

REPUBLIC OF SOUTH AFRICA

PLANT HEALTH (PHYTOSANITARY) BILL

*(As introduced in the National Assembly (proposed section 76); explanatory summary of
Bill and prior notice of its introduction published in Government Gazette No. 44604 of
21 May 2021)
(The English text is the official text of the Bill)*

(MINISTER OF AGRICULTURE, LAND REFORM AND RURAL DEVELOPMENT)

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BILL

To provide for phytosanitary measures to prevent the introduction, establishment and spread of regulated pests in the Republic; to provide for the control of regulated pests; to provide for regulation of the movement of plants, plant products and other regulated articles into, within and out of the Republic; and to provide for matters connected therewith.

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

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SCHEDULE

Act repealed

CHAPTER 1

DEFINITIONS 30

Definitions and Interpretations

- 1.** (1) In this Act, unless the context indicates otherwise—
- “**area of low pest prevalence**” means an area, whether all of a country, part of a country, or all or parts of several countries, as identified by the competent authorities, in which a specific pest occurs at low levels and which is subject to effective surveillance, control or eradication measures; 35
- “**assignee**” means a person or juristic person to whom a power or duty has been assigned by the Minister under section 22(1);
- “**authorised person**” means a person contemplated in section 8(1);
- “**authority**” means, depending on the context— 40
- (a) an authority granted by the Minister under section 5(2); and
 - (b) the Department responsible for agriculture, land reform and rural development;
 - (c) the provincial departments responsible for agriculture, land reform and rural development; and 45
 - (d) municipal entities responsible for agriculture, land reform and rural development;
- “**commodity**” means a type of plant, plant product or other regulated article being moved for trade or other purpose;
- “**consignment**” means a quantity of plants, plant products or other regulated articles being moved from or to the Republic and covered, when required, by a single phytosanitary certificate; 50

- “**consignment in transit**” means a consignment that passes through a country without being imported and that may be subject to phytosanitary measures;
- “**control**” means the suppression, containment or eradication of a pest population;
- “**control measure**” means a control measure prescribed by the Minister under section 4; 5
- “**Convention**” means the International Plant Protection Convention (IPPC), as deposited in 1951 with the Food and Agriculture Organisation (FAO) in Rome and as subsequently amended from time to time, and which was acceded to by the Republic at its 29th Session in November 1997;
- “**conveyance**” means any aircraft, vessel, train, motor car, van, truck, cart or other vehicle, plant or any other regulated article that can act as a pathway for pests; 10
- “**day**” means any calendar day excluding Saturdays, Sundays and public holidays within the Republic;
- “**Department**” means the Department responsible for agriculture, land reform and rural development; 15
- “**emergency measure**” means a phytosanitary measure established as a matter of urgency in a new or unexpected phytosanitary situation, and which may or may not be a provisional measure;
- “**eradication**” means the application of phytosanitary measures to eliminate a pest from an area; 20
- “**establishment**” means the perpetuation, for the foreseeable future, of a pest within an area after entry;
- “**executive officer**” means an officer designated in terms of section 5(1);
- “**export**” means to move, or the transboundary movement of, regulated articles from the Republic to any place outside the Republic; 25
- “**exporter**” means any person who, whether as owner, consignor, agent or broker, is in possession of or in any way entitled to the custody or control of any regulated article to be exported from the Republic;
- “**import**” means to move, or the transboundary movement of, regulated articles into the Republic; 30
- “**importer**” means any person who, whether as owner, consignee, agent or broker, is in possession of or in any way entitled to the custody or control of any plant, plant product or regulated article to be imported into the Republic;
- “**infestation**” means the presence in a commodity of a living pest of the plant or plant product concerned, and includes infection; 35
- “**inspection**” means the official visual examination of plants, plant products or other regulated articles to determine if pests are present or to determine compliance with phytosanitary measures;
- “**integrity**” means the composition of a consignment as described by its phytosanitary certificate or other officially acceptable document, maintained without loss, addition 40 or substitution;
- “**introduction**” means the entry of a pest which may result in its establishment;
- “**juristic person**” means any organisation, partnership, corporation, association, joint venture, or other legal entity;
- “**Minister**” means the Minister responsible for agriculture, land reform and rural development; 45
- “**National Plant Protection Organisation of South Africa**” means the organisation designated under section 9 to discharge the functions specified under section 11;
- “**officer**” means an officer or employee as defined in section 1 of the Public Service Act, 1994 (Proclamation No. 103 of 1994); 50
- “**order**” means an order given by the executive officer in terms of section 7;
- “**organ of state**” means—
- (a) any department of state or administration in the national, provincial or local sphere of government; or
 - (b) any other functionary or institution— 55
 - (i) exercising a power or performing a duty in terms of the Constitution or a provincial constitution; or
 - (ii) exercising a public power or performing a public duty in terms of any legislation, but does not include a court or judicial officer;
- “**organism**” means any biotic entity capable of reproduction or replication in its naturally occurring state; 60
- “**pathway**” refers to any means that allows the entry or spread of a pest;

- “**permit**” means any authorisation, issued under this Act, to move plants, plant products or other regulated articles in accordance with phytosanitary measures prescribed by this Act, and includes “phytosanitary certificate” and “import permit”;
- “**pest**” means any species, strain or biotype of plant, animal or pathogenic agent injurious to plants or plant products; 5
- “**pest-free area**” means an area in which a specific pest does not occur as demonstrated by scientific evidence and in which, where appropriate, this condition is being officially maintained;
- “**pest-free place of production**” means a place of production in which a specific pest does not occur as demonstrated by scientific evidence and in which, where appropriate, this condition is being officially maintained; 10
- “**pest-free production site**” means a defined portion of a place of production in which a specific pest does not occur as demonstrated by scientific evidence and in which, where appropriate, this condition is being officially maintained for a defined period and that is managed as a separate unit in the same way as a pest-free place of production; 15
- “**pest-risk analysis**” means the process of evaluating biological or other scientific and economic evidence to determine whether a pest should be regulated and the strength of any phytosanitary measures to be taken against it;
- “**phytosanitary action**” means an official operation, such as inspection, testing, surveillance or treatment, undertaken to implement phytosanitary measures; 20
- “**phytosanitary certificate**” means an official document that attests to the phytosanitary status of any consignment affected by phytosanitary regulations, patterned after the model certificates of the IPPC;
- “**phytosanitary import requirements**” means specific phytosanitary measures established by an importing country concerning consignments moving into that country; 25
- “**phytosanitary measures**” means those measures, regulations or procedures provided for by this Act having the purpose to prevent the introduction or spread of quarantine pests or to limit the economic impact of regulated non-quarantine pests;
- “**phytosanitary security**”, in relation to a consignment, means the maintenance of integrity and prevention of re-infestation after phytosanitary certification and prior to export; 30
- “**plant**” means any living plant and parts of it, including seeds and germplasm;
- “**plant products**” means any unmanufactured material of plant origin, including grain, and those manufactured products which, by their nature or that of their processing, may create a risk for the introduction and spread of pests; 35
- “**point of entry**” means an airport, seaport or land border point officially designated or prescribed for the importation of consignments, or entrance of passengers;
- “**point of exit**” means an airport, seaport or land border point or a point designated or prescribed for the exportation of consignments, or exit of passengers; 40
- “**prescribed**” means prescribed by any accompanying regulations or control measures;
- “**provisional measure**” means a phytosanitary regulation or procedure established without full technical justification owing to a current lack of adequate information;
- “**quarantine**” means official confinement of regulated articles for observation and research or for further inspection, testing or treatment; 45
- “**quarantine area**” means an area determined by order under section 19(1) within which a quarantine pest is present and is being officially controlled;
- “**quarantine facility**” means an official facility for holding plants or plant products in quarantine;
- “**quarantine pest**” means a pest of potential economic importance to the area endangered thereby and not yet present there or present but not widely distributed and being officially controlled; 50
- “**re-export**” means an imported consignment into the Republic from which it is then exported;
- “**regulated area**” means an area into which, within which or from which plants, plant products and other regulated articles are subjected to phytosanitary measures or procedures in order to prevent the introduction or spread of quarantine pests or to limit the economic impact of regulated non-quarantine pests; 55
- “**regulated article**” means any plant, plant product, storage place, packaging, conveyance, container, soil and any other organism, object or material capable of harbouring or spreading pests, deemed to require phytosanitary measures, particularly where international transportation is involved; 60

