

REPUBLIC OF SOUTH AFRICA

AGRICULTURAL RESEARCH COUNCIL AMENDMENT 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]

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 Agricultural Research Act, 1990, so as to provide for a new Title of the Act; so as to provide for a new Long Title; to provide for the amendment of the Arrangement of Sections; to provide for the amendment of definitions; to provide for the insertion of new definitions; to provide for public trusteeship of the national agricultural research system; to provide for the objects of the ARC; to provide for the performance of functions, powers and duties of the ARC subject to the provisions of the Public Finance Management Act, 1999 and the Intellectual Property Rights from Publicly Financed Research and Development Act, 2008; to provide for the performance of functions, powers and duties of the ARC in accordance with chapter 3 of the Constitution and the intergovernmental relations framework policy and national legislation; to provide for the development of a national research framework and system and determination of an ARC research portfolio; to provide for the determination of policy and objectives of the ARC in consultation with the Minister and Department; to provide for the appointment of members of the ARC by virtue of specific knowledge and experience; to provide for the representation of provincial and national research interests and forums; to provide for considerations in the designation, appointment and removal of the chairperson and vice-chairperson of the Board; to provide for duties and powers of the chairperson of the Board; to provide for the powers and functions of the CEO of the Board; to provide that the acceptance of funding from international donors and sponsors must be pre-approved by the Minister; to provide for meetings between the ARC and the Department; to provide for compliance with financial legislation and the Intellectual Property Rights from Publicly Financed Research and Development Act, 2008; to provide for the publication of national instructions and directives; to provide for the development of a framework for delegations and assignments; to provide that sufficient funding and resources must be ensured for all assignments; to provide for the assignment of the enforcement of reporting frameworks and regulations; to provide for the legal effect of delegation of power; to provide that delegation proceedings must be in writing and for the recordkeeping of delegations; to promote for the promotion of access to information; to provide that the Act, Regulations and Notices must be maintained and copies be made available; to provide for monitoring, evaluation and assessment and reporting; to provide for performance auditing; to provide for public participation and coordination; and to provide for matters connected therewith.

Amendment of the Title of Act 86 of 1990

1. The Title of Act 86 of 1990 (hereinafter referred to as the “principal Act”) is hereby amended by the substitution for the Title of the following:

“Agricultural Research Council Act, 2013[1990 (Act No. 86 of 1990)]”.

Amendment of the Long Title of Act 86 of 1990

2. The Long Title of the principal Act is hereby amended by the substitution for the Long Title of the following:

“To establish a juristic person [to deal] with focus on agricultural research; to provide for definitions; to provide for public trusteeship of the national agricultural research system; to provide for the establishment of the ARC; to provide for the objects of the ARC; to provide for the functions, powers and duties of ARC; to provide for a research strategy and portfolio; to provide for the exercising of powers of the ARC outside the Republic; to provide for the administration of the Act; to provide for the transfer of functions and powers; to provide for control over, and management of affairs of the ARC; to provide for the Constitution of the ARC; to provide for the remuneration, allowances and conditions of service of members of the ARC; to provide for the appointment of and period of office of the chairperson, vice-chairperson and members of the ARC; to provide for meeting arrangements of the ARC; to provide for the validity of decisions and acts of the ARC; to provide for an Executive Management Committee; to provide for committees of the ARC; to provide for a CEO and staff of the ARC and their conditions of service; to provide for financing of the ARC; to provide for an accounting officer; to provide for accounting, auditing and annual reports; to provide for recovery of loss and damages; to provide for discoveries, inventions and improvements by employees of ARC and other persons; to provide for the publication of regulations and national instructions and directives by the Minister; to provide for delegations and assignments and the legal effect thereof; to provide for recording of delegations; to provide for transfer of assets and funds to the ARC; to provide for strikes; to provide for the promotion of access to information; to provide for the Act, Regulations and Notices to be maintained and copies to be made available; to provide for monitoring, evaluation and assessment and reporting and performance auditing; to provide for public participation and coordination; to provide for administrative justice; to provide for the repeal of laws; and to provide for matters related thereto.”

