

No. 14 of 1974.]

HAZARDOUS SUBSTANCES ORDINANCE, 1974.

(Assented to 30 July 1974.)

(Afrikaans text signed by the Administrator.)

(Date of commencement 1 August 1974.)

ORDINANCE

To provide for the control of substances which may cause injury or ill-health to or death of human beings by reason of their toxic, corrosive, irritant, strongly sensitizing or flammable nature or the generation of pressure thereby in certain circumstances, and for the control of certain electronic products; to provide for the division of such substances or products into groups in relation to the degree of danger; to provide for the prohibition and control of the importation, manufacture, sale, use, operation, application, modification, disposal or dumping of such substances and products; and to provide for matters connected therewith.

BE IT ORDAINED by the Legislative Assembly for the Territory of South West Africa, with the consent of the State President, in so far as such consent is necessary, previously obtained and communicated to the Assembly by message from the Administrator, as follows:-

1. In this Ordinance, unless the context otherwise indicates - Definitions.

- (i) "Administration" means the Administration of the Territory; (i)
- (ii) "advertisement", in relation to any grouped hazardous substance, means any written, pictorial, visual or other descriptive matter or verbal statement, communication, representation or reference -
 - (a) appearing in a newspaper or other publication;
 - (b) distributed to members of the public; or
 - (c) brought to the notice of members of the public in any manner,

and which is intended to promote the sale or encourage the use of such a substance; and "advertise" has a corresponding meaning; (ii)

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- (iii) "analyst" means a person appointed as such under section 11(1), and a person deemed to have been appointed as such under section 11(2); (xvi)
- (iv) "appliance" means the whole or any part of any implement, machine, instrument, apparatus or other object used or capable of being used for, in or in connection with the manufacture, treatment, packing, labelling, storage, conveyance, preparation, serving or administering of any grouped hazardous substance; (xxiii)
- (v) "describe" includes advertise or label; (iii)
- (vi) "Director" means the Director of Health Services to the Administration; (iv)
- (vii) "dump", in relation to a grouped hazardous substance, means deposit, discharge, spill, release or cause or permit to be deposited, discharged, spilled or released (whether or not the substance in question is enclosed in a container), in such a place, under such circumstances or for such a period that the person depositing, discharging, spilling, or releasing the substance in question or causing or permitting it to be deposited, discharged, spilled or released, may reasonably be assumed to have abandoned it; and "dumping" has a corresponding meaning; (xxii)
- (viii) "electronic product" means -
 - (a) any manufactured or assembled product which, when in operation -
 - (i) contains or acts as part of an electric circuit; and
 - (ii) emits (or in the absence of effective shielding or other controls would emit) electronic product radiation; or
 - (b) any manufactured or assembled article which is intended for use as a component, part or accessory of a product described in paragraph (a) and which, when in operation, emits (or in the absence of effective shielding or other controls would emit) such radiation; (v)
- (ix) "electronic product radiation" means -
 - (a) any ionizing or non-ionizing electromagnetic or particulate radiation; or
 - (b) any sonic, infrasonic or ultrasonic wave which is emitted from an electronic product as the result of the operation of an electric circuit in such product; (vi)

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- (x) "Executive Committee" means the Administrator-in-Executive Committee as referred to in section 6 of the South West Africa Constitution Act, 1968 (Act No. 39 of 1968); (xxiv)
- (xi) "grouped hazardous substance" means any substance, mixture of substances, product or material declared in terms of section 3(1) to be a hazardous substance of any kind; (ix)
- (xii) "Group I, Group II, Group III or Group IV hazardous substance" means a substance, mixture of substances, product or material declared in terms of section 3(1) to be a Group I, Group II, Group III or Group IV hazardous substance, respectively; (x)
- (xiii) "import" means import into the Territory by any means; and "importation" has a corresponding meaning; (xiii)
- (xiv) "importer" includes any person who, whether as owner, consignor, consignee, agent or broker, is in possession of or in any way entitled to the custody or control of any grouped hazardous substance imported; (xiv)
- (xv) "import harbour" means a place appointed or prescribed by rule under section 6 of the Customs and Excise Act, 1964 (Act No. 91 of 1964), as a place of clearance for the Territory or as a customs and excise airport through which goods may be imported into the Territory or where they may be landed for transit or coastwise carriage; (xv)
- (xvi) "inspector" means -
- (a) a person appointed as such under section 9(1); and also
 - (b) a person deemed to have been appointed as such under section 9(2); and also
 - (c) a person who may in terms of section 9(4) execute or perform the powers, duties and functions of such an inspector; (xii)
- (xvii) "label", when used as a noun, means any brand or mark or any written, pictorial or other descriptive matter appearing on or attached to or packed with any grouped hazardous substance or its package, and referring to such grouped hazardous substance, and, when used as a verb, means brand or mark or attach or provide in any other manner with, any written, pictorial or other descriptive matter; (vii)

