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**20 November 2018** 

No. 42046

# THE PRESIDENCY

No. 1259

20 November 2018

It is hereby notified that the President has assented to the following Act, which is hereby published for general information:—

Act No. 2 of 2018: Extension of Security of Tenure Amendment Act, 2018

# **DIE PRESIDENSIE**

No. 1259

20 November 2018

Hierby word bekend gemaak dat die President sy goedkeuring geheg het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

Wet No. 2 van 2018: Wysigingswet op die Uitbreiding van Sekerheid van Verblyfreg, 2018

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Act No. 2 of 2018

Extension of Security of Tenure Amendment Act, 2018

### **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.			
		(English text signed by the President) (Assented to 18 November 2018)			

# ACT

To amend the Extension of Security of Tenure Act, 1997, so as to amend and insert certain definitions; to substitute the provision of subsidies with tenure grants; to further regulate the rights of occupiers; to provide for legal representation for occupiers; to further regulate the eviction of occupiers by enforcing alternative resolution mechanisms provided for in the Act; to provide for the establishment and operation of a Land Rights Management Board; to provide for the establishment and operation of Land Rights Management Committees to identify, monitor and settle land rights disputes; and to provide for matters connected therewith.

**B**<sup>E</sup> IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

Amendment of section 1 of Act 62 of 1997, as amended by section 20 of Act 61 of 1998, section 6 of Act 51 of 2001 and section 35 of Act 4 of 2011

- 1. Section 1 of the Extension of Security of Tenure Act, 1997 (hereinafter referred to 5 as the principal Act), is hereby amended—

  (a) by the invertion before the definition of "concent" of the following definition:
  - (a) by the insertion before the definition of "consent" of the following definition:

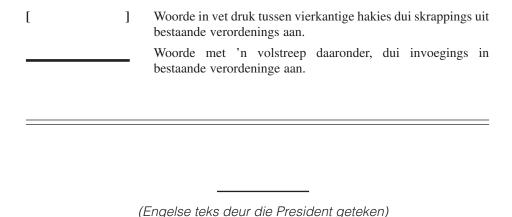
    "Board' means the Land Rights Management Board established in terms of section 15A;";
  - (b) by the insertion after the definition of "court" of the following definition: 10 "'dependant' means a family member whom the occupier has a legal duty to support;";
  - (c) by the insertion after the definition of "evict" of the following definition:
    - "family' means the occupier's spouse, and includes—
      (i) a spouse in a customary marriage, whether or not the marriage is registered:
    - (ii) a child, including an adopted child, or foster care child;
    - (iii) a grandchild;
    - (iv) a parent; and
    - (v) a grandparent, who are dependants of the occupier and who reside on the land with the

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who are dependants of the occupier and who reside on the land with the occupier;";

Wet No. 2 van 2018

### ALGEMENE VERDUIDELIKENDE NOTA:



# WET

(Goedgekeur op 18 November 2018)

Tot wysiging van die Wet op die Uitbreiding van Sekerheid van Verblyfreg, 1997, ten einde sekere omskrywings te wysig en in te voeg; die voorsiening van subsidies met verblyfregtoelaes te vervang; die regte van okkupeerders verder te reël; voorsiening te maak vir regsverteenwoordiging vir okkupeerders; die uitsetting van okkupeerders verder te reël deur alternatiewe meganismes vir geskilbeslegting waarvoor in die Wet voorsiening gemaak word, af te dwing; voorsiening te maak vir die instelling en bedryf van 'n Grondregtebestuursraad; voorsiening te maak vir die instelling en bedryf van Grondregtebestuurskomitees om geskille oor grondregte te identifiseer, te monitor en te skik; en voorsiening te maak vir aangeleenthede wat daarmee in verband staan.

**D**<sup>AAR</sup> WORD BEPAAL deur die Parlement van die Republiek van Suid-Afrika, soos volg:—

Wysiging van artikel 1 van Wet 62 van 1997, soos gewysig deur artikel 20 van Wet 61 van 1998, artikel 6 van Wet 51 van 2001 en artikel 35 van Wet 4 van 2011

- 1. Artikel 1 van die Wet op die Uitbreiding van Sekerheid van Verblyfreg, 1997 (hierna die Hoofwet genoem), word hierby gewysig—
  - (a) deur die volgende omskrywing voor die omskrywing van "beëindig" in te voeg:
    - "'afhanklike' 'n lid van die gesin wat die okkupeerder 'n regsplig het om te onderhou;";
  - (b) deur die volgende omskrywing na die omskrywing van "eienaar" in te voeg: "**'gesin'** die okkupeerder se gade, en ook—
    - (i) 'n gade in 'n gewoontehuwelik, hetsy die huwelik geregistreer is al dan nie:
    - (ii) 'n kind, met inbegrip van 'n aangenome kind of kind in pleegsorg;
    - (iii) 'n kleinkind;
    - (iv) 'n ouer; en
    - (v) 'n grootouer,

wat afhanklikes van die okkupeerder is en wat saam met die okkupeerder op die grond woon;";

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- (d) by the insertion after the definition of "Land Claims Court" of the following definition:
  - "'Land Rights Management Committees' means the Land Rights Management Committees contemplated in section 15H;";
- (e) by the substitution for the definition of "Minister" of the following definition:

