

ANIMALS PROTECTION ACT 71 OF 1962

[ASSENTED TO 16 JUNE 1962] [DATE OF COMMENCEMENT: 1
DECEMBER 1962]

(Signed by the President)

as amended by

General Law Amendment Act 102 of 1972

[with effect from 5 July, 1972 - see title General Law Amendment Act]

Animals Protection Amendment Act 7 of 1972

ACT

To consolidate and amend the laws relating to the prevention of cruelty to animals.

ARRANGEMENT OF SECTIONS

- 1 Definitions
- 2 Offences in respect of animals
- 2A Animal Fights
- 3 Powers of court
- 4 Power of court to award damages
- 5 When police officer may destroy any animal
- 6 Poundmaster may recover expenses
- 7 Owner may be summoned to produce animal for inspection by court
- 8 Powers of officers of society for prevention of cruelty to animals
- 9 Costs may be awarded against vexatious complainant
- 10 Regulations
- 10A Application of Act in South-West Africa
- 11 Repeal of laws
- 12 Short title and commencement

[a71y1962s1]1 Definitions

In this Act, unless the context otherwise indicates-

"animal" means any equine, bovine, sheep, goat, pig, fowl, ostrich, dog, cat or other domestic animal or bird, or any wild animal, wild bird or reptile which is in captivity or under the control of any person;

"Minister" means the Minister of Justice;

"owner", in relation to an animal, includes any person having the possession, charge, custody or control of that animal;

"police officer" includes a member of any force established under any law for the carrying out of police powers, duties or functions;

"veterinarian" means a person registered as such under the Veterinary Act, 1933 (Act 16 of 1933).

[a71y1962s2]2 Offences in respect of animals

(1) Any person who-

(a) overloads, overdrives, overrides, ill-treats, neglects, infuriates, tortures or maims or cruelly beats, kicks, goads, terrifies any animal; or

(b) confines, chains, tethers or secures any animal unnecessarily or under such conditions or in such a manner or position as to cause that animal unnecessary suffering or in any place which affords inadequate space, ventilation, light, protection or shelter from heat, cold or weather; or

- (c) unnecessarily starves or under-feeds or denies water or food to any animal; or
- (d) lays or exposes any poison or any poisoned fluid or edible matter or infectious agents except for the destruction of vermin or marauding domestic animals or without taking reasonable precautions to prevent injury or disease being caused to animals; or
- (e) being the owner of any animal, deliberately or negligently keeps such animal in a dirty or parasitic condition or allows it to become infested with external parasites or fails to render or procure veterinary or other medical treatment or attention which he is able to render or procure for any such animal in need of such treatment or attention, whether through disease, injury, delivery of young or any other cause, or fails to destroy or cause to be destroyed any such animal which is so seriously injured or diseased or in such a physical condition that to prolong its life would be cruel and would cause such animal unnecessary suffering; or
- (f) uses on or attaches to any animal any equipment, appliance or vehicle which causes or will cause injury to such animal or which is loaded, used or attached in such a manner as will cause such animal to be injured or to become diseased or to suffer unnecessarily; or
- (g) save for the purpose of training hounds maintained by a duly established and registered vermin club in the destruction of vermin, liberates any animal in such manner or place as to expose it to immediate attack or danger of attack by other animals or by wild animals, or baits or provokes any animal or incites any animal to attack another animal; or
- (h) liberates any bird in such manner as to expose it to immediate attack or danger of attack by animals, wild animals or wild birds; or
- (i) drives or uses any animal which is so diseased or so injured or in such a physical condition that it is unfit to be driven or to do any work; or
- (j) lays any trap or other device for the purpose of capturing or destroying any animal, wild animal or wild bird the destruction of which is not proved to be necessary for the protection of property or for the prevention of the spread of disease; or
- (k) having laid any such trap or other device fails either himself or through some competent person to inspect and clear such trap or device at least once each day; or
- (l) except under the authority of a permit issued by the magistrate of the district concerned, sells any trap or other device intended for the capture of any animal, including any wild animal (not being a rodent) or wild bird, to any person who is not a bona fide farmer; or
- (m) conveys or carries any animal-
 - (i) under such conditions or in such a manner or position as to cause that animal unnecessary suffering; or
 - (ii) in conditions affording inadequate shelter, light or ventilation or in which such animal is excessively exposed to heat, cold, weather, sun, rain or dust; or
 - (iii) without making adequate provision for suitable food, portable water and rest for such animal in circumstances where it is necessary; or

(n) without reasonable cause administers to any animal any poisonous or injurious drug or substance; or

(o)

[Para (o) deleted by sec 2 of Act 42 of 1993.]

(p) being the owner of any animal, deliberately or without reasonable cause or excuse, abandons it, whether permanently or not, in circumstances likely to cause that animal unnecessary suffering; or

(q) causes, procures or assists in the commission or omission of any of the aforesaid acts or, being the owner of any animal, permits the commission or omission of any such act; or

(r) by wantonly or unreasonably or negligently doing or omitting to do any act or causing or procuring the commission or omission of any act, causes any unnecessary suffering to any animal; or

(s) kills any animal in contravention of a prohibition in terms of a notice published in the Gazette under subsection (3) of this section,

[Para (s) inserted by sec 21(b) of Act 102 of 1972.]

shall, subject to the provisions of this Act and any other law, be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding twelve months imprisonment without the option of a fine.

[Subsec (1) amended by sec 3 of Act 54 of 1983, by sec 5 of Act 20 of 1985, by sec 13(c) of Act 7 of 1991 and by sec 2 of Act 33 of 1997.]

(2) For the purposes of subsection (1) the owner of any animal shall be deemed to have permitted or procured the commission or omission of any act in relation to that animal if by the exercise of reasonable care and supervision in respect of that animal he could have prevented the commission or omission of such act.

(3) The Minister may by notice in the Gazette prohibit the killing of an animal specified in the notice with the intention of using the skin or meat or any other part of such animal for commercial purposes.

[Subsec (3) added by sec 21(c) of Act 102 of 1972.]

[a71y1962s2A]2A Animal Fights

(1) Any person who-

(a) possesses, keeps, imports, buys, sells, trains, breeds, or has under his control an animal for the purpose of fighting any other law;

(b) baits or provokes or incites any animal to attack any other animal or to proceed with the fighting of another animal;

(c) for financial gain or as a form of amusement promotes animal fights;

(d) allows any of the acts referred to in paragraphs (a) to (c) to take place on any premises or place in his possession or under his charge or control;

(e) owns, uses or controls any premises or place for the purpose or partly for the purpose of presenting animal fights on any such premises or place or who acts or assists in the management of any such premises or place, or who receives any consideration for the admission of any person to any such premises or place; or

(f) is present as a spectator at any premises or place where any of the acts referred to in paragraphs (a) to (c) is taking place or where preparations are being made for such act,

shall be guilty of an offence and liable on conviction to a fine or imprisonment for a period not exceeding two years.

(2) In any prosecution in terms subsection (1) it shall be presumed, unless the contrary is proved, that an animal which is found at any premises or place is the property or under the control of the owner of that premises or place, or is the property or under the control of the person who uses or is in control of the premises or place.

(3) Notwithstanding anything to the contrary contained in any law, a magistrate's court shall have jurisdiction to impose any penalty provided for in this section.

[Sec 2A inserted by sec 3 of Act 42 of 1993.]

[a71y1962s3]3 Powers of court

(1) Whenever a person is convicted of an offence in terms of this Act in respect of any animal, the court convicting him may in addition to any punishment imposed upon him in respect of that offence-

- (a) order such animal to be destroyed if in the opinion of the court it would be cruel to keep such animal alive;
- (b) order that the person convicted be deprived of the ownership of such animal;
- (c) declare the person convicted to be unfit to own or be in charge of any animal, or of any animal of a specified kind, for a specified period;
- (d) make any order with regard to such animal as it deems fit to give effect to any order or declaration made under any of the preceding paragraphs.

(2) Any person who is found in possession or in charge of any animal in contravention of a declaration made in terms of paragraph (c) of subsection (1), shall be guilty of an offence and liable on convictions to the penalties prescribed in subsection (1) of section two.

[a71y1962s4]4 Power of court to award damages

(1) Whenever any person is convicted by a magistrate's court of an offence under this Act and it is proved that such person has by the commission of that offence caused loss to any other person or that any other person has as the result of such offence incurred expense in providing necessary veterinary attention or treatment, food or accommodation for any animal in respect of which the offence was committed or in caring for such animal pending the making of an order by the court for the disposal thereof, the court may, on application by such other person or by the person conducting the prosecution acting on the instructions of such other person, summarily enquire into and determine the amount of the loss so caused or expense so incurred and give judgment against the person convicted and in favour of such other person for the amount so determined, but not exceeding an amount of four hundred rand.

[Subsec (1) substituted by sec 6(a) of act 20 of 1985.]

(2) Any such judgment shall have effect as if it had been given in a civil action duly instituted before such court.

(3) The provisions of subsections (1) and (2) shall mutatis mutandis apply in respect of-

(a) any costs incurred in connection with the custody of an animal seized in terms of the Criminal Procedure Act, 1977 (Act 51 of 1977), for the purposes of a prosecution in terms of this Act; and

[Para (a) substituted by sec 9 of Act 7 of 1972 and by sec 6(b) of Act 20 of 1985.]

