



Republic of Namibia
Annotated Statutes

Marketing Act 59 of 1968 (RSA)

(RSA GG 2107)

came into force in South Africa and in South West Africa in relation to karakul pelts on date of publication: 26 June 1968 (section 99 of original Act); came into force in South West Africa in its entirety on 7 July 1971 when Act 78 of 1971 came into force (section 99 of the Act as substituted by Act 78 of 1971)

APPLICABILITY TO SOUTH WEST AFRICA: Section 99 of the original Act stated “The provisions of this Act, in so far as they relate to karakul pelts, shall also apply in the territory of South-West Africa.” Section 99(1), as amended by Act 78 of 1971, states “This act and any amendments thereof shall apply also in the territory, including the Eastern Caprivi Zipfel.” Section 99(2) states “Any proclamation, regulation or notice issued or made under this Act prior to the commencement of the Marketing Amendment Act, 1971, and which does not apply in the territory immediately prior to such commencement, shall, subject to the provisions of this Act, not apply in the territory.” In definitions inserted by Act 78 of 1971, “Republic” includes “the territory”, which is defined as “the territory of South West Africa”.

TRANSFER TO SOUTH WEST AFRICA: The administration of this Act was transferred to South West Africa by the Executive Powers (Agricultural Economics and Marketing) Transfer Proclamation, AG 18 of 1977, dated 20 December 1977. None of the amending acts in South Africa after the date of transfer were made expressly applicable to South West Africa. The *Marketing Amendment Act 79 of 1987* (RSA GG 10956) repealed section 99 of the Act (concerning applicability to South West Africa) in South Africa, but this amending Act was not applicable to South West Africa because it was not made expressly so applicable.

The provisions of the Act which relate to the Karakul Scheme published under the Act in Proclamation R.172 of 1968 (RSA GG 2112), and the Wool Scheme published under the Act in Proc. R.155 of 1972 (RSA GG 3585) were excluded from the operation of section 3(1) of the General Proclamation, meaning that they were not transferred to South West Africa. However, the Executive Powers (Agricultural Economics and Marketing) Transfer Proclamation, AG 18 of 1977, was amended by the Karakul Scheme Amendment Proclamation AG 41 of 1978 (OG 3771), to remove the references to the Karakul Scheme from this exemption with effect from 1 July 1978.

The provisions of the Act relating to boards and control bodies relevant to these schemes were excluded from transfer by section 3(2)(b) of the Executive Powers Transfer (General Provisions) Proclamation, AG 7 of 1977, which exempted from the operation of section 3(1) of the that Proclamation “those provisions of any law... which provide for or relate to the institution, constitution or control of any juristic person or any board or any other body of persons that may exercise powers or perform other functions in or in respect of both the territory and the Republic”.

as amended by

Marketing Amendment Act 52 of 1969 (RSA) (RSA GG 2384)

came into force on date of publication: 7 May 1969

Marketing Amendment Act 69 of 1970 (RSA) (RSA GG 2864)

came into force on date of publication: 7 October 1970

Marketing Amendment Act 78 of 1971 (RSA) (RSA GG 3189)

came into force on date of publication: 7 July 1971

Marketing Amendment Act 68 of 1972 (RSA) (RSA GG 3558)

came into force on date of publication: 14 June 1972

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Marketing Amendment Act 31 of 1973 (RSA) (RSA GG 3860)

came into force on date of publication: 18 April 1973

Marketing Amendment Act 73 of 1974 (RSA) (RSA GG 4501)

came into force on date of publication: 20 November 1974;

amended by the Marketing Amendment Act 38 of 1975

Marketing Amendment Act 38 of 1975 (RSA) (RSA GG 4701)

came into force on date of publication: 7 May 1975

Marketing Amendment Act 50 of 1976 (RSA) (RSA GG 5075)

came into force on date of publication: 9 April 1976

Marketing Amendment Act 109 of 1977 (RSA) (RSA GG 5661)

came into force on date of publication: 20 July 1977, with the exception of section 10 of the amending Act (which amended section 28 of Act 59 of 1968), which came into force on 1 July 1978 (after the date of transfer to South West Africa) and so was not applicable to South West Africa

Marketing Amendment Act 19 of 1980 (OG 4293)

deemed to have come into operation on 17 July 1980 (section 3 of Act 19 of 1980)

Meat Industry Act 12 of 1981 (OG 4506)

brought into force on 8 December 1981 by AG Proc. 30/1981 (OG 4553);

since re-named the Livestock and Livestock Products Act 12 of 1981 (GG 8182)

Karakul Pelts and Wool Act 14 of 1982 (OG 4707)

brought into force on 22 November 1982 by AG 30/1982 (OG 4709)

Act 12 of 1981 repealed the Act in South West Africa “in so far as it relates to controlled products”, which are defined by Act 12 of 1981 as “livestock, meat or meat products”.

Act 14 of 1982 repealed the Act and any scheme in operation thereunder, “insofar as it relates to karakul pelts or wool”.

ACT

To consolidate the laws providing for the regulation of the production and sale of agricultural products; for the establishment of certain boards in connection therewith; for the establishment of a national mark; for the grading and standardization of agricultural products; and for matters incidental thereto.

(Afrikaans text signed by the State President)

(Assented to 12th June, 1968)

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SCHEDULE 1

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Products

PART B

Definitions of or relating to products

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Laws Repealed

BE IT ENACTED by the State President, the Senate and the House of Assembly of the Republic of South Africa, as follows:-

Definitions

1. (1) In this Act, unless inconsistent with the context, any definition contained in Part B of Schedule 1 applies generally, and -

“class”, in relation to any product, includes, except (in the case of a regulated product) to the extent excluded in the relevant scheme, any kind or variety of such product and any category of such product determined according to -

- (a) the size, mass, measure, number, measurements, colour, appearance, purity, composition or other feature or characteristic of such product or of a unit or quantity thereof;
- (b) the country, area, place or premises in, upon, to or from which, the person or class of persons by, to or through whom, the manner in which, the time at which, the conditions under which, or the purpose for which such product is or has been produced, consigned, conveyed, delivered, received, kept, treated, processed, manufactured, packed, sold, acquired, used or dealt with in any other manner, or any other act in connection therewith is or has been performed,

or on the basis of any other circumstance or matter in connection with such product, and the words “classify”, “reclassify”, “classification” and “reclassification” have corresponding meanings;

[definition of “class” substituted by Act 69 of 1970 and amended by Act 68 of 1972]

“cold storage” means any place or building having a total storage capacity in excess of twenty-eight cubic metres, where perishable products are stored, kept or preserved at low temperatures;

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[definition of “cold storage” substituted by Act 68 of 1972]**[definition of “consumers’ committee” deleted by Act 109 of 1977]**

“control board” means the board which administers a scheme or is to administer a proposed scheme, as the context may require;

“co-operative society” or “co-operative company” means any co-operative agricultural society or cooperative agricultural company registered under the law relating to co-operative societies and companies;

“dealing in the course of trade”, in relation to any product, includes, except to the extent excluded in any scheme for that product -

- (a) every purchase and every act performed in the manufacture or processing of that product by any person, if the product so purchased, manufactured or processed, or any quantity thereof, is or is intended to be disposed of by that person for any consideration whatsoever, whether in the form in which it was purchased or into which it was manufactured or processed or in any other form, or is used or is intended to be used in the manufacture or processing of any product or commodity disposed of, or intended to be disposed of, by that person for any consideration whatsoever;
- (b) every purchase and every act performed in the manufacture, processing or preparation of that product by any person, if the product so purchased, manufactured, processed or prepared or any quantity thereof, is or is intended to be supplied, in any form whatsoever and whether separately or as part of any meal or dish, to any other person not being a member of the first-mentioned person’s household or a *bona fide* non-paying guest of himself or of a member of his household; and
- (c) for the purposes of sections 59(1)(b), 52(1) or (2)(b), and 54, the processing, treatment, storage, conveyance or sale of that product on behalf of the owner thereof;

“marketing council” means the National Marketing Council referred to in section 2;

“Minister” means the Minister of Agriculture;

“plant material”, in relation to a product, means the seed, plant or tree from which that product is derived, or any portion of such seed, plant or tree;

[definition of “plant material” substituted by Act 68 of 1972]

“processing”, except in the definition of “producer” and in the definitions, in Part B of Schedule 1, of a barley, kaffircorn, maize, oaten, rye and wheaten product, respectively, includes, in relation to -

- (a) a cereal, the threshing thereof;
- (b) groundnuts, peas and beans, the shelling thereof;
- (c) a slaughter animal, the slaughtering thereof and its separation into meat and by-products;
- (d) eggs, the removal of the shells thereof;

[definition of “processing” amended by Act 52 of 1969]

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“producer” for the purposes of any scheme relating to any product, or of any notice relating to a product in respect of which no scheme is in force, includes, to the extent defined in the scheme or notice -

- (a) any person concerned in the production, manufacture or processing of that product;
- (b) in relation to any quantity of that product which has been acquired from any person as a consideration for the right to use land on which that person has produced a quantity of that product, or as remuneration for services rendered to a producer of that product, the person who so acquired that quantity;
- (c) in relation to any quantity of that product which is imported into the Republic, or into the Republic, excluding the territory, or into the territory, the person who so imports that quantity;
- (cA) in relation to any quantity of that product which has been produced in a self-governing territory and is introduced into an area in which such scheme or notice applies, for the purpose of sale or processing therein, the person who so introduces that quantity;
- (d) in relation to any cereal obtained by the threshing of any unthreshed quantity thereof acquired from any person, the person by whom or, if such person is not the owner, the person on whose behalf that quantity has been so threshed;
- (e) in relation to a slaughter animal, or any by-product derived from a slaughter animal, the owner of the animal;
- (f) in relation to -
 - (i) wool or mohair shorn from an animal or removed from a skin, the owner of the animal or the skin, as the case may be;
 - (ii) wool or mohair on skins, the person on whose behalf the skin was flayed;
 - (iii) dead wool or mohair collected by any person, the person on whose behalf the wool or mohair was collected; and

for the purposes of a scheme for milk, skim milk or cream intended for human consumption in the form of milk, skim milk or cream, or for the manufacture of ice cream or of any other article other than dairy produce as defined in the Dairy Industry Act, 1961 (Act No. 30 of 1961), any person who produces any such product anywhere for sale in the area in respect of which the scheme is proposed or in which it applies, shall be deemed to be a producer of such product in that area;

**[definition of “producer” amended by Act 69 of 1970, Act 78 of 1971,
Act 68 of 1972 and Act 38 of 1975]**

“product” means any commodity specified in Part A of Schedule 1 or declared to be a product under subsection (2);

“reference board” means the Agricultural Reference Board referred to in section 7A;

[definition of “reference board” inserted by Act 31 of 1973]

“regulated product” means a product in respect of which a scheme is in force;

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“Republic” includes the territory;

[definition of “Republic” inserted by Act 78 of 1971]

“scheme” means a set of rules complying with the requirements of this Act in relation to any one or more of the following, namely -

- (a) the regulation of the marketing of any product in the Republic;
- (b) the regulation of the export for sale of any product from the Republic, or from the Republic, excluding the territory, or from the territory;
- (c) the promotion of the demand for any product whether within or outside the Republic;
- (d) the promotion of research relating to any product,

and matters incidental thereto, and includes any proposed scheme;

[definition of “scheme” inserted by Act 78 of 1971]

“Secretary” means the Secretary for Agricultural Economics and Marketing;

“self-governing territory” means -

- (a)
- (b) an area declared under section 26 of the Bantu Homelands Constitution Act, 1971 (Act No. 21 of 1971), to be a self-governing territory; or
- (c) an area declared under section 17A of the Development of Self-government for Native Nations in South-West Africa Act, 1968 (Act No. 54 of 1968), to be a self-governing area;

[The definition of “self-governing territory” is inserted by Act 38 of 1975 and amended by Act 109 of 1977. The Native Laws Amendment Proclamation, AG 3 of 1979 (OG 3898) – deemed to have come into force in relevant part on 1 August 1978 (section 5 of AG 3 of 1979) – provides that “there is hereby substituted for the word ‘Bantu’ wherever it occurs in any law as a reference to a person or persons, the word ‘Black’ or ‘Blacks’, as the context in question may require”. It is not clear if this directive would apply to the name of a law, and so the name “Bantu Homelands Constitution Act” has not been changed here. In any event, this provision is of no relevance in independent Namibia.]

“sell” includes to export, offer, advertise, keep, expose, transmit, convey, deliver or prepare for sale or to exchange or to dispose of for any consideration whatsoever or to export, transmit, convey or deliver in pursuance of a sale, exchange or disposal as aforesaid, and the words “seller”, “selling”, “sale” and “sold” have corresponding meanings;

“specified power” means a power which a scheme may confer on its control board under section 58, 59(3)(b) or (5), 60, 61, 62, 63(1), 64, 66, 67, 68, 69, 70, 71, 72, 73, 74, 76 or 77.

[The full stop at the end of the definition of “specified power” should be a semicolon now that this definition is no longer the last one in the list.]

“the territory” means the territory of South-West Africa.

[definition of “the territory” inserted by Act 78 of 1971]

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- (2) (a) The State President may by proclamation in the *Gazette* declare any commodity to be a product for the purposes of this Act.
- (b) Every proclamation issued under paragraph (a) shall be laid upon the Table of the Senate and of the House of Assembly within fourteen days after the date of publication thereof, if Parliament is then in ordinary session, or, if Parliament is not then in ordinary session, within fourteen days after the commencement of its next ensuing ordinary session.
- (3) For the purposes of this Act -
- (a) any product imported into the Republic, excluding the territory, or into the territory shall, for the purposes of any scheme relating to such product, be deemed to have been produced in the Republic, excluding the territory, or in the territory, as the case may be, except in so far as the scheme provides otherwise;
- (b) any person who manufactures or processes any quantity of any product which he has imported into the Republic, excluding the territory, or into the territory, shall be deemed to sell that quantity, except in so far as the scheme provides otherwise.

[subsection (3) amended by Act 52 of 1969 and substituted by Act 78 of 1971]

PART 1

THE NATIONAL MARKETING COUNCIL
AND THE AGRICULTURAL REFERENCE BOARD

[heading substituted by Act 31 of 1973 and by Act 109 of 1977]

The National Marketing Council

2. (1) There shall be a council to be known as the National Marketing Council which shall consist of a chairman and seven other members, all of whom shall be appointed by the Minister, and one of whom shall be designated by him as deputy chairman for such period as he may determine: Provided that either the chairman or the deputy chairman shall be an officer of the Department of Agricultural Economics and Marketing.

[subsection (1) substituted by Act 109 of 1977]

(2) The deputy chairman shall exercise all the powers and perform all the duties of the chairman whenever the chairman or, where an acting chairman has been appointed under subsection (7), the acting chairman is unable to function as such.

(3) The members of the marketing council who are not officers of the Department of Agricultural Economics and Marketing shall be appointed for such period not exceeding four years as the Minister may in each case determine, and at such salary or other remuneration and on such conditions as the Minister may from time to time with the concurrence of the Minister of Finance determine.

[subsection (3) substituted by Act 109 of 1977]

(4) Every member of the marketing council, other than an officer of the Department of Agricultural Economics and Marketing, shall devote all his time to his duties as such a member, unless it is otherwise provided in the conditions of his appointment.

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(5) A member of the marketing council who is an officer of the Department of Agricultural Economics and Marketing shall, subject to the provisions of the law governing the public service, hold office during the Minister's pleasure, and may be paid such allowances, in addition to his salary as an officer in the public service, as the Minister may, on the recommendation of the Public Service Commission and with the concurrence of the Minister of Finance, determine.

[subsection (5) substituted by Act 109 of 1977]

(6) A member of the marketing council whose period of office has expired, shall be eligible for re-appointment.

(7) The Minister may from time to time appoint, at such salary or other remuneration and on such conditions as he may from time to time determine, an acting chairman to exercise all the powers and perform all the duties of the chairman while the office of chairman is vacant.

[subsection (7) substituted by Act 109 of 1977]

(8) Whenever any member of the marketing council ceases to hold office before the expiration of the period for which he was appointed, the Minister may appoint any other person to fill the vacancy until the expiration of that period.

[subsection (8) substituted by Act 109 of 1977]

(9) Whenever the Minister is satisfied that any member of the marketing council is prevented by illness, absence or any other cause from performing the duties of his office, the Minister may appoint any other person whom he considers suitable to act as the deputy of that member while he is so prevented, and such deputy shall during the period he so acts, perform the functions of the member in whose stead he has been appointed so to act: Provided that a person appointed as the deputy of the chairman or the acting chairman or the deputy chairman shall perform only the duties of an ordinary member unless the Minister otherwise directs.

Meetings of the marketing council

3. (1) The meetings of the marketing council shall be held at such times and places as it may determine from time to time.

(2) The quorum for a meeting of the marketing council shall be four of the members thereof.

[subsection (2) substituted by Act 109 of 1977]

(3) A decision of the majority of the members present at any meeting of the marketing council shall be the decision of the council: Provided that in the event of an equality of votes the person presiding at the meeting shall have a casting vote in addition to his deliberative vote.

Functions, powers and duties of the marketing council

4. (1) The marketing council may -

(a) on the instructions of the Minister, investigate, or cause to be investigated, marketing conditions in general or in any province, or the conditions relating to any particular product, or ruling on any market;

(b) examine and report to the Minister on any scheme which he may refer to it;

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- (c) draft and submit to the Minister any scheme which it may deem necessary or which the Minister may require it to draft;
- (d) from time to time examine any scheme which is in operation in terms of this Act and report thereon to the Minister and, in connection with such examination, inspect, or cause to be inspected, the books, records, and other documents of the board which administers that scheme;
- (e) assist in the organization of any control board and require any such board to furnish the marketing council with such information as it may deem necessary for the proper performance of its functions;
- (f) attend any meeting of any control board or any committee of a control board and participate in the proceedings at such meeting in an advisory capacity, or authorize one or more of its members, or any officer designated by the Minister, to attend any such meeting and so to participate in the proceedings;
- (g) cause the books of account of any control board to be audited, and consider the report of the person who audited such books of account, and recommend to the Minister any action which it may consider necessary in connection with any such report;
- (h) recommend to the Minister the prohibition or the regulation of the importation of any product into the Republic, or into the Republic, excluding the territory, or into the territory, generally or from any particular country or territory;

[paragraph (h) substituted by Act 78 of 1971]

- (i) recommend to the Minister the prohibition or the regulation of the exportation of any product from the Republic, or from the Republic, excluding the territory, or from the territory, generally or to any particular country or territory;

[paragraph (i) substituted by Act 78 of 1971]

- (j) advise the Minister in regard to any matter within his purview under this Act which he may refer to it for its advice;
- (k) perform the duties imposed, and exercise the powers conferred on it in terms of this Act, and perform such other duties as the Minister may from time to time assign to it.

(2) The marketing council may delegate any power conferred on it by this Act, or any duty imposed on it by the Minister, to one or more of its members: Provided that any action taken or decision given by three or less of such members in pursuance of any such delegation, shall be subject to confirmation by the marketing council.

[subsection (2) amended by Act 109 of 1977]

(3) The provisions of sections 8, 10 and 12 of the Board of Trade and Industries Act, 1944 (Act No. 19 of 1944), shall *mutatis mutandis* apply in connection with any investigation by the marketing council.

[The Board of Trade and Industries Act 19 of 1944 was not applicable to South West Africa.]

- (4)

[subsection (4) deleted by Act 109 of 1977]

(5) The marketing council shall at the request of the Minister submit to him a report on the operation of any scheme which is in operation under this Act.

[subsection (5) substituted by Act 109 of 1977]

5.

[section 5 deleted by Act 109 of 1977]

6.

[section 6 deleted by Act 109 of 1977]

7.

[section 7 deleted by Act 109 of 1977]

The Agricultural Reference Board

7A. (1) There is hereby established a board to be known as the Agricultural Reference Board, which shall consist of a chairman and two other members who shall be appointed by the Minister: Provided that the Minister may from time to time appoint not more than two additional members to the said board for a particular purpose on the ground of their special knowledge of the matter for the purpose of which they are appointed.

(2) (a) A member of the reference board who is not a person in the full-time service of the State or has not been appointed for a particular purpose, shall be appointed for such period not exceeding two years as the Minister may determine at the time of the appointment of the member concerned.

(b) A member of the reference board who is a person in the full-time service of the State shall hold office during the Minister's pleasure.

(c) A member of the reference board appointed for a particular purpose shall hold office until the matter for the purpose of which he was appointed has been disposed of by the reference board.

(3) A member of the reference board whose period of office has expired, shall be eligible for reappointment.

(4) A member of the reference board who is not a person in the full-time service of the State, shall be paid, out of moneys appropriated by Parliament for that purpose, such allowances as the Minister may determine.

(5) Whenever the Minister is satisfied that a member of the reference board is prevented by illness or absence or any other cause from performing the duties of his office, the Minister may appoint any other person whom he considers suitable to act as deputy of that member while he is so prevented, and such deputy shall, during the period he so acts, perform

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the duties of the member in whose stead he has been appointed so to act: Provided that whenever the chairman is prevented as aforesaid, the Minister may, if he deems it expedient, designate any other member to perform the duties of the chairman during his absence or inability, in which case any person who is appointed as deputy of the chairman shall perform the ordinary duties of the member so designated.

[section 7A inserted by Act 31 of 1973]

Meetings of reference board

7B. (1) The meetings of the reference board shall be held at such times and places as the Minister may from time to time determine.