  "'Minister' means the Minister [of] responsible for Rural Development and Land Reform [or an officer of the Department of Rural Development and Land Reform who has been designated by the Minister either generally or in respect of a particular case, or in respect of cases of a particular nature: Provided that the powers referred to in section 28 shall be excluded from any such designation];";
- (f) by the substitution for the definition of "municipality" of the following definition:
  - "'municipality' means a municipality as defined in section 1 of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000);":
- (g) by the substitution for the definition of "occupier" of the following definition:

  "'occupier' means a person residing on land which belongs to another person, and who [has or], on 4 February 1997 or thereafter, had consent 20 or another right in law to do so, but excluding—
  - (a) ..
  - (b) a person using or intending to use the land in question mainly for industrial, mining, commercial or commercial farming purposes, but including a person who works the land himself or herself and does not employ any person who is not a member of his or her family; and
  - (c) a person who has an income in excess of the prescribed amount;";
- (h) by the insertion after the definition of "regulation" of the following definition: 30 "**reside**' means to live at a place permanently, and '**residence**' has a corresponding meaning.".

# Amendment of section 4 of Act 62 of 1997, as amended by section 21 of Act 61 of 1998

- **2.** Section 4 of the principal Act is hereby amended—
  - (a) by the substitution for the heading of the following heading:
    - "[Subsidies] Tenure grants";
  - (b) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:
    - "The Minister shall, from moneys appropriated by Parliament for that 40 purpose and subject to the conditions the Minister may prescribe in general or determine in a particular case, [grant subsides] provide tenure grants—";
  - (c) by the deletion in subsection (1) of the word "and" at the end of paragraph (b) and the addition of the following paragraphs:
    - "(d) to enable occupiers and former occupiers to acquire suitable alternative accommodation; and
    - (e) to compensate owners or persons in charge for the provision of accommodation and services to occupiers and their families.";

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- (c) deur die volgende omskrywing na die omskrywing van "Grondeisehof" in te voeg:

  "Grondregtebestuurskomitees' die Grondregtebestuurskomitees in artikel 15H bedoel;";
- (d) deur die omskrywing van "Minister" deur die volgende omskrywing te vervang:

"'Minister' die Minister [van] verantwoordelik vir Landelike Ontwikkeling en Grondhervorming [of 'n beampte van die Departement van Landelike Ontwikkeling en Grondhervorming wat deur die Minister in die algemeen of ten opsigte van 'n bepaalde 10 geval, of in gevalle van 'n bepaalde aard, aangewys is: Met dien verstande dat die bevoegdhede in artikel 28 bedoel van sodanige aanwysing uitgesluit is];";

- (e) deur die omskrywing van "munisipaliteit" deur die volgende omskrywing te vervang:
  - "'munisipaliteit' 'n munisipaliteit soos omskryf in artikel 1 van die Wet op Plaaslike Regering: Munisipale Stelsels, 2000 (Wet No. 32 van 2000);":
- (f) deur die omskrywing van "okkupeerder" deur die volgende omskrywing te vervang:
  - "'okkupeerder' 'n persoon wat woon op grond wat aan 'n ander persoon behoort en wat [beskik oor, of] op 4 Februarie 1997 of daarna beskik het oor[,] toestemming of 'n ander regsgeldige reg om so te doen, maar uitgesluit—
  - (a) ... 25
  - (b) 'n persoon wat die betrokke grond hoofsaaklik vir industriële, myn-, kommersiële of kommersiële boerderydoeleindes gebruik of beoog om dit aldus te gebruik, 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
  - (c) 'n persoon met 'n inkomste hoër as die voorgeskrewe bedrag;"; die volgende omskrywing na die omskrywing van "persoon in beheer"
- (g) deur die volgende omskrywing na die omskrywing van "persoon in beheer" in te voeg:
  - "'Raad' die Grondregtebestuursraad ingevolge artikel 15A ingestel;"; en 35
- (h) deur die volgende omskrywing na die omskrywing van "werknemer" in te voeg:
  - "'woon' om heeltyds by 'n plek woonagtig te wees, en het woning' 'n ooreenstemmende betekenis."

# Wysiging van artikel 4 van Wet 62 van 1997, soos gewysig deur artikel 21 van 40 Wet 61 van 1998

- **2.** Artikel 4 van die Hoofwet word hierby gewysig—
  - (a) deur die opskrif deur die volgende opskrif te vervang:
    - "[Subsidies] Verblyftoelaes";
  - (b) deur in subartikel (1) die woorde wat paragraaf (a) voorafgaan deur die 45 volgende woorde te vervang:
    - "Die Minister moet, uit geld vir daardie doel deur die Parlement bewillig en behoudens die voorwaardes wat die Minister in die algemeen mag voorskryf of in 'n besondere geval mag bepaal, [subsidies toeken] verblyftoelaes voorsien—";
  - (c) deur in subartikel (1) die woord "en" aan die einde van paragraaf (b) te skrap en die volgende paragrawe by te voeg:
    - "(d) om okkupeerders en voormalige okkupeerders in staat te stel om gepaste alternatiewe akkommodasie te kry; en
    - (e) om eienaars of persone in beheer te vergoed vir die voorsiening van akkommodasie en dienste aan okkupeerders en hul gesinne.";

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( <i>d</i> )	by the substitution in subsection (2) for the words preceding paragraph (a) of
	the following words:

"In deciding whether to approve an application for a [subsidy] tenure grant, and if so, the priority to be given to that application, the Minister shall have regard to the extent to which an application complies with the following criteria:";

(e) by the deletion in subsection (2) of paragraph (c);

- (f) by the deletion in subsection (2) of the word "and" at the end of paragraph (e);
- (g) by the substitution in subsection (2) for paragraph (f) of the following paragraph:

(f) there is an urgent need for the development or suitable alternative accommodation because occupiers have been evicted or are about to be evicted[:]; and";

(h) by the addition in subsection (2) of the following paragraph:

"(g) the provision of accommodation and services contemplated in 15 subsection (1)(e) entails a mutual accommodation of the interests of occupiers and owners:"; and

(i) by the substitution for subsections (3), (4), (5) and (6) of the following subsections, respectively:

> "(3) Where the persons who are intended to benefit from a 20 development have been identified, a [subsidy] tenure grant shall not be [granted] provided unless the Minister has been satisfied that the development is acceptable to a majority of the adults concerned.

> (4) The Minister may, for the purposes of this section, [grant subsidies] provide tenure grants through an agreement with a provincial 25 government or a municipality, or a person or body which he or she has recognised for that purpose, where-

> (a) a provincial government or a municipality or such person or body will facilitate, implement or undertake or contract with a third party for the facilitation, implementation or undertaking of a develop- 30 ment or suitable alternative accommodation; or

> (b) the [subsidy] tenure grant is paid to the provincial 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 or for 35 the provision of suitable alternative accommodation.

(5) No transfer duty shall be payable in respect of any transaction for the acquisition of land in terms of this section or in respect of any transaction for the acquisition of land which is financed by a [subsidy] tenure grant in terms of this section.

(6) A potential beneficiary of a development or of suitable alternative accommodation may apply for a housing subsidy as provided for in terms of [sections 10A, 10B, 10C and 10D of the Housing Act, 1966 (Act **No. 4 of 1966**)] the Housing Act, 1997 (Act No. 107 of 1997).".

## Amendment of section 6 of Act 62 of 1997, as amended by section 7 of Act 51 of 2001 45

3. Section 6 of the principal Act is hereby amended—

(a) by the insertion in subsection (2) after paragraph (dA) of the following paragraph:

> "(dB) to take reasonable measures to maintain the dwelling occupied by him or her or members of his or her family;"; and

(b) by the substitution for subsection (4) of the following subsection:

"(4) Any person shall have the right to visit and maintain, or erect a tombstone on, mark, place symbols or perform rites on, his or her family graves on land which belongs to another person, subject to any reasonable condition imposed by the owner or person in charge of such land in order to safeguard life or property or to prevent the undue disruption of work on the land.".

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- (d) deur in subartikel (2) die woorde wat paragraaf (a) voorafgaan deur die volgende woorde te vervang:
  - "Wanneer die Minister die goedkeuring van 'n aansoek om 'n [subsidie] verblyftoelaag oorweeg, en indien goedgekeur, die prioriteit wat aan sodanige aansoek verleen behoort te word, moet die Minister die mate waarin die aansoek aan die volgende maatstawwe voldoen, in ag neem:";
- (e) deur in subartikel (2) paragraaf (c) te skrap;
- (f) deur in subartikel (2) die woord "en" aan die einde van paragraaf (e) te skrap;
- (g) deur in subartikel (2) paragraaf (f) deur die volgende paragraaf te vervang:
  - (f) daar is 'n dringende behoefte vir die ontwikkeling of gepaste alternatiewe akkommodasie omrede okkupeerders uitgesit is of uitgesit staan te word[:]; en'';
- (h) deur in subartikel (2) die volgende paragraaf by te voeg:
  - "(g) die voorsiening van akkommodasie en dienste in subartikel (1)(e)
    beoog, behels 'n onderlinge tegemoetkoming van die belange van
    okkupeerders en eienaars:"; en
- (i) deur subartikels (3), (4), (5) en (6) onderskeidelik deur die volgende subartikels te vervang:
  - "(3) Indien die persone wat deur 'n ontwikkeling bevoordeel staan te word reeds geïdentifiseer is, word 'n [subsidie] verblyftoelae nie 20 [toegeken] voorsien nie tensy die Minister oortuig is dat die ontwikkeling vir die meerderheid van die betrokke volwassenes aanvaarbaar is.
  - (4) Die Minister kan vir die doeleindes van hierdie artikel by wyse van 'n ooreenkoms met 'n provinsiale regering of 'n munisipaliteit, of 'n 25 persoon of liggaam wat hy of sy vir daardie doel erken, [subsidies toeken] verblyftoelaes voorsien waar—
  - (a) 'n provinsiale regering of 'n munisipaliteit of sodanige persoon of liggaam 'n ontwikkeling of gepaste alternatiewe akkommodasie fasiliteer, implementeer of onderneem of ooreenkom met 'n derde 30 party om dit te fasiliteer, te implementeer of te onderneem; of
  - (b) die [subsidie] verblyftoelaag aan die provinsiale regering of 'n munisipaliteit of sodanige persoon of liggaam betaal word ten einde daardie regering of liggaam in staat te stel om die ontwikkeling of voorsiening van geskikte alternatiewe akkommodasie te fasiliteer, te implementeer of te onderneem of ooreen te kom met 'n derde party om dit te fasiliteer, te implementeer of te onderneem.
  - (5) Geen hereregte is betaalbaar ten opsigte van enige transaksie vir die verkryging van grond ingevolge hierdie artikel of ten opsigte van enige transaksie vir die verkryging van grond wat deur 'n [subsidie] 40 verblyftoelae ingevolge hierdie artikel gefinansier word nie.
  - (6) 'n Potensiële begunstigde van 'n ontwikkeling of van geskikte alternatiewe akkommodasie kan vir 'n behuisingsubsidie soos bepaal ingevolge [artikels 10A, 10B, 10C en 10D van die Behuisingswet, 1966 (Wet No. 4 van 1966)] die Behuisingswet, 1997 (Wet No. 107 van 45 1997), aansoek doen."

