

Brief analysis of Unlawful Entry on Premises Bill

The Department of Justice and Correctional Services published the Unlawful Entry on Premises Bill for public comment on 12 August 2022. The due date for comments is 16 September. Agbiz has prepared draft comments that we have submitted to members for input and mandating.

The main purpose of the Bill is to repeal and replace the Trespass Act, No. 6 of 1959 and to prohibit unlawful entry to premises. The Bill creates an offence of unlawful entry and prescribes the penalties to be imposed if a person is found to be guilty of the offence. It also deals with the duty of the owner or lawful occupier to inform an intruder of unlawful entry, the powers of the police and defences against the offence of unlawful entry.

In its draft submission, Agbiz points out that most of the members of Agbiz and their clients are property owners. The protection of property rights is not only a constitutionally protected right, but it is critical to economic growth, investor confidence and ultimately to food security in South Africa. Increasingly problems are being encountered by landowners with the unlawful occupation of land and buildings, and processes for eviction are long, cumbersome and expensive. The problem of illegal occupation has only grown worse since the start of the Covid-19 pandemic. Illegal structures are cropping up everywhere and the situation has become difficult to manage for municipalities and private landowners alike.

The Bill seems to address some of the shortcomings in current law enforcement against unlawful occupation, in that it clearly states that intruders can be arrested even if they have already erected structures on the property and are occupying such structures.

What is concerning though, is the defences provided for that unlawful occupiers can raise against a charge of unlawful entry. These are broadly formulated and include the reasonable belief that they had title to or an interest in the premises that entitled them to enter the premises. Also, the fact that members of the SA Police Service (SAPS) need to be authorised to act in terms of this Bill, is a cause for concern. Agbiz is of the view that all members of the SAPS should be able to enforce the provisions of the Bill.

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