

AGRICULTURAL RESEARCH ACT NO. 86 OF 1990

[ASSENTED TO 21 JUNE, 1990]
[DATE OF COMMENCEMENT: 1 DECEMBER, 1990]

(Unless otherwise indicated)

(English text signed by the State President)

This Act has been updated to <i>Government Gazette</i> 22856 dated 23 November, 2001.

as amended by

Agricultural Research Amendment Act, No. 12 of 1993

Agricultural Research Second Amendment Act, No. 174 of 1993

Agricultural Research Amendment Act, No. 16 of 1996

Agricultural Research Amendment Act, No. 27 of 2001

ACT

To establish a juristic person to deal with agricultural research; to determine its objects, functions, powers and duties; to prescribe the manner in which it is to be managed and governed; to regulate its employee matters and financial affairs; and to provide for matters connected therewith.

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1. Definitions.—In this Act, unless the context otherwise indicates—

“**agriculture**” means the utilization of the means of production and the utilization by man of the natural agricultural resources for the production of, among other things, sufficient food, fibre and drink of quality;

“**chairman**” means the person appointed in terms of section 11 (1) as the chairman of the Council;

“**Council**” means the Council referred to in section 8 (1);

“development” means the activities by which knowledge acquired through research is utilized;

“Executive Management Committee” means the Executive Management Committee referred to in section 16;

“financial year” means the period from 1 April in any year to 31 March in the next succeeding year;

“industry” means any industry involved in the processing of agricultural products in such fields as the Minister may determine by notice in the *Gazette*;

“invention” includes the development, in whatever way, of new animal breeds, plant cultivars and other organisms;

“Minister” means, subject to the provisions of section 6, the Minister of Agriculture;

“president” means the person appointed in terms of section 18 as the chief executive officer of the ARC;

“regulation” means a regulation made in terms of this Act;

“research” means the furtherance, accumulation and improvement of knowledge in the agricultural and related sciences through original and other investigations and methods of a scientific nature with the advancement of agriculture as its object;

“technology transfer” means the transfer of knowledge, and techniques and processes for the application thereof;

“the ARC” means the Agricultural Research Council established by section 2;

“this Act” includes a regulation;

“trust” means a trust as contemplated in the Trust Property Control Act, 1988 (Act No. 57 of 1988).

[Definition of “trust” inserted by s. 1 of Act No. 174 of 1993.]

2. Establishment of Agricultural Research Council.—There is hereby established a juristic person to be known as the Agricultural Research Council.

3. Objects of ARC.—The objects of the ARC are, through research, development and technology transfer, to promote agriculture and industry and thereby to contribute to the improvement of the quality of life of the people of the Republic, and having regard to the protection of the environment to perform such other functions as may be assigned to the ARC by or under this Act.

4. Functions, powers and duties of ARC.—(1) In order to achieve its objects, the ARC may—

- (a) undertake and promote research, development and technology transfer in connection with—
 - (i) the optimal utilization of the agricultural resources and the improvement of the production capacity of such resources;
 - (ii) the rehabilitation and improvement of the agricultural resources;
 - (iii) the opening of possibilities and the generation of new knowledge to solve particular problems;
 - (iv) the improvement of the nutritional value and quality of agricultural products;
 - (v) the pollution of the environment and the prevention thereof in respect of agriculture;
 - (vi) the improvement of existing techniques and the creation of new techniques for the processing of agricultural products and to improve the keeping quality of perishable agricultural products;
- (b) utilize the technological expertise in its possession and make it generally available;
- (c) publish information concerning its objects and functions, and establish facilities for the collection and dissemination of information in connection with research and development;
- (d) establish and control facilities in those fields of research, development and technology transfer which the Council may from time to time determine;
- (e) promote co-operation between the Republic and other countries with regard to research, development and technology transfer;
- (f) co-operate with persons, institutions and associations undertaking research, development and technology transfer in other countries;
- (g) co-operate with any institution or person to promote research and development, or contract with such institution or person to undertake research and development for the ARC;
- (h) co-operate with educational authorities and scientific or technical societies in the Republic for the promotion of—
 - (i) the instruction of potential researchers in schools, technikons, colleges and universities; and

- (ii) the training of researchers and technical experts;
- (i) make grants to any institution for the advancement of research and development by their staff or for the establishment of facilities for such research and development;
- (j) promote the training of research workers by means of the granting of bursaries or grants-in-aid for research, development and technology transfer and the making of monetary contributions for research, development and technology transfer programmes;
- (k) grant study bursaries and educational loans to any person;
- (l) subject to the provisions of section 5, enter into agreements with any person, institution, government or administration, upon such conditions as the ARC and that person, institution, government or administration may agree;
- (IA) purchase or otherwise acquire, or possess, hire, alienate, let, pledge or otherwise encumber movable property;

[Para. (IA) inserted by. s. 1 (a) of Act No. 12 of 1993.]

