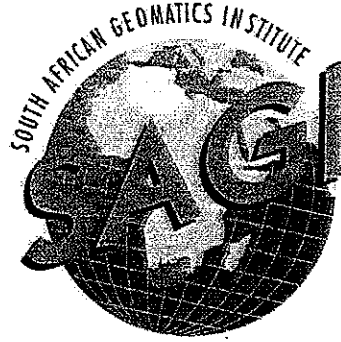


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Serving our Nation in Land Reform, Development and Geospatial Information

Portfolio Committee on Trade and Industry
3rd floor,
90 Plein Street,
Cape Town, 8001,

Attention : A Hermans; M Herling; N Cloete

LMB 2013/7

1. Comments on the Legal Metrology Bill

The South African Geomatics Institute (SAGI) is a voluntary organization for registered persons working in Land Surveying, Engineering Surveying, Photogrammetry, Remote Sensing, Planning, Geographical Information Systems (GIS) & Land Management Domain. The Bill currently before the committee will thus have a direct bearing on our members as geomatics involves the following aspects

1. Geomatics and the geomatics profession are areas of expertise which involve one or more of the following activities which may occur on, above or below the surface of the land or the sea:
 - a. the determination of the size and shape of the earth and the measurement and recording of all data needed to define the size, position, shape and contour of any part of the earth;
 - b. the spatial positioning of objects and the positioning and monitoring of physical features, structures and engineering works;
 - c. the planning and determination of the position of the boundaries of land and of rights in land, for the purpose of registration of such land and rights in terms of applicable legislation;
 - d. the design, establishment and administration of geographic information systems and the collection, storage, analysis, visualisation and management of geo-spatial information;
 - e. the measurement of land, mineral and marine resources: and
 - f. such other activity as may be prescribed in this or any other relevant

Currently we are licenced under the PROFESSIONAL AND TECHNICAL SURVEYORS' ACT NO. 40 OF 1984 (PLATO), this current Act is being redone and is before the Rural Development and Land Reform Portfolio Committee as the Geomatics Bill.

We comment firstly on a general nature and secondly specifically to various sections;

1. General Comment.

The Geomatics industry was not consulted on this Bill, and we pray the committee's indulgence in giving us some leeway in our comments and making some further comments in the next few weeks. We cannot be expected to in a very limited few days to deliver a comprehensive set of comments without fully applying our minds to the Bill. Additionally there are other role-players in our industry such as the Chief Surveyor General and National Geo-spatial Information (NGI), a component of Department of Rural Development and Land Reform who will be severely effected by such bill – issues to which we have alerted them and they too need to submit comment. In addition PLATO may wish to also make a submission.

*President Mr P Newmarch, Vice President Administration and Finance – Mr JC Martin,
Vice President Cadastral – Mr K van Rensburg
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Vice Present Education & Co-ordination – Mr JH Raubenheimer
Vice President Engineering Commission – Mr G Muller*

We don't think that the drafters of the bill had thought about the Geomatics profession when they drafted this bill, as evidenced by some of the comments we will raise in this submission.

Our profession has long since been hamstrung by suitable standards of measure around some issues. This Bill gives us the platform to engage with the department and create standards in areas in which the public needs protection.

Our profession consists of academia, vendors and practitioners. Practitioners provide a measuring service and must comply with this bill. Similarly our industry vendors would also need to comply.

There are however certain unforeseen problem which we do not think the drafters of this legislation are aware of, namely;

2. Specific Comments - Land

The definition of "trade" includes the sale of land, and any measurement of a legal nature in connection with which any measuring instrument is used. This last aspect is core to every surveyor.

The Land Survey Act governs diagrams and general plans on which the sale of land is based. Included in the Land Survey Act are accuracy provisions and technicalities around how diagrams and general plans must be prepared and what must be shown thereon. By law, only a Land Surveyor may perform any measurement relating to property boundaries and make submissions to the Surveyor General Office. Land Surveyors are governed by law under a statutory council commonly known as PLATO, as mentioned previously.

All the diagrams and general plans are in effect legal documents and certainly contain declarations of linear and angular measure.

Section 33(1) makes it an offence to make an incorrect statement. If the tolerances as set down in 33(2) where different (to a higher accuracy) to those allowed in the Land Survey Act, then this would compromise the functioning of the property system.

The above is also true in respect of the sectional titles act and issues arise with respect to the Spatial Data Infrastructure Act.

Additional complications arise in other property matters as well, such as

- Where tribal chiefs allocate land without a survey being undertaken.
- Expropriated areas which have not been surveyed and thus areas are not final.

The issue to which we think the drafters allude to is what we would call the sale of land that takes place off plan. This is a common practice with developers – all of which is subject to ultimately a diagram, general plan or sectional plan being prepared by a land surveyor and approved by the surveyor general. Additionally various pieces of legislation are also applicable and regulate the sale document and various provisions therein.

Proposal

Add item 33(4) Any statement or declaration of measure in terms of the Land Survey Act, the Sectional Titles Act or the Spatial Data Infrastructure Act and corresponding regulations, shall be exempted from the criminal provisions of this Act.

Or,

Any statement or declaration in any other Act or Regulations which specifies measurements and or tolerances shall be exempted from the criminal provisions of this Act.

Note

It must be stressed that as an industry we support the principles and objectives of this bill, but certain acts already exist which specify accuracies and tolerances or allow for accuracies and tolerances to be determined – these must be exempted. Naturally when a legal metrology regulation is prescribed on a certain matter, the consultation process can then be rationalised between the various regulations. Additionally, the regulator in this Bill may not see a particular urgency in creating a legal metrology standard in a particular practise, for which another Act may have an urgency and in terms of that act create such standards.

3. Specific Comments – Registration Section 11

As measuring practitioners we supply a measuring service to the public. We are licenced under a statutory council and it should not be necessary to re-licence in terms of this Bill, although we are prepared to do so on that basis of the proposal below. Additionally we point out to the Committee that licencing provisions in this bill can indeed have the opposite effect in that it may not protect the public.

In the case of geomatics persons licenced under PLATO, who are measuring professionals, it could happen that persons who want to engage the public in the same space as geomatics professionals could licence under this proposed bill and use such certificate to mislead the public on their credentials to which the state has indeed issued them a licence.

To our knowledge, we are the only statutory measuring service providers regulated by law and since this bill seeks to widen in the broadest sense measuring services, we should be granted protection in terms of this bill and protection from those who would seek to use such a licence to perform duties to which the government has already recognised and created an Act to perform. (The current Act is to be replaced by a new one which has been finalised by the rural development and land reform committee).

All Geomatics persons under PLATO are legally bound to a code of conduct, disciplinary measures and are indeed personally liable for all their actions.

Additionally Section 11 talks to the registration of individuals. When read in conjunction with the provisions relating to offences, there are circumstances in which unscrupulous companies may take advantage of an employee and provide intolerable conditions and place measures on an employee (who is the licenced person) to perhaps take some shortcuts or some other measures to induce a higher company profit. We are talking now in general business terms and not specifically Geomatics. In the case of say for example an employee in a supermarket, they could be induced to perform a measurement in a certain way, contrary to this bill, but yet it's the individual that gets penalised, not the company. The bill should provide for measures where after determination of the facts, a company can be fined.

Proposal

Add, at the end of Section 11 “with the proviso that any person who performs work which falls within the scope of the geomatics profession shall not be licenced in terms of this Act unless they are registered with such governing geomatics council in an appropriate category as defined by that governing council.”

SAGI would like to make a verbal presentation on these comments as well as other matters within this Bill.

Yours faithfully



PETER NEWMARCH
National SAGI President

14 October 2013