- “**regulated non-quarantine pest**” means a non-quarantine pest whose presence in plants for planting affects the intended use of those plants with an economically unacceptable impact and which is therefore regulated within the Republic;
- “**regulated pest**” means a quarantine pest or a regulated non-quarantine pest;
- “**regulation**” means regulations made under section 30; 5
- “**spread**” means the expansion of the geographical distribution of a pest within an area;
- “**surveillance**” means an official process of surveying, monitoring or other procedures in order to collect and record data on the occurrence or absence of pests;
- “**technically justified**” means justified on the basis of conclusions reached by using an appropriate pest risk analysis or, where applicable, another comparable examination and evaluation of available scientific information; 10
- “**test**” means an official examination, other than visual, to determine if pests are present or to identify pests;
- “**this Act**” means the Plant Health (Phytosanitary) Act;
- “**treatment**” means an official procedure for the killing, inactivation or removal of pests, or for rendering pests infertile or for devitalisation; 15
- “**user of land**” means an owner of land, and includes—
- (a) a person who has a personal or real right in respect of land in his or her capacity of fiduciary, fidei-commissary, holder of a servitude, possessor, lessee or occupier, irrespective of whether he or she resides on it; 20
 - (b) a person who has the right to cut trees or wood on land or to remove trees, wood or other organic material from land;
 - (c) a person who has the right to remove sand, soil, clay, stone or gravel from land; and
 - (d) a person who carries on prospecting or mining activities on land; and 25
- “**visual examination**” means the physical examination of plants, plant products or other regulated articles using the unaided eye, lens, stereoscope or microscope to detect pests without testing or processing.
- (2) Where a provision of this Act is in conflict with any other law on plant health, the provision of this Act prevails. 30

CHAPTER 2

ADMINISTRATION

Responsibility for administration of Act

2. The primary responsibility for the administration of this Act lies with the Minister.

Powers of Minister 35

3. (1) The Minister may, out of funds appropriated by Parliament for that purpose, perform any act on or with respect to land that is necessary to—
- (a) carry out the provisions of a control measure or an order where the user of land concerned refuses or neglects to do so;
 - (b) release on, or remove or eradicate from, land an organism imported in terms of section 13(5); 40
 - (c) control regulated pests; and
 - (d) further the objectives of this Act.
- (2) The Minister may, on application, authorise a person or juristic person to perform at the expense of that person or juristic person and subject to the control and instruction of the Minister, the acts referred to in subsection (1)(a), and such a person or juristic person has no recourse against the State for expenses so incurred. 45
- (3) The Minister may, by notice in the *Gazette*, prescribe control measures which must be complied with or carried out by a user of land in terms of section 4.
- (4) The Minister may make regulations in terms of section 30. 50

Prescribing of control measures by Minister

4. (1) The Minister may, by notice in the *Gazette*, prescribe control measures which must be complied with or carried out by a user of land.

- (2) Control measures may relate to—
- (a) the control of regulated pests;
 - (b) the keeping, planting or cultivation of plants;
 - (c) the keeping of regulated articles;
 - (d) the removal of regulated articles from land within a specified area to— 5
 - (i) other land within the same area; or
 - (ii) other land within any other specified area;
 - (e) the notification of the occurrence of regulated pests; or
 - (f) any other matter which may be necessary or expedient to prescribe in order to 10
 further the objectives of this Act, and the generality of the power conferred by this paragraph may not be limited by the preceding paragraphs.
- (3) Control measures must—
- (a) contain a prohibition or obligation with regard to any matter referred to in 15
 subsection (2);
 - (b) provide that the executive officer may, upon application by a person, exempt that person from the prohibition or obligation by means of a permit; and
 - (c) prescribe fees payable by a person applying for a permit referred to in 20
 paragraph (b).
- (4) Different control measures may be prescribed in respect of different regulated pests, different areas or different circumstances or in such other respect as may be 20 necessary.

Designation of executive officer

5. (1) The Minister must designate the director in the department responsible for phytosanitary measures as the executive officer.
- (2) The executive officer is the authority to whom the provision of phytosanitary 25 measures is entrusted and must exercise the powers and perform the duties conferred or imposed upon the executive officer under this Act.

Powers of executive officer

6. (1) (a) The executive officer may delegate to any officer of the Department, or with 30 the approval of the Minister to any juristic person, any power conferred upon him or her by or under this Act.
- (b) Any decision made or order given by any such officer or any such juristic person must be regarded as having been made by the executive officer.
- (c) Any decision or order of such an officer or any such juristic person may at any time 35 be withdrawn or amended in writing by the executive officer.
- (2) If the executive officer ascertains, or suspects on reasonable grounds, that regulated articles have been or will be imported into the Republic contrary to this Act, or have been or will be exported out of the country, or that regulated articles are infested, or have been moved or will be moved from a declared infested area to a non-infested 40 area within the Republic, the executive officer may—
- (a) order the person in charge of the conveyance by which the regulated articles 40 have been or will be imported or conveyed, that such articles or part of them as he or she may determine—
 - (i) not be off-loaded;
 - (ii) not be conveyed any further; or 45
 - (iii) be off-loaded at any place determined by the executive officer;
 - (b) order the person in control of the regulated articles, or the person by whom or 50 on whose behalf the regulated articles have been or will be imported or conveyed, or the person in possession or in charge of the regulated articles or part of such article, to remove from the Republic, destroy, treat, detain or deal with the regulated articles in the manner, at the place and within the period 50 determined by the executive officer;
 - (c) destroy or cause to destroy the regulated articles or part of them as he or she 55 may determine after notifying, in writing, the person in control or in charge of the regulated articles, or by whom or on whose behalf the regulated articles have been imported: Provided that where the destruction of the regulated articles is urgently required or the giving of notice is impractical, notice need not be given;
 - (d) search any person, personal luggage or conveyance;