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- (xviii) "manufacture", when used as a noun, includes production, preparation, processing or any other manufacturing process and, when used as a verb, has a corresponding meaning; (xxvii)
- (xix) "package" means anything by or in which any substance is covered, enclosed, contained or packed; (xvii)
- (xx) "premises" means land or any building or other structure and includes any train, boat, ship, aircraft or other vehicle; (xviii)
- (xxi) "prescribed" means prescribed by regulation; (xxviii)
- (xxii) "radio-active material" means any substance, other than source material or special nuclear material as defined in the Atomic Energy Act, 1967 (Act No. 90 of 1967), which consists of, or contains any radioactive nuclide, whether natural or artificial, and whose specific activity exceeds 0,002 microcurie per gram of chemical element and which has a total activity of more than 0,1 microcurie; (xix)
- (xxiii) "regulation" means a regulation made under this Ordinance; (xx)
- (xxiv) "sealed package" means an unopened package which cannot be opened without breaking or damaging such package or any seal, adhesive label or other part of or attachment to such package; (xxvi)
- (xxv) "Secretary" means the Secretary for South West Africa; (xxi)
- (xxvi) "sell" includes offer, advertise, keep, display, transmit, consign, convey or deliver for sale, or exchange, or dispose of to any person in any manner, whether for a consideration or otherwise, or manufacture or import for use in the Territory; and "selling" and "sale" have a corresponding meaning; (xxv)

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(xxvii) "Territory" means the Territory of South West Africa; (viii)

(xxviii) "this Ordinance" includes any regulation. (xi)

2. This Ordinance and any amendment thereof shall also be applicable in all those areas referred to in section 2(1) of the Development of Self-government for Native Nations in South West Africa Act, 1968 (Act No. 54 of 1968) which are areas for the different native nations in the Territory and are reserved and set apart for the exclusive use of and occupation by natives, excluding the area known as Eastern Caprivi and defined in the Schedule to Government Notice No. 2429 of 1972 of the Republic of South Africa:

Application of Ordinance
in Native Areas.

3. (1) The Executive Committee may, subject to the provisions of subsections (2) and (3), by notice in the *Official Gazette*, declare -

Declaration of grouped hazardous substances.

- (a) any substance or mixture of substances which, in the course of customary or reasonable handling or use, including ingestion, might, by reason of its toxic, corrosive, irritant, strongly sensitizing or flammable nature or because it generates pressure through decomposition, heat or other means, cause injury, ill-health or death to human beings, to be a Group I or a Group II hazardous substance;
- (b) any electronic product to be a Group III hazardous substance; and
- (c) subject to the approval of the Minister of Mines, any radioactive material to be a Group IV hazardous substance.

- (2) (a) If the Executive Committee intends to declare any substance or mixture of substances to be a Group I or Group II hazardous substance or any electronic product to be a Group III hazardous substance or any radio-active material to be a Group IV hazardous substance, it shall cause to be published in the *Official Gazette* a notice

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of its intention to do so and in such notice invite interested persons to submit to the Secretary any comments and representations they may wish to make in connection therewith.

(b) A period of not less than three months shall elapse between the publication of such a notice and any relevant declaration under subsection (1).

(3) The provisions of subsection (2) shall not apply in respect of -

(a) an amendment of any proposed declaration in pursuance of a notice published in terms of that subsection; and

(b) any declaration in respect of which the Executive Committee is of the opinion that the public interest requires that it be made without delay.

4. (1) Subject to the provisions of subsection (2) no person shall -

Sale of Group I, and use, operation, application and installation of Group III, hazardous substances.

