

STANDARDS ACT 33 OF 1962

[ASSENTED TO 26 MARCH 1962]

[DATE OF COMMENCEMENT: 1 APRIL 1962
but made applicable in Namibia only with effect
from 1 July 1964 by Act 72 of 1964]

(Signed by the President)

as amended by

Standards Amendment Act 72 of 1964
Standards Amendment Act 10 of 1967
Standards Amendment Act 61 of 1968
Standards Amendment Act 77 of 1970
General Law Amendment Act 57 of 1975
Standards Amendment Act 59 of 1976
Standards Amendment Act 100 of 1977

ACT

To consolidate and amend the laws providing for the promotion of the standardization of commodities and the manufacture, production, processing or treatment thereof, and for the establishment of the South African Bureau of Standards; to provide for the establishment of marks of proof and marks of authenticity in respect of commodities and articles; for the carrying out of examinations, tests and analyses by the said Bureau in respect of other substances, objects and materials; for the incorporation by reference of the rules or provisions of codes of practice, standard specifications and compulsory standard specifications; for the promotion of uniformity in the building regulations or by-laws of local authorities; and for matters incidental thereto.

[Long title amended by sec 6 of Act. 72 of 1964 and substituted by sec 12 of Act. 59 of 1976 and by sec 6 of Act 100 of 1977.]

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1 Definitions

In this Act, unless the context otherwise indicates-

"Akademie"

[Definition of "Akademie" deleted by sec 1 of Act 61 of 1968.]

"associated societies"

[Definition of "associated societies" deleted by sec 1 of Act. 61 of 1968.]

"bureau" means the South African Bureau of Standards established by section *two* of the Standards Act, 1945 (Act 24 of 1945);

"code of practice" means a set of rules relating to the methods to be applied or the procedure to be adopted in connection with the construction, installation, testing, operation or use of any article, apparatus, instrument, device or process;

"compulsory standard specification" means a specification which has been declared a compulsory standard specification in terms of subsection (1) of section *fifteen*, and includes any such specification as amended in terms of the said subsection;

"council" means the Council of the South African Bureau of Standards referred to in section *four*;

"department of State" includes the Administration of the Territory;

"director-general" means the director-general of the bureau appointed in terms of section *twelve*;

"distinctive mark" means a mark which has been prescribed in terms of paragraph (*b*) of subsection (1) of section *fifteen*;

"Gazette", in relation to the Territory, means the *Official Gazette* of the Territory;

"inspector" means an inspector appointed in terms of section *eighteen*;

"mark" means any device, brand, heading, label, ticket, name, signature, word, letter or numeral, or any combination thereof;

"mark of authenticity" means a mark which has been established as such under section

14*ter* (1);

[Definition of "mark of authenticity" inserted by sec 1 of Act. 59 of 1976.]

"mark of proof" means a mark which has been established as such under section 14*ter* (1);

[Definition of "mark of proof" inserted by sec 1 of Act 59 of 1976.]

"Minister" means the Minister of Economic Affairs;

"research council" means the Scientific and Industrial Research Council established by section *two* of the Scientific Research Council Act, 1945 (Act 33 of 1945);

"sell" includes expose or offer for sale, or export for or in pursuance of a sale, or have in possession for the purpose of sale or export or for any purpose of trade or manufacture;

"specification" means a description of any commodity by reference to its nature, quality, strength, purity, composition, quantity, dimensions, weight, grade, durability, origin, age or other characteristics, or of the material or substance from or with which any commodity may be manufactured, produced, processed or treated, or of the manner in which this may be done;

"standardization mark" means a mark which has in terms of subsection (1) of section *fourteen* been declared to be a standardization mark, and includes any such mark as amended in terms of the said subsection;

"standard specification" means a specification which is the subject of a notice published in terms of section *fourteen* and declaring any mark to be a standardization mark in respect of any commodity or the manufacture, production, processing or treatment of any commodity;

"Territory" means the territory of South-West Africa.

2 Management and control of bureau

The bureau shall be managed and controlled by the council.

