

Memo on the Objects of the Conservation of Agricultural Resources Amendment Bill, 2013

1. Purpose, Background

(Focus of current legislation, shortcomings identified by DAFF, need for new/amendment legislation, focus of new/amendment legislation, etc).

- 1.1 The Minister for DAFF made an instruction in 2009 for the review of all agricultural legislations. The University of Pretoria through Prof. Nic Olivier was appointed in March 2012 to facilitate the review process under supervision of DAFF Legal services. The revision process is restricted to the review and amendment of the critical administrative areas of CARA legislation with no complete review of the legislation and or development of policy and regulations.
- 1.2 The Minister for Agriculture, Forestry and Fisheries is the custodian of the natural agricultural resources. DAFF and Provincial Departments of Agriculture perform a concurrent function in the administration of CARA in ensuring protection and sustainable use of natural agricultural resources.
- 1.3 The Directorate Land Use and Soil Management (D: LUSM) is responsible for the administration of the Conservation of Agricultural Resources Act, Act 43 of 1983 (CARA). The purpose of this act is to ensure the long term sustainable use and conservation of natural agricultural resources.
- 1.4 The country is experiencing high degradation of natural agricultural resources resulting from overstocking, illegal mining, illegal veld burning, mismanagement of agricultural land causing soil erosion, Invasion of agricultural land by alien plants, etc. impacting negatively on the economy and livelihoods.
- 1.5 The Conservation of Agricultural Resources Act, 1983 (Act No. 43 of 1983) (CARA) has the objects to provide for the conservation of the natural agricultural resources of the Republic by the maintenance of the production potential of land, by the combating and prevention of erosion and weakening or destruction of the water sources, and by the protection of the vegetation and the combating of weeds and invader plants and is the only legislation promoting the sustainable use of natural agricultural resources at farm level.
- 1.6 A consultation workshop with relevant stakeholders was held in October 2012 and a series of meetings whereby inputs were gathered on shortcomings of CARA implementation and were incorporated into a detailed technical report that was submitted to UP through legal services.
- 1.7 Due to significant changes that were proposed from gaps identified, a rewriting of the Act and Policy Development through the use of a service provider was recommended. However the stakeholders requested for an amendment of two critical areas as enabling for effective administration of the Act between national and Provincial Departments which included the amendment of: Soil Conservation Committees, Assignment and Delegation of function from National to Provinces plus the Agricultural Resources Review Board.
- 1.8 DAFF, in gathering inputs from various stakeholders applied various mechanisms which includes the following:-
 - Circulation of templates through email in September 2012
 - Consultation of NRM Letsema Working Group technical team dated August 2012, 11th February 2013
 - Stakeholder workshop organised in October 2012
 - Consultation of stakeholders during the Task Team meetings of CARA and Natural Resources Inventories and Assessments (NRIA) on 15th March 2013 and
 - Circulation of draft amended BILL to stakeholders through email in March 2013.
- 1.9 Consolidated technical inputs have been submitted to UP through the DAFF Legal Services for incorporation into the document that will be published for public consultation.

2. Detailed Analysis of provisions of Bill

2.1 Clause 1: Amendment of Long Title of the Conservation of Agricultural Resources Amendment Act 43 of 1983

This clause substitutes the Long Title to include the core matters in the amended Act.

2.2 Clause 2: Amendment of Section 1 of Act 43 of 1983

This clause amends section 1 to include the definitions of “assignment”, “area” and “region”.

2.3 Clause 3: Insertion of Section 1A in Act 43 of 1983

This clause inserts section 1A to provide for public trusteeship of nation’s agricultural resources. This clause determines that the national government, through the Minister responsible for agriculture, is the public trustee of the nation’s agricultural resources and that these resources must be preserved, accessed and used in an equitable and sustainable.

2.4 Clause 4: Amendment of Section 15 of Act 43 of 1983

This clause substitutes section 15 to provide for the MEC to establish a conservation committee in respect of every metropolitan and district municipality within a framework determined by the Minister. This clause also provides for the MEC to appoint members of the conservation committee concerned in consultation with MECs.

2.5 Clause 5: Amendment of Section 16 of Act 43 of 1983

This clause substitutes section 16 to provide for the MEC to establish a provincial conservation committee in respect of every province within a framework as determined by the Minister. This clause also provides for the MEC to appoint members to the provincial conservation committee.