Wysiging van artikel 6 van Wet 62 van 1997, soos gewysig deur artikel 7 van Wet 51 van 2001

- 3. Artikel 6 van die Hoofwet word hierby gewysig—
  - (a) deur in subartikel (2) na paragraaf (dA) die volgende paragraaf in te voeg:

    "(dB) om redelike stappe te doen om die woning wat deur hom of haar

    of lede van sy of haar gesin geokkupeer word, te onderhou;"; en
  - (b) deur subartikel (4) deur die volgende subartikel te vervang:
    - "(4) 'n Persoon het die reg om sy of haar familiegrafte op grond wat aan 'n ander persoon behoort, te besoek en in stand te hou, of 'n grafsteen op te rig op die grafte, die grafte te merk, simbole daarop aan te bring of rituele daarop uit te voer, onderhewig aan enige redelike voorwaarde opgelê deur die eienaar of persoon in beheer van sodanige grond ten einde lewe of eiendom te beskerm of om die onbehoorlike ontwrigting van werksaamhede op die grond te voorkom.".

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# Amendment of section 9 of Act 62 of 1997, as amended by section 10 of Act 11 of 2000 and section 36 of Act 4 of 2011

- **4.** Section 9 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:
  - "(1) Notwithstanding the provisions of any other law an occupier may be evicted only—
  - (a) in terms of an order of court issued under this Act; and
  - (b) if such occupier was legally represented at the proceedings in terms of which such a court order was issued unless—
    - (i) such occupier expressly waived his or her right to obtain state funded legal representation; and
    - (ii) the court determined that the interests of justice would not be harmed by lack of legal representation.".

# Amendment of section 10 of Act 62 of 1997, as amended by section 25 of Act 61 of 1998

- **5.** Section 10 of the principal Act is hereby amended by the deletion in subsection (1) of the word "or" at the end of paragraph (c), insertion of the word "or" at the end of paragraph (d) and the addition of the following paragraph:
  - "(e) the owner or person in charge or the occupier have attempted mediation to settle the dispute in terms of section 21 or referred the dispute for arbitration in terms of section 22, and the court is satisfied that the circumstances surrounding the order for eviction is of such a nature that it could not be settled by way of mediation or arbitration.".

# Amendment of section 11 of Act 62 of 1997, as amended by section 25 of Act 61 of 1998

- **6.** Section 11 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:
  - "(2) In circumstances other than those contemplated in subsection (1), a court may grant an order for eviction in respect of any person who became an occupier after 4 February 1997, if—
  - (a) [it] the court is of the opinion that it is just and equitable to do so; and
  - (b) the owner or person in charge of the land and the occupier have attempted mediation to settle the dispute in terms of section 21 or referred the dispute for arbitration in terms of section 22, and the court is satisfied that the circumstances surrounding the order for eviction is of such a nature that it 35 could not be settled by way of mediation or arbitration.".

# Amendment of section 12 of Act 62 of 1997

- **7.** Section 12 of the principal Act is hereby amended by the deletion in subsection (1) of the word "and" at the end of paragraph (a), addition of that word at the end of paragraph (b) and addition of the following paragraph:
  - "(c) determine reasonable weather conditions under which an eviction order may be carried out.".

# Insertion of Chapter IVA in Act 62 of 1997

**8.** The following Chapter is hereby inserted in the principal Act after Chapter IV:

# "CHAPTER IVA

# LAND RIGHTS MANAGEMENT BOARD

# **Establishment of Board**

15A. The Land Rights Management Board is hereby established.

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# Wysiging van artikel 9 van Wet 62 van 1997, soos gewysig deur artikel 10 van Wet 11 van 2000 en artikel 36 van Wet 4 van 2011

- **4.** Artikel 9 van die Hoofwet word hierby gewysig deur subartikel (1) deur die volgende subartikel te vervang:
  - "(1) Ondanks die bepalings van enige ander wet, kan 'n okkupeerder slegs uitgesit word—
  - (a) ingevolge 'n hofbevel kragtens hierdie Wet uitgereik; en
  - (b) indien die okkupeerder regsverteenwoordiging gehad het by die verrigtinge ingevolge waarvan so 'n hofbevel uitgereik is, tensy—
    - (i) die okkupeerder uitdruklik afstand gedoen het van sy of haar reg om regsverteenwoordiging wat deur die staat befonds is, te kry; en
    - (ii) die hof bevind het dat die belang van geregtigheid nie deur 'n gebrek aan regsverteenwoordiging geskaad sal word nie.".

