1996

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

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

Amendment of section 5 of Act 31 of 1996

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

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

Amendment of section 1 of Act 8 of 1997

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

- (a) by the insertion after the definition of “approve” of the following definition:

“ ‘Chief Director’ means the Chief Director: Surveys and Mapping, appointed in terms of section 2A;”; and
- (b) by the substitution for the definition of “trigonometrical station” of the following definition:

“ ‘trigonometrical station’ means any survey station, including a town survey mark, erected by or under direction of the Chief **[Surveyor-General]** Director as part of the national control survey system and for which he or she has published, or intends to publish, official co-ordinate values, and includes such other stations as may be prescribed.”.

Amendment of section 2 of Act 8 of 1997

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

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

Insertion of section 2A in Act 8 of 1997

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

“Appointment, powers and functions of Chief Director

2A. (1) The Minister shall, subject to section 50 and the Public Service Act, 1994 (Proclamation No. 103 of 1994), appoint an officer, who shall be

a person registered in terms of section 20 of the Professional and Technical Surveyors' Act, 1984 (Act No. 40 of 1984), to be styled the Chief Director: Surveys and Mapping.

(2) The Chief Director shall, subject to the directions of the Minister, exercise the powers and perform the duties conferred upon or assigned to the Chief Director by this Act or any other law.”. 5

Amendment of section 3 of Act 8 of 1997

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

(a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words: 10

“(1) The Chief Surveyor-General shall be in charge of such **[geodetic, topographical and]** cadastral surveying and land information services in the Republic as the Minister may direct and, subject to this Act, shall—”; and

(b) by the substitution for paragraph (b) of subsection (1) of the following paragraph: 15

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

Insertion of section 3A in Act 8 of 1997

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

“Duties of Chief Director

3A. (1) The Chief Director shall be in charge of such geodetic and topographical surveying and geospatial information services in the Republic as the Minister may direct and, subject to this Act, shall— 25

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

(b) conduct such geodetic, topographical and other relevant survey operations as may be required; 30

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

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

(e) prepare, compile and amend such maps and other cartographic representations of geospatial information as may be required; and 35

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

(2) Any person employed in the office of the Chief Director may, if authorised thereto by the Chief Director, perform any specified act or task which may be performed by the Chief Director in terms of this Act or any other law.”. 40

Amendment of section 6 of Act 8 of 1997

10. Section 6 of the Land Survey Act, 1997, is hereby amended by the substitution for subsection (2) of the following subsection: 45

“(2) Any land surveyor employed in a Surveyor-General's office may, if delegated thereto by the Surveyor-General concerned, perform any function which may be performed in terms of this Act or any other law by that Surveyor-General, and a Surveyor-General may delegate any power referred to in subsection (1)(c), (d), (e) and (f) to **[an officer]** any person employed in his or her office.” 50

Amendment of section 8 of Act 8 of 1997

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

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

Amendment of section 10 of Act 8 of 1997

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

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

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Amendment of section 42 of Act 8 of 1997

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

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

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Amendment of section 45 of Act 8 of 1997

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

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

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

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

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

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Amendment of section 50 of Act 8 of 1997

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

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

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

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

Amendment of section 1 of Act 62 of 1997

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

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

- “(a) a labour tenant in terms of the Land Reform (Labour Tenants) Act, 1996 (Act No. 3 of 1996); **[and]**”; and
- (b) by the substitution in the Afrikaans text for paragraph (b) of the definition of “okkupeerder” of the following paragraph:
- “(b) ’n persoon wat die betrokke grond hoofsaaklik vir industriële, myn-, kommersiële of kommersiële boerderydoeleindes gebruik of beoog om dit aldus te gebruik, **[met inbegrip van]** maar nie ook ’n persoon wat self die grond bewerk nie en geen persoon wat nie ’n lid van sy of haar familie is in diens het of neem nie; en”.

