



Republic of Namibia
Annotated Statutes

Subdivision of Agricultural Land Act 70 of 1970 (RSA)

(RSA GG 2867)

brought into force in South Africa and South West Africa
on 2 January 1971 by RSA Proc. 329 of 1970 (RSA GG 2950)
(see section 14 of Act)

APPLICABILITY TO SOUTH WEST AFRICA: Section 14 states "This Act and any amendment thereof shall apply also in the territory of South West Africa". Section 1 defines "agricultural land", "executive committee" and "scheme" accordingly.

TRANSFER TO SOUTH WEST AFRICA: The administration of this Act was transferred to South West Africa by the Executive Powers (Agricultural Technical Services) Transfer Proclamation, AG 11 of 1978, dated 2 March 1978. None of the amendments to the Act in South Africa after the date of transfer and prior to Namibian independence – the *Subdivision of Agricultural Land Amendment Act 12 of 1979* (RSA GG 6345), the *Subdivision of Agricultural Land Amendment Act 18 of 1981* (RSA GG 7447) and the *Subdivision of Agricultural Land Amendment Act 33 of 1984* (RSA GG 9170) – were applicable to South West Africa because none were made expressly so applicable.

as amended by

**Subdivision of Agricultural Land Amendment
Act 55 of 1972 (RSA) (RSA GG 3531)**

came into force on date of publication: 2 June 1972

**Subdivision of Agricultural Land Amendment
Act 19 of 1974 (RSA) (RSA GG 4210)**

came into force on date of publication: 13 March 1974

**Subdivision of Agricultural Land Amendment
Act 18 of 1977 (RSA) (RSA GG 5450)**

came into force on date of publication: 16 March 1977

Native Laws Amendment Proclamation, AG 3 of 1979 (OG 3898)

deemed to have come into force in relevant part on 1 August 1978 (section 5 of AG 3 of 1979)

The Subdivision of Agricultural Land Act 70 of 1970 and two of its amending acts (Act 70 of 1970 and Act 55 of 1972) – but not Act 18 of 1977 – are repealed in respect of Rehoboth by the Agricultural Land Act 5 of 1981 (Rehoboth) (*Official Gazette 37 of Rehoboth*, which was misprinted as *Official Gazette 38 of Rehoboth* and bears a handwritten correction), brought into force on 1 September 1981 by an unnumbered notice (*Official Gazette 41 of Rehoboth*, dated 23 September 1981).

ACT

Subdivision of Agricultural Land Act 70 of 1970 (RSA)

To control the subdivision and, in connection therewith, the use of agricultural land.

[long title substituted by Act 55 of 1972]

*(English text signed by the State President)
(Assented to 28th September, 1970)*

ARRANGEMENT OF SECTIONS

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BE IT ENACTED by the State President, the Senate and the House of Assembly of the Republic of South Africa, as follows:-

1. In this Act, unless the context otherwise indicates -

“advertise” means to distribute to members of the public or bring to their notice in any other manner any written, illustrated, visual or other descriptive material or oral statement, communication, representation or reference;

[definition of “advertise” inserted by Act 18 of 1977]

“agricultural land” means any land, except -

- (a) land situated in the area of jurisdiction of a municipal council, city council, town council, village council, village management board, village management council, local board, health board or health committee, and land forming part of, in the province of the Cape of Good Hope, a local area established under section 6(1)(i) of the Divisional Councils Ordinance, 1952 (Ordinance No. 15 of 1952 of that province), and, in the province of Natal, a public health area as defined in section 1 of the Local Health Commission (Public Health Areas Control) Ordinance, 1941 (Ordinance No. 20 of 1941 of the last-mentioned province), and in the province of the Transvaal, an area in respect of which a local area committee has been established under section 21(1) of the Transvaal Board for the Development of Peri-Urban Areas Ordinance, 1943 (Ordinance No. 20 of 1943 of the Transvaal), and, in South-West Africa, a peri-urban area established under section 9 of

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the Peri-Urban Development Board Ordinance, 1970 (Ordinance No. 19 of 1970 of South-West Africa), but excluding any such land declared by the Minister after consultation with the executive committee concerned and by notice in the Gazette to be agricultural land for the purposes of this Act;

[The Local Authorities Act 23 of 1992 repealed the Peri-Urban Development Board Ordinance 19 of 1970.]