# Wysiging van artikel 10 van Wet 62 van 1997, soos gewysig deur artikel 25 van Wet 61 van 1998

- **5.** Artikel 10 van die Hoofwet word hierby gewysig deur in subartikel (1) die woord "of" aan die einde van paragraaf (c) te skrap, die woord "of" aan die einde van paragraaf (d) in te voeg en die volgende paragraaf by te voeg:
  - "(e) die eienaar of persoon in beheer of die okkupeerder gepoog het om die geskil deur bemiddeling ingevolge artikel 21 te skik of die geskil vir arbitrasie ingevolge artikel 22 verwys het, en die hof oortuig is dat die omstandighede rondom die uitsettingsbevel van so 'n aard is dat dit nie by wyse van bemiddeling of arbitrasie geskik kon word nie.".

# Wysiging van artikel 11 van Wet 62 van 1997, soos gewysig deur artikel 25 van Wet 61 van 1998

- **6.** Artikel 11 van die Hoofwet word hierby gewysig deur subartikel (2) deur die volgende subartikel te vervang:
  - "(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—
  - (a) die hof oortuig is dat dit regverdig en billik is om dit te doen; en
  - (b) die eienaar of persoon in beheer van die grond en die okkupeerder gepoog het om die geskil deur bemiddeling ingevolge artikel 21 te skik of die geskil vir arbitrasie ingevolge artikel 22 verwys het, en die hof oortuig is dat die omstandighede rondom die uitsettingsbevel van so 'n aard is dat dit nie by wyse van bemiddeling of arbitrasie geskik kon word nie.".

### Wysiging van artikel 12 van Wet 62 van 1997

- **7.** Artikel 12 van die Hoofwet word hierby gewysig deur in subartikel (1) die woord "en" aan die einde van paragraaf (a) te skrap, daardie woord aan die einde van paragraaf (b) by te voeg en die volgende paragraaf by te voeg:
  - "(c) redelike weersomstandighede bepaal waaronder 'n uitsettingsbevel uitgevoer mag word.".

# Invoeging van Hoofstuk IVA in Wet 62 van 1997

8. Die volgende Hoofstuk word hierby na Hoofstuk IV in die Hoofwet ingevoeg:

# "HOOFSTUK IVA

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### GRONDREGTEBESTUURSRAAD

### Stigting van Raad

**15A.** Die Grondregtebestuursraad word hierby gestig.

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# **Composition of Board**

15B. (1) The Board consists of not less than seven and not more than	
13 members, including the chairperson and the deputy chairperson,	
appointed by the Minister.	l
(2) A member of the Board is appointed for a period of four years:	5
Provided that a member may not be appointed for more than two	
consecutive terms.	
(3) A member of the Board must—	
(a) be a fit and proper person to hold office as a member; and	
(b) have appropriate qualifications and relevant experience.	10
(4) The Board must—	
(a) be representative of the communities and interests affected by this Act;	
and	l
(b) have not less than 50% women members.	l
(5) Before the Minister appoints members of the Board in terms of	15
subsection (1), the Minister must by notice in two newspapers and the	
Gazette invite all interested persons to submit, within the period and in the	l
manner mentioned in the notice, the names of persons fit to be appointed as	l
members of the Board.	l
(6) The Minister must appoint a nomination committee to make	20
recommendations to the Minister for the appointment of members of the	l
Board.	l
(7) In establishing a nomination committee, the Minister must ensure	l
that the committee is broadly representative of the various racial groups,	
communities and interests affected by this Act and geographic areas of the	25
Republic, and that both males and females are represented.	l
(8) The deputy chairperson of the Board must act as chairperson in the	l
absence of the chairperson of the Board.	l
(9) (a) The Board may determine the proceedings at its meetings as it	•
may deem fit, and must cause minutes of such proceedings to be kept.	30
(b) A majority of the members of the Board is a quorum for a meeting of	
the Board.	

# **Functions of Board**

Functions of Board					
<b>15C.</b> (1) The functions of the Board are to advise the Minister and the					
Director-General on tenure security matters, and generally, the Board					
shall—					
(a) guide and oversee the Land Rights Management Committees in the execution of their functions in terms of this Act;					
(b) assist in the creation and maintenance of a data base of occupiers, land rights disputes and their resolution as well as evictions, which must contain such additional information as may be prescribed;	40				
(c) assist in the provision of mediation and arbitration of land rights disputes arising from the application of this Act;					
(d) facilitate the implementation of information dissemination measures to develop awareness of the provisions of this Act;	45				
(e) monitor and evaluate the impact of related laws, in relation to the functions of the Board;					
(f) assist in the creation of mechanisms for the provision of legal assistance and legal representation to affected persons in terms of this Act;	50				
(g) assist in the formulation of a means test relating to funding for legal assistance;					
(h) generally, advise on any other matter referred to it by the Minister. (2) The Board shall involve all the various structures and representatives of organisations with vested interests in land within the commercial farming areas, to promote effective ways of monitoring and mediating land rights disputes.	55				