Amendment of section 4 of Act 62 of 1997

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

- (a) by the substitution in the Afrikaans text for subsection (3) of the following subsection:
- “(3) Indien die persone wat deur ’n ontwikkeling bevoordeel staan te word reeds geïdentifiseer is, word ’n subsidie nie toegeken nie tensy die Minister oortuig is dat die ontwikkeling vir die meerderheid van die betrokke volwassenes aanvaarbaar is.”;
- (b) by the substitution in the Afrikaans text for paragraph (a) of subsection (4) of the following paragraph:
- “(a) ’n provinsiale **[of plaaslike]** regering of ’n munisipaliteit of sodanige persoon of liggaam ’n ontwikkeling fasiliteer, implementeer of onderneem of ooreenkom met ’n derde party om dit te fasiliteer, te implementeer of te onderneem; of”; and
- (c) by the substitution for paragraph (b) of subsection (4) of the following paragraph:
- “(b) the subsidy is paid to the provincial **[or local]** government or a municipality or such person or body to enable it to facilitate, implement or undertake or contract with a third party for the facilitation, implementation or undertaking of a development.”.

Amendment of section 7 of Act 62 of 1997

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

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

Amendment of section 8 of Act 62 of 1997

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

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

Amendment of section 10 of Act 62 of 1997

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

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

- (a) geskikte alternatiewe akkommodasie nie binne 'n tydperk van nege maande na die datum van beëindiging van sy of haar verblyfreg ingevolge artikel 8 vir die okkupeerder beskikbaar is nie;
- (b) die eienaar of persoon in beheer die woning wat deur die okkupeerder bewoon is, verskaf het; en 5
- (c) die effektiewe voortsetting van enige onderneming van die eienaar of persoon in beheer ernstig benadeel sal word tensy die woning beskikbaar is vir okkupasie deur 'n ander persoon wat in diens is van, of in diens geneem staan te word deur, die eienaar of persoon in beheer, kan 'n hof 'n uitsettingsbevel ten opsigte van die okkupeerder en enige ander okkupeerder wat in dieselfde woning as hy of sy woon en wie se toestemming om daar te woon in die geheel van sy of haar verblyfreg afhanklik is, verleen indien dit regverdig en billik is om dit te doen, met inagneming van— 10
 - (i) die pogings wat die eienaar of persoon in beheer en die okkupeerder onderskeidelik aangewend het om geskikte alternatiewe akkommodasie vir die okkupeerder te bekom; en 15
 - (ii) die belange van die partye, met inbegrip van die vergelykende ontbering waaraan die eienaar of persoon in beheer, die okkupeerder en die oorblywende okkupeerders blootgestel sal word indien 'n uitsettingsbevel verleen word of nie verleen word nie.”. 20

Amendment of section 11 of Act 62 of 1997

22. Section 11 of the Extension of Security of Tenure Act, 1997, is hereby amended—
- (a) by the substitution for subsection (1) of the following subsection:
 - “(1) If it was an express, material and fair term of the consent granted to an occupier to reside on the land in question, that the consent would terminate upon a fixed or determinable date, a court may on termination of such consent by effluxion of time grant an order for eviction of any person who became an occupier of the land in question after 4 February 1997, if it is just and equitable to do so.”; 25
 - (b) by the substitution in the Afrikaans text for subsection (2) of the following subsection: 30
 - “(2) 'n Hof kan in omstandighede anders as dié in subartikel (1) beoog, 'n uitsettingsbevel verleen ten opsigte van enige persoon wat na 4 Februarie 1997 'n okkupeerder geword het indien **[hy]** die hof oortuig is dat dit regverdig en billik is om dit te doen.”; and 35
 - (c) by the substitution for paragraph (d) of subsection (3) of the following paragraph:
 - “(d) the reason for the proposed eviction; and”.