(2) The chairman of the reference board, or the member for the time being charged with the performance of the duties of the chairman, and two other members of the reference board shall constitute a quorum for any meeting of that board.

(3) A decision of the majority of the members present at a meeting of the reference board shall be the decision of the reference board and, in the event of an equality of votes, the chairman, or the member for the time being charged with the performance of the duties of the chairman, shall have a casting vote in addition to his deliberative vote.

[section 7B inserted by Act 31 of 1973]

Powers of reference board

7C. (1) The reference board shall have power to decide, in the stead and on behalf of a control board, upon any matter referred to the reference board by such control board under subsection (2), and shall for that purpose have such incidental powers as are vested in the control board concerned in relation to that matter.

(2) Where any members of a control board have recused themselves from participation in the proceedings of the control board in connection with a matter upon which the control board is in terms of its scheme or this Act or a proclamation issued under section 87 or a regulation made under section 89 required to take a decision, on the ground of having any interest in such matter, and the remaining members are too few in number to constitute a quorum for a meeting of the control board, the control board may, and, if so directed by the Minister, shall refer the matter in question to the reference board for decision by it under subsection (1).

(3) A decision taken by the reference board under subsection (1) shall, for the purpose of the relevant scheme or this Act or any proclamation issued under section 87 or any regulation made under section 89, be deemed to be a decision of the control board concerned.

(4) Any reference in this section -

(a) to a control board shall be construed as including a reference to the Dairy Industry Control Board established under section 2 of the Dairy Industry Control Ordinance, 1962 (Ordinance No. 29 of 1962), of the territory, and the Meat Trade Control Board established under section 2 of the Meat Trade Control Ordinance, 1962 (Ordinance No. 20 of 1962), of the territory; and

(b) to any scheme or this Act or any proclamation issued under section 87 or any regulation made under section 89 shall be construed as including a reference to an

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Ordinance mentioned in paragraph (a) or any regulation made thereunder, as the circumstances may require.

[section 7C inserted by Act 31 of 1973]

PART 2

SCHEMES

A. ESTABLISHMENT, AMENDMENT, SUSPENSION AND REVOCATION.

Submission of schemes to, and drafting of schemes by, the Minister

8. (1) (a) Any association of producers or any co-operative society, co-operative company or control board may submit to the Minister in writing a proposed scheme relating to any product or products which the members of the association, society or company concerned produce, or in respect of which the board concerned has been established or is in terms of subsection (2) deemed to have been established, as the case may be.

[paragraph (a) substituted by Act 52 of 1969]

- (b) The marketing council or any body which, in the opinion of the Minister, is representative of persons engaged in agricultural pursuits, may submit to the Minister in writing a proposed scheme relating to any product.
- (c) The Minister may at any time cause a proposed scheme to be drafted.

(2) For the purposes of paragraph (a) of subsection (1) a control board shall be deemed to have been established in respect of a product if the State President has by proclamation in the *Gazette* conferred upon the board in question the power to submit to the Minister a proposed scheme under that paragraph relating to that product.

[subsection (2) substituted by Act 52 of 1969]

Investigation, and rejection or acceptance by the Minister, of a proposed scheme

9. (1) The Minister may, after consultation with the marketing council, reject any proposed scheme submitted to him under section 8(1)(a) or (b), or approve it provisionally, or refer it back to the association, society, company, board or body concerned for consideration of and report on such modification of the proposed scheme as he may suggest, and, after having received such report (if any) he may reject the proposed scheme or approve it provisionally, either without modification or with such modifications as he may deem expedient.

- (2) If the Minister approves a proposed scheme provisionally -
- (a) he shall, if it was not submitted to him by the marketing council, refer the scheme to that council for investigation and report;
- (b) he may, if he deems it necessary, cause the particulars concerning the scheme to be published by notice in the *Gazette* and by such notice invite persons who have an interest in the product to which the scheme relates, to lodge with him in writing within a period stated therein, not being less than four weeks as from the date of the publication in the *Gazette*, any objections to or representations concerning the scheme;

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- (c) he may, after consideration of any report on the scheme by the marketing council and, where the scheme has been published under paragraph (b), of any objections or representations lodged with him in pursuance of the relevant notice, accept the scheme without modification or with such modifications as he may deem expedient, if he is satisfied that the scheme or the modified scheme, as the case may be, is practicable and contains adequate provision for the regulation of the marketing of the product to which the scheme relates.

(3) The Minister may refer a proposed scheme which he has had drafted under section 8(1)(c), to the marketing council for investigation and report and, after having considered such report, may deal with the proposed scheme *mutatis mutandis* in terms of the provisions of subsection (2)(b) and (c).

(4)

[subsection (4) substituted by Act 69 of 1970 and deleted by Act 109 of 1977]

(5) The modification of a scheme under subsection (1) or (2)(c) may include the extension or the reduction of the area in which the scheme or any provision thereof is to apply, or the addition of any product to the product to which the scheme relates, or the incorporation in the scheme of any new provision either in addition to or in substitution for any existing provision thereof or, in the case of a modification under subsection (2)(c), in addition to or in substitution for a modification made under subsection (1).

Joint schemes

10. (1) (a) Any two or more associations of producers or any two or more co-operative societies, co-operative companies or control boards may submit to the Minister in writing a proposed joint scheme relating to all or any two or more of the products which the members of any such association, society or company produce or in respect of which any such board has been established or is, in terms of section 8(2) as applied by subsection (2) of this section, deemed to have been established, as the case may be.

[paragraph (a) substituted by Act 52 of 1969]

- (b) The marketing council or any body which, in the opinion of the Minister, is representative of persons engaged in agricultural pursuits, may similarly submit a joint scheme relating to any products.
- (c) The Minister may cause such a scheme to be drafted.

(2) The provisions of section 8(2) shall *mutatis mutandis* apply in relation to paragraph (a) of subsection (1) of this section, and the provisions of section 9 shall *mutatis mutandis* apply in respect of a scheme submitted or drafted under this section.

[subsection (2) substituted by Act 52 of 1969]

- (3) A joint scheme referred to in subsection (1) may provide for -
- (a) the extent to which any notices, prohibitions, requirements, decisions or determinations issued, imposed, taken or made under any other scheme wholly or partially superseded by such joint scheme shall continue in force;

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- (b) the extent to which any assets, liabilities, rights and obligations of the board administering any such other scheme, shall vest in the board established under such joint scheme;
- (c) the extent to which any moneys in any fund established under any such other scheme, shall be transferred to any fund established under the joint scheme;
- (d) the transfer of persons in the employ of the board administering any such other scheme, to the employ of the board established under such joint scheme and the conditions of service of persons so transferred.

[subsection (3) substituted by Act 109 of 1977]

(4) The registrar of deeds concerned shall as soon as may be practicable after the commencement of a joint scheme referred to in subsection (1), make such entries or endorsements in or on any relevant register, title deed or other document in his office or submitted to him as he may deem necessary in order to give effect to any vesting by virtue of the provisions of subsection (3)(b), and no transfer duty, office fee or other charge shall be payable in respect of any such vesting or in respect of any such entry or endorsement

[subsection (4) inserted by Act 109 of 1977]

Separate schemes for the same product

11. Subject to the provisions of this Act, separate schemes may exist for the same product according to the purpose for which the product is intended to be used or the area in which it is produced.

Publication, or recommendation to the State President of a proposed scheme accepted by the Minister

- 12.** (1) If the Minister has accepted any proposed scheme, he may -
- (a) cause particulars thereof to be published by notice in the *Gazette* and in such newspapers as in his opinion will ensure that the particulars of the scheme will be brought to the notice of the producers in the area in which the scheme is intended to apply, and cause a copy of such notice to be displayed at every magistrate's office in that area and at any other place where he deems the publication of the notice desirable, and by such notice invite the producers in that area to attend a meeting or meetings to be held at a time or times and at a place or places specified in the notice, for the purpose of voting for or against the proposed scheme; or

- (b) in the case of a proposed scheme -

- (i)

[subparagraph (i) deleted by Act 52 of 1969]

- (ii) which has been submitted to him by a control board administering a scheme which has been in operation for a period of not less than two years;
 - (iii) which has been submitted to him in terms of section 10 by two or more such control boards;

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- (iv) which has been submitted to him by a control board administering a joint scheme originally submitted under section 10 by two or more such control boards;
- (v) which relates to a product which is the subject of a proclamation in terms of subsection (2) (irrespective of whether or not such proposed scheme has previously been voted on in terms of the provisions of paragraph (a), and irrespective of the result of such voting); or
- (vi) which does not confer a specified power on its control board,

recommend approval thereof to the State President if the Minister is satisfied that the introduction of the scheme in question will be in the interests of producers of the product to which that scheme relates.

(2) The State President may by proclamation in the *Gazette* declare that the provisions of subsection (1)(a) shall not apply in respect of any scheme relating to a product specified in that proclamation.

Voting on a published scheme at meetings of producers

13. (1) At any meeting contemplated in section 12(1)(a) the magistrate or assistant magistrate of the district in which the meeting is held, or such other person as the Minister may designate for the purpose, shall preside.

(2) The person presiding at any such meeting, or any other person whom the Minister may have appointed for the purpose, shall explain the particulars of the proposed scheme to the meeting and thereafter the person presiding at the meeting shall submit a draft resolution approving of the scheme to the meeting.

(3) No person shall be entitled to vote on the said resolution except a white person of or above the age of twenty-one years -

- (a) who, during the period of three years immediately preceding the date of the meeting concerned, was continuously engaged, in the area in which the proposed scheme is to apply, in the production, for sale on his own account, of the product to which the proposed scheme relates; and
- (b) who, during that period, has produced a quantity of that product not less than a quantity fixed by regulation under section 89 for the purposes of the proposed scheme; and
- (c) who has complied with such requirements as may have been prescribed by regulation under that section.

(4) Regulations made for the purposes of subsection (3) may, in the case of a scheme which vests in its control board the powers specified in section 78, provide that only a producer who has, during a period mentioned in such regulations, exported a quantity of the product to which the proposed scheme relates which is not less than the quantity specified in those regulations, shall be entitled to vote on the said resolution.

(5) Any person entitled to vote on the said resolution who desires to vote thereon, shall do so by means of a ballot paper in the form prescribed by regulation, completed in such manner and circumstances and containing such information as may have been likewise prescribed, and

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shall hand such ballot paper, when duly completed, to the person presiding at the meeting in question.

(6) The person presiding at the meeting shall, as soon as may be after the conclusion of the meeting, forward to the Secretary in Pretoria by registered post, all ballot papers handed to him in terms of subsection (5) by persons who are entitled to vote on the said resolution.

Approval and application of a scheme by the State President

14. (1) The State President may publish any scheme by proclamation in the *Gazette* and declare that it shall come into operation on a date mentioned in such proclamation -

- (a) if the Minister has, in terms of section 12(1)(b), recommended the approval of such scheme; or
- (b) where such scheme has been voted on as provided in section 12(1)(a) and has not been recommended by the Minister as contemplated in paragraph (a), if the State President is satisfied that the producers who voted in favour of the scheme -
 - (i) constitute more than half or, in the case of a scheme which confers a specified power on its control board, not less than three-fifths of the producers who voted on the scheme; and
 - (ii) produced more than half the total quantity of the product to which the scheme relates, which was, during the period of three years immediately preceding the first meeting at which the scheme was submitted to a vote, produced in the area in which the scheme is to apply, by persons who were entitled to vote on the scheme.

(2) The provisions of any scheme published under subsection (1) shall as from a date specified in the proclamation by which the scheme is published, be binding on the persons to whom and in the area in which those provisions apply.

Amendment of a scheme

15. (1) (a) Any association of producers or any co-operative society, co-operative company or control board may submit to the Minister a proposal in writing for the amendment of an existing scheme which relates to a product produced by the members of the association, society or company concerned or which is administered by the board concerned, as the case may be.

[paragraph (a) substituted by Act 52 of 1969]

- (b) The marketing council or any body which, in the opinion of the Minister, is representative of persons engaged in agricultural pursuits, may submit to the Minister a proposal in writing for the amendment of any existing scheme.

[paragraph (b) substituted by Act 109 of 1977]

- (c) The Minister may cause a proposal for the amendment of any existing scheme to be drafted.
- (2) Such a proposed amendment may provide for -
- (a) the extension or the reduction of the area in which the scheme in question applies;

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- (b) the application of the scheme in any area other than or additional to the area in which it applies;
- (c) the substitution for, or the addition to, the product to which the scheme relates, of another product: Provided that, if the product is to be substituted or added by virtue of an amendment proposed by an association, society, company or board as aforesaid, it shall be a product which is produced by the members of the association, society or company concerned or in respect of which the board concerned has been established or is deemed to have been established, as aforesaid;
- (d) the omission of any product to which the scheme relates;
- (e) the alteration of any other provision of the scheme;
- (f) the addition thereto of fresh provisions;
- (g) the substitution of a new scheme for an existing scheme.

(3) Any such proposal for the amendment of a scheme shall be dealt with and may be brought into operation *mutatis mutandis* as if it were a proposal for a new scheme submitted to or drafted on the direction of the Minister in terms of section 8.

(4) An amendment of a scheme which provides for a modification of the constitution of the board administering the scheme, may provide for the extension or reduction of the period of office of any existing member of the board, or for the abolition of such office.

[subsection (4) substituted by Act 109 of 1977]

(5)

[subsection (5) deleted by Act 109 of 1977]

(6) The provisions of section 10(3) shall *mutatis mutandis* apply in respect of any scheme substituted for an existing scheme in terms of subsection (2)(g).

Suspension of any provision of a scheme, and amendment or revocation of the scheme at the request of Parliament

16. (1) Whenever the Minister has reason to believe that any provision of a scheme which is in operation under this Act imposes an undue burden upon producers or consumers of the product to which the scheme relates, or upon any group or number of such producers or consumers, or is contrary to the public interest, he may appoint a committee consisting of not more than three persons to investigate and to report to him on the operation of the scheme in question.

(2) If, after the receipt of the report of any committee appointed under subsection (1) and of a recommendation by the marketing council, the Minister is satisfied that any such provision does impose an undue burden upon producers or consumers of the product to which the scheme relates, or upon any group or number of such producers or consumers, or is contrary to the public interest, the State President may, by proclamation in the *Gazette*, suspend the provision in question for any period not exceeding six months and the Minister may thereupon repeal any decision taken in pursuance of that provision with effect from such date and subject to such conditions as he may determine.

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(3) The Minister shall lay copies of the report of the said committee and of the recommendation of the marketing council upon the Table of the Senate and of the House of Assembly within fourteen days after receipt thereof, if Parliament is then in ordinary session, or, if Parliament is not then in ordinary session, within fourteen days after the commencement of its next ensuing ordinary session.

(4) At the request, by resolution, of the Senate and of the House of Assembly, the State President may, by proclamation in the *Gazette* -

- (a) revoke any scheme;
- (b) amend the provisions of any scheme in the manner set forth in such resolution;
- (c) repeal or amend any such proclamation issued in terms of paragraph (b).

Revocation of a scheme if the producers disapprove of it

17. (1) The Minister may at any time after the expiration of a period of two years as from the date on which a scheme came into operation, call a meeting or meetings of the producers concerned to express their approval or disapproval of the continuance of the scheme.

(2) The provisions of section 13 shall *mutatis mutandis* apply in connection with a meeting called under subsection (1).

- (3) The State President may, by proclamation in the *Gazette*, revoke any scheme -
 - (a) if revocation thereof has been recommended by the Minister: Provided that the Minister shall not recommend the revocation of a scheme which confers a specified power on its control board, unless the scheme in question was published in pursuance of a recommendation by the Minister under section 12(1)(b) and the said board has requested that the scheme be revoked; or
 - (b) if the producers who voted in favour of the discontinuance of the scheme at a meeting or meetings called under subsection (1) -
 - (i) constitute more than half or, in the case of a scheme which confers a specified power on its control board, not less than three-fifths, of the producers who voted at such meeting or meetings; and
 - (ii) produced more than half the total quantity of the product to which the scheme relates which was produced in the area in which the scheme applies, during the period of three years immediately preceding the date of the first of such meetings.

B. GENERAL PROVISIONS**Name, product and area to be specified**

18. A scheme shall specify its name, the product to which it relates and the area or areas in which it applies.

Provisions relating to the product to which a scheme relates

- 19. (1) A scheme may -

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- (a) include under any class of the product to which it relates -
 - (i) any quantity thereof which has been imported into the Republic, or into the Republic excluding the territory, or into the territory; or
 - (ii) any quantity thereof which has been produced in a self-governing territory and is introduced into an area in which such scheme applies, for the purpose of sale or processing therein;
- (b) with the concurrence of the administration of any state or territory adjoining the Republic, provide that any provision of the scheme shall, subject to such conditions as may be specified therein, apply to any quantity of any product regulated thereunder, which arrives in any port of the Republic, or in the harbour of Lourenço Marques or in the harbour of Beira, in transit from that state or territory to a destination other than the Republic, in the same manner as if that quantity of the said product had been produced in the Republic.
- (c) with the concurrence of the government of a self-governing territory, provide that any provision of the scheme shall, subject to such conditions as may be specified therein, apply to any quantity of any product regulated thereunder, which arrives in any area in which that scheme applies, in transit from that self-governing territory to a destination other than the area in which the scheme applies, in the same manner as if that quantity of the said product had been produced in the area in which the scheme applies.

[subsection (1) substituted by Act 78 of 1971 and amended by Act 38 of 1975]

- (2) A scheme may provide that any requirement or prohibition imposed or decision taken by its control board -
 - (a) which relates to any class of the product to which the scheme relates may differ from any such requirement or prohibition or decision which relates to any other class of such product;
 - (b) shall relate only to a specified class of the product to which the scheme relates.

[subsection (2) substituted by Act 69 of 1970]

Provisions relating to the area in which a scheme applies

- 20. A scheme may provide that -
 - (a) any provision thereof shall apply only in one or more of the areas in which the scheme otherwise applies or only in a specified portion of any area in which the scheme otherwise applies;
 - (b) any requirement or prohibition imposed or decision taken by its control board -
 - (i) which relates to any area in which the scheme applies, or any portion of any such area, may differ from any such requirement or prohibition or decision which relates to any other area in which the scheme applies or any other portion of any such area, as the case may be;
 - (ii) shall apply only to one or more of the areas in which the scheme applies or only to a specified portion of any area in which the scheme applies.

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Provisions relating to the persons to whom a scheme applies

21. (1) A scheme shall define the persons or classes of persons (if any) producing or dealing in the course of trade with any product to which the scheme relates or any class or grade of such product, and to whom any provision of the scheme applies.

(2) A scheme may provide that any provision thereof shall apply to any co-operative society or co-operative company which handles any product to which that scheme relates, in the same manner as if the society or company concerned were a producer of that product.

22.

[section 22 deleted by Act 52 of 1969]

Scheme may provide for penalties

23. A scheme may provide for a fine not exceeding two hundred rand or for imprisonment for a period not exceeding six months or for both such fine and such imprisonment, by way of a criminal sanction for the purpose of enforcing the provisions of such scheme.

Provision to be made for matters prescribed by proclamation

24. A scheme shall provide for any matter which the State President may by proclamation in the *Gazette* prescribe as a matter in respect of which provision shall be made in any scheme.

C. THE CONTROL BOARD**Establishment and legal personality of a control board**

25. (1) A scheme shall provide for the establishment of a board to administer the scheme.

[subsection (1) substituted by Act 52 of 1969]

(2) A control board shall be a body corporate capable of suing and being sued in its own name, and of performing all such acts as are necessary for or incidental to the carrying out of its objects and powers under the scheme which it administers.

26.

[section 26 deleted by Act 52 of 1969]

27.

[section 27 deleted by Act 52 of 1969]

Constitution of a control board

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28. (1) A scheme shall, subject to the provisions of subsections (2), (3) and (4), provide for the appointment to its control board of not more than one officer either in the Department of Agricultural Economics and Marketing or in the Department of Agricultural Technical Services, and of members to represent persons who produce the product to which the scheme relates, and such classes of persons dealing in the course of trade with, or of consumers of, or of persons having any other interest whether directly or indirectly in such product, as the Minister may after consultation with the marketing council determine, and may in respect of any one or more of or all such members -

- (a) provide that the member or members concerned shall be nominated or elected for appointment to the control board in accordance with a procedure prescribed in the scheme, or shall be selected from among persons whose names are to be submitted for that purpose in accordance with a procedure so prescribed;
- (b) prescribe the person or persons who or organization or organizations which may so nominate the member or members concerned, or who or which may so submit the names of persons;
- (c) prescribe the class or classes of persons who may so elect the member or members concerned.

