

Eastern Cape, South Africa

Fort Cox Agricultural Institute Transitional Provisions Act, 2015

Act 7 of 2015

Legislation as at 26 February 2016

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Eastern Cape South Africa

Fort Cox Agricultural Institute Transitional Provisions Act, 2015 Act 7 of 2015

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Assented to on 21 December 2015

Commenced on 1 April 2016 by [Fort Cox Agricultural Institute Transitional Provisions Act, 2015: Commencement](#)

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ACT

To repeal the Fort Cox Institute Decree, to provide for the continued existence of the Fort Cox Institute as an autonomous institution, to provide for the administration and control of the affairs of the Institute and to provide for matters incidental thereto.

BE IT ENACTED by the Legislature of the Province of the Eastern Cape as follows: -

1. Definitions

In this Act, unless the context indicates otherwise-

"**Academic Board**" means the academic board of the Institute constituted in terms of [section 19](#);

"**advanced education**" means education in agriculture and forestry which is of a standard higher than that which is or would ordinarily be prescribed for grade 12;

"**Council**" means the council constituted in terms of [section 7](#);

"**Department**" means the department responsible for the administration of this Act;

"**ex-officio member**" means a non-voting member of the Council;

"**Head of Department**" means the Head of Department;

"**higher education institution**" means an institution as defined in the Higher Education Act, 1997 ([Act No. 101 of 1997](#));

"**Institute**" means the Fort Cox Agriculture and Forestry Training Institute contemplated in [section 3](#);

"**labour representative**" means a person representing a union operating in the Institute;

"**MEC**" means the Member of the Executive Council responsible for the administration of this Act;

"**organised labour**" means recognized unions operating in the Institute;

"**principal**" means the principal of the Institute referred to in [section 2](#);

"**SRC**" means the Students' Representative Council;

"**student**" means a person registered to study at the institute;

"**student representative**" means a person registered to study at the Institute and elected by the SRC to represent them on the Council;

"**this Act**" includes the regulations;

"**the existing institution**" means the Fort Cox Agricultural Institute in the district of Middledrift; and

"**Province**" means the Province of the Eastern Cape established by section 103 of the Constitution.

2. Functions of the Institute

- (1) The Institute must-
 - (a) Develop and maintain effective and well-coordinated Agricultural Education and Training programmes that are integrated at all levels and applied research that respond appropriately to South African Agriculture, Forestry and Rural Development.
 - (b) Provide Rural Wealth Creation programmes and applied research for rural areas of the Province.
 - (c) Provide advanced education in Agriculture, Forestry and related disciplines.
 - (d) Provide such other education and training, whether on a full-time or part-time basis, as the Council may determine with the approval of the MEC.
 - (e) Align the Agricultural Education and Training curricula with urgent challenges faced by the South African Agriculture, Forestry and Rural Development sector especially in the Province.
 - (f) Enhance equitable access and meaningful participation in Agricultural Education and Training by all South Africans.
 - (g) Recognise credits from other credible higher education institutions.
- (2) The Institute may, with the approval of the MEC, acting with the concurrence of the Minister for Higher Education and Training and the Minister for Agriculture, Forestry and Fisheries, enter into any agreement with any higher education institute or other institution or body or any department of State, regarding -
 - (a) the exercise, development or extension of the activities of the College, including farm management and any research;
 - (b) the provision of teaching or training personnel, whether on secondment or otherwise;
 - (c) the procedure to be adopted for the identification and selection of students;
 - (d) the educational and training methods to be followed, and the maintenance, improvement and monitoring of such training generally;
 - (e) the curriculum to be followed in respect of any course;
 - (f) staff and student evaluation procedures;
 - (g) develop relevant policies pertaining to the running of the Institute; and
 - (h) generally any other matter concerning the promotion and maintenance of the quality of education and training offered by the Institute and the enhancement of its status.

3. Constitution of the Institute

The Institute must consist of the: -

- (a) Council;
- (b) Principal;
- (c) Academic Board; and
- (d) Staff and students of the Institute.