Amendment of the Arrangement of Sections of Act 86 of 1990

3. The Arrangement of Sections of the principal Act is hereby amended by the substitution for the Arrangement of Sections of the following:

- “1. Definitions
- 1A. Public trusteeship of national agricultural research system
2. Establishment of Agricultural Research Council
3. Objects of ARC
4. Functions, powers and duties of ARC
- 4A. National research framework and system and ARC research portfolio
5. Exercise of powers of ARC outside Republic
6. Administration of Act
7. Transfer of functions and powers
8. Control over, and management of affairs of, ARC
9. Constitution of **[Council]Board**
10. Remuneration, allowances and conditions of service of members of **[Council]Board**
11. Chairperson and vice-chairperson of **[Council]Board**
12. Period of office of members of **[Council]Board**
13. Meetings of **[Council]Board**
14. Meetings of **[Council]Board** deemed to be duly held
15. Validity of decisions and acts of **[Council]Board**
16. Executive Management Committee
17. Committees of **[Council]Board**
18. **[President]CEO** of ARC
19. Staff of ARC and conditions of service
20. Financing of ARC
21. Accounting officer
22. Accounting, auditing and annual report
23. Recovery of loss and damage
24. Discoveries, inventions and improvements by employees of ARC and other persons
25. Regulations
- 25A. National instructions and directives
26. Delegations and Assignments
- 26A. Assignment between spheres of government
- 26B. Legal effect of delegation of power
- 26C. Delegation proceedings in writing
- 26D. Record of delegations
27. Transfer of assets and funds to ARC
28. Strikes
- 28A. Promotion of access to information
- 28B. Act, Regulations and Notices to be maintained and copies to be made available
- 28C. Monitoring, evaluation and assessment and reporting
- 28D. Performance auditing
- 28E. Public participation and coordination
- 28F. Administrative justice
29. Repeal of laws
30. Short title and commencement

Schedule Acts repealed”.

Substitution for “chairman” in Act 86 of 1990

4. The principal Act is hereby amended by the substitution for the word “chairman” wherever it occurs in sections 11, 13, 17, 18 and 26, for the word “chairperson”.

Substitution for “council” in Act 86 of 1990

5. The principal Act is hereby amended by the substitution for the word “Council” wherever it occurs in sections 8 to 19, 22, 25 and 26, for the word “Board”.

Substitution for “president” in Act 86 of 1990

6. The principal Act is hereby amended by the substitution for the word “president” wherever it occurs in sections 9, 12, 16 to 21, and 26, for the word “CEO”.

Substitution for “State President” in Act 86 of 1990

7. The principal Act is hereby amended by the substitution for the word “State President” wherever it occurs in sections 6, 7 and 30, for the word “President”.

Amendment of section 1 of Act 86 of 1990

8. Section 1 of the principal Act is hereby amended by—

(a) the insertion after the definition of “agriculture” of the following definition:

“**agricultural extension**” means the application of scientific research and new knowledge to agricultural practices through farmer education; the field of extension encompasses a wider range of communication and learning activities organised for rural people by professionals from different disciplines, including agriculture, agricultural marketing, health, and business studies;

(b) the insertion after the definition of “agricultural extension” of the following definition:

“**ARC**” means the Agricultural Research Council established in section 2 of this Act;

(c) the insertion after the definition of “ARC” of the following definition:

“**assignment**” means the 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;

(d) by the insertion after the definition of “assignment” of the following:

“**Board**” means the Board referred to in section 8(1) of this Act;

(e) by the deletion of the definitions for “chairman” and “Council”;

(f) the insertion after the definition of “Board” of the following definitions:

- “**CEO**” means the Chief Executive Officer appointed in terms of section 18;
“**chairperson**” means the person appointed in terms of section 11(1) as the chairperson of the ARC;
“**Constitution**” means the Constitution of the Republic of South Africa, 1996;”;
- (g) the insertion after the definition of “Constitution” of the following definition:
“**Department**” means the national Department responsible for agriculture, and “departmental” has a corresponding meaning;”;
- (h) the insertion after the definition of “invention” of the following definition:
“**IPR Act**” means the Intellectual Property Rights from Publicly Financed Research and Development Act, 2008 (Act No. 51 of 2008);
“**ITCAFF**” means the Inter-governmental Technical Committee on Agriculture, Forestry and Fisheries, being a structure of government which—
(a) is an economic, marketing and cooperatives working group; and
(b) serves as a liaison platform between national and provincial departments on agricultural economic matters,
and includes its substructures;”;
- (i) the substitution for the definition of “Minister” of the following definition:
“**Minister**” means, subject to the provisions of section 6, the Minister **[of]**responsible for Agriculture, Forestry and Fisheries;”;
- (j) the insertion after the definition of “Minister” of the following definitions:
“**NARF**” means the National Agricultural Research Foundation and refers to the broad stakeholder body consisting of representatives of the entire National Agricultural Research System which was established in terms of the Memorandum of Understanding for the National Agricultural Research Forum of January 2004;
“**PFMA**” means the Public Finance Management Act, 1999 (Act No. 1 of 1999) and includes the Treasury Regulations issued under section 76 of the PFMA;”;
- (k) the deletion of the definition for “president”; and
- (l) the insertion after the definition of “research” of the following definition:
“**science**” means—
(a) a system of acquiring knowledge based on scientific method; and
(b) the **[organized]**organised body of knowledge gained through such research.”.

Insertion of section 1A in Act 86 of 1990

9. The following section is hereby inserted after section 1 of the principal Act:

“Public trusteeship of national agricultural research system

1A. The Minister is the public trustee of the national agricultural research system and must ensure that this system is protected, used, developed, conserved, managed and controlled in a sustainable and equitable manner, for the benefit of all persons and in accordance with the constitutional mandate.”.

Substitution of section 3 of Act 86 of 1990

10. The following section is hereby substituted for section 3 of the principal Act:

“Objects of ARC

3. The objects of the ARC are to contribute to the improvement of the quality of life of the people of the Republic with due regard to the protection of the environment, by promoting and developing the agriculture industry—

(a) as specifically or in broad outline determined by the Minister—

(i) by generating and transferring technology, and

(ii) through initiating, undertaking, fostering, co-ordinating, promoting, encouraging and causing to be undertaken, independent strategic and applied scientific research, and

(b) by performing such other functions as may be assigned to the ARC by or under this Act.”.

Amendment of section 4 of Act 86 of 1990

11. Section 4 of the principal Act is hereby amended—

(a) by the substitution for subparagraph (iii) of paragraph (m) of subsection (1) of the following:

“(iii) on its own, or in association with any person, establish a company for the purpose of developing or exploiting in any manner any invention or technological expertise, and for this purpose acquire an interest in or control over a company or statutory body [**referred to in section 1 of the Exchequer Act, 1975 (Act No. 66 of 1975)**]subject to the provisions of section 54(2) of the Public Finance Management Act, (Act No. 1 of 1999);”;

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

“(o) as an end-product of research, development and technology transfer undertaken or caused to be undertaken by the ARC, and subject to the conditions determined in section 11 of the IPR Act with respect to publicly funded research—

(i) produce and sell reports, computer programmes and other intellectual property;

(ii) manufacture and sell instruments, equipment and similar items;

(iii) produce, process and sell products;

(iv) conduct or commission market research and sell the results thereof; and

(v) provide, against payment, services not directly related to research;”;

(c) by the insertion after paragraph (a) of subsection (1), of the following:

“(aA)(i) establish, disestablish and merge units and entities which—

(aa) will be responsible for practical and technical research areas; and

(bb) are required to support the functional areas of the ARC; and

(ii) determine the relationship between—

(aa) such entities and units; and

(bb) the ARC and such units and entities;”; and

(d) by the insertion after subsection (2) of the following:

“4(3) The ARC, being an organ of state as contemplated in section 239 of the Constitution, 1996, must exercise its powers and perform its functions in accordance with the principles of co-operative government and

intergovernmental relations with other national, provincial and local spheres of government and all other organs of state within each sphere, as provided for in—

(a) Chapter 3 of the Constitution, 1996, by—

(i) preserving the peace, national unity and the indivisibility of the Republic;

(ii) securing the well-being of the people of the Republic;

(iii) providing effective, transparent, accountable and coherent government for the Republic as a whole;