[Subsection (1) is substituted by Act 31 of 1973. It was also substituted in South Africa by Act 109 of 1977, but that provision of the amending Act came into force after the date of transfer and made no explicit reference to South West Africa. In South Africa, the substitution was as follows:

- “(1) (a) A scheme shall, subject to the provisions of subsections (2) and (3), provide for the extent to which persons who produce the product to which the scheme relates, and such classes of persons dealing in the course of trade with, or of consumers of, or of persons having any other interest whether directly or indirectly in such product, as the Minister may after consultation with the marketing council determine, shall be represented on its control board and shall determine how many members, not exceeding thirteen, such control board shall have: Provided that in the case of a joint scheme contemplated in section 10 the board established under such joint scheme may for a period of one year as from the date of its constitution consist of more than thirteen members.
- (b) The members of a control board shall, subject to any provision included in the relevant scheme by virtue of the provisions of paragraph (a) and to the provisions of subsection (2) and section 15(4), be appointed by the Minister for a period of three years: Provided that -
- (i) no person of or over the age of sixty-eight years shall be appointed as a member of a control board;
 - (ii) the Minister may from time to time appoint one additional member to a control board for a particular purpose on the ground of his special knowledge of the matter for the purpose of which he is appointed.
- (c) In making an appointment in terms of paragraph (b) the Minister may consult with persons or organizations which in the opinion of the Minister are representative of persons who produce the product to which the relevant scheme relates and of the classes of persons or consumers which, in terms of the provisions of the relevant scheme, are required to be represented on the control board in question.
- (d) A member of a control board appointed under paragraph (ii) of the proviso to paragraph (b) for a particular purpose -
- (i) shall hold office until the matter for the purpose of which he was appointed, has been disposed of by that control board;
 - (ii) shall have the right to take part in the proceedings of that control board, but shall not have the right to vote.”]

(1A) A scheme may, in addition to any provision included in that scheme by virtue of the provisions of subsection (1) and subject to the provisions of subsection (2), also make provision for the appointment as members of its control board of one or more persons by reason of their particular knowledge regarding a matter in which the board has an interest and specified in the scheme.

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[Subsection (1A) is inserted by Act 68 of 1972. It was deleted in South Africa by Act 109 of 1977, but that provision of the amending Act came into force after the date of transfer and made no explicit reference to South West Africa.]

(2) More than half the total number of members of any such board shall be members appointed to represent persons producing such product: Provided that -

- (a) a scheme may provide that only persons who produce the product to which the scheme relates, shall be appointed as members of such board to represent producers of such product;
- (b) no person shall be so appointed to represent persons who produce slaughter animals, unless he is engaged in *bona fide* farming operations.

(3) If by any amendment of a scheme any other product is substituted for or added to the product to which the scheme relates and the amendment does not provide for the reconstitution or any consequential modification of the constitution of the board -

- (a) the members representing the persons producing such last-mentioned product shall, for the purposes of this section, be deemed to represent also persons producing such other product;
- (b) any class of persons or consumers which has in terms of subsection (1) been determined in relation to the last-mentioned product referred to in paragraph (a), shall for the said purposes be deemed to have been so determined also in relation to such other product;
- (c) any member representing a class of persons or consumers so determined, shall for the said purposes be deemed to represent also the corresponding class of persons or consumers which is in terms of paragraph (b) deemed to have been so determined in relation to such other product.

[subsection (3) substituted by Act 52 of 1969 with effect from 1 March 1969]

(4) At least one of the members of any such board on which the consumers of such product are represented shall be nominated by the consumers' committee from among its members: Provided that whenever such member ceases to be a member of the consumers' committee he shall also cease to be a member of such board and another member of the consumers' committee shall be nominated in his place.

[Subsection (4) was deleted in South Africa by Act 109 of 1977, but that provision of the amending Act came into force after the date of transfer and made no explicit reference to South West Africa.]

(5) A scheme may provide that its control board may co-opt not more than two persons as advisory members of such board.

[Subsection (5) was substituted in South Africa by Act 109 of 1977, but that provision of the amending Act came into force after the date of transfer and made no explicit reference to South West Africa. In South Africa, the substitution was as follows:

“(5) A scheme may provide that its control board may co-opt one person as an advisory member of such board.”]

Vacation of office by, and suspension of, member of control board

28A. (1) A member of a control board shall vacate his office -

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- (a) if his estate is sequestrated or if a notice is published in respect of him under section 22(1) of the Agricultural Credit Act, 1966 (Act No. 28 of 1966);

[The Agricultural Credit Act 28 of 1966 was repealed by the Agricultural Bank Amendment Act 27 of 1991.]

- (b) if he becomes of unsound mind;
- (c) if he is convicted of an offence and is sentenced to imprisonment without the option of a fine;
- (d) if he resigns as a member;
- (e) if he is absent without permission from three consecutive meetings of the control board to which he has been appointed as a member;
- (f) if he is removed from office under subsection (2).

(2) A member of a control board may at any time be removed from office by the State President.

(3) A member of a control board may at any time be suspended from office by the Minister for a specified period and the Minister may appoint any other person to act as a member of the board in the place of the suspended member during that period.

[section 28A inserted by Act 69 of 1970]

Advisory committees to, and other committees of, a control board

- 29.** (1) (a) A scheme may provide for the establishment of one or more committees for the purpose of advising the control board concerned in regard to any matter relating to the administration of the scheme or any of its provisions in general or in a part of the area in which the scheme or a provision thereof applies or in respect of any product or products to which the scheme relates.
- (b) Any such committee shall be constituted in such manner as may be specified in the scheme or determined by the control board concerned with the approval of the Minister.
- (c) The control board concerned may assign to any such committee, on such conditions as the Minister may approve, such of the powers of that control board under the scheme as it may determine with the approval of the Minister.

[subsection (1) substituted by Act 31 of 1973]

(2) A scheme may empower its control board to appoint, with the consent of the Minister and subject to such conditions as the board may impose, one or more committees from among its members and to invest any such committee with such of its powers as it may deem fit: Provided that the board shall not be divested of any power with which it may invest any such committee.

Allowances to, and insurance cover for, members of a control board or an advisory committee

30. (1) A scheme may empower its control board to determine, with the approval of the Minister, the allowances payable out of the funds of the board to its members or advisory

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members or the members of a committee established in terms of a provision included in the scheme by virtue of section 29(1).

(2) A control board may, with the approval of the Minister, arrange with any insurer for the provision of insurance cover for a member, including an advisory member, of the board, and for a member of any committee established in terms of a provision contained in the relevant scheme by virtue of section 29(1), in respect of bodily injury, disablement or death resulting solely and directly from an accident occurring in the course of the performance by such member of his duties.

(3) The moneys in a fund, referred to in section 46(1)(a), of the control board concerned may be utilized for the payment of the premium payable in respect of insurance cover arranged in terms of subsection (2).

Meetings of a control board

31. A scheme shall provide for the calling of meetings of its control board, and shall prescribe the quorum and the procedure at such meetings.

Validity of decision taken by, or act performed under authority of, a control board

31A. No decision taken by a control board or act performed under authority of a control board, shall be invalid by reason only of a vacancy on the board or of the fact that a person who is not entitled to sit as member of the board sat as a member at the time when the decision was taken or the act was authorized, if the decision was taken or the act was authorized by the requisite majority of the members of the board who were present at the time and entitled to sit as members.

[section 31A inserted by Act 69 of 1970]

Submission of certain decisions of a control board to the marketing council

32. (1) Any decision of a control board in respect of which the Minister's approval is required under this Act shall, together with any minority proposal in connection with the matter to which the decision relates, be submitted by such board to the marketing council, which shall transmit such decision and minority proposal (if any) to the Minister together with its report and recommendations thereon.

(2) The provisions of subsection (1) shall not apply in respect of sections 8, 9, 10 and 15.

Employment of persons by a control board

33. A scheme may empower its control board to employ, subject to such directions as the Minister may issue in a particular case, such persons as the board may consider necessary for the proper performance of its functions and for the attainment of the objects of the scheme.

[section 33 substituted by Act 109 of 1977]

Acquisition of property by a control board

34. (1) A scheme may empower its control board -

(a) to acquire or hire such property as it may consider necessary for the proper performance of its functions and for the attainment of the objects of the scheme;

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- (b) to accept money or property given to the board by way of donation, grant or otherwise and to utilize such money or property in such manner as the Minister may approve.

(2) No immovable property shall be acquired or hired under subsection (1)(a), and no immovable property so acquired shall be let, hypothecated, sold or otherwise alienated, except with the consent of the Minister and on such conditions as he may approve.

[subsection (2) substituted by Act 52 of 1969]

Assistance by a control board to certain undertakings and research work

35. A scheme may empower its control board to assist, with the approval of the Minister, by grant or loan or in any other manner -

- (a) any undertaking for preserving, processing, manufacturing, storing or conditioning any product to which the scheme relates or anything which is derived from any such product;
- (b) research work relating to the improvement, production, manufacture, processing, storing or marketing of any such product or of anything from which any such product is derived or of anything which is derived from any such product.

[section 35 substituted by Act 68 of 1972]

Furnishing of information and advice by a control board

36. A scheme may empower its control board -

- (a) to establish an information service in order to inform producers from time to time about marketing conditions in general or about the condition of any particular market;
- (b) to advise the Minister as to -
 - (i) the conditions, regarding grades, standards of quality, methods of packing, and the marking of any product to which the scheme relates or of any receptacle or cover containing it, subject to which any such product may be sold or imported for sale;
 - (ii) the prohibition, control or regulation of the importation or export of any such product;
 - (iii) all matters relating to the marketing or processing of any such product.

Stimulating demand for a regulated product

37. A scheme may empower its control board to take such steps as may be approved by the Minister for fostering or stimulating the demand, whether within or outside the Republic, for any product to which the scheme relates or for anything which is derived from any such product.

[section 37 substituted by Act 68 of 1972]

Co-operation by a control board with any person or another board

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38. (1) A scheme may empower its control board to co-operate, with the approval of the Minister, with any person in doing any act which the board may perform, and to do on behalf of any other board established under any law for or in respect of any agricultural or related industry, any act which such other board may perform.

(2) A control board may enter into a written agreement with any person with whom that board intends to co-operate under subsection (1) in doing any act which the board in question may perform, providing -

- (a) for the establishment of a committee consisting of representatives of that board and representatives of such person, to perform the said act on behalf of that board and such person, in such manner and subject to such conditions as may be set out in the agreement;
- (b) for the establishment of a special account which shall be administered and controlled by the control board concerned or by it in cooperation with such committee, in such manner and subject to such conditions as may be set out in the agreement, and into which shall be paid all moneys specified in the agreement.

(3) The provisions of section 32 shall *mutatis mutandis* apply with reference to a decision taken on behalf of the control board concerned or under this section by a committee contemplated in subsection (2) of this section and in respect of which the Minister's approval is required under this Act.

(4) The moneys in a special account contemplated in subsection (2) may, after approval by the Minister of an estimate of expenditure submitted to him, be utilized in accordance with that estimate for any purposes connected with the performance of the act referred to in subsection (1) which is the subject of the cooperation.

[subsection (4) substituted by Act 109 of 1977]

(5) A special account contemplated in subsection (2) shall be audited annually by the Auditor-General.

[subsection (5) substituted by Act 109 of 1977]

(6) The provisions of section 30 shall *mutatis mutandis* apply with reference to the members of a committee contemplated in subsection (2): Provided that, if a special account has been established as contemplated in that subsection, the allowances and insurance premiums payable to or in respect of such members may be paid from such special account.

[section 38 substituted by Act 31 of 1973]

Exemption of a control board from certain licensing provisions

39. Notwithstanding anything to the contrary contained in any law, a control board shall be exempt from the duty to obtain any licence and to pay any licence duties or fees in respect of the carrying on by it of any activity contemplated in the Licences Act, 1962 (Act No. 44 of 1962).

[Section 39 is substituted by Act 109 of 1977. The Licences Act 44 of 1962 was not applicable to South West Africa.]

Report to Minister by a control board

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40. Every control board which administers a scheme shall, within six months after the end of its financial year, submit to the Minister a report on its activities during its preceding financial year.

D. GENERAL FINANCIAL PROVISIONS**Imposition of a levy on a regulated product**

41. (1) A scheme shall provide for the imposition, with the approval of the Minister, by the control board concerned, on such basis as such board may determine, of a levy on any product to which the scheme relates, or on any such product of a particular class, grade or standard of quality.

[subsection (1) substituted by Act 69 of 1970]

(2) Such levy shall, if the scheme so provides, be payable only in respect of any unit or quantity of the product which is exported from the Republic or is exported from the Republic to any particular country or territory, or not be payable in respect of any unit or quantity of the product which is so exported or which is imported into the Republic or is imported into the Republic from any particular country or territory.

Manner and times at which and persons by whom the levy shall be payable

42. (1) The levy contemplated in section 41 shall be payable in such manner and at such times as may be prescribed by regulation under section 89, and shall be so payable by persons belonging to such class or classes of persons as may be prescribed in the scheme in question.

(2) A scheme may provide for the recovery, by any person contemplated in subsection (1) or any other person and under the circumstances prescribed in such scheme, of any amount paid or payable by such person or other person by way of or in respect of such levy, from any other person determined in accordance with a manner so prescribed.

(3) The control board of the scheme in question may pay to any person by whom an amount paid by him by way of such levy may be recovered as contemplated in subsection (2), such commission on the amount in question as that control board may determine.

(4) Provision may be made, in any case where a control board has prohibited producers of the product in question from selling the product except to or through that board, for such levy to be deducted from the price payable to such producers or added to the price at which the board disposes of the product to any person.

[section 42 substituted by Act 52 of 1969]

The amount of the levy

43. (1) The levy contemplated in section 41 -

(a) may be in the form of a percentage or portion of the selling price of every unit or quantity of the product in question purchased or sold;

[paragraph (a) substituted by Act 52 of 1969]

(aA) may be in the form of a fixed amount on any unit or quantity of that product dealt with in a manner determined in the scheme;

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[paragraph (aA) inserted by Act 52 of 1969]

- (b) may be indicated by means of a formula according to which the amount of such levy shall be calculated on every unit or quantity of that product purchased or sold;
 - (c) may, in so far as it affects producers, be determined on a sliding scale according to the quantity of that product sold by any producer during any period determined by the board.
- (2) Such levy -
- (a) may, in respect of any particular class, grade or standard of quality of the product in question, differ from any such levy in respect of any other class, grade or standard of quality of that product;
 - (b) may, in respect of any unit or quantity of that product which was produced or is sold in any particular area in which the scheme applies or in any particular portion of any such area, differ from any such levy in respect of any unit or quantity of that product which was produced or is sold in any other area in which the scheme applies or in any other portion of any such area, as the case may be;
 - (c) may, in respect of any unit or quantity of that product which is imported into the Republic from any other country or territory, differ from but not exceed any levy in respect of any unit or quantity of that product which is produced in the Republic;
 - (d) may, in respect of any unit or quantity of that product which is imported into the Republic from any country or territory adjoining the Republic, differ from any such levy in respect of any unit or quantity of that product which is imported into the Republic from any other country or territory;
 - (e) may, in respect of any unit or quantity of that product which is exported from the Republic or is exported from the Republic to any particular country or territory, differ from any such levy in respect of any unit or quantity of that product which is not so exported.

Special levy

44. (1) A scheme may empower its control board to impose, with the approval of the Minister, a special levy on any product to which the scheme relates or on any such product of a particular class, grade or standard of quality.

[subsection (1) inserted by Act 69 of 1970]

(2) For the purposes of any such special levy the provisions of sections 41, 42 and 43 shall *mutatis mutandis* apply.

Borrowing of money by a control board

45. A scheme may empower its control board to borrow money, with the approval of the Minister, to be utilized for the purpose of attaining the objects of the scheme.

Funds of a control board

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46. (1) (a) A scheme shall provide for the establishment of one or more general funds to be administered and controlled by its control board and into which shall be paid all moneys received by that board except such moneys as are to be paid into a reserve fund contemplated in subsection (2) or into a special fund contemplated in subsection (3) or into a fund or account of any pool contemplated in this Act.
- (b) All administrative expenses of the control board shall be paid from such a general fund.
- (c) A scheme may empower its control board to utilize, with the approval of the Minister, money in such a general fund for any other object which in the opinion of the board will be to the advantage of persons interested in any product to which the scheme relates.
- (d) As long as any amount is owing by any person to a control board in respect of any loan granted by virtue of the provisions of paragraph (c) by that control board to that person out of money in such a general fund, all products to which the relevant scheme relates and which has been produced or manufactured by the said person, shall be deemed to be pledged for the amount so owing in favour of the said control board as if it had actually been pledged in favour of and delivered to the control board, and any disposal by or on behalf of the said person of those products while they are so deemed to be pledged, shall be void unless the written consent of the control board concerned to such disposal had been obtained beforehand.

[paragraph (d) inserted by Act 109 of 1977]

- (2) (a) A scheme shall provide for the establishment of one or more reserve funds to be administered and controlled by its control board and into which shall be paid such moneys received by that board as may be determined by the Minister, and such amounts at the disposal of that board as may from time to time be approved by the Minister or as may after the end of any financial year under the scheme be determined by the Minister after consultation with that board.
- (b) A scheme shall empower its control board to deal with money in any reserve fund in such manner as may be approved by the Minister.
- (3) (a) A scheme may (and, if it is a scheme providing for the imposition of a special levy as contemplated in section 44, it shall) empower its control board to establish one or more special funds to be administered and controlled by that board, and to pay into such special fund or funds the moneys derived from such a special levy, such other moneys received by that board as may be determined by the Minister and such amounts at the disposal of that board as may be specified in the scheme or approved by the Minister.
- (b) A scheme providing for the establishment of a special fund shall empower its control board to deal with money in such special fund in such manner as may be prescribed in the scheme or approved by the Minister.

[section 46 substituted by Act 68 of 1972]

Imposition of a general levy by Minister

46A. (1) The Minister may by notice in the *Gazette* impose, on a basis specified in such notice, a general levy on any product, or on any such product of a particular class, grade or

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standard of quality, or on any such product, class, grade or standard of quality thereof produced or sold in a particular area or at a particular place.

(2) The provisions of section 84A(2), (3) and (4) shall *mutatis mutandis* apply in respect of a general levy imposed under subsection (1).

[section 46A inserted by Act 109 of 1977]

The amount of the general levy

46B. (1) The general levy contemplated in section 46A -

- (a) may be in the form of a percentage or portion of the selling price of every unit or quantity of the product in question purchased or sold;
- (b) may be in the form of a fixed amount on any unit or quantity of that product dealt with in a manner determined in the notice;
- (c) may be indicated by means of a formula according to which the amount of such levy shall be calculated on every unit or quantity of that product purchased or sold;
- (d) may, in so far as it affects producers, be determined on a sliding scale according to the quantity of that product sold by any producer during any period determined by the Minister.

(2) Such general levy -

- (a) may, in respect of any particular class, grade or standard of quality of the product in question, differ from any such general levy in respect of any other class, grade or standard of quality of that product;
- (b) may, in respect of any unit or quantity of that product which was produced or is sold in any particular area, differ from any such general levy in respect of any unit or quantity of that product which was produced or is sold in any other area;
- (c) may, in respect of any unit or quantity of that product which is exported from the Republic, differ from any such general levy in respect of any unit or quantity of that product which is not so exported.

[section 46B inserted by Act 109 of 1977]

Proceeds of general levy to be paid into special account

46C. (1) The Minister shall cause a special account to be opened at the South African Reserve Bank into which the proceeds of any general levy imposed under section 46A and such moneys as may accrue to such account from any other source shall be paid, and out of which all payments authorized under section 46D shall be made.

(2) Such special account shall, subject to the provisions of section 46D, be under the control of the Secretary who shall keep proper account of all moneys paid into, and of all payments made out of, such special account.

(3) Such special account shall be audited annually by the Auditor-General.

[section 46C inserted by Act 109 of 1977]

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Utilization of moneys in the special account

46D. (1) The Minister may from time to time direct that there be paid out of the special account referred to in section 46C such amount as he may determine for any purpose set out in subsection (2).

- (2) The moneys in such account may be utilized -
- (a) to meet such expenditure as may be incurred by the South West African Agricultural Union and organizations established to promote any branch of the agricultural industry and affiliated with the said South West African Agricultural Union in connection with the performance of their functions, and approved by the Administrator-General after submission to him by the said Agricultural Union of estimates of the requirements of the said Agricultural Union and the said organizations in connection with the performance of such functions;

[paragraph (a) substituted by Act 19 of 1980]

- (b) for the payment of commission in terms of section 84A(4) as applied by section 46A(2), and the payment of any other costs in connection with the administration of such account.

(3) Any moneys in such special account not immediately required for any such purpose, shall be invested with the Public Debt Commissioners or in such other manner as the Minister may with the concurrence of the Minister of Finance determine.

[section 46D inserted by Act 109 of 1977]

Forfeiture of certain moneys

47. Whenever moneys set aside, in accordance with the requirements of a scheme or a decision of a control board, for a purpose specified in that scheme or determined by that board, as the case may be, have not been claimed by the persons who were in terms of that scheme or decision entitled thereto, within a period of three years after the date upon which they became so entitled, such moneys shall be forfeited and shall be dealt with as the Minister may direct.

Recovery of certain costs and allowances from a control board

- 48.** The Minister may recover -
- (a) the costs incurred from time to time in respect of any action taken by the marketing council under section 4(1)(b), (d), (e), (g) or (j) in respect of any scheme; and
- (b) the allowances paid under section 7A(4) to members of the reference board in connection with the consideration of a matter referred to it by a control board,

or such portion of those costs or allowances as the Minister may determine, from the control board of the scheme in question or from the control board by whom the matter in question has been so referred to the reference board, as the case may be.

[section 48 substituted by Act 31 of 1973]

Disposal of remaining assets of a control board in event of discontinuance of a scheme

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49. A scheme shall determine the manner in which any assets of its control board remaining after all its debts have been paid, shall be disposed of, and the manner in which any class of persons to whom the scheme applies shall contribute towards making good any deficit which may exist, in the event of the discontinuance of the scheme.

Financial year of scheme

50. A scheme shall determine the financial year under the scheme.

Auditing of accounts of a control board

51. (1) The accounts of a control board shall be audited annually by the Auditor-General.

