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**PROPOSED AMENDMENTS**

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**PLANT BREEDERS' RIGHTS BILL**

**[B 11—2015]**

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**CLAUSE 41**

1. On page 17, after line 44, to insert the following:

**"Right to appeal**

41. A person who feels aggrieved by any decision or action taken by the Registrar or designated authority may appeal in the prescribed manner to the Minister against such decision or action.

**Appeal Board, composition and membership**

42. (1) The Minister may constitute a board known as the Appeal Board to investigate and consider any appeal referred to it in terms of section 41.

(2) The Board must consist of at least three members appointed by the Minister, of whom—

- (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 Minister must designate the person referred to in subsection 2(a) as the chairperson.

(4) The remuneration of a member of the Board must be prescribed after consultation with the Minister of Finance.

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

#### **Investigation and consideration by Board**

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

(2) An appeal must be heard on the date and at the 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.

(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 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

(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 47, the designated authority and the Registrar may be represented at the appeal.

(6) If a member of the Board—

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

(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 Board.

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

### Consideration of appeal by Minister

44. (1) Where the Minister has referred an appeal to the Board in terms of section 47(1), he or she may—

- (a) confirm or set aside the recommendations of the Board; and
- (b) order the Registrar or the designated authority 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 Registrar or designated authority; and
- (b) order the Registrar or designated authority 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 Registrar, appellant and any other party to whom decision must be conveyed.

(4) If the Minister—

- (a) sets aside any decision or action by the Registrar or designated authority the prescribed fee paid by the appellant in respect of the appeal must be refunded to the appellant; or
- (b) varies any decision or action by the Registrar or designated authority, the Minister may direct that the whole or any part of such fee, be refunded to the appellant."