3 Objects of bureau

The objects of the bureau are-

- (a) to promote standardization in industry and commerce;
- (b) to prepare, frame, modify or amend and in such manner as it may deem fit publish specifications and codes of practice;

[Para (b) substituted by sec 1 of Act 100 of 1977.]

- (c) to make arrangements or provide facilities for the testing and calibration of precision instruments, gauges and scientific apparatus, for the determination of their degree of

accuracy by comparison with standards approved by the Minister on the recommendation of the council, and for the issue of certificates in regard thereto;

- (d) to make arrangements or provide facilities for the examination and testing of commodities and articles, any material or substance from or with which they may be manufactured, produced, processed or treated, and of the manner in which this may be done, and for the examination, testing and analysis of other substances, objects or materials;

[Para (d) substituted by sec 2(a) of Act 59 of 1976.]

- (e) to control, in accordance with the provisions of this Act, the use of standardization marks, distinctive marks and marks of proof and authenticity;

[Para (e) substituted by sec 2(b) of Act 59 of 1976.]

- (f) to encourage or undertake educational work in connection with standardization;
- (g) to provide for co-operation with any person, association or organization outside the Republic having objects similar to those of the bureau;
- (h) to assist any department of State or any local authority or other public body in the preparation and framing of any specifications or codes of practice required by it;
- (i) to provide for co-operation with the representatives of any branch of industry or with any department of State, local authority or other public body or with any person, with a view to bringing about standardisation in connection with commodities;
- (j) to provide, at the request of the Minister and on behalf of the State or the Administration of the Territory, for the testing of locally manufactured or imported commodities with a view to determining whether such commodities comply with the provisions of the Merchandise Marks Act, 1941 (Act 17 of 1941), or any other law in regard to standards of quality;
- (k) to frame, amend or substitute draft building regulations (hereinafter referred to as standard building regulations) for the benefit of local authorities.

[Para (k) added by sec 1 of Act 72 of 1964.]

- (l) to perform such functions and tasks in connection with the introduction of the metric system of weights and measures in the Republic, and the raising of productivity and the standard of industrial design, as the Minister may from time to time assign to the Bureau.

[Para (l) added by sec 1 of Act 77 of 1970.]

3A Agreements with foreign governments organizations and bodies

The Minister may conclude on behalf of the Government of the Republic, any agreement with the government of, or any organization or body in, any other country, in order to promote the objects for which the bureau has been established, including any agreement wherein provision is made for membership of the bureau of any such organization or body for the purposes set out in the relevant agreement.

[Sec 3A inserted by sec 3 of Act 59 of 1976.]

4 Establishment of council

There is hereby established a corporate body to be known as the Council of the South African Bureau of Standards.

5 Constitution of council

(1) Subject to the provisions of subsection (2) the council shall consist of a chairman and seven other members who shall be appointed by the Minister and who shall all be persons with special knowledge or experience of matters relating to the objects for which the bureau has been established.

(2) Any person who immediately before the commencement of the Standards Amendment Act, 1968, was chairman or any other member of the council, shall be deemed to have been appointed as chairman or other member of the council under this section, as substituted by section 2 of the said Act: Provided that the period of office of any such person as chairman or other member of the council shall expire on the date on which his period of office would have expired if the Standards Amendment Act, 1968, had not come into operation.

[Sec 5 substituted by sec 2 of Act 61 of 1968.]

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[Sec 6 repealed by sec 3 of Act 61 of 1968.]

7 Period of office and remuneration of members of and casual vacancies on council

(1) The chairman of the council shall hold office during the Minister's pleasure and any other member of the council shall, save as may be otherwise prescribed by regulation, hold office for such period, not exceeding three years, as the Minister may in the case of that member determine.

(2) The Minister shall fill a casual vacancy on the council-

- (a) in the case of the chairman, by the appointment of another person as member and chairman; and
- (b) in the case of any other member, by the appointment of another person for the unexpired portion of the period for which the member whose office has become vacant, had been appointed.

[Para (b) substituted by sec 4 of Act 61 of 1968.]

(3) A member whose period of office has expired shall be eligible for re-appointment.

(4) The council shall pay to any person who is the chairman or another member of the council and is not in the full-time employment of the State, such remuneration and allowances as the Minister may after consultation with the Minister of Finance determine.