- (b) land forming part of any area subdivided in terms of the Agricultural Holdings (Transvaal) Registration Act, 1919 (Act No. 22 of 1919), or being a township as defined in section 102(1) of the Deeds Registries Act, 1937 (Act No. 47 of 1937);

[Act 22 of 1919 has no relevance to Namibia. The Deeds Registries Act 47 of 1937 has been replaced by the Deeds Registries Act 14 of 2015.]

- (c) land of which the State or the administration of the territory of South-West Africa is the owner or which is held in trust by the State or a Minister or the Administrator of the said territory for any person;
- (d) land forming part of a scheduled Black area as defined in section 49 of the Development Trust and Land Act, 1936 (Act No. 18 of 1936), or of a released area referred to in section 2 of the said Act, or land referred to in section 4 of the South-West Africa Bantu Affairs Administration Act, 1954 (Act No. 56 of 1954);

[Paragraph (d) is amended by AG 3 of 1979.

Act 56 of 1954 was originally enacted as the “South-West Africa Native Affairs Administration Act” (SA GG 5302). It became the “South-West Africa Bantu Affairs Administration Act” in South Africa by virtue of the Bantu Laws Amendment 42 of 1964 (RSA GG 801) read together with section 16(1) of the Native Laws Amendment Act 46 of 1962 (RSA GG 240). However, in South West Africa, these two laws were repealed insofar as they were applicable to South West Africa. Thus, Act 56 of 1954 was once again the “South-West Africa Native Affairs Administration Act” in South West Africa.

However, this provision uses the title “South West African Bantu Affairs Administration Act”. This provision was never specifically amended in South West Africa. AG 3 of 1979 provides that “there is hereby substituted for the word ‘Bantu’ wherever it occurs in any law as a reference to a person or persons, the word ‘Black’ or ‘Blacks’, as the context in question may require”. It is not clear if this directive would apply to the name of a law, and so the name “South West African Bantu Affairs Administration Act” has not been altered here. If AG 3 of 1979 did have the effect of altering the reference to the name of the Act to the South West Africa Black Affairs Administration Act 56 of 1954, then it must be noted that AG 3 of 1979 also amended section 3A(1) of Act 56 of 1954 to state “Any reference in any law in force in the territory, including the Eastern Caprivi Zipfel, or in any document, relating to any matter in such territory, to a Black, being a reference to a person, shall be construed as a reference to a native, and any word or expression in any such law or document connected with a Black shall be construed accordingly.” This would mean that the name “South West Africa Black Affairs Administration Act” was to be construed as the “South West Africa Native Affairs Administration Act”.

Both Act 18 of 1936 and Act 56 of 1954 were repealed by the Communal Land Reform Act 5 of 2002.]

- (e) land to which the provisions of the Rural Coloured Areas Act, 1963 (Act No. 24 of 1963), apply, or land in the territory of South-West Africa included in the “Gebiet” as defined in section 1 of the Rehoboth Investment and Development Corporation Act, 1969 (Act No. 84 of 1969);

[The Rural Coloured Areas Act 24 of 1963 was never applicable to South West Africa. The Rehoboth Investment and Development Corporation Act 83 of 1969 was repealed by the Rehoboth Investment and Development Corporation Repeal Act 15 of 1996.]

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- (f) land which the Minister after consultation with the executive committee concerned and by notice in the *Gazette* excludes from the provisions of this Act;

[definition of “agricultural land” substituted by Act 55 of 1972 and amended by Act 18 of 1977]

“executive committee” means the executive committee of a province or the territory of South-West Africa;

[definition of “executive committee” substituted by Act 55 of 1972]

“local authority” means any institution or body referred to in section 84(1)(f) of the Republic of South Africa Constitution Act, 1961 (Act No. 32 of 1961);

[The Republic of South Africa Constitution Act 32 of 1961 was South Africa's constitution from 1961 to 1984. Although this Act had implications for South-West Africa, it does not appear to have been directly applicable as a law of South West Africa. It was repealed on 3 September 1984 by the Republic of South Africa Constitution Act, 1983, although some provisions relating to provincial government were retained under the new name of the Provincial Government Act 32 of 1961. Local authorities in Namibia are governed by the Local Authorities Act 23 of 1992.]