(b) any costs incurred in connection with the destruction of an animal in terms of an order under paragraph (a) of subsection (1) of section three and the removal and burial or destruction of the carcass.

[a71y1962s5]5 When police officer may destroy any animal

(1) Whenever a police officer is of the opinion that any animal is so diseased or severely injured or in such a physical condition that it ought to be destroyed, he shall, if the owner be absent or refuses to consent to the destruction of the animal, at once summon a veterinarian or, if there is no veterinarian within a reasonable distance, two adult persons whom he considers to be reliable and of sound judgment, and if such veterinarian or adult persons after having duly examined such an animal certify that the animal is so diseased or so severely injured or in such physical condition that it would be cruel to keep it alive, such police officer may without the consent of the owner destroy the animal or cause it to be destroyed with such instruments or appliances and with such precautions and in such manner as to inflict as little suffering as practicable.

(2) Any police officer who destroys any animal or causes it to be destroyed in the absence of the owner shall, if such owner's name and address are known, advise him of the destruction, and where the destruction of any animal takes place on any public place or public road shall, subject to the provisions of the Animal Diseases Act, 1984 (Act 35 of 1984), remove the carcass or cause it to be removed therefrom. [Subsec (2) substituted by sec 10 of Act 7 of 1972 and by sec 14 of Act 7 of 1991.]

(3) A veterinarian may in respect of any animal exercise the powers conferred by subsection (1) upon a police officer without summoning another veterinarian, police officer or any other person, and in respect of such exercise of those powers the provisions of subsection (2) shall apply.

(4) Any expenses which may be reasonably incurred by any police officer or veterinarian in carrying out the provisions of this section may be recovered from the owner of the animal in question as a civil debt.

(5) It shall be a defence to an action brought against any person arising out of the destruction of an animal by him or with his authority, to prove that such animal was so severely injured or so diseased or in such a physical condition that it would have been cruel to have kept it alive, and that to summon a police officer or follow the procedure prescribed in this section would have occasioned unreasonable delay and unnecessary suffering to such animal.

[a71y1962s6]6 Poundmaster may recover expenses

Any poundmaster shall be entitled to recover from the owner of any impounded animal any reasonable expenses necessarily incurred by him in rendering or providing veterinary or medical attention for such animal.

[a71y1962s7]7 Owner may be summoned to produce animal for inspection by court

(1) A court trying any person for an alleged offence under this Act may summon the owner of any animal in respect of which such offence is alleged to have

been committed to produce that animal at a time and place stated in the summons for inspection by the court.

(2) Any person who without satisfactory excuse fails to comply with a summons issued in terms of subsection (1) shall be guilty of an offence and liable on conviction to the penalties prescribed in subsection (1) of section two.

[a71y1962s8]8 Powers of officers of society for prevention of cruelty to animals

(1) If authorized thereto by writing under the hand of the magistrate of a district, any officer of any society for the prevention of cruelty to animals may in that district-

(a) without warrant and at any time with the consent of the owner or occupier, or failing such consent on obtaining an order from a magistrate, enter any premises where any animal is kept, for the purpose of examining the conditions under which it is so kept;

(b) without warrant arrest any person who is suspected on reasonable grounds of having committed an offence under this Act, if there is reason to believe that the ends of justice would be defeated by the delay in obtaining a warrant;

(c) on the arrest of any person on a charge of an offence under this Act, seize any animal or thing in the possession or custody of that person at the time of the arrest and take it forthwith before a magistrate;

(d) exercise in respect of any animal the powers conferred by subsection (1) of section five upon a police officer and in respect of such exercise of those powers, the provisions of the said section shall mutatis mutandis apply.

(2) Any authority granted under subsection (1) may at any time for good cause be revoked by the magistrate of the district.

(3) An officer to whom authority has been granted under subsection (1) shall, when required to do so in the exercise of his powers, produce that authority for inspection.

(4) Any person who wilfully obstructs, hinders or resists an officer authorized under subsection (1) in the exercise of the powers conferred upon him or conceals any animal or thing with intent to defeat the exercise of such powers, or who upon demand fails to give his name and address to such officer, shall be guilty of an offence and liable on conviction to the penalties set out in subsection (1) of section two.

[a71y1962s9]9 Costs may be awarded against vexatious complainant

If at the trial of any person on a charge of an offence under this Act, the court is satisfied that any person or body has without reasonable cause and vexatiously lodged or caused to be lodged the complaint which led to such trial, it may award costs, including attorney and client costs, on the magistrate's court scale, against such person or body as if the proceedings were civil proceedings between the accused and such person or body.

[a71y1962s10]10 Regulations

(1) The Minister may make regulations relating to-

(a) the method and form of confinement and accommodation of any animal or class, species or variety of animals, whether travelling or stationary;

(b) any other reasonable requirements which may be necessary to prevent cruelty to or suffering of any animal;

(c) the seizure, impounding, custody or confining of any animal due to any condition of such animal, the disposal or destruction of such animal and the recovery of any expenses incurred in connection therewith from the owner of such animal; and

(d) generally such matters as are required for the better carrying out of the objects and purposes of this Act.

(2) Such regulations may prescribe penalties for contravention thereof or failure to comply therewith not exceeding a fine of R4 000 or imprisonment for a period of twelve months.

[a71y1962s10A]10A Application of Act in South-West Africa

This Act and any amendment thereof shall apply also in the territory of South-West Africa, including the Eastern Caprivi Zipfel.

[Sec 10A inserted by sec 11 of Act 7 of 1972.]

[a71y1962s11]11 Repeal of laws

The Prevention of Cruelty to Animals Act, 1914 (Act 8 of 1914), the Prevention of Cruelty to Animals Act, 1914, Amendment Act, 1922 (Act 14 of 1922), the Prevention of Cruelty to Animals Act, 1914, Amendment Act, 1928 (Act 10 of 1928), and the Prevention of Cruelty to Animals Amendment Act, 1949 (Act 28 of 1949), are hereby repealed.

[a71y1962s12]12 Short title and commencement

This Act shall be called the Animals Protection Act, 1962, and shall come into operation on a date to be fixed by the State President by proclamation in the Gazette.

[a21y1991]PREVENTION OF UNDESIRABLE RESIDUE IN MEAT ACT 21 OF 1991

[ASSENTED TO 5 DECEMBER 1991] [DATE OF COMMENCEMENT: 28 NOVEMBER 1994]

(Signed by the President)

as amended by

Prevention of Undesirable Residue in Meat Amendment Act 11 of 1994

ACT

To provide for control over the administration of certain products to animals which may cause undesirable residue in meat and meat products; to further regulate the slaughtering of animals and the marketing of meat and meat products; and to provide for incidental matters.

ARRANGEMENT OF SECTIONS

- 1 Definitions
- 2 Minister's power in relation to certain substances
- 3 Prohibition on possession of prohibited substances
- 4 Prohibition on the administration of certain substances to certain animals
- 5 Prohibition on slaughtering of animals to which certain substances were administered
- 6 Export of meat or meat products to prescribed countries
- 7 Inspectors
- 8 Powers of inspectors
- 9 Analysts
- 10 Preservation of secrecy

- 11 Offences and penalties
- 12 Jurisdiction of magistrates' court
- 13 Proof and presumptions
- 14 Defects in form
- 15 Restriction of liability
- 16 Regulations
- 17 Delegation of powers
- 18 State bound
- 19 Short title and commencement

[a21y1991s1]1 Definitions

In this Act, unless the context otherwise indicates-

"analyst" means a person designated under section 9 as an analyst;

"Director" means the person who holds the post of Director: Veterinary Services in the Ministry;

"Group I substance" means-

- (a) any product consisting of or containing-
 - (i) stilbenes, stilbenes derivatives, or their salts and esters;
 - (ii) thyrostatic substances;
 - (iii) anabolic growth stimulants with a hormonal action;
- (b) any product with oestrogenic, androgenic or gestagenic actions, but excluding any such product which has been declared as a Group II substance; and
- (c) any other product declared as a Group I substance under section 2;

"Group II substance" means any product declared as a Group II substance under section 2;

"Group III substance" means-

- (a) any product referred to in subparagraphs (i) and (ii) of paragraph (a) of section 2(1) to which a withdrawal time has been assigned during registration under the laws referred to in those subparagraphs, but excluding any such product which is prohibited or Group I or Group II substance;
- (b) any other product declared as a Group III substance under that section;

[Definition of "Group III substance" substituted by sec 1(a) of Act 11 of 1994.]

