| **NAME/ INSTITUTION/****DEPARTMENT** | **CLAUSE** | **COMMENT BY RESPONDENT ON PROPOSED AMENDMENT AND PROPOSAL ON CLAUSE** | **RESPONSE BY DALRRD (TO BE SIGNED OFF BY DDG)** |
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| **PART A: RESPONSE TO SPECIFIC CLAUSES.** |
| **CLAUSE 1: DEFINITIONS** |
| * 1. **AGBIZ/**

**Red Meat Industry Forum / South African Organic Sector Organization/****Milk South Africa/ PEPSICO/ South African Organic/ Consumer Goods Council of South Africa/ PRIMERIO/ South African Fruit and****Vegetable Canners Association (SAFVCA) and the South African Fruit Juice****Association (SAFJA)/ Tiger Consumer Brands Limited/ The National Chamber of****Milling/ Perishable Product Export Control Board/SAMPRO****1.2 AGBIZ/ South African Organic Sector Organization/ PEPSICO/ Consumer Goods Council of South Africa/ PRIMERIO/ Tiger Consumer Brands Limited/ The National Chamber of Milling** | **“assignee”** | 1. define the words “interest” and “indirect” in the definition of an assignee.
 | 1. There is no need to define both “interest” and “indirect” because that is already expressly prohibited in terms of section 33 of the Constitution of the RSA as supported by the Promotion of Administrative Justice Act, No 3 of 2000 (PAJA). By further defining these concepts, the Department will run the risk of attempting to be exhaustive which is not possible. The de-limiting factor is that such an interest is only limited to a product which is a subject of inspection or audit under the APS Act.

There is a common law principle, *nemo iudex in sua causa*, which is associated with procedural fairness. This maxim, often described as the rule against bias, expresses the idea that decision-makers ought to be impartial. This is captured in section 6 (2)(a)(iii) of PAJA. It is in the context of the aforesaid that the amendment seeks to prevent either direct or indirect interest of the product being inspected or audited. The example of direct or indirect interests could either be pecuniary or personal interest in the product. Ultimately, the definition seeks to further prevent reasonable apprehension of bias. The revised definition will assist in preventing conflict of interest and thus allow independent and unbiased assignees to be designated or to carry out inspection and auditing. |
| **“assignee”** | 1. how is it possible that a “person, undertaking, body, institution, association or board” which has no “direct or indirect interest in the product concerned”, can have, particular knowledge in respect of the products concerned” and be “competent to exercise the powers and perform the duties” of an assignee? The answer to this question is that it is impossible for a legal person with no “direct or indirect interest in the product concerned” to have particular knowledge of the particular product and to be competent to act as an assignee.
2. It is reasonable to assume that the intention of the inclusion of the reference to “…. direct or indirect interest” is to ensure objectivity and to prevent a legal person, with commercial interest in an industry, to be designated as an assignee in respect of the industry concerned. It is proposed that 1(a) of the Amendment Bill, be amended so that it conveys the message that an assignee should not have any commercial interest in any member of the industry in respect of which the assignee must enforce regulations and that the wording “***which does not have direct or indirect interest in the product concerned”,*** be deleted
3. assignees should be cost-recovery operations and that assignees should not be profit-orientated entities. The reason for the proposal is that allowing profit orientated enterprises to act as assignees, will jeopardise the competitiveness of the relevant industries.
 | 1. The comment is incorrect. It is possible for a natural or juristic person to have particular knowledge even if they do not have direct or indirect interest. Examples would be academics in the field, former employees, people trained on product inspections, experienced companies that conduct inspections and auditing etc.
2. The comment is not accepted because the current definition is all-inclusive and covers commercial interests too.

The definition should stay as is, because in its current form it will be able to prevent any conflict of interest as well as any reasonable apprehension bias~~ness~~.1. Section 3(1A) of the Agricultural Product Standards Act stipulates that “*fees may be charged* *in respect of the powers exercised and duties performed by the executive officer or the assignee, as the case may be, to ensure compliance with this section*”

In the case of ***Bertie van Zyl (Edms) Bpk and others v The Minister of Agriculture Forestry and Fisheries and others,*** the purposes of section 3 (1A) was stated as, “… *to secure compensation sufficient to meet the assignee`s costs of carrying out its duties in a competent and efficient manner*.”The intention of the amendment of section 3(1)(B) in the Amendment Bill reinforces emphasis on cost recovery. |
| **“assignee”** | 1. It would be preferable for the drafters to adopt the Department`s stance in the Meat Safety Act and give specific content to what constitutes independence and specify those persons who would not be classified as independent .
 | (e) The amendment definition is aligned with the provisions of PAJA.The definition in the Meat Safety Act is as follows:“assignee” *means any person, undertaking, body, institution, or association designated under section 4 (viii)*Unfortunately, section 4(viii) of the definition cannot be traced under the Meat Safety Act; thus the Meat Safety Act was of no assistance in this instance. |
| **“assignee”** | 1. Would other members of the Participatory Guarantee Systems (PGS) South Africa group be considered as having an indirect interest in the product?
 | (f) It is not known or clear as to who PGS is or their role; hence, this question could not be answered. However, the definition in the Amendment Bill sufficiently outlines what assignees are.  |
| **“assignee”** | 1. consideration should be given on whether this change will prohibit/exclude expert association inspection services such as the Dairy Standards Agency (DSA) or any other, to apply/register as assignees. These associations although formed by sector, are independent in their service offerings and have expertise to inspect and guide the sector, for inspection purposes
 | (g) Noted, provided they don’t have any interest in the product being inspected.  |
| **“assignee”** | 1. The definition should be expanded to include that the assignee must **be a juristic person existing under the laws of the Republic of South Africa** and must, substantially, have the necessary skill, experience, resources and infrastructure to carry out its function, inter alia, to ensure that its costs in setting up and acquiring these do not result in an artificial increase to the costs it seeks to be recover by way of its determined fee. Put differently, the cost recovery basis in respect of which the fee must be determined, must relate to the cost of the assignee’s statutory function, and not ancillary cost (e.g. infrastructure and other set up costs). This requires the definition to be expanded
 | (h) Addressed in the definition of an assignee under section 2(3) (a) of the current APS Act. The intention of the amendment of section 3(1)(B) in the Amendment Bill is to reinforce and re-emphasise the importance of cost recovery. |
| **“assignee”** | 1. recommends removal of ‘**direct or indirect interests in the products concerned**’
* Members of the PPECB Board are comprised of industry nominated exporters/stakeholders and one Ministerial representative. As such the board members may have a direct or indirect interest by virtue of being producers and/or exporters of these products. From a corporate governance perspective, organisations and companies are expected to manage conflicts of interest. The PPECB has a declaration of interest policy in place and any interest in respect of agenda items must be declared at the outset at all Committee and Board meetings. Board members must recuse themselves where an interest has been declared. There is oversight in respect of potential conflicts of interest.
 | (i) Responded to above. The comment is noted.  |
| **“assignee”** | 1. It is reasonable to assume that the intention of the inclusion of the reference to “direct or indirect interest” is to ensure objectivity and to prevent a legal person, with commercial interest in an industry, to be designated as an assignee in respect of the industry concerned.
2. it is proposed that 1(a) of the Amendment Bill, be amended so that it conveys the message that an assignee should not have any commercial interest in any member of the industry in respect of which the assignee must enforce particular regulations and that the wording “which does not have direct or indirect interest in the product concerned”, be deleted.
3. It is also proposed that Clause 1(a) of the Amendment Bill, be amended to convey the message that assignees should be cost-recovery operations and that assignees should not be profit-orientated entities. This requirement is of crucial importance. This requirement is just as important as the requirements contained in the APS Act.
4. The reason for the proposal in the above paragraph, is that allowing profit orientated enterprises to act as assignees, will jeopardise the competitiveness of the relevant industries. The industries are already under serious pressure and the competitiveness of the industries will, in the foreseeable future, still be under pressure. Without improved competitiveness, inclusive growth, as required by the National Development Plan, cannot be achieved.
 | (j)Responded to above.(k)Responded to above.(l)Responded to above.(m)Responded to above. |
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| **“Management control system (MCS)”** | 1. clarify the span of control (from where to where in the specific supply chain) as well as the applicable industries governed by the management control system.
2. management control system should only be applicable on the local/domestic South Africa market. MCS should apply to products that are only used for inland consumption and for food grade vs animal feed grade
 | (a)Management control system addresses itself to the manner of production and claims associated thereto at the point of sale. (b)The definition is applicable to regulated products which are either imported, exported, or produced in South AfricaIn other words, claims of production can only be claimed if such claims follow prescribed substantiation in that respect.  |
| **“management control system”** | (c)PGS produce is labelled PGS Certified Organic or PGS organic in-conversion and it is generally recognised for the local market or short supply chains. | (c)The comment is noted. This matter may be addressed by the Regulations after the APS Bill has been passed into law.  |
| **“management control system”** | (d)This needs to explicitly include religious certifications such as HALAAL. This is currently a huge challenge which also affects exports (raised in the Poultry Master Plan). Clarity is needed that the requirement for a management control system and the subsequent use of claims is governed by the requirements of the regulations and under the APS Act.(e)Re-phrase the definition MCS to read as follows: ***‘Management control system’ means the [principles of procedure with regard to a product, within the scope of the Act and/or relevant Regulations, from its primary production to its sale or export] manner or method of production which may be claimed through the use of a name, word, expression, reference, particulars or indication in any manner, either by itself or in conjunction with any other verbal, written, printed, illustrated or visual material, in respect of the sale or export of a product;’’*** | (d)To the extent that HALAAL products and other products that may use religious certifications, are associated with methods of production, such may be regulated under the APS Act. (e)The proposed definition is rejected because it re-emphasizes what the amendment definition states. Therefore, the definition captured in the Amendment Bill will find its application in the Regulations.  |
| **‘management control system”** | 1. nor is it clear what is entailed in the examination of the management control system as the term is not clearly defined; and as a result, it is not clear that any “management control system” function falls within the ambit and purpose of the Agricultural Products Standards Act
 | (f)The definition relates to the methods of production and the use of associated claims for products, thereof.  |
| **“management control system”** | 1. to the extent that the envisaged audit of the management control systems is expected to guarantee that the product aligns with the description thereof provided to the market / the consumer (which is unclear), this function appears to fall within the purpose of legislation such as the Consumer Protection Act 68 of 2008 or the Foodstuffs, Cosmetics and Disinfectants Act 54 of 1972 and not that of the APS Act. Our client submits that the definition requires reformulation.