Amendment of section 15 of Act 62 of 1997

23. Section 15 of the Extension of Security of Tenure Act, 1997, is hereby amended 40
by the addition of the following subsection, the existing section becoming subsection (1):
- “(2) The owner or person in charge shall beforehand give reasonable notice of any application in terms of this section to the municipality in whose area of jurisdiction the land in question is situated, and to the head of the relevant provincial office of the Department of Land Affairs for his or her information.”. 45

Amendment of section 19 of Act 62 of 1997

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

Amendment of section 20 of Act 62 of 1997

25. Section 20 of the Extension of Security of Tenure Act, 1997, is hereby amended by the substitution for subsections (3) and (4) of the following subsections, respectively:
- “(3) If in any proceedings in a High Court at the date of the commencement of

this Act that **[court]** Court is required to interpret this Act, that Court shall stop the proceedings if no oral evidence has been led and refer the matter to the Land Claims Court.

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

- (a) to govern the procedure in the Land Claims Court in terms of this Act; and 5
- (b) to govern the procedure for the automatic review of orders for eviction in terms of section 19(3)."

Amendment of section 23 of Act 62 of 1997

26. Section 23 of the Extension of Security of Tenure Act, 1997, is hereby amended by the substitution in the Afrikaans text for paragraph (a) of subsection (5) of the 10 following paragraph:

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

Short title 15

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

MEMORANDUM ON THE OBJECTS OF THE LAND AFFAIRS GENERAL AMENDMENT BILL, 1998

1. The Land Affairs General Amendment Bill, 1998, contains proposed amendments to a number of laws administered by the Department of Land Affairs. The proposed amendments are mostly of a technical nature and do not justify separate amendment bills.

2. The proposed amendment to the Upgrading of Land Tenure Rights Act, 1991 (Act No. 112 of 1991), is aimed at making the Act applicable throughout the Republic. The Act was enacted before the commencement of the 1993 Constitution and thus does not apply throughout the national territory of the Republic. However, the provisions of the Act were made applicable in the former self-governing territories of Lebowa, Qwaqwa, Gazankulu and KaNgwane by means of a proclamation in terms of section 25 of the said Act, which section has since been repealed. In terms of provisions of the Act, *inter alia*, a deed of grant right or a right of leasehold issued in terms of the Regulations for the Administration and Control of Townships in Black Areas, 1962 (Proclamation No. R. 293 of 1962), may be converted into ownership. Since the Act does not apply throughout the Republic, the result is that the holders of deed of grant rights and rights of leasehold staying in certain areas may obtain ownership of their land whilst the holders of the same rights staying in other areas may not, *inter alia*, resulting in them not qualifying for housing subsidies. This is illogical and clause 1 of the Bill seeks to rectify this inconsistency. (The three sections that are excluded from this provision deal with matters relating to, *inter alia*, tribal land and will be addressed in the proposed Tenure Bill. That Bill is currently being drafted by the Department of Land Affairs.)

3. There are two ways in which claimants may receive land in terms of the Restitution of Land Rights Act, 1994 (Act No. 22 of 1994), namely through an order of the Land Claims Court and through an agreement between the Minister and the claimant in terms of section 42D of the Act. Section 42C of the Act makes provision for financial assistance for the development of land in cases where the land is the subject of an order of the Court. No such assistance exists in respect of land received through an agreement between the Minister and the claimant. Clause 2 of the Bill proposes to amend section 42C by removing this disparity. The amendment also seeks to authorise the Minister to make grants for the management of land or to facilitate the settlement of people on land.

4. In terms of section 15(1)(b) of the Communal Property Associations Act, 1996 (Act No. 28 of 1996), the Director-General of the Department of Land Affairs may authorise an officer in the Department or, with the approval of the Premier, in a provincial administration to perform any of his or her duties, except the duty referred to in section 6(2). Section 6(2) provides that the Director-General must designate an officer in the Department to assist a community with the drafting of a constitution. Since all administrative functions pertaining to the establishment of Communal Property Associations, except for the registration of the legal entity, are being dealt with by the provincial offices of the Department of Land Affairs, it seems logical that these offices be enabled to appoint persons to assist with the drafting of constitutions. The existing prohibition has proved to be time consuming and is not in line with the Department's policy of decentralisation. Clause 3 of the Bill proposes an amendment to section 15 of the Act which amendment will do away with the said prohibition.