(a) sell any Group I hazardous substance -

(i) unless he is the holder of a licence issued to him in terms of section 5(a); and

(ii) otherwise than subject to the conditions prescribed or determined by the Director;

(b) use, operate or apply any Group III hazardous substance unless it is registered under section 5(b), and otherwise than subject to the conditions prescribed or determined by the Director;

(c) install or keep installed any Group III hazardous substance on any premises unless such premises is registered in terms of section 5(c), and otherwise than subject to the conditions prescribed or determined by the Director.

(2) If a person has in his possession a substance immediately before the date on which it is declared to be a Group I or a Group III hazardous substance in terms of section 3, he may, notwithstanding the provisions of subsection (1), sell, use, operate, apply or install or keep installed on any premises, as the case may be, that substance -

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- (a) at any time during a period of 180 days calculated from the date on which it was so declared to be such a substance; and
- (b) if, before the expiry of the period mentioned in paragraph (a), an application was made in terms of section 5 for a licence or a registration which would authorize such sale, use, operation, application or installation, at any time until such application has been finally refused in terms of this Ordinance.

5. The Director may on application in the prescribed manner and on payment of the prescribed fee (if any) and subject to the prescribed conditions and such further conditions as the Director may in each case determine -

Licensing and registration.

- (a) issue to any natural person a licence to carry on business as a supplier of Group I hazardous substances;
- (b) register any Group III hazardous substance for the purposes of this Ordinance;
- (c) register any premises as premises on which a Group III hazardous substance may be installed.

6. A licence or a registration under section 5 shall be valid for the prescribed period but may on application in the prescribed manner and before the prescribed time or such later time as the Director may allow and on payment of the prescribed fee (if any) be renewed.

Period of validity and renewal of licences and registrations.

7. (1) If the Director refuses an application in terms of section 5 or 6 he shall inform the applicant in writing that -

Appeals.

- (a) the application has been refused, giving his reasons therefor; and
- (b) he may appeal to the Executive Committee within the prescribed period and in the prescribed manner.

(2) The Executive Committee may allow or dismiss an appeal by virtue of the provisions of subsection (1).

8. The Executive Committee may at any time withdraw or suspend a licence or a registration under section 5 if any condition to which such licence or registration is subject, has not been complied with.

Withdrawal or suspension of licence or registration.

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9. (1) The Executive Committee may appoint any person it may deem fit as an inspector for - *Inspectors.*

- (a) Group I and Group II hazardous substances; or
- (b) Group III and Group IV hazardous substances,

and any such inspector shall, in respect of any substance in respect of which he has been so appointed, and subject to the control of the Executive Committee, be vested with the powers, duties and functions conferred or imposed on an inspector by this Ordinance.

(2) Until such time as the Executive Committee may appoint a person under subsection 1(b) as an inspector for Group III and Group IV hazardous substances, each person appointed under section 8(1)(b) of the Hazardous Substances Act, 1973 (Act No. 15 of 1973) as an inspector for such hazardous substances, shall be deemed to have been appointed under subsection 1(b) as an inspector for Group III and Group IV hazardous substances.

(3) Each person appointed under subsection (1) and each person deemed under subsection (2) to have been so appointed shall be provided with a letter of authority signed by or on behalf of the Secretary and certifying that such person has been appointed as an inspector in terms of this Ordinance and indicating for which groups of hazardous substances he has been so appointed.

(4) The powers, duties and functions of an inspector for Group I and Group II hazardous substances may also be exercised or performed -

- (a) by an officer of the Department of Customs and Excise authorized thereto in writing by the Secretary for Customs and Excise;
- (b) by any member of the South African Police of or above the rank of sergeant; or
- (c) by any member of the South African Police below the rank of sergeant authorized thereto in writing by a member referred to in paragraph (b).