 1. the proposed definition of ‘management control system’ is overly broad. Furthermore, its meaning, purpose for inclusion and scope (as read together with the term ‘audit’) is vague.
 | (g)There is alignment between the Acts mentioned in that whilst they focus on consumer protection and even to some extent, ensuring fair trade practices, the amended definition of Management control system will contribute to consumer protection and fair-trade practices. (h)The definition is narrowed essentially to focus *inter alia* on methods of production of agricultural products and the use of associated claims, thereof. |
| **“management control system”** | 1. Insertion of revised definition of management control system is not supported. Claims are governed through Foodstuffs, Cosmetics and Disinfectants Act. There is no reference to claims or manner on how these are made in the current APS regulations
 | (i)There is alignment between the Acts mentioned in that whilst they focus on consumer protection and even to some extent, ensuring fair trade practices, the amended definition of Management control system will contribute to consumer protection and fair-trade practices.  |

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| **1.3 AGBIZ/** **Milk SA/ South African Organic Sector Organization/ Consumer Goods Council of South Africa / PEPSICO/ PRIMERIO/ South African Fruit and****Vegetable Canners Association (SAFVCA) and the South African Fruit Juice****Association (SAFJA)** | **“audit”** | 1. Clarification is sought for the intention of the inclusion of the reference to audit. This description of the intention lacks clarity due to the fact that reference is made in order to fully address what was intended” and no explanation is given about what was intended”. As a result, an explanation of the intention is required and such explanation is requested.
2. Clarification on whether audits are intended to be limited to cases where the requirements, other than the requirements as captured in, for example Regulation 1510 and which cannot be determined by the technical testing of the product, are relevant similar examples relevant in respect of products other than dairy products, are claims about free-range and Karoo lamb.
3. Audits in respect of products, of which compliance with the relevant regulatory requirements, can be determined by testing of the products, will not add value, it will only increase cost, harm the competitiveness of the industries concerned and as well as the interests of consumers, and it will amount to wasteful use of national resources.
 | (j)Audit pertains to management control system. Management control systems must be audited to ensure and establish that they are indeed following correct production methods according to the prescribed specifications and claimed.(k)Free range is a manner of production which resorts directly under management control system and will be covered under the same. However, Karoo lamb is categorised as a geographical indicator as stipulated in section 6A of the Agricultural Production Standards Act.(l)Agree, hence audit will only refer to management control system. |
| **“audit”** | 1. Would the PGS audit process by other members of the PGS group be considered a “functionally independent examination”?
 | (m)It is not known or clear as to what is PGS is all about. Hence, this question could not be answered. However, the definition as indicated in the Amendment Bill sufficiently outlines what audit is all about  |
| **“audit”**  | 1. It is currently not clear who will be doing audits and who will be doing inspections. The lack of clarity may result in additional costs to the sector. Separation of power between inspectors and auditors needs to be clearly defined.
2. The definition of audit should be aligned to the definition in the ISO 9001:2018 Guidelines for auditing management systems as follows: ***Systematic, independent and documented process for obtaining objective evidence and evaluating it objectively to determine whether activities and related results comply with the respective regulations***
3. Proposal to define “claims” be included in the Amendment
4. It is not clear whether “claims associated with the product” refers specifically to claims that are registered with DALRRD regulations in terms of the APS Act and does not include claims that are regulated by the Department of Health and/or other government departments
5. Clarity is needed on whether an audit on management control systems will only be conducted at selected facilities where products with claims are produced/packed.
 | (n)Inspection and audit mandates are different and will be addressed separately. However, there may be cases wherein an assignee or executive officer may be designated for both mandates depending on the knowledge and expertise that the assignee possesses.(o)The alignment with ISO 9001 is not compulsory, however the definition has been drafted in the context of the APS Act and encapsulates the principles outlined in ISO 9001. (p)The recommendation is not accepted. (q)The comment is premature as the Regulations are not in place yet. (r)The definition of audit answers this comment. |
| **“audit”** | 1. it is not clear what the purpose of the audit function is, separate and distinct from the “inspection” function (which is not defined)
 | (s)Audit pertains to management control systems and inspections are provided for in section 3A of the APS Act.  |
| **“audit”** | 1. The introduction of the defined term ‘audit’, read with the amendments to the definition of ‘management control system’ and the insertion of Section 2(3)(a)(ii) in the Bill is vague and potentially problematic in that: the purpose of the audit function is unclear, in particular because the proposed amendment intends to make it separate and distinct from the “inspection” function (which is undefined)
2. while ‘audit’ has been defined, the term ‘inspection’ is not defined. This creates uncertainty as to the meaning of the respective terms and the extent to which they are intended to overlap / differ. Clear and concise definitions of both of these terms should be included
 | (t)Section 3A (1) of the APS Act set out the basics of inspection whilst audit relates to management control system. There is no need to define inspection. Management control system talks to the manner of production and associated claims relating to products which needs to be substantiated. |
|  | **‘audit”** | 1. an audit system would be more effective and cost-efficient and would not be overly burdensome to the industry to ensure adherence to the current regulations when compared to actual inspections
 | (v)Comment noted. |
| **“audit”** | 1. Delete wording “**claims associated with the product”** in (b) above to be replaced with wording “**classes and grades as defined by APS regulations**” for proper context.
 | (w)Methods of production in terms of grades and classes will still fall under section 3A (1) read in conjunction with section 3 of the APS Act. Products should still be graded and classed. Therefore, there is no need to be amend the definition.  |
| **“audit”** | (x) The inclusion of a definition of “audit” in Clause 3 of the Amendment Bill and the reference to “audit” in Clause 4(a) and 4(b)(d) of the Amendment Bill, is noted. The existing APS Act does not contain any reference to audit.(y)The intention of the inclusion of the reference to audit in the Amendment Bill, as described in the previous paragraph, is addressed in 1.2 of the “Memorandum of the Objects of the Agricultural Product Standards Amendment Bill”. This description of the intention lacks clarity due to the fact that reference is made “in order to fully address what was intended” and no explanation is given about what “was intended”. As a result, an explanation of the intention is required and such explanation is requested.(z) If the intention is that audits will only be relevant in respect of protocols about, for example, organic, hormone-free or free-range, it should be categorically stated in the Amendment Bill. The Amendment Bill should not create opportunity for audits in case where compliance with all the regulatory requirements, can be measured by the testing of the relevant products. Audits in respect of products, of which compliance with the relevant regulatory requirements, can be determined by testing of the products, will not add value, it will only increase cost, harm the competitiveness of the industries concerned and as well as the interests of consumers, and it will amount to wasteful use of national resources. | (y)Responded to above.(z)Comment is noted. |
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| **1.4.AGBIZ/ South African Organic Sector Organization/ PEPSICO/ Consumer Goods Council of South Africa/ PRIMERIO/ Tiger Consumer Brands Limited/ The National Chamber of****Milling****The National Chamber of****Milling** | **“Sell”**  | 1. clarify if “any person” would include a storage operator of grain and if he/she should pay the inspection fee.
 | (a)Yes  |
| **“sell”** | 1. Consideration needs to be given to the impact of this definition to food loss and waste and donation of surplus food. Government assessment of compositional standards' impact on the above is needed as the definition applies to all agricultural products.
 | (b)Comment is noted. |
| **“sell”** | 1. proposal to define sell as follows: ***includes offer, deliver or prepare for sale or to exchange or to dispose of to any person in any way for a consideration or otherwise, and ‘sold’, ‘selling’ and ‘sale’ have a corresponding meaning;”***
 | (c)The proposal is rejected since it removes **“advertise”** which is an important element of the definition of sell.  |
| **“sell”** | 1. The Bill provides for an overly broad definition of ‘sell’ and includes transactions in respect of which no consideration is received. There does not appear to be a rational basis for this amendment.
 | (d)Partly agreed. However, there is a justification and rationale to amend the definition of sell to accommodate different context under which the word sell can be used and construed. More than anything, it relates to clarification of the use of language.  |
| (e) Specify if donations and sponsorships fall within the definition of “sale”. | (e)Donations will not be read into the word “sell”. The Department concedes that the term **“or otherwise”** be removed from the definition. |
| **“sell”** | 1. The definition of “sell” is ambiguous. It needs refinement for better understanding.
 | (f)Comment is noted |
|  **clause 2: Amendment of CLASUE 2 - Designation of an assignee**  |
| **2.1 AGBIZ** | **Amendment of clause 2** | 1. Legislation should allow the Executive Officer sufficient discretion to enter into cost-sharing agreements or other public-private partnerships between the industry and the authority. The Act would need to allow functions to be delegated to suitably qualified persons who are not officers, subject to the qualification that they must still operate under the instruction of the executive officer. It should not be mandatory to follow this route, but the legislation should be enabling and include it as an option at the discretion of the executive officer.
 | (a)The principal Act accommodates the comments e.g. designation of laboratories and assignees.   |
| **2.2 South African Organic Sector Organization** | **Amendment of clause 2** | 1. Request the honourable Minister to designate Participatory Guarantee Systems (PGS) South Africa and SAOSO as the body “having particular knowledge” and assign to them recognition as the knowledgeable body as the expert organisations in this regard.
 | (b)The comment is outside the scope of the Bill. |