(2) As soon as may be after completion of any such audit the Auditor-General shall transmit to the Minister, to the marketing council and to the control board concerned a copy of his report in respect of such audit.

[section 51 substituted by Act 109 of 1977]

E. CONTROL UNDER A SCHEME**Records, returns and information in respect of a regulated product**

52. (1) A scheme may provide for the keeping of records by any person or class or group of persons producing or dealing in the course of trade with the product to which the scheme relates and the periodical submission to the control board concerned by such person, class or group of persons of such returns as may be specified in the scheme.

(2) A scheme may empower its control board -

- (a) with the approval of the Minister to require any person, or any person belonging to any class or group of persons, or any person other than a person belonging to any class or group of persons, to furnish the board with such information, relating to a product to which the scheme relates or any thing from which any such product is derived or any thing which is derived from any such product, as may be available to such person and as the board may specify;
- (b) with the approval of the Minister to prescribe the records to be kept in connection with such product or thing, the period for which any such record shall be retained and the returns to be rendered in regard to such product or thing to that board by any person, or by any person belonging to any class or group of persons, or by any person other than a person belonging to any class or group of persons, and the times at which and the form and manner in which such returns shall be so rendered.

Appointment of agents by a control board

53. (1) A scheme may empower its control board to appoint, subject to conditions approved by the Minister, such agents as it may consider necessary for the proper performance of its functions.

(2) Any person whose application for appointment as an agent under subsection (1) has been refused, or whose appointment as an agent under that subsection has been terminated, may, on depositing with the Secretary an amount of thirty rand, appeal against the refusal or termination to the Minister who may dismiss the appeal or, if he is satisfied that the appellant

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should be appointed as an agent in addition to any other person so appointed or that the appointment of the appellant should not have been terminated, as the case may be, allow the appeal and determine the manner in which the amount so deposited shall be disposed of.

Authorization of inspectors by a control board

54. A scheme may empower its control board, for the purpose of the enforcement of the provisions of the scheme, to empower any person generally or in any particular case, at all reasonable hours -

- (a) to enter any place occupied by any person who is or is suspected to be a producer of or person dealing in the course of trade with, a product to which the scheme relates or any thing from which such product is derived or any thing which is derived from such product, or any place or vehicle in or on which there is kept or is suspected to be kept any quantity of such product or thing by any person;
- (b) to inspect any such product or thing and to examine all books and documents at any such place or in or on any such vehicle, which are believed on reasonable grounds to relate to such product or thing, and to make copies of or take extracts from such books and documents;
- (c) to demand from the owner or custodian of such product or thing any information concerning such product or thing;
- (d) to demand from the owner or custodian of any such book or document an explanation of any entry therein;
- (e) to seize any books, documents or articles which may afford evidence of the commission of an offence under this Act or any scheme or any regulation made under this Act, or any quantity of such product in respect of which any such offence is suspected to have been committed, and to remove from the place or vehicle in question or to leave at such place or on such vehicle any books, documents or articles or any quantity of such product which has been so seized, and, if he deems fit, to place on any such book, document, article or product or on the container thereof, any identification mark which he may consider necessary;
- (f) to take samples of any such product, including any quantity thereof which has been seized under a power conferred in terms of paragraph (e), and to examine, analyse, classify or grade such samples or cause them to be examined, analysed, classified or graded.

[paragraph (f) substituted by Act 68 of 1972]

55.

[section 55 deleted by Act 69 of 1970]

Dealings by a control board with a regulated product or packing material and containers, and, in the case of a scheme relating to any cereal, its power in relation to such cereal in unthreshed form

56. (1) A scheme may empower its control board -

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- (a) to buy, at such a price or on such a basis as the Minister may approve, any product to which such scheme relates;
- (b) to treat in such manner as it may deem fit, classify, grade, pack, store, process, adapt for sale, insure, transport and, subject to the provisions of section 37, advertise any product which it has bought;

[paragraph (b) substituted by Act 68 of 1972 and by Act 31 of 1973]

- (c) to sell, whether in its original form or processed wholly or in part, any product which it has bought, at such a price or on such a basis as the Minister may approve, or to withhold any part of it from the market;
- (d) to act as agent for the receipt and sale of any product to which the scheme relates;
- (e) on such conditions as the Minister may approve -
 - (i) to purchase any packing material and containers which producers may require for the marketing of the product to which the scheme relates;
 - (ii) to sell such packing material and containers to producers of that product or to persons who in the course of their business sell such packing material and containers to such producers;
 - (iii) to hire out such packing material and containers to producers of that product.

[The full stop at the end of subparagraph (iii) should be a semicolon since it is no longer the last subparagraph in paragraph (e).]

- (iv) to finance out of its funds the manufacture of such packing material and containers, or the purchase thereof by such producers or persons;

[subparagraph (iv) inserted by Act 68 of 1972]

- (f) on such conditions as the Minister may approve -
 - (i) to acquire or develop any plant material which producers use for the production of the product to which the scheme relates;
 - (ii) to multiply or improve such plant material, or to sell such plant material to producers of that product or to persons who in the course of their business sell such plant material to such producers;
 - (iii) to finance out of its funds the development, improvement or multiplication of such plant material.

[paragraph (f) inserted by Act 68 of 1972]

(2) The control board administering a scheme relating to any cereal, may, for the purposes of such scheme determine, in relation to that cereal, the equivalent in unthreshed form, of any quantity of that cereal in threshed form.

Conducting of pools

57. (1) A scheme may empower its control board -

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- (a) to conduct a pool for the sale of any product to which the scheme relates, and to treat in such manner as it may deem fit, classify, grade, pack, store, process, adapt for sale, insure, transport and, subject to the provisions of section 37, advertise any product in connection with which it conducts a pool;

[paragraph (a) substituted by Act 68 of 1972 and by Act 31 of 1973]

- (b) to finance any pool conducted by the board and to make advances to the contributors to the pool.

(2) A scheme which provides for the conduct of a pool for the sale of the product to which the scheme relates, may, in addition to any other provisions which may be included in any such scheme under this Act, also -

- (a) define the time when and the place where delivery of the product to the pool shall be deemed to take place;
- (b) provide that, where any balance in the pool when its accounts are closed is, in the opinion of the board and the Minister, so small that a division thereof among the participants of the pool is not justified, such balance may be dealt with in any manner approved by the Minister;
- (c) provide that the board may with the approval of the Minister transfer any portion of the proceeds in the pool to any other such pool conducted by the board.

[The full stop at the end of paragraph (c) should be a semicolon since it is no longer the last paragraph in subsection (2).]

- (d) provide that moneys which accrue to the pool after its accounts have been closed, may be dealt with in a manner determined by the Minister;

[paragraph (d) inserted by Act 69 of 1970 and substituted by Act 68 of 1972]

- (e) provide that different pools may be conducted, whether on the same basis or not, for such different grades or other classes of the said product as may be determined by the board or prescribed in the scheme or by regulations made for that purpose.

[paragraph (e) inserted by Act 68 of 1972]

Furnishing of security to a control board for the payment of the purchase price of a regulated product

58. A scheme may empower its control board to require, with the approval of the Minister, any person dealing in the course of trade with any product to which the scheme relates, to furnish to the board such security for the payment of the purchase price of any quantity of that product purchased from a producer as may be specified in the scheme or prescribed by regulation, and to deal with any security so furnished in such manner as may be so specified or prescribed.

Registration of producers of, and persons dealing in the course of trade with, a regulated product

59. (1) A scheme may provide -

- (a) that no producer of the product to which the scheme relates or no producer belonging to any class or group of producers of that product shall -

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- (i) sell that product within the Republic or within any area in the Republic defined in the scheme or determined by the control board concerned with the approval of the Minister and notified by the Minister in the *Gazette*, unless he has been registered with the board; or
 - (ii) sell that product within any area other than an area, defined therein or determined by the board, in respect of which he has been registered with the board; or
 - (iii) except for consumption by himself or members of his household, or for the feeding of his livestock, manufacture or process that product or convert it into any other product or commodity or cause it to be so manufactured, processed or converted, unless he has been registered with the board;
- (b) that no person, or no person belonging to any class or group of persons, or no person other than a person belonging to any class or group of persons, shall deal with that product in the course of trade -
- (i) within the Republic, or within any area in the Republic defined in the scheme or determined by the control board concerned with the approval of the Minister and notified by the Minister in the *Gazette*, unless he has been registered with the board; or
 - (ii) within any area other than an area, defined in the scheme or determined by the board, in respect of which he has been registered with the board;
- (c) that no producer or person shall be so registered unless he has complied with such requirements as may be prescribed by regulation, and that the control board concerned may grant any such registration for such period as it may determine or as may be specified in the scheme, and may cancel the registration of any such producer or person who has contravened or failed to comply with the said requirements.
- (2) For the purpose of any provision included in a scheme by virtue of subsection (1)(a), a member of a co-operative society or co-operative company, who delivers any quantity of a product to that society or company in terms of its regulations, shall be deemed to sell that quantity to that society or company.
- (3) A scheme may empower its control board -
- (a) with the approval of the Minister to prescribe the procedure in connection with the consideration of applications for registration in terms of any provision made in a scheme under subsection (1)(a) or (b);
 - (aA) with the approval of the Minister, to determine that such applications for registration will be considered by the board during one or more specified months of each calendar year, and to fix a date in respect of each such month as the last date on which such applications will be accepted for consideration during that month, and to postpone the consideration of all such applications which may be received after a date so fixed, until the next ensuing month so specified;

[paragraph (aA) inserted by Act 31 of 1973]

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- (b) to refuse any such application, or to grant any such application on such conditions as it may determine or as may be specified in the scheme;

[paragraph (b) substituted by Act 69 of 1970]

- (c) to render, at intervals specified in the scheme, the continued validity of any such registration subject to such conditions as the board may then determine, whether by the imposition of further or new conditions or by the amendment or cancellation of conditions then existing;

[paragraph (c) inserted by Act 69 of 1970]

- (d) to cancel any such registration if the person registered has contravened or failed to comply with any condition specified in the scheme or imposed by the board under paragraph (b) or (c).

[paragraph (d) inserted by Act 69 of 1970]

(4) A control board, which is by virtue of subsection (3)(b) empowered by the relevant scheme to refuse any application for registration in terms of a provision made in that scheme under paragraph (a)(iii) or (b) of subsection (1), may, in addition to any other reason for which it may lawfully refuse any such application, also refuse it if in its opinion there are -

- (a) in a case arising out of the said paragraph (a)(iii), already sufficient producers engaged in the manufacture or processing of the product in question or the conversion thereof into any other product or commodity;
- (b) in a case arising out of the said paragraph (b), already sufficient persons dealing in the course of trade with the product in question,

to meet the needs of all persons likely to be served by the applicant in the event of his application being granted.

(5) A scheme which empowers its control board to impose conditions in connection with the registration with the board of a producer of, or of a person dealing in the course of trade with, the product to which the scheme relates, may further empower the board to impose, in addition to any other conditions which it may lawfully impose, conditions prescribing the nature of the equipment and the maximum capacity of the plant or machinery which may be installed, or the class, grade or maximum quantity of any product or commodity which may be manufactured or processed or converted or be dealt with in the course of trade by such producer or person, and the manner in which, and the place where or the area within which, and the purpose for which, and the person (who may also be the board) or persons or classes of persons to whom, that product or any product or commodity derived therefrom, may be disposed of.

[subsection (5) substituted by Act 68 of 1972]

(6) Any person who is dissatisfied with a decision of a control board in connection with any matter relating to his registration by that board in pursuance of powers vested in it by virtue of subsection (1)(c) or of subsection (3)(b), (c) or (d) read with subsections (4) and (5), may within ninety days after he or his representative has been notified of such decision, appeal to the Minister against such decision, and the Minister may, after consultation with the marketing council, confirm, set aside or vary such decision or make such order in connection therewith as he may deem fit.

[subsection (6) substituted by Act 69 of 1970 and by Act 68 of 1972]

Fixing of the price of a regulated product

60. (1) A scheme may empower its control board -
- (a) with the approval of the Minister to prohibit, from time to time, any person, or any person belonging to any class or group of persons, or any person other than a person belonging to any class or group of persons, from acquiring, selling or disposing of any quantity of the product to which the scheme relates, or of any class or grade thereof, at a price other than or below or above a price fixed by the board, or calculated in accordance with a basis specified in the scheme or determined by the board, for that product or for such class, grade or quantity thereof, or from selling or disposing of any quantity, class or grade of that product in any country or territory outside the Republic at a price below a price so fixed or calculated therefor;
 - (b) with the approval of the Minister, when exercising its powers conferred under paragraph (a) -
 - (i) to determine the charges or costs to be included in, added to or deducted from any price referred to in the said paragraph, or the mass to be allowed, in relation to any quantity referred to in that paragraph, for any container of the product in question;

[subparagraph (i) substituted by Act 68 of 1972]

- (ii) to require any person disposing of the product in question, or of any class, grade or quantity thereof, on credit or for an amount exceeding an amount specified in the scheme or determined by the board, to render an invoice containing such particulars as may be so specified or determined;
- (iii) to require any price so fixed to be displayed in such manner and form, and at such places or on such vehicles and by such persons or classes of persons, as may be determined by the board.

(2) With the approval of the Minister, a control board may, when exercising its powers conferred under subsection (1)(a) -

- (a) fix in respect of any quantity of the product in question or of any class or grade thereof, which is acquired for any purpose or by any class of persons, a price which differs from the price fixed in respect of a quantity of that product, or of that class or grade thereof, acquired for any other purpose or by any other class of persons;
 - (b) fix in respect of that product, or of any class or grade thereof, different prices in respect of different quantities or in respect of different times of the year.
- (2A) (a) If the Minister is of the opinion that the exercise of any power conferred on a control board by or under subsection (1) or (2) is or may be affected by the fact that a subsidy is paid by the State in respect of the product to which the scheme in question relates or in respect of anything from which that product is derived or anything which is derived from that product, the Minister, after consultation with the marketing council, may, notwithstanding anything to the contrary in this Act contained but subject to the provisions of paragraph (b), exercise any or all of the powers so conferred on the control board concerned in the stead of that control board: Provided that, in so far as he may deem it expedient for the purpose of exercising any such power himself, the Minister need not comply with any

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provision or requirement of that scheme which governs or otherwise relates to the exercise of such power by that control board.

- (b) Paragraph (a) does not authorize the Minister to exercise any power referred to therein in respect of -
- (i) the sale or disposal of any quantity of the product to which a scheme relates by a person who has produced such quantity in the course of *bona fide* farming operations, to or through the control board administering the scheme or to any person dealing with that product in the course of trade; or
 - (ii) the purchase or acquisition of any quantity of that product by that control board or by any person so dealing with that product, from any person who has so produced such quantity.
- (c) Anything done by the Minister by virtue of the provisions of paragraph (a) shall for the purposes of the scheme in question and the provisions of this Act be deemed to have been done by the control board concerned under the relevant provisions of that scheme and of subsections (1) and (2).

[subsection (2A) inserted by Act 73 of 1974]

(3) For the purpose of any prohibition under subsection (1)(a), any person who has claimed from any other person in respect of any quantity of a product disposed of by him to such other person, an amount which is not in accordance with the price fixed under the said subsection, shall be deemed to have disposed of that quantity of the product to such other person for the said amount, unless he proves to the satisfaction of the court that the claim was made as a result of a *bona fide* error.

Fixing of rates for conveyance of regulated product

60A. (1) A scheme may empower its control board to prohibit with the approval of the Minister any person, or any person belonging to any class or group of persons, or any person other than a person belonging to any class or group of persons, from conveying any quantity of a product to which the scheme relates, or any class or grade thereof, at a rate other than or below or above a rate fixed by the board or calculated on a basis prescribed in the scheme or determined by the board.

(2) Unless the scheme in question provides otherwise, a prohibition imposed under a power conferred by virtue of subsection (1) shall not apply to a co-operative society or co-operative company which in terms of its regulations conveys its members' products and pools the costs of such conveyance among such members.

[section 60A inserted by Act 69 of 1970]

Recovery of certain subsidies by control boards

60B. (1) Whenever a control board has paid a subsidy in respect of the product to which the scheme administered by it relates, to any person in order to enable such person or any other person acquiring that product to supply any particular commodity into which that product has been converted or in the manufacture of which that product has been used, to distributors and consumers thereof at a price lower than the price at which that commodity would otherwise, if no subsidy had been paid in respect of the said product, have been so supplied, and such person or any such other person has used any quantity of that product for any purpose other than to convert it into the said commodity or to use it in the manufacture thereof, the control board

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may, subject to the provisions of subsection (2), recover the amount of the subsidy paid by it in respect of that quantity of the said product from such person or such other person, as the case may be.

(2) Whenever the State has advanced money to a control board for the payment of a subsidy referred to in subsection (1), the board in question shall exercise the powers conferred by the said subsection subject to the directions of the Minister.

(3) Any control board paying a subsidy referred to in subsection (1) shall at least once in a year, by notice in the *Gazette*, give notice to all interested persons of the commodities in respect of which the subsidy is paid.

[Section 60B is inserted by Act 50 of 1976, which provides the following transitional provision in section 1(2):

“Any recovery before the commencement of subsection (1) [which inserted section 60B into Act 59 of 1968] by any control board of the amount of a subsidy referred to in subsection (1) of section 60B of the principal Act [Act 59 of 1968], which would have been valid if the last-mentioned subsection had been in operation at the time of the payment of the relevant subsidy to the person concerned, is hereby validated.”]

Payment to, and distribution by, a control board of the purchase price of a regulated product

61. (1) A scheme may empower its control board to require, with the approval of the Minister, any person who has purchased from a producer any quantity of the product to which the scheme relates, to pay the purchase price to the board, and to distribute the amounts so paid to it, less such amounts as may be prescribed in the scheme, among producers in proportion to the respective quantities of that product purchased from each of them and in respect of which the purchase price has been so paid to the board.

(2) For the purpose of any requirement under a power conferred by virtue of subsection (1), any quantity of a product which has, in terms of the regulations of any co-operative society or co-operative company, been delivered to that society or company by a member thereof, shall be deemed to have been sold to that society or company by that member and to have been purchased by that society or company from that member, except in so far as the relevant scheme provides otherwise.

Conducting, by a control board, of pool in respect of certain quantities of a regulated product

62. (1) A control board may, if authorized thereto by the relevant scheme, and on such conditions or on such basis as may be prescribed therein, conduct a pool for the disposal of any quantity of the product to which that scheme relates, which may in the circumstances described in such scheme be delivered for such disposal to the board or such person as it may determine, by any person who has produced or otherwise acquired that quantity.

(2) The ownership in any quantity of that product so delivered shall, on delivery thereof, vest in the board concerned.

(3) The said board may dispose of any quantity of that product so delivered in such manner as it may deem fit, and shall distribute the proceeds derived from such disposal, less such amounts as may be specified in the scheme or as the board may determine, among the persons who are in terms of the scheme entitled thereto, on such basis as may be prescribed in the scheme.

Payment to and distribution by a control board of the purchase price of any quantity of a regulated product not delivered for disposal through a pool

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63. (1) A scheme may empower its control board -

- (a) with the approval of the Minister, to require any person, or any person belonging to any class or group of persons, or any person other than a person belonging to a class or group of persons, who has purchased from a producer any quantity of the product to which the scheme relates, to pay to the board the purchase price of so much of that quantity as has not been delivered for disposal through a pool conducted by the board in terms of section 62, after deduction therefrom of any amounts which may, in terms of the scheme or with the consent of the board, have been paid to or on behalf of that producer; and
- (b) to distribute the sum of the amounts so paid to the board during any period specified in the scheme or determined by the board, together with the proceeds derived by it from the disposal of the quantities of such product delivered for sale through the said pool during that period, less such amounts as may be specified in the scheme or as the board may determine, among producers of such product on such basis as may be prescribed in the scheme or determined by the board.

(2) The basis of distribution contemplated in subsection (1)(b) may under such circumstances and subject to such modifications and adjustments as may be specified in the scheme or determined by the board, vary -

- (a) in the case of different producers, according to the respective quantities of the product in question disposed of by such producers on any day or during any period, whether by delivery for sale through the pool or in any other manner, or according to the respective quantities of that product so disposed of by such producers during any previous period, and for that purpose a producer who has not during any such period or any portion thereof so disposed of any quantity of that product shall be deemed to have so disposed of such quantity thereof during that period as the board may determine;
- (b) in respect of different quantities of that product so disposed of by any such producer on any day or during any period in excess of a quantity which may be specified in the scheme or determined by the board and which may be fixed by reference to the quantity so disposed of, or (as the case may be) deemed in terms of paragraph (a) to have been so disposed of, by such producer during any previous period, or in any other manner specified in the scheme or determined by the board;
- (c) according to the class or grade of that product so disposed of by any such producer.

(3) The provisions of section 61(2) shall *mutatis mutandis* apply in respect of any requirement under a power conferred by virtue of subsection (1).

(4) A scheme may provide that the provisions of paragraphs (b) and (c) of section 57(2) shall *mutatis mutandis* also apply, to the extent determined by the scheme, in respect of the distribution, as empowered by that scheme by virtue of a requirement of that scheme in terms of this section, of the sum of the amounts and the proceeds referred to in this section, as if the said amounts and proceeds were the proceeds in a pool mentioned in the said section 57(2).