10. (1), An inspector may at all reasonable times enter any premises on or in which any substance suspected to be a grouped hazardous substance is or is suspected to be manufactured, packed, marked, labelled, kept, stored, conveyed, sold, used, operated, applied, administered or dumped or on or in which any other operation or activity with or in connection with any *Powers of inspectors.*

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such substance is or is suspected to be carried out, and may, subject to the provisions of this Ordinance -

- (a) inspect or search such premises or examine, or extract, or take and remove samples of, any substance (other than a Group III or a Group IV hazardous substance) found in or upon such premises, or any appliance or other object so found which is or is suspected to be used, or destined or to be intended for use, for, in or in connection with the manufacture, packing, marking, labelling, storage, conveyance, use, application or administration of a grouped hazardous substance, or for, in or in connection with any other operation or activity with or in connection with any grouped hazardous substance, or open any package suspected to contain a grouped hazardous substance;
- (b) inspect any Group III or Group IV hazardous substance;
- (c) demand any information regarding any such substance, appliance or object from any person in whose possession or charge it is or from the owner or person in charge of such premises;
- (d) count, measure, mark, seal or measure the mass of any such substance, appliance or object or its package, or lock, secure, seal or close any door or opening giving access to it;
- (e) examine or make copies of, or take extracts from, any book, statement or other document found in or upon such premises and which refers or is suspected to refer to such substance, appliance or object;
- (f) demand from the owner or any person in charge of such premises or from any person in whose possession or charge such book, statement or other document is, an explanation of any entry therein;
- (g) inspect any operation or process carried out in or upon such premises in connection with any activity referred to in paragraph (a);

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(h) demand any information regarding such operation or process from the owner or person in charge of such premises or from any person carrying out or in charge of the carrying out of such operation or process;

(i) seize any substance, appliance, book, statement or document or other object which appears to provide proof of a contravention of any provision of this Ordinance.

(2) If an inspector referred to in section 9(1) or (2) or (4) (a) or (c) intends to exercise or perform any power, duty or function under this Ordinance in the presence of any persons affected thereby, he shall first exhibit the written authority issued to him in terms of section 9(3) or (4) to any of those persons.

(3) The procedure to be followed by an inspector in obtaining, transmitting for analysis or examination of or otherwise dealing with any sample, shall be as prescribed.

11. (1) The Executive Committee may in writing appoint any person it may deem fit, as an analyst in respect of Group I and Group II hazardous substances to analyse or examine samples of any substance for the purposes of this Ordinance.

Analysts.

(2) Until such time as the Executive Committee may appoint a person under subsection (1) as an analyst, each person appointed as such under section 10(1) of the Hazardous Substances Act, 1973 (Act No. 15 of 1973), shall be deemed to have been appointed under subsection (1) as analyst.

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

12. (1) If evidence of an analysis or examination of a sample by an analyst is adduced in a prosecution under this Ordinance, the court may, of its own motion or at the request of the prosecutor or, subject to the provisions of subsection (3), at the request of the accused, order a further analysis or examination of the remaining portion of the sample used for the first analysis or examination, or, if there is no such remaining portion and the inspector who obtained the sample has retained any part of it in accordance with the regulations, of the part so retained by him.

Further analysis or examination of samples.

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(2) Such further analysis or examination shall be carried out by an analyst designated by the court, or, if an analyst is not readily available, by any competent person so designated.

(3) (a) A request by the accused for such a further analysis or examination shall be granted only on condition that he deposits the prescribed fee.

(b) Such fee shall be returned to the accused if he is acquitted on the charge to which the evidence relates, but if he is convicted the court may declare such fee or such part of it as the court may consider sufficient to defray the cost of the further analysis or examination, to be forfeited to the Administration.

13. (1) If an inspector has taken for analysis or examination a sample of any substance imported at an import harbour, such substance and all similar substances in the same consignment may, at the discretion of the Secretary for Customs and Excise acting in consultation with the Secretary, be -

Detention of imported substances.

(a) detained at the import harbour until the analysis or examination has been completed; or

(b) removed from the import harbour if the importer furnishes a guarantee approved by the Secretary, that he will not pledge, sell or alienate or in any manner part with, or grant any right in or over the substance in question until the analysis or examination has been completed, and that if, as a result of the analysis or examination, it should appear that such substance may in terms of this Ordinance not be imported, he will immediately return the whole consignment of such substance to the import harbour or to the port of shipment or place of origin, as the Secretary may direct, or deal with it in such other manner as the Secretary may direct.