- (m) with the approval of the Minister, acting with the concurrence of the Minister of Finance—
 - (i) purchase or otherwise acquire, or possess, hire, alienate, let, pledge or otherwise encumber immovable property;
[Sub-para. (i) substituted by s. 1 (b) of Act No. 12 of 1993.]
 - (ii) borrow money from time to time on such conditions as the council may approve, by way of loans from any source and against the security which the Council may deem fit;
 - (iii) on its own, or in association with any person, establish a company for the purpose of developing or exploiting in any manner any invention or technological expertise, and for this purpose acquire an interest in or control over a company or statutory body referred to in section 1 of the Exchequer Act, 1975 (Act No. 66 of 1975); and
 - (iv) on its own, or in association with any person, create a trust for the administration of the donations, contributions and amounts referred to in section 20 (5) (c);
[Sub-para. (iv) added by s. 2 of Act No. 174 of 1993.]
- (n) hire or let services;
- (o) as an end-product of research, development and technology transfer undertaken or caused to be undertaken by the ARC—
 - (i) produce and sell reports, computer programmes and other intellectual property;
 - (ii) manufacture and sell instruments, equipment and similar items;
 - (iii) produce, process and sell products;
 - (iv) conduct or commission market research and sell the results thereof; and
 - (v) provide, against payment, services not directly related to research;
- (p) establish or undertake any research institute, unit or activity or place it under the control of any university, technikon, college or other educational or scientific institution on such conditions as may be agreed upon;
- (q) do everything which in the opinion of the Council is conducive to the achievement of its objects or is calculated, directly or indirectly, to enhance or render profitable the value of the property or rights of the ARC.

(2) The ARC shall, in addition to its functions in terms of this Act or any other law—

- (a) and subject to its objects, undertake the investigations, research, development and technology transfer which the Minister may assign to it;
- (b) advise the Minister on research, development and technology transfer in the field of agriculture; and
- (c) co-ordinate on a voluntary basis information on agricultural research and development in the Republic by implementing and keeping a central register of agricultural research and development projects, and institute such measures as it may deem fit to achieve such goal.

5. Exercise of powers of ARC outside Republic.—(1) The ARC may at the request or with the prior approval of the Minister undertake research, development and technology transfer in any territory outside the Republic on behalf of any person (including any institution, government or administration).

(2) Subject to the provisions of subsection (3), the provisions of this Act shall, in so far as they can be applied, apply *mutatis mutandis* to the exercising by the ARC of its powers in terms of this section as if the territory in which it so exercises its powers were within the Republic.

(3) Notwithstanding anything to the contrary in this Act contained, research, development and technology

transfer shall under subsection (1) be undertaken on such conditions as may be agreed upon between the ARC and the person (including any institution, government or administration) on whose behalf the research, development and technology transfer are to be undertaken, and as may be approved by the Minister.

(4) The Minister may with the concurrence of the Minister of Finance indemnify the ARC against any losses which it may incur consequent upon any act or omission of the person, institution, government or administration referred to in subsection (1).

6. Administration of Act.—The State President may by proclamation in the *Gazette* determine that any power or duty mentioned in the proclamation and which is by this Act conferred or imposed upon the Minister, shall be exercised or performed by the Minister after consultation with one or more other Ministers so mentioned.

7. Transfer of functions and powers.—(1) The State President may, after consultation by the Minister with the Council and a council, board or body established by or under any Act of Parliament, transfer any function or power entrusted to or conferred upon any such council, board or body to the ARC to be performed or exercised by the ARC.

(2) The State President may, after consultation by the Minister with the Council and a council, board or body established by or under any Act of Parliament, transfer any function or power entrusted to or conferred upon the Council to such council, board or body to be performed or exercised by it.

(3) The ARC or a council, board or body referred to in subsections (1) and (2) may, with the approval of the Minister concerned, transfer any property, including land and buildings, used in connection with the performance or exercise of a function or power transferred in terms of the said subsections, to a council, board or body concerned or the ARC, as the case may be.

8. Control over, and management of affairs of, ARC.—(1) The affairs of the ARC shall be managed by a council, which shall, subject to the provisions of this Act, determine the policy and objectives of the ARC and exercise control generally over the performance of its functions, the exercise of its powers and the execution of its duties.

(2) The Minister may from time to time, to prevent duplication of the functions of the ARC with those of other institutions, and subject to the provisions of subsection (3), reserve any matter relating to research, development and technology transfer provided for in this Act, as a matter in respect of which a decision of the Council shall be subject to the consent of the Minister.

(3) The Minister and the Minister of Finance may jointly from time to time reserve any financial matter provided for in this Act as a matter in respect of which a decision of the Council shall be subject to the consent of the Minister with the concurrence of the Minister of Finance.

9. Constitution of Council.—(1) The Council shall consist of—

- (a) the chairperson;
- (b) at least eight but not more than 15 other members appointed by Minister; and
- (c) the president, who shall serve on the Council by virtue of his or her office.

(2) (a) The members referred to in subsection (1) (a) and (b) shall appointed by virtue of their knowledge and experience of agriculture, marketing, the training of agriculturists and veterinarians, business and financial management, the law, the environment, rural development, or research, development or technology transfer in the field of agriculture.

(b) In the composition of the Council the interests of each province shall be taken into account.

(3) (a) Whenever a member of the Council has to be appointed, the Minister shall—

- (i) by notice in the *Gazette* and other appropriate media, invite persons, stakeholders, the Premier of each province and the Portfolio and Select Committees of Parliament responsible for agricultural affairs to submit to the Minister, within the period mentioned in the notice, the names of persons who comply with the criteria referred to in paragraph (a) of subsection (2);
- (ii) establish a selection committee consisting of at least three persons, designate a chairperson for the committee and submit to the committee all the nominations received.

