

**SELECT COMMITTEE ON LAND AND MINERAL  
RESOURCES**

**NATIONAL COUNCIL OF PROVINCES**

**PLANT IMPROVEMENT BILL [B8B – 2015]:**

**BRIEFING ON SUBMISSIONS OF CHALLENGES/ CONCERNS**

**1 AUGUST 2017**



# DEFINITIONS

Public comment	DAFF response
Definition of “sell” – remove part (b) “to exchange or to otherwise exchange ...”	Removal of “exchange” will provide loophole. Provision is made for small-scale farmers and business in Exemptions.



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# REGISTRATION OF BUSINESS & PREMISES

Public comment	DAFF response
<p>Request to remove “and sale” in definition of business [cl.9(1)], because all the types of business in (a), (b), (d)-(g) can be conducted as a service without selling plants or propagating material. Another proposal to replace “and sale” with “or sale”</p>	<ul style="list-style-type: none"><li>• Agree to remove “and sale” of the phrase “cultivation and sale”.</li><li>• Propose amended wording for (1): “Any person who desires to <del>conduct</del> <u>operate as service provider for one or more of the following types of business relating to plants and propagating material for cultivation <del>and sale</del></u>, must be registered in terms of this Act and must comply with the prescribed requirements, unless exempted in terms of section 19”</li><li>• Amendment required for the text where it appears</li></ul>



# REGISTRATION OF BUSINESS & PREMISES

Public comment	DAFF response
<p>Registration of business [Cl. 9, 10, 19]: It is not clear which business will be exempted from registration.</p>	<p>Details will be in the Regulations, which will be drafted in consultation with the stakeholders.</p>
<p>Bill does not distinguish between farmer seed systems and commercial seed sector, criminalising farmer-managed seed systems</p>	<p>Bill regulates the commercial sector, exempts the small-scale (“non-commercial”) sector.</p>



# VARIETY REGISTRATION

Public comment	DAFF response
<p>Variety registration – DUS criteria not favourable for farmer’s varieties and diversity. Request more flexible standards to allow registration of farmer’s varieties</p>	<ul style="list-style-type: none"><li>• DUS criteria are the international standard for the formal commercial sector with the purpose to protect users.</li><li>• Farmer’s varieties are in the small-scale sector and exempted. A separate system will be developed for registration of farmer’s varieties if there is a justifiable need.</li></ul>



# QUALITY CONTROL AND SCHEMES

Public comment	DAFF response
<p>Need alternative quality control systems to accommodate smallholder farmers and informal seed sector</p> <p>Request different standards for plants and propagating material in regulations for formal seed sector and the informal small-scale sector</p>	<ul style="list-style-type: none"> <li>• Bill provides for exemption</li> <li>• Bill provides for other schemes which will have different requirements than certification schemes.</li> </ul>
<p>Other schemes such as quality declared seed and participatory guarantee schemes would support small-scale farming enterprises</p>	<p>Bill provides for other types of schemes in addition to Certification Schemes of the formal commercial sector</p>



# EXEMPTIONS

Public comment	DAFF response
<p>Exemptions provided for in Cl.23 requires clarification on which businesses these exemptions will be applicable</p> <p>Propose to add “and exchange” in Cl.23(1)(b) to allow farmer to farmer exchange beyond registration of varieties</p>	<p>Exemption on businesses is covered by Cl. 19 and will be detailed in Regulations.</p> <p>Exemption in this clause is for all the provisions of this Bill, therefore no need to add anything</p>
<p>Propose to delete Cl. 23(2)(b) because the categories of kinds of plants are not defined in the Bill. This allowance may lead to decline in breeding of open-pollinated varieties.</p>	<ul style="list-style-type: none"><li>• Agree to delete 23(2)(b).</li><li>• 23(2)(a) is covering all kinds of plants regulated by the Bill, allowing trade in heirloom and farmer’s varieties</li></ul>



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# EVALUATION FOR VALUE, CULTIVATION AND USE (VCU)

Public comment	DAFF response
<p>Cl. 38 gives power to Registrar to determine value of varieties. Registrar should not have power or responsibility to determine value, it is the responsibility of the variety owner in the free market system.</p>	<ul style="list-style-type: none"> <li>• Provision is that Registrar <u>may</u> evaluate if VCU of a variety is doubtful. Appeals process is available for aggrieved applicants.</li> <li>• Important to have the provision available</li> <li>• Bill provides for delegation where Registrar cannot perform a duty.</li> <li>• Cl.38(4)(b) and(c) provides for “cause to be examined” or “obtain results”</li> </ul>
<p>Cl. 38 should be restricted to agronomy crops and not extended to vegetables.</p>	<p>If any restrictions are considered, it may be stipulated in the regulations.</p>





# IMPORT AND EXPORT CONTROL

Public comment	DAFF response
<p><b>Request exemptions to include small-scale cross-border trade for material used in the same agro-ecological zones.</b></p> <p><b>To develop more local, context-specific quality control procedures to ensure minimum phytosanitary standards are met.</b></p>	<ul style="list-style-type: none"><li>• Exemption in Cl. 23 covers all provisions of the Bill</li><li>• Phytosanitary requirements fall outside the ambit of this Bill</li></ul> <p>Phytosanitary standards fall outside the ambit of this Bill</p>



# OFFENCES AND PENALTIES

Public comment	DAFF response
<p>Bill is making exchange of seed illegal and criminalise the age-old practice of small farmers.</p> <p>Increase in penalties works against farmers' rights to exchange varieties and criminalises farmers' activities, causing a threat to farmer seed systems.</p> <p>Removal of "exchange" from definition of sell will resolve this.</p>	<ul style="list-style-type: none"><li>• The Bill is only regulating the kinds of plants declared.</li><li>• Exemption in Cl. 23 provides for small-scale "trade" or exchange of seed.</li><li>• Penalties had to be increased in this Bill because stakeholders indicated the current Act is not effective in dealing with transgressions and thus people could flout regulations with impunity.</li></ul>



# ADVISORY COMMITTEE

Public comment	DAFF response
<p>Request provision for representation of the seed/plant industries/associations on the committee.</p>	<p>Agree.</p>



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## GENERAL REMARKS

Public comment	DAFF response
<p>The bill fails to accommodate smallholder seed and farming systems, not recognising farmers' seed reproduction practices and their role in maintaining seed diversity and no public support</p>	<p>The Bill was designed to also accommodate the needs of smallholder farmers and SMMEs as much as possible. This gesture had however be in line with international standards and not be infringing on the rights of both seed producers and the buyers</p>
<p>Bill is unconstitutional and against human rights. This will take away food sovereignty from the thousands of smallholder farmers across this nation.</p>	<p>The Bill was declared to be in line with the Constitution of the Republic of South Africa by DAFF lawyers, Parliamentary Legal Advisors and State Law Advisors</p>



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# Thank you



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