(2) If as a result of the analysis or examination of a sample referred to in subsection (1), it appears that the substance in question may in terms of this Ordinance not be imported, the Secretary may, in consultation with the Secretary for Customs and Excise, and by order in writing direct that such substance and all similar substances in the same consignment -

(a) shall be confiscated and destroyed; or

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- (b) shall be returned to the import harbour or to the port of shipment or place of origin; or
- (c) may, subject to the provisions of the Customs and Excise Act, 1964 (Act No. 91 of 1964), be imported on compliance by the importer with such conditions as the Secretary may specify in such order, including any condition requiring the substitution of a label approved by the Secretary for any existing label; or
- (d) shall be dealt with or disposed of in such other manner as the Secretary may specify in such order.

14. (1) Any person who, according to the label of any Group I or any Group II hazardous substance, which is sold in a sealed package, imported, manufactured or packed the substance in question, shall be presumed to have imported, manufactured or packed, as the case may be, such substance unless he proves that he did not import, manufacture or pack, as the case may be, such substance.

Liability in regard to substance sold in a sealed package.

(2) The provisions of subsection (1) shall not relieve any person from liability incurred by him in terms of this Ordinance in respect of the sale of any substance referred to in that subsection.

15. No person shall be convicted on a charge of selling or importing a Group I or Group II hazardous substance in contravention of any provision of this Ordinance, if he proves -

Special defences.

- (a) that he or his employer or principal acquired or imported the grouped hazardous substance in question under a written warranty complying with the provisions of section 16 and furnished to him or to his employer or principal; and
- (b) in the case of a sale of the grouped hazardous substance in question, that he sold it in the condition in which he acquired or imported it, or, if it was acquired or imported by his employer or principal, that he at no relevant time had reason to suspect that it was in any other condition than that in which it was so acquired or imported.

16. (1) A warranty referred to in section 15(a) shall -

Warranties.

- (a) not be valid unless furnished by a person resident in the Territory, and if it is furnished on behalf of a third person, unless such third person is resident or, in the

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case of a company, has a registered office in the Territory;

- (b) reflect the name and address of the person by whom it is furnished and, if it is furnished on behalf of a third person, the name and address (including in the case of a company, the registered office) of such third person;
- (c) guarantee that the substance to which it applies, is not a grouped hazardous substance in respect of which any prohibition in terms of the regulations applies; and
- (d) contain particulars by which any substance to which it applies can be identified and particulars of the number of packages of such substance.

(2) Any person who furnishes a warranty for the purposes of this Ordinance which is false or misleading in any respect, shall be guilty of an offence.

(3) Any court within whose area of jurisdiction the place is situated where a warranty has been furnished (including any address reflected on such warranty for the purposes of subsection (1)(b)) or where a substance to which such warranty applies is sold or where a sample of such substance is obtained in terms of this Ordinance, shall have jurisdiction in respect of any offence committed in respect of such warranty under subsection (2).

17. (1) An act or omission of an employee, manager or agent which constitutes an offence under this Ordinance shall be deemed to be the act or omission of his employer or principal and the said employer or principal may be convicted and sentenced in respect of it unless he proves -

Liability of employer or principal.

- (a) that he did not permit or connive at such act or omission; and
- (b) that he took all reasonable measures to prevent an act or omission of the nature in question; and
- (c) that an act or omission, whether legal or illegal, of the nature in question did not under any conditions or in any circumstances fall within the course of the employment or the scope of the authority of the employee, manager or agent concerned.

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(2) For the purposes of subsection (1)(b) the fact that an employer or principal forbade an act or omission of the nature in question shall not by itself be regarded as sufficient proof that he took all reasonable measures to prevent such an act or omission.

(3) The provisions of subsection (1) shall not relieve the employee, manager or agent concerned from liability to be convicted and sentenced in respect of the act or omission in question.

18. (1) No person shall, except for the purposes of carrying out his functions or the performance of his duties under this Ordinance or for the purpose of legal proceedings under this Ordinance or when required to do so by any court or under any law -

Preservation of secrecy.

- (a) without the authority in writing of the Secretary, disclose to any other person the contents of any certificate or report on the analysis or examination of a sample in terms of this Ordinance; or
- (b) disclose to any other person any information acquired by him in the carrying out of his functions or the performance of his duties under this Ordinance and relating to the business or affairs of any other person.

(2) Any person who contravenes the provisions of subsection (1) shall be guilty of an offence.

19. Any person who -

Offences.