4. Principal of the Institute

- (1) The principal is the administrative head of the Institute and must be appointed by the Council, subject to the approval of the MEC.
- (2) Whenever the post of the principal becomes vacant, or the principal is for any reason incapable of carrying out his or her duties, the Council, with the concurrence of the MEC, may designate a member of the staff of the Institute or any other suitable person to act as principal.
- (3) Any acting principal must hold office as such until the permanent incumbent returns to duty or his or her successor is appointed, as the case may be.

5. Functions of the principal

The principal must -

- (a) Be the accounting officer of the Institute;
- (b) Manage the affairs of the Institute;
- (c) Perform all the functions of an accounting officer contemplated in the Public Finance Management Act, 1999 ([Act No. 1 of 1999](#)) and all other relevant legislation;
- (d) Manage the appointment of staff of the Institute within applicable prescripts;
- (e) Develop and submit strategic plans for approval by the Council;
- (f) Develop and submit the annual operational plan together with the annual budget for approval by the Council and further submission thereof to the Department;
- (g) Be ultimately accountable for all formal and non-formal aspects of the programmes offered by the Institute;
- (h) Manage the staff of the Institute;
- (i) Manage facilities and infrastructure of the Institute;
- (j) Facilitate local, provincial, national and international partnerships, subject to the Board and the MEC's concurrence on international partnerships; and
- (k) Subject to the approval of the Board, facilitate fundraising for the Institute.

6. Functions of the Council

- (1) The primary role of the Council is to provide support to the principal of the Institute in areas of leadership and governance to ensure that the Institute is managed professionally.
- (2) Governance of and control over the Institute vests in the Council.
- (3) The Council must -
 - (a) ensure the sound management of the Institute, and support the principal of the Institute in carrying out his or her work;
 - (b) promote the best interests of the Institute;
 - (c) ensure the provision of quality Agricultural Education and Training programmes at the Institute;
 - (d) give strategic guidance to the Institute;
 - (e) develop a constitution and code of conduct for students and staff;

- (f) oversee development of rules and procedures on any matter relating to students and staff at the Institute;
- (g) oversee the administration of all the Institute's infrastructure;
- (h) recommend to the MEC the appointment of the principal of the Institute;
- (i) review and approve budgets of the Institute subject to applicable legislation;
- (j) review and approve the Institute's academic programmes and related matters;
- (k) oversee the development and implementation of an internal quality assurance system;
- (l) adjudicate on academic issues that cannot be resolved by Institute management; and
- (m) oversee performance of the principal.

7. Constitution of the Council

- (1) The Council must be appointed by the MEC and must consist of-
 - (a) the principal who must be an *ex-officio* member;
 - (b) three members from the Department nominated by the MEC;
 - (c) two members of the teaching staff of institutions of higher learning in the Province nominated by their Councils;
 - (d) six other members by virtue of their qualifications, skills, expertise, experience and knowledge in the fields of agriculture, forestry, rural development, law, financial management and business;
 - (e) one member nominated by organised labour to serve as an *ex officio* member;
 - (f) one SRC member who is a registered student and nominated by the SRC to serve as an *ex officio* member;
 - (g) one member of the Provincial Agricultural Education and Training Forum to serve as an *ex-officio* member; and
 - (h) one member of the local community nominated by the community.
- (2) A body, organization or person contemplated in subsection (1) (c), (e), (f), (g) and (h) must nominate a person to represent them on the Council and must submit such nominations to the MEC for consideration.

8. Term of office

- (1) A member of the Council, other than the principal, may hold office for a period of three years.
- (2) Any member whose term of office has expired is eligible for reappointment for one further term.
- (3) Despite subsection (1), the MEC may, by notice in the *Gazette*, after consultation with the Council, extend the term of office of all the Council members for a period of six months, but he or she may only extend the term of office of the Council twice.