| **2.3 Consumer Goods Council of South Africa**  | **Amendment of clause 2** | 1. Definition of assignee and this clause have material differences i.e., knowledge vs. independence.
2. It. is critical that a skills audit of current and future assignees is conducted and their credentials published for public comment before they are appointed.
3. The criteria for the selection of assignees should be made public
4. Furthermore, the playing fields need to be level so that all levels of retail are inspected, i.e., the formal and informal sectors of the retail value chain, as is the case with formal retail. Furthermore, all demographics need to be included in the inspections not only focused on centralised regions
5. Assignees to consider the quality management systems that are in place prior to inspections, these are to be used to determine frequency of inspections based on risk.
6. It needs to be borne in mind that retailers currently have quality controllers in place who conduct inspections on products based on product specifications which are drawn up based on the regulations with far more stringent criteria, questioning the need for DALRRD appointed assignees.
 | (c)There is no reference to the word “independence” in both the Bill and the principal Act. (d)The designation of assignees is provided by section 2(3)(a) of the APS Act. The Executive Authority appoints suitably qualified assignees. (e)See above response. (f)The law does not make any distinction in terms of inspections regarding informal or formal set-ups. (g)The issue raised in this case has got no resonance with the proposal in the Bill nor existing Act. At any rate, sellers of products ought to carry out due diligence. (h)Mandatory inspections need to be carried out by designated inspectors or officers as part of regulatory compliance.  |
| **2.4 PEPSICO** | **Amendment of clause 2** | 1. the purpose for a provision (in clause 2(3)(a)(i)) for the appointment of an additional assignee to perform the “management control systems related to that product” is likewise unclear. No rational basis for the provision of an additional assignee to perform this function is apparent.
2. Instead, the introduction of an additional assignee to carry out this discreet albeit unclear function (see above comments on the definitions of ‘audit’ and ‘management control system’) will lead to the duplication of assignees and a duplication of functions and costs, which is likely to ultimately increase the cost of basic food goods for the end consumer. This amendment should be removed and to the extent that “management control systems related to that product” remains in the Bill, it should be performed by one assignee.
 | (i)Comment is accepted(j)Recommend deletion of Clauses 2 (3)(a)(i) and 2(3)(a)(ii). |
| **2.5 PRIMERIO** | **Amendment of clause 2** | 1. the justification for a provision for the appointment of an additional assignee to perform the ‘management control systems related to that product’, as contained in section 2(3)(a)(ii), is likewise unclear. No rational basis for the provision of an additional assignee to perform this function exists or is apparent. With reference to the above comment on the definitions of ‘audit’ and ‘management control system’, the introduction of an additional assignee to carry out this discreet albeit unclear function may lead to a duplication of assignees as well as a duplication of functions and cost. The likely result of such duplication is an increase to the cost of basic food goods which is ultimately harmful to the end consumer**. This amendment should be removed**. Furthermore, to the extent that ‘management control systems related to that product’ remains in the Bill, **it should be carried out by a single assignee together with any other functions assigned under the Act**.
 | (k)Comment is accepted. Recommend deletion of Clauses 2(3)(a)(i) and 2(3)(a)(ii) |
| **2.6 South African Fruit and****Vegetable Canners Association (SAFVCA) and the South African Fruit Juice****Association (SAFJA)**  | **Amendment of clause 2** | 1. canned fruit and some vegetables, products are already inspected by the Perishable Product Export Control Board (PPECB) which is also appointed as an assignee in terms of the APS Act. Such inspections are done at our members manufacturing facilities (in some cases whether these products are destined for the South African or export market). As the inspections are the same, in terms of canned fruit and some vegetables, **the appointment of an additional assignee to perform the inspections solely for products destined for the local market serve no purpose but adds significant cost and duplication to members**
2. clarify that industry will not be subject to both inspection and audits. The Bill must be amended to ensure that the APS Act caters for mandatory audit where a management control system has been implemented and only to revert to inspections where the audit proves that compliance with the APS Act and attendant regulations has not been satisfactorily achieved. The industry seeks clarity and suitable amendments to cater for this concern
3. seek clarity on the criteria for selection and/or appointment of the assignees. Impumelelo was unqualified to conduct the inspections. Some 5 years after Impumelelo has determined and collected its own fees, the appointment of the assignee has been revoked.
 | (l)Inspections are carried out for two purposes; namely, export in terms of section 4(1), local and import in terms of section 3(1) and 4A. The PPECB has been designated *inter alia* to apply section 4(1). Specifications for export and local markets are different. The basis of the comment hereto, does not particularise as to which part of the proposed Amendment Bill it relates to.(m)Inspection and audit are two separate controls. Inspection is set out in section 3A(1) of the APS Act and relates to end point inspection of products whilst audit pertains to the management control system in relation to production methods.(n)The revocation of the designation of Impumelelo was effected in consideration of factors relating to operational requirements rather than its suitability for designation. |
| **2.7 Tiger Consumer Brands Limited** | **Amendment of clause 2** | 1. seek to clarify that industry will not be subject to both inspection and audits. The Bill must be amended to ensure that the APS Act caters for mandatory audit where a management control system has been implemented and only to revert to inspections where the audit proves that compliance with the APS Act and attendant regulations has not been satisfactorily achieved. We therefore seek clarity and suitable amendments to cater for this concern.
2. seek clarity on the criteria for selection and/or appointment of the assignees. It was clear that Impumelelo was unqualified to conduct the inspections.
3. Knowledge should be extended to employees of the assignees and not only the person, undertaking, institution, association, or board
4. Clarity is required as to why two sets of undertakings are required? (Assignee nomination of another body to complete the work. Cost implication?)
5. Why is there a requirement for separate assignees with knowledge of the “product” and separately for “the management control systems related to the product”? This is inefficient and would amount to unnecessary costs being incurred by industry.
 | (o)Responded to above.(p)Responded to above.(q)Comment falls outside the scope of the Bill.(r)Comment falls outside the scope of the Bill.(s)Responded to above. |
| **2.8 The National Chamber of****Milling** | **Amendment of clause 2** | 1. Insertion of section 2 (ii) is not supported, mainly reference to “particular knowledge in respect of the management control systems related to that product”. Management control system are not legislated under the Act. Verification should be aligned to APS regulations. • Clarity is required as to why one or more assignees could be designated which might have cost implications.
 | (t)Responded to above. |
| **2.9 Grain SA**  | **Amendment of clause 2** | 1. Where self-regulation of product standards is implemented with success, the role of an assignee becomes a mere duplication. Since the deregulation of the Agricultural markets in the late 1990’s, quality control (grading) has been a function successfully maintained by the grain and oilseed industry.
2. The introduction of assignees will add a significant cost to the value-chain. It can especially be the case for staple food such as maize (maize meal), wheat (bread) and vegetable oils (sunflower, soybeans and canola). The recent Global Food Security Index showed that South Africa has recently declined in the rankings compared to other countries, with the main reason the affordability of food, and can therefore not afford any additional costs, especially on staple foods.
3. Assignee should never be meant to take over the responsibility of the Government. Appointment of Assignee’s should be for a reason, i.e., if there is a specific challenge or problem that arises and insufficient capacity or specialists exist within Government, an assignee may be temporarily utilised for such a function. It should not duplicate the responsibility that Government should fulfil. An example of the current situation is that DALRRD already have an in-house inspection service. Will the assignee take over the in-house inspectorate or will it merely be a duplication?
 | (u)Mandatory inspections need to be carried out by designated inspectors or officers as part of regulatory compliance.(v)The assertion relating to Grain SA cannot be countenanced by any evidence. Deregulation came in 1997, before then there were several designated assignees. PPECB has been conducting inspection relating to grains and oilseeds in terms of export since 1990 to date. (w)The legislation provides for the function to be performed by the Department or the designated assignee.  |
| **2.10 Red Meat Industry Forum** | **Amendment of clause 2** | 1. The proposed amendment does not require that the Executive Officer designated in terms of section 2(1) of the Officer should have the knowledge referred to in the proposed amendment. It is incongruous that when the function is performed by an assignee, the particular knowledge is required but not when it is performed by the Executive Officer or the Officer appointed by the Executive Officer
2. The knowledge required of the Executive Officer or Officer appointed by him or her should similarly be specified
3. Re-phrase the definition to read “ ***designate as assignee having a particular knowledge in respect of the product concerned***”
4. Until such time as the Regulations are published, it will however not be possible to appoint one or more assignees in terms of subsection (ii) who has particular knowledge in respect of the management control system related to the product. It will not be workable to without Regulations having been promulgated and until this has been done, the Bill becomes law, it will result in an absurdity. This ought to be borne in mind when considering passing the Bill into law
5. Appointment of two or more assignees to be appointed in relation to a specific product. No mechanism is built into the Bill for the resolution of an impasse that may result in different findings from assignees in relation to a product
 | (x)The Executive Officer and Officer are technically qualified serving officials of the Department appointed in terms of the Public Service Act, no 103 of 1994.(y)Responded to above.(z)Responded to above.(aa)Agreed, the details as proposed in section 15 will come out in the publication of Regulations. (bb)Assignees will be appointed for different mandates. There won’t be any impasse. |