(b) The selection committee shall, within 30 days after the signing of the letters of appointment of its members, from the nominations submitted to it by the Minister, compile a short-list of eligible candidates who have knowledge and experience of any matter referred to in subsection (2), and submit it to the Minister.

(c) The Minister shall appoint such number of members as is required from the short-list of candidates recommended by the selection committee.

(d) Within 30 days after making any appointment in terms of paragraph (c), the Minister shall inform the Portfolio and Select Committees of Parliament responsible for agricultural affairs in writing of the appointment made.

[Sub-s. (3) substituted by s. 1 (a) of Act No. 27 of 2001.]

[Editorial Note: There is a difference between the amendments in the English and Afrikaans texts to this subsection, as published in Act No. 27 of 2001.]

(4) No political office-bearer as defined in section 190A of the Constitution, as well as a member of a Provincial House of Traditional Leaders, the Council of Traditional Leaders, the Volkstaat Council or a local government, and any official of a political party, shall be appointed as a member of the Council.

(5) A person may not be nominated or appointed as a member of the Council if such person—

- (a) is not a South African citizen or permanently resident in the Republic;
- (b) is an unrehabilitated insolvent in respect of whom the trustee of the insolvent estate has not certified that the insolvent is a fit and proper person to serve as a member of the Council;
- (c) has failed or is unable to comply in full with a judgment or order, including an order as to costs, given against such person by a court of law in civil proceedings;
- (d) has been convicted of an offence involving an element of dishonesty or has been sentenced for any other offence committed on or after 27 April 1994 to a period of imprisonment without the option of a fine;
- (e) is of unsound mind; or
- (f) has contravened a provision of section 7 of the Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 (Act No. 4 of 2000), and it has been so determined by an equality court.
[S. 9 substituted by s. 1 of Act No. 16 of 1996. Sub-s. (5) added by s. 1 (b) of Act No. 27 of 2001.]

10. Remuneration, allowances and conditions of service of members of Council.—(1) A member of the Council other than a person who is in the full-time employment of the State, shall receive such remuneration and allowances as the Minister may determine with the concurrence of the Minister of Finance: Provided that the remuneration and allowances of members may differ according to whether they serve in a full-time or part-time capacity.

(2) The conditions of service of a member of the Council who is not an officer as defined in section 1 (1) of the Public Service Act, 1984 (Act No. 111 of 1984), shall be determined by the Minister with the concurrence of the Minister of Finance.

(3) The remuneration and allowances referred to in subsection (1) and the expenditure connected with the conditions of service referred to in subsection (2), shall be paid out of the funds of the ARC.

11. Chairman and vice-chairman of Council.—(1) The Minister shall, after consultation with the Council, appoint a person as chairman and may in his discretion rescind such appointment at any time: Provided that in the case of the first Council such chairman shall be appointed only by the Minister.

(2) (a) The Minister shall after consultation with the chairman appoint one of the members of the Council as vice-chairman, who shall act as chairman whenever the chairman is for any reason absent, or unable to act as chairman, or whenever he is requested thereto by the chairman.

(b) The Minister may in his discretion at any time rescind an appointment made under paragraph (a).

(3) Whenever both the chairman and the vice-chairman of the Council are for any reason absent or unable to act, the Council shall from among its number elect a person to act as chairman.

12. Period of office of members of Council.—(1) A member of the Council, other than the president, shall hold office for a period not exceeding three years, but shall be eligible for reappointment.

(2) A member of the Council shall vacate his office if—

- (a) he or she has contravened a provision of section 7 of the Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 (Act No. 4 of 2000), and it has been so determined by an equality court;
[Para. (a) deleted by s. 2 (a) of Act No. 16 of 1996 and inserted by s. 2 (a) of Act No. 27 of 2001.]
- (b) he is declared insolvent or surrenders his estate for the benefit of his creditors;
- (c) he is found guilty of an offence and sentenced to imprisonment without the option of a fine;
- (d) he is absent from three consecutive meetings of the Council without the consent of the chairman;
- (e) he resigns as a member;
- (f) he or she is nominated as a candidate for election as a member of Parliament, a Provincial House of Traditional Leaders, the National House of Traditional Leaders, a provincial legislature, or the council or other governing body of a local government body or is appointed as an official of a political party and whose functions as such are incompatible with the functions of a member; or
[Para. (f) substituted by s. 2 (b) of Act No. 16 of 1996 and by s. 2 (b) of Act No. 27 of 2001.]
- (g) his term of office is terminated in terms of subsection (3).

(3) The Minister may at any time discharge a member of the Council from office if he is of the opinion that such member is incompetent to fulfil his duties or is guilty of misconduct.

(4) If a member dies or by written notice, directed to the Minister, resigns or in terms of subsection (2) or (3) ceases to be a member, the Minister shall appoint a suitable person in the vacancy for the unexpired period of the relevant term of office.

[Sub-s. (4) substituted by s. 2 (c) of Act No. 27 of 2001.]