(5)(a) The council shall pay to any person who is the chairman or another member of the council and is in the full-time employment of the State, in respect of travelling and subsistence expenses incurred by him in connection with the business of the bureau, such allowances as the Minister may after consultation with the Minister of Finance determine: Provided that except on the recommendation of the Public Service Commission such allowances shall not exceed those which are payable to such person in respect of his work in the service of the State.

(b) The council shall not, except on the recommendation of the Public Service Commission, pay to any such person any remuneration, in addition to his remuneration in respect of such service, for services rendered by him as chairman or as another member of the council.

8 Meetings of the council

(1) The first meeting of the council shall be held at such time and place as the Minister may determine, and all subsequent meetings at such times and places as the council may fix.

(2) The chairman of the council may at any time call a special meeting of the council which shall be held at such time and place as he may direct.

9 Quorum majority decision and chairman's casting vote

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

[Subsec (1) substituted by sec 5 of Act 61 of 1968.]

(2) When the chairman of the council is absent or unable to fulfil his duties as chairman, the Minister may appoint any person to act as chairman of the council during such absence or inability, and if the chairman or a person so appointed by the Minister is absent from any meeting of the council, the members present thereat may elect one of their member to preside at that meeting.

(3) A decision of the council shall be by a resolution of the majority of the members present at any meeting of the council, and, in the event of an equality of votes on any matter, the person presiding at the meeting in question shall have a casting vote in addition to his deliberative vote as a member of the council.

10 Functions of council

(1) The functions of the council shall be-

- (a) to formulate, on broad national lines, the policy which, subject to the approval of the Minister, shall be adopted by it with a view to achieving the objects of the bureau;
- (b) to advise the Minister in regard to any matter within his purview under this Act.

(2) The council may-

- (a) for achieving the objects of the bureau-
 - (i) with the approval of the Minister purchase or otherwise acquire, or hold, alienate, hire or let immovable property, and establish laboratories or other facilities; and
 - (ii) purchase or otherwise acquire, or hold or alienate movable property, and hire or let such property as well as any services; and
- (b) do all such things as are conducive to the achievement of the said objects or calculated directly or indirectly to enhance the value of or render profitable the property or rights of the council.

[Subsec (2) substituted by sec 2 of Act 72 of 1964.]

(3)(a) The council may at the request of any person, including any department of State or State-controlled body or any local authority or other public body, carry out examinations or tests in respect of any particular commodities, or comparative examinations or tests in respect of imported and locally produced commodities or in respect of commodities of different makes or brands, and may furnish reports on any examination or test so carried out subject to such conditions as it may deem fit, including conditions as to the use which may be made of such reports, and conditions prohibiting or restricting the disclosure of any information contained in such reports.

(b) The council may at the request of any person referred to in paragraph (a), and with the approval of the Minister, carry out examinations or tests, or have analyses made, in respect of any other substance, object or material of whatever nature or origin, and may furnish reports thereon, subject to conditions, as contemplated in the said paragraph.

[Para (b) added by sec 4 of Act 59 of 1976.]

11 Establishment of committees and assignment of powers of council

(1)(a) The council may establish committees to assist it in the performance of its functions and may in its discretion appoint any person as a member of any such committee, whether he is connected with the bureau or not.

(b) The council may in its discretion assign any of its powers, excluding the powers referred to in subsection (2), to a committee so established, but shall not be divested of any power which it may have so assigned to a committee, and may amend or withdraw any

decision of such a committee.

(c) The council may out of its funds pay to the members of any such committee such remuneration and allowances as the Minister may after consultation with the Minister of Finance determine: Provided that the provisions of section 7(5) shall *mutatis mutandis* apply in respect of any member of such a committee who is in the full-time service of the State.

(2)(a) The council may, either generally or in a particular case, assign the power of amending codes of practice and standard specifications framed by it under this Act and of publishing such amendments, to-

- (i) the chairman of the council; and
- (ii) the director-general, who shall act under any such assignment only during the absence or temporary incapacity of the said chairman.

(b) The council shall not by any assignment referred to in paragraph (a), be divested of its power under this Act to amend at any time the relevant, or any other, code of practice or standard specification.