- (e) where a person does not comply with the provisions in paragraph (a) or (b), destroy or cause to destroy the regulated articles; or
- (f) order the owner or person in possession or in charge of the regulated articles, including any articles produced through, or acquired through, from or by means of the regulated articles, to deal with those articles as provided in paragraph (b) irrespective of the degree of descent or relationship concerned, or the connection between the regulated articles. 5
- (3) The executive officer may institute an inquiry and request information and documentation from any person, to exercise his or her powers or perform his or her duties. 10
- (4) The executive officer may inspect, sample, test or investigate regulated articles and conduct surveillances.
- (5) The executive officer may audit delegates or assignees.
- (6) The executive officer may issue or grant any order or relevant permit, including a phytosanitary certificate. 15
- (7) When the executive officer issues or grants an order or relevant permit subject to technically justifiable conditions, he or she may at any time—
- (a) amend the provisions or conditions concerned; or
- (b) withdraw the order or relevant permit in writing.
- (8) In a case where the executive officer issues or grants an order or relevant permit, he or she may at any time, on application, determine points of entry or exit other than the points of entry or exit prescribed in terms of this Act.
- (9) The executive officer or an official who has been—
- (a) delegated for this purpose under this Act; or
- (b) declared to be a peace officer under section 334(1)(a) of the Criminal Procedure Act, 1977 (Act No. 55 of 1977), may issue an admission of guilt fine not exceeding R2500, as prescribed, to anyone who contravenes the provisions of sections 4 and 7. 25
- (10) For the purpose of this section, “detain” means keeping a consignment in official custody or confinement as a phytosanitary measure. 30

Orders with regard to land

7. (1) The executive officer may, by written order, which must be served in the prescribed manner, instruct a user of land to observe or carry out the provisions of a particular control measure on or with respect to any quarantine area or regulated area determined in that order. 35
- (2) Such an order may provide that anything required in terms of the order, must be done or omitted in the manner or within or during the period mentioned in it.
- (3) The executive officer may, upon application by the user of land concerned and against payment of the prescribed fees, if any, withdraw or amend an order, and for that purpose carry out the necessary inspection of the quarantine area or regulated area. 40
- (4) (a) Despite a prohibition in an order referred to in subsection (1), the executive officer may, in writing, authorise a user of land to remove a regulated article from the quarantine area or regulated area concerned in order to treat, eradicate or destroy it or dispose of it.
- (b) An application for an authorisation contemplated in paragraph (a) must be submitted in the prescribed manner to the executive officer. 45

Powers of entry, search, inspection and seizure with regard to land

8. (1) A person authorised by the Minister to perform an act under section 3(2) may on the authority of a warrant at any reasonable time enter upon or proceed over land to perform that act on or in connection with that land or other land. 50
- (2) The person contemplated in subsection (1) may—
- (a) after having notified the user of land concerned of his or her intention to do so, take with him or her when he or she enters upon or proceeds over that land such persons, vehicles, goods and material as he or she may require for the performance of the relevant act: Provided that notice need not be given if the user of the land concerned does not reside on that land and cannot readily be traced; and 55

- (b) require the user of land concerned or his or her manager, agent or employee on that land to render him or her such reasonable assistance as may be necessary in the circumstances to enable him or her to perform the act concerned.
- (3) The executive officer may at any reasonable time, after having obtained a warrant— 5
- (a) proceed over any land to reach the area where he or she wants to exercise his or her powers or perform his or her duties;
 - (b) enter and search any land, building or conveyance if he or she suspects on reasonable grounds that there may be a regulated article on or in it or with a person, and for that purpose he or she may inspect anything on or in that land, building or conveyance on or with that person and remove it or a sample of it for further investigation; 10
 - (c) require access to a book, document or electronic equipment at or on that land, building or conveyance which he or she suspects on reasonable grounds may relate to a regulated article, and make copies of or extracts from that book, document or electronic information; 15
 - (d) demand an explanation in connection with a relevant entry in such a book, document or electronic information or anything observed by him or her during his or her inspection, from a person who may have knowledge of the entry concerned or of something observed by him or her; 20
 - (e) seize an article which may serve as evidence of the commission of an offence in terms of this Act, and for that purpose remove it or a sample of it or any other article from the land, building or conveyance in question, and affix an identification mark or seal to it;
 - (f) enter and inspect any land to demarcate a quarantine area or regulated area and for that purpose effect or erect a marker, peg, label or other mark on or in connection with the land; 25
 - (g) enter and search any land to determine if the user of the land concerned is complying with or carrying out, or has complied with or carried out, the provisions of a control measure or order; 30
 - (h) enter any land, building, conveyance or premises to carry out any surveillance of pests; and
 - (i) enter any land, building, conveyance or premises to carry out any other investigation in connection with any matter mentioned in this Act.
- (4) A warrant referred to in subsection (3) must be issued by a magistrate who has jurisdiction in the area where the land, building, conveyance or premises in question are situated, and must be issued only if it appears to the magistrate from the information on oath or affirmation that there are reasonable grounds for believing that an article mentioned in subsection (3)(b) and (e) is upon or in such land or premises and must specify which of the acts mentioned in subsection (3) may be performed by the person to whom it is issued. 35 40
- (5) A warrant issued in terms of this section must be executed by day unless the person who issues the warrant authorises the execution thereof by night at times which must be reasonable, and entry upon and search of any land, building, conveyance, premises, or specified area in such warrant, must be conducted with strict regard to decency and order, including— 45
- (a) the right of a person to respect and the protection of his or her dignity;
 - (b) the right of a person to freedom and security; and
 - (c) the right of a person to his or her personal privacy.
- (6) The executive officer, employee or juristic person executing a warrant in terms of this section must immediately before commencing with the execution— 50
- (a) identify himself or herself to the person in control of the land or premises if such a person is present, and hand to such a person a copy of the warrant, or if such a person is not present, affix such copy to a prominent place on the land, premises or conveyance; and 55
 - (b) supply such person at his or her request with particulars regarding his or her authority to execute such a warrant.
- (7) If, during the execution of a warrant or the conducting of a search in terms of this section, a person claims that an article found on or in the land, premises or conveyance in question contains confidential information and refuses the inspection, seizure or removal of such article, the person executing the warrant or conducting the search must, if he or she is of the opinion that the article contains information which is relevant to the investigation and that such information is necessary for the investigation or hearing, 60

request a magistrate who has jurisdiction to seize or remove that article for safe custody until a court of law has made a ruling on the question whether or not the information in question is confidential.

(8) A warrant issued in terms of this section may be issued on any day and remains in force until— 5

- (a) it is executed;
- (b) it is cancelled by the person who issued it or, if such person is not available, by any person with similar authority;
- (c) the expiry of one month from the day of its issue; or
- (d) the purpose for which the warrant was issued no longer exists, 10

whichever occurs first.