(5) If, at the expiration of the period for which a member was appointed, no new appointment has been made in his or her stead, that member shall remain in office until such an appointment is made: Provided that a member shall so remain in office for a period not exceeding three months.

[Sub-s. (5) added by s. 2 (c) of Act No. 16 of 1996.]

13. Meetings of Council.—(1) The meetings of the Council shall be held at such times and places as the Council may determine: Provided that the first meeting shall be held at such time and place as the chairman may determine.

(2) The chairman, or in his absence the vice-chairman, may at any time convene a special meeting of the Council, which shall be held at such time and place as the chairman or the vice-chairman, as the case may be, may direct: Provided that, when at least five members of the Council submit a written request to the Minister in this respect, a special meeting of the Council shall be held at such time and place as the Minister may direct.

(3) The quorum for a meeting of the Council shall be a majority of its members.

(4) A decision of the Council shall be taken by resolution of the majority of the members present at any meeting of the Council and, in the event of an equality of votes on any matter, the person presiding at the meeting in question shall have a casting vote in addition to his deliberative vote as a member of the Council.

(5) The chairman may allow any person who in his opinion has an interest in the functions of the ARC to attend the proceedings of the Council, or to nominate a person for such purpose, and to take part in such discussions of the Council as in the opinion of the chairman relate to the interests of the person in question or to the interests represented by such a person, but such person or his nominee may not vote in respect of any decision.

(6) Minutes shall be kept of the proceedings of every meeting of the Council, and shall as soon as possible be confirmed at a subsequent meeting of the Council.

14. Meetings of Council deemed to be duly held.—Whenever the minutes of the proceedings of a meeting have been confirmed in terms of section 13 (6), such meeting shall, unless the contrary is proved, be deemed to have been duly convened and held, and all members present at the meeting shall be deemed to have been duly qualified to attend the meeting and to participate in the proceedings.

15. Validity of decisions and acts of Council.—No decision or act of the Council or act done under the authority of the Council shall be invalid by reason only of the fact that the Council did not consist of the full number of members referred to in section 9 (1), or by reason only of the fact that a disqualified person was present or acted as a member of the Council, at the time when such decision was taken or act was done.

16. Executive Management Committee.—The Council shall designate an executive management committee, which shall consist of the president and so many other members, who shall be employees of the ARC, as the Council may deem necessary and who shall, subject to the directives and control of the Council, be responsible for the management of the affairs of the ARC in accordance with the objects and policy of the ARC.

17. Committees of Council.—(1) (a) The Council may nominate one or more committees, called council committees, which shall, subject to the instructions of the Council, perform such functions of the Council as the Council may determine: Provided that the following council committees shall be appointed:

(i) A council committee which shall, on a continuous basis, evaluate the activities of the ARC against the objects of the ARC; and

(ii) a council committee to monitor the financial affairs of the ARC.

(b) Such a committee shall consist of one or more persons, as the Council may determine, being members of the Council, employees of the ARC, or other experts.

(c) The Council may at any time dissolve a committee referred to in paragraph (b) or decrease or increase the number of its members.

(d) If a committee referred to in paragraph (a) consists of more than one member, the Council shall designate a member of the committee as the chairman thereof.

(2) (a) The president may nominate one or more committees, called planning committees, which shall—

(i) outline research areas and determine priorities accordingly;

(ii) plan the financing of the envisaged research, development and technology transfer, taking into consideration the available expertise and the economic merits thereof;

(iii) evaluate the progress of research, development and technology transfer projects;

(iv) subject to the instructions of the president, acting after consultation with the Council, perform such

other functions as the president may determine.

(b) A committee referred to in paragraph (a) shall consist of one or more members, appointed by the president in his discretion from employees of the ARC, other experts and persons nominated by interested authorities.

(c) The president may at any time dissolve or reconstitute such a committee.

(d) If such a committee consists of more than one member, the members of the committee shall designate a member of the committee as the chairman thereof.

(e) A committee referred to in paragraph (a) may, subject to the instructions of the president, appoint subcommittees.

(3) The ARC may pay to members of any committee referred to in subsections (1) and (2) who are not in the full-time employment of the State, or are not members of the Council or employees of the ARC, such remuneration and allowances as the Minister, with the concurrence of the Minister of Finance, may determine.

(4) The Council or president shall not be absolved from the performance of any function conferred by this section upon any council committee or a planning committee.

18. President of ARC.—(1) The Council shall appoint a chief executive officer for the ARC, who shall occupy the post of president of the ARC: Provided that the first president shall be appointed by the Minister.

(2) The president shall be the chairman of the Executive Management Committee, shall, together with the other members thereof, be responsible for the management of the affairs of the ARC, and shall report on such affairs as may be required of him by the Council.

(3) Whenever for any reason the president is absent or unable to carry out his duties, or whenever there is a vacancy in the office of the president, the Council may, subject to such conditions and the payment of such remuneration and allowances as it may determine as contemplated in subsection (4), appoint an employee of the ARC to act as president during such absence or inability, or until a president has been appointed in terms of subsection (1), and that employee shall, while so acting, have all the powers and perform all the duties of the president.