2.6 Clause 6: Amendment of Section 17 of Act 43 of 1983

This clause substitutes section 17 to provide for the Minister to establish a national conservation committee. This clause also provides for the Minister to appoint members of the national conservation committee.

2.7 Clause 7: Amendment of Section 21 of Act 43 of 1983

This clause repeals section 21.

2.8 Clause 8: Insertion of Section 21A in Act 43 of 1983

This clause inserts section 21A to provide for the establishment and composition of the Agricultural Resources Review Board, which is an independent body. This clause also provides that the Minister appoints the chairperson, deputy chairperson and members. This clause further provides that the chairperson may, if the nature of a particular review application requires specialist expertise, co-opt not more than two persons who have expert knowledge and relevant experience: Provided that such person or persons are appointed in a non-voting capacity in order to advise the Board in respect of the review application concerned. This clause further provides for the employment conditions and remuneration of the members of the Agricultural Resources Review Board.

2.9 Clause 9: Insertion of Section 21B in Act 43 of 1983

This clause inserts section 21B to provide the operational framework for the Agricultural Resources Review Board.

2.10 Clause 10: Insertion of Section 21C in Act 43 of 1983

This clause inserts section 21C to provide that any person or entity with a direct interest in a decision of the Minister or his or her delegate to submit an application in the manner provided for, to the Agricultural Resources Review Board for review.

2.11 Clause 11: Insertion of Section 21D in Act 43 of 1983

This clause inserts section 21B to provide that decisions of the Agricultural Resources Review Board are final.

2.12 Clause 12: Insertion of Section 21E in Act 43 of 1983

This clause inserts clause 21E to provide for appeals from decisions of the Agricultural Resources Review Board to a High Court, in the manner provided for.

2.13 Clause 13: Amendment of Section 26 of Act 43 of 1983

This clause repeals section 26.

2.14 Clause 14: Insertion of Section 26A in Act 43 of 1983

This clause inserts section 26A to provide the assignment of administration of agriculture to Members of the Executive Council, in the manner provided for.

2.15 Clause 15: Insertion of Section 26B of Act 43 of 1983

This clause inserts section 26B to provide for the delegation of powers and assignment of duties by the Minister to Members of the Executive Councils, in the manner provided for. This clause also provides that such delegation or assignment does not prevent the Minister from carrying out that duty and does not divest the Minister from accountability concerning the carrying out of the assigned duty.

2.16 Clause 16: Insertion of Section 26C in Act 43 of 1983

This clause inserts section 26C to provide for the establishment and maintenance of an inventory of assignments and delegations. This clause also creates the obligation to publish an updated version of the inventory on the departmental website on the first day of every financial year.

2.17 Clause 17: Insertion of Section 26D in Act 43 of 1983

This clause inserts section 26D to provide for the development and publication of the framework for assignment and delegation between the spheres of government.

2.18 Clause 18: Insertion of Section 26E in Act 43 of 1983

This clause inserts section 26E to provide for the legal effect of delegation of power.

2.19 Clause 19: Insertion of Section 26F in Act 43 of 1983

This clause inserts section 26F to determine that all proceedings relating to any delegation in this Act must be in writing.

2.20 Clause 20: Insertion of Section 30A in Act 43 of 1983

This clause inserts clause 30A to provide for the publication of a framework for the monitoring, evaluation and assessment of all matters relating to agriculture. This clause also provides for the establishing of mechanisms, processes, procedures and indicators to report on and monitor 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 entities in the public and private agricultural sector.

2.21 Clause 21: Insertion of Section 30B in Act 43 of 1983

This clause inserts section 30B to provide for performance auditing of, and reporting on 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.

2.22 Clause 22: Insertion of Section 30C in Act 43 of 1983

This clause inserts section 30C to provide for the establishment of mechanisms, processes and procedures to monitor provincial governments in respect of their performance of the agricultural function national monitoring of provinces. This clause further provides for the Minister to take steps in the event of a report of the non-delivery or insufficient delivery of agricultural services by a provincial government. This clause further provides that the Minister may determine that specified provincial agricultural services must be performed by the national Department or an agricultural service provider appointed by the national Department, in the manner provided for.

2.23 Clause 23: Insertion of Section 30D in Act 43 of 1983

This clause inserts section 30D to provide for the applicability of the intergovernmental relations framework policy and legislation in respect of agricultural matters between the national Department and every Member of the Executive Council responsible for agriculture.

2.24 Clause 24: Insertion of Section 30E in Act 43 of 1983

This clause inserts section 30E to provide that the Minister may establish by notice in the Gazette, one or more governance and other structures to assist in the promotion of the objects and the realisation of the provisions of this Act.