"inspector" means a person designated under section 7 as an inspector;

"meat" means any portion of the carcass of an animal ordinarily used for human consumption;

"meat product" means any commodity wholly or partly derived from the processing of meat;

"Minister" means the Minister of Agriculture, Water and Rural Development;

"Ministry" means the Ministry of Agriculture, Water and Rural Development;

"prescribed" means prescribed by regulation made under this Act;

"prohibited substance" means any product declared as a prohibited substance under section 2;

"public service" means the public service mentioned in section 2 of the Public Service Act, 1980 (Act 2 of 1980);

"Public Service Commission" means the Commission established by section 4 of the Public Service Act, 1980 (Act 2 of 1980);

"this Act" includes any regulation made or notice issued under this Act;

"veterinarian" means a person registered or deemed to be registered in terms of the Veterinary and Para-Veterinary Professions Proclamation, 1984 (Proclamation AG. 14 of 1984), to practise a veterinary profession; and

"withdrawal time", in relation to a Group II or Group III substance, means the appropriate withdrawal time referred to in section 2.

[Definition of "withdrawal time" substituted by sec 1(b) of Act 11 of 1994.]

[a21y1991s2]2 Minister's power in relation to certain substances

(1) Subject to the provisions of subsections (3) and (4), the Minister may by notice in the Gazette, for the purposes of this Act-

(a) declare, either as a Group I or a Group II or a Group III substance-

(i) any product being a substance or containing a substance registered as a stock remedy or farm feed in terms of the Fertilizers, Farm Feeds, Agricultural Remedies and Stock Remedies Act, 1947 (Act 36 of 1947);

(ii) any product being a substance registered as a medicine in terms of the Medicines and Related Substances Control Act, 1965 (Act 101 of 1965); or

(iii) any product consisting of or containing oestrogen, testosterone or progesterone or any other product which is used, or recommended as suitable for use, in connection with livestock or wild animals for therapeutic purposes or for purposes of fattening or improving fertility, growth, production or working capacity and which, when administered to an animal, has a hormonal action and causes or, in the opinion of the Minister, is likely to cause a residue in the tissue of such animal;

(b) declare any product used or recommended as suitable for use, or manufactured or sold for use in connection with livestock or wild animals, whether or not such product is a Group I or Group II or Group III substance, and which is not a stock remedy or farm feed registered as such in terms of the said Fertilizers, Farm Feeds, Agricultural Remedies and Stock Remedies Act, 1947, or a medicine registered as such in terms of the said Medicines and Related Substances Control Act, 1965, as a prohibited substance;

(c) whether in general or in respect of any particular Group II or Group III substance, prescribe a period (in this Act referred to as a "withdrawal time") during which, following the treatment of an animal with such substance, the meat of such animal shall be considered unfit for human consumption or the processing thereof into a meat product.

[Subsec (1) amended by sec 2(a) of Act 11 of 1994.]

(2) The Minister may amend or revoke any notice issued under subsection (1).

(3) The Minister may, for the purpose of prescribing the withdrawal time of any substance referred to in subparagraphs (i) and (ii) of paragraph (a) of subsection (1), except the withdrawal time assigned to such substance during registration under the laws referred to in those subparagraphs.

[Subsec (3) added by sec 2(b) of Act 11 of 1994.]

(4) Notwithstanding subsection (1)(c), the withdrawal time referred to in paragraph (a) of the definition of "Group III substance" in section 1 shall until-

(a) a product referred to in that paragraph is declared as prohibited or Group I or Group II substance; or

(b) such withdrawal time is amended by means of any notice contemplated in that subsection,

be the withdrawal time in respect of such product.

[Subsec (4) added by sec 2(b) of Act 11 of 1994.]

[a21y1991s3]3 Prohibition on possession of prohibited substances

No person shall have in his or her possession any prohibited substance except for the purpose of the carrying out of any research and with the written approval of the Minister and subject to such conditions as the Minister may impose.

[a21y1991s4]4 Prohibition on the administration of certain substances to certain animals

(1) Except with the written approval of the Director and subject to such conditions as the Director may impose, no person shall administer or cause or permit to be administered any Group I substance to any prescribed animal.

(2) No person shall administer or cause or permit to be administered any Group II substance to any prescribed animal, except-

(a) if it is administered to such an animal-

(i) by a veterinarian or by a person acting under the directions and control of a veterinarian; or

(ii) by the owner or person in control of the animal concerned and such owner or person has obtained such substance upon the prescription of a veterinarian; and

(b) if it is administered for a prescribed purpose and in the prescribed manner.

[a21y1991s5]5 Prohibition on slaughtering of animals to which certain substances were administered

(1) No person shall deliver or cause or permit to be delivered, any prescribed animal for slaughter to any prescribed abattoir, knowing or having reasonable grounds to suspect that-

(a) any prohibited substance or Group I substance has at any time been administered to such animal;

(b) any Group II or Group III substance has been administered to such animal and that the withdrawal time applying to such substance has not yet expired.

(2) The owner or person in charge of an abattoir may, if such owner or person has reasonable grounds to believe that any prescribed animal which is being or has been delivered to such abattoir contrary to the provisions of subsection (1), refuse to receive such animal at such abattoir or take such steps as he or she deems necessary to return the animal concerned to the owner or any other person in charge thereof.

(3) Any costs incurred by the owner or person in charge of an abattoir in connection with the return of an animal in terms of subsection (2), shall be paid by, or may be recovered from, the owner or any other person in charge of the animal.

[a21y1991s6]6 Export of meat or meat products to prescribed countries

(1) Notwithstanding anything to the contrary in any law contained, no meat or meat product derived from a prescribed animal shall be exported to any prescribed country, unless-

(a) such animal was slaughtered at a prescribed abattoir;

(b) the meat of such animal was cut at a prescribed cutting plant;

(c) in the case of a meat product, such meat product was processed at a prescribed processing plant; and

(d) such meat, and where necessary, such meat product, was stored at a prescribed cold storage pending exportation.

(2) Whenever the Director comes to the conclusion that any meat or meat product intended for export to a prescribed country -

(a) is meat or a meat product derived from a prescribed animal-

(i) to which a prohibited substance or Group I substance has at any time been administered; or

(ii) to which a Group II or Group III substance has been administered and which was slaughtered before the withdrawal time applying to such substance expired;

(b) contains any residue of any prohibited substance or Group I or Group II or Group III substance; or

(c) is meat or a meat product in respect of which any provision of subsection (1) has not been complied with, the Director shall cause such meat or meat product to be seized and removed to such place as the Director may determine or cause any other steps to be taken in order to prevent such meat from being dispatched from Namibia.

(3) Any meat or meat product seized in terms of subsection (2), shall be disposed of in a manner as prescribed.

[a21y1991s7]7 Inspectors

(1) The Minister may designate officers or employees in the public service, or other persons, as inspectors to exercise and perform, subject to the instructions and directives of the Director, the powers and functions conferred upon or assigned to an inspector by or under this Act.

(2) An inspector who is not an officer or employee in the public service, shall receive such remuneration and allowances as the Minister may determine in consultation with the Public Service Commission.

(3) Every person designated as an inspector under subsection (1) shall be furnished with a certificate signed by the Minister stating that such person has been so designated.

(4) Any interested person may, where any inspector exercises any power or function under this Act, require such inspector to produce the certificate referred to in subsection (3) to him or her.

(5) The Director may authorise, subject to such conditions as the Director may impose, any person to accompany an inspector during the performance by such inspector of any function in terms of this Act.

[a21y1991s8]8 Powers of inspectors

(1) Subject to the provisions of this section, an inspector may at any reasonable time without a warrant and without permission, enter upon any premises, vehicle or vessel, and on or in such premises, vehicle or vessel perform any such act as he or she may deem necessary in order to ascertain whether the provisions of this Act have been or are being complied with, and may -

(a) inspect or cause to be inspected any prescribed animal, meat, meat product, substance or any instrument, equipment or other article being used or destined to be used for the administration of substances to animals, found by him or her on or in such premises, vehicle or vessel, and demand from the person in charge

thereof any information regarding such animal, meat, meat product, substance, instrument, equipment or other article;

(b) cause any vehicle or vessel to be brought to a halt and have it searched in order to ascertain whether any prescribed animal, meat, meat product, prohibited substance or Group I or Group II substance is being transported on or in such vehicle or vessel;

(c) examine any book or document found by him or her on or in any such premises, vehicle or vessel, and which he or she on reasonable grounds suspects to relate to any matter referred to in this Act and make copies of or extracts from such book or document, and demand from the owner or custodian of any such book or document an explanation of any entry therein;

(d) seize and remove or cause to be removed any animal, meat, meat product, substance, book, document, instrument, equipment or other article which he or she may lawfully inspect, examine or search for under this section which in his or her opinion may afford evidence of a contravention of any provision of this Act; and

(e) take any sample or cause any sample to be taken of the tissue, blood or discharge of a prescribed animal, or of meat or any meat product or any substance for the purposes of any test, analysis or examination provided for in this Act and direct any person on the premises, vehicle or vessel on which such sample is taken, to assist him or her therein.

(2) No search of the home of any person shall be carried out under the provisions of subsection (1) unless such search is authorised by a search warrant which has been issued by a magistrate or judge upon information on oath that-

(a) there are reasonable grounds for believing that any article referred to in the said subsection is in the possession or under the control of any person or upon or at any home within the area of jurisdiction of such judicial officer;

(b) such search is necessary for a purpose referred to in Article 13(1) of the Namibian Constitution;

Provided that this subsection shall not be so construed as to prohibit the carrying out of any such search without a warrant in circumstances contemplated in Article 13(2)(b) of the Namibian Constitution.