(4) The president shall be appointed for a period not exceeding five years on such conditions, including conditions relating to the payment of remuneration and allowances, as the Council may determine subject to the provisions of section 19 (1) (b), but may, at the expiration of his period of office, with his consent, be reappointed.

19. Staff of ARC and conditions of service.—(1) (a) The president may, subject to paragraph (b) and on such conditions as the Council may determine, appoint the employees whom he deems necessary to perform the functions of the ARC.

(b) The ARC shall pay to its employees such remuneration, allowances, subsidies and other benefits as the Council may determine, in accordance with a system approved from time to time by the Minister, with the concurrence of the Minister of Finance.

(c) The ARC may, in addition to the employees referred to in paragraph (a), be assisted in the performance of its functions by officers and employees in the public service who have been placed at the disposal of the ARC in terms of section 14 (3) (a) of the Public Service Act, 1984 (Act No. 111 of 1984).

(d) Any person who occupies a post in the public service, may with his written consent and the consent of the head of the department in which he is employed, be transferred to the ARC, after which he shall from the date of his transfer be deemed to have been appointed under this section: Provided that—

- (i) his salary or salary scale in respect of the post shall not be less favourable than the salary or salary scale which was applicable to him as a person employed by the State;
- (ii) any sick or vacation leave which stood to the credit of such person immediately prior to his transfer, shall be deemed to be leave credited to him in the employment of the ARC;
- (iii) pensionable service performed or bought back by such person before his transfer shall be deemed to be pensionable service performed by him in the service of the ARC;
- (iv) no person shall as a consequence of such transfer and appointment acquire a retirement age which is higher than that which applied to him in the service of the State; and
- (v) such a person may apply—
 - (aa) to be declared a dormant member in terms of section 15 of the General Pensions Act, 1979 (Act No. 29 of 1979);
 - (bb) to become in terms of the Associated Institutions Pension Fund Act, 1963 (Act No. 41 of 1963), a member of the fund as defined in section 1 of that Act; or
 - (cc) to become a member of an own pension fund as referred to in the first proviso to paragraph (g).

(e) The salary or salary scale referred to in paragraph (d) (i) may not be altered without the written consent of the person concerned.

(f) The Council may, on such conditions as it may deem fit, second an employee of the ARC, either for a particular service or for a period of time, to the service of a department of State, the government of any other country or territory, an institution or a person in or outside the Republic, provided such an employee's rights, privileges and benefits by virtue of his conditions of service as an employee of the ARC are not adversely affected by such secondment: Provided that an employee shall not be seconded to the service of the government of such other country or territory, or an institution or person outside the Republic, unless the employee consents thereto.

(g) The ARC shall for the purposes of the Associated Institutions Pension Fund Act, 1963 (Act No. 41 of 1963), be deemed to be an associated institution: Provided that the ARC may, under the Pension Funds Act, 1956 (Act No. 24 of 1956), establish any other pension fund or funds for its employees: Provided that the claim of an employee against such new pension fund on the date on which he becomes a member of the fund, shall not be smaller than the claim which such employee had on the said date in respect of service performed as a member of a pension fund administered by the Department of National Health and Population Development of which he was a member on the date immediately preceding the date on which he joined the new pension fund.

(h) In the case where an employee applies for membership of, and his pension benefits are transferred to, a pension fund referred to in paragraph (g)—

- (i) his membership of the pension fund from which his benefits are transferred shall terminate and he will have no further claim against such pension fund;
- (ii) the pension fund from which an employee's benefits are transferred shall pay to the pension fund of which he becomes a member, an amount equal to the financing percentage of the first-mentioned fund, multiplied by the actuarial liability of that fund in respect of such employee as on the date of the transfer, plus interest calculated at the bank rate from the date of the transfer to the date of payment thereof;
- (iii) the pension fund from which an employee's benefits are transferred shall cede any claim which it may have against the employee to the pension fund of which he becomes a member; and
- (iv) the State shall, in respect of that employee on his becoming a member of a pension fund referred to in paragraph (g) established in terms of the Pension Funds Act, 1956 (Act No. 24 of 1956), pay to such pension fund an amount equal to the difference between the actuarial liability of the pension fund from which the employee's benefits are transferred and the amount paid in terms of subparagraph (ii), plus interest calculated at the bank rate from the date of the transfer to the date of payment.

(i) The provisions of paragraph (h) shall *mutatis mutandis* apply if an employee who on the date of his transfer under paragraph (d) (v) (aa) elected to be a dormant member, at a later stage under section 15A of the General Pensions Act, 1979 (Act No. 29 of 1979), elects to have his accrued pension benefits transferred to another pension fund.

(j) For the purposes of this section—

- (i) the actuarial liability of a pension fund in respect of a specific member or group of members of the fund, means the actuarial liability, as determined by an actuary instructed by the Minister of National Health and Population Development, with regard to the said member or group of members of the fund;
- (ii) the financing percentage of a pension fund means the market value of the assets of the fund expressed as a percentage of the total actuarial liability of the fund, after such assets and liabilities have been reduced with the amount of the liability of the fund towards all its pensioners, as determined at the time of the most recent actuarial assessment of the fund or any reappraisal thereof done on the instructions of the Minister of National Health and Population Development; and
- (iii) bank rate means the rate determined from time to time under section 10 (2) of the South African Reserve Bank Act, 1989 (Act No. 90 of 1989).