“Minister” means the Minister of Agriculture;

“prescribed” means prescribed by regulation;

[definition of “prescribed” inserted by Act 18 of 1977]

“right”, in relation to agricultural land, does not include any right to minerals or a prospecting or mining right;

[definition of “right” inserted by Act 18 of 1977]

“scheme” means a town-planning scheme prepared in terms of a provincial ordinance or an ordinance of the territory of South West Africa by an authority referred to in paragraph (a) of the definition of “agricultural land”, envisaging the co-ordinated and harmonious development of the area to which such scheme relates;

[definition of “scheme” inserted by Act 18 of 1977]

“Secretary” means the Secretary for Agricultural Technical Services;

“statutory body” means -

- (a) any board or body which has been established by or under any law and whose funds consist wholly or partly of moneys appropriated by Parliament in aid of such board or body;
- (b) any local authority;
- (c) any other board or body, or any board or body belonging to a class of boards or bodies, which the Minister may by notice in the *Gazette* declare to be a statutory board or body or statutory boards or bodies for the purposes of this Act.

Actions which are excluded from application of Act

2. The provisions of this Act shall not apply in respect of -

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- (a) (i) any subdivision of land for the purpose of transferring a portion thereof to the State or the administration of the territory of South-West Africa or a statutory body;
- (ii) the transfer of an undivided share in land to the State or the administration of the territory of South-West Africa or a statutory body;
- (iii) the sale or grant of any right to any portion of agricultural land to the State or the administration of the territory of South-West Africa or a statutory body;

[paragraph (a) substituted by Act 55 of 1972 and by Act 18 of 1977]

- (b) any subdivision of, or the passing of an undivided share in, any land in accordance with a testamentary disposition or intestate succession, if the testator died before the commencement of this Act;
- (c) the passing of an undivided share in any land in accordance with a contract entered into prior to the commencement of this Act;
- (d) any subdivision of any land in connection with which a surveyor has completed the relevant survey and has submitted the relevant subdivisional diagram and survey records for examination and approval to the surveyor-general concerned prior to the commencement of this Act.

[The full stop at the end of paragraph (d) should be a semicolon now that it is no longer the last paragraph in section 2.]

- (e) the registration of a lease referred to in section 3(d) in respect of a portion of agricultural land, concluded in writing prior to the commencement of the Subdivision of Agricultural Land Amendment Act, 1974.

[paragraph (e) inserted by Act 55 of 1972 and substituted by Act 19 of 1974]

Prohibition of certain actions regarding agricultural land

- 3. Subject to the provisions of section 2 -
 - (a) agricultural land shall not be subdivided;
 - (b) no undivided share in agricultural land not already held by any person, shall vest in any person;
 - (c) no part of any undivided share in agricultural land shall vest in any person, if such part is not already held by any person;
 - (d) no lease in respect of a portion of agricultural land of which the period is 10 years or longer, or is the natural life of the lessee or any other person mentioned in the lease, or which is renewable from time to time at the will of the lessee either by the continuation of the original lease or by entering into a new lease, indefinitely or for periods which together with the first period of the lease amount in all to not less than 10 years, shall be entered into;
 - (e) no portion of agricultural land, whether surveyed or not, shall be sold or advertised for sale, and no right to such portion shall be sold or granted for a period of more than 10 years or for the natural life of any person or to the same person for periods

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aggregating more than 10 years, or advertised for sale or with a view to any such granting;

- (f) no area of jurisdiction, local area, public health area, peri-urban area or other area referred to in paragraph (a) or (b) of the definition of “agricultural land” in section 1, shall be established on, or enlarged so as to include, any land which is agricultural land;
- (g) no public notice to the effect that a scheme relating to agricultural land or any portion thereof has been prepared or submitted under the ordinance in question, shall be given,

unless the Minister has consented in writing.

[section 3 substituted by Act 55 of 1972, Act 19 of 1974 and Act 18 of 1977]

Application for consent of Minister, and imposition, enforcement or withdrawal of conditions by him

4. (1) Any application for the consent of the Minister for the purposes of section 3 shall be lodged with the Secretary and shall be in such form and be accompanied by such plans, documents and information as are determined by the Secretary.