(9) When the executive officer exercises a power referred to in subsection (3) on or in connection with any land, premises or conveyance, he or she may require the user of land, owner or person in charge, or his or her manager, agent or employee, to render him or her such reasonable assistance as may be necessary. 15

(10) When the executive officer exercises a power referred to in subsection (3) on or in connection with any land, premises, building or conveyance, he or she may make use of any person or equipment to assist him or her in the exercise of his or her power.

(11) A person authorised under this section to enter upon, search or proceed over any land, building or conveyance must show to the user of the land, owner or person in charge, or his or her manager, agent or employee, proof of his or her identity. 20

Establishment of National Plant Protection Organisation of South Africa

9. (1) The National Plant Protection Organisation of South Africa is hereby established in accordance with the provisions of Article IV of the Convention.

(2) The National Plant Protection Organisation of South Africa must perform the functions provided for in this Act. 25

Composition of National Plant Protection Organisation of South Africa

10. The National Plant Protection Organisation of South Africa consists of directorates responsible for phytosanitary policy and operation matters in the Department. 30

Functions of National Plant Protection Organisation of South Africa

11. The National Plant Protection Organisation of South Africa shall perform the following functions:

- (a) Provide a national plant protection contact point in terms of the Convention in the Republic; 35
- (b) issue phytosanitary certificates;
- (c) conduct pest risk analyses;
- (d) develop and publish phytosanitary measures;
- (e) propose, review and enforce phytosanitary measures;
- (f) inspect consignments of plants, plant products and other regulated articles; 40
- (g) notify trading partners regarding non-compliance with phytosanitary import requirements;
- (h) notify other countries about the Republic's phytosanitary measures, regulations, requirements and legislation;
- (i) conduct surveillance for regulated pests in the Republic; 45
- (j) conduct phytosanitary audits to ensure that pest management is in compliance with official phytosanitary measures and standards;
- (k) render plant health services that include phytosanitary diagnostic services and quarantine services;
- (l) distribute plant health information regarding regulated pests and any other phytosanitary matters that are of public interest; 50
- (m) conduct training and development of staff;
- (n) represent the Republic in bilateral, regional and other international phytosanitary forums;
- (o) negotiate and maintain export work programmes, bilateral protocols for importing and exporting plants and plant products and other regulated articles; as well as any other related phytosanitary measures; and 55

- (p) perform such other functions as may be required by the provisions of this Act and relevant international agreements.

CHAPTER 3

IMPORTS

Regulation of imports 5

- 12.** (1) In order to prevent the introduction, establishment and spread of regulated pests, the executive officer may—
- (a) conduct pest-risk analyses and prescribe specific phytosanitary measures as conditions for the import of plants, plant products and other regulated articles;
 - (b) exempt or prohibit the import of specified plants, plant products and other regulated articles; 10
 - (c) implement emergency and provisional measures in relation to imports; and
 - (d) take phytosanitary action in relation to imports.
- (2) Phytosanitary measures under subsection (1)(a) and the exemptions or prohibitions under subsection (1)(b) shall be based on existing international standards or be technically justified based on pest-risk analyses. 15
- (3) The executive officer may engage in preparatory negotiations with counterparts for phytosanitary bilateral and multilateral agreements.

Import of regulated articles

- 13.** (1) Subject to subsections (2), (5) and (6), a person may not, except on authority of an import permit that may on application be issued by the executive officer on such conditions as he or she may determine, import into the Republic regulated articles. 20
- (2) The Minister may, by notice in the *Gazette*, determine that specific regulated articles may be imported into the Republic without an import permit, subject to conditions set out in that notice. 25
- (3) A person importing regulated articles into the Republic on the authority of a permit or a notice in the *Gazette* as contemplated in subsection (2)—
- (a) must do so through a prescribed point of entry, except where an executive officer has determined an alternative point of entry;
 - (b) must present the regulated articles and prescribed documents at the point of entry or any other place determined by the executive officer for inspection, tests or other activities;
 - (c) must not remove the regulated articles from the point of entry or any other place before the executive officer has authorised such removal in writing;
 - (d) must apply for inspection on a form obtainable from the executive officer; and 30
 - (e) is liable for the payment of the prescribed fees. 35
- (4) (a) The executive officer may review, modify or revoke an import permit in the case where import conditions have been amended or modified or where the permit holder has contravened the conditions of the import permit;
- (b) If the executive officer reviews, modifies or revokes an import permit in terms of subsection (4)(a) he or she must advise the permit holder in writing of the review, modification or revocation and the reasons for the review, modification or revocation within 10 days of his or her decision. 40
- (5) The Minister may allow the importation of any organism of a kind not indigenous to the Republic, if the presence of it in the Republic is desirable to— 45
- (a) control the occurrence of pests in the Republic; or
 - (b) further the objectives of this Act;
- (6) The Minister may consult widely with, and take into account the advice of members of the agricultural and scientific communities before taking action under subsection (5). 50
- (7) The Minister may, by notice in the *Gazette*, determine regulated articles in respect of which a permit for importation into the Republic may not be issued.

CHAPTER 4

EXPORT, RE-EXPORT AND TRANSIT

Export of regulated articles

- 14.** (1) A person intending to export plants, plant products or other regulated articles from the Republic— 5
- (a) must comply with the phytosanitary import requirements of the importing country;
 - (b) must apply to the executive officer for the prescribed phytosanitary certificate, where applicable, in the prescribed manner;
 - (c) must do so through a prescribed point of exit, except where the executive officer has determined an alternative point of exit; 10
 - (d) is liable for the prescribed fees;
 - (e) must present the consignment for inspection; and
 - (f) must comply with the prescribed export phytosanitary protocols and related requirements. 15
- (2) The executive officer shall, upon application by an exporter under subsection (1)(b), inspect the consignment without undue delay.
- (3) Upon inspection under subsection (2) the executive officer shall—
- (a) where the consignment meets the importing country's phytosanitary measures, issue a phytosanitary certificate and any other required declaration; or 20
 - (b) deny certification where requirements under subsection (1) have not been met.
- (4) After the issuance of a phytosanitary certificate, the exporter shall export the consignment in compliance with the conditions of the National Plant Protection Organisation of South Africa concerning maintenance of the phytosanitary security of a consignment after certification. 25

Re-export

- 15.** (1) When a consignment is imported into the Republic for further export to another country, the exporter—
- (a) must apply to the executive officer for a prescribed phytosanitary certificate for re-export; 30
 - (b) must provide all required documentation to the relevant executive officer;
 - (c) must avail the consignment for inspection; and
 - (d) is liable for the prescribed fees.
- (2) The executive officer shall, upon application by an exporter under subsection (1)(a), inspect the consignment without undue delay. 35
- (3) Upon inspection under subsection (2), the executive officer shall issue a re-export phytosanitary certificate where he or she has reasonable grounds to believe that the consignment—
- (a) complies with the phytosanitary measures of the importing country; and
 - (b) the accompanying documents comply with the phytosanitary import requirements of the importing country. 40
- (4) Upon issuance of a re-export phytosanitary certificate, the exporter shall re-export the consignment in compliance with the conditions of the National Plant Protection Organisation of South Africa concerning consignment integrity and phytosanitary security. 45
- (5) In cases where any of the requirements of subsection (3) are not met, the executive officer shall not issue a phytosanitary certificate in accordance with section 14(3).
- (6) Any phytosanitary certificate issued under subsection (5) shall indicate the country of origin of the consignment.