(2) The ARC may from time to time on such conditions and against such security as it may deem fit—

- (a) provide collateral security, including guarantees, to a registered financial institution in respect of a loan granted to an employee by that financial institution, to enable the employee to acquire, improve or enlarge immovable property for residential purposes;
- (b) build, cause to be built, purchase or rent houses, flats or flat buildings for occupation by employees, and may sell or let those houses or flats to employees, or otherwise dispose of, let or otherwise deal with those houses, flats or flat buildings; and
- (c) establish, institute, erect or maintain sports or recreational societies, social clubs, social and health services, restaurants, hostels, bursary schemes for purposes of study or other similar undertakings or schemes which in its opinion may be beneficial to its employees.

(3) If a person who is employed in any capacity by or on behalf of the ARC suffers an injury or contracts a disease while engaged in, and which is directly attributable to, any activity in the course of such employment, the ARC may with the consent of the Minister, granted with the concurrence of the Minister of Finance, in its discretion pay compensation to such person or, in the event of his death, to his dependants.

(4) The provisions of subsection (3) shall not affect the right of any person to claim damages in respect of any injury or disease referred to in that subsection.

20. Financing of ARC.—(1) The funds of the ARC shall consist of—

- (a) money appropriated by Parliament to finance the functions of the ARC;
- (b) money paid to the ARC in terms of subsection (4);
- (c) money received by virtue of contracts and the functions performed by the ARC;
- (d) money borrowed by the ARC in terms of section 4 (1) (m) (ii);
- (e) fees or royalties referred to in section 24 (2) which are paid to the ARC;
- (f) the proceeds from the sale of shares, and from dividends on shares held by the ARC, in any company referred to in section 4 (1) (m) (iii);
- (g) donations or contributions which the ARC may receive from any person, institution, government, administration or any other source;
- (h) interest on investments by the ARC.

(2) (a) The ARC shall utilize its funds for defraying expenses in connection with the performance of its functions and the exercise of its powers.

(b) The ARC shall utilize any money contemplated in subsection (1) (a) in accordance with the statement of its estimated income and expenditure referred to in subsection (3), as approved by the Minister: Provided that, subject to the provisions of paragraph (a), the ARC may utilize any amount or portion of any amount required to be so utilized for a particular purpose in connection with a specified matter, for any other purpose in connection with that matter: Provided further that the ARC may, with the concurrence of the Minister, utilize any balance of the money remaining at the end of the ARC's financial year in question, for any expenses in connection with the exercise of its powers or the performance of its functions.

(c) The ARC shall utilize any donations or contributions contemplated in subsection (1) (g) in accordance with the conditions, if any, imposed by the donor or contributor concerned.

(3) (a) The ARC—

- (i) shall in each financial year, at a time determined by the Minister, submit a statement of its estimated income and expenditure during the following financial year; and
- (ii) may in any financial year at any time submit supplementary statements of its estimated expenditure for that financial year, to the Minister for his approval, granted with the concurrence of the Minister of Finance.

(b) The ARC shall not incur any expenditure which exceeds the total amount approved under paragraph (a).

(4) The ARC may, in respect of any work performed or services rendered by it under this Act, or for the use of its facilities or rights consequent upon any discoveries, inventions or improvements, charge such fee or make such other financial arrangement as it may deem fit.

(5) (a) The ARC may invest any unexpended portion of its funds with the Corporation for Public Deposits established by section 2 of the Corporation for Public Deposits Act, 1984 (Act No. 46 of 1984), or, subject to the approval of the Minister acting with the concurrence of the Minister of Finance, dispose thereof in any other manner.

(b) The ARC may establish such reserve funds and deposit therein such amounts as the Minister, acting with the concurrence of the Minister of Finance, may approve.

(c) The ARC may pay over to a trust contemplated in section 4 (1) (m) (iv) only—

- (i) donations or contributions contemplated in subsection (1) (g) that are subject to conditions; and
- (ii) amounts in reserve funds established under section 27 (3) (b).

[Para. (c) added by s. 3 of Act No. 174 of 1993.]

21. Accounting officer.—(1) The president shall be the accounting officer charged with the responsibility of accounting for all money received, the utilization thereof and the use and care of the property of the ARC.

(2) The accounting officer shall cause such records of account to be kept as are necessary to represent fairly the state of affairs and business of the ARC and to explain the transactions and financial position of the business of the ARC.

22. Accounting, auditing and annual report.—(1) The Auditor-General shall audit the books of accounts, accounting statements and annual financial statements of the ARC and shall submit a copy of his report on the audit of the said statements to the Council.

(2) The keeping, compilation and publication of annual financial statements of a company referred to in section (1) (m) (iii) shall be done in accordance with the provisions of the Companies Act, 1973 (Act No. 61 of 1973): Provided that the Auditor-General shall, notwithstanding the provisions of Chapter X of the Companies Act, 1973, audit the annual financial statements of such a company, and shall submit, within six months after the end of the

financial year concerned, copies of such annual statements to the Minister.