9. Disqualification from appointment to or remaining a member of the Council

- (1) A person is disqualified from being appointed or remaining a member of the Council if that person -
 - (a) is or becomes a Member of the National Assembly or National Council of Provinces, any provincial legislature, municipal council or is in the full-time employ of an organ of state with the exception of the representatives of the Department contemplated in [section 7](#);

- (b) is not a South African citizen or a permanent resident in the Republic;
 - (c) is or becomes subject to a final order of court whereby his or her estate is sequestrated under the Insolvency Act, 1936 ([Act 24 of 1936](#)), or if his or her estate is sequestrated in terms of the laws of any other country or territory by a competent court or agency of such country or territory, or if he or she has assigned his or her estate for the benefit of his or her creditors;
 - (d) is declared by a competent court to be of unsound mind or suffers a mental illness or has a severe or profound intellectual disability as contemplated in the Mental Health Care Act, 2002 ([Act 17 of 2002](#));
 - (e) has been convicted, whether in the Republic or elsewhere, of theft, fraud, forgery or uttering a forged document, perjury, or any offence involving dishonesty or of any offence in terms of the Prevention of Corruption Act, 1958 ([Act 6 of 1958](#)), the Corruption Act, 1992 ([Act 94 of 1992](#)), Part 1 to 4, or section 17, 20 or 21 (in so far as it relates to the aforementioned offences) of chapter 2 of the Prevention and Combating of Corrupt Activities Act, 2004 or the Companies Act, 2008 (Act 71 of
 - (f) 2008), or of contravening this Act, irrespective of whether such imprisonment was wholly or partly suspended or not;
 - (g) has been convicted of an offence, other than an offence contemplated in paragraph (e) and sentenced to imprisonment without the option of a fine for a period of not less than three months, irrespective of whether such imprisonment was wholly or partly suspended or not;
 - (h) without authorisation discloses or improperly acts on information gained as a result of his or her membership of the Council; or
 - (i) contravenes the Council's code of conduct
- (2) A body, organization or person by whom any member was nominated to the Council may at any time, and on good cause shown, withdraw such member from the Council.

10. Resignation of a member and vacating of office

- (1) A Member of the Council may at any time resign from the Council upon one month's written notice tendered to the chairperson who must immediately inform the MEC and the Council accordingly.
- (2) A member of the Council who resigns as contemplated in subsection 1 must vacate his or her office at the end of the notice period contemplated therein.
- (3) A member of the Council ceases to be a member and must vacate his or her office with immediate effect if he or she -
 - (a) is no longer eligible in terms of [section 9](#) to be a member; or
 - (b) is removed from office by the MEC in terms of [section 11](#).

11. Removal of member of Council, dissolution of Council and appointment of interim Council

- (1) The MEC may, after due process, remove a member of the Council from office on account of any or all of the following -
 - (a) misconduct;
 - (b) contravention of the Council's code of conduct;
 - (c) inability to perform the duties of his or her office efficiently; and
 - (d) absence from three consecutive meetings of the Council without the permission of the Council, except on good cause shown.

- (2) The MEC may, after due process, dissolve the Council, if it fails in any or all of the following-
 - (a) achieving its objectives in terms of this Act; and
 - (b) carrying out its duties.
- (3) Upon the dissolution of the Council contemplated in subsection (2), the MEC must appoint an interim Council consisting of between seven and nine members.
- (4) The MEC must appoint the interim Council within 30 days after the dissolution of the Council, and the term of office of the interim Council may not exceed six months.
- (5) The MEC must appoint the chairperson and deputy chairperson of the interim Council.
- (6) The provisions of this Act regarding the Council apply to the interim Council.

12. Filling of vacancies

Any vacancy in the Council must be filled for the unexpired portion of the term of office of the member whose seat has become vacant in accordance with the relevant provisions of [section 7](#).

13. Chairperson and deputy chairperson

- (1) The MEC must appoint a chairperson and the Council must appoint a deputy chairperson.
- (2) The deputy chairperson must, if the chairperson is for any reason unable to act as chairperson, perform all the functions of the chairperson and may exercise all the powers of the chairperson.
- (3) If both the chairperson and the deputy chairperson are for any reason unable to preside at a Council meeting, the members present must elect one of the members to preside at that meeting, and the person elected may perform all the functions and exercise all the powers of the chairperson.
- (4)
 - (a) A chairperson or deputy chairperson may vacate office as such, and such vacation does not terminate his or her membership of the Council.
 - (b) If the chairperson or deputy chairperson has vacated office as contemplated in subsection (a), the MEC must appoint a chairperson or deputy chairperson from the Council members for the remaining term of office of the Council.