(3) Any search carried out pursuant to the provisions of this section shall-

(a) not be excessively intrusive having regard to the relevant offence allegedly committed under this Act; and

(b) comply with the provisions of section 21(3)(a) and (4) and section 29 of the Criminal Procedure Act, 1977 (Act 51 of 1977).

(4) Any inspector who carries out a search without a warrant, shall inform any person found at the home concerned, of the objectives of the search.

(5) The procedure to be followed by an inspector in obtaining and transmitting any sample intended for testing, analysis or examination in connection with criminal proceedings in terms of this Act, shall be as prescribed: Provided that any sample of the tissue of an animal shall only be taken by a veterinarian.

[a21y1991s9]9 Analysts

(1) The Minister may designate officers or employees in the public service, or other persons, who in the opinion of the Minister are qualified by their technical training and possess competent knowledge, skill and experience, as analysts to test,

analyse or examine samples of substances, meat, meat products or any other matter which may be or is required to be tested, analysed or examined in terms of this Act.

(2) An analyst who is not an officer or employee in the public service shall receive such remuneration and allowances as the Minister may determine in consultation with the Public Service Commission.

(3) An analyst shall, for the purpose of testing, analysing or examining any sample or reporting the result, employ or use such methods or forms or complete such certificates or reports as may be prescribed, and shall be vested with such other powers, duties or functions as may be prescribed.

(4) Any test, analysis or examination of a sample by an analyst shall be conducted in a prescribed laboratory.

[a21y1991s10]10 Preservation of secrecy

No person shall disclose to any other person any information acquired by him or her in the performance of his or her duties in terms of this Act relating to the business of any person, except for the purposes of the performance of his or her duties under this Act or when required to do so by any court or under any law.

[a21y1991s11]11 Offences and penalties

Any person-

- (a) who contravenes any provision of section 3, 4 or 5;
- (b) who refuses or fails to reply to any question put to him or her by an inspector in the exercise of his or her powers in terms of this Act, or in reply to such a question makes any statement or representation knowing it to be false or not knowing or believing it to be true;
- (c) who obstructs or hinders an inspector in the exercise of his or her powers or the performance of his or her duties in terms of this Act;
- (d) who falsely represents himself or herself to be an inspector, shall be guilty of an offence and on conviction be liable-
 - (i) on a first conviction, to a fine not exceeding R2 000 or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment;
 - (ii) on a second conviction, to a fine not exceeding R4 000 or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment;
 - (iii) on a third or subsequent conviction, to a fine not exceeding R8 000 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

[a21y1991s12]12 Jurisdiction of magistrates' court

Notwithstanding anything to the contrary in any law contained, a magistrates' court shall have jurisdiction to impose any penalty provided for in section 11.

[a21y1991s13]13 Proof and presumptions

In any prosecution under this Act it shall, unless the contrary is proved, be presumed that-

- (a) any instrument used in the taking of a sample in terms of this Act and the container in which it was placed for the delivery or transmitting of such sample to an analyst, was free of any substance or contamination which could have influenced the results of such test, analysis or examination;

(b) any substance or any tissue, blood or discharge of a prescribed animal, or meat or meat product, at the time a sample thereof is taken in terms of this Act, is in the same condition or possesses the same properties as such sample.

[a21y1991s14]14 Defects in form

A defect in the form of a notice, certificate, report or other document issued, made or furnished in terms of this Act shall not lead to invalidity or be a ground for exception in legal proceedings, provided the requirements for such a notice, certificate, report or other document are substantially complied with and its meaning is clear.

[a21y1991s15]15 Restriction of liability

No person, including the State, shall be liable in respect of anything done in good faith in the exercise or performance of a power or duty conferred or imposed by or under this Act.

[a21y1991s16]16 Regulations

(1) The Minister may make regulations-

(a) in relation to any matter which in terms of this Act is required or permitted to be prescribed;

(b) to regulate the manufacture or marketing, of any Group I or Group II or Group III substance in terms of this Act;

(c) providing for the keeping of registers in relation to the administration of Group I or Group II or Group III substances and the manufacture or marketing of such substances;

(d) the purposes for and the manner in which any Group II substance may be administered to prescribed animals;

(e) the marking of prescribed animals to which any Group I or Group II or Group III substances have been administered;

(f) prescribing the requirements to be complied with by any person who sells or otherwise disposes of any prescribed animal to which any Group I or Group II or Group III substances has been administered;

(g) conferring upon or assigning to inspectors such other powers and functions as the Minister may deem fit,

and, in general, with regard to any matter which the Minister may consider necessary or expedient to prescribe or regulate in order to attain or further the objectives of this Act, and the generality of this provision shall not be limited by the preceding paragraphs of this subsection.

(2) Different regulations which differ in the respects deemed expedient by the Minister, may, subject to the provisions of this Act, be made under subsection (1) in respect of different Group I or Group II or Group III substances or different kinds of prescribed animals.

(3) A regulation may prescribe penalties for any contravention of or failure to comply with its provisions, but not exceeding a fine of R2 000 or imprisonment exceeding a period of six months.

[a21y1991s17]17 Delegation of powers

(1) The Minister may, subject to such conditions as the Minister may deem fit to impose, delegate the powers conferred by section 7(1) and (3) and section 9(1) to any officer or employee in the public service attached to the Ministry.

(2) The Director may, subject to such conditions as the Director may deem fit to impose, delegate the powers conferred by section 7(5) to any officer in the public service attached to the Directorate: Veterinary Services of the Ministry.

(3) The delegation of any power under subsection (1) or (2) shall not divest the Minister or Director, as the case may be, of the power so delegated and the Minister or Director, as the case may be, may amend or set aside anything done by the delegate in the exercise of such a power.

[a21y1991s18]18 State bound

This Act shall bind the State.

[a21y1991s19]19 Short title and commencement

This Act shall be known as the Prevention of Undesirable Residue in Meat Act, 1991, and shall come into operation on a date to be fixed by the President by proclamation in the Gazette.

[a24y1995]STOCK BRANDS ACT 24 OF 1995

[ASSENTED TO 15 DECEMBER 1995] [DATE OF COMMENCEMENT: 29 DECEMBER 1995]

(Signed by the President)

as amended by

Stock Brands Amendment Act 7 of 2001

ACT

To consolidate and amend the law relating to the branding of stock; and to provide for incidental matters.

ARRANGEMENT OF SECTIONS

- 1 Definitions
- 2 Minister's powers in relation to certain stock and brands
- 3 Registrar of Brands
- 4 Register of brands
- 5 Prescribed brands
- 6 Application for registration of brand
- 7 Branding of stock
- 8 Transfer of registration of brand
- 9 Transfer or cancellation of registration of brand after death of owner
- 10 Cancellation of brand for disuse and cancellation at request of owner
- 11 Exemptions
- 12 Notification of change of address
- 13 Authorized persons and investigations
- 14 Appeals
- 15 Duties and powers of poundmaster
- 16 Prohibited branding of stock
- 17 Offences and penalties
- 18 Proof of certain facts
- 19 Restriction of liability
- 20 Regulations
- 20A Branding of animals other than stock
- 21 Brands provided for in other laws
- 21A Powers of Minister to enter into Agreements

- 22 Delegation of powers
 - 23 State bound
 - 24 Repeal of laws
 - 25 Short title and commencement
- Schedule - Laws repealed

[a24y1995s1]1 Definitions

In this Act, unless the context otherwise indicates-

"authorized person" means any person authorized under section 13 to exercise or perform the powers, duties and functions contemplated in that section;

"brand", used as a noun, means a mark made or placed on any stock for any purpose or a representation of a mark intended to be made or placed on any stock, excluding a mark declared not to be a brand under section 2;

"brand", used as a verb, means make or place a brand on any stock;

"branding iron" means an instrument used or intended to be used for branding stock;

"member of the Police" means a member as defined in section 1 of the Police Act, 1990 (Act 19 of 1990);

"Minister" means the Minister of Agriculture, Water and Rural Development;

"Ministry" means the Ministry of Agriculture, Water and Rural Development;

"owner", in relation to a registered brand, means the person in whose name such brand is registered;

"prescribed" means prescribed by regulation made under section 20;

"registered" means registered in terms of this Act, and "registration" has a corresponding meaning;

"Registrar" means the Registrar of Brands referred to in section 3(1);

"stock" means cattle and any other animal declared as stock under section 2;

"stock brand area" means a stock brand area defined under section 5(2);

"this Act" includes a regulation made or notice issued under this Act.

[a24y1995s2]2 Minister's powers in relation to certain stock and brands

The Minister may by notice in the Gazette declare-

- (a) any kind of animal as stock;
- (b) any mark not to be a brand,

for the purposes of this Act.

[a24y1995s3]3 Registrar of Brands

The Director: Veterinary Services in the Ministry shall be the Registrar of Brands, and shall, subject to the control of the Minister, exercise or perform the powers, duties and functions conferred upon or assigned to the Registrar by or under this Act.

[a24y1995s4]4 Register of brands

The Registrar shall keep a register of all brands registered under this Act.

