

# ***The Preservation of Agricultural Land Bill, 2016***

9 March 2017

# Introduction

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- Overview
  - Current status
  - Background
  - Fundamental aspects
- Issues
  - Constitutionality
  - Practicality
  - Limitation of rights
- Effect
  - Negative impact on important sectors

Bill introduced to Parliament

Published in Gazette for public comment

Debated by Parliamentary Committee

Submitted to Parliament for debate before a vote

Referred to NCOP

President to sign

Act

# Status

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- First draft for comments: 13 March 2015
- Second draft for comments: 2 September 2016
- Current stage: Comments closed on 30 September 2016
- Timeframe: ~410 days from introduction to Parliament to commencement

# Cox Yeats' submissions

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- Commercial and Natural Resources Team
- Representations on behalf of:
  - Richards Bay Minerals
  - South African Property Owners' Association (SAPOA)
  - Tongaat Hulett
- Considered representations by Chamber of Mines
- Represents a wide range of interests

# Background

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- Subdivision of Agricultural Land Act 70 of 1970
- National Water Act 36 of 1998
- National Environmental Management Act 107 of 1998
- Mineral and Petroleum Resources Development Act 28 of 2002
- Spatial Planning and Land Use Management Act 16 of 2013

# Subdivision of Agricultural Land Act 70 of 1970

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- Ministerial consent required to subdivide or register servitude
- **“agricultural land”** means any land, except:
  - Municipal Council
  - Townships
  - Land owned or held in trust by the State
- Exclusion: transferring portion to statutory body
- Post 1994 – wall-to-wall municipalities
- *Wary Holdings (Pty) Ltd v Stalwo (Pty) Ltd and Another*

# The purported purpose

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- Preservation of agricultural land – similar rationale to Act 70 of 70
- Food security
- Minimum norms and standards – land use, planning and development



# Definitions in the Bill

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- Agricultural Land – all land except:
  - Township
  - Land zoned for non-agricultural purposes prior to commencement
  - Where an application for declaration as a township made prior to commencement
  - Excluded by Minister by way of notice
- Not all land in SA is subject to zoning, e.g. mining operations
- Does not exclude State owned or State trust land

# National Land Register

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- Database containing information on all agricultural land in SA
- To include:
  - Private or public ownership
  - Spatial information
  - Socio-economic indicators
  - Current usage
- Created within 24 months of commencement

# Classification

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- Minister to establish framework to classify agricultural land, according to:
  - Potential
  - Use
  - Location
- Expertise for classification will be outsourced
- Classification to be included in the Agricultural Sector Plans

# Agricultural Sector Plans

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- Prepared by **every** province and municipality within five years
- To include:
  - Demarcation of agricultural land use zones based on classification
  - What activities may take place in the zones
  - Any other matter
- Legally binding on all organs of state
- Guideline for allocation of resources to local government
- To co-ordinate policy between spheres of government

# Protected Agricultural Areas

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- Minister may establish Protected Agricultural Areas to be used for crop production or livestock production only
- This only applies to “High Value” cropland or rangeland of strategic importance
- Change in classification system from first to second draft
- Noted on title deeds
- Application to de-list

# Activities designated as farm use

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- Identify activities which **cannot** commence without authorisation
- Identify areas where certain activities cannot commence without authorisation
- Demarcate areas which will be regarded as strategic cropping or rangeland areas
- Regulations regarding such authorisations

# Application for non-agricultural uses

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- Owner must apply for authorisation to use agricultural land for non-agricultural purposes
- Municipalities cannot authorise development on agricultural land inconsistent with controls imposed by the Minister
- Example of potential unconstitutionality
- Restriction on owners' rights in land – e.g. to develop or allow mining
- In general, no change in use without consent

# Rules for use and sub-division

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- The Minister may set criteria to govern use and sub-division:
  - Standards applicable per area
  - Minimum requirements for agro-ecosystem report
  - Desirability of future use
  - Any other consideration
- Essentially gives the Minister authority to determine what activities are undertaken on agricultural land
- Distinguishable from Designated Farm Use provisions



# Servitudes under Act 70 of 70

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- Consent for all servitudes on all Agricultural Land, except:
  - Sub-division and transfer to State
  - Rights in land transferred to State
  - Right of way, aqueduct, pipe line, electrical line with a width not exceeding 15 metres
  - Area not exceeding 225 square metres
  - Usufruct over the whole of agricultural land

# Servitudes under the Bill

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- Act 70 of 70 repealed entirely
- First draft included provision similar to Act 70 of 70
- Second draft - consent required to register any servitudes

# Penalties

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- Fines and imprisonment
  - Changing use, sub-dividing, registering servitude without consent
- Tax to discourage using agricultural land for non-agricultural purposes
- Essentially a penalty for using agricultural land for non-agricultural purposes
- Taxation to “encourage” the optimal utilisation of land

# Expropriation

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- First draft:
  - Minister to expropriate agricultural land being used for non-agricultural purposes
  - Minister may expropriate land for agricultural purposes if in the public interest
- Second draft:
  - Expropriation is not included
- Provisions of Expropriation Act and Property Valuation Act will still apply
- Expropriation Bill in the pipeline
- *Msiza v Director-General, Department of Rural Development and Land Reform*

# Issues

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- Unconstitutional – intrudes on municipal powers
- Impact on important areas of the economy, such as mining and development
- May also damage the agricultural sector
- One-stop-shop policy
- Generally, unduly limits owner's rights in land and will hamper investor confidence

# Solutions?

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- The definition of agricultural land should be amended to exclude any land in terms which:
  - Any right, permit or permission to use the land which has been granted under the MPRDA, NEMA or any other law
- Land to be transferred to State entities or rights registered in favour of State should be excluded
- Trumping provision should be amended
- Limit ministerial power

# Thank you

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Questions?