(iv) being loyal to the Constitution, 1996, the Republic and its people;

(v) respecting the constitutional status, institutions, powers and functions of government in the other spheres;

(vi) not assuming any power or function except those conferred on them in terms of the Constitution, 1996;

(vii) exercising their powers and perform their functions in a manner that does not encroach on the geographical, functional or institutional integrity of government in another sphere; and

(viii) co-operating with one another in mutual trust and good faith by—

(aa) fostering friendly relations;

(bb) assisting and supporting one another;

(cc) informing one another of, and consulting one another on, matters of common interest;

(dd) co-ordinating their actions and legislation with one another;

(ee) adhering to agreed procedures; and

(ff) avoiding legal proceedings against one another; and

(b) the intergovernmental relations framework policy and national legislation.”

Insertion of section 4A in Act 86 of 1990

12. The following section is hereby inserted after section 4 of the principal Act:

“National research framework and system and ARC research portfolio

4A.(1) The Minister must—

(a) within six months after the commencement of this Act and after consultation with the ARC and stakeholder organisations—

(i) develop a national research framework and system; and

(ii) determine a research portfolio for the ARC; and

(b) bi-annually review such research framework and portfolio.

(2) When developing the national research framework and determining the research portfolio contemplated in subsection (1), the Minister must consider existing strategies and memoranda of understanding of the ARC.

(3) The national research framework and system and research portfolio contemplated in this section must be published by notice in the *Gazette*.”

Amendment of section 5 of Act 86 of 1990

13. Section 5 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection:

“(3) Notwithstanding anything to the contrary in this Act contained, research, development and technology transfer **[shall]must** under subsection (1) be undertaken—

(a) within the mandate of the line function department and deal with all functional areas that have been allocated to the Department by the President; and

(b) on such conditions as may be agreed upon between the ARC and the person, ~~[(including any institution, government or administration,)]~~ on whose behalf the research, development and technology transfer are to be undertaken, and as may be approved by the Minister.”.

Amendment of section 8 of Act 86 of 1990

14. Section 8 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) The affairs of the ARC **[shall]must** be managed by a **[council]Board**, which **[shall]**, subject to the provisions of this Act, determine the policy and objectives of the ARC, in consultation with the Minister and the relevant policy departments within the Department, and exercise control generally over the performance of its functions, the exercise of its powers and the execution of its duties.”.

Amendment of section 9 of Act 86 of 1990

15. Section 9 of the principal Act is hereby amended by the substitution for subsections (2) and (3) of the following subsections:

“(2) The members referred to in subsection (1)(a) and (b) must—

(a) be appointed by virtue of their knowledge and experience of—

(i) agriculture;

(ii) commercial industries, commodities and marketing;

(iii) corporate governance;

(iv) education and training;

(v) environment;

(vi) financial management;

(vii) food security;

(viii) law;

(ix) research, development and technology transfer in the field of agriculture;

(x) rural development; and

(xi) smallholder development;

Provided that a balance must be maintained between—

(aa) crops and livestock; and

(bb) natural resource management; and

(b) represent national and provincial agricultural research interests and forums, including ITCAFF and NARF, or their equivalents.

(3)(a) Whenever a member of the Council has to be appointed, the Minister **[shall] must**—

(i) by notice in the *Gazette* and other appropriate media, invite persons, stakeholders, the Premier of each province and the Portfolio and Select Committees of Parliament responsible for agricultural affairs to submit to the Minister, within the period mentioned in the notice, the names of persons who comply with the criteria referred to in paragraph (a) of subsection (2);

(ii) establish a selection committee consisting of at least three persons, designate a chairperson for the committee and submit to the committee all the nominations received.

(b) The selection committee **[shall] must**, within **[30] 90** days after the signing of the letters of appointment of its members, from the nominations submitted to it by the Minister, compile a short-list of eligible candidates who have knowledge and experience of any matter referred to in subsection (2), and submit it to the Minister.

(c) The Minister **[shall] must** appoint such number of members as is required from the short-list of candidates recommended by the selection committee.

(d) Within 30 days after making any appointment in terms of paragraph (c), the Minister **[shall] must** inform the Portfolio and Select Committees of Parliament responsible for agricultural affairs in writing of the appointment made.”.