[a24y1995s5]5 Prescribed brands

(1) The Minister shall prescribe brands in respect of stock, including the order in which such brands shall be allocated in terms of section 6(2).

(2) The Minister may, in the regulations contemplated in subsection (1)-

- (a) divide Namibia into different stock brand areas;

(b) determine the figures, letters or other symbols to be used in respect of the brands for the different stock brand areas.

(3) If the definition of a stock brand area under subsection (2) incorporates the description of a boundary of any other area which was defined under any law, the amendment of such description shall not affect that definition.

[a24y1995s6]6 Application for registration of brand

(1) Subject to the provisions of this Act, every person who-

(a) is, on the date of commencement of this Act, the owner of stock in Namibia other than in an area contemplated in section 11(1), shall within 6 months of that date;

(b) becomes, after such date, the owner of stock in Namibia other than in such area, shall within 14 days of the date on which he or she becomes such owner;

(c) is, on such date, or becomes thereafter, the owner of stock in Namibia in such area, may at any time,

and whether a brand has already been registered or not in his or her name in terms of the provisions of any law repealed by this Act, apply to the Registrar in the prescribed form for the registration of a brand in his or her name in respect of such stock.

(2) If the Registrar is satisfied that an application in terms of subsection (1) is in order and that the prescribed fee has been paid, he or she shall allocate the prescribed brand to the applicant, register such brand in his or her name and issue to him or her a certificate of registration of such brand in the prescribed form: Provided that the Registrar may, if the applicant is the owner of stock in different stock brand areas of Namibia, register a separate brand in the applicant's name in respect of each stock brand area.

[a24y1995s7]7 Branding of stock

(1) Subject to the provisions of this Act, every owner of stock in Namibia other than in an area contemplated in section 11(1), shall-

(a) within six months of the date of the certificate of registration referred to in section 6(2), and whether such stock already bear a brand or not, brand his or her stock with a brand registered in his or her name: Provided that this subsection shall not apply in respect of stock which already bear a brand complying with the requirements of this Act, if such brand was registered in such owner's name in terms of the provisions of any law repealed by this Act, and has again been registered in his or her name in terms of this Act;

(b) within 30 days of the date on which he or she becomes the owner of stock which are acquired after the date contemplated in paragraph (a), and whether such stock already bear a brand or not, brand such stock with a brand registered in his or her name;

(c) if a brand on any such stock becomes invisible or indistinct, again brand the stock in question in the prescribed manner;

(d) where an animal is erroneously branded on a place other than the place prescribed, forthwith brand such animal on the prescribed place, as well as on all places which, according to the prescribed order of branding places, lie between the prescribed place and the place where such animal was erroneously branded.

(2) No person shall in any manner dispose of any stock which are subject to the provisions of subsection (1), other than stock in respect of which an exemption has been granted under section 11, unless such stock have been branded in the prescribed manner with the registered brand.

(3) No person shall brand stock in any communal area in Namibia unless stock is branded in the presence of-

(a) the chief or headman of the area within which the owner of such stock lives or a deputy or representative of such chief or headman; or

(b) five residents of the neighbourhood in which the branding takes place, who are also the owners of registered brands in terms of this Act.

[a24y1995s8]8 Transfer of registration of brand

(1) Subject to the provisions of this Act, any owner of stock may in the prescribed form apply to the Registrar for the transfer of the registration of a brand from the name of any other person into his or her own name.

(2) An application in terms of subsection (1) shall be accompanied by the consent in writing of the owner of the brand in question to the proposed transfer.

(3) If the Registrar is satisfied that an application in terms of subsection (1) is in order and the prescribed fee has been paid, he or she shall transfer that registration of the brand in question into the name of the applicant, and issue to him or her a certificate of registration of such brand in the prescribed form.

[a24y1995s9]9 Transfer or cancellation of registration of brand after death of owner

(1) Any person acquiring in any manner any stock from the estate of a deceased owner of a brand registered in respect of such stock, may apply in the prescribed form to the Registrar for transfer of the registration of such brand into his or her own name.

(2) If the Registrar is satisfied that an application in terms of subsection (1) is in order and the prescribed fee has been paid, he or she shall transfer the registration of the brand in question into the name of the applicant, and issue to him or her a certificate of registration of such brand in the prescribed form.

(3) If the Registrar is satisfied that the owner of a registered brand is deceased and no application is made in terms of subsection (1) for the transfer of the registration of such brand within two years after the death of such owner; he or she shall cancel the registration of such brand.

[a24y1995s10]10 Cancellation of brand for disuse and cancellation at request of owner

(1)(a) If it appears to the Registrar that a person does not make use of a brand registered in his or her name, he or she may request such person in the prescribed form to show cause within a period specified in such request, not being less than three months, why the registration of such brand should not be cancelled.

(b) If within the period so specified cause is not shown to the satisfaction of the Registrar for the continuation of the registration of the brand in the name of such person, he or she shall cancel such registration.

(2) If for a period of two years a person did not make use of a brand registered in his or her name, such person shall within a period of 30 days after the expiry of the

said period of two years notify the Registrar in writing thereof, and upon receipt of such notice the Registrar shall cancel the registration of such brand.

(3) For the purposes of subsections (1) and (2), a person shall be deemed to make use of a brand as long as he or she has any stock lawfully bearing such brand.

(4) The owner of a registered brand may in writing request the Registrar to cancel the registration of such brand, and upon receipt of such request the Registrar shall cancel such registration.

[a24y1995s11]11 Exemptions

(1) The Minister may by notice in the Gazette declare that such provisions of this Act as may be specified shall not apply in any area defined in such notice, or in respect of any kind of stock specified therein.

(2) If the definition of a stock brand area under subsection (1) incorporates the description of a boundary of any other area which was defined under any law, the amendment of such description shall not affect that definition.

(3) Subject to subsection (1)-

(a) the Registrar may upon application in writing of the owner of stock, exempt such owner for such period and on such conditions as the Registrar may determine, from the provisions of section 6, 7 or 10(2);

(b) the provisions of sections 6 and 7 shall not apply in respect of-

(i) stock which have yet attained the age contemplated in any regulation made under section 20(1)(f);

(ii) pedigree stock which have been registered in a pedigree-register approved by the Registrar: Provided that such stock shall bear such marks or other means of identification as may be approved by the Registrar.

[a24y1995s12]12 Notification of change of address

If the owner of a registered brand changes his or her address, he or she shall within 14 days after such change, notify the Registrar in writing of his or her new address.

[a24y1995s13]13 Authorized persons and investigations

(1) This section, in so far as it provides for a limitation on the fundamental rights contemplated in Sub-Article (1) of Article 13 of the Namibian Constitution by authorizing interference with the privacy of any person's home, correspondence or communication, is enacted upon the authority conferred by that Sub-Article.

(2) The Registrar may, for the purposes of the effective application of this Act, at any time authorize one or more staff members in the public service under his or her control, who shall subject to the direction and control of the Registrar, exercise and perform the powers, duties and functions conferred or imposed upon an authorized person by or under this Act and perform such other functions as the Minister may determine.

(3) An authorized person shall at the time of his or her authorization be furnished with a certificate of authorization in the prescribed form.

(4) Subject to subsection (5), an authorized person may, for the purposes of the application of this Act-

(a) mutatis mutandis in accordance with chapter 2 of the Criminal Procedure Act, 1977 (Act 51 of 1977), at any reasonable time and without prior notice enter any premises and-

(i) inspect or cause to be inspected any stock, carcase or hide of any stock or branding iron or other instrument for marking of stock or any certificate or document issued or purporting to have been issued under this Act, found by him or her on or in such premises, and demand from the person in charge thereof any information regarding such stock, carcase, hide, branding iron, other instrument, certificate or document;

(ii) seize and remove or cause to be removed any such stock, carcase, hide, branding iron, other instrument, certificate or document which he or she may lawfully inspect under this section which in his or her opinion may afford evidence of a contravention of any provision of this Act;

(b) require a member of the Police, or request any other person, to assist him or her as an interpreter or otherwise in the exercise or performance of his or her powers, duties or functions under this Act.

(5) When an authorized person exercise or performs a power or duty under this Act in the presence of any person affected thereby, the authorized person shall on demand by such person produce to him or her the certificate issued to such authorized person in terms of subsection (3).

(6) A member of the Police required, or any other person requested, by an authorized person to assist him or her as provided in subsection (4)(b), may accompany such authorized person in the exercise or performance of his or her powers, duties or functions as if such member or person were an authorized person.

(7) Any employer, employee or other person in charge of any premises contemplated in subsection (4) on which persons are employed, shall at all times furnish such assistance as are reasonably required by an authorized person in order to enable him or her to exercise or perform his or her powers, duties or functions effectively.

(8) The Registrar may exercise any powers which are, under this section, conferred upon an authorized person.

(9) For the purpose of this section, "premises" includes any building or structure, or part thereof, whether above or below the surface of the land or water, or any vehicle, vessel or aircraft.

[a24y1995s14]14 Appeals

A person aggrieved by a decision of the Registrar under this Act may, within 60 days after the date of such decision, appeal to the Minister against such decision.