- (a) obstructs or hinders an inspector in the performance of his functions or duties or the exercise of his powers under this Ordinance;
- (b) when an inspector demands of him an explanation or particulars or information relating to a matter within his knowledge, refuses or fails to give such explanation, particulars or information or gives an explanation or particulars or information which is false or misleading knowing it to be false or misleading;
- (c) otherwise than in the exercise or performance of a power, duty or function under this Ordinance, removes, obliterates, alters, damages, breaks or opens a mark, seal or

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fastening placed by an inspector on any substance or its package or on or over any door or opening giving access to it;

- (d) falsely represents himself to be an inspector;
- (e) retakes any sample or other substance obtained or seized under this Ordinance, or hinders or obstructs the obtaining or seizure of any such sample or other substance;
- (f) falsely in connection with any grouped hazardous substance makes use of, or applies to any such substance, any warranty, certificate, report, invoice or other document; or
- (g) for purposes of business or trade makes use of any report or certificate furnished in terms of this Ordinance by an inspector or an analyst,

shall be guilty of an offence.

20. (1) Any person convicted of an offence under this Ordinance shall, subject to the provisions of subsection (2), be liable -

Penalties.

- (a) on a first conviction, to a fine not exceeding five hundred rand or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment;
- (b) on a second conviction, to a fine not exceeding one thousand rand or to imprisonment for a period not exceeding twelve months or to both such fine and such imprisonment; and
- (c) on a third or subsequent conviction, to a fine not exceeding two thousand rand or to imprisonment for a period not exceeding twenty-four months or to both such fine and such imprisonment.

(2) Where a penalty is prescribed by regulation for a contravention of or failure to comply with any regulation, a person convicted of any such contravention or failure shall be liable only to the penalty so prescribed.

21. A magistrate's court shall have jurisdiction to impose any penalty provided for by this Ordinance.

Jurisdiction.

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22. (1) The court convicting any person of an offence under this Ordinance may declare any grouped hazardous substance, appliance, product, or other object in respect of which the offence has been committed or which was used for, in or in connection with the commission of the offence, to be forfeited to the Administration.

Forfeiture and disposal of goods.

(2) Anything forfeited under subsection (1) shall be disposed of in such manner as the Secretary may direct.

(3) Costs incurred in respect of any action under subsection (2) may be recovered from the person convicted.

23. (1) In any criminal proceedings under this Ordinance the period between the service of the summons and the commencement of the trial shall not be less than 10 days.

Time limits and other requirements in connection with prosecution.

(2) (a) Subject to the provisions of paragraph (b), no prosecution for a contravention of a provision of this Ordinance disclosed by the analysis or examination of a sample shall be instituted after ninety days from the date on which the sample was obtained for the purpose of such analysis or examination.

(b) The provisions of paragraph (a) shall not apply to proceedings against any person who furnished a warranty in respect of the substance of which the sample in question was obtained.

(3) A copy of any certificate or report by an analyst which the prosecutor intends to produce in evidence in any prosecution under this Ordinance, shall be served on the accused with the summons.

(4) If the accused has within three days after having been so served with a copy of a certificate or report, demanded in writing that the analyst who furnished the certificate or report be called as a witness at the trial, and has paid or tendered to the prosecutor a sum of money sufficient to defray the expenses incidental to the calling and attendance of the said analyst as a witness, and if the prosecutor produces the certificate or report in evidence at the trial, the prosecutor shall call the said analyst as a witness at such trial.

(5) The second accused may, instead of requiring the calling of the said analyst as a witness, submit to him written interrogatories approved by the court, and such interrogatories and any reply thereto, purporting to be a reply from the said analyst, shall be admissible in evidence in the proceedings.

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24. In any prosecution under this Ordinance -

Proof and presumptions.