In-transit

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- 16.** (1) Transit of consignments carrying certain regulated articles through the Republic shall be permitted only upon written permission by the executive officer, which shall be granted after application by a person in control of transition process or transiting the consignment in the prescribed form and the payment of any prescribed fee.

- (2) Phytosanitary measures shall not apply to a consignment in transit through the Republic, provided that the consignment—
- (a) has been packed in such a manner as not to permit any risk of the introduction and spread of regulated pests that might be present in the consignment;
 - (b) where applicable, is accompanied by the phytosanitary certificate and accompanying documents of the country of origin. 5

CHAPTER 5

PEST STATUS AND PHYTOSANITARY PROCEDURES

Declaration of regulated pests

- 17.** (1) The executive officer must declare a pest as a quarantine pest or regulated non-quarantine pest, based on a pest-risk analysis. 10
- (2) The executive officer must publish the lists of regulated pests in a government notice.

Compulsory notification of presence of pests

- 18.** (1) A user of land who knows or suspects the presence of regulated pests on the land concerned must— 15
- (a) immediately notify the executive officer or authority by the quickest practicable means;
 - (b) provide the executive officer with such further information as the executive officer may reasonably require; and 20
 - (c) take all reasonable measures to prevent the spread of the regulated pests.
- (2) Any person who has for the first time identified or recorded the occurrence of a regulated pest to be present in the Republic must immediately report it to the executive officer or authority.

Declaration of quarantine areas 25

- 19.** (1) Where the executive officer determines or suspects that an area or premises is infested with any quarantine pest, he or she may declare in the prescribed manner that area a quarantine area.
- (2) The executive officer shall regularly review the situation in respect of any quarantine area and as soon as either— 30
- (a) the relevant quarantine pest is considered as no longer present; or
 - (b) it is no longer viable for the quarantine to be maintained in respect of part or all of the area,
- it shall revoke the quarantine status of such area.
- (3) The executive officer may declare a place to be a quarantine facility in which regulated articles may, subject to this Act, be kept, examined, disinfested, treated, destroyed or otherwise disposed thereof. 35

Declaration of pest-free areas, places and sites of production

- 20.** A pest-free area, place and site of production may be established and declared in the prescribed manner when the executive officer— 40
- (a) is satisfied through surveillance that a specific pest is not present in the area;
 - (b) adopts phytosanitary measures to establish and maintain a pest-free area; and
 - (c) institutes a surveillance programme to verify that the pest-free status is maintained.

Declaration of area of low pest prevalence 45

- 21.** An area of low pest prevalence may be declared in the prescribed manner when the executive officer—
- (a) is satisfied that a regulated pest occurs at low levels in an area;
 - (b) adopts phytosanitary measures to establish and maintain an area of low pest prevalence; and 50
 - (c) institutes a surveillance programme to verify that the pest levels remain low.

CHAPTER 6

GENERAL PROVISIONS

Assignment of powers

22. (1) If the Minister deems it fit, he or she may assign, in writing, any power conferred or assign any duty imposed on the Minister by this Act to a juristic person or organs of state, except the power— 5

- (a) conferred upon him or her by section 13(1), (2), (5) and (6);
- (b) to prescribe control measures under section 4;
- (c) to decide an appeal under section 23;
- (d) to make regulations under section 30; and 10
- (e) to perform the functions of the executive officer under section 6.

(2) When the Minister assigns a power or duty referred to in subsection (1), he or she may determine that the assignee concerned must exercise his or her powers and perform his or her duties subject to the instructions of the Minister.

(3) (a) A juristic person established under any law and to whom a power or duty has been assigned under subsection (1) is, despite the absence of any express provision to that effect in the law under which it was established, deemed competent to exercise the power or perform the duty. 15

(b) Subject to the approval of the Minister, such juristic person may in writing authorise a person in its employment to exercise the power or to perform the duty concerned: Provided that a decision or order of the authorised person may at any time be withdrawn or amended by the Minister. 20

Right to appeal

23. A person who feels aggrieved by any decision or action by the executive officer in terms of this Act may appeal in the prescribed manner to the Minister against such decision or action. 25

Appeal Board, composition and membership

24. (1) The Minister may constitute a board known as the Appeal Board to investigate and consider any appeal referred to in terms of section 23.

(2) The Appeal Board must consist of not less than three members appointed by the Minister, of whom— 30

- (a) one person must be appointed on account of his or her knowledge in the relevant fields of the law; and
- (b) two or more persons must have expert knowledge of the subject of the appeal.

(3) The person referred to in subsection (2) must be designated as the chairperson. 35

(4) The remuneration of a member of the Appeal Board must be prescribed.

(5) Any person appointed in terms of subsection (2) must recuse himself or herself as a member of the Appeal Board if he or she has any direct or indirect personal interest in the outcome of the appeal.

Investigation and consideration by Appeal Board 40

25. (1) The Minister may refer an appeal to the Appeal Board.

(2) An appeal must be heard on the date, time and place determined by the chairperson.

(3) The chairperson must inform the appellant and any other party that has an interest in the appeal in writing of the date, time and place of the hearing. 45

(4) The chairperson may, for the purposes of the hearing of an appeal—

- (a) summon any person who may have material information concerning the subject of the hearing or who has in his or her possession or custody or under his or her control any document which has any bearing upon the subject of the hearing, to appear before the Appeal Board at a date, time and place specified in the summons, to be questioned or to produce that document, and the chairperson may retain for examination any document so produced; and 50
- (b) administer an oath to or accept an affirmation from any person called as a witness at the hearing.

(5) A person who appeals in terms of section 23 and the executive officer may be represented.

(6) If a member of the Appeal Board—

(a) dies during the investigation of the appeal or so soon before the commencement of the investigation that the vacancy cannot be filled in time; 5

(b) is unable to act and another person cannot be appointed in time; or

(c) is, after the investigation has commenced, unable to continue therewith,

the parties may agree that the investigation be continued by the remaining members of the Appeal Board.

(7) Where the member of the Appeal Board who has died or has become incapacitated as envisaged in subsection (6) was or is the chairperson of the Appeal Board, the Minister must designate one of the remaining members of the Appeal Board to act as chairperson. 10

Consideration of appeal by Minister

26. (1) Where the Minister has referred an appeal to the Appeal Board in terms of section 24(1), he or she may— 15

(a) confirm or set aside the recommendations of the Appeal Board; and

(b) order the executive officer to execute the decision in connection therewith.

(2) Where the Minister considers an appeal, he or she may—

(a) confirm, set aside or vary the decision of the executive officer; and 20

(b) order the executive officer to execute the decision in connection therewith.