Amendment of section 10 of Act 86 of 1990

16. Section 10 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) The conditions of service of a member of the Council who is not an officer as defined in section 1(1) of the Public Service Act, **[1984 (Act No. 111 of 1984)]1994** (Proclamation No. 103 of 1994), **[shall]must** be determined by the Minister with the concurrence of the Minister of Finance.”.

Amendment of section 11 of Act 86 of 1990

17. Section 11 of the principal Act is hereby amended by the substitution for the section of the following:

“**11.(1)** The Minister **[shall]must**, after **[consultation with the Council, appoint a person as chairman and may in his discretion rescind such appointment at any time: Provided that in the case of the first Council such chairman shall be appointed only by the Minister]**consideration of the recommendations made by the selection committee contemplated in section 9(3) of this Act, designate in writing the chairperson of the ARC.

(2)~~[(a)]~~ The Minister ~~[shall]~~must, after consultation with the chairman, appoint in writing one of the members of the ~~[Council]~~ARC as vice-chairman, to ~~[who shall]~~ act as chairman whenever the chairman is for any reason absent, or unable to act as chairman, or whenever he or she is requested thereto by the chairman.

[(b) The Minister may in his discretion at any time rescind an appointment made under paragraph (a).]

(3) Whenever both the chairman and the vice-chairman of the ~~[Council]~~ARC are for any reason absent or unable to act, the ~~[Council]~~ARC ~~[shall]~~must, from among its number, elect a person to act as chairman.

(4) The Minister may at any time remove a chairperson or vice-chairperson of the ARC from office if such member is incompetent to fulfil his or her duties or is guilty of misconduct.

Insertion of section 11A in Act 86 of 1990

18. The following section is hereby inserted after section 11 in the principal Act:

“Duties and powers of the chairperson

11A. In addition to the duties devolving upon the chairperson in terms of this Act and such duties as the ARC assigns to him, it is the duty of the chairperson, after consultation with the CEO, to formulate policy proposals for consideration by the ARC, and from time to time to submit reports to the ARC on the progress of the work authorised by the ARC.”

Amendment of section 12 of Act 86 of 1990

19. Section 12 of the principal Act is hereby amended by the—

(a) substitution for subsection (5) of the following subsection:

“(5) If, at the expiration of the period for which a member was appointed, no new appointment has been made in his or her stead, that member ~~[shall]~~must remain in office until such an appointment is made~~[:~~ **Provided that a member shall so remain in office for a period not exceeding three months]**.”; and

(b) addition of the following subsection after subsection (5):

“(6) Notwithstanding the provisions of this section—

(a) a member may serve a maximum of two terms, after which such member will not be eligible for re-appointment; and

(b) a third of all existing members, including the Vice-Chairperson, must, by operation of law, be carried over to the next Board for the purposes of ensuring continuity and the retention and sharing of institutional memory and knowledge.”

Amendment of section 17 of Act 86 of 1990

20. Section 17 of the principal Act is hereby amended by the substitution for paragraph (b) of subsection (2) by the following paragraph:

“(b) A committee referred to in paragraph (a) [~~shall~~must] consist of one or more members, appointed by the [~~president~~Chairperson] in his or her discretion from—

- (i) employees of the ARC[,];
- (ii) other experts; and
- (iii) persons nominated by interested authorities,

by virtue of their specialist knowledge or experience with regard to any aspect of the functions of the ARC.”.

Amendment of section 18 of Act 86 of 1990

21. Section 18 of the principal Act is hereby amended by the insertion after subsection (4) of the following subsections:

“(5) The CEO manages and control the work authorised by the ARC and is responsible to the ARC for the carrying out of their duties by the officials and employees of the ARC.

(6) The CEO and his or her management must meet at least twice annually with the Director General and his or her management to—

(a) review the—

(i) national research framework and system; and

(ii) research portfolio of the ARC; and

(b) report to the Department on—

(i) the performance of the ARC; and

(ii) opportunities for development.

(7)(a) The CEO and the Director General must draft a shareholder agreement on behalf of the ARC and the Department, respectively, aligned with the Medium Term Expenditure Framework as determined by the National Treasury.