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|  **CLAUSE 3: AMENDMENT OF CLAUSE 3 – DETERMINATION OF FEES** |
| **3.1 AGBIZ** | **Amendment of clause 3** | 1. fair and transparent cost recovery system and fee structure

A clear and transparent process must guide the consultation. This means that identifiable stakeholders will need to be thoroughly consulted and will need to be provided with sufficient information to meaningfully engage in the process of setting a fee, subject to an annual review process. | (a)Agreed, this is provided for in the Bill by the insertion of Clause 3 (1B) (a) to (c) |
| **3.2 Milk South Africa** | **Amendment of clause 3** | 1. It is proposed section 3 be expanded to include the requirement that each assignee should annually make audited financial accounts public, in order to make it possible for interested parties to assess the success of the implementation of the cost-recovery principle.
2. Each assignee should annually present a draft budget to interested parties to enable them to comment.
3. No motivation is provided why the “executive officer” should be the sole judge of whether or not a person or party is “directly affected by the actions of the assignee”. It is not regarded as functional and justified that the “executive officer” should be the sole judge in respect of the matter concerned and it is proposed that the words “**who, are in the opinion of the executive officer** ” be deleted
 | (b)This is provided for in Amendment Bill by the insertion of Clause 3 (1B) (a) to (c). This would be beyond the scope of the APS Act. (c)This is provided for in the Bill by the insertion of Clause 3 (1B) (a). (d)Agreed, the wording will be removed. |
| **3.3 Perishable Products Export Control Board**  | **Amendment of clause 3** | 1. The PPECB Board is comprised of industry stakeholders and would certainly qualify as interested persons as contemplated in this section. The PPECB’s proposed fees/levies and anticipated volumes of fruit are discussed with industry bodies. The PPECB board approves the annual budget at the November Audit Committee and Board meeting each year. Since the PPECB is a Schedule 3A public entity it submits its strategic plan, performance framework and Medium-Term Expenditure Framework to DALRRD, and the MTEF is submitted to National Treasury in December each year. In March or April of each year, the National Budget is tabled at Parliament and the Strategic Plan, Performance Framework and MTEF are presented to the relevant Parliamentary Portfolio Committee. As a result of the oversight provided in respect of the budget of a public entity such as the PPECB.
2. it is recommended that this provision is made applicable to private companies only.
 | (e)This is a law of general application, and it applies to all without exception and the comment is therefore rejected. |
| **3.4 Consumer Goods Council of South Africa**  | **Amendment of clause 3** | 1. This fee determination must comply to set rules and regulations, i.e., a regulatory framework should be put in place to guide the determination of fees by assignees for transparency and accountability
2. there needs to be a requirement for the executive officer to have the requisite skills to interrogate the business plan and budget of assignees.
3. We propose that the consultation process should not be a subjective process, i.e., “in the opinion of the executive officer” but rather consultation should take place within X number of days inviting written comments on the business plan and budget of such an assignee through the public consultation process e.g., government gazette for interested parties or individuals to make written and/or oral submissions. [The business plan and budget should be a public document that interested parties have access to]
4. We propose that this section should read as follows:

(c) ***the executive officer, shall present the business plan and budget including a summary of the public comments (envisaged as suggested in (b) above), to the Minister who must approve the budget and fees with the concurrence of the Minister responsible for Finance, within 60 days of submission by the Minister responsible for DALRRD.***1. We therefore implore the Portfolio Committee to consider requiring that the fees charged by the assignees be regulated given the numerous and successful litigation cases that have cost the industry massive amounts of monies.
2. We therefore proposed an additional sub-section as follows:

***(d) the approved business plan and budget of the assignee shall be applicable for a period of three years and subject to inflationary increases*** | (g)Section 3 (1A)(b)(ii) of the APS Act makes provision for the assignee to determine fees. In the matter ***Woodlands Dairy Proprietary Limited and Another v Minister of Agriculture, Forestry and Fisheries in the Government of the Republic of South,*** case number 82044/2018, it was stated as follows: * *The assignee must subject its work to the direction of the Executive Officer, who is entitled (and obliged) to give direction to the assignee.*
* *That does not mean that the APS Act, as it stands, does not allow for proper monitoring and direction by the Executive Officer.*
* *The APS Act already provides for regulatory control over, and approval of the decisions of the assignee by the Executive Officer.*

The above judgment by the Acting Judge JJC Swanepoel emphasis the supervisory role of the EO and current regulatory control in the current APS Act. Agreed, this is provided for in Amendment Bill by the insertion of section 3 (1B) (a) to (c)(h)Responded to above.(i)Responded to above(j)The EO is the delegatee of the Minister.(k)Fees are regulated in terms of section 3(1A) of the APS Act. All the judgments confirmed the legitimacy of the fee determination. (l)The reason for the introduction of section 3 (1B) (a) to (c) is to afford the affected communities an opportunity to evaluate the proposed inspection fees of assignees in line with amongst others, inflation and consideration, so that they may have a bearing on the final fee.  |
| **3.5 PEPSICO** | **Amendment of clause 3** | 1. it is unclear whether the process outlined in section 3(1B)(a)-(c) is intended to be in addition to (and following) the mandatory publishing of the fee, determined in terms of section 3 (1A)(b)(ii), for comment in the Government Gazette or whether the intention is that it supplants this process and/or means that such process would not require disclosure of the assignee’s business plan and/or budget. The latter would contradict the rights of interested parties to fair administrative action in the determination of inter alia the assignee’s fees under section 3 (1A)(b)(ii)
2. the provision in section 3(1B)(b) of the Bill for the Executive Officer to determine, in his opinion, who an interested party is conflicts with the constitutional principles of procedural fairness. We propose deleting the words ‘***in the opinion of the executive officer’***
3. the stipulated period for approval provided in terms of section 3(1B)(c) of the Bill should not exceed a period of 12 months
 | (m)Section 3(1B)(a) to (c) is mutually reinforcing the determination of fees. The final publication of fees will only be done after consultation with the EO. Fees will not be finalised before the EO has undertaken his supervisory role in terms of section 3(1B) (a) to (c) (n)Responded to above(o)Agreed, the Amendment Bill will be amended by the insertion of the proposed period of 12 months. |
| **3.6 PRIMERIO** | **Amendment of clause 3** | 1. it is unclear whether the section 3(1B)(a)-(c) process is to be carried out in addition to the mandatory publishing of the fee, determined in terms of section 3(1A)(b)(ii), for comment in the Government Gazette or whether it supplants this process and/or means that such process would not require the disclosure of the assignee’s business plan and/or budget. The latter would contradict the rights of interested parties to fair administrative action in the determination of *inter alia* the assignee’s fees under section 3 (1A)(b)(ii)
2. propose deleting the words ‘***in the opinion of the executive officer***
3. The stipulated period for approval provided in terms of section 3(1B)(c) of the Bill should not exceed a period of 12 months.
 | (p)Responded to above.(q)Responded to above.(r)Agreed, the Bill will be amended by the insertion of the proposed period (12 months) |
| **3.7 South African Fruit and****Vegetable Canners Association (SAFVCA) and the South African Fruit Juice****Association (SAFJA)** | **Amendment of clause 3** | 1. Assignee must be a not-for-profit entity. If that is not the case, it is uncertain how fees will be determined on a cost-recovery basis. Those with a profit motive will have a much different cost-recovery base than those operating on a not-for-profit basis. A for-profit company is not subject to the prescripts of the PFMA and thus not required to report on any profits as would be the case for not-for-profit entities which would report to National Treasury on surpluses accrued from the collection of inspection fees
2. The proposed budget and business plan should be notified not only to those who, in the opinion of the Executive Officer, are directly affected. **It should be notified to the public generally to avoid a situation where the Executive Director may influence who is notified.** However, the Executive Director should notify all persons who the Executive Director has knowledge of being directly or indirectly affected
3. No provision is made for instances where the assignee has **over-recovered its costs from inspection/audit fees**. Should this relate to a private company, this should be disclosed and any over recovery should be used to offset the fees charged in the following annum.
4. It is unclear why the proposed amendment does not allow industry representatives to serve on the board of the assignee where it has insight into the determination of the fees as well as the approval thereof as has been the case, very successfully, with the PPECB. This will add to obtain industry’s commitment as it will allay concerns regarding fee setting and the impact of such fees on industry
5. Instead, this period should be for one year only which would allow for the effective recuperation of any over or under recovery of inspection fees in the following year on a cost recovery basis
 | (s)Responded to above(t)Responded to above.(u)Cost-recovery by its nature negates the possibility of “over recovery”.(v)The comment is beyond the scope of the Bill. (w)Responded to above. |
| **3.8 Tiger Consumer Brands Limited** | **Amendment of clause 3** | 1. it is uncertain how fees will be determined on a cost-recovery basis. Those with a profit motive will have a much different cost-recovery base than those operating on a not-for-profit basis. A for-profit company is not subject to the prescripts of the PFMA and thus not required to report on any profits as would be the case for not-for-profit entities which would report to National Treasury on surpluses accrued from the collection of inspection fees.
2. The proposed budget and business plan should be notified not only to those who, in the opinion of the Executive Officer, are directly affected. It should be notified to the public generally to avoid a situation where the Executive Director may influence who is notified. However, the Executive Director should notify all persons who the Executive Director has knowledge of being directly or indirectly affected
3. No provision is made for instances where the assignee has over-recovered its costs from inspection/audit fees. Should this relate to a private company, this should be disclosed and any over recovery should be used to offset the fees charged in the following annum
4. It is unclear why the proposed amendment does not allow industry representatives to serve on the board of the assignee where it has insight into the determination of the fees as well as the approval thereof as has been the case, very successfully, with the PPECB. This will add to obtain industry’s commitment as it will allay concerns regarding fee setting and the impact of such fees on industry
 | (x)Responded to above.(y)Responded to above.(z)Responded to above.(aa)Responded to above. |
| **3.9 Chamber of****Milling** | **Amendment of clause 3** | 1. Fees should be **applicable to the task at hand and not include overheads such as offices** to reinforce Section 3 (1A)a: Fees may be charged in respect of the powers exercised and duties performed by the executive officer or the assignee, as the case maybe, to ensure compliance with this section
2. The phrase “**in the opinion of the executive officer**” cannot be supported as it confines selection of directly affected groups to the discretion of executive officer. Directly affected groups should be terms of the MAP Act, Act No. 47 of 1996, (MAP ACT) as Amended. “A directly affected group means any group of persons, which is party to the production, sale, purchase, processing or consumption of an agricultural product and includes labour employed in the production or processing of such a product.” DALRRD to ensure that the Department of Treasury is aware of the fees imposed.
 | (bb)Responded to above.(cc)Responded to above.  |
| **3.10 Grain SA** | **Amendment of clause 3** | 1. Assignees should not be setting fees to generate a profit but should be strictly on a cost-recovery basis. The process of budgeting and compiling business plans, should be fully transparent to industry role-players. Fees should also only be levied per duty performed
 | (dd)Responded to above. |
| **3.11 SAMPRO** | **Amendment of clause 3** | 1. It is proposed that Clause 4 should be expanded to include the requirement that each assignee should annually made audited financial accounts public, in order to make it possible for interested parties to assess the success of the implementation of the cost-recovery principle.