(3) The decision of the Minister must be in writing and a copy thereof must be furnished to the executive officer, appellant and any other party that has an interest in the appeal.

(4) If the Minister— 25

(a) sets aside any decision or action by the executive officer, the prescribed fee paid by the appellant in respect of the appeal must be refunded to him or her; or

(b) varies any decision or action by the executive officer, the Minister may direct that the whole or any part of such fee, be refunded to the appellant. 30

Preservation of confidentiality

27. Subject to the provisions of the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000), no person may, except for the purposes of exercising his or her powers in terms of this Act, or for the purposes of legal proceedings under this Act, or when required to do so under a law, disclose to any other person information acquired by him or her in the exercise of those powers relating to the business or affairs of any person. 35

Offences and penalties

28. (1) A person is guilty of an offence if he or she—

(a) contravenes, refuses or fails to comply with a provision of section 13(1) or (3), including a condition imposed in connection with an import permit, or a condition in a notice referred to in section 13(2); 40

(b) is found in possession of regulated articles in respect of which there is a reasonable suspicion that they were moved from an infested area to a non-infested area as provided in the relevant regulation, imported without an import permit referred to in section 13(1), or contrary to a condition of a permit or a condition set out in a notice issued under section 13(2), and who is not able to give a satisfactory account of such possession; 45

(c) contravenes, refuses or fails to comply with a provision of section 14, 15 or 16; 50

(d) refuses or neglects to notify the executive officer as required by section 18 or to give him or her the requested further information;

(e) refuses or neglects to comply with or carry out a provision of a control measure, order or authority, including a condition imposed in connection with it; 55

(f) obstructs or hinders an executive officer, an officer or a delegate or assignee in the exercise of his or her powers or the performance of his or her duties;

- (g) effects an unauthorised entry or deletion on a document issued or required under this Act;
 - (h) refuses or neglects to supply information, produce a document or give an explanation to a person who is authorised in terms of this Act to ask for it, or who supplies information or gives an explanation knowing it to be false; 5
 - (i) refuses or neglects to render the assistance contemplated in section 8(2)(b);
 - (j) damages, destroys, removes, shifts, alters or otherwise tampers with a marker, peg, label or other mark effected or erected for the purpose of demarcating a quarantine area or regulated area;
 - (k) damages, destroys, removes, shifts, alters or otherwise tampers with surveillance equipment; or 10
 - (l) discloses information contrary to section 27.
- (2) A person found guilty of an offence mentioned in subsection (1) is liable—
- (a) on a first conviction of an offence in terms of subsection (1)(a), (b) or (c), to a fine or imprisonment for a period not exceeding five years; 15
 - (b) on a first conviction of an offence in terms of subsection (1)(d), (e), (f) or (g), to a fine or imprisonment for a period not exceeding 18 months;
 - (c) on a second or subsequent conviction of an offence mentioned in subsection (2)(a), whether the same or some other offence mentioned in that subsection, in the case of a person, to imprisonment for a period not exceeding 10 years, 20 and in the case of a juristic person, to a fine as determined by court of law.
 - (d) on a second or subsequent conviction of an offence mentioned in subsection (2)(b), whether the same or some other offence mentioned in that subsection, to a fine or to imprisonment for a period not exceeding three years; and
 - (e) on conviction of an offence in terms of subsection (1)(h), (i), (j), (k) or (l), to a fine or imprisonment for a period not exceeding two months. 25
- (3) Notwithstanding anything to the contrary in any law contained, a magistrate's court shall be competent to impose any fine or imprisonment provided for in this section.

Liability of employer

29. (1) When a manager, representative, agent, employee or member of the family of a person (in this section referred to as the principal) does or omits to do any act, and it would be an offence in terms of this Act for the principal to perform or omit to do such act himself or herself, that principal shall be deemed himself or herself to have done or omitted to have done the act, unless he or she satisfies the court that— 30
- (a) he or she neither connived at nor permitted the act or omission by the manager, representative, agent, employee or member concerned; 35
 - (b) he or she took all reasonable steps to prevent the act or omission; and
 - (c) an act or omission, whether lawful or unlawful, of the nature charged, on no condition or under no circumstance came within the scope of the authority or employment of the manager, representative, agent, employee or member 40 concerned.
- (2) In the application of subsection (1)(b), the fact that such principal issued instructions whereby an act or omission of that nature is prohibited, does not in itself mean that he or she took all reasonable steps to prevent the act or omission.
- (3) When a principal is by virtue of subsection (1) liable for an act or omission by a manager, representative, agent, employee or member of his or her family, that manager, representative, agent, employee or member shall also be liable thereof as if he or she is the principal concerned. 45
- (4) Subsection (2) shall not release a manager, representative, agent, employee or member contemplated in that subsection from any other liability which he or she may have incurred apart from the liability which he or she shares with the principal concerned. 50
- (5) In the application of this section in criminal proceedings, evidence that any article was at the time of the act or omission charged, in the possession or under the custody, supervision, control or care of any manager, representative, agent, employee or member of the family of the principal, shall be *prima facie* proof that the principal concerned is the owner of the article concerned. 55

Regulations

- 30.** (1) The Minister may make regulations regarding—
- (a) the manner in which application must be made for an import permit, other permit, authorisation, phytosanitary certificate or inspection;
 - (b) the points of entry or exit through which regulated articles must be imported in terms of section 13 or exported in terms of section 14; 5
 - (c) fees payable in terms of this Act;
 - (d) the manner in which a notice, authorisation, order or other document mentioned in this Act may be served;
 - (e) the manner in which and the period within which an appeal may be noted in terms of section 23, the officer by whom and the manner in which the refusal or conduct concerned must be investigated, the manner in which an appellant may submit information or evidence or make representations, whether personally or through a legal representative, and the preparation and submission of a report and recommendation to the Minister; 10
 - (f) the manner in which regulated articles must be presented for inspection;
 - (g) the listing of regulated pests;
 - (h) the declaration of pest-free areas and areas of low pest prevalence;
 - (i) the declaration of pest-free places of production;
 - (j) the declaration of pest-free production sites; 20
 - (k) the declaration of quarantine areas;
 - (l) the listing of regulated articles;
 - (m) the manner in which the executive officer must deal with regulated articles for export found to be infested;
 - (n) any matter required or permitted to be prescribed under this Act; and 25
 - (o) any incidental matter of a procedural or administrative nature that may be necessary to prescribe in order to achieve the objects of this Act.
- (2) Different regulations may be made in terms of this section in respect of different areas in the Republic or in such other aspects as may be deemed necessary.
- (3) A regulation prescribing fees may be made only after consultation with the Minister of Finance. 30

Compensation

- 31.** (1) If a regulated article has been destroyed by virtue of an order contemplated in section 7(1)—
- (a) the Minister may, out of funds appropriated by Parliament for that purpose, pay such compensation as he or she may consider reasonable; 35
 - (b) an application for the payment of compensation under subsection (1)(a) may be considered only if—
 - (i) it is submitted in writing to the executive officer concerned within 90 days after the date on which the regulated articles in question have been destroyed; and 40
 - (ii) it is done in a prescribed manner.
- (2) No compensation is payable to a person in respect of the rendering of assistance in terms of section 8(2)(b).