Prohibition of the sale of a regulated product except to or through a control board or specified persons

64. (1) A scheme may empower its control board -

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- (a) with the approval of the Minister, to prohibit any producer of the product to which the scheme relates from selling that product or any class, grade, quantity or percentage thereof which the board may from time to time determine, except to or through the board or such persons as may be specified in the scheme or determined by the board;
- (b) with the approval of the Minister to grant exemption on the conditions prescribed in the scheme or determined by the board, from the operation of any prohibition imposed by the board under a power conferred by virtue of paragraph (a) and, if a levy referred to in section 41 or a special levy referred to in section 44 is not payable in respect of the class of that product in respect of which any such exemption was granted, also on condition that an amount of money, determined by the board with the approval of the Minister, be paid to the board in respect of any unit or quantity thereof by such persons, at such times and in such manner as the board may determine, but not exceeding the amount of the highest such levy and the highest such special levy payable in respect of an equal unit or quantity of any class of that product which is sold to or through the board or the persons referred to in paragraph (a).

[Paragraph (b) is substituted by Act 69 of 1970. The word “exceeding” in the phrase “not exceeding the amount of the highest such levy” is misspelt in the Government Gazette, as reproduced above.]

(2) The provisions of section 61(2) shall *mutatis mutandis* apply in respect of any prohibition imposed under a power conferred by virtue of subsection (1) and, for the purpose of any such prohibition, any co-operative society or co-operative company which deals on behalf of its members with any product in respect of which the prohibition has been imposed, may be appointed as an agent for the purchase and sale of any quantity of such product, whether produced by its members or by any other person, and any society or company so appointed shall, notwithstanding anything contained in its regulations or in the Co-operative Societies Act, 1939 (Act No. 29 of 1939), or in the Co-operative Societies Ordinance, 1946 (Ordinance No. 15 of 1946), of the territory, be deemed to have all the powers which may be reasonably necessary for the due performance of the functions it is required to exercise in pursuance of such appointment.

[Subsection (2) is substituted by Act 78 of 1971.]

(2A) Whenever a control board has under the circumstances contemplated in subsection (1)(a) appointed a co-operative society or co-operative company as its agent to receive quantities of any product on behalf of that control board from members of the society or company concerned -

- (a) any quantity of such product delivered to that society or company in its capacity as such agent by a member thereof shall, in so far as a permit under section 96 of the Co-operative Societies Act, 1939 (Act No. 29 of 1939), or under section 96 of the Co-operative Societies Ordinance, 1946 (Ordinance No. 15 of 1946), of the territory, is required for the purpose, be deemed to have been delivered in pursuance of such a permit;

[Paragraph (a) is substituted by Act 78 of 1971. The Co-operative Societies Ordinance 15 of 1946 has been replaced by the Co-operatives Act 23 of 1996.]

- (b) the control board shall not be liable to such a member in respect of any quantity of such product delivered by the member of that society or company in its said capacity, provided all amounts due by the control board to that society or company in respect of quantities of such product delivered to it are paid to it by the control

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board in accordance with the conditions on which that society or company has been appointed as such agent; and

- (c) any amount which in accordance with the said conditions of appointment becomes payable to any such member by that society or company in respect of any quantity of such product delivered to it in its said capacity by the member, shall be deemed to be a debt due to the member by that society or company in the same manner as if that quantity had been delivered to it to be dealt with in accordance with its regulations, and not in its said capacity.

[subsection (2A) inserted by Act 69 of 1970, with effect from the date of commencement of Act 59 of 1968]

- (2B) (a) Any quantity of a product delivered by the producer thereof to a control board by virtue of the provisions of subsection (1)(a) shall, in so far as a permit under section 96 of the Co-operative Societies Act, 1939 (Act No. 29 of 1939), or under section 96 of the Co-operative Societies Ordinance, 1946 (Ordinance No. 15 of 1946), of the territory, is required for the purpose, be deemed to have been delivered in pursuance of such a permit.

[The Co-operative Societies Ordinance 15 of 1946 has been replaced by the Co-operatives Act 23 of 1996.]

- (b) No moneys payable by a control board to a producer of a product in respect of any quantity of that product delivered by such producer to such control board by virtue of the provisions of subsection (1)(a) shall be paid to such producer unless -
- (i) the said producer has at the time of such delivery informed that control board in writing whether or not he is a member of a co-operative society or co-operative company and, in the event of such producer being such a member, has furnished the control board with the name of every such society or company of which he is a member;
- (ii) all amounts owing in terms of the provisions of section 96 of the said Co-operative Societies Act, 1939, or of the said Co-operative Societies Ordinance, 1946, by such producer to a co-operative society or co-operative company referred to in subparagraph (i) have, subject to the provisions of paragraph (c), been paid to such society or company.
- (c) An amount referred to in paragraph (b)(ii) shall be paid to the co-operative society or co-operative company concerned by the control board concerned out of the moneys referred to in paragraph (b), after deduction by the control board from such moneys of any amount owing to the control board by the producer concerned in terms of the provisions of the scheme administered by the control board or of this Act: Provided that if the total of amounts so owing to the co-operative society or co-operative company and the control board concerned exceeds the amount of the said moneys, the amounts so owing shall be paid to the co-operative society or co-operative company and the control board concerned in proportion to their claims.

[subsection (2B) inserted by Act 109 of 1977]

(3) Any moneys paid to a control board by virtue of the provisions of subsection (1)(b) shall be dealt with by it only in such manner as the Minister may approve.

(4) The Minister may, by notice in the *Gazette*, authorize a control board which has prohibited producers from selling a product except to or through the board, to refuse at any time

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during a period mentioned in such notice, to purchase or to take delivery for sale of a class or grade of the product mentioned in the notice or which the board may from time to time determine as it deems fit.

Special provisions regarding a scheme relating to milk, skim milk or cream

65. (1) A scheme which relates to milk, skim milk or cream intended for human consumption in the form of milk, skim milk or cream, or for the manufacture of ice cream or of any other article other than dairy produce as defined in the Dairy Industry Act, 1961 (Act No. 30 of 1961), and which empowers its control board to prohibit a producer of such milk, skim milk or cream from selling it except to or through the board or persons dealing with such milk, skim milk or cream in the course of trade, may -

- (a) provide for exemption, under such circumstances and subject to such exceptions and conditions as may be specified in the scheme or determined by the board, from the operation of any such prohibition or any provision of that scheme applicable to persons to whom such prohibition applies, in the case of any class of such producers as may be specified in the scheme or determined by the board;
- (b) provide for prohibiting, under such circumstances and subject to such exceptions and conditions as may be specified in the scheme, any producer of such class from dealing in the course of trade with such milk, skim milk or cream which he has acquired from any person;
- (c) in the case of any producer of such class who deals in the course of trade with any such milk, skim milk or cream which he has acquired from any person -
 - (i) prescribe, subject to such conditions or exceptions as may be specified in the scheme or determined by the board, the maximum quantity of such milk, skim milk or cream (or the maximum quantity thereof as determined on a basis specified in the scheme or determined by the board) which he may acquire from any person on any day or during any period specified in the scheme or determined by the board for the purpose of dealing therewith in the course of trade;
 - (ii) provide for exemption from the operation of any provision of the scheme in so far as it applies to any specified class of persons dealing with such milk, skim milk or cream in the course of trade;
- (d) provide that any quantity of such milk, skim milk or cream which any producer of such class has produced and in respect of which he has been so exempted, shall be deemed to have been purchased by him from the producer thereof;
- (e) provide that the board may, with the approval of the Minister -
 - (i) determine that applications for the registration of producers of such milk, skim milk or cream will be considered by the board during one or more specified months of each calendar year; and
 - (ii) in respect of each month so determined, fix a date as the last date on which such applications shall be received for consideration during that month,

and may postpone the consideration of all such applications which may be received after a date so fixed until the first ensuing month so determined;

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- (f) include provisions applicable only to a producer of such class either in his capacity as a producer of such milk, skim milk or cream or in his capacity as a person dealing with such milk, skim milk or cream in the course of trade.

(2) No provision included in a scheme by virtue of this section shall be held to be invalid on the ground that it applies to a producer of a product a provision which in terms of this Act can be applied only to a person dealing with a product in the course of trade, or that it applies to such a person a provision which in terms of this Act can be applied only to such a producer.

(3) Any reference to milk or cream in any scheme or proposed scheme or proclamation or notice in terms of this Act relating to milk or cream intended for human consumption in the form of milk or cream or for the manufacture of ice cream or in connection with anything done in respect of any such scheme or proposed scheme, proclamation or notice, shall be deemed to include a reference to sterilized or pasteurized milk or cream, as the case may be, and to have included such a reference at all relevant times since the 18th June, 1951.

Conducting of a pool in respect of a regulated product which may not be sold except through a control board or specified persons

66. (1) A scheme which empowers its control board to prohibit the sale of the product to which that scheme relates, except through that board or such persons as it may determine or as may be specified in the scheme, may provide for the conduct by the board or any such person of a pool for the sale of that product on such basis as may be specified in the scheme.

(2) The ownership in any quantity of that product delivered for sale through a pool contemplated in subsection (1) shall forthwith vest in the board or person concerned: Provided that the scheme may empower the board or any such person to acquire for its or his own account any quantity of that product so delivered for sale through any such pool, at a price determined by the board on a basis approved by the Minister, and that -

- (a) any quantity of that product so acquired shall, for the purposes of this section, be deemed to have been sold by the board or any such person, as the case may be, on behalf of the pool;
- (b) any quantity of that product so acquired by the board shall, for the purposes of section 56, be deemed to have been purchased by the board under a power conferred in terms of paragraph (a) of that section.

**[Subsection (2) is amended by Act 68 of 1972 to insert the proviso.
The full stop preceding the proviso has accordingly been changed to a colon.]**

(3) Whenever a control board has prohibited producers of a product from selling that product except through the board and the said board conducts a pool for the sale of that product, the said board may, if authorized thereto by the relevant scheme and with the approval of the Minister -

- (a) require each producer to give, during any period determined by the board, notice to the board or to such person or persons as may be determined by the board, of the total quantity of the product in question which he intends to deliver to the board during any future period determined by the board, for sale;

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- (b) refuse to accept that quantity of the product, or any part thereof, in respect of which the producer concerned has not given notice in terms of any requirement under paragraph (a);
- (c) where the board considers it equitable to do so, recover for the benefit of the pool from any producer who has delivered to the board a quantity of that product -
 - (i) which differs from the quantity of which such producer so gave notice; or
 - (ii) in respect of which such producer failed so to give notice,

an amount assessed by the board, with the approval of the Minister, as being approximately equal to the amount of any loss suffered by such pool in consequence of such difference in quantity or such failure to give notice: Provided that any amount recovered per unit or quantity of the product shall not exceed an amount which shall be prescribed in the scheme.

Equalization of levy rates under certain circumstances

66A. Whenever a control board conducts a pool for the sale of a product in the circumstances contemplated in section 66 and, during a period specified in the relevant scheme, reduces or increases the rate at which a levy referred to in section 41 or a special levy referred to in section 44 is payable in respect of a unit or quantity of that product, the board may, if authorized thereto by the scheme and in the manner prescribed in the scheme -

(a) refund to each person who paid the levy during that period at a rate higher than an average rate for that period calculated by the board on a basis so prescribed or determined by the board, or to each such person belonging to a class of persons defined in the scheme, an amount calculated by the board, on a basis so prescribed, in respect of every unit or quantity of that product in respect of which the person in question so paid the levy;

(b) recover from each person who paid the levy during that period at a rate lower than such average rate, or from each such person belonging to a class of persons defined in the scheme, an amount calculated by the board, on a basis so prescribed, in respect of every unit or quantity of that product in respect of which the person in question so paid the levy.

[section 66A inserted by Act 69 of 1970]

Prohibition of the sale of a regulated product except a particular class, grade, quantity or percentage thereof, or for a defined purpose

67. (1) A scheme may empower its control board to prohibit from time to time, with the approval of the Minister, any producer from selling any product to which the scheme relates and which he has produced, except such class, grade, quantity or percentage thereof as the board has determined, or except for such purposes as the board has defined.

(2) The provisions of section 61(2) shall *mutatis mutandis* apply in respect of any prohibition imposed under a power conferred by virtue of subsection (1).

Conducting of a pool in respect of a quantity of a regulated product in excess of the quantity which a producer may sell

68. A control board which has prohibited any producer from selling any quantity of a product in excess of a quantity determined by that board, may, if authorized thereto by the relevant scheme, and on such conditions as may be prescribed therein, conduct a pool for the

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sale of any quantities of that product which, in terms of such prohibition, may not be sold by the producers thereof, or which may, in the circumstances described in such scheme, be delivered to it for sale by persons dealing with that product in the course of trade.

Prohibition of the sale of a regulated product not acquired from a control board or a specified person

69. A scheme may empower its control board to prohibit, with the approval of the Minister, any person from selling the product to which the scheme relates unless he has acquired it from the board, or from such persons as may be specified in the scheme or determined by the board.

Prohibition of the sale of fruit or vegetables intended for processing, otherwise than in accordance with an approved written agreement

70. (1) A scheme relating to fruit or vegetables intended for processing, may authorize its control board to prohibit, with the approval of the Minister, any person, or any person belonging to any class or group of persons, or any person other than a person belonging to any class or group of persons, from selling, during a period determined by the board, any quantity of the product in question to any person who carries on business as a processor thereof, or any person who so carries on business, from purchasing any quantity of that product from any person, or any person belonging to any class or group of persons, or any person other than a person belonging to any class or group of persons, during any such period, otherwise than in accordance with a written agreement entered into on or before a date fixed by the board or such later date as the board may in special circumstances allow, of which a certified copy has been submitted to the board on or before that date for approval and which has been approved by the board, and in terms whereof provision is made for the purchase and sale of that product subject to the conditions determined by the board with the approval of the Minister.

(2) A scheme may prescribe the grounds on which a control board may refuse to approve an agreement referred to in subsection (1).

[section 70 substituted by Act 31 of 1973]

Prohibition of the sale, supply, delivery or conveying of a regulated product at specified times

71. A scheme may empower its control board to prohibit, with the approval of the Minister, any person, or any person belonging to any class or group of persons, or any person other than a person belonging to any class or group of persons, from selling, supplying, delivering or conveying the product to which the scheme relates, or any class or grade thereof, on, at or during any day, time or period specified in the prohibition, or on, at or during any day, time or period other than a day, time or period so specified, or more or less frequently than so specified.

[section 71 substituted by Act 69 of 1970]

Prohibition of the purchase or sale of a regulated product except under permit

72. (1) A scheme may empower its control board, to prohibit, with the approval of the Minister, the purchase or sale, by any person, or by any person belonging to any class or group of persons, or by any person other than a person belonging to any class or group of persons, of any product to which the scheme relates or of any class or grade thereof, except under the authority of a permit, the issue of which shall be in the discretion of the board and which may be cancelled by the board if the holder thereof has contravened or failed to comply

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with any condition specified therein or any provision of the scheme or of any regulation made under this Act.

(1A) A scheme may empower its control board, with the approval of the Minister, to determine that applications for permits referred to in subsection (1) will be considered by the board during one or more specified months of each calendar year, and to fix a date in respect of each such month as the last date on which such applications will be accepted for consideration during that month, and to postpone the consideration of all such applications which may be received after a date so fixed, until the next ensuing month so specified.

[subsection (1A) inserted by Act 31 of 1973]

(2) Whenever a prohibition is imposed under a provision embodied in a scheme in pursuance of subsection (1) and the board concerned refuses to issue, or cancels, the required permit, the applicant or the holder, as the case may be, may appeal against the refusal or the cancellation to the Minister who may thereupon confirm, set aside or vary the refusal or the cancellation.

Prohibition of the processing or manufacturing of a regulated product on behalf of any other person except under permit

73. A scheme may empower its control board -
- (a) with the approval of the Minister to prohibit any person from manufacturing or processing any product to which the scheme relates or any class, grade or quantity thereof on behalf of any other person, except under the authority of a permit which may be issued by the board subject to such conditions as it may deem fit;
 - (b) with the approval of the Minister to fix the fees which may be charged by any person for the manufacture or processing of such product on behalf of any other person.

Prohibition of the purchase, sale, use, treatment, manufacture or processing of a regulated product for a specified purpose or in a specified manner, or the placing thereof in cold storage, except under permit

74. A scheme may empower its control board to prohibit, with the approval of the Minister, any person, or any person belonging to any class or group of persons, or any person other than a person belonging to any class or group of persons -
- (a) from purchasing, selling, using, treating, manufacturing or processing any product to which the scheme relates or any class, grade or quantity (determined on a basis prescribed in the scheme or otherwise) of such product for any purpose or in any manner determined by the board, or for any purpose or in any manner other than a purpose or manner so determined; or
 - (b) from placing any such product or any class, grade or quantity (determined on a basis prescribed in the scheme or otherwise) of such product in cold storage,

except under the authority of a permit which may be issued by the board subject to the conditions (if any) prescribed in the scheme or determined by the board.

Regulation of quantity, time and place in relation to the movement, sale, processing or acquisition of a regulated product

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75. (1) A scheme may empower its control board -
- (a) to determine the maximum quantity of any product to which the scheme relates which may, during any week, or during any day or other period determined by the board, be brought into or removed from any area defined by the board;
 - (b) to determine the maximum quantity of any such product which may be sold or offered for sale during any week, or during any day or other period determined by the board, at any market or other place specified by the board;
 - (c) in the case of a scheme relating to the marketing of slaughter animals or meat, to determine the maximum number of any slaughter animals which may during any week, or during any day or other period or in any area or at any place determined by the said board, be slaughtered by or on behalf of any person, or to determine the maximum quantity of meat which may during any such period, or in any such area or at any such place, be acquired by such person through the slaughtering by him or on his behalf of any such slaughter animals.

[paragraph (c) substituted by Act 52 of 1969]

- (2) The Minister may, for the purpose of rendering effective any decision of a control board under a power conferred in terms of subsection (1), by notice in the *Gazette* -
- (a) prohibit the introduction into, the receipt, processing, sale or acquisition in or removal from any area, market or place, which may at any time be determined by the board under any such power, at any time, on any day or during any period which may be so determined, by any person, or by any person belonging to any class or group of persons, or by any person other than a person belonging to any class or group of persons, of any product to which the relevant scheme relates, except under the authority of a permit issued by the board, or otherwise than in accordance with any conditions prescribed under paragraph (b)(ii); and
 - (b) prescribe -
 - (i) the procedure to be followed and the forms to be used in an application for a permit referred to in paragraph (a), including the form of any declaration to be made by an applicant for any such permit; and
 - (ii) the form of any such permit and the conditions subject to which any such permit may be issued, suspended or cancelled by the board.
- (3) No permit referred to in subsection (2)(a) shall be transferable without the permission of the board which issued it, unless it is otherwise stated in the permit.

Penalty for exceeding quantities authorized by certain permits

76. A scheme may empower its control board to recover from a producer who has delivered to the board for sale a larger quantity of a product than he was authorized so to deliver under a permit contemplated in section 72 or 75(2), an amount assessed, on the surplus so delivered, at a rate determined by the board with the approval of the Minister, and to deal with the amount so recovered in such manner as may be prescribed in the scheme or approved by the Minister.

Prohibition of the introduction of a regulated product into a defined area

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77. A scheme may empower its control board to prohibit from time to time, with the approval of the Minister, any person from introducing into any area defined by the board, the product to which the scheme relates, except such class or grade thereof as the board has determined or except for such purposes as the board has defined.

Directions regarding the export of a product

78. A scheme may empower its control board to direct any person, who exports any product to which the scheme relates, to consign or dispose of any quantity of such product which he exports, to or through the board or such persons or agencies (including an agency established by the board) as it may designate, or to consign any quantity of such product which he exports, to a specified overseas market.

Agreement to market product of the State

78A. A scheme may, subject to the provisions of section 98, empower its control board to enter, with the approval of the Minister, into an agreement with any department of State for the marketing of a quantity of a product produced by the department in question and to which the scheme relates, in such manner and on such conditions as may be mutually agreed upon.

[section 78A inserted by Act 68 of 1972]

Agreement to market product produced in adjoining state or territory

78B. (1) A control board which, under a power conferred upon it by virtue of the provisions of section 64(1), has prohibited any producers of the product to which the scheme in question relates from selling that product except to or through that control board, may, with the approval of the Minister, enter into an agreement with the government of, or any other competent authority in, any state or territory adjoining the Republic or the government of, or any other competent authority in, any self-governing territory, whereby the control board undertakes -

- (a) to purchase, receive for sale or otherwise dispose of any quantities of such product produced in that state or self-governing or other territory, on such conditions as may, subject to the provisions of that scheme, be mutually agreed upon;
- (b) to pay to such government or authority, or to any person or body designated by such government or authority, all moneys which are in terms of the scheme due by the control board to persons who sell or deliver any such quantities of that product to the board under the agreement.

[subsection (1) substituted by Act 38 of 1975]

(2) A control board which has under subsection (1) agreed to pay the moneys referred to in paragraph (b) of that subsection in the manner contemplated in that paragraph, shall, provided it pays to the government, authority, person or body concerned, as the case may be, all moneys due under the agreement in accordance with the provisions of the agreement, be relieved of all liability to any other person for any payment in respect of any quantity of such product referred to in paragraph (a) of that subsection which is purchased by or delivered to it.