- (a) a copy of or extract from a book, statement or other document, made by an inspector under section 10(1)(e) and certified by him to be true and correct, shall, unless the contrary is proved, be presumed to be a true and correct copy of or extract from the relevant book, statement or other document, and shall on its production in court be *prima facie* proof of any entry to which it relates;
- (b) a certificate or report on the analysis or examination of a sample and purporting to be signed by an analyst, shall on its production in court be *prima facie* proof of the facts stated in it;
- (c) any quantity of a substance in or upon any premises at the time a sample of it is obtained by an inspector for the purpose of this Ordinance, shall, unless the contrary is proved, be presumed to be in the same condition or possess the same properties as such sample;
- (d) a sample of a substance obtained by an inspector for analysis or examination in terms of this Ordinance, shall be presumed to have been sold to him by the person selling the substance of which it is a sample;
- (e) if it is proved that any person has manufactured or imported any grouped hazardous substance, it shall be presumed, unless the contrary is proved, that he manufactured or imported it for use in the Territory;
- (f) any substance, appliance or other object found in or upon any premises where any grouped hazardous substance is manufactured, treated, packed, labelled, stored, conveyed, applied, used, operated or administered, shall, unless the contrary is proved, be presumed to be used for, in or in connection with the manufacture, treatment, packing, labelling, storage, conveyance, application, use, operation or administration of such grouped hazardous substance;
- (g) any person who sells, manufactures or imports any substance which contains any grouped hazardous substance or in or on which any grouped hazardous substance is

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present, shall be presumed to sell, manufacture or import, as the case may be, such grouped hazardous substance.

25. A defect in the form of a notice, order, certificate, report or other document issued, made or furnished in terms of this Ordinance shall not invalidate any administrative proceedings to which such notice, order, certificate, report or other document relates or be a ground for exception in legal proceedings, provided the requirements for such a notice, order, certificate, report or other document are substantially complied with and its meaning is clear.

Defects in form.

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

Restriction of liability.

27. (1) The Executive Committee may make regulations -

Regulations.

(a) authorizing, regulating, controlling, restricting or prohibiting the -

(i) manufacture;

(ii) modification;

(iii) importation;

(iv) storage;

(v) transportation; or

(vi) dumping or other disposal,

of any grouped hazardous substance or class of grouped hazardous substances;

(b) regulating, controlling, restricting or prohibiting the application of a grouped hazardous substance for any specific purpose;

(c) prescribing the manner in which any particular grouped hazardous substance shall be described and the name under which any such substance may be sold, or prohibiting the sale of any particular grouped hazardous substance under a name other than a name so prescribed or under a specified name, or the advertisement thereof in a manner other than the manner prescribed;

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- (d) prescribing the procedures to be followed, the forms to be completed, the registers to be kept and the other requirements to be complied with in connection with the registration of Group III hazardous substances and the premises on which they are installed, and the conditions under which any such registration shall be subject;

- (e) prescribing the precautions to be taken for the protection from injury, ill-health or death of persons in control of or employed or engaged in the manufacture, operation, application, or use of grouped hazardous substances or of any other person who is likely to or may be exposed to grouped hazardous substances as a result of the manufacture, operation, application, use, disposal or dumping thereof;

- (f) providing for the keeping of records and the submission of statistics and reports relating to -
 - (i) the manufacture, operation, application, modification, use or sale of grouped hazardous substances;
 - (ii) the premises on which grouped hazardous substances are used, sold or installed; or
 - (iii) persons employed in connection with or in control of Group III hazardous substances;

- (g) prescribing, prohibiting, restricting or otherwise regulating -
 - (i) the packing of any Group I or any Group II hazardous substance or the packing of any such substance in a specified manner or in a manner other than a specified manner; or
 - (ii) the use for the packing of any Group I or any Group II hazardous substance, of any package of a specified condition, form or nature or made from or treated with any specified material or substance;

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- (h) exempting any Group I or any Group II hazardous substance or any such substance of a specified nature or class from the requirements of this Ordinance relating to labelling, and prescribing the conditions (if any) subject to which such exemption shall apply and the prerequisites to be observed before it shall apply;
- (i) prescribing the addition to a Group I or a Group II hazardous substance of specified additives, in order to render such substance easily distinguishable as such a substance;
- (j) prescribing the manner in which any Group I or any Group II hazardous substance or its package, or the bulk stock from which it is taken for sale, shall be labelled, the nature of the information to be reflected on the label, the manner or form in which such information shall be so reflected or shall be arranged on the label, or prohibiting the reflecting of information of a specified nature on the label;
- (k) prescribing the procedures to be followed, the forms to be completed and the registers to be kept in connection with the licensing of persons as suppliers of Group I hazardous substances;
- (l) prohibiting or regulating the application or other use of any Group I or any Group II hazardous substance for gain;
- (m) providing for the keeping of records relating to the application or other use of grouped hazardous substances;
- (n) providing for the notification of cases or suspected cases of poisoning, intoxication, illness or death of persons who have been exposed to grouped hazardous substances;
- (o) prescribing the conditions under which persons involved in the operation or use of a Group III hazardous substance may be employed;