2. In order to facilitate public scrutiny in respect of the implementation of the cost-recovery principle and transparency, it is proposed that the Amendment Bill should determine that each assignee should annually present a draft budget to interested parties to enable them to comment.
3. In Clause 3, reference is made to “interested parties on individuals who, in the opinion of the executive officer, are directly affected by the actions of that assignee. No motivation is provided why the “executive officer” should be the sole judge of whether or not a person or party is “directly affected by the actions of the assignee”. It is not regarded as functional and justified that the “executive officer” should be the sole judge in respect of the matter concerned and it is proposed that the words “ who, are in the opinion of the executive officer ” be deleted
 | (ee)Responded to above.(ff)Responded to above.(gg)Responded to above. |
|   **CLAUSE 3A: AMENDMENT OF CLAUSE 3A – INSERTION OF “AUDITS”** |
| **3A.1 AGBIZ** | **Amendment of clause 3A** | 1. The Act should make provision for specifying “who pays for what” by means of regulations issued by the Minister. The methodology of “who pays for what” should be determined as part of the industry engagement process to establish the extend of the “management control system” required for the specific industry
2. The inclusion of the word “test” in subclause (d) is therefore questioned
3. Preference should be given to modalities whereby existing structures are optimally utilised, provided that transparency and accountability can be maintained. Agbiz is in favour of a system of accredited organisations that will be empowered to perform auditing, monitoring or compliance with certain aspects of the legislation. The purpose for which an assignee is appointed must however be very clear. It is not clear who will pay for audits done under the Act.
 | (a)Agreed, section 3A (4) of the APS Act provides for that.(b)This is not a new insertion. (c)Section 3A(4) will be recommended for amendment by inserting Section 3A (2) (c) to accommodate payments for audits.  |
| **3A .2. Consumer Goods Council of South Africa**  | **Amendment of clause 3A** | 1. APS Act deals with compositional requirements. We do not agree that food safety and quality should be included as these are regulated by the Department of Health.
2. We recommend that inspections should be conducted at source to avoid duplication. In most instances the same supplier supplies multiple retailers, and there is therefore no need for products to be inspected at the supplier, market, distribution centre and the store.
3. Furthermore, a separate audit need not be introduced, and we recommend that DALRRD accepts the suppliers’ current audit that is in place for organic /free range products, for example. The audit should be based on industry codes of practice and or global standards for free range products. In the case of organic products this is generally a certification audit based on the SABS standards. It should not be necessary for the audit to be verified but rather just accepted because of its current global authenticity.
 | (d)The comment raised by CGCSA is not borne out by facts in the proposed Bill or the current Act. The APS Act will not cover aspects that are beyond its mandate.(e)Inspections are not the subject of the Bill(f)Mandatory inspections need to be carried out by designated inspectors or officers as part of regulatory compliance. The industry need also to practice and adhere to good and best agricultural practices as part of their due diligence.  |
| **3A. 3. PEPSICO** | **Amendment of clause 3A** | 1. in contradistinction to the proposed definition of the term ‘audit’, the term ‘inspection’ is not defined. This creates uncertainty as to the meaning of the respective terms and the extent to which they are intended to overlap / differ. Clear and concise definitions of both of these terms must be included;
 | (g)Inspection and audit are two separate controls. Inspection is set out in section 3A(1) of the APS Act, and it relates to end-point product inspection whilst audit pertains to the management control system in relation to production methods.  |
| **3A.4.South African Fruit and Vegetable Canners Association** **South African Fruit Juice Association** | **Amendment of clause 3A** | 1. auditing does not only apply to subsection (1) paragraph (d) and should extend to the other paragraphs in subsection (1)
2. Even if the audit system extends to all the paragraphs in subsection (1), **the Bill does not prescribe when the Executive Officer or the appointed assignee should either audit or inspect (or classify, grade, pack or mark as the case may be**). Instead, the current wording is that the Executive Officer or the assignee **‘may’** audit the management control system. Without a prescriptive direction, the system remains open for abuse which would again lead to inefficiency and burdensome costs. An audit of the control management system must be taken where such control management system has been implemented. In such instance, there cannot be recourse to inspections, unless the audit of the control management system proves that it has failed to ensure adherence to the regulations
3. substantial amendments to section 3A are required in order to implement an effective and binding risk-based audit system which serves to ensure that the APS Act is adhered to without overly burdening the industry with exceedingly high and unnecessary costs, inspections and product wastage.
 | (h)Agreed, it also applies to subsection 2.(i)This will be provided for in the Regulations. (j)Risk based inspections is subject to the inspector’s discretion as set out in section 3A(1). This will appropriately be covered between the EO or assignee through ancillary guiding documents.  |
| **3A.5.Tiger Consumer Brands Limited**  | **Amendment of clause 3A** | 1. The audit of a control management system may be extended to the other paragraphs in subsection (1). Curtailing the inclusion of an audit of the management control system to only paragraph (d) undermines the efficacy of the control management systems as well as any real intention to allow for an audit of such control management systems. This is due to the fact that the other paragraphs in subsection (1) provides for additional, yet very similar, ways in which products may be inspected and tested. Thus, if the audit of a control management system is limited to only one of the ways in which inspections may be undertaken, it would make the auditing thereof superfluous if the other ways of inspection the products.
2. the Bill does not prescribe when the Executive Officer or the appointed assignee should either audit or inspect (or classify, grade, pack or mark as the case may be). Instead, the current wording is that the Executive Director or the assignee ‘may’ audit the management control system. Without a prescriptive direction, the system remains open for abuse which would again lead to inefficiency and burdensome costs. An audit of the control management system must be taken where such control management system has been implemented. In such instance, there cannot be recourse to inspections, unless the audit of the control management system proves that it has failed to ensure adherence to the regulations
3. Substantial amendments to section 3A are required in order to implement an effective and binding risk-based audit system which serves to ensure that the APS Act is adhered to without overly burdening the industry with exceedingly high and unnecessary costs, inspections and product wastage
 | (k)Inspection and audit are two separate controls. Inspection is set out in section 3A of the APS Act and it relates to end-point product inspection whilst audit pertains to the management control system in relation to production methods.(l)Responded to above.(m)Responded to above.  |
| **3A .6. National Chamber of****Milling** | **Amendment of clause 3A** | 1. Definition of inspection is necessary to provide clarity especially with inclusion of audit.
2. The word “any”, referring to quantity of a product and stricken out above, should be deleted. It creates an open-ended loophole on the quantity which should be defined in the APS regulations. There should be no duplication of audits.
 | (n)Inspection is set out in section 3A(1) of the APS Act and relates to products whilst audit pertains to the management control system in relation to production methods.(o)The comment is outside the scope of the Bill.  |
|   **CLAUSE 10: APPEAL** |
| **10.1. AGBIZ** | **Amendment of clause 10** | 1. Proposal to extend the timelines for dealing with lodged appeals to promote fair hearings.
 | (a)The comment is outside the scope of the Bill. |
|  **CLAUSE 15: REGULATIONS**  |
| **15. 1. South African Fruit and****Vegetable Canners Association (SAFVCA) and the South African Fruit Juice****Association (SAFJA)** | **Amendment of clause 15(dA)** | 1. request that such regulations relating to management control system should consider the existing management control systems, as well as those used worldwide relevant for our members products. Proper consultation must occur with the related industries and our members prior to the promulgation thereof.
 | (b)Agreed, there will be proper consultations with stakeholders and all these things shall be considered during the development of regulations.  |
| **15.2. Tiger Consumer Brands Limited** | **Amendment of clause 15(dA)** | 1. Proposal to promulgate regulations regarding management control systems. Such regulations should consider the existing management control systems, as well as those used worldwide relevant for our members products. Proper consultation must occur with the related industries and our members prior to the promulgation thereof.