[section 78B inserted by Act 73 of 1974]

Control board may act as agent on behalf of the government of a self-governing territory

78C. A control board may, with the approval of the Minister and at the request of the government of any self-governing territory, exercise any power or perform any function on

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behalf of such government or of any other competent authority in such territory, which such board is otherwise empowered to exercise or to perform under its scheme or this Act or any regulation made thereunder, and any such power shall be exercised or function shall be performed subject to such conditions as may be agreed upon between the said board and the said government.

[section 78C inserted by Act 38 of 1975]

Notification of certain decisions of a control board

79. Every -
- (a) levy under section 41 or special levy under section 44;
 - (b) prohibition under section 60(1)(a), 60A, 64(1)(a), 67(1), 69, 70, 71, 72(1), 73(a), 74 or 77;
 - (c) direction, determination, requirement, condition or fixation of a date under section 52(2)(a) or (b), 59(3)(a) or (aA), 60(1)(b), 61(1), 63(1)(a), 65(1)(e), 66(3)(a), 70, 72(1A), 75(1)(a), (b) or (c) or 78; or
 - (d) fixation of fees under section 73(b),

shall be made known by the Minister by notice in the *Gazette*, or, if the Minister so determines, be communicated by the control board concerned to the person or persons affected thereby, by registered post, and shall come into operation on a date specified in the notice or communication.

[section 79 substituted by Act 69 of 1970 and amended by Act 31 of 1973]

F. MISCELLANEOUS PROVISIONS**Exercise of powers of control board by minister in certain circumstances**

80. (1) If -
- (a) the Minister is not prepared to grant his approval of any decision of a control board taken by such control board in the exercise of any of its powers or the performance of any of its duties and in respect of which the Minister's approval is required under this Act; or
 - (b) a control board, after having been directed by the Minister to exercise any power or to perform any duty which it is under this Act empowered or required to exercise or to perform, refuses or neglects to do so within a period determined by the Minister,

the Minister may, after consultation with the control board concerned and the marketing council, exercise the power or perform the duty in question and may, in exercising such power or performing such duty, if he deems it expedient and in so far as it is practicable to do so, dispense with compliance with any provision or requirement of the scheme which governs or otherwise relates to the exercise of such power or the performance of such duty by the control board concerned.

(2) Any power exercised or duty performed by the Minister in terms of the provisions of subsection (1) shall, for the purposes of the relevant scheme and the applicable provisions of this Act, be deemed to have been exercised or performed by the control board concerned.

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(3) Whenever the Minister exercises the powers or performs the duties of a control board in terms of this section, he shall within 14 days, if Parliament is then in session, or, if Parliament is not then in session, within 14 days after the commencement of its next ensuing session, report such matter to Parliament.

[section 80 deleted by Act 52 of 1969 and inserted by Act 109 of 1977]

Certain reports to be submitted to Parliament

81. The Minister shall lay copies of every report submitted to him in terms of section 4(5) or 40, and of every report relating to the fixing of prices for any product, submitted to him in terms of section 32, upon the Table of the Senate and of the House of Assembly within fourteen days after receipt thereof, if Parliament is then in ordinary session, or, if Parliament is not then in ordinary session, within fourteen days after the commencement of its next ensuing ordinary session.

[section 81 substituted by Act 109 of 1977]

PART 3

MARKETING MATTERS GENERALLY

National mark

82. The State President may, by proclamation in the *Gazette*, prescribe a national mark for application to any product, specified in the proclamation, in connection with its sale in any area or at any place, and may from time to time repeal or amend any such proclamation.

Sale of products under the national mark

83. (1) No person shall apply the national mark prescribed under section 82 to any product not specified in the proclamation prescribing such mark, or to any receptacle containing any such product, or to any product so specified or to the receptacle containing any such product, if such product is sold in any area or at any place not so specified.

(2) No person shall without the written permission of the Minister or otherwise than in accordance with any condition prescribed under section 89(1)(f) apply the said national mark to any product or to the receptacle containing any product.

(3) No person shall apply to any product or to the receptacle containing any product any mark or representation which resembles the said national mark.

Inspection marks

83A. (1) The State President may, by proclamation in the *Gazette*, prescribe an inspection mark or marks for application to a product specified in the proclamation to indicate that a quantity of that product to which, or on the receptacle of which, any such mark has been applied, has been inspected on behalf of the Department of Agricultural Economics and Marketing and has at such inspection been found to comply with the requirements prescribed by or under this Act or with such requirements for a particular class or grade of such product, as the circumstances may require.

(2) No person shall -

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- (a) apply an inspection mark prescribed under subsection (1) to any product not specified in the proclamation prescribing such mark or to any receptacle containing such a product;
- (b) except under authority in writing granted by the Secretary, or otherwise than in accordance with the conditions or requirements determined by him and set out in the authorization, apply any such mark or any other representation purporting to indicate that a product has been inspected on behalf of the Department of Agricultural Economics and Marketing, to any product or to any receptacle containing any product.

(3) The Secretary may at any time cancel any authority granted by him under subsection (2)(b), if the person to whom such authority was granted, has contravened or failed to comply with a condition or requirement thereof.

[section 83A inserted by Act 31 of 1973]

Prohibition of the sale, under the name of a product, of any article which is not that product

83B. The State President may by proclamation in the *Gazette* prohibit the sale, under the name of or as being a product specified or defined in such proclamation, of any article which is not that product or which, if that product is defined as aforesaid or in Schedule 1 or in any proclamation under section 1(2), does not comply with the relevant definition of that product.

[section 83B inserted by Act 73 of 1974]

Packing and marking of products

84. (1) The State President may, by proclamation in the *Gazette*, declare that the sale by any person, or any person belonging to any class or group of persons, or any person other than a person belonging to any class or group of persons, of any product specified in the proclamation, or any product of a class so specified, in any area or at any place likewise specified, either generally or for a specified purpose or for a purpose other than a specified purpose, shall be prohibited -

- (a) unless the product in question is sold according to such grade or grades or other class or classes as may be prescribed in respect thereof by regulation under section 89 and specified in the proclamation;
- (aA) unless the product in question complies with the standards so prescribed for the composition thereof, and contains the ingredients and other substances so prescribed as ingredients and other substances which it shall contain;

[paragraph (aA) inserted by Act 73 of 1974]

- (b) unless the product in question is packed in a container and in a manner so prescribed;
- (c) unless the product in question is marked with particulars and in a manner so prescribed;
- (cA) if the product in question contains a substance so prescribed as a substance which it may not contain;

[paragraph (cA) inserted by Act 73 of 1974]

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- (d) if the product in question is packed in a container or in a manner so prescribed as a container in which or a manner in which it may not be packed;
- (e) if the product in question is marked with particulars or in a manner so prescribed as particulars with which or a manner in which it may not be marked.

[subsection (1) substituted by Act 69 of 1970 and by Act 68 of 1972]

(2) Any such proclamation may exempt from the provisions thereof any quantity of such product in respect of which an officer of the Department of Agricultural Economics and Marketing, specified in the proclamation, has approved in writing that, subject to the conditions determined by him, it be sold as an experiment or under special circumstances so specified, and in respect of which such conditions have been complied with.

[subsection (2) substituted by Act 52 of 1969]

Imposition of a levy on a product other than a regulated product

84A. (1) The Minister may, subject to the provisions of subsection (6), and after consultation with representatives of the persons referred to in the said subsection, by notice in the *Gazette* impose, on a basis specified in such notice, a levy on any product in respect of which no scheme is in force, or on any such product of a particular class, grade or standard of quality, or on any such product, class, grade or standard of quality thereof produced or sold in a particular area or at a particular place.

(2) A levy imposed under subsection (1) shall be payable in such manner and at such times as may be prescribed by regulation under section 89 and shall be so payable by persons belonging to such class or classes of persons as may be prescribed in the notice imposing the levy.

(3) Such notice may provide for the recovery, by any person contemplated in subsection (2) or any other person and under the circumstances prescribed in such notice, of any amount paid or payable by such person or other person by way of or in respect of such levy, from any other person determined in accordance with a manner so prescribed.

(4) The Minister may pay to any person by whom an amount paid by him by way of such levy may be recovered as contemplated in subsection (3), such commission on the amount in question as the Minister may determine.

- (5) (a) The provisions of section 43 shall *mutatis mutandis* apply in respect of any levy imposed under subsection (1).
- (b) For the purposes of paragraph (a) any reference in section 43 to a control board shall be construed as a reference to the Minister and any reference in that section to a scheme shall be construed as a reference to the notice imposing the levy in question.

(6) Before imposing a levy under subsection (1), the Minister shall, by notice in the *Gazette*, notify his intention so to impose such levy, and invite the producers of the product in respect of which he so proposes to impose a levy, to make such representations to him thereanent as they may think fit.

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(7) Whenever the Minister has imposed a levy on a product under subsection (1), he may appoint such persons as he deems suitable to form a committee for the purpose of advising him at his request in regard to any matter relating to such product.

[subsection (7) inserted by Act 69 of 1970]

[section 84A inserted by Act 52 of 1969]

Proceeds of levy to be paid into special account

84B. (1) The Minister shall cause a special account to be opened at the South African Reserve Bank into which the proceeds of any levy imposed under section 84A and such moneys as may accrue to such account from any other source shall be paid, and out of which all payments authorized under section 84C shall be made.

(2) Such special account shall, subject to the provisions of section 84C, be under the control of the Secretary who shall keep proper account of all moneys paid into, and of all payments made out of, such special account.

(3) Such special account shall be audited annually by the Auditor-General.

[subsection (3) substituted by Act 109 of 1977]

[section 84B inserted by Act 52 of 1969]

Utilization of moneys in the special account

84C. (1) The Minister may from time to time direct that there be paid out of the special account referred to in section 84B such amount as he may determine for any purpose set out in subsection (2).

(2) The moneys in such account may be utilized for -

- (a) the purchase, at a price determined by the Minister, of a quantity of any product in respect of which a levy has been imposed under section 84A;
- (b) the payment of costs in connection with any such purchase and the removal, diversion, storage, conveyance, distribution or sale of a quantity of any such product so purchased;
- (bA) the payment of subsidies in connection with any such product or anything from which such product is derived or anything which is derived from such product under such circumstances and to such person or persons or such class or classes of persons producing, or dealing in the course of trade with, any such product or any such thing, as the Minister may determine;

[Paragraph (bA) is inserted by Act 31 of 1973 and substituted by Act 73 of 1974, which erroneously refers to subsection (1) instead of subsection (2); this error is corrected in the amendment to Act 73 of 1974 by Act 38 of 1975.]

(bB) the payment of remuneration to any person for services rendered in connection with the administration of any provision of this Act or a regulation made thereunder, in respect of such product;

[Paragraph (bB) is inserted by Act 73 of 1974, which erroneously refers to subsection (1) instead of subsection (2); this error is corrected in the amendment to Act 73 of 1974 by Act 38 of 1975.]

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- (c) the promotion of the production or marketing of any such product;
- (d) fostering or stimulating the demand for any such product;
- (e) research relating to the improvement, production, manufacture, processing, storing or marketing of any such product;
- (f) the payment of commission in terms of section 84A(4), the payment to members of any committee appointed under section 84A(7) of such allowances as the Minister may determine and the payment of any other costs in connection with the administration of such account.

[paragraph (f) substituted by Act 69 of 1970]

(3) Any moneys in such special account not immediately required for any such purpose, shall be invested with the Public Debt Commissioners or in such other manner as the Minister may in consultation with the Minister of Finance determine.

(4) If a scheme is established which relates to a product in respect of which a levy has been imposed under section 84A, any moneys held in such special account in respect of such product may, by direction of the Minister, be transferred to any fund established under that scheme in terms of section 46.

[section 84C inserted by Act 52 of 1969]

Prohibition of the sale of certain products except a particular class, grade, quantity or percentage thereof, or for a defined purpose

84D. The Minister may by notice in the *Gazette* prohibit producers of a product in respect of which no scheme is in force and which is specified in such notice, from selling in an area or at a place defined in such notice, any quantity of such product except such class, grade, quantity or percentage thereof as may be so specified, or except for such purposes as may be so defined.

[section 84D inserted by Act 52 of 1969]

Fixing of the price of a product other than a regulated product

84E. (1) The Minister may by notice in the *Gazette* from time to time prohibit any person, or any person belonging to any class or group of persons, or any person other than a person belonging to any class or group of persons, from acquiring or selling any quantity of any product in respect of which no scheme is in force, or of any such product of a particular class or grade, generally or in an area specified in the notice, at a price other than or below or above a price fixed by the Minister, or calculated in accordance with a basis prescribed in the notice, for that product or for such class, grade or quantity thereof, or from selling any quantity, class, or grade of that product in any specified country or territory outside the Republic at a price below a price so fixed or calculated therefor, or from exporting it to such country or territory by reason of or with a view to a sale at a price below a price so fixed or calculated therefor.

- (2) In the exercise of the powers conferred under subsection (1), the Minister may -
 - (a) determine the charges or costs to be included in, added to or deducted from any price fixed under the said subsection, or the mass to be allowed, in relation to any quantity referred to in that subsection, for any container of the product in question;

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[paragraph (a) substituted by Act 68 of 1972]

- (b) require any person disposing of the product in question, or of any class, grade or quantity thereof, on credit or for an amount exceeding an amount prescribed in the notice, to render an invoice containing such particulars as may be so prescribed;
- (c) require any price so fixed to be displayed in such manner and form, and at such places or on such vehicles and by such persons or classes of persons, as may be prescribed in the notice;
- (d) fix in respect of any quantity of the product in question or of any class or grade thereof which is acquired for any purpose or by any class of persons a price which differs from the price fixed in respect of a quantity of that product, or of that class or grade thereof, acquired for any other purpose or by any other class of persons;
- (e) fix in respect of that product, or of any class or grade thereof, different prices in respect of different quantities or in respect of different times of the year or in respect of different areas.

(3) For the purpose of any prohibition under subsection (1), any person who has claimed from any other person in respect of any quantity of a product disposed of by him to such other person, an amount which is not in accordance with the price fixed under the said subsection, shall be deemed to have disposed of that quantity of the product to such other person for the said amount, unless the first-mentioned person proves to the satisfaction of the court that the claim was made as a result of a *bona fide* error.

[section 84E inserted by Act 69 of 1970]**Prohibition of the sale of a product other than a regulated product, except to or through specified persons**

- 84F.** (1) (a) The Minister may by notice in the *Gazette* prohibit any producer of a product in respect of which no scheme is in force and which is specified in such notice, from selling, generally or in an area defined in such notice, that product or any class, grade, quantity, or percentage thereof which the Minister may from time to time determine, except to or through the persons designated by the Minister and specified in the notice.
- (b) The Minister may designate any control board for the purposes of paragraph (a), and a control board so designated and specified in any such notice shall be deemed to have all such powers as it may require in order to give effect to the notice or the provisions of this section.
- (2) Any such notice which prohibits the sale of a product except through specified persons, may provide for -
- (a) the conduct by any or each of such persons or all such persons collectively and on a basis prescribed in the notice, of a pool for the sale of that product; or
 - (b) the payment of the proceeds of quantities of that product sold by any such person, into an account to be administered by the Secretary or by any other specified person, and the distribution of the proceeds in the account, on a basis prescribed in the notice and after deduction of such amounts as may be indicated in the notice, among the producers who delivered that product for sale through such persons.

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(3) The ownership in any quantity of that product delivered for sale through a specified person shall forthwith vest in the person concerned.

(4) The Minister may grant exemption on such conditions as he may determine, from the operation of any prohibition imposed by him under subsection (1).

[section 84F inserted by Act 69 of 1970]

Designation and powers of inspectors

85. (1) Whenever a national mark has been prescribed under section 82 or any inspection mark has been prescribed under section 83A or a prohibition has been imposed under section 84, 84D, 84E or 84F in respect of any product, the Minister may designate persons to perform, subject to the control of the Minister, the functions referred to in subsection (2).

[subsection (1) substituted by Act 69 of 1970, Act 68 of 1972 and Act 31 of 1973]

(2) Any person designated under subsection (1) may at all reasonable times enter upon any premises or vehicle in or on which there is or is suspected to be sold, kept, manufactured, produced, processed, treated, prepared, graded, classified, packed or marked any product in respect of which any such national mark or any such inspection mark has been prescribed or any such prohibition has been imposed, and may -

- (a) grade, classify, pack or mark, in accordance with the requirements prescribed under this Act, any quantity of that product found in or on such premises or vehicle, or direct any person in charge of such premises or vehicle or such quantity of that product or any employee or agent of such person so to grade, classify, pack or mark it;
- (b) if he is of the opinion -
 - (i) that any such national mark or a mark or representation resembling any such national mark, or any such inspection mark or a representation referred to in section 83A(2)(b), which has been applied to any product found in or on such premises or vehicle or to the container thereof, has not been lawfully applied thereto; or
 - (ii) that any quantity of that product found in or on such premises or vehicle has not been lawfully graded, classified, packed or marked,

cancel the said national mark or inspection mark or representation or any mark which has been applied to the said product or the container thereof otherwise than in accordance with the requirements prescribed under this Act, or grade, classify, pack or mark, or regrade, reclassify, repack or remark such product or container in accordance with the requirements so prescribed, or direct any person in charge of the said premises or vehicle or the said quantity of that product, or any employee or agent of such person, to do so;

- (c) take samples of any such product or any material or substance used or suspected to be intended for use in the selling, manufacture, production, processing, treatment, preparation, grading, classification, packing or marking thereof, and of any product, material or substance seized in terms of paragraph (g), and examine, analyse, grade or classify such samples or cause them to be examined, analysed,

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classified or graded, and open any package or container which contains or is suspected to contain any quantity of any such product, material or substance;

- (d) examine all books and documents in or on any such premises or vehicle which are believed, on reasonable grounds, to relate to such product, material or substance, and make copies of or take extracts from such books or documents;
- (e) demand from the owner or custodian of any such book or document an explanation of any entry therein;
- (f) demand from the owner or custodian of such product, material or substance any information concerning such product, material or substance;
- (g) seize any books, documents, products, materials, substances or other articles, which may afford evidence of any contravention of the provisions of this Act or any regulation made under this Act;
- (h) inspect any operations carried out in or on any such premises in connection with the selling, manufacture, production, processing, treatment, preparation, grading, classification, packing or marking of any such product and may demand from the person in charge of such operations any information regarding such operations;
- (i) direct the owner or custodian of any such product to remove or dispose of any quantity of that product which does not comply with the requirements prescribed under this Act or the regulations issued thereunder, in the manner and within the period prescribed by regulation.

[subsection (2) amended by Act 69 of 1970, Act 68 of 1972 and Act 31 of 1973]

(3) Any such cancellation, grading, classification, marking, regrading, reclassification, remarking or direction shall be subject to appeal by or on behalf of the owner of such product in the manner prescribed by regulation, and the decision of the person or persons who decide the appeal shall be final.

[subsection (3) substituted by Act 69 of 1970]

(4) Whenever a levy has been imposed under section 84A, the Minister may designate persons to perform the functions referred to in subsection (5).

[subsection (4) inserted by Act 52 of 1969]

(5) Any person designated under subsection (4) may at all reasonable times enter upon any premises or vehicle which is occupied by a person by whom any such levy is payable or is suspected to be payable, and may -

- (a) examine any book, writing or document which relates to a product on which such levy has been imposed, and require from the custodian or other person who has control over such book, writing or document, an explanation of any entry therein;
- (b) question any person whom he reasonably believes to be in possession of information relating to an omission to pay such levy;
- (c) require the production of, or an explanation of any entry in, any account, invoice or other document issued by a person who deals with such product, from such person or the custodian of such account, invoice or other document;

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- (d) take extracts from or make copies of any book, writing, document, account or invoice referred to in paragraph (a) or (c) and, for the purposes of any proceedings against any person, seize any such book, writing, document, account or invoice.

[subsection (5) inserted by Act 52 of 1969]

Prohibition of the erection or extension or the use of facilities for handling or storage in bulk of products

- 86.** (1) The State President may by proclamation in the *Gazette* -
- (a) prohibit the erection or extension of any facilities for the mechanical handling in bulk or storage in bulk of any product; or
- (b) prohibit the use of such facilities,

except under the authority of a permit issued by the Secretary subject to such conditions as he deems fit, including, in the case of a prohibition contemplated in paragraph (a), conditions relating to the capacity of such facilities and the place where they shall be located, and, in the case of a prohibition contemplated in paragraph (b), conditions relating to the extent to which and the products for which such facilities may be used.

(2) The Secretary may, on application by the holder of a permit issued under subsection (1), amend or withdraw any condition imposed under that subsection.

(3) Any such proclamation may provide that it shall only apply to facilities or extensions which exceed the limits stated in the proclamation.

[section 86 substituted by Act 52 of 1969]

Prohibition or control of the importation and exportation of products

- 87.** (1) The State President may by proclamation in the *Gazette* -
- (a) prohibit or regulate the importation into or the exportation from the Republic of any product, or of any class or grade of a product;
- (b) subject to such conditions as may be specified in the proclamation -
- (i) confer on the Secretary the power to regulate the importation into or the exportation from the Republic of any product, or of any class or grade of a product;
- (ii) confer on the Secretary or, in the case of a regulated product, either on the Secretary or on the control board concerned, the sole right to import into or export from the Republic such product or any class or grade thereof;
- (iii) prohibit the importation into or the exportation from the Republic of any regulated product, or of any class or grade of any such product, except by the control board concerned or by any person authorized thereto by permit, the issue of which shall be in the discretion of the board, or otherwise than in accordance with conditions determined by the board and set out in such permit:

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[Subparagraph (iii) is substituted by Act 31 of 1973. The full stop at the end of this subparagraph has been changed to a colon to accord with the addition of the proviso below.]