Assistance and cooperation 45

- 32.** The executive officer—
- (a) must exercise his or her powers and perform his or her functions in accordance with the principles of cooperative government and intergovernmental relations with other national, provincial and local spheres of government and all other organs of state within each sphere, as provided for in Chapter 3 of the Constitution of the Republic of South Africa, 1996, and the Intergovernmental Relations Framework Act, 2005 (Act No. 13 of 2005); and 50
 - (b) may, for the purposes contemplated in paragraph (a), request the assistance and cooperation from other national, provincial and local authorities, including traditional councils, the research institutes, associations, 55 organisations and other relevant bodies.

Limitation of liability

33. No person, including the State, is liable in respect of anything done in good faith and without negligence in the exercise of a power or the performance of a duty conferred or imposed upon him or her under this Act.

Provisions binding State

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- 34.** (1) The provisions of this Act bind the State.
 (2) No fees payable under this Act are payable by the State.

Application of international agreements

35. This Act gives effect to ratified international agreements affecting phytosanitary matters to which South Africa is a Party, and which bind the Republic. 10

Transitional provisions

- 36.** (1) A permit issued in terms of the Agricultural Pests Act, 1983 (Act No. 36 of 1983), and which is in force at the date of commencement of this Act, is regarded to be a permit issued under this Act.
 (2) A notice issued under the Agricultural Pests Act, 1983, and still in force at the date of commencement of this Act, is regarded to be a notice issued under this Act. 15
 (3) A written notice issued in terms of section 8(1) of the Agricultural Pests Act, 1983, or an Act repealed by that Act, which is in force at the date of commencement of this Act, is regarded to be an order issued under section 6 of this Act.
 (4) A regulation made under the Agricultural Pests Act, 1983, and still in force on the date of commencement of this Act, is regarded to be a regulation made under this Act. 20

Repeal of laws

37. Subject to section 36(1) and (2), the Act mentioned in the Schedule is hereby repealed to the extent set out in the third column thereof.

Short title and commencement

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- 38.** (1) This Act is called the Plant Health (Phytosanitary) Act, 2021.
 (2) This Act comes into operation on a date fixed by the President by proclamation in the *Gazette*.

SCHEDULE**ACT REPEALED BY SECTION 37**

Act No.	Short title of Act	Extent of Repeal
36 of 1983	Agricultural Pests Act, 1983	Section 3(1) to the extent that it relates to plants. Section 6 as a whole.

MEMORANDUM ON THE OBJECTS OF THE PLANT HEALTH (PHYTOSANITARY) BILL

1. BACKGROUND

- 1.1 The national phytosanitary regulatory system is currently administered under the Agricultural Pests Act, 1983 (Act No. 36 of 1983) (“the Act”), and its associated regulations. The purpose of the Act with regard to phytosanitary matters is to provide for measures by which quarantine pests of plants, plant products and other regulated articles may be prevented from entering and establishing in South Africa, and for combating plant pests of national concern.
- 1.2 South Africa is a signatory member of the World Trade Organisation Agreement on the Application of Sanitary and Phytosanitary Measures (WTO-SPS Agreement) and the International Plant Protection Convention (IPPC), so it needs to align its phytosanitary legislation with the relevant obligations and standards to facilitate safe and fair international trade.
- 1.3 The Act was promulgated in 1983, with its latest amendment promulgated in 1992. It has therefore been in force for nearly three decades, been through two different government systems and was promulgated before the adoption of the International Plant Protection Convention’s 1997 text and the World Trade Organisation Agreement on the Application of Sanitary and Phytosanitary Measures (WTO-SPS Agreement) of 1995. As a necessary step in the management of legislation, frequent revisions ought to be performed to determine the validity and relevance of the provisions of legislation.

2. PURPOSE OF BILL

- 2.1 The Plant Health (Phytosanitary) Bill (“the Bill”) seeks to address gaps and challenges in the current phytosanitary system in view of the requirements of this country’s major trading partners and the requirements under the relevant international agreements and treaties of which South Africa is a signatory member. It aims to support the South African Government’s objectives and priorities such as sustainable management and use of natural resources, the provision of effective national regulatory services and risk management systems as well as increased contribution of the sector to the country’s economic growth and development.
- 2.2 In accordance with the National Development Plan (NDP), the agricultural sector has been identified as one of the important sectors contributing to job creation and employment. The Bill will support South Africa’s efforts to enter new markets and maintain current export markets, which will have a positive impact on the South African economy.
- 2.3 Phytosanitary legislation is important in securing the country’s domestic and international trade in plants and plant products. Considering its active agricultural and forestry sectors, South Africa needs a sound, nationally coordinated phytosanitary system in order to maintain and expand its competitive position in the global trade arena.

3. OBJECTS OF BILL

Clause by clause analysis

The Bill consists of 38 clauses and a Schedule.

- 3.1 In **clause 1** certain terms and expressions are defined so that the contents of the Bill may be more understandable.
- 3.2 In terms of **clause 2**, the Minister is responsible for the administration of this Act.

- 3.3 **Clause 3** gives certain powers to the Minister to further the objectives of the Bill.
- 3.4 Under **clause 4**, the Minister may prescribe control measures which must be complied with by users of land in order to achieve the objectives of the Bill.
- 3.5 **Clause 5** provides for the designation of the executive officer.
- 3.6 **Clause 6** empowers an executive officer to instruct a user of land by written order to comply with a control measure in respect of a quarantine area or regulated area determined in that order.
- 3.7 **Clause 7** provides for orders with regard to land which must be served in the prescribed manner.
- 3.8 In terms of **clause 8**, an authorised person may on the authority of a warrant enter, search and inspect any land to combat pests or to carry out a control measure.
- 3.9 **Clause 9** provides for the establishment of the National Plant Protection Organisation of South Africa.
- 3.10 **Clause 10** provides for the composition of the National Plant Protection Organisation of South Africa (NPPOZA), required in terms of membership of the IPPC.
- 3.11 **Clause 11** provides for the functions of the NPPOZA.
- 3.12 **Clause 12** sets out import regulations in order to prevent the introduction and spread of regulated pests.
- 3.13 **Clause 13** provides that regulated articles may be imported only on the authority of a permit and under certain conditions. The Minister may by notice in the *Gazette* make provision for certain exceptions.
- 3.14 **Clause 14** sets out the conditions for exporting regulated articles.
- 3.15 **Clause 15** provides provisions for the re-export of consignments imported into the Republic for further export to another country.
- 3.16 **Clause 16** sets out the requirements and/or conditions that should be adhered to by a person transiting a consignment of regulated articles through the Republic to another country.
- 3.17 **Clause 17** provides for conditions under which the executive officer may declare regulated pests.
- 3.18 In **clause 18**, provisions are made for the compulsory notification of the presence of certain pests by a user of land.
- 3.19 **Clause 19** sets out conditions under which the executive officer may declare quarantine areas.
- 3.20 Under **clause 20**, the executive officer may declare certain areas as pest-free areas, or pest-free places and sites of production.
- 3.21 Under **clause 21**, the executive officer may declare areas of low pest prevalence.
- 3.22 **Clause 22** gives the Minister the power to assign certain powers conferred upon him or her, or to assign any duty imposed upon him or her by this Bill, to a juristic person or organs of state.