14. Meetings of Council

- (1) The MEC must, as soon as is practicable after the appointment of a Council for the first term of office, determine the time and place of its first meeting.
- (2) The Council must determine the time and place of subsequent meetings of the Council.
- (3) The Council meets as often as circumstances require, but at least four times in every financial year.
- (4) A majority of Council members constitutes a quorum at a meeting.
- (5) Every Council member, including the chairperson, has one vote and in the event of an equality of votes, the chairperson of the meeting has a casting vote in addition to his or her deliberative vote.
- (6) Subject to the approval of the Council, any person who is not a Council member may attend or take part, but may not vote, in a meeting of the Council.
- (7) The Council must adopt governance rules which provides for the conduct of proceedings at meetings and recording of the proceedings including the governance rules for special meetings.

15. Decisions of Council

- (1) A decision of the majority of Council members present at any duly constituted meeting constitutes a decision of the Council.

- (2) No decision taken by or act performed under the authority of the Council is invalid by reason of -
 - (a) a vacancy on the Council at the time the decision was taken or the act was authorised; or
 - (b) the fact that any person who was not entitled to sit as a Council member, participated in the meeting at the time the decision was taken or the act was authorised, if the members who were present at the time followed the required procedure for decisions.

16. Council committees

- (1) The Council may establish committees to assist in discharging its responsibilities.
- (2) The Council may co-opt any person outside the Council to sit in a committee if that person has skills and expertise, and he or she must serve in an advisory capacity without voting powers.
- (3) The Council has the power to determine the mandate, composition, powers, functions and duration of any board committee and may amend these from time to time, or dis-establish any such committee.
- (4) Council committees are accountable to the Council and must keep records of their proceedings and resolutions in the same manner as the Council.

17. Delegations by the Council

- (1) The Council must develop a system of delegation to maximise administrative and operational efficiency and provide for adequate checks and balances, and, in accordance with that system, may -
 - (a) in writing, delegate appropriate powers, excluding the power to establish a committee, prescribe governance rules for a committee, and disburse funds, to a committee, the principal, a member of the Council or an employee of the Institute; and
 - (c) approve the delegation of any of the powers delegated to the principal by the Council or granted to him or her under this Act to any employee of the Institute.
- (2) A delegation in terms of subsection (1) -
 - (a) is subject to such limitations and conditions as the Council may impose;
 - (b) may authorise sub-delegation; and
 - (c) does not divest the Council or principal in the delegated power.
- (3) The Council may confirm, vary or revoke any decision taken by the committee, the Principal, a member of the Council or an employee of the Institute as a result of a delegation in terms of subsection (1).

18. Functions of the Academic Board

The Academic Board-

- (a) must exercise such powers of and control over the institution, training and discipline of the students of the Institute as are conferred upon it by the Council.
- (b) must advise the Council in regard to any matter which the Council may refer to it for its advice;
- (c) may make such recommendations to the Council on matters of academic interest as it may deem expedient or necessary; and
- (d) must develop a Policy on Recognition of Prior Learning.

19. Constitution of the Academic Board

- (1) The Academic Board of the Institute must consist of-
 - (a) the principal, who must be the chairperson;
 - (b) two persons who are members of the Council designated by the Council;
 - (c) deputy principal/s, heads of academic departments and total quality assurance manager and such academic, management and staff members of the Institute as the Council may from time to time determine;
 - (d) one SRC member; and
 - (e) such additional persons from the Industry as may be determined by the Council.

20. Committees of the Academic Board

The Academic Board may from time to time establish committees consisting of members of the board or members of the Council and other persons, as it may deem necessary.

21. Delegations by the Academic Board

The provisions of [section 17](#) apply with the necessary changes to delegations by the Academic Board.

22. Allowances to Council members and to Board members

A member of the Council or Board who is not an employee of the State or the Institute may be paid such allowances as the MEC with the concurrence of the MEC for Finance, may determine.