5. The Interim Protection of Informal Land Rights Act, 1996 (Act No. 31 of 1996), was enacted to provide interim protection to holders of informal land rights, while long-term tenure reform measures are being debated and enacted. In terms of section 5(2) of that Act the Act lapses on 31 December 1997, but the Minister of Land Affairs may extend the operation for a period of 12 months. The Minister has extended the period, and the Act will now lapse on 31 December 1998. The Chief State Law Adviser has informed the Department that, according to the wording of section 5(2), it could be argued that the operation of the Act can only be extended once. If that is the case, the interim protection measures will lapse at the end of the year. Since the long-term reforms have not yet been finalised it is imperative to amend section 5(2) in order to expressly

authorise the Minister to extend the period in question when the need arises. Clause 4 of the Bill seeks to suitably amend section 5(2).

6. The Bill contains a number of proposed amendments of a technical nature to the Land Survey Act, 1997 (Act No. 8 of 1997). Apart from a single textual correction, these amendments are necessitated by the fact that the functions of the Chief Surveyor-General have been divided between the Chief Surveyor-General and the newly created post of Chief Director: Surveys and Mapping. The creation of the new post is part of the Department of Land Affairs' continued efforts to improve service delivery and is the result of an in-depth restructuring exercise. Towards further improving service delivery, the Surveyors-General are authorised to delegate more of their functions to non-professional staff members. Clauses 5 to 16 of the Bill give effect hereto.

7. In terms of the rules of interpretation of laws the text of an Act signed by the President has to be followed in the case of differences between the different texts. In the case of the Extension of Security of Tenure Act, 1997 (Act No. 62 of 1997), the Afrikaans text was signed. Unfortunately, some errors occurred in the final text agreed to by Parliament and in the Act printed in the Government Gazette, especially in the Afrikaans text, resulting in differences between the two texts. For purposes of legal certainty it is important to rectify those errors immediately. The proposed amendments are thus mostly of a technical nature. Two other amendments are also proposed, namely the amendment of sections 15 and 19:

- (a) Section 9(2) of the Act deals with the ordinary procedure for evictions. It requires the owner or person in charge of land to give notice of an intended eviction to the municipality and the provincial office of the Department of Land Affairs. The reason for this is to enable government to facilitate the settlement of disputes, to give the municipality warning that there may be people in its area who are about to become homeless, and to enable evictions to be monitored effectively. Section 15 of the Act creates a procedure for urgent evictions in appropriate cases. However, as a result of an oversight it does not require that notice of these evictions must also be given to the municipality and the Department of Land Affairs. The proposed amendment to section 15 brings the urgent procedure into line with the ordinary procedure in this regard.
- (b) Section 19(3) of the Act provides for an automatic review by the Land Claims Court of all eviction orders made by a magistrate's court. This applies to proceedings instituted on or before 31 December 1999. In terms of the proviso to section 19(3) the Land Claims Court may not set aside such orders unless it gives notice to all the parties, including the evicted occupiers, and allow them to make submissions to the Court. When a magistrate's court orders eviction and the eviction is carried out, the occupiers are dispersed. It is often not practically possible for the Land Claims Court to give notice that the Court is considering setting aside the eviction order. This makes it practically impossible for the Court to carry out its review functions. Section 19(3) furthermore does not create a procedure to allow the respective parties to respond to each other's submissions. It is suggested that these matters be dealt with in terms of the rules of the Land Claims Court, and not through provisions in the Act. The review procedure can become complex and it can more effectively be regulated by rules of Court than by legislative provision. (Clauses 17 to 26 of the Bill address the amendments contemplated in paragraph 7.)

DEPARTMENTS/BODIES/PERSONS CONSULTED

8. Most of the proposed amendments are of a technical nature and only concerns the Department of Land Affairs. However, in respect of the proposed amendments to the Land Survey Act, 1997, the Chief Surveyor-General, and in respect of the proposed amendment regarding the review functions of the Land Claims Court, the Department of Justice were consulted.

PARLIAMENTARY PROCEDURE

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