- 3.23 **Clause 23** gives an aggrieved person the right to appeal against a decision of an executive officer to the Minister in the prescribed manner.
- 3.24 **Clause 24** provides for the establishment of the Appeal Board by the Minister, composition of the Appeal Board and its membership.
- 3.25 **Clause 25** provides for investigations and consideration by the Appeal Board.
- 3.26 **Clause 26** provides for the consideration of an appeal by the Minister.
- 3.27 **Clause 27** regulates the preservation of confidentiality.
- 3.28 **Clause 28** prescribes penalties for certain offences.
- 3.29 In terms of **clause 29**, the employer may be convicted for an offence committed by his or her manager, agent or employee.
- 3.30 In terms of **clause 30**, the Minister may make regulations regarding certain matters.
- 3.31 **Clause 31** provides for compensation by the Minister regarding certain matters in the Bill.
- 3.32 **Clause 32** provides for assistance and cooperation to the executive officer by different authorities and parties in order for the executive officer to perform his or her functions.
- 3.33 In terms of **clause 33**, no person, including the State, is liable for anything done legally under the Bill.
- 3.34 **Clause 34** provides that the State is bound by the Bill, excluding clauses 27, 29 and 30.
- 3.35 According to **clause 35**, the Bill gives effect to international agreements that bind the Republic.
- 3.36 **Clause 36** provides for the transitional provisions.
- 3.37 **Clause 37** repeals portions of the Act.
- 3.38 In terms of **clause 38**, the Bill, when passed, shall be called the National Plant (Phytosanitary) Health Act, 2016, and will come into operation on a date fixed by the President by proclamation in the *Gazette*.
- 3.39 In the **Schedule** the laws that are repealed by clause 37 are set out.

4. CONSULTATION

- 4.1 The Draft Bill was developed and forwarded to the Office of the Chief State Law Adviser (OCSLA) for legal opinion in 2011. Following internal consultation, a revised draft was published in *Government Gazette* No. 35823 of 2012, for public comment. A national stakeholder's workshop for discussion was conducted in 2013.
- 4.2 The following departments and parties were consulted:
- National House of Traditional Leaders, Department of Environmental Affairs, Provincial Departments of Agriculture, South African Local Government Association, Agricultural industry: Deciduous, Citrus and Subtropical industry, Grain SA, Business Enterprise at the University of Pretoria (BE at UP),

South African National Seed Organization (SANSOR) and the Perishable Products Export Control Board (PPECB).

- 4.3 The draft Bill was also notified for international comment from trading partners through the transparency system of the World Trade Organisation Agreement on the Application of Sanitary and Phytosanitary Measures in 2013. Subsequently, it was forwarded to the State Law Advisers for pre-certification and was pre-certified in July 2014.
- 4.4 The Bill has been presented to and was recommended by the Economic Sectors, Employment and Infrastructure Development Cluster of Directors-General on 1 October 2014.

5. FINANCIAL IMPLICATIONS FOR STATE

- 5.1 The implementation of the new Act will have no additional implication in terms of human and financial resources since the NPPO of South Africa has already been established and funded.
- 5.2 Key activities such surveillance and response will be catered for under the current MTEF allocation and further prioritisation will be undertaken in the Branch: Agricultural Production, Health, Food Safety and Disaster Management over multiple MTEFs.
- 5.3 The Branch has received additional MTEF allocations (2020 to 2023) to respond to biosecurity threats, strengthen inspection services at points of entry and revitalise laboratories and quarantine stations. This will serve as additional resource to support the implementation of the new Act.

6. PARLIAMENTARY PROCEDURE

- 6.1 The Constitution of the Republic of South Africa, 1996 (“the Constitution”), prescribes the procedure for the classification of Bills, therefore a Bill must be correctly classified so that it does not become inconsistent with the Constitution.
- 6.2 We have considered the Bill against the provisions of the Constitution relating to the tagging of Bills and against the functional areas listed in Schedule 4 (functional areas of concurrent national and provincial legislative competence) and Schedule 5 (functional areas of exclusive provincial legislative competence) to the Constitution.
- 6.3 The established test for classification of a Bill is that any Bill whose provisions in substantial measure fall within a functional area listed in Schedule 4 to the Constitution must be classified in terms of that Schedule (*Tongoane and Others v Minister for Agriculture and Land Affairs and Others Case CCT 100/09 [2010] ZACC 10*). The process is concerned with the question of how the Bill should be considered by the provinces and in the National Council of Provinces.
- 6.4 Furthermore, how a Bill must be considered by the provincial legislatures depends on whether it affects the provinces. The more the Bill affects the interests, concerns and capacities of the provinces, the more say the provinces should have on the contents of the Bill.
- 6.5 Therefore, the issue to be determined is whether the proposed amendments to the Act, as contained in the Bill, in substantial measure fall within a functional area listed in Schedule 4 to the Constitution.
- 6.6 Other key points to consider as stated in the *Tongoane case* are as follows:
 - The tagging of Bills before Parliament must be informed by the need to ensure that provinces fully and effectively exercise their appropriate role in the process of considering national legislation that substantially affects

them. Paying less attention to the provisions of a Bill once its substance, or purpose and effect, has been identified undermines the role that provinces should play in the enactment of national legislation affecting them.

- To apply the “pith and substance” test to the tagging question, therefore undermines the constitutional role of the provinces in legislation in which they should have a meaningful say, and disregards the breadth of the legislative provisions that section 76(3) of the Constitution requires to be enacted in accordance with the section 76 procedure.

6.7 In light of the *Tongoane* matter, we are of the view that the Bill falls within the functional area of “Agriculture”, listed in Part A to Schedule 4 of the Constitution, which is an area of concurrent national and provincial legislative competence. In accordance with section 76(3)—

“A Bill must be dealt with in accordance with the procedure established by either subsection (1) or subsection (2) if it falls within a functional area listed in Schedule 4 ”.

6.8 The Bill should be dealt with in accordance with the section 76(1) or (2) process, since it falls within the functional area of Schedule 4 and 5 of the Constitution.

6.9 We are also of the opinion that it is not necessary to refer this Bill to the National House of Traditional and Khoi-San Leaders in terms of section 39(1)(a) of the Traditional and Khoi-San Leadership Act, 2019 (Act No. 3 of 2019), since it does not contain provisions pertaining to traditional or Khoi-San communities or pertaining to customary law or customs of traditional or Khoi-San communities or provisions pertaining to any matter referred to in section 154(2) of the Constitution.