(b) The draft shareholder agreement contemplated in paragraph (a) must be updated on an annual basis.

(c) The draft shareholder agreement contemplated in paragraph (a) and all annual updates contemplated in paragraph (b) come into operation and are legally binding only after the written approval by both the Minister and the Chairperson, thereof.”.

Amendment of section 19 of Act 86 of 1990

22. Section 19 of the principal Act is hereby amended by the substitution for paragraph (c) of subsection (1) for the following paragraph:

“(c) The ARC may, in addition to the employees referred to in paragraph (a), be assisted in the performance of its functions by [~~officers~~officials] and employees in the public service who have been placed at the disposal of the ARC in terms of [~~section 14 (3)(a)] of the Public Service Act, [1984 (Act No. 111 of 1984)]1994 (Proclamation No. 103 of 1994).”.~~

Amendment of section 20 of Act 86 of 1990

23. Section 20 of the principal Act is hereby amended:

(a) by the substitution for subsection (1) of the following:

“(1)The **[funds of the]**ARC **[shall]must be funded from[consists of]**—

- (a) money appropriated by Parliament to finance the functions of the ARC;
- (b) money paid to the ARC in terms of subsection (4);
- (c) money received by virtue of contracts and the functions performed by the ARC;
- (d) money borrowed by the ARC in terms of section 4(1)(m)(ii);
- (e) fees or royalties referred to in section 24(2) which are paid to the ARC;
- (f) the proceeds from the sale of shares, and from dividends on shares held by the ARC, in any company referred to in section 4(1)(m)(iii);
- (g) donations or contributions which the ARC may receive from any person, institution, government, administration or any other source;
- (h) interest on investments by the ARC~~]; and~~
- (i) funding from international donors or sponsors: Provided that the Minister must, in writing, pre-approve the acceptance or conditional acceptance of such donations or sponsorships.”;

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

“(2)(a) The ARC **[shall]must [utilize]utilise** its funds for defraying expenses in connection with the performance of its functions and the exercise of its powers.

(b) The ARC **[shall]must [utilize]utilise** any money contemplated in subsection (1)(a) in accordance with the statement of its estimated income and expenditure referred to in subsection (3), as approved by the Minister: Provided that, subject to the provisions of paragraph (a), the ARC may **[utilize]utilise** any amount or portion of any amount required to be so **[utilized]utilised** for a particular purpose in connection with a specified matter, for any other purpose in connection with that matter: Provided further that the ARC may, with the concurrence of the Minister, **[utilize]utilise** any balance of the money remaining at the end of the financial year in question, for any expenses in connection with the exercise of its powers or the performance of its functions.

(c) The ARC **[shall]must [utilize]utilise** any donations or contributions contemplated in subsection(1)(g) in accordance with the conditions, if any, imposed by the donor or contributor concerned.”; and

(c) by the substitution for subsection (3) of the following:

“(3)(a)The ARC—

- (i) **[shall]must** in each financial year, at a time determined by the Minister, submit a statement of its estimated income and expenditure during the following financial year; and
- (ii) may in any financial year at any time submit supplementary statements of its estimated expenditure for that financial year, to the Minister for his approval, granted with the concurrence of the Minister of Finance.

(b)The ARC **[shall]must** not incur any expenditure which exceeds the total amount approved under paragraph (a).”.

Amendment of section 22 of Act 86 of 1990

24. Section 22 of the principal Act is hereby amended:

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

“(2) The keeping, compilation and publication of annual financial statements as well as an audited report of a company referred to in section 4(1)(m)(iii)

[shall] must be done in accordance with the provisions of—

(a) the Companies Act, 1973 (Act No. 61 of 1973), [as amended 2004] read with section 224 and Schedule 5 of the Companies Act, 2008 (Act No. 71 of 2008);

(b) the Companies Act, 2008 (Act No. 71 of 2008);

(c) the PFMA; and

(d) other applicable financial regulatory legislation:

Provided that the Auditor-General must—

(i) [shall, notwithstanding the provisions of Chapter X of the Companies Act, 1973,] audit the annual financial statements of such a company; and [shall]

(ii) submit, within a period not exceeding six months after the end of the financial year concerned, copies of such annual statements to the Minister.”;