[a24y1995s15]15 Duties and powers of poundmaster

(1) If any stock bearing one or more registered brands are impounded in a pound, the poundmaster in question shall, in addition to any other notice which he or she may be required to give in terms of any other law, forthwith send by post or deliver or cause to be delivered to the owner of such brand or of the latest brand, as the case may be, a notice of such impoundment.

(2) The poundmaster shall be entitled to recover, on the release or sale of the stock in question, the prescribed fee in respect of a notice in terms of subsection (1).

[a24y1995s16]16 Prohibited branding of stock

No person shall-

(a) brand any stock with a registered brand without the authority of the owner of such brand;

- (b) brand any stock with a registered brand otherwise than in the prescribed manner;
- (c) brand any stock with a brand which is registered in the name of a person who is not the owner of such stock;
- (d) use more than one registered brand in respect of stock in the same stock brand area.

[a24y1995s17]17 Offences and penalties

- (1) Any person who-
 - (a) fails to comply with a provision of section 6(1), 10(2) or 12;
 - (b) fails to comply with or contravenes a provision of section 7;
 - (c) contravenes a provision of section 16;
 - (d) has in his or her possession without lawful reason, a branding iron that can be used for making or placing on stock a brand which he or she is, in terms of this Act, prohibited from making or placing on any stock;
 - (e) has in his or her possession any stock branded after the commencement of this Act, otherwise than in accordance with or in a manner allowed by the provisions of this Act;
 - (f) alters, mutilates or cancels any registered brand on any stock;
 - (g) without lawful reason has in his or her possession, or sells, or otherwise disposes of, or offers for sale or disposal in any other manner, to any other person any stock on which a registered brand has been altered, mutilated or cancelled;
 - (h) hinders or obstructs the Registrar or an authorized person or a member of the Police in the exercise of his or her powers or the performance of his or her duties under this Act;
 - (i) fails or refuses to produce, when required in terms of this Act by the Registrar or an authorized person or a member of the Police to do so, any stock, instrument, document or other article in his or her possession or under his or her control;
 - (j) with intent to evade or defeat the provisions of this Act, alters in any manner a certificate issued in terms of this Act;
 - (k) in terms of section 6 obtains for himself or herself, the registration of more than one brand in respect of stock kept in the same stock brand area;
 - (l) in an application made in terms of this Act, knowingly makes or causes to be made a statement which is false in a material respect;
 - (m) falsely represents himself or herself to be the Registrar or an authorized person,
- shall be guilty of an offence and liable on conviction to a fine not exceeding N\$4 000 or to imprisonment for a period not exceeding one year, or to both such fine and such imprisonment.

(2) Notwithstanding anything to the contrary contained in any law, a magistrate's court shall have jurisdiction to impose any penalty provided for in subsection (1).

[a24y1995s18]18 Proof of certain facts

In any legal proceedings a certificate purporting to have been issued by the Registrar regarding the registration or the transfer or cancellation of the registration of

a brand in terms of this Act, or the ownership of a registered brand, shall upon production in such proceedings be prima facie proof of the facts certified therein.

[a24y1995s19]19 Restriction of liability

No person, including the State, shall be liable in respect of anything done in good faith in the exercise or performance of a power or duty conferred or imposed by or under this Act.

[a24y1995s20]20 Regulations

(1) Subject to the other provisions of this Act, the Minister may make regulations in relation to-

- (a) anything which is required or permitted to be prescribed under this Act;
- (b) the size, shape, pattern and composition of prescribed brands;
- (c) the size, shape and construction of branding irons;
- (d) the person by whom, and the conditions under which, branding irons may be made, repaired, altered and supplied;
- (e) the manner in which persons who have ceased to be owners of registered brands, or their representatives, shall dispose of any branding irons relating to such brands;
- (f) the age which stock shall have attained before they may be branded;
- (g) the manner in which, the parts on which and the material with which stock shall or shall not be branded, and the position in which successive brands shall be made or placed in relation to one another on stock;
- (h) the fees payable in terms of this Act;
- (i) such other matters as the Minister may consider necessary or expedient to prescribe for the purposes of this Act.

(2)(a) The Minister may make different regulations in respect of different kinds of brands or stock and different stock brand areas.

(b) A regulation may prescribe penalties for any contravention of or failure to comply with its provisions, but not exceeding a fine of N\$2 000 or imprisonment not exceeding a period of six months.

[a24y1995s20A]20A Branding of animals other than stock

Notwithstanding the other provisions of this Act, the Minister may, by regulations and for the purpose specified by the Minister, require an owner of any kind of animal, not being stock, to brand that animal, in the prescribed manner, for that particular purpose.

[Sec 20A inserted by sec 1 of Act 7 of 2001.]

[a24y1995s21]21 Brands provided for in other laws

(1) Subject to the provisions of this section, the provisions of this Act shall be in addition to and not in substitution for the provisions of any other law not repealed by this Act authorizing or requiring the branding stock.

(2)(a) A person or the holder of an office required by the Minister to do so, shall within the period specified by the Minister, submit to the Registrar any brand with which any stock are authorized or required to be branded in terms of a law referred to in subsection (1).

(b) If the Registrar is satisfied that such brand is not so similar to a registered brand as to be easily confused with or convertible into such brand, he or she shall register such brand in the prescribed manner free of charge.

(c) If the Registrar is not so satisfied, he or she shall submit the matter to the Minister, who may make such order as he or she thinks fit for the registration of the brand in question or of any other brand in its stead.

(d) Upon registration of such other brand the use thereof shall be deemed to have been authorized or required, as the case may be, in terms of the relevant law instead of the brand in whose place it was so registered.

(3) If a brand is registered in terms of subsection (2), the other provisions of this Act shall not apply in respect thereof.

(4) The use of a brand referred to in subsection (3) in accordance with the law authorizing or requiring its use, shall not preclude the owner of the stock on which it is made or placed from making or placing or retaining on such stock any other appropriate brand registered in his or her name.

[a24y1995s21A]21A Powers of Minister to enter into Agreements

The Minister may enter into a written Agreement with any person to perform a particular act or render a particular service in respect of any matter related to the functions of the Registrar.

[Sec 21A inserted by sec 2 of Act 7 of 2001.]

[a24y1995s22]22 Delegation of powers

(1) The Minister may, subject to such conditions as he or she may determine, delegate or assign in writing to a staff member in the public service employed in the Ministry or to any person referred to in section 21A any power, duty or function conferred upon the Minister by or under this Act, other than a power conferred by sections 20 and 20A.

[Subsec (1) substituted by sec 3 of Act 7 of 2001.]

(2) The Registrar may, subject to such conditions as he or she may determine, delegate or assign to any such staff member under his or her control, any power, duty or function conferred upon the Registrar by or under this Act.

(3) The Minister or the Registrar, as the case may be, shall not be divested of a power, duty or function delegated or assigned under subsection (1) and he or she may amend or set aside anything done in the exercise of such power under such delegation or in the performance of such function or the carrying out of such duty under such assignment.

(4) The Minister or the Registrar, as the case may be, may at any time withdraw the delegation of a power or assignment of a function or duty in terms of subsection (1).

[a24y1995s23]23 State bound

This Act shall bind the State.

[a24y1995s24]24 Repeal of laws

The laws specified in column 2 of the Schedule are hereby repealed to the extent set out in column 3 thereof.

[a24y1995s25]25 Short title and commencement

(1) This Act shall be called the Stock Brands Act, 1995, and shall come into operation on a date to be determined by the Minister by notice in the Gazette.

(2) Different dates may be determined under subsection (1) in respect of different provisions of this Act.

(3) Any reference in any provision of this Act to the commencement of this Act shall be construed as a reference to the date determined under subsection (2) in relation to such provisions.

Schedule

LAWS REPEALED

No. and year of law	Title	Extent of repeal
Proclamation 15 of 1923	Native Stock Brands Proclamation, 1923	The whole
Ordinance 8 of 1931	Stock Brands Ordinance, 1931	The whole
Proclamation 59 of 1958	Rehoboth Gebiet (Further Extension of Laws)	
Proclamation, 1958	Section 2, in so far as it relates to the Stock Brands Ordinance, 1931 (Ordinance 8 of 1931)	
Proclamation 205 of 1959	Native Stock Brands Amendment Proclamation, 1959	
	The whole	

FISHERIES, FOREST AND WATER

[a28y 1991] NATIONAL FISHING CORPORATION OF NAMIBIA ACT 28 OF 1991

[ASSENTED TO 12 DECEMBER 1991] [DATE OF COMMENCEMENT: 27 DECEMBER 1991]

(Signed by the President)

ACT

To provide for the formation of the National Fishing Corporation of Namibia Limited, a company with the object of exploiting the fish and other marine resources and promoting the establishment, development and efficiency of other businesses engaged in the fishing industry; and to provide for matters incidental thereto.