23. The Students' Representative Council

- (1) The Students' Representative Council must be elected by the students of the Institute.
- (2) The composition mode of election, term of office, functions and duties of the Students' Representative Council must be as prescribed by the rules made by the Students' Representative Council and approved by the Council

24. Appointment of staff and conditions of service

- (1) The establishment of the Institute shall consist of -
 - (a) The posts established by Council on a basis to be determined by the MEC from time to time, with the concurrence of the MEC for Finance.
 - (b) The other posts in respect of which the MEC is of the opinion that no basis can be determined and which he may establish from time to time; provided that the Council may establish such posts as the MEC may designate from time to time.
- (2) The power to appoint, promote, transfer, second or discharge members of teaching, staff and other employees of the Institute shall vest in the Council; provided that the appointment, promotion, transfer, secondment or discharge of members of the teaching and administrative staff in such posts as the MEC may determine shall be subject to his/her approval.
- (3) No person shall be permanently appointed under the provisions of subsection (2), whether on probation or not, unless he complies with such requirements as may be prescribed by the MEC or by regulation.
- (4) The conditions of service of the persons employed by the Institute (including salary scales, allowances and leave privileges, and the conditions and circumstances under which the persons

concerned may be required to become and remain members of any medical scheme or medical benefit schemes) shall be determined by the Council with the approval of the MEC and the concurrence of the MEC for Finance.

25. Admission and registration of students

- (1) A person may be admitted or registered as a student of the Institute if he or she-
 - (a) Has obtained the grade 12 certificate and/or National Senior Certificate, issued and confirmed by the Department of Basic Education, or any other certificate deemed by the Council to be equivalent to the said grade 12 certificate as evaluated by the South African Qualifications Authority, or satisfied the Recognition of Prior Learning Policy of the Institute; or
 - (b) Has obtained any qualification, whether of an academic or practical nature, recognised by the Council as adequate for the purpose of registration for any particular course of study in terms of its Recognition of Prior Learning Policy; or
 - (c) Complies with such other requirements as the Council may determine; and
 - (d) Pays the fees determined by the Council.
- (2) The Council may, for registration of any specific course of study at the Institute, require that a specific grade in any specific subject must have been attained at the grade 12 examination or its equivalent.
- (3) A person must be registered as a student of the Institute for one semester of study unless the Council has determined otherwise.
- (4) The Council may, after consultation with the Academic Board, limit the number of persons to be permitted to register for any course, in which case the Academic Board may select the persons who must be permitted to register for such course, with the proviso that no discrimination on the basis of race, gender, language, disability, culture or belief must be permitted.
- (5) The Council may, on recommendation of the Academic Board, recognise as equivalent to an examination required as a necessary qualification by the Council, an examination which has been passed by any person at any other educational institution regarded by the Council as the equal of the Institute, for the purpose of such person's obtaining a certificate or diploma at the Institute, provided such person must at least have been successful in the examinations of the two semesters of the final year of study at the Institute.
- (6) On the expiry of a semester of study that person must, if he or she desires to remain a student of the Institute, renew his or her registration.
- (7) The Council may, after consultation with the Academic Board, determine the minimum requirements in respect of study with which any particular person must comply before he or she be permitted to renew his or her registration as a student of the Institute in terms of the academic policy of the Institute.

26. Refusal of admission and registration as students

The Board may refuse to register any person as a student of the Institute if he or she does not meet the admission and registration requirements as contemplated in [section 24](#).

27. Discipline and places of residence of students

- (1) A student of the Institute must be subject to such disciplinary measures as may be prescribed by rules and regulations made by the Council.
- (2) The Council must make rules and regulations in respect of students residing in residences of the Institute.

28. Financial assistance to students

The MEC may, out of moneys lawfully appropriated for the purpose, and subject to such conditions as he or she may determine with the concurrence of the MEC for Finance, grant to a student of the Institute such financial assistance as the MEC may deem appropriate.

29. Fees payable by students

The fees payable by a student or a prospective student of the Institute must be approved by the Council.

30. Programme of study and departments

The Council may, together with the Academic Board, establish or abolish any department or programme of study at the Institute.

31. Syllabus

A syllabus of any programme of study established in terms of this Act must be endorsed by the Council on the recommendations of the Academic Board.

32. Recognition and registration of certificates and diplomas

- (1) The Institute must not issue any certificate or diploma indicating that a person has passed an examination or completed a programme of study at the Institute, unless such certificate or diploma has been endorsed by the Council.
- (2) The provisions of the Higher Education Act of 1997 ([Act 101 of 1997](#)), must apply *mutatis mutandis* in respect of the certificates or diplomas of the Institute.