(b) by the substitution for subsection (3) of the following:

“(3) The Board must—

(a) furnish the Minister with such information as he or she may call for from time to time in connection with the activities and financial position of the ARC;

(b) annually, in accordance with the PFMA and through the Director General, submit to the Minister, within 6 months after the end of each financial year, a report on the affairs and functions of the ARC and which must include at least the following:

(i) an audited balance sheet, including notes thereon or a document annexed thereto providing information required by this Act;

(ii) an audited income statement, including any similar financial statement where such form is appropriate, and including any notes thereon or a document annexed thereto providing information required by this Act;

(iii) a statement of cash flow information;

(iv) the audited annual financial reports contemplated in subsection (2)(d)(ii) above;

(v) an analysis of its performance against the strategic plan of the ARC developed in the manner prescribed by National Treasury; and

(vi) include particulars as determined in section 55 read with Schedule 3 of the PFMA; and

(c) meet at least twice in every financial year with the Minister for the purposes of enabling the Minister to carry out his or her oversight role in respect of the governance, management and activities of the ARC.”;

(c) by the substitution for subsection (5) of the following:

“(5) A report referred to in subsection (3) [shall] must be printed in [both official languages] three official languages as determined in the departmental language

policy contemplated in section 4(2)(b) of the Use of Official Languages Act, 2012 (Act No. 12 of 2012);” and

(d) by the substitution for subsection (6) of the following:

“(6) The Minister must table the report referred to in subsection (3)(b) in Parliament within a period not exceeding six months after the end of the financial year concerned.”.

Amendment of section 24 of Act 86 of 1990

25. Section 24 of the principal Act is hereby amended:

(a) by the substitution for subsection (1) of the following:

“(1) Subject to the provisions of subsections (5) and (6) and the provisions of the IPR Act, the rights in all discoveries and inventions and in all improvements in respect of processes, apparatus and machinery made by—

(a) employees of the ARC or officers and employees in the public service who have been placed at the disposal of the ARC under section 19(1)(c) of this Act;

(b) persons assisting the ARC with any investigation or research; or

(c) persons to whom bursaries or grants-in-aid have been granted by the ARC,

[shall]vests in the ARC.”;

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

“(2)The ARC may make the discoveries, inventions and improvements referred to in subsection (1) available for use in the public interest subject to—

(a) the provisions in terms of the IPR Act, in the case of publicly financed research; and;

(b) such conditions and the payment of such fees or royalties as the ARC may determine.”;

(c) by the substitution for subsection (3) of the following:

“(3) If the rights in any discovery, invention or improvement are vested in the ARC in terms of subsection (1), the **[Council]Board** may award to the person responsible for the discovery, invention or improvement such bonus as it deems fit, or make provision for financial participation by such person in the profits derived from the discovery, invention or improvement to such extent as the Minister may determine with the concurrence of the Minister of Finance, except in the case of publicly financed research where the provisions in terms of the section 15(1) of the IPR Act applies.” and

(d) by the substitution for subsection (5) of the following:

“(5) Unless it is otherwise agreed, the rights in respect of any discovery, invention or improvement made by the ARC in the course of an investigation for or on behalf of another person, institution, government or administration **[shall] vests** in the ARC, with the exception of government and publicly funded research in which instance the provisions of the IPR Act applies.”.

Amendment of section 25 of Act 86 of 1990

26. Section 25 of the principal Act is hereby amended by the addition to subsection (1) of the following paragraph:

“(g) promote the objects and facilitate the application of the Act.”

Insertion of section 25A in Act 86 of 1990

27. The following section is hereby inserted after section 25 in the principal Act:

“National instructions and directives

25A. The Minister may, after consultation with the ARC, publish by notice in the *Gazette*, national instructions and directives regarding all matters which are reasonably necessary or expedient to be provided for to promote the objects and facilitate the application of the Act.”

Substitution of heading of section 26 of Act 86 of 1990

28. The following heading is hereby substituted for the heading of section 26:

“Delegations and assignments”.