[Sec 11 substituted by sec 5 of Act 59 of 1976.]

12 Appointment of director-general and staff of bureau membership of provident fund and transfer of certain persons from staff of research council to that of council

(1) The council shall appoint a person suitably qualified scientifically and technically and approved by the Minister, as director-general of the bureau, and shall also appoint such staff as the council may deem necessary for achieving the objects of the bureau.

(2) Whenever for any reason the director-general is absent or unable to fulfil his duties, the council may appoint some other person approved by the Minister, to act as director-general during such absence or inability.

(3) The functions of the director-general shall be to organize, carry out and direct the work of the bureau in accordance with the policy adopted by the council in terms of section *ten*.

(4) Any person appointed as a member of the staff of the council shall perform the duties assigned to him from time to time by the council.

(4A) The council may with the approval of the Minister, granted after consultation with the Minister of Finance, make rules prescribing the conditions of service of the director-general and the other members of the staff of the council, and any rules so made need only be made known in such manner as the council may think fit.

[Subsec (4A) inserted by sec 2 of Act 77 of 1970.]

(5) The director-general and the other members of the staff of the council who are in the full-time service of the council and occupy posts approved by the Minister shall, subject to

the provisions of the Associated Institutions Pension Fund Act, 1963 (Act 41 of 1963), and the regulations made thereunder, be members of and contribute to the provident fund established under section 12 of the Higher Education Additional Provision Act, 1917 (Act 20 of 1917), in the same manner and subject to the same conditions as if they were members of the teaching or administrative staff of a university as defined by section 1 of the Universities Act, 1955 (Act 61 of 1955), and the council shall for the purposes of the said fund be deemed to be a university as so defined.

[Subsec (5) substituted by sec 27(1)(a) of Act 57 of 1975.]

(6) The council shall be deemed to be a "council" as defined by the regulations governing the said provident fund and shall, anything to the contrary notwithstanding, pay to the said fund the contributions that the State would otherwise have been required to pay to it in respect of the director-general and the other members of the staff of the council who are members of the said fund.

(7) If any person is immediately prior to the commencement of this Act in the service of the research council as director-general of the bureau, he shall be deemed to have been appointed by the council in terms of subsection (1) as director-general of the bureau as from such commencement, and all other persons who are immediately prior to such commencement in the service of the research council for the purposes of the bureau, shall be deemed to have been appointed by the council in terms of the said subsection as members of the staff of the bureau as from such commencement.

(8) Any continuous service of any person referred to in subsection (7) as an officer of the research council, and any service of any such person which is in terms of any law deemed to be continuous service as an officer of the research council shall for the purposes of the provident fund referred to in subsection (5) be deemed to be continuous service as a member of the staff of the council.

(9) The pensionable emoluments immediately prior to the commencement of this Act of any person referred to in subsection (7), in respect of his service with the research council, and, where a salary scale was then applicable in his case, his progress according to that scale, shall not be altered without his consent, and any other rights or privileges acquired by any such person in respect of such service, shall be deemed to have been acquired in respect of service with the council.

(10) The council may advance from its funds such amount on such conditions as it may deem fit, to the director-general or any other member of its staff in order to enable him to become a member of the pension fund established under the Associated Institutions Pension Fund Act, 1963 (Act 41 of 1963), or of the provident fund mentioned in section 3 (1)(b) of that Act.

[Subsec (10) added by sec 27(1)(b) of Act 57 of 1975 and amended by sec 6 of Act 59 of 1976.]

13 Financing of bureau

(1) The funds of the council shall consist of-

- (a) moneys appropriated by Parliament to enable the council to perform its functions;
- (b) revenue obtained by virtue of the provisions of subsections (4) and (5);
- (c) donations or contributions which the council may receive from any person or which the Legislative Assembly of South-West Africa may appropriate in aid of the council.

(2)(a) Subject to the provisions of subsection (5), the council shall utilize its funds for defraying expenses in connection with the performance of its functions.