ARRANGEMENT OF SECTIONS

- 1 Definitions
- 2 Incorporation of the Corporation
- 3 Application of provisions of Companies Act
- 4 Memorandum and Articles of Association of corporation
- 5 Certain provisions to be included in Memorandum of Association
- 6 Certain provisions to be included in Articles of Associations
- 7 Amendment of Memorandum and Articles of Association
- 8 Shares shall be registered in name of beneficial owner
- 9 Representative appointed by Minister
- 10 Information to be furnished to Minister and to National Assembly
- 11 Procedure for election of private directors
- 12 Winding-up and judicial management
- 13 Transfer of certain assets and rights to Corporation
- 14 Exemptions from liability
- 15 Short title

[a28y1991s1]1 Definitions

In this Act, unless the context indicates otherwise-

"board" means the board of directors of the Corporation;

"Companies Act" means the Companies Act, 1973 (Act 61 of 1973) as amended;

"Corporation" means National Fishing Corporation of Namibia Limited;

"director" includes alternate director;

"Government" means the Government of the Republic of Namibia;

"fishing industry" means the fishing industry of the Republic of Namibia and includes the whole of the trade engaged in the exploitation of the fish and other marine resources (including aquatic plants, salt and guano), the buying, selling, processing (including preserving or preparing fish or marine products, and manufacturing by any method products wholly or partly derived from fish or other marine resources), and the marketing of fish, fish products and other marine resources or products wholly or partly derived therefrom;

"Minister" means the Minister of Fisheries and Marine Resources;

"Namibia" means the Republic of Namibia;

"private shareholder" means any holder of shares in the Corporation other than the Government as holder of Class A and Class B shares;

"Registrar" means the Registrar of Companies appointed under the Companies Act.

[a28y1991s2]2 Incorporation of the Corporation

(1) There shall be a corporate body to be known as National Fishing Corporation of Namibia Limited.

(2) On the issue by the Registrar of the certificates referred to in subsection (4), the Corporation shall be deemed to be a public company incorporated under the Companies Act.

(3) The Minister shall submit to the Registrar the Memorandum and Articles of Association of the Corporation which shall be signed by the Minister.

(4) The Registrar shall register the Memorandum and Articles referred to in subsection (3), issue a certificate under his or her hand and seal that the Corporation is incorporated as a public company under the Companies Act, and issue a certificate entitling the Corporation to commence business.

(5) The Registrar shall issue such directives and authorise such deviations from the regulations made under the Companies Act and the documents prescribed in terms thereof as he or she may consider necessary in order to give effect to the provisions of this Act.

(6) No registration fee or any other fee payable in terms of the Companies Act shall be payable to the Registrar in respect of the registration of the Corporation or the certificate entitling it to commence business.

[a28y1991s3]3 Application of provisions of Companies Act

(1) The provisions of the Companies Act shall apply to the Corporation, save for-

(a) those provisions of the Companies Act that are inconsistent with the provisions of this Act;

(b) sections 73, 103(1), 193, 195, 208(2) and 221 until the first annual general meeting of the Corporation.

(2) Save for the provisions of section 7 of this Act and any other provisions of the Companies Act or any other law, the exclusion of which may be inconsistent with this Act, the Minister may, by notice in the Gazette, exclude the application to the Corporation of any provision of the Companies Act or any other law relating to companies, or render such provision or law applicable subject to such modification as the Minister may deem fit, and the Minister may withdraw or amend such notice.

[a28y1991s4]4 Memorandum and Articles of Association of corporation

(1) The Memorandum and Articles of Association of the Corporation submitted to the Registrar in terms of section 3 shall include the provisions contained in sections 5 and 6 of this Act.

(2) The Minister shall lay copies of the Memorandum and Articles of Association of the Corporation, and of all amendments thereto, upon the Table of the National Assembly within fourteen days after their registration if the National Assembly is then in ordinary session or, if the National Assembly is not then in ordinary session, within fourteen days after the commencement of its first ensuing ordinary session.

[a28y1991s5]5 Certain provisions to be included in Memorandum of Association

The Memorandum of Association of the Corporation shall on registration include the following provisions-

"(1) Main objects.

The main objects of the Corporation shall be:

- (a) to carry on the business of-
 - (i) exploiting the fish and other marine resources, including aquatic plants, salt and guano; and
 - (ii) buying, selling, processing and marketing of fish, fish products, such other marine resources or products derived therefrom and manufacturing fish products and products wholly or partly derived from such other marine resources; and
 - (iii) facilitating, promoting, guiding and assisting in the financing of:
 - (aa) new businesses and undertakings; and
 - (bb) the expansion, better organisation and modernisation of
- and the more efficient carrying out of operations in existing businesses and undertakings,

to engage, or be engaged, in the fishing industry.

(b) to undertake research or other projects and to carry out such other activities for the development of the fishing and marine sector, or any related sector, as shall be agreed from time to time with the Minister or with any other person or body, local or foreign, provided that the Corporation shall be compensated for any costs incurred in undertaking or carrying out any such activities;

(c) to finance, by funds transferred to the Corporation by the Government, such operations or projects of such businesses and undertakings engaged in the fishing industry as the Minister may specify, and to enter into contracts with such businesses and undertakings to ensure that the operations or projects specified by the Minister are carried out.

(2) General principles on which Corporation's powers to be exercised.

The Corporation shall exercise its powers with a view to enhancing corporate profit and shareholder gain, taking into account the enhancement of corporate profit and shareholder gain by the Corporation in the promotion of an economically prosperous and efficient fishing industry conducted on sound business principles.

(3) Share capital.

The share capital of the Corporation shall be R300 000 000 (Three Hundred Million Rands) divided into:-

(a) 51 000 000 (Fifty One Million) Class A shares of R1,00 each;

(b) 200 000 000 (Two Hundred Million) Class B shares of R1,00 each;

(c) 19 600 000 (Nineteen Million Six Hundred Thousand) Class C shares of R1,00 each;

(d) 14 700 000 (Fourteen Million Seven Hundred Thousand) Class D shares of R1,00 each;

(e) 14 700 000 (Fourteen Million Seven Hundred Thousand) Class E shares of R1,00 each.

(4) Variation of rights.

Subject to the provisions of the Memorandum of Association restricting the Corporation's power to vary the rights attached to classes of shares, the Corporation may from time to time alter its capital and its shares in the ways and in the manner provided by section 75 of the Companies Act.

(5) Allotment of shares other than for cash.

In the event of any Class A or Class B shares in the Corporation being allotted or issued otherwise than for cash, the value of the consideration given for such shares shall be determined by an accountant and auditor registered under the Public Accountants' and Auditors' Act, 1951 (Act 51 of 1951) appointed by the Minister for that purpose, or by such other person appointed by the Minister by reason of his or her special knowledge or experience, to value such consideration.

(6) Restriction on holding of shares.

(a) Only the Government shall be entitled to hold Class A and Class B shares in the Corporation;

(b) Only citizens of Namibia who are permanently resident in Namibia shall be entitled to hold Class C shares in the Corporation;

(c) Only companies incorporated in Namibia and in which the majority of issued share capital is held by citizens of Namibia shall be entitled to hold Class D shares in the Corporation;

(d) Only companies or other corporate bodies (whether incorporated in or outside Namibia) in which the majority of issued share capital is held by persons other than citizens of Namibia shall be entitled to hold Class E shares in the Corporation;

(e) Notwithstanding the provisions of paragraphs (b), (c) and (d) of this clause, the Government shall be entitled to subscribe for such of the Class C, Class D and Class E shares as are not taken up upon the conclusion of any offer of such shares for public subscription.

(7) Voting rights.

The voting rights attached to the shares of the Corporation are-

(a) The Government as holders of Class A shares in the Corporation shall, irrespective of the number of Class A shares held, be entitled to 51 000 000 (Fifty One Million) votes;

(b) No voting rights shall be attached to Class B shares;

(c) The holders of Class C, Class D and Class E shares shall be entitled to one vote for each share held by them.

(8) Dividends.

Any dividends paid by the Corporation shall be paid as follows-

(a) 15% of the total dividend to the Government as the holders of Class A shares;

(b) No dividend shall be paid to the holder of Class B shares;

(c) 34% of the total dividend to the holders of Class C shares pro rata to their shareholding;

(d) 25,5% of the total dividend to the holders of Class D shares pro rata to their shareholding; and

(e) 25,5% of the total dividend to the holders of Class E shares pro rata to their shareholding;

provided that if the nominal capital of the Class C, Class D or Class E shares has not been fully subscribed, the percentage of such dividend payable to the holders of shares of that class shall be reduced to a percentage which bears the same proportion to the percentage dividend allocated to that class of share as the number of issued shares of that class bears to the nominal share capital of that class.

(9) Ranking of shares on winding-up.

In the event of the winding-up of the Corporation, all shares shall rank pari passu for all purposes and in all respects.

(10) Variation of rights.

(a) The rights, whether contained in the Memorandum or the Articles of Association, attached to a class of shares may be varied only with the consent in writing of the holders of three-fourths of the issued shares of that class or with the sanction of a resolution passed at a separate general meeting of the holders of the shares of the class, and the provisions of section 199 of the Companies Act shall mutatis mutandis apply to the said resolution and meetings as if the resolution were a special resolution. To every such separate general meeting, the provisions of the Articles of Association relating to general meetings shall mutatis mutandis apply but so that the necessary quorum, unless the class concerned has only one member, shall be two persons holding or representing by proxy at least half of all the issued shares of that class.