Amendment of section 26 of Act 86 of 1990

29. Section 26 of the principal Act is hereby amended by the addition of the following subsections:

(5) The Minister—

(a) must, in consultation the chairperson of the ARC, within a period not exceeding six months after the commencement of this Act, develop a delegation framework for delegations and assignments contemplated in this Act;

(b) may, in accordance with the PFMA, assign the enforcement of reporting frameworks in terms of this Act to—

(i) the Director General; or

(ii) any official employed in terms of the Public Service Act, 1994, to whom the Director General has delegated any or all of his or her functions.

(6) Any assignment of a matter contemplated this Act must be effected in accordance with the assignment and delegation framework of the Department.

(7) Any person or entity effecting an assignment contemplated in this Act must—

(a) ensure the availability of sufficient funding and other resources required for the full and effective implementation of such assignment; and

(b) monitor and review its implementation.”

Insertion of section 26A, 26B and 26C in Act 86 of 1990

30. The following sections are hereby inserted in the principal Act after section 26:

“Legal effect of delegation of power

26A.(1) The delegation of a power does not—

(a) prevent a competent authority from exercising that power, subject to subsection (2); and

(b) relieve the competent authority from accountability for the exercise of the power.

(2) When the person to whom a power has been delegated exercises that power, the exercise of the power has the same force as if it had been exercised by the competent authority.

(3) Any activity in the exercise of a power by a person to whom that power has been delegated, which was carried out within the scope of the delegation, remains in force and is not invalid by reason—

(a) of the competent authority electing subsequent to the activity contemplated in this subsection, to exercise that power; or

(b) a subsequent amendment to, or withdrawal of, the delegation.

Delegation proceedings in writing

26B.(1) All proceedings relating to any delegation contemplated in this Act, must be in writing.

(2) The record of proceedings contemplated in subsection (1), must be available for inspection and copying by any person, at all reasonable times.

Record of delegations

26C.(1) The Minister must establish and maintain an inventory of all assignments and delegations, including all sub-delegations, done in accordance with this Act.

(2) The inventory contemplated in subsection (1), must be available for inspection and copying by any person, at all reasonable times.

(3) The CEO must annually and at least 30 calendar days before expiry of the financial year, by notice in the *Government Gazette*, publish an updated record of all assignments and delegations contemplated and done in accordance with this Act.

(4) The Director General must publish an updated version of the inventory contemplated in this section on the departmental website concerned, on the first day of every financial year.”.

Insertion of sections 28A, 28B, 28C, 28D, 28E and 28F in Act 86 of 1990

31. The following section is hereby inserted in the principal Act after section 28:

“Promotion of access to information

28A. The ARC must comply with the constitutional and national legislative framework that promotes access to information.

Act, Regulations and Notices to be maintained and copies to be made available

28B. The ARC must ensure that an electronic version of this Act and all Regulations made under, and all notices 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.

Monitoring, evaluation and assessment and reporting

28C. The Minister in consultation with the ARC must, by notice in the *Gazette* and within six months after commencement of this Act, publish a framework—

- (a) providing for the minimum norms and standards in respect of the procedures for, and the frequency of, monitoring, evaluation and assessment of all matters relating to the ARC; and
- (b) establishing the necessary mechanisms, processes, procedures and indicators, to report on, monitor, evaluate, assess, and determine the impact of the exercise of powers, the performance of functions and the execution of duties in terms of this Act and any other law by the ARC.

Performance auditing

28D.(1) All programmes and projects executed, grants allocated, funds allocated, delegations or assignments effected, service level agreements or public private partnerships entered into, or any other administrative action performed in terms of this Act, are subject to monitoring, evaluation, impact assessment and the submission of a written report by the ARC to the Minister.

(2) On receipt of the written report referred to in subsection (1), the—

- (a) Minister must inform the ARC of any inadequate performance; and
- (b) CEO must ensure that the steps deemed appropriate by the Minister are taken to address such performance.

Public participation and coordination

28E. The ARC must implement systems to provide for, and facilitate, consultation and inclusive participation of civil society, communities, individuals, and organs of state.

Administrative justice

28F. The ARC 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.”.

Short title and commencement

32. This Act is called the Agricultural Research Council Amendment Act, 2013, and comes into operation on a date fixed by proclamation in the *Gazette*.