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### Samestelling van Raad

15B. (1) Die Raad bestaan uit minstens sewe en hoogstens 13 lede, met inbegrip van die voorsitter en die ondervoorsitter, deur die Minister aangestel. (2) 'n Lid van die Raad word vir 'n tydperk van vier jaar aangestel: Met dien verstande dat 'n lid nie vir meer as twee opeenvolgende termyne aangestel mag word nie. (3) 'n Lid van die Raad moet-'n geskikte en gepaste persoon wees om die posisie van 'n lid te 10 beklee: en (b) gepaste kwalifikasies en tersaaklike ervaring hê. (4) Die Raad moet— (a) verteenwoordigend wees van die gemeenskappe en belange deur hierdie Wet geraak; en (b) minstens 50% vroulike lede hê. 15 (5) Voor die Minister lede van die Raad ingevolge subartikel (1) aanstel, moet die Minister by kennisgewing in twee koerante en die Staatskoerant alle belangstellende persone uitnooi om binne die tydperk en op die wyse in die kennisgewing vermeld, die name van persone wat geskik is om as lede 20 van die Raad aangestel te word, in te dien. (6) Die Minister moet 'n benoemingskomitee aanstel om aanbevelings aan die Minister te doen vir die aanstelling van lede van die Raad. (7) By die stigting van 'n benoemingskomitee, moet die Minister verseker dat die komitee in die breë verteenwoordigend is van die verskeie rassegroepe, gemeenskappe en belange deur hierdie Wet geraak, en 25 geografiese gebiede van die Republiek en dat vroue asook mans verteenwoordig is. (8) Die ondervoorsitter van die Raad moet in die afwesigheid van die voorsitter van die Raad as voorsitter waarneem. (9) (a) Die Raad kan die verrigtinge by sy vergaderings vasstel soos hy gepas ag, en moet notules van sodanige verrigtinge laat hou. (b) 'n Meerderheid van die lede van die Raad is 'n kworum vir 'n vergadering van die Raad.

Werksaamhede van Raad	
15C. (1) Die werksaamhede van die Raad is om die Minister	en 35
Direkteur-generaal oor aangeleenthede oor sekerheid van verblyfreg	
raad te bedien, en die Raad moet, oor die algemeen—	
(a) die Grondregtebestuurskomitees rig en toesig hou oor die Grondre	gte-
bestuurskomitees in die uitvoering van hul werksaamhede ingeve	olge
hierdie Wet;	40
(b) bystand lewer in die skep en onderhoud van 'n databasis	
okkupeerders, grondregtegeskille en die uitslag daarvan as	
uitsettings, wat die bykomende inligting moet bevat wat voorges	kryf
kan word;	
(c) bystand lewer in die voorsiening van bemiddeling en arbitrasie	
grondregtegeskille voortspruitend uit die toepassing van hierdie V	
(d) die implementering van maatreëls om inligting te versprei, fasili	
ten einde bewustheid oor die bepalings van hierdie Wet te ontwik	
(e) die invloed van die verwante wette, in verband met die werksaamh	
van die Raad, monitor en evalueer;	50
(f) bystand lewer in die skep van meganismes vir die voorsiening	
regshulp en regsverteenwoordiging aan geraakte persone ingeve hierdie Wet;	nge
(g) bystand lewer in die formulering van 'n vermoënstoets rake	nda
finansiering vir regshulp;	55
(h) oor die algemeen raad gee oor enige ander aangeleentheid wat	
Minister daarheen verwys.	are
(2) Die Raad moet al die verskeie strukture en verteenwoordigers	van
organisasies met gevestigde belange binne die kommersiële boerd	
gebiede betrek om doeltreffende maniere te ontwikkel vir die monito	

bemiddeling van grondregtegeskille.

(3) The Board may delegate its functions, except the function to advise the Minister and the Director-General on tenure security matters and the functions contemplated in subsection (1)(a) and (f), to the Land Rights Management Committees.

### **Remuneration of members of Board**

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- **15D.** (1) The remuneration, allowances and other terms and conditions of appointment and service benefits of members of the Board must be determined by the Minister in consultation with the Minister of Finance, taking into account—
- (a) the role, duties and responsibilities of a member of the Board;
- (b) affordability in relation to the responsibilities of the Board; and
- (c) the level of expertise and experience required from a member of the
  - (2) Conditions of appointment may differ in respect of—
- (a) the chairperson and other members of the Board;
- (b) full-time and part-time members; or
- (c) any other appropriate circumstances.

# Disqualification from membership

15E. A person may not be appointed as a member of the Board if he or

she-

- (a) is an unrehabilitated insolvent;
- (b) has been declared by a court to be mentally ill;
- (c) has been convicted of an offence in the Republic or elsewhere and was sentenced to imprisonment for a period exceeding 12 months without the option of a fine, other than an offence committed prior to 27 April 1994 associated with a political objective for which amnesty was granted by the Truth and Reconciliation Commission;
- (d) is a member of the National Assembly, a provincial legislature or any municipal council, or is a delegate to the National Council of Provinces;
- (e) is not a citizen of, or does not have the right of permanent residence in, the Republic; or
- (f) has, as a result of improper conduct, been removed from a position of trust by a competent court of law.

# Vacation and removal from office

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- 15F. (1) A member of the Board must vacate office if—
- (a) he or she becomes disqualified in terms of section 15E;
- (b) he or she resigns; or
- (c) he or she has been absent, without leave of the chairperson, from more than two consecutive meetings of the Board.

(2) (a) If a member of the Board dies or vacates his or her office before the expiry of the period for which he or she was appointed, the Minister must appoint a person to fill the vacancy for the unexpired term for which such member had been appointed.

