

REPUBLIC OF SOUTH AFRICA

LAND AFFAIRS GENERAL AMENDMENT BILL

*(As introduced in the National Assembly as a section 75 Bill; explanatory summary of Bill
published in Government Gazette No. 22664 of 7 September 2001)
(The English text is the official text of the Bill)*

(MINISTER FOR AGRICULTURE AND LAND AFFAIRS)

[B 71—2001]

REPUBLIEK VAN SUID-AFRIKA

ALGEMENE WYSIGINGSWETSONTWERP OP GRONDSAKE

*(Soos ingedien in die Nasionale Vergadering as 'n artikel 75-wetsontwerp; verduidelikende
opsomming van Wetsontwerp in Staatskoerant No. 22664 van 7 September 2001
gepubliseer) (Die Afrikaanse teks is die amptelike vertaling van die Wetsontwerp)*

(MINISTER VIR LANDBOU EN GRONDSAKE)

[W 71—2001]

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GENERAL EXPLANATORY NOTE:

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

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

BILL

To amend the Land Reform (Labour Tenants) Act, 1996, by extending the definition of “applicant” to provide for associates to apply for the acquisition of rights in land and servitudes; to reduce the age at which a labour tenant who refused or failed to provide labour to an owner or lessee, may be evicted; to make provision that a court satisfies itself that adequate arrangements have been made for the reinstatement of a person who was evicted, if a final order is not granted; to provide for offences; to make provision that associates also may apply for advances and subsidies, granted in terms of that Act, for the acquisition of land or rights to land; to amend the Extension of Security of Tenure Act, 1997, by the deletion of the reference to “labour tenant” in the definition of “occupier”; to insert a definition for “established practice” and to grant rights to occupiers to bury deceased family members residing on the land on which the occupier is residing, on that land; to grant a right to the family members of an occupier at the occupier’s death, to bury that occupier on the land he or she was residing at; and to provide for matters connected therewith.

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

Amendment of section 1 of Act 3 of 1996, as substituted by section 32 of Act 63 of 1997

1. Section 1 of the Land Reform (Labour Tenants) Act, 1996, is hereby amended by the substitution for paragraph (a) of the definition of “applicant” of the following paragraph: 5

“(a) a labour tenant, an associate or his or her successor who has lodged an application in terms of section 17(1); and”.

Amendment of section 9 of Act 3 of 1996

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2. Section 9 of the Land Reform (Labour Tenants) Act, 1996, is hereby amended by the substitution for paragraph (a) of subsection (1) of the following paragraph:

“(a) has attained the age of **[65]** 60 years, or as a result of disability is unable personally to provide labour to the owner or lessee; and”.

Amendment of section 15 of Act 3 of 1996

3. Section 15 of the Land Reform (Labour Tenants) Act, 1996, is hereby amended by the addition of the following paragraph:

“(d) adequate arrangements have been made for the reinstatement of any person evicted, if the final order is not granted.”.

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Insertion of section 15A in Act 3 of 1996

4. The Land Reform (Labour Tenants) Act, 1996, is hereby amended by the insertion of the following section after section 15:

“Offences

15A. (1) No person shall evict an occupier except on the authority of an order of a competent court. 10

(2) No person shall wilfully obstruct or interfere with an official in the employ of the State or a mediator in the performance of his or her duties under this Act.

(3) Any person who contravenes a provision of subsection (1) or (2) shall be guilty of an offence and liable on conviction to a fine, or to imprisonment for a period not exceeding two years, or to both a fine and such imprisonment. 15

(4) Any person whose rights or interests have been prejudiced by a contravention of subsection (1) shall have the right to institute a private prosecution of the alleged offender. 20

(5) The provisions of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), shall apply to a private prosecution in terms of this Act: Provided that if—

(a) the person prosecuting privately does so through a person entitled to practise as an advocate or an attorney in the Republic; 25

(b) the person prosecuting privately has given written notice to the prosecutor with jurisdiction that he or she intends to do so; and

(c) the prosecutor has not, within 14 days of receipt of such notice, stated in writing that he or she intends to prosecute the alleged offence, then— 30

(i) the person prosecuting privately shall not be required to produce a certificate issued by the Director of Public Prosecutions with jurisdiction in respect of the area of the court concerned, stating that he or she has refused to prosecute the accused; 35

(ii) the person prosecuting privately shall not be required to provide security for such action;

(iii) the accused shall be entitled to an order for costs against the person prosecuting privately, if—

(aa) the charge against the accused is dismissed or the accused is acquitted or a decision in favour of the accused is given on appeal; and 40

(bb) the court finds that such prosecution was unfounded or vexatious; and

(iv) the Director of Public Prosecutions contemplated in paragraph (i) shall be barred from prosecuting except with the leave of the court concerned.”. 45

Amendment of section 27 of Act 3 of 1996

5. Section 27 of the Land Reform (Labour Tenants) Act, 1996, is hereby amended by the substitution for subsection (3) of the following subsection: 50

“(3) Advances or subsidies referred to in section 26 may also, subject to such conditions as the Minister may determine, be applied to the acquisition of land or rights in land by former labour tenants, associates and persons who have been

required to leave a farm in accordance with the provisions of section 9(2): Provided that such applications were lodged prior to 31 March 2001.”.