2.25 Clause 25: Insertion of Section 30F in Act 43 of 1983

This clause inserts section 30F to provide for the categories of the structures contemplated in clause 23.

2.26 Clause 26: Insertion of Section 30G in Act 43 of 1983

This clause inserts section 30G to set out the powers, functions and duties of structures contemplated in clause 23.

2.27 Clause 27: Insertion of Section 30H in Act 43 of 1983

This clause inserts section 30H to provide for the dissolution and reconstitution of the structures contemplated in clause 23.

2.28 Clause 28: Insertion of Section 30I in Act 43 of 1983

This clause inserts section 30I to provide for the establishment and composition of the Intergovernmental Forum on Agricultural Resources.

2.29 Clause 29: Insertion of Section 30J in Act 43 of 1983

This clause inserts section 30J to provide for the powers, functions and duties of Intergovernmental Forum on Agricultural Resources

2.30 Clause 30: Insertion of Section 30K in Act 43 of 1983

This clause inserts clause 30K to provide for the compulsory implementation of public participation and coordination systems, developed by the Minister in consultation with the provincial MECs.

2.31 Clause 31: Insertion of Section 30L in Act 43 of 1983

This clause inserts clause 30L to provides that the national department, every provincial department responsible for agriculture and every intergovernmental government structure as contemplated this Act, must comply fully with the constitutional, national legislative and common law framework relating to administrative justice.

2.32 Clause 32: Insertion of Section 30M in Act 43 of 1983

This clause inserts clause 30M to provide that the national department, every provincial department responsible for agriculture and every intergovernmental government structure as contemplated this Act, must comply fully with the constitutional and national legislative framework relating to the promotion of access to information.

2.33 Clause 33: Insertion of Section 30N in Act 43 of 1983

This clause inserts clause 30N to provide for the compulsory maintenance and updating of an electronic version of the Act and all Regulations made thereunder, and all notices issued in terms of thereof, as well as for the compulsory availment of copies of the Act, Regulations and Notices, also in electronic format.

2.34 Clause 34: Short title and commencement

This clause provides that this Act is called the Conservation of Agricultural Resources Amendment Act, 2013 and comes into operation on a date fixed by proclamation in the *Gazette*.

3. Complete List of all Government (National, Provincial and Local), Public entities and Third Party Stakeholders consulted

- DAFF (NRM WG; Directorates: LUSM; CCDM; WUID; Plant Production; Animal Production; Plant Health)
- DEA
- DWA
- Provincial Departments of Agriculture
- Organized Agriculture
- ARC

4. Implications for National Government (other departments, public entities etc)

The Directorate: Land Use and Soil Management as responsible for the administration of Act 43 of 1983 (CARA) will continue with the coordination of technical inputs from relevant stakeholders in ensuring that the developments of the Act are in line with existing related and relevant legislation. This will include consultations with relevant authorities such as the Department of Environmental Affairs, Department of Water Affairs and Department of Rural Development and Land Reform.

With the current amendments, consultation with other National Departments was conducted to ensure that the amendment of the Act does not clash with other environmental legislations such as NEMA, NEMBA & National Water Act (NWA) as well as to create awareness on DAFF Legislative review process.

5. Implications for DAFF

- Create enabling environment for implementation at National level for the establishment of the National Conservation Committee.
- To ensure policy and frameworks for effective and sufficient administration of CARA for protection and sustainable use of natural resources
- Awareness, co regulation, compliance and enforcement
- Ensure alignment of the CARA with the Government administration
- To provide enabling environment for other spheres of Government in ensuring enhanced management and protection of natural agricultural resources

6. Implications for Provincial Government

- Create enabling environment for implementation at District, Metropolitan and Provincial level for the establishment of Soil Conservation Committees and structures that will ensure enhanced management and protection of natural agricultural resources.
- Ensure effective cooperation in co regulation of CARA and ensure compliance by land users and all Provincial programmes/ projects

7. Implications for Local Government

Ensure effective cooperation in co regulations of CARA and ensure compliance in all projects, municipal and communal areas. (E.g. weed inspector, or include sections of CARA in their by-laws)

8. Financial Implications

- Finance required for the administration and operation of the Soil Conservation Committees
- Funding for the Soil Conservation Scheme to assist land users in carrying out soil conservation works
- Training of land users/ Committees members and awareness campaigns to public and land users on the object of the Act