- (b) The provisions of section 15B(2) to (7) apply to the filling of a vacancy in terms of paragraph (a).
- (3) (a) Subject to the provisions of the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000), the Minister may remove a member of the Board on the grounds of misconduct, incapacity or incompetence.
- (b) A decision to remove a member of the Board must be based on a finding to that effect by an investigative committee appointed by the Minister.
- (c) The Minister may suspend a member of the Board who is under investigation in terms of paragraph (b).

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(3) Die Raad kan sy werksaamhede, buiten die werksaamheid om die Minister en die Direkteur-generaal van raad te bedien oor aangeleenthede oor sekerheid van verblyfreg en die werksaamhede in subartikel (1)(a) en (f) bedoel, aan die Grondregtebestuurskomitees delegeer.

# Besoldiging van lede van Raad

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- 15D. (1) Die besoldiging, toelaes en ander bedinge en voorwaardes van aanstelling en diensvoordele van lede van die Raad moet deur die Minister in oorleg met die Minister van Finansies bepaal word, met inagneming van—
- (a) die rol, pligte en verantwoordelikhede van 'n lid van die Raad;
- (b) bekostigbaarheid in verhouding tot die verantwoordelikhede van die Raad: en
- (c) die vlak van kundigheid en ervaring waaroor 'n lid van die Raad moet beskik.
- (2) Aanstellingsvoorwaardes kan verskil ten opsigte van—
- (a) die voorsitter en ander lede van die Raad;
- (b) heeltydse en deeltydse lede; of
- (c) enige ander gepaste omstandighede.

# Onbevoegdheid vir lidmaatskap

15E. 'n Persoon kan nie as 'n lid van die Raad aangestel word nie indien 20 hy of sy—

- (a) 'n ongerehabiliteerde insolvent is;
- (b) deur 'n hof geestesongesteld verklaar is;
- (c) in die Republiek of elders aan 'n misdryf skuldig bevind is en vir 'n tydperk van meer as 12 maande tot gevangenisstraf sonder die opsie van 'n boete gevonnis is, behalwe 'n misdryf voor 27 April 1994 gepleeg wat met 'n politieke oogmerk geassosieer is en waarvoor amnestie deur die Waarheids- en Versoeningskommissie toegestaan is;
- (d) 'n lid van die Nasionale Vergadering, 'n provinsiale wetgewer of enige munisipale raad is, of 'n gedelegeerde tot die Nasionale Raad van Provinsies is;
- (e) nie 'n burger is van, of nie permanente verblyfreg het vir, die Republiek nie; of
- (f) as gevolg van onbehoorlike gedrag deur 'n bevoegde geregshof uit 'n vertrouensposisie verwyder is.

# Ontruiming van en verwydering uit amp

15F. (1) 'n Lid van die Raad moet die amp ontruim indien hy of sy-

- (a) ingevolge artikel 15E onbevoeg word;
- (b) bedank; of
- (c) sonder verlof van die voorsitter van meer as twee agtereenvolgende vergaderings van die Raad afwesig was.
- (2) (a) Indien 'n lid van die Raad tot sterwe kom of sy of haar amp voor die verstryking van die tydperk waarvoor hy of sy aangestel is ontruim, moet die Minister 'n persoon aanstel om die vakature vir die onverstreke termyn waarvoor sodanige lid aangestel is, te vul.
- (b) Die bepalings van artikel 15B(2) tot (7) is van toepassing op die vul van 'n vakature ingevolge paragraaf (a).
- (3) (a) Behoudens die bepalings van die 'Promotion of Administrative Justice Act, 2000' (Wet No. 3 van 2000), kan die Minister 'n lid van die Raad verwyder op grond van wangedrag, ongeskiktheid of onbevoegdheid.
- (b) 'n Besluit om 'n lid van die Raad te verwyder, moet op 'n bevinding te dien effekte deur 'n ondersoekkomitee deur die Minister aangestel, gegrond wees.
- (c) Die Minister kan 'n lid van die Raad skors wat ingevolge paragraaf (b) ondersoek word.

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# Support to and reports by Board

- **15G.** (1) (a) The Director-General must provide administrative and financial support to the Board so as to enable the Board to perform its functions in terms of this Act.
- (b) The Board may, with the approval of the Director-General and subject to the Public Finance Management Act, 1999 (Act No. 1 of 1999), appoint a person or institution to assist the Board or a Land Rights Management Committee in the execution of its functions.
- (2) The Board must quarterly, or when requested by the Minister, provide a comprehensive report on its activities to the Minister.

### **Land Rights Management Committees**

- **15H.** (1) (a) The Minister may, on the recommendation of the Board, establish Land Rights Management Committees and determine their areas of operation.
- (b) The number of such committees and the number of members of each committee must be determined by the Minister after consultation with the Roard
- (2) (a) The Committees shall be composed of representatives of occupiers, labour tenants, communal property associations, various land owners, officials from the Department of Rural Development and Land Reform, state institutions with vested interests in land matters, various relevant non-government organisations and civil society organisations, local farming and business development agencies, organised labour and representatives of the local government structures.
- (b) The Board must, after consultation with the Director-General and having regard to the provisions of paragraph (a), nominate the persons to be appointed as members of a committee.
- (c) The persons identified in terms of paragraph (b) must be appointed by the Minister.
  - (3) The Committees shall—
- (a) identify and recommend acquisition of land for settlement and resettlement of occupiers, including facilitation of the implementation of section 4;
- (b) facilitate the provision of municipal services on the acquired land, in consultation with the municipality concerned;
- (c) identify and monitor land rights disputes observed through adequate participation of all actors whose relative rights are contested;
- (d) take steps to resolve a dispute referred to in paragraph (c);
- (e) in the event that a dispute cannot be resolved, refer such dispute to the Board;
- (f) assist the Board in providing the information necessary to populate the data base contemplated in section 15C(1)(b); and
- (g) perform such functions as delegated to it in terms of section 15C(3).".