Provided that -

- (aa) the total quantity of any product or class or grade thereof which may be imported or exported by virtue of the provisions of this subsection during a particular period, shall not exceed a quantity determined in respect of such period by the Minister after consultation with the marketing council and, in the case of a regulated product, also with the control board concerned;
- (bb) the Minister may determine the basis of allocation to different persons authorized in terms of subparagraph (iii), of different portions of a quantity determined in terms of subparagraph (aa).

[subsection (1) amended by Act 109 of 1977 to add the proviso]

(1A) For the purposes of subsection (1), “Republic” means either the Republic as defined in section 1, or the Republic excluding the territory, or the territory.

[subsection (1A) inserted by Act 78 of 1971]

(1B) A proclamation issued under subsection (1) may provide that applications for permits referred to in that subsection will be considered by the control board concerned or the Secretary, as the case may be, during one or more specified months of each calendar year, and may in respect of each such month fix a date as the last date on which any such applications will be accepted for consideration during that month, and authorize that control board or the Secretary, as the case may be, to postpone the consideration of all such applications received after a date so fixed, until the next ensuing month so specified.

[subsection (1B) inserted by Act 31 of 1973]

(2) Whenever any power conferred on the Secretary by proclamation under subsection (1) involves the authority to issue permits, he may delegate such authority to any other persons subject to such conditions as he may determine.

(3) Any person who is dissatisfied with a decision of the control board concerned in connection with any matter relating to his application for a permit referred to in subsection (1)(b)(iii), may appeal against such decision to the Minister who may, after consultation with the marketing council, confirm, set aside or vary such decision or make such order in connection therewith as he may deem fit.

Minister may prescribe rendering of certain returns relating to products

88. The Minister may from time to time by notice in the *Gazette* require every person who, on behalf of a local authority, controls or manages any place, within an area defined in the said notice, where products are habitually sold in public or where livestock is habitually slaughtered, or every person, other than a producer who, in an area so defined, sells, purchases or otherwise deals with any product in his business, to render to the Secretary such periodical returns as may be prescribed in the said notice, respectively of any product or of all products brought to any such place for sale or slaughter thereat as aforesaid, or of any product or of all products which such person sold, purchased or otherwise dealt with as aforesaid.

PART 4

REGULATIONS AND DELEGATION OF POWERS

[heading substituted by Act 69 of 1970, with capitalisation replicated as in *Government Gazette*]

Regulations

89. (1) The Minister may make regulations, not inconsistent with the provisions of this Act or of any scheme, prescribing -

[The introductory phrase of subsection (1) is substituted by Act 68 of 1972, to give authority to make regulations to the Minister instead of the State President. Section 16(2) of Act 68 of 1972 provides the following transitional provision:

“Any regulation made by the State President under section 89 of the principal Act and in force immediately before the commencement of this Act [Act 68 of 1972], shall be deemed to have been made by the Minister of Agriculture under the said section as amended by subsection (1) of this section [which substituted the introductory phrase of subsection (1)].”]

- (a) any matter which may be prescribed by regulation under this Act;
- (b) the times at which and the manner in which any levy imposed in terms of section 41 or 84A or any special levy imposed in terms of section 44 or any general levy imposed in terms of section 46A shall be paid.

[paragraph (b) substituted by Act 52 of 1969 and by Act 109 of 1977]

- (c) grades or other classes in respect of any product, the manner of grading or classification and the manner in which any such product shall be treated, prepared or processed for the purpose of such grading or classification;

[paragraph (c) substituted by Act 69 of 1970]

- (cA) standards for the composition of a product or any class of a product, and the ingredients and other substances which a product or a class thereof shall contain, or the substances which a product or a class thereof may not contain;

[paragraph (cA) inserted by Act 73 of 1974]

- (d) the containers in which and the manner in which any product shall be packed, and the persons by whom the product shall be so packed, or the containers in which or the manner in which any product may not be packed;

[paragraph (d) substituted by Act 69 of 1970 and by Act 68 of 1972]

- (dA) the particulars with which and the manner in which any product or container containing such product shall be marked or labelled, and the persons by whom the product or container shall be so marked or labelled, or the particulars with which or manner in which any such product or container may not be marked or labelled;

[paragraph (dA) inserted by Act 69 of 1970 and substituted by Act 68 of 1972]

- (e) the fees to be paid for the inspection, by a person designated under section 85(1), of any product in respect of which a national mark or a grade or other class has been prescribed, and the persons by whom, the times at which and the manner in which such fees shall be paid;

[paragraph (e) substituted by Act 52 of 1969 and by Act 69 of 1970]

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- (f) the conditions under which permission to mark any product with the national mark prescribed under section 82 may be granted to any person by the Minister;
- (fA) the manner in which a matter contemplated in section 7C shall be referred by a control board, as defined in that section, to the reference board, and the documents in connection with such matter to be submitted by such a control board to the reference board;

[paragraph (fA) inserted by Act 31 of 1973]

- (g) the time and manner in which an appeal under section 53(2), 59(6), 72(2), 85(3) or 87(3) shall be prosecuted, the security (if any) to be lodged in connection with any such appeal (other than an appeal under section 53(2)), the disposal of any security so lodged, and the officer of the Department of Agricultural Economics and Marketing who shall designate, or may nominate another such officer to designate, the person or persons by whom an appeal under section 85(3) shall be decided;
- (h) the methods to be employed and the procedure to be followed when samples are taken under this Act or any scheme or under any regulation made in terms of this section;
- (i) the methods to be employed and the procedure to be followed in connection with the inspection of any quantity of a product by a person designated under section 85(1), and the percentage of any such quantity which shall be inspected, and which shall be deemed to be representative of the said quantity.
- (2) (a) Different regulations may under subsection (1) be made -
 - (i) in respect of different classes of persons;
 - (ii) in respect of different products or different classes of the same product;
 - (iii) in respect of different areas.
- (b) Regulations under subsection (1) may be made either generally or -
 - (i) in respect of a defined class of persons;
 - (ii) in respect of a defined product or a defined class of a product;
 - (iii) in respect of a defined area.

[subsection (2) substituted by Act 69 of 1970]

(2A) Regulations made under paragraph (g) of subsection (1) may provide that the Minister or other person required to decide an appeal referred to in that paragraph, may consider and decide such appeal without hearing any oral representations by any person or giving any notice in connection with the appeal, or any opportunity to submit representations in connection with it, to any person or disclosing any document or information taken into account in the consideration or decision of the appeal (regardless of whether or not it was taken into account in the decision appealed against) to any person.

[subsection (2A) inserted by Act 68 of 1972]

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(3) Any regulations made under this section may prescribe penalties for any contravention thereof or failure to comply therewith not exceeding a fine of two hundred rand.

Delegation of Minister's powers

89A. (1) The Minister may in writing delegate to any officer in the Department of Agricultural Economics and Marketing all or any of the powers conferred upon him by this Act, other than a power conferred upon him by section 12, 16, 17(3), 53(2), 59(6), 60(2A), 72(2), 80, 81 or 87(3) or by this section, or the power to publish a notice in the *Gazette* in pursuance of the provisions of section 46A, 64(4), 84A, 84D, 84E, 84F or 88.

[subsection (1) substituted by Act 109 of 1977]

(2) The Minister may at any time revoke in writing any delegation under subsection (1), and no delegation of any power shall prevent the exercise of such power by the Minister himself.

[section 89A inserted by Act 69 of 1970]

PART 5

OFFENCES, PENALTIES AND OTHER JUDICIAL MATTERS

Offences and penalties

90. (1) Any person who -

(a) contravenes any prohibition imposed under section 75(2), 83B, 84, 84D, 84E, 84F, 86 or 87, or contravenes or fails to comply with any condition of a permit referred to in section 86; or

[paragraph (a) substituted by Act 52 of 1969, Act 69 of 1970 and Act 73 of 1974]

(b) contravenes or fails to comply with any provision of section 83 or 83A; or

[paragraph (b) substituted by Act 31 of 1973]

(bA) fails to pay a levy imposed under section 46A or 84A within the period and in the manner prescribed by regulation under section 89; or

[paragraph (bA) inserted by Act 52 of 1969 and substituted by Act 109 of 1977]

(c) obstructs any person in the lawful exercise of his functions in terms of this Act or any proclamation or regulation issued or scheme in operation thereunder, or who wilfully fails or refuses to make any statement or give any explanation demanded by any such person or makes a false statement or gives a false explanation or causes a false statement to be made or a false explanation to be given to any such person, knowing such statement or explanation to be false; or

(d) fails to comply with any direction given by any person designated under section 85(1); or

(e) without the written permission of a person authorized thereto by the control board concerned, removes or causes to be removed any book, document, article or product seized in terms of any provision included in a scheme by virtue of section 54(e), from the place where it was left by such person or who tampers with any

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such book, document, article or product or any identification mark placed thereon by such person; or

- (f) without the written permission of a person authorized thereto by the control board concerned, sells to that board or delivers to that board for sale by that board a quantity of a product of which he is not the producer or which he has acquired from that board; or
- (g) not being entitled to vote on a resolution submitted to a meeting in terms of section 13(2), or of that section as applied by section 17(2), votes or attempts to vote thereon; or
- (h) fails to comply with a notice under section 88, or makes a false or incomplete statement in a return prescribed in such notice, knowing that it is false or incomplete,

shall be guilty of an offence and liable on conviction -

- (i) in the case of an offence referred to in paragraph (a), (b) or (f) to a fine not exceeding four hundred rand or to imprisonment for a period not exceeding twelve months or to both such fine and such imprisonment;
- (ii) in the case of an offence referred to in paragraph (bA), (c), (d) or (e), to a fine not exceeding two hundred rand or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment;

[paragraph (ii) substituted by Act 52 of 1969]

- (iii) in the case of an offence referred to in paragraph (g) or (h), to a fine not exceeding one hundred rand.

(2) Whenever a person has, in contravention of a prohibition imposed by virtue of the provisions of section 60(1)(a), 64(1)(a), 67, 70, 71, 72, 74, 84D, 84E or 84F, sold or disposed of any quantity of a product to any other person, the person who acquired that quantity from such first-mentioned person shall be guilty of an offence and liable to the penalties prescribed in the relevant scheme or in this Act in respect of a contravention of the said prohibition by the said first-mentioned person.

[subsection (2) substituted by Act 69 of 1970]

Acts and omissions of managers, agents or employees

- 91.** (1) (a) Whenever any manager, agent or employee of any producer of, or dealer in the course of trade with, a product, does or omits to do any act which it would be an offence under this Act or any regulations made or scheme published thereunder for such producer or dealer to do or omit to do, the producer concerned or dealer concerned, as the case may be, shall be presumed himself to have done or omitted to do that act, and be liable to be convicted and sentenced in respect thereof, unless it is proved that -
- (i) in doing or omitting to do that act the manager, agent or employee was acting without the connivance or the permission of such producer or dealer; and

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- (ii) all reasonable steps were taken by such producer or dealer to prevent any act or omission of the kind in question; and
 - (iii) it was not under any condition or circumstance within the scope of the authority or in the course of the employment of the manager, agent or employee to do or to omit to do acts whether lawful or unlawful of the character of the act or omission charged.
- (b) The fact that the producer concerned or the dealer concerned, as the case may be, issued instructions forbidding any act or omission of the kind in question shall not, of itself, be accepted as sufficient proof that he took all reasonable steps to prevent the act or omission charged.

(2) Whenever any manager, agent or employee of any such producer or dealer does or omits to do an act which it would be an offence under this Act or any regulation made or scheme published thereunder for the producer or dealer concerned to do or omit to do, the manager, agent or employee concerned shall be liable to be convicted and sentenced in respect thereof as if he were that producer or dealer.

(3) Any such manager, agent or employee may be so convicted and sentenced in addition to the producer or dealer concerned.

Additional fines and forfeitures

92. (1) Whenever any person is convicted of an offence under this Act or any scheme or any regulation made in terms of section 89, the court convicting him shall, in addition to any other punishment imposed in respect of that offence -

- (a) in the case of an offence which consists of a failure to pay the full amount due by that person in respect of -
 - (i) any levy or special levy imposed by a control board by virtue of the provisions of section 41 or 44; or
 - (ii) any exemption granted by a control board by virtue of the provisions of section 64(1)(b); or
 - (iii) any levy imposed by the Minister under section 46A or 84A,

summarily enquire into and assess the amount due by that person to the control board concerned, or to the Department of Agricultural Economics and Marketing for the benefit of the special account referred to in section 46C or 84B, as the case may be, and forthwith give judgment for the amount so assessed against that person and in favour of that control board or that Department, as the case may be, and any such judgment may be executed in the same manner as if it had been pronounced in the course of civil proceedings;

[paragraph (a) substituted by Act 109 of 1977]

- (b) in the case of any other offence, summarily enquire into and assess the monetary equivalent of any advantage gained by that person in consequence of that offence, and impose on him a fine equal to the amount so assessed or, in default of payment, imprisonment for a period not exceeding six months.

[subsection (1) substituted by Act 52 of 1969]

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(2) Whenever any person is convicted of an offence under section 90(1)(f), the court convicting him shall summarily enquire into and assess the monetary equivalent of any advantage gained by that person in consequence of that offence, and, in addition to any punishment imposed in respect of that offence, order that person to pay to the control board concerned an amount equal to the amount so assessed, and any such order may be executed in the same manner as if it had been made in the course of civil proceedings.

(3) Whenever any person is convicted of an offence under section 90(2) the court convicting him shall, in addition to any other punishment imposed in respect of that offence -

- (a) if the quantity of the product in respect of which the offence was committed, is in the possession or under the control of the person convicted or has been seized in terms of any provision included in a scheme by virtue of section 54(e), declare such quantity to be forfeited to the control board concerned; or
- (b) if such quantity is not in the possession or under the control of the person convicted and has not been so seized, order that person to pay to the board concerned an amount equal to the value of that quantity calculated at the price fixed by that board in terms of its scheme, according to the class or grade thereof, or if the class or grade of such quantity is not proved to the satisfaction of the court, at the price so fixed for the highest class or grade of such product, and any such order may be executed in the same manner as if it had been made in the course of civil proceedings.

(4) Whenever a producer of a regulated product, or a person dealing with a regulated product in the course of trade, is convicted of a contravention of any provision made in a scheme by virtue of section 59(1)(a) or (b), and it is proved that he was on at least two other occasions during the twenty-four months immediately preceding the date of such conviction found guilty of the same offence, the court convicting him may, in addition to any other punishment imposed in respect of the offence, if it is satisfied that any equipment, machinery or apparatus, but excluding any vehicle, was used for the purpose of or in connection with the commission of the offence, declare such equipment, machinery or apparatus, or the convicted person's rights thereto, to be forfeited to the State: Provided that such declaration shall not affect any rights which any person other than the convicted person may have to the equipment, machinery or apparatus concerned if it is proved that such other person did not know that it was being used or would be used for the purpose of or in connection with the commission of such offence or that he could not prevent such use.

(5) The provisions of section 360(4) and (5) of the Criminal Procedure Act, 1955 (Act No. 56 of 1955), shall *mutatis mutandis* apply to any forfeiture in terms of subsection (4) of this section.

[The Criminal Procedure Act 56 of 1955 was never applicable to South West Africa. The South West African equivalent was the Criminal Procedure and Evidence Proclamation 30 of 1935, which was replaced by the Criminal Procedure Ordinance 34 of 1963, which, with the exception of sections 300(3) and 370, has been replaced by the Criminal Procedure Act 51 of 1977.]

Admissibility of certain statements and records

93. At the trial of any person charged with the commission of an offence under this Act or any scheme or any regulation made under section 89, any statement contained in any return furnished by or on behalf of the accused in terms of this Act or any such scheme or regulation, and any statement or record contained in any book or document kept by the accused, or by any employee or agent of the accused, or which was, at any time, at any place during the occupancy

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of that place by the accused, shall be admissible in evidence against the accused as an admission of the facts set forth in that statement or record.

Proof of certain facts by affidavit

94. (1) Whenever at the trial of any person charged with the commission of an offence under this Act or any scheme or any regulation made under section 89, the question arises whether or not any person bearing a particular name -

- (a) has furnished particular information or a particular return or other document to a control board within a particular period; or
- (b) has paid a particular levy or a portion thereof to any such board within a particular period; or
- (c) is registered with any such board; or
- (d) has been appointed as an agent of any such board,

a document purporting to be an affidavit made by a person who, in that affidavit, alleges that he is a servant of the control board concerned and that no person bearing the said name has furnished such information or return or other document to the board within such period, or has paid such levy or portion thereof to the board within such period, or is registered with the board, or has been appointed as an agent of the board, as the case may be, shall, on its mere production at such trial by any person, be *prima facie* proof of the facts stated therein.

(1A) The provisions of subsection (1) shall *mutatis mutandis* apply in respect of the trial of a person charged with the commission of an offence which consists of a failure to pay the full amount of a levy imposed under section 46A or 84A and for the purpose of such application a reference in that subsection to a control board and to an employee of such a board shall be construed as a reference to the Department of Agricultural Economics and Marketing and to a person employed in that Department, respectively.

[subsection (1A) inserted by Act 52 of 1969 and substituted by Act 109 of 1977]

(2A) At any trial referred to in subsection (1) a certificate stating the result of an examination, analysis, grading or other classification carried out in pursuance of the provisions of this Act or any scheme or any regulation made under section 89, and purporting to be signed by the person who carried out such examination, analysis, grading or classification, shall be accepted as *prima facie* proof of the facts stated therein.

[subsection (2) substituted by Act 69 of 1970 and by Act 109 of 1977, which erroneously labels the subsection as "(2A)".]

(3) At the trial in respect of any proceedings instituted by a control board for the recovery of the amount of a subsidy under section 60B, a document purporting to be an affidavit made by a person who in that affidavit alleges that he is an employee of that board and that an amount mentioned in the affidavit was paid by the board as a subsidy in respect of a quantity of a product acquired by the defendant, shall be accepted as *prima facie* proof of the amount of the subsidy which may be recovered by the board in respect of the said quantity under the circumstances contemplated in that section.

[subsection (3) inserted by Act 50 of 1976]

Presumptions

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95. (1) Whenever a scheme or an amendment of a scheme has been published in the *Gazette* in terms of section 14 or of that section read with section 15(3), as the case may be, or whenever a scheme has been revoked in terms of section 16 or 17, the said scheme, amendment or revocation shall not be vitiated by any act which was performed or by any omission which occurred before the said publication or revocation, unless a court in which the validity of the scheme, amendment or revocation is challenged finds that the said act or omission amounted to an intentional contravention of or noncompliance with any provision of this Act or a regulation made under section 89, and is of the opinion that the act or omission was material.

(2) If at the trial of any person charged with the commission of an offence under this Act or any scheme or any regulation made under section 89 -

- (a) it is proved that a false statement appears in any document signed or any return furnished by such person or on his behalf, it shall be presumed, until the contrary is proved, that he made such statement or caused it to be made, knowing it to be false;
- (b) it is alleged in the charge that a quantity of a particular product was produced in a particular area, it shall be presumed until the contrary is proved, that such quantity of such product was produced in such area.

(3) At the trial of any person charged with the commission of an offence under this Act or any scheme or any regulation made in terms of section 89, any quantity of a product in or upon any place or vehicle at the time a sample of such product is taken pursuant to the provisions of this Act or any such scheme or regulation shall, unless the contrary is proved, be deemed to be of the same class or grade as that sample.

(4) Whenever at the trial in respect of any proceedings instituted by a control board for the recovery of the amount of a subsidy under section 60B, it is proved that a quantity of a product in respect of which a subsidy has been paid by that board has been acquired by the defendant and that he, in the normal course of his business, converts that product into, or uses it in the manufacture of, any particular commodity, or otherwise uses that product for any particular purpose, it shall be presumed, until the contrary is proved, that the said quantity has been converted by the person concerned into, or used in the manufacture of, such commodity, or has been otherwise used by him for such purpose, as the case may be.

[subsection (4) inserted by Act 50 of 1976]

Railway Administration protected

96. No action shall lie against the Railway Administration by reason of its refusal to transport any product, or to accept any product for transport into or from any such area as is referred to in section 75(1)(a), if the reason for such refusal was the exercise by a control board of the powers conferred on that board by this Act or by any regulations made thereunder.

Jurisdiction

97. Notwithstanding anything to the contrary contained in any other law, a magistrate's court shall have jurisdiction to impose any penalty or additional penalty prescribed by this Act or any regulation made or scheme published thereunder, and to make any order of court and give any judgment provided for in this Act.

PART 6

MISCELLANEOUS MATTERS

Marketing Act 59 of 1968 (RSA)**Certain provisions bind the State**

98. The provisions of this Act and of any scheme introduced thereunder (other than penal provisions) relating to the imposition or payment of any levy or special levy on a product to which this Act applies, shall bind the State.

Application of the Act to the territory

99. (1) This Act and any amendment thereof shall apply also in the territory, including the Eastern Caprivi Zipfel.

(2) Any proclamation, regulation or notice issued or made under this Act prior to the commencement of the Marketing Amendment Act, 1971, and which does not apply in the territory immediately prior to such commencement, shall, subject to the other provisions of this Act, not apply in the territory.

[section 99 substituted by Act 78 of 1971]

Repeal of laws, and savings

100. (1) Subject to the provisions of subsections (2) and (3), the laws specified in Schedule 3 are hereby repealed to the extent indicated in the third column of that Schedule.