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- (p) prescribing the duties and responsibilities of any person in control of a Group III hazardous substance or any premises on which such hazardous substance has been or is being used or of any person employed in connection with the operation of such a substance, and generally for the protection of any person from the harmful effects of exposure to radiation emanating from any Group III hazardous substance;
- (q) providing for the -
- (i) appointment of the committees it considers necessary for the purpose of advising the Secretary and the Director on any matter concerning a Group III hazardous substance, including a regulation which provides that until such time as the Executive Committee has appointed such committees under any regulations made under this paragraph, the committees appointed by the Minister of Health under the provisions of the Hazardous Substances Act, 1973 (Act No. 15 of 1973) and the regulations made thereunder, shall be deemed to have been appointed as such also for the Territory;
 - (ii) the calling of meetings of such a committee, the quorum for and the procedure at such meetings; and
 - (iii) the remuneration and allowances, conditions of service and tenure of office of members of such a committee who are not in the full-time employment of the State;
- (r) providing for control over the dumping or disposal of radio-active material;
- (s) prescribing the duties to be performed by inspectors, including the procedures to be followed in connection with the inspection of premises, the obtaining or transmitting of samples for analysis or examination, the dealing in other respects with samples, and the records to be kept for the purposes of this Ordinance;

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(t) prescribing the duties to be performed or the powers which may be exercised by analysts, methods of analysis or examination of samples for the purposes of this Ordinance, the form of any certificate or report to be furnished in connection with such analysis or examination, or the nature or arrangement of particulars to be reflected in such certificate or report, and the records to be kept in connection therewith;

(u) with regard to any matter which in terms of this Ordinance may be prescribed or otherwise dealt with by regulation,

and, in general, with regard to any matter which the Executive Committee considers necessary or expedient to prescribe or regulate in order to attain or further the objects of the Ordinance, and the generality of this provision shall not be limited by the preceding paragraphs of this subsection.

(2) Regulations made under subsection (1)(t) may prescribe any method for the analysis or examination of a sample set out in any publication which in the opinion of the Executive Committee is generally recognized as authoritative.

(3) Different regulations may be made in respect of different types, classes or categories of grouped hazardous substances, or different classes or categories of premises, or different classes or categories of persons in control of Group III hazardous substances or premises on which Group III hazardous substances have been installed, or different classes or categories of persons employed in connection with the operation of any Group III hazardous substance.

(4) No regulation providing for the control of a Group III hazardous substance for diagnostic or therapeutic use on man shall be made except after consultation with the South African Medical and Dental Council.

(5) Any regulation may be expressed to apply only in such area as may be specified in it.

(6) A regulation may prescribe penalties for any contravention of or failure to comply with its provisions, not exceeding the penalties prescribed by section 20.

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28. The Executive Committee, may, at the request of the government or administration of a state or territory which is not part of the Territory, by proclamation in the *Official Gazette* apply any provision of this Ordinance to any grouped hazardous substance which arrives at or is imported through an import harbour or other place in the Territory and which is addressed to or intended for transmission to a place in such state or territory, and may at any time withdraw or amend such proclamation by proclamation in the *Official Gazette*.

Application of Ordinance to grouped hazardous substances in transit.

29. (1) The provisions of this Ordinance shall be in addition to and not in substitution for any other law which is not in conflict with or inconsistent with this Ordinance.

Operation of Ordinance in relation to other laws.

(2) A reference in this Ordinance to a provision or provisions of the Hazardous Substances Act, 1973 (Act No. 15 of 1973) and the regulations made thereunder shall, until such time as such provision or provisions come into operation, be interpreted as a reference to the corresponding provisions of section 133A of the Public Health Act, 1919 (Act No. 36 of 1919), as inserted by the Public Health Amendment Act, 1971 (Act No. 42 of 1971) and the regulations made under the said section 133A.

30. This Ordinance shall be called the Hazardous Substances Ordinance, 1974.

Short title.