# Amendment of section 21 of Act 62 of 1997

- **9.** Section 21 of the principal Act is hereby amended by the insertion of the following 45 subsection after subsection (3):
  - "(3A) The Director-General may refer the disputes contemplated in this section to the Board for mediation or arbitration as contemplated in section 15C(1)(d).".

# Amendment of section 28 of Act 62 of 1997

- **10.** Section 28 of the principal Act is hereby amended by the substitution in subsection 50 (1) for paragraph (*a*) of the following paragraph:
  - "(a) general conditions for the [granting of subsidies] provision of tenure grants in terms of section 4;".

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# Ondersteuning aan en verslae deur Raad

- **15G.** (1) (a) Die Direkteur-generaal moet administratiewe en finansiële ondersteuning aan die Raad voorsien ten einde die Raad in staat te stel om sy werksaamhede ingevolge hierdie Wet te verrig.
- (b) Die Raad kan, met die goedkeuring van die Direkteur-generaal en behoudens die Wet op Openbare Finansiële Bestuur, 1999 (Wet No. 1 van 1999), 'n persoon of instelling aanstel om die Raad of 'n Grondregtebestuurskomitee by te staan in die verrigting van sy werksaamhede.
- (2) Die Raad moet kwartaalliks, of wanneer die Minister dit versoek, 'n omvattende verslag van sy aktiwiteite aan die Minister voorsien. 10

# Grondregtebestuurskomitees

- 15H. (1) (a) Die Minister kan, op aanbeveling deur die Raad, Grondregtebestuurskomitees instel en hul bedryfsgebiede bepaal.
- (b) Die getal sodanige komitees en die getal lede van elke komitee moet na oorleg met die Raad deur die Minister bepaal word.
- (2) (a) Die Komitees bestaan uit verteenwoordigers van okkupeerders, huurarbeiders, verenigings vir gemeenskaplike eiendom, verskeie grondeienaars, beamptes van die Departement van Landelike Ontwikkeling en Grondhervorming, staatsinstellings met gevestigde belange in grondsake, verskeie nieregeringsorganisasies en organisasies van die burgerlike samelewing, plaaslike boerdery- en sakeontwikkelingsagentskappe, georganiseerde arbeid en verteenwoordigers van die plaaslike regeringstrukture.
- (b) Die Raad moet na oorleg met die Direkteur-generaal en met inagneming van die bepalings van paragraaf (a), die persone wat as lede | 25 van 'n komitee aangestel moet word, benoem.
- (c) Die persone ingevolge paragraaf (b) geïdentifiseer, moet deur die Minister aangestel word.
  - (3) Die Komitees moet-
- (a) grond identifiseer en aanbeveel vir verkryging ten einde okkupeerders te vestig en te hervestig, met inbegrip van die vergemakliking van die inwerkingstelling van artikel 4;
- (b) die voorsiening van munisipale dienste op die verkrygde grond vergemaklik in oorleg met die betrokke munisipaliteit;
- (c) waargenome grondregtegeskille identifiseer en monitor deur voldoende deelname van alle betrokkenes wie se relatiewe regte betwis word;
- (d) stappe doen om 'n geskil in paragraaf (c) bedoel, te besleg;
- (e) indien 'n geskil nie besleg kan word nie, die geskil na die Raad verwys;
- (f) die Raad bystaan in die voorsiening van die nodige inligting wat op die databasis in artikel 15C(1)(b) beoog, vasgelê moet word; en
- (g) sodanige werksaamhede verrig soos ingevolge artikel 15C(3) gedelegeer.".

# Wysiging van artikel 21 van Wet 62 van 1997

- 9. Artikel 21 van die Hoofwet word hierby gewysig deur die volgende subartikel na subartikel (3) in te voeg:
  - "(3A) Die Direkteur-generaal kan die geskille in hierdie artikel beoog na die Raad verwys vir bemiddeling of arbitrasie soos in artikel 15C(1)(d) bedoel.".

# Wysiging van artikel 28 van Wet 62 van 1997

- 10. Artikel 28 van die Hoofwet word hierby gewysig deur in subartikel (1) paragraaf (a) deur die volgende paragraaf te vervang:
  - "(a) die algemene voorwaardes vir die [toestaan van subsidies] voorsiening van verblyftoelaes ingevolge artikel 4;".

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Act No. 2 of 2018

Extension of Security of Tenure Amendment Act, 2018

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# Short title and commencement

**11.** This Act is called the Extension of Security of Tenure Amendment Act, 2018, and comes into operation on a date determined by the President by proclamation in the *Gazette*.

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# Kort titel en inwerkingtreding

**11.** Hierdie Wet heet die Wysigingswet op die Uitbreiding van Sekerheid van Verblyfreg, 2018, en tree in werking op 'n datum deur die President by proklamasie in die *Staatskoerant* vasgestel.

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