  | (c)Responded to above. |
| **15. 3. National Chamber of****Milling** | **Amendment of clause on 15(dA)** | 1. The “management control system” was an insertion after point (d), as an additional point (dA). Thus, this would not relate specifically to point (d) of section 15. While there is additional emphasis on auditing and the management control system, consideration should be given to existing auditing bodies that are already auditing management control systems. (Avoid any duplication of auditing the management control system)
 | (d)The designation of any assignee for the management control system shall be done in consultation and compliance with section 217 of the Constitution of the Republic of South Africa  |
| **GENERAL COMMENTS****(These are comments that are not about specific clauses)** |
| **(a) Milk South Africa** |  | 1. Proposal to make it compulsory that service level agreements between the Minister and assignees, should be concluded and that such service level agreements can only be finalised once interested parties had the opportunity to comment on it and once such comments were properly considered by the Minister.
2. Interested parties cannot protect their rights unless it is known what the contents of the agreements (Service Level Agreements) are, which the Minister concluded with the assignees.
3. Agreement between the Minister and assignees, impact on the rights of the interested parties (especially the industries in respect of which the assignees should enforce regulations) and interested parties must be consulted regarding the contents of the agreements
4. In at least one case and for a period of more than five years after the appointment of a particular assignee, no information was made public about the Service Level Agreement, notwithstanding repeated requests that it should be provided
 | (a)The Act does not make provision for the conclusion of the Service Level Agreements (SLA) between the Minister and assignees.  |
| **(b) Consumer Goods Council of South Africa**  |  | 1. The APS Act has brought with it several challenges for the industry in general and our members in particular, relating to for example, the appointment of assignees and the “unregulated” fees the assignees charge the industry.
2. The issue of the unregulated fees continues to be a challenge and there are concerns that if not managed, the situation will continue to have unintended consequences of rising costs, not only for the industry but also the consumers
3. it is critical that regulators consider first the impact of legislative reforms on the economy and population by subjecting such reforms and/or amendments to a Socio-Economic Impact Assessment System (SEIAS).
4. The Portfolio Committee to consider the negative economic and social impact of the proposed Amendment Bill in the absence of a SEIAS, particularly given the challenges currently experienced in the implementation of the APS Act
5. The CGCSA hereby calls for an audit to be conducted to determine the inspection capacity of DALRRD, including the job functions of individuals who are still in DALRRD employed to conduct inspection services. The audit we believe, will assist in the assessment of whether assignees are still needed, given that they come at a cost to the industry and consumers in an environment that is economically challenging.
6. consideration to be had on the need for assignees given the merger of Department of Agriculture, Forestry and Fisheries (DAFF) and Department Rural Development and Land Reform (DRDLR) to establish the Department of Agriculture, Land Reform and Rural Development (DALRRD) as it is now known.
7. the powers conferred on the executive officer in approval of the business plan and budget of assignees. We recommend that this should be an inclusive process, to be outlined in legislation with the involvement of both the Ministers of DALRRD and Finance.
8. a regulatory framework needs to be put in place for the determination and approval of assignee fees. The budget and fees must be approved with the concurrence of the Minister of Finance in line with the provision made in section 15(4) of the APS Act, which states that “a regulation prescribing fees shall be made 'with the concurrence of the Minister of Finance”
9. that the Amendment Bill is subjected to a SEIAS to minimise unintended consequences and impact to the industry and consumer
 | (e)The issue of fees is well regulated under section 3(1A) and the interpretation was succinctly given in the judgement of ***Bertie van Zyl (Edms) Bpk and others v The Minister of Agriculture Forestry and Fisheries and others,*** Judge JBaqwa states that “*The purpose of the power to determine inspection fee, is to secure compensation sufficient to meet the assignee`s costs of carrying out its duties in a competent and efficient manner*.”(g)The Amendment Bill went through the process of SEIAS in 2015, which is a requirement for all Government legislations intended for review (i)The role of the Minister in respect of the designation of the assignees is set out in section 2(3)(a). It is worth noting that once the Minister has designated an assignee, the Minister is out of office in other words, *functus officio*. The designation of assignees is occasioned by lack of the requisite capacity in DALRRD(j)Responded to above.(k)Responded to above.(l)Responded to above.(m) Responded to above. |
| **(c)South African Organic Sector Organization** |  | 1. With reference to ‘organic regulations’ where do we stand? A document drafted in February, 2008 by the Department of Agriculture entitled AGRICULTURAL PRODUCT STANDARDS ACT, 1990 (ACT No. 119 OF 1990): REGULATIONS REGARDING CONTROL OVER THE SALE OF ORGANICALLY PRODUCED PRODUCTS IN THE REPUBLIC OF SOUTH AFRICA has never been passed. It is understood that these regulations were replaced by the SANS 1369: 2016 Organic Standard, which references Participatory Guarantee Systems under 3.
2. When referencing “organic regulations” is it the SANS1369:2016 that is referenced? Where do we stand with the National Policy on Organic Production, currently in its 10th draft? Will the Fertilizer, Farm Feeds, Seeds and Remedies Act 36 of 1947 be amended to allow for the simplified registration of organic inputs under the regulation?
 | (n)The Regulations on organically produced products will be promulgated once the Bill is passed into law. (o)Responded to above. |
| **(d) PEPSICO** |  | 1. provide for an increased, continuous and express oversight and direction mechanisms from the Executive Officer over the assignee and its determined fee and performance, under a predefined governance structure that enable routine reporting and visible oversight by Parliament and/or Cabinet, annual fee reconciliation and ongoing mitigating efforts to reduce cost of compliance to the industry to ultimately benefit the consumer.
2. include provision for the appointment of more than one assignee per product (grains and grain products, only one of whom may levy fees) to provide industry with choice as to the assignee, to ensure that the determined fee and performance remains competitive amongst assignees.
3. require the Executive Officer to take into consideration the functions currently fulfilled by industry before appointing an assignee, to avoid duplication of functions and costs
4. make provision for the appointment of an assignee to be limited to a fixed term (3-years) and a commitment towards transition of services to a new assignee to avoid any adverse impact to industry.
5. make provision for a mandatory governance structure, as a prerequisite for an assignee’s appointment, to ensure that the assignee cannot conduct unfettered operations and to ensure accurate expenditure of the determined fee.
6. make provision for auditing of assignee performance in terms of defined Key Performance Indicators on an annual basis.
7. make provision for the fair and transparent tender of the assignee position after the end of their tenure.
8. make provision for no duplication of fees payable under the Act where the product is procured, processed, and used in production (integrated supply chain) under a management control system governed by a single person, entity or group of entities
 | (p)The APS Act makes provision for the exercise of oversight by the EO to ensure efficient and effectiveness in the delivery of the assignees mandate. Fees are based on cost recovery, regardless of how many assignees are designated. The basis of enforcement will be based on cost recovery in terms of section 3(1B) of the Amendment Bill. (q)The designation of multiple assignees per product type may lead to a situation where the exercise of control over them is less effective.  (r)Responded to above.(s)The recommendation is noted however, it takes more than 3 years to build a credible inspection body. (t)Comment is beyond the scope of the Bill. (u)Responded to above.(v)Responded to above.(w)Responded to above. |
| **(e) PRIMERIO** |  | 1. provide for increased, continuous and express oversight and direction mechanisms from the Executive Officer over the assignee and its determined fee and performance. This should include reporting to Parliament or the responsible Minister, annual fee reconciliation and a review to ensure the assignee’s fee remains on a cost-recovery basis and is efficient and competitive.
2. provide for the appointment of more than one assignee per product (grains and grain products, only one of whom may levy fees) to provide industry with choice as to the assignee and to ensure that the determined fee and performance remains competitive amongst assignees
3. require the Executive Officer to take into consideration the functions currently fulfilled by industry before appointing an assignee, to avoid duplication of functions and costs and ongoing efforts to ensure that costs are mitigated and reduced
4. provide for the appointment of an assignee to be limited to a fixed term (3-years)
5. provide for a mandatory governance structure, as a prerequisite for an assignee’s appointment, which will provide a safeguard in that the assignee cannot conduct unfettered operations and to ensure accurate expenditure of the determined fee
6. provide for annual auditing of assignee performance in terms of defined Key Performance Indicators
7. provide for fair and transparent tender of the assignee’s position after the end of its tenure.
 | (x)The APS Act makes provision for exercise of oversight by the EO to ensure efficient and effectiveness in the delivery of the assignees mandate. Fees are based on cost recovery, regardless of how many assignees are designated. The basis of enforcement will be based on cost recovery in section 3(1B) of the Amendment Bill. (y)The designation of multiple assignees per product type will create a situation whereby one assignee is favoured over the other  (z)Mandatory inspections need to be carried out by designated inspectors or officers as part of regulatory compliance. The industry need also to practice and adhere to good and best agricultural practices as part of due diligence(aa)The appointment of the assignee for a limited period may be a consideration. However, there are disadvantages etc. institutional memory, experience, expertise(bb)In the matter between ***Woodlands Dairy Proprietary Limited and Another v Minister of Agriculture, Forestry and Fisheries in the Government of the Republic of South***, case number 82044/2018 states the following: * *The assignee must subject its work to the direction of the Executive Officer, who is entitled (and obliged) to give direction to the assignee.*
* *That does not mean that the APS Act, as it stands, does not allow for proper monitoring and direction by the Executive Officer.*