(b) The council shall utilise any moneys contemplated in paragraph (a) of subsection (1) in accordance with the statement in question of its estimated income and expenditure referred to in subsection (3) as approved by the Minister: Provided that, subject to the provisions of paragraph (a), the council may utilize any amount or portion of any amount required to be so utilized for a particular purpose in connection with a specified matter, for any other purpose in connection with that matter: Provided further that the council may utilize any balance of such moneys remaining at the end of the council's financial year in question, for any expenses in connection with the performance of its functions.

(c) The council shall utilize any donations or contributions contemplated in paragraph (c) of subsection (1) in accordance with the conditions (if any) imposed by the donor or contributor in question.

(3) The council shall in each financial year at a time determined by the Minister, submit a statement of its estimated income and expenditure during the following financial year to the Minister for his approval after consultation with the Minister of Finance.

(4) Subject to the provisions of any regulation made under section *twenty-seven*, the council may, in respect of any services rendered by it under this Act, charge such fees or make such other financial arrangements as it may deem fit.

(5) The council may invest any unexpended portion of its moneys with the Public Debt Commissioners or in such other manner as may be determined by the Minister in consultation with the Minister of Finance.

(6) The council may establish such reserve funds as it may deem necessary or expedient and pay therein such amounts as the Minister may approve.

[Sec 13 substituted by sec 3 of Act 72 of 1964.]

14 Standardization marks

(1) The council may with the approval of the Minister and subject to the provisions of subsections (2) and (3), by notice in the *Gazette* declare any mark adopted by the council in respect of a specification framed by it for any commodity, or for the manufacture, production,

processing or treatment of any commodity, to be a standardization mark in respect of that commodity or the manufacture, production, processing or treatment of that commodity, and may in like manner abolish or amend any such mark.

(2)(a) Any such notice declaring a mark to be a standardization mark shall contain such particulars concerning the specification in question as the council may consider necessary.

(b) The council may amend any such specification and if it amends any such specification it shall publish in the *Gazette* such particulars of the amendment as it may deem fit.

(3) No mark which is identical with any trade mark registered in respect of any commodity under the Designs, Trade Marks and Copyright Act, 1916 (Act 9 of 1916), or the Patents, Designs, Trade Marks and Copyright Proclamation, 1923 (Proclamation 17 of 1923 of the Territory), or so nearly resembles any such mark as to be likely to be mistaken for it, shall in terms of subsection (1) be declared to be a standardization mark in respect of that commodity or any similar commodity or in respect of the manufacture, production, processing or treatment of that commodity or any similar commodity, and no mark identical with any mark which has been duly declared to be a standardization mark, or so nearly resembling such a mark as to be likely to be mistaken for it, shall be registered as a trade mark under that Act or that proclamation in respect of any commodity.

(4) If the council has issued any notice in terms of subsection (1) declaring a mark to be a standardization mark, no person shall apply that standardization mark to any commodity, except under a permit issued by the council or a person acting under its authority, and unless that commodity complies with the appropriate specification or has been manufactured, produced, processed or treated in accordance with that specification.

(5) For the purposes of subsection (4) a person shall be deemed to have applied a standardization mark to a commodity if he-

- (a) applies that mark to any receptacle or covering of that commodity or to any label attached to that commodity or to any receptacle or covering thereof;
- (b) places or encloses that commodity in a receptacle or covering to which that mark has been applied or to which is attached a label to which that mark has been applied;
or
- (c) makes, in connection with the sale of that commodity, any reference, directly or indirectly, to that mark in a manner or under circumstances calculated to convey the impression that that commodity complies with the specification to which that mark relates, or that it has been manufactured, produced, processed or treated in accordance with that specification.

(6)(a) The council or any person acting under its authority may in its or his discretion, as the case may be, issue or refuse to issue any permit referred to in subsection (4), and if the council or such person issue any such permit, it may be issued subject to such conditions and

for such period as the council or such person may determine and specify therein.

(b) Such permit may only be issued on payment of such fees as the council may with the approval of the Minister determine, and may at any time be withdrawn by the council or any person acting under its authority, by notice in writing to the person to whom it was issued.