33. Funds of the Institute

The funds of the Institute must consist of-

- (a) Money appropriated by the Provincial Legislature;
- (b) Fees paid by students;
- (c) Income derived from investments; and
- (d) Money accruing to the Institute from any other source.

34. Accounts and records to be kept and information to be furnished by Council

- (1) The Council must, in accordance with generally accepted accounting principles, practice and procedure cause-
 - (a) Keeping of books, and full records of income, expenditure, assets and liabilities;
 - (b) Preparation of financial statements within 3 months of the end of the year, including at least-
 - (i) a statement of income and expenditure for the previous year; and
 - (ii) a balance sheet as at the end of the previous year;
 - (iii) any other information the MEC may require.
 - (c) Full and true accounts and records to be kept of all moneys received or expended by or on behalf of the Institute and of all its assets and liabilities and of all relevant financial transactions, and must each year present to the MEC a balance sheet and a full statement of

the income and expenditure of the Institute for the preceding financial year, together with a report on the work of the Council during that year.

- (2) The Council must cause the books, accounts, records and balance sheet of the Institute to be audited annually by an auditor in accordance with generally accepted auditing standards.
- (3) The Council must submit to the MEC -
 - (a) a certified copy of the auditor's report in respect to the financial statements referred to in subsection (1);
 - (b) a report on the work of the Council and on the status of the Institute for the preceding year;
 - (c) and any other additional information, particulars or documents the MEC may require.

35. Delegation of powers and duties by the MEC

- (1) The MEC may authorize any officer of the Department to exercise or to perform any power or duty conferred or imposed on him or her by this Act other than the power to make regulations.
- (2) The provisions of [section 17](#) apply with the necessary changes to delegations by the MEC.

36. Protection of powers of the Institute

A vacancy in the office of the principal or deficiency in the number of members of the Board or the academic council must not prejudice or affect the corporate existence of the Institute or the exercise of any power, right or privilege conferred by this Act upon the Institute or the Board.

37. Offences and penalties

Any person who, without the authority of the Council, -

- (a) publicizes or represents to anyone that he or she or some other person can offer any course of study or part thereof which is offered at the Institute, and which must entitle a person who has followed such a course or part thereof to the granting of any certificates or diploma which may be granted by the Institute; or
- (b) confers a certificate or diploma purporting to be a certificate or diploma granted by the Institute; or
- (c) performs any act which purports to have been performed by or on behalf of the Institute; or
- (d) establishes or conducts an institution which is not the Institute under a name which includes or resembles the name of the Institute;
- (e) is guilty of an offence and liable on conviction to a fine not exceeding one thousand rand, or to imprisonment for a period not exceeding six months.

38. Regulations

The MEC may make regulations on any matter he or she deems appropriate for the purposes of achieving the objectives of this Act.

39. Savings

- (1) The Fort Cox Institute of Agriculture must continue to exist as a juristic person and must, from the date of publication hereof, be known as the Fort Cox Agriculture and Forestry Training Institute.
- (2) The Registrar of Deeds must, upon the production to him of the title deed of any immovable property referred to in subsection (1) (c) endorse the same to the effect that the immovable property therein described is vested in the institute and make the necessary entries in his/her registers, and thereupon the said title deed must serve and avail for all purposes as the title deed of the institute to the said property but subject to the provisions of [section 3\(2\)](#).

40. Transitional provisions

- (1) The assets and liabilities of the Fort Cox Agriculture and Forestry College must be assets and liabilities of the institute
- (2) The legal framework which applied to appointment and conditions of employment prior to the repeal of the decree shall continue to apply despite the repeal of the decree.
- (3) The current Academic Council and Board must be deemed to be the Academic Board and Council, respectively, and must continue to be in office for a period of six months from the date of operation of the Act or until a new Council and Academic Board are constituted in terms of the Act, whichever comes first.

41. Repeal of laws

The Fort Cox College Decree, 1991 ([Decree No. 5 of 1991](#), Ciskei) is hereby repealed.

42. Short title and commencement

This Act is called the Fort Cox Agricultural Institute Transitional Provisions Act, 2015, and comes into operation on a date determined by the Premier by Proclamation in the *Gazette*.