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THE PRESIDENCY

No. 1283 5 December 2001

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

No. 51 of 2001: Land Affairs General Amendment Act, 2001



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GENERAL EXPLANATORY NOTE:

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

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

(English text signed by the President.)
(Assented to 29 November 2001.)

ACT

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

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

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

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

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

Amendment of section 9 of Act 3 of 1996

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

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

Amendment of section 15 of Act 3 of 1996

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

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

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Insertion of section 15A in Act 3 of 1996

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

“Offences

15A. (1) No person shall remove or evict a labour tenant or an associate except on the authority of an order of a competent court. 10

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

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

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

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

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

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

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

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

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

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

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

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

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

Amendment of section 27 of Act 3 of 1996

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

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

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

Amendment of section 1 of Act 62 of 1997

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

Amendment of section 6 of Act 62 of 1997

7. Section 6 of the Extension of Security of Tenure Act, 1997, is hereby amended—
- (a) by the insertion of the following paragraph after paragraph (d) in subsection (2): 15
“(dA) to bury a deceased member of his or her family who, at the time of that person’s death, was residing on the land on which the occupier is residing, in accordance with their religion or cultural belief, if an established practice in respect of the land exists;”;
 and 20
 - (b) by the addition of the following subsection:
“(5) The family members of an occupier contemplated in section 8(4) of this Act shall on his or her death have a right to bury that occupier on the land on which he or she was residing at the time of his or her death, in accordance with their religion or cultural belief, subject to any reasonable conditions which are not more onerous than those prescribed and that may be imposed by the owner or person in charge.” 25

Short title

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