(3) The Council shall furnish the Minister with such information as he may call for from time to time in connection with the activities and financial position of the ARC and shall as soon as practicable after the end of each financial year submit to the Minister an annual report on the ARC's affairs and functions in respect of that financial year, which shall, *inter alia*, include—

- (a) an audited balance sheet, including notes thereon or a document annexed thereto providing information required by this Act;
- (b) an audited income statement, including any similar financial statement where such form is appropriate, and including any notes thereon or a document annexed thereto providing information required by this Act;
- (c) a statement of cash flow information;
- (d) the report of the auditors.

(4) The financial statements referred to in subsection (3) (a), (b) and (c) shall—

- (a) be in conformity with generally accepted accounting practice;
- (b) fairly reflect the state of affairs and functions of the ARC and the results thereof; and
- (c) refer to any relevant matter not specifically prescribed by this Act which affects or is likely to affect the affairs of the ARC, both by way of figures and by a descriptive report, amplifying and explaining, where necessary, figures in the financial statements.

(5) A report referred to in subsection (3) shall be printed in both official languages.

(6) As soon as practicable after a report has been submitted to the Minister in terms of subsection (3), he shall table it in Parliament.

23. Recovery of loss and damage.—(1) If a person who is or was in the employment of the ARC caused the ARC any loss or damage because he—

- (a) failed to collect money due to the ARC and for the collection of which he is or was responsible;
- (b) is or was responsible for an irregular payment of money of the ARC or for a payment of such money not supported by a proper voucher;
- (c) is or was responsible for fruitless expenditure of money of the ARC owing to failure to carry out his duties;
- (d) is or was responsible for a deficiency in, the destruction of or any damage to the ARC's money, stamps, face value documents and forms having potential value, securities, equipment, stores or any other property of the ARC; and
- (e) is or was responsible for a claim against the ARC owing to failure to carry out his duties,

the accounting officer shall determine the amount of such loss or damage, and may order that person, by notice in writing, to pay to the ARC, within 30 days from the date of such notice, the whole or any party of the amount so determined.

(2) If a person who is in the employment of the ARC and who has in terms of subsection (1) been ordered to pay an amount, fails to pay the amount within the period stipulated in the notice in question, the amount shall, subject to the provisions of subsections (4), (5) and (6), be deducted from his monthly salary: Provided that such deduction shall not in any month exceed a fourth of his monthly salary.

(3) If a person who was in the employment of the ARC and who has in terms of subsection (1) been ordered to pay an amount, fails to pay the amount within the period stipulated in the notice in question, the accounting officer shall, subject to the provisions of subsections (4), (5) and (6), recover the amount from the person concerned by legal process.

(4) If a person who has in terms of subsection (1) been ordered to pay an amount, offers, within the period stipulated in the notice in question, to pay the amount in instalments, the accounting officer may allow payment in such instalments as the accounting officer may consider reasonable.

(5) A person who has in terms of subsection (1) been ordered to pay an amount may within a period of 30 days from the date of such order appeal in writing against such order to the Council, stating the grounds for his appeal, and the Council may, after such investigation as it may deem necessary, dismiss the appeal, or order that the appellant be exempted, either wholly or partly, as the Council may deem fair and reasonable, from the payment of such amount.

(6) A person who has in terms of subsection (1) been ordered to pay an amount may, instead of appealing to the Council under subsection (5), apply within a period of 30 days from the date of such order, or within such further period as the court may allow, to a competent court for an order setting aside such first-mentioned order or reducing such amount, and the court may upon such an application, if it is not convinced by the accounting officer on the merits of the case that the order was rightly made or that the amount is correct, make an order setting aside such first-mentioned order or reducing that amount, as the case may be.

24. Discoveries, inventions and improvements by employees of ARC and other persons.—(1) Subject to

the provisions of subsections (5) and (6) the rights in all discoveries and inventions and in all improvements in respect of processes, apparatus and machinery made by—

- (a) employees of the ARC or officers and employees in the public service who have been placed at the disposal of the ARC under section 19 (1) (c);
- (b) persons assisting the ARC with any investigation or research; or
- (c) persons to whom bursaries or grants-in-aid have been granted by the ARC,

shall vest in the ARC.

(2) The ARC may make the discoveries, inventions and improvements referred to in subsection (1) available for use in the public interest subject to such conditions and the payment of such fees or royalties as the ARC may determine.

(3) If the rights in any discovery, invention or improvement are vested in the ARC in terms of subsection (1), the Council may award to the person responsible for the discovery, invention or improvement such bonus as it deems fit, or make provision for financial participation by such person in the profits derived from the discovery, invention or improvement to such extent as the Minister may determine with the concurrence of the Minister of Finance.

(4) The ARC may apply for a patent in respect of any discovery, invention or improvement referred to in subsection (1), and shall for the purposes of the Patents Act, 1978 (Act No. 57 of 1978), and the Plant Breeders' Rights Act, 1976 (Act No. 15 of 1976), be regarded as the assignee of the discoverer or inventor in question.

(5) Unless it is otherwise agreed, the rights in respect of any discovery, invention or improvement made by the ARC in the course of an investigation for or on behalf of another person, institution, government or administration shall vest in the ARC.