The Acting Judge JJC Swanepoel emphasis the supervisory role of the EO and current regulatory control in the current APS Act(dd)This can be accommodated under a Direction under section 2(3)(a) |
| **(f) South African Fruit and Vegetable Canners Association** **South African Fruit Juice Association** |  | 1. members have implemented their own internal management control systems to ensure that the APS Act and its attendant regulation are complied with. Such management control systems far exceed the requirements of the APS Act and extensively cover the requirements of all related legislative ambits for both food quality and food safety, as well as the social, ethical, sustainability and environmental aspects relating to food production
2. It must also be recalled that as our members have implemented management control systems to ensure adherence to the APS Act and its attendant regulations, a bill was proposed to allow for an audit of the management control systems as opposed to individual product inspections. This bill was introduced by Government Gazette No 39099 of 14 August 2015. Despite our support and comments thereof, we have, to date, not yet received any feedback hereon. We urge this Portfolio Committee to consider this bill in the context of our comments on the Bill and not to proceed with the Bill until our previous comments have been acknowledged
3. the entire regulatory framework, including proposed changes, adjacent legislation and regulations (such as the Foodstuffs, Cosmetics and Disinfectants Act) and the systems implemented by our members must be considered in the context of the Bill
4. recommend that there should be further oversight, as in the case of the PPECB, in finalizing the fees determined by the assignee. Even if the Executive Officer determines its own fees, such fees must be considered by industry representatives and/or tabled before the Parliamentary Portfolio Committee and National Treasury. The provisions of the Public Finance Management Act should apply to the assignee when setting its fees
 | (ee)Mandatory inspections need to be carried out by designated inspectors or officers as part of regulatory compliance. The industry need also to practice and adhere to good and best agricultural practices as part of due diligence(ff)All comments received in 2015 were considered. Road shows were embarked upon in 9 provinces, Notices published, the Bill was re-published again for public comments in the Government Gazette. The current process of soliciting comments from the public by the Portfolio Committee is relevant for the affected parties to re-register their comments. It is virtually impossible to provide feedback to everyone(gg)Each legislation has its own regulatory framework. It must be noted that during the review or amendment of any legislation, the legislator/drafters give due consideration to other legislations. Each legislation has different regulatory control and mandates, simply put, legitimate governmental purpose.(hh)In the matter of ***Woodlands Dairy Proprietary Limited and Another v Minister of Agriculture, Forestry and Fisheries in the Government of the Republic of South***, case number 82044/2018 states the following: * *The assignee must subject its work to the direction of the Executive Officer, who is entitled (and obliged) to give direction to the assignee.*
* *That does not mean that the APS Act, as it stands, does not allow for proper monitoring and direction by the Executive Officer.*

The Acting Judge JJC Swanepoel emphasis the supervisory role of the EO and current regulatory control in the current APS Act |
| **(g) Tiger Consumer Brands Unlimited**  |  | 1. further oversight, as in the case of the PPECB, in finalizing the fees determined by the assignee. Even if the Executive Officer determines its own fees, such fees must be considered by industry representatives and/or tabled before the Parliamentary Portfolio Committee and National Treasury. The provisions of the Public Finance Management Act should apply to the assignee when setting its fees
2. We do not think it is feasible to allow the assignee to determine the period for which the determined fees will apply. Instead, this period should be for one year only which would allow for the effective recuperation of any over-or-under recovery of inspection fees in the following year on a cost recovery basis
3. There is not clear visibility of how fees will be determined. Fees should be applicable to the task at hand and not include overheads such as offices…etc
4. DALRRD to sign off on the Business Plan to ensure the Department of Treasury are aware of the fees. DALRRD must expressly approve the fee – not only the budget and business plan
 | (ii)Responded to above.  |
| **(g)SAMPRO**  |  | 1. It is important that the Amendment Bill should be amended to make it compulsory that service level agreements between the Minister and assignees, should be concluded and that such service level agreements can only be finalised once interested parties had the opportunity to comment on it and once such comments were properly considered by the Minister. It is proposed that the Amendment Bill be amended accordingly.
2. Interested parties cannot protect their rights unless it is known what the contents of the agreements (Service Level Agreements) are, which the Minister concluded with the assignees.
3. Agreement between the Minister and assignees, impact on the rights of the interested parties (especially the industries in respect of which the assignees should enforce regulations) and interested parties must be consulted regarding the contents of the agreements.
4. In at least one case and for a period of more than five years after the appointment of a particular assignee, no information was made public about the Service Level Agreement, notwithstanding repeated requests that it should be provided.
5. The proposal is the practical expression of the requirements of the Promotion of the Administrative Justice Act.

  | (mm)Responded to above. |