(c) If the council has amended any standardization mark under subsection (1), it may upon the application of any person entitled in terms of subsection (4) to apply the mark in question in respect of any commodities, and on such conditions including conditions relating to the payment of fees (if any) approved of by the Minister and relating to the withdrawal of the permission, as the council may in its discretion determine in every particular case, permit the continued use of the mark in question as it existed prior to its amendment, as from the date of such amendment, and such mark shall during the period in which its continued use by the person concerned is so permitted, in the application of this Act in respect of that person, be deemed to be a standardization mark which has not been so amended by the council.

[Para (c) added by sec 7 of Act 59 of 1976.]

(7) No person shall, in connection with the sale of any commodity, make any reference, directly or indirectly, to the bureau or the council or a specification framed, or which he pretends has been framed, by the council, in a manner or under circumstances calculated to convey the impression that such commodity complies with a specification framed by the council for that commodity or for the manufacture, production, processing or treatment thereof, or has been approved by the council or the bureau, unless the council has in terms of this section declared a mark to be a standardization mark in respect of a specification framed by it for the commodity in question or for the manufacture, production, processing or treatment thereof, and such person is in possession of a permit issued in terms of subsection (6) and authorizing him to apply such standardisation mark to that commodity.

(8) If any person is required to state in any tender, contract or other document whether any commodity manufactured, produced, processed or treated by him, or the manufacture, production, processing or treatment thereof complies with a designated specification framed by the council for the commodity in question or for the manufacture, production, processing or treatment thereof, he may, notwithstanding anything to the contrary contained in subsection (7), state on oath in such tender, contract or other document whether that commodity or the manufacture, production, processing or treatment thereof complies with that specification or not.

(9) If the Minister is satisfied that the circumstances require it he may by notice in the *Gazette* suspend the operation of subsection (8) in respect of, or confine such operation to, any person or class of persons or any commodity or class of commodities.

14bis Publication of standard building regulations by council and adoption thereof by local authorities

(1) The council may with the approval of the Minister and by notice in the *Gazette* publish

any standard building regulations framed by it in terms of this Act, and if it amends or substitutes any such standard regulations, likewise publish the amendment or substitution thereof.

(2) Any local institution or body contemplated in paragraph (f) of subsection (1) of section *eighty-four* of the Republic of South Africa Constitution Act, 1961 (Act 32 of 1961), and any similar institution or body in the Territory may, in accordance with the provisions of any laws relating to the making of by-laws or regulations applicable to it, adopt such standard building regulations or any amendment thereof wholly or partly and with or without any amendment, as its by-laws or regulations, in so far as they could have been made by it as such.

(3) If any standard building regulations or any amendments of standard building regulations have been adopted in terms of subsection (2), it shall not be necessary to promulgate the proposed by-laws or regulations in full, but the necessary promulgation of the contents thereof may be effected by publication of a notice in the *Official Gazette* of the province in question or of the Territory, as the case may be, stating the date and number of the notice by which publication of the standard building regulations or amendments in question was effected in the *Gazette*, and-

- (a) if the standard regulations or amendments in question were so adopted partly only, stating which part thereof was so adopted;
- (b) if any such standard regulations or amendments were so adopted with amendments, containing the full text of any standard regulation or amendment so amended or, if it is divided into subdivisions, of the amended subdivision in question.

[Sec 14bis inserted by sec 4 of Act 72 of 1964.]

14ter Marks of proof and marks of authenticity

(1)(a) The Minister may on the recommendation of the council and subject to the provisions of paragraph (b) and subsection (2), establish by notice in the *Gazette* marks of proof and marks of authenticity, and may in like manner make regulations relating to-

- (i) the application of any mark so established to commodities or articles in accordance with the nature, quality, strength, purity, composition, quantity, measurements, mass, grade, durability, origin, age or any other characteristic of the relevant commodities or articles, or the material or matter from or with which such commodities or articles have been manufactured, produced, processed or treated, or the manner in which it has been done; and
- (ii) any other matter in respect of which he considers it necessary to make regulations so as to achieve the object of the regulation and control of the application of such marks to, and of the use of such marks in connection with, such goods.

(b) The provisions of section 14(3) shall *mutatis mutandis* apply in respect of marks of

proof and marks of authenticity.

(2) The Minister may in terms of subsection (1)-

- (a) establish different