(2) Any appointment, decision, levy, prohibition, requirement, direction, determination, proclamation, regulation or notice, made, taken, imposed, issued, given or published or any other steps taken or any other thing done under a provision of a law repealed by subsection (1), shall be deemed to have been made, taken, imposed, issued, given, published or done under the corresponding provision of this Act.

(3) No licence duty or fee paid by a control board prior to the commencement of the Marketing Amendment Act, 1964 (Act No. 66 of 1964), shall be refunded by virtue of the repeal of that Act by subsection (1).

Short title

101. This Act shall be called the Marketing Act, 1968.

Schedule 1

[Schedule 1 is amended by Act 52 of 1969, Act 69 of 1970, Act 78 of 1971, Act 68 of 1972, Act 73 of 1974, Act 12 of 1981 (repeal of items relating to livestock, meat and meat products), and Act 14 of 1982 (repeal of items relating to karakul pelts and wool).]

PART A. PRODUCTS

- Item 1.* Barley, grain sorghum as defined in Part B, maize, oats, rye and wheat, including any such cereal in unthreshed form.
Any barley product, grain sorghum product, maize product, oaten product, rye product or wheaten product, as defined in Part B.
Any commodity which contains a substantial proportion of barley, grain sorghum, maize, oats, rye or wheat or of a barley, grain sorghum, maize, oaten, rye or wheaten product.
- Item 2.* Buckwheat, as defined in Part B.
Lucerne; lucerne seed.
Canary seed, as defined in Part B.

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- Item 3.* Groundnuts; sunflower seed.
Beans, peas and all other leguminous seeds, and any class thereof, whether dried or otherwise,
or whole, ground or split.
Oil cake, as defined in Part B.
Vegetable oil.
- Item 4.* Fruit, including dried fruit and nuts.
Vegetables and dehydrated vegetables, including dried vegetables.
Granadillas, as defined in Part B.
Fruit juice and drink, as defined in Part B.
- Item 5.* Chicory.
Rooibos tea, as defined in Part B.
- Item 6.* Tobacco.
Wine, as defined in Part B.
- Item 7.* Wattle bark; wattle extract.
Sisal, as defined in Part B.
Seed cotton, as defined in Part B.
Cotton lint, as defined in Part B.
- Item 8.* ---
- Item 9.* By-products derived from slaughter animals, as so defined.
- Item 10.* Mohair.
Crossbred hair, as defined in Part B.
Ostrich feathers.
Ostrich skins, as defined in Part B.
- Item 11.* Hides; skins.
Cured hides and cured skins, or any part thereof, as defined in Part B.
- Item 12.* Milk, as defined in Part B.
Skim milk; condensed milk; condensed skim milk.
Buttermilk; yoghurt; fermented milk; skim fermented milk.
Reconstituted milk, as defined in Part B.
Reconstituted skim milk, as defined in Part B.
Dried milk; milk powder; skim milk powder; buttermilk powder; whey powder.
Cream, as defined in Part B.
Fermented cream.
Reconstituted cream, as defined in Part B.
Cheese, including process cheese.
Butter, ghee.
Margarine, as defined in Part B.
- Item 13.* Eggs.
Egg pulp, as defined in Part B.
- Item 14.* Honey, as defined in Part B.
Honey mixtures, as so defined.
Honey substitutes, as so defined.
- Item 15.* Canned foodstuffs, as defined in Part B.

PART B. DEFINITIONS OF OR RELATING TO PRODUCTS

“Barley product” means a commodity derived from the processing of barley or into which barley or any part of barley has been converted.

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“Buckwheat” means the seed of the plant *Fagopyrum esculentum*.

“By-product”, in relation to a slaughter animal, includes all portions of that animal other than the meat thereof not being meat which has been condemned for human consumption in terms of any law.

“Canary seed” means the seed of the plant known as *Philaris canariensis*.

“Canned foodstuffs” means the canned products consisting of-

- (a) fruit, fruit pulp, fruit sauce, fruit juice, fruit juice concentrate, fruit jam, fruit conserve, jelly or marmalade;
- (b) vegetables, vegetable puree, vegetable paste, vegetable juice or vegetable concentrate;
- (c) soup or soup concentrate;
- (d) spaghetti, macaroni, vermicelli or other paste products; or
- (e) mushrooms,

which have been preserved by heat against decay in hermetically sealed containers.

“Cotton lint” means the fibre derived from the ginning of seed cotton.

“Cream” means cream derived from milk, and includes such cream which has been subjected to heat treatment.

“Crossbred hair” means hair derived from an animal obtained by the crossbreeding of an Angora goat (*Capra angoriensis*) with another member of the goat family.

“Cured hides” or “cured skins” means hides or skins which have been derived from cattle, sheep or goats of any age and which have been -

- (a) wet-salted, that is to say, not dried after having been treated in the freshly-flayed state with salt with or without an approved preservative or an approved combination of preservatives;
- (b) dry-salted, that is to say, dried artificially or in the sun or shade after having been treated in the freshly-flayed state with salt with or without an approved preservative or an approved combination of preservatives;
- (c) sun-dried, that is to say, dried in the sun without having been treated with salt or an approved preservative or an approved combination of preservatives, or dried in the sun and treated with an approved preservative or an approved combination of preservatives other than salt; or
- (d) shade-dried, that is to say, dried artificially or in the shade without having been treated with salt or an approved preservative or an approved combination of preservatives, or dried artificially or in the shade and treated with an approved preservative or an approved combination of preservatives other than salt.

“Egg pulp” means the pulp which is obtained from eggs after the shells have been removed, and includes the yolk and the white or the yolk separately or the white separately.

“Freshly-flayed state”, in relation to a cured hide or a cured skin, means the condition after removal of the hide or skin from the carcass and prior to its being subjected to a process of curing or processing.

“Fruit juice and drink” means any substance which is intended to be used as a drink, whether with or without the addition of any other substance, and

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- (a) which is solely or partially prepared from fruit or in appearance, flavour and taste resembles any juice derived from fruit; or
- (b) on the container of which there appears any depiction or representation of, or reference to, fruit,

but does not include wine, other fermented beverages and spirits as defined in the Wine, Other Fermented Beverages and Spirits Act, 1957 (Act No. 25 of 1957).

**[The Wine, Other Fermented Beverages and Spirits Act 25 of 1957
was not applicable to South West Africa.]**

“Grain sorghum” means the seed of any sorghum except a broom sorghum, hay sorghum or cane sorghum.

“Grain sorghum product” means a commodity derived from the processing of grain sorghum or into which grain sorghum or any part of grain sorghum has been converted.

“Granadilla” means the fruit originating from the plant *Passiflora edulis*.

“Honey” means the product which is solely obtained from the honey-bee.

“Honey mixture” means -

- (a) honey which is mixed or compounded with any other substance, where such mixture is a foodstuff which resembles honey in appearance; or
- (b) a foodstuff which resembles honey in appearance and of which honey is stated to be an ingredient.

“Honey substitute” means any syrup or substance prepared synthetically and resembling honey in appearance, flavour, taste or smell.

“Maize product” means a commodity derived from the processing of maize or into which maize or any part of maize has been converted.

“Margarine” means any substance in imitation or form of butter, whether described as margarine or by any other name or designation, whereof the consistency is substantially similar to that of butter and which has been manufactured mainly from any one or more vegetable or animal fats or oils, but does not include any single fat sold as such fat.

“Milk” means the milk of a cow, and includes such milk which has been subjected to heat treatment.

“Oaten product” means a commodity derived from the processing of oats or into which oats or any part of oats has been converted.

“Oil cake” means the residue of groundnuts, sunflower seed, soya beans and cotton seed (whether decorticated or not), after the oil has been extracted.

“Ostrich skins” means processed and unprocessed ostrich skins or any part of any such skin.

“Reconstituted cream” means a compound of milk solids and water, with a milk fat content of at least 12% (mass by mass) and containing at least 50% (mass by mass) milk fat in the milk solids.

“Reconstituted milk” means a compound of milk solids and water, with a milk fat content of less than 12% (mass by mass) but at least 0,5% (mass by mass) and a fat-free milk solids content of less than 12% (mass by mass).

“Reconstituted skim milk” means a compound of milk solids and water, with a milk fat content of less than 0,5% (mass by mass) and a fat-free milk solids content of less than 12% (mass by mass).

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“Rooibos tea” means the product obtained from the needlelike leaves and fine stems of the plant *Aspalathus linearis* (also known as *Aspalathus contaminatus* or *Borbonia pinifolia*) after it has been cut, bruised, sweated and dried;

“Rye product” means a commodity derived from the processing of rye or into which rye or any part of rye has been converted.

“Seed cotton” means the lint and seed derived from the ball of the *Gossypium* plant.

“Sisal” means the fibre derived from the leaves of the plant *Agave sisalana* or related species, irrespective of whether or not such fibre has been separated from the leaves.

“Slaughter animals” means cattle, sheep, goats or pigs slaughtered or intended for slaughtering.

“Wheaten product” means a commodity derived from the processing of wheat or into which wheat or any part of wheat has been converted.

“Wine” means the beverage obtained solely by the alcoholic fermentation of the juice of fresh grapes, with or without the addition of any substance approved under any law.

Schedule 2

[Schedule 2 deleted by Act 52 of 1969]

Schedule 3

LAWS REPEALED

No. and Year of Law.	Title.	Extent of repeal.
Act No. 26 of 1937.	Marketing Act, 1937	The whole.
Act No. 19 of 1938.	Marketing Amendment Act, 1938	The whole.
Act No. 12 of 1941.	Marketing Amendment Act, 1941	The whole.
Act No. 41 of 1942.	Finance Act, 1942.	Section 11(1)(b).
Act No. 46 of 1945.	Finance Act, 1945	Section 24.
Act No. 50 of 1946.	Marketing Amendment Act, 1946	The whole.
Act No. 45 of 1951.	Marketing Amendment Act, 1951	The whole.
Act No. 37 of 1958.	Finance Act, 1958	Section 12.
Act No. 34 of 1961.	Marketing Amendment Act, 1961	The whole.
Act No. 47	Marketing Amendment Act, 1962	The whole.

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of 1962.		
Act No. 57 of 1963.	Marketing Amendment Act, 1963	The whole.
Act No. 66 of 1964.	Marketing Amendment Act, 1964	The whole.
Act No. 60 of 1965.	Marketing Amendment Act, 1965	The whole.
Act No. 78 of 1965.	Marketing, Wool and Wool Commission Amendment Act, 1965.	Section 1; in section 5, the word “Marketing”; and, in the long title, the words “the Marketing Act, 1937”.
Act No. 30 of 1967.	Marketing Amendment Act, 1967	The whole.
Proclamation No. 289 of 1939.	—	The whole.
Proclamation No. R.44 of 1962.	—	The whole.
Proclamation No. R.201 of 1963.	—	The whole.
Proclamation No. R.16 of 1964.	—	In so far as it declares canned foodstuffs to be a product; and the schedule thereto.
Proclamation No. R.17 of 1964.	—	In so far as it declares rooibos tea to be a product; and the schedule thereto.
Proclamation No. R.190 of 1964.	—	In so far as it declares cured hides and cured skins and any part thereof to be products; and the schedule thereto.
Proclamation No. R.261 of 1964.	—	The whole.
Proclamation No. R.280 of 1964.	—	The whole.
Proclamation No. R.45 of 1965.	—	The whole.
Proclamation No. R.135 of 1966.	—	The whole.

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Proclamation No. R.249 of 1966.	–	The whole.
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**ADDITIONAL REPEALS, TRANSITIONAL PROVISIONS
AND MISCELLANEOUS PROVISIONS**

**Act 52 of 1969 contains the following section regarding additional repeals and amendments,
with accompanying transitional provisions:**

“Repeal and amendment of laws

25. (1) Subject to the provisions of subsection (2), the laws specified in the Schedule are hereby repealed or amended to the extent indicated in the third column thereof.

(2) A board established in terms of any law repealed by subsection (1), and which immediately before the commencement of this Act administered a scheme in terms of any provision of the principal Act repealed by this Act, shall, notwithstanding the repeal of such law or such provision and without derogation from the provisions of such scheme relating to the constitution of such board, continue to exist as the control board of such scheme until superseded by a control board established in terms of any amendment of such scheme in terms of subsection (3) and, until so superseded, shall be deemed to be and at all relevant times to have been established in terms of such scheme in accordance with section 25 of the principal Act.

- (3) (a) Any such board may submit to the Minister of Agriculture a proposal for the amendment of the scheme in question providing for the establishment of a control board to administer that scheme as contemplated in section 25 of the principal Act, and any such proposal shall be dealt with and may be brought into operation mutatis mutandis as if it were a proposal submitted by such board in terms of section 15 of the principal Act.
- (b) The provisions of paragraph (a) shall in no way derogate from the provisions of section 15 of the principal Act.
- (4) As from the date on which an amendment in terms of subsection (3) comes into operation -
- (a) the control board established in terms thereof shall supersede the board administering such scheme in terms of subsection (2);
- (b) all assets and liabilities of the board so superseded shall vest in the said control board, without any transfer duty, licence duty, office fee or other charge being payable in respect thereof;
- (c) anything done by or on behalf of or in respect of the board so superseded, shall be deemed to have been done by or on behalf of or in respect of the said control board.”

Schedule

LAWS REPEALED OR AMENDED

No. and year of Law.	Title.	Extent of amendment or repeal.
Act No. 35 of 1930	Dairy Industry Control Act, 1930	Repeal of the whole.
Act No. 2 of 1931	Dairy Industry Control (Amendment) Act, 1931	Repeal of the whole.
Act No. 39 of 1931	Mealie Control Act, 1931	Repeal of the whole.
Act No. 7 of 1932	Dairy Industry Control (Amendment) Act, 1932	Repeal of the whole.
Act No. 19 of 1932	Tobacco Control Act, 1932	Repeal of the whole.
Act No. 23 of 1932	Mealie Control (Amendment) Act, 1932	Repeal of the whole.
Act No. 48 of 1934	Livestock and Meat Industries Act, 1934	Repeal of section 1; Chapters I, II and V; sections 45 to 49, inclusive; and sections 53, 54, 55, 56 and 58.

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		Amendment of -
		(a) section 2 by the deletion of all the definitions except the definitions of “cold storage”, “co-operative organization”, “Minister”, “local authority” and “regulation”;
		(b) section 31 by the deletion in subsection (1) of the words “on the recommendation of the board”;
		(c) section 32 by the substitution for the word “board” where it occurs for the first time of the word “Minister”, and the deletion of the words “on the recommendation of the board”;
		(d) section 50 by the deletion in subsection (1) of paragraphs (a) to (g), inclusive, and paragraphs (n) to (s), inclusive, and, in subsection (2), of the words “livestock or”;
		(e) section 52 by the deletion of subsection (1), and, in subsection (2), of the words “other than an offence under section <i>forty-two</i> , <i>forty-three</i> or <i>forty-four</i> ,” and
		(f) the long title by the substitution therefor of the following long title: “Act to provide for the erection and inspection of cold storages and certain other premises, and for incidental matters.”.
Act No. 51 of 1934	Dairy Industry Control Amendment Act, 1934	Repeal of the whole.
Act No. 17 of 1935	Tobacco Control Amendment Act, 1935	Repeal of the whole.
Act No. 58 of 1935	Wheat Industry Control Act, 1935	Repeal of the whole.
Act No. 59 of 1935	Mealie Control Amendment Act, 1935	Repeal of the whole.
Act No. 60 of 1935	Dairy Industry Control Amendment Act, 1935	Repeal of the whole.
Act No. 48 of 1937	Mealie Control Amendment Act, 1937	Repeal of the whole.
Act No. 41 of 1942	Finance Act, 1942.	Repeal of section 11.
Act No. 49 of 1946	Livestock and Meat Industry Amendment	Repeal of sections 1, 2, 3, 13 and

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	Act, 1946	14.
Act No. 38 of 1950	Dairy Industry Control Amendment Act, 1950	Repeal of the whole.
Act No. 30 of 1961	Dairy Industry Act, 1961	Repeal of sections 31, 32 and 33.
Proclamation No. R.27 of 1969	—	Repeal of the whole.

Act 69 of 1970 repeals RSA Proclamation R.272 of 1969 and RSA Proclamation R.74 of 1970.

Act 78 of 1971 repeals RSA Proclamation R.290 of 1970.

Act 68 of 1972 contains the following section regarding additional repeals, with accompanying transitional provisions:

“Repeal of wool laws and savings

18. (1) Subject to the provisions of subsections (2) and (4), the laws specified in the Schedule are hereby repealed with effect from the date on which a scheme relating to wool comes into operation in terms of a proclamation under section 14(1) of the principal Act [a Wool Scheme was published in terms of Act 59 of 1968 in Proc. R.155 of 1972 (RSA GG 3585) and came into effect on 1 July 1972]

(2) As from the date referred to in subsection (1):

- (a) all assets, rights, liabilities and obligations of the South African Wool Commission and the South African Wool Board shall vest in the control board of the scheme contemplated in that subsection;
- (b) anything done by or on behalf of the South African Wool Commission or the South African Wool Board before that date and which may be done by the said control board under the provisions of the principal Act or of the said scheme, shall be deemed to have been done by that control board under those provisions;
- (c) any levy which immediately before that date was payable in terms of a law repealed by subsection (1) shall, until abolished by the said control board, be payable to that control board as if it were a levy imposed under the said scheme as contemplated in section 41 of the principal Act [Act 59 of 1968]: Provided that any regulations made in terms of a law so repealed and governing the payment of such levy immediately before that date, shall, notwithstanding the repeal of such law and until such regulations are superseded by regulations made under the principal Act, *mutatis mutandis* apply with reference to the payment of such levy to the said control board;
- (d) every person who immediately before that date held an appointment under the proviso to section 6 (1) of the Wool Commission and Wool Amendment Act, 1960 (Act No. 35 of 1960), as a member of the South African Wool Commission, or under section 5(1)(a) of the Wool Act, 1967 (Act No. 59 of 1967), as a member of the South African Wool Board, shall, until the first appointment of persons in terms of the said scheme as members of the said control board to represent producers of wool becomes effective, be deemed to have been duly appointed as a member of that control board to represent such producers.

(3) Any moneys in a fund established in terms of or referred to in the said Wool Commission and Wool Amendment Act, 1960, or the said Wool Act, 1967, shall, on or as soon as may be practicable after the date referred to in subsection (1), be paid into such fund or funds established in terms of the said scheme as may be determined by the Minister of Agriculture.

(4) The Wool Profits Distribution Account (Bantu Producers), established in terms of paragraph (b) of section 2 (2) of the Wool Profits Distribution and Wool Amendment Act, 1952 (Act No. 60 of 1952), shall continue to exist after and notwithstanding the repeal of that Act by subsection (1) of this section, and the said Account and any moneys in it shall after such repeal be dealt with as if the said paragraph (b) had not been repealed.

(5) The registrar of deeds shall, on or as soon as may be practicable after the date referred to in subsection (1), make such entries or endorsements in or on any relevant register, title deed or other document in his office or submitted to him as he may deem necessary in order to give effect to the provisions of subsection (2) (a), and no transfer duty, stamp duty, office fee or other charge shall be payable in respect of any vesting in terms of the said subsection (2) (a) or in respect of any such entry or endorsement.

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LAWS REPEALED

No. and Year of Law.	Title.
Act No. 60 of 1952	Wool Profits Distribution and Wool Amendment Act, 1952.
Act No. 57 of 1955	Wool Amendment Act, 1955.
Act No. 12 of 1959	Wool Amendment Act, 1959.
Act No. 35 of 1960	Wool Commission and Wool Amendment Act, 1960.
Act No. 23 of 1962	Wool Commission Amendment Act, 1962.
Act No. 78 of 1965	Wool and Wool Commission Amendment Act, 1965.
Act No. 26 of 1967	Wool and Wool Commission Amendment Act, 1967.
Act No. 59 of 1967	Wool Act, 1967.
Act No. 46 of 1969	Wool Amendment Act, 1969.

Act 68 of 1972 also repeals RSA Proclamation R.238 of 1971.

Act 73 of 1974 repeals RSA Proclamations R.149 of 1972, R.194 of 1973, R.209 of 1973, R.211 of 1973 and R.52 of 1974.

Act 109 of 1977 contains the following additional substantive provision:

“Distribution of assets and rights of “Aros Utiliteitsmaatskappy”

27. (1) After the winding-up of the “Aros Utiliteitsmaatskappy” in terms of the provisions of the Companies Act, 1973 (Act No. 61 of 1973), all assets and rights of the said company shall vest in and be distributed between the Oil Seeds Control Board established by section 3(1) of Proclamation No. R.55 of 1968, and the Potato Board referred to in section 6 (1) of Proclamation No. R.268 of 1970, in the manner determined by the Minister of Agriculture with the concurrence of the said boards.

(2) The registrar of deeds concerned shall as soon as may be practicable after the winding-up referred to in subsection (1) make such entries or endorsements in or on any relevant register, title deed or other document in his office or submitted to him, as he may deem necessary in order to give effect to the provisions of subsection (1), and no transfer duty, office fee or other charge shall be payable in respect of any vesting in terms of subsection (1) or in respect of any such entry or endorsement.”

Section 2 of Act 19 of 1980 states:

“The general levy imposed by Government Notice AG. 112 of 1980 and the directions, regulations and determinations made thereby, shall be deemed to have been so imposed and made with effect from 17 July 1980.”]