(6) The provisions of this section shall not apply in respect of any discovery, invention or improvement referred to in subsection (1) which, in the opinion of the Minister, was made by the person concerned other than—

- (a) in the course of his employment as an employee of the ARC;
- (b) during the performance of functions in respect of which he has been placed at the disposal of the ARC in terms of section 19 (1) (c);
- (c) in the course of any investigation or research while assisting the ARC; or
- (d) in the course of any research in respect of which he receives a bursary or grant-in-aid from the ARC,

and which is not connected with such employment, investigation or research.

25. Regulations.—(1) The Minister may, after consultation with the Council, make regulations as to—

- (a) the procedure for the submission of names to the Minister for appointment as members of the Council;
- (aA) the publication and contents of the notice referred to in section 9 (3);
[Para. (aA) inserted by s. 3 of Act No. 16 of 1996.]
- (aB) the manner in which the Council must submit to the Minister its needs in relation to expertise in the Council;
[Para. (aB) inserted by s. 3 of Act No. 16 of 1996.]
- (b) the filling of casual vacancies on the Council and the appointment of persons to act on behalf of absent members;
- (c) the procedure at meetings of the Council;
- (d) the preservation of secrecy in respect of the affairs of the ARC;
- (e) the matters in respect of which fees shall be payable to the ARC, the amount of such fees and the persons who shall be liable for the payment thereof and the circumstances in which any fees so paid shall be refunded;
- (f) the procedure in respect of grievances and requests by employees,

and, generally, as to any matter in respect of which the Minister, after consultation with the Council, deems it necessary or expedient to make regulations in order to achieve the objects of this Act.

(2) Any regulation made under subsection (1) may provide that any person who contravenes or fails to comply with a provision thereof shall be guilty of an offence and liable on conviction to a fine not exceeding R2 000 or imprisonment for a period not exceeding six months.

26. Delegations.—(1) The Council may—

- (a) delegate to the chairman or any other member of the Council, the president or any other employee of, or holder of an office with, the ARC or to a committee established under section 17 (1), any power

conferred upon the Council by or under this Act; or

- (b) authorize the chairman or any other member of the Council, the president or any other employee of, or holder of an office with, the ARC or a committee established under section 17 (1), to perform any duty assigned to the Council by or under this Act.

(2) The president may—

- (a) delegate to an employee of, or the holder of an office with the ARC, any power conferred upon the president by or under this Act in his capacity as president or accounting officer; or
- (b) authorize that employee or holder of an office to perform any duty assigned to the president by or under this Act in the said capacities.

(3) Any delegation under subsections (1) and (2) may be made subject to such conditions and restrictions as may be determined by the Council or the president, as the case may be, and may be withdrawn by the Council or the president, as the case may be.

(4) The Council and the president shall not be divested of any power delegated under subsections (1) and (2) by it or him, and may amend or withdraw any decision made in the exercise of such delegated power.

27. Transfer of assets and funds to ARC.—(1) The Minister may, with the concurrence of the Minister of Finance, transfer any movable or immovable property belonging to the State to the ARC to enable it to perform its functions or to achieve any of its objects.

(2) No immovable property transferred to the ARC in terms of subsection (1), may without the approval of the Minister, granted with the concurrence of the Minister of Finance, be alienated, mortgaged or disposed of in any other manner.

(3) (a) All amounts or unspent portions of amounts and the interest thereon, being in the Agricultural Research Account established under section 2 of the Agricultural Research Account Act, 1964 (Act No. 37 of 1964), and the Tobacco Research Account and the Wine Research Account established under section 2 of the Tobacco and Wine Research Accounts Act, 1960 (Act No. 60 of 1960), on a date determined by the Minister by notice in the *Gazette*, shall with effect from such date be transferred to the ARC.

(b) Any condition attached to any amount in the research accounts referred to in paragraph (a), remains in force and shall be honoured by the ARC, and a reserve fund contemplated in section 20 (5) (b), shall be established in respect of each such amount.

(c) In respect of the amounts in the Agricultural Research Account referred to in paragraph (a) to which no condition is attached as referred to in paragraph (b), one reserve fund as contemplated in section 20 (5) (b) shall be established.

(4) A registrar as defined in section 102 of the Deeds Registries Act, 1937 (Act No. 47 of 1937), shall, upon submission to him of a certificate by the Minister that a real right in respect of immovable property described in such certificate has been acquired by the ARC, make such entries or endorsements as he may deem necessary in or on any relevant register or other document in his office or laid before him, in order to register such right in the name of the ARC, and no stamp duty, office or other fee shall be payable in respect of the registration.

28. Strikes.—The Minister may by notice in the *Gazette* prohibit strikes by employees of the ARC and impose punishments, and provide for matters relating thereto.

29. Repeal of laws.—The Tobacco and Wine Research Accounts Act, 1960 (Act No. 60 of 1960), the Tobacco and Wine Research Accounts Amendment Act, 1972 (Act No. 35 of 1972), the Agricultural Research Account Act, 1964 (Act No. 37 of 1964), and the Agricultural Research Account Amendment Act, 1972 (Act No. 37 of 1972), are hereby repealed.

(Date of commencement to be proclaimed)

30. Short title and commencement.—(1) This Act shall be called the Agricultural Research Act, 1990, and shall come into operation on a date fixed by the State President by proclamation in the *Gazette*.

(2) Different dates may be so fixed in respect of different provisions of this Act.