- (2) The Minister may in his discretion refuse or -
 - (a) on such conditions, including conditions as to the purpose for or manner in which the land in question may be used, as he deems fit, grant any such application;
 - (b) if he is satisfied that the land in question is not to be used for agricultural purposes and after consultation with the Administrator of the province, including the territory of South West Africa, in which such land is situated, on such conditions as such Administrator may determine in regard to the purpose for or manner in which such land, may be used, grant any such application.

[subsection (2) substituted by Act 55 of 1972 and by Act 18 of 1977]

(3) The Minister, or in the case of a condition referred to in subsection (2)(b), the Administrator concerned, may enforce any such condition.

[subsection (3) substituted by Act 18 of 1977]

(4) The Minister, or in the case of a condition referred to in subsection (2)(b), the Administrator concerned after consultation with the Minister may vary or withdraw any such condition and, if it has been registered against the title deed of the land, the Minister may direct that it be varied or cancelled.

[subsection (4) substituted by Act 18 of 1977]

Succession

5. (1) If the Minister does not in terms of section 4 consent to the subdivision of any particular agricultural land in accordance with any testamentary disposition or intestate succession or to the vesting of any undivided share in such land in accordance therewith, and no agreement is reached as to a subdivision or vesting in respect of which the Minister grants his consent in terms of the said section 4, the executor of the estate concerned shall realize the land

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or undivided share concerned, as the case may be, and dispose of the nett proceeds thereof in accordance with the said testamentary disposition or intestate succession, as the case may be.

(2) The provisions of section 12 of the Expropriation Act, 1965 (Act No. 55 of 1965), shall *mutatis mutandis* apply in respect of any such proceeds of land or an undivided share in any land, and in such application of the said section a reference therein to a Minister shall be deemed to be a reference to an executor referred to in subsection (1) of this section.

[The Expropriation Act 55 of 1965 was not generally applicable to South West Africa, although this provision appears to have made it applicable for the specific purposes referred to here. The Expropriation Act 55 of 1965 was replaced in South Africa by the Expropriation Act 63 of 1975. Only section 4 of the Expropriation Act 63 of 1975 was ever directly applicable to South West Africa, and that section was repealed by the National Transport Corporation Act 21 of 1987 (SWA) (which was repealed in turn by the National Transport Services Holding Company Act 28 of 1998). In South West Africa, expropriation in general was governed by the Expropriation Ordinance 32 of 1967, which was replaced by the Expropriation Ordinance 13 of 1978 (still in force in independent Namibia).]

Duties of Surveyor-General and Registrar of Deeds in application of Act

6. (1) Subject to the provisions of section 2 a Surveyor-General shall only approve a general plan or diagram relating to a subdivision of agricultural land, and a Registrar of Deeds shall only register the vesting of an undivided share in agricultural land referred to in section 3(b), or a part of any such share referred to in section 3(c), or a lease referred to in section 3(d), or, if applicable, a right referred to in section 3(e) in respect of a portion of agricultural land, if the written consent of the Minister in terms of this Act has been submitted to him.

[subsection (1) substituted by Act 55 of 1972, Act 19 of 1974 and Act 18 of 1977]

(2) If such consent has been granted subject to a registrable condition, such condition shall, on such approval or registration, be endorsed on the title deed of the land concerned.

Registration of servitudes

6A. (1) Subject to the provisions of the Water Act, 1956 (Act No. 54 of 1956), a servitude in respect of agricultural land, except -

- (a) a right of way, aqueduct, pipe line or conducting of electricity with a width not exceeding 15 metres;
- (b) a usufruct over the whole of agricultural land in favour of one person or in favour of such person and his spouse or the survivor of them if they are married in community of property,

shall not be registered by a Registrar of Deeds without the written consent of the Minister.

[subsection (1) substituted by Act 18 of 1977]

(2) The provisions of sections 4 and 6(2) shall *mutatis mutandis* apply in respect of the granting of consent for the purposes of subsection (1) of this section, and in respect of such consent.

[section 6A inserted by Act 55 of 1972]

Entry upon and investigations on land

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7. The Secretary may either generally or in any particular case authorize any person to enter upon any land at all reasonable times and to carry out thereon such investigations or to perform thereon such other acts as are necessary or expedient for achieving the objects of this Act.