(b) The variation of rights referred to in paragraph (a) shall be deemed to include any abrogation of rights and any alteration of the issued share capital that will increase the votes of only a certain class or classes of shares, or that will not increase the votes of all the classes of shares equally."

[a28y1991s6]6 Certain provisions to be included in Articles of Associations

The Articles of Association of the Corporation shall on registration include the following provisions, which provisions may be amended in accordance with the provisions of the Companies Act-

"(1) Board of directors.

The affairs of the Corporation shall be managed, controlled, supervised, evaluated and reviewed by a Board of Directors, which may exercise all such powers of the Corporation as are by the Companies Act or these Articles of Association required to be exercised by the shareholders of the Corporation at a general meeting of shareholders.

(2) Share qualification.

It shall not be necessary for any director to hold any shares in the Corporation in order to qualify himself or herself as such.

(3) Remuneration of directors.

(a) A director who is not in the full-time employment of the State shall hold office upon such conditions, including conditions as to remuneration and allowances, as may be determined by the board.

(b) An alternate director who is not in the full-time employment of the State shall be remunerated, as determined by the board, out of the remuneration which is due to the director in whose place he or she is acting or which would have become due to such director if he or she had acted as director.

(c) If a director or alternate director performs any work on behalf of the Corporation other than his or her work as a director or holds any office in the employ of the Corporation other than his or her office of director, such director may be paid such additional remuneration as the board may determine.

(4) Chairperson.

(a) The directors shall appoint one of their number as chairperson of the board who shall preside at all meetings of the board at which he or she is present and who, in the event of an equality of votes on any matter, shall have a casting vote in addition to his or her deliberative vote.

(b) If at any meeting the chairperson is not within ten minutes of the time appointed for holding the same present or willing to act as chairperson thereof, the directors present shall choose someone of their number to be chairperson of such meeting, and the person so acting shall have a casting vote in addition to his or her deliberative vote.

(5) Chief executive officer.

(a) The board may from time to time, on such conditions as it may determine, appoint one of its members or any other person who is not a member of the board as chief executive officer of the Corporation.

(b) The chief executive officer shall occupy himself or herself full-time with the affairs of the Corporation and shall perform such functions as the board may assign to him or her.

(c) The board may from time to time delegate to the chief executive officer such of its powers subject to such conditions as it may deem fit.

(d) If the chief executive officer is for any reason unable to act as such the board may appoint any other member of the board or any other person to act as chief executive officer during the period that the chief executive officer is unable to act as such.

(e) A director or other person appointed to act as chief executive officer under paragraph (d) shall while so acting have all the powers and perform all the duties of the chief executive officer.

(6) Number of directors.

The board shall consist of eight directors of whom-

- (a) one shall be the Permanent Secretary: Fisheries and Marine Resources;
 - (b) four shall be persons who are not officers or employees in the Public Service and who shall be appointed by the Minister; and
 - (c) three shall be elected by the private shareholders in a manner prescribed by the Minister by notice in the Gazette;
- provided that if at any time the number of directors holding office is less than eight, the directors holding office shall for all purposes constitute the board of directors of the Corporation.

(7) Directors holding office of profit.

Not more than three directors (including the chief executive officer if he or she is a director) may hold an office of profit under the Corporation.

(8) Alternate directors.

(a) The Minister may in respect of the director referred to in paragraph (a) of clause (6) and every director appointed under paragraph (b) of that clause, appoint an alternate director to act in the place of such director during his or her absence or inability to act as a member of the board.

(b) Each director elected by the private shareholders may appoint a person approved by the board to act as alternate director in his or her place during his or her absence or inability to act as member of the board.

(9) Period of office of directors.

(a) A director other than the director referred to in paragraph (a) of clause (6) shall, subject to the provisions of these articles, hold office for such period, not exceeding three years as-

(i) in the case of a director appointed by the Minister, the Minister determined at the time of his or her appointment;

(ii) in the case of a director elected by the private shareholders, the private shareholders determined at the time of his or her election.

(b) A director shall be eligible for re-appointment or re-election, as the case may be, after the expiration of his or her term of office.

(10) Disclosure of directors' interests.

(a) A director who has, directly or indirectly, an interest or duty which is material and which conflicts or may conflict with the interests of the Corporation shall disclose that interest or duty to the board in the manner provided by sections 234 to 237 of the Companies Act, and such disclosure shall be deemed to constitute disclosure to the Corporation.

(b) A director shall not vote at a meeting of directors or of a committee of directors on any resolution concerning a matter in which he or she, directly or indirectly, has an interest or duty which is material and which conflicts or may conflict with the interests of the Corporation, and he or she shall not be counted in the quorum present at a meeting in relation to a resolution on which he or she is not entitled to vote."

[a28y1991s7]7

Amendment of Memorandum and Articles of Association

After registration of the Corporation by the Registrar, the Memorandum and Articles of Association of the Corporation may only be amended as provided by the Companies Act, notwithstanding anything to the contrary in this Act contained.

[a28y1991s8]8 Shares shall be registered in name of beneficial owner

(1) No shares shall be registered in the name of any person other than that of its beneficial owner.

(2) The shares of a beneficial owner who causes or permits his or her shares to be registered in a name other than his or her own shall be forfeited to the State.

[a28y1991s9]9 Representative appointed by Minister

(1) The Minister shall appoint a representative to attend a meeting or meetings of the shareholders and to vote thereat on behalf of the Government.

(2) Such representative shall have the right-

(a) to requisition the directors to call a meeting of the shareholders and give the members notice of any resolution he or she intends to move at any general meeting;

(b) to require that any resolutions he or she moves at any meeting of shareholders, of which the members have been given due notice, be put to the meeting; and

(c) to demand that a poll be taken on any question, including the election of a chairperson of the meeting and the adjournment of the meeting.

(3) If at the time and place appointed for a meeting of shareholders, no private shareholders are present in person or represented by proxy, a resolution signed by the representative of the Minister shall be deemed to be a resolution of shareholders taken at a meeting of shareholders.

[a28y1991s10]10 Information to be furnished to Minister and to National Assembly

(1) The Corporation shall on the day on which it sends copies of the annual financial statements to its members as provided in subsection (1) of section 302 of the Companies Act, send to the Minister a copy, certified to be a true copy by a director and the secretary of the Corporation of-

(a) the annual financial statements and group annual financial statements, if any;

(b) the annual financial statements of every private company which is a subsidiary of the Corporation; and

(c) the directors' report, which report shall, in addition to the information required by section 299 of the Companies Act, deal with what the Corporation has done and plans to do, and with what the directors consider can be done by the Government, to improve the efficiency and otherwise promote the fishing industry.

(2) The Minister shall lay copies of the report and the financial statements referred to in subsection (1) upon the Table of the National Assembly within fourteen days after receipt thereof by the Minister, if the National Assembly is then in ordinary session or, if the National Assembly is not then in ordinary session, within fourteen days after the commencement of its first ensuing ordinary session.

[a28y1991s11]11 Procedure for election of private directors

The Minister may, by notice in the Gazette, determine the procedure for the election of the directors required to be elected by the private shareholders.

[a28y1991s12]12 Winding-up and judicial management

The Corporation shall not be wound up or placed under judicial management except by or under the authority of an Act of Parliament.

[a28y1991s13]13 Transfer of certain assets and rights to Corporation

(1) In this section-

"promoters" means the two persons who in terms of a resolution taken on 1 September 1987 by the former Cabinet under the Administration of the Administrator-General before Namibia's independence were appointed for the purpose of forming a public company to procure interests in the fishing industry for the benefit of the inhabitants of Namibia;

"trust" means the assets and rights which were acquired by or accrued to the promoters in their capacities as trustees of the public company they were commissioned to form, and includes any assets and rights held by any other person for or on behalf of such company, which assets and rights shall be deemed to be a trust for the purposes of this section.

(2) The Minister shall, on such conditions as the Minister may determine, appoint a person whom the Minister deems fit to take charge of the trust and dispose of it in accordance with the provisions of this section.

(3) On the appointment of a person under subsection (2), the trust shall vest in such person who shall deal with it in a manner which shall be most beneficial to the trust for the purpose of the vesting of the net assets and rights of the trust in the Corporation in terms of subsection (7).

(4) The person appointed under subsection (2) may-

(a) make such investigations as he or she may deem necessary in order to establish what the assets, rights, obligations and liabilities of the trust are;

(b) subject to the approval of the Minister, enforce any right, liquidate any assets, or fulfil any obligation or liability of the trust;

(c) subject to the approval of the Minister, dispute or settle any claim against the trust;

(d) demand or obtain from any person any information or any document, book or voucher in the possession or under the control of any person in relation to the affairs of the trust.

(5) Any person who fails or refuses to comply with a demand made in terms of paragraph (d) of subsection (4) by the person concerned, shall be guilty of an offence and on conviction liable to a fine not exceeding R4 000 or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

(6) If the President deems it necessary for the proper discharge of the functions of the person appointed under subsection (2), the President may by proclamation in the Gazette declare the provisions of the Commissions Act, 1947 (Act 8 of 1947), to be applicable with reference to the person so appointed, subject to such modifications and exceptions as may be specified in such proclamation, as if the person so appointed were a commission contemplated in section 1 of that Act.