Amendment of section 1 of Act 62 of 1997

6. Section 1(1) of the Extension of Security of Tenure Act, 1997, is hereby amended—
- (a) by the deletion of paragraph (a) of the definition of “occupier”; and 5
 - (b) by the insertion of the following definition after the definition of “employee”:
“ ‘established practice’ means a practice in terms of which the owner or person in charge or his or her predecessor in title routinely gave permission to people residing on the land to bury deceased members of their family on that land in accordance with their religion or cultural belief;”. 10

Amendment of section 6 of Act 62 of 1997

7. Section 6 of the Extension of Security of Tenure Act, 1997, is hereby amended—
- (a) by the insertion of the following paragraph after paragraph (d) in subsection (2): 15
“(dA) to bury a deceased member of his or her family who, at the time of that person’s death, was residing on the land on which the occupier is residing, in accordance with their religion or cultural belief, if an established practice in respect of the land exists;”; 20
 and
 - (b) by the addition of the following subsection:
“(5) The family members of an occupier contemplated in section 8(4) of this Act shall on his or her death have a right to bury that occupier on the land on which he or she was residing at the time of his or her death, in accordance with their religion or cultural belief, subject to the conditions that may be imposed by the owner or person in charge.”. 25

Short title

8. This Act shall be called the Land Affairs General Amendment Act, 2001.

MEMORANDUM ON THE OBJECTS OF THE LAND AFFAIRS GENERAL AMENDMENT BILL

1. Introduction

1.1 The Land Affairs General Amendment Bill contains amendments to two Acts administered by the Department of Land Affairs. The Acts affected by the proposed amendments are the Land Reform (Labour Tenants) Act, 1996 (Act No. 3 of 1996), and the Extension of Security of Tenure Act, 1997 (Act No. 62 of 1997).

1.2 Due to the nature of the proposed amendments, separate Bills are not justified. It is common practice to embody the amendments, as proposed, in one Bill.

2. Objects of Bill

2.1 The objects of the proposed Bill are to effect certain amendments to the two Acts referred to in paragraph 1.1.

2.2 In terms of section 16 of the Land Reform (Labour Tenants) Act, 1996 (Act No. 3 of 1996), hereinafter referred to as “the LTA”, labour tenants have the right to purchase the land which they occupy and use. Advances and subsidies for that purpose are granted by the Minister for Agriculture and Land Affairs. The LTA does not explicitly provide for the granting of advances and subsidies to a labour tenant’s associate. When labour tenants and associates apply for approval of a project, funds are released for associates in terms of section 4 of the Extension of Security of Tenure Act, 1997 (Act No. 62 of 1997), hereinafter referred to as “the ESTA”, and grants to labour tenants in terms of section 27 of the LTA. This tedious process causes delays in finalising labour tenants projects. To ensure that funds for the same projects, which provide for secure tenure for members of the same family, are released in a uniform manner, amendments to sections 1 and 27 of the LTA are recommended. Clauses 1 and 5 of the Bill address this problem by the inclusion of “associates”.

2.3 Section 9(1) of the LTA protects a labour tenant who has attained the age of 65 years, from eviction, while section 8(4) of the ESTA provides for the age of 60 years. Clause 2 of the Bill proposes that the age of 65 years be reduced to 60 years in order to bring the provisions of the LTA in line with the ESTA. This will ensure that people who have lived on land for many years and who are pensioners, cannot be evicted and suffer hardship due to the eviction. In fact, they would have the right to secure tenure for the remainder of their lives, provided they do not commit a breach in terms of the provisions of the ESTA.

2.4 Section 15 of both the LTA and the ESTA provides for owners of land to seek relief by means of urgent evictions under certain exceptional circumstances. There are four requirements under the ESTA while the LTA only contains three requirements. In order to align those requirements, it is proposed that the requirement that the owner makes arrangements for the reinstatement of the evicted person, if a final order for eviction is not granted by the court, be inserted in the LTA. Clause 3 of the Bill provides for this.

2.5 In order to fully align the eviction procedures in the LTA and the ESTA, and to eliminate dual eviction procedures for people who have the same rights in land, it is imperative that the offences provided for in section 23 of the ESTA, also be embodied in the LTA to make illegal evictions uniform. Clause 4 of the Bill provides for this insertion.

2.6 In terms of the definition of “occupier” in section 1 of the ESTA, a labour tenant is excluded from being an occupier for the purposes of the Act. The deletion of paragraph (a), which excludes a labour tenant from the definition of “occupier”, now gives recognition to labour tenants as a class of farm dwellers. The insertion of the definition of “established practice” now also establishes a right to people residing on land to bury deceased members of the family on that land. Such a practice becomes established if the owner or person in charge of land has routinely given permission for such burials (clause 6). The provisions of clause 7 are inserted in the ESTA to regulate

the burial of an occupier's deceased family member who was residing on the land on which the occupier is residing, at the time of that member's death, and the burial of the occupier by his or her family members.

2.7 Clause 8 contains the short title of the Bill.

3. Consultation

Although the proposed amendments of the LTA and the ESTA are of a technical nature, the Department consulted with the following instances:

- (a) The Agricultural Union of South Africa; and
- (b) the National Land Committee.

4. Parliamentary procedure

The State Law Advisers and the Department of Land Affairs are of the opinion that the Bill must be dealt with in accordance with 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.