Delegation of powers

8. (1) The Minister may delegate to the Secretary or any other officer in the Public Service any power conferred upon him by this Act (excluding a power referred to in section 10), but shall not be divested of any power delegated by him, and may vary or withdraw any decision of the Secretary or any such officer upon application by any person affected and feeling aggrieved by such decision.

(2) The Minister may under subsection (1) delegate the same power to more than one officer or different powers to different officers or in respect of different areas the same or different powers to different officers.

[subsection (2) inserted by Act 55 of 1972 and by Act 18 of 1977]

- (3) (a) An application referred to in subsection (1) shall be made within the period and in the manner prescribed, and shall be accompanied by the prescribed fee.
- (b) If the Minister withdraws any decision of the Secretary or the officer concerned, the prescribed fee paid by the applicant shall be refunded to him, or if the Minister varies any such decision, he may in his discretion direct that the whole or any part of such fee be refunded to the applicant.

[subsection (3) inserted by Act 18 of 1977]

Payment of duties or fees

9. No duties or fees of office shall be payable in respect of any document drawn up for the purposes of this Act and lodged in a registration office for registration or filing.

Regulations

10. (1) Subject to the provisions of subsection (2) the Minister may make regulations with reference to any matter which may be prescribed under this Act, or in respect of which, in his opinion, it is necessary or expedient to make regulations for achieving the objects of this Act.

(2) Any such regulation which relates to State revenue or expenditure shall be made after consultation with the Minister of Finance.

(3) Regulations made under subsection (1) may provide that any person who contravenes or fails to comply with any provision thereof shall be guilty of an offence and on conviction liable to such fine, not exceeding two hundred rand, or to imprisonment for such period, not exceeding six months, as may be prescribed therein.

Offences and penalties

11. Any person who -

- (a) in any application for the purpose of this Act makes any statement which is false in any material respect, knowing it to be false, or fails to disclose any information with intent to deceive;

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- (b) hinders or obstructs in the performance of his functions any other person acting under an authority from the Secretary in terms of section 7;
- (c) contravenes or fails to comply with a condition imposed in terms of section 4(2);
- (cA) contravenes the provisions of section 3(d) with regard to the entering into of a lease contemplated therein;

[paragraph (cA) inserted by Act 19 of 1974]

- (d) contravenes the provisions of section 3(e),

shall be guilty of an offence and on conviction liable to a fine not exceeding R1 000 or to imprisonment for a period not exceeding 2 years, and in addition, in the case of an offence contemplated in paragraph (c) or (d), to a fine not exceeding R50 in respect of each day on which the offence continues.

[section 11 substituted by Act 55 of 1972 and amended by Act 18 of 1977]

Insertion of section 3A in Act 10 of 1944

12. The following section is hereby inserted in the Provincial Powers Extension Act, 1944, after section 3:

“Application of Act

3A. The provisions of sections 1, 2 and 3 shall not apply in respect of agricultural land as defined in section 1 of the Subdivision of Agricultural Land Act, 1970: Provided that the provisions of this section shall not affect any condition contemplated in subsection (2) of the said section 3.”.

Validity of permits

13. A permit issued under section 8(1)(a)(ii) or (iii) of the Environment Planning Act 1967 (Act No. 88 of 1967), or a similar document issued under a provincial ordinance or an ordinance of the territory of South West Africa, prior to the commencement of this Act and still of force and effect at such commencement, shall be deemed to be a written consent granted by the Minister in terms of section 3 of this Act, and the conditions (if any) subject to which such permit or document was issued in terms of the first-mentioned Act or the ordinance in question, shall be deemed to be conditions imposed by the Minister in terms of section 4(2) of this Act in connection with such consent.

[Section 13 is substituted by Act 18 of 1977. The Environment Planning Act 88 of 1967 was not applicable to South West Africa.]

Application of Act in South-West Africa

14. This Act and any amendment thereof shall also apply in the territory of South-West Africa.

Short title and commencement

15. This Act shall be called the Subdivision of Agricultural Land Act, 1970, and shall come into operation on a date fixed by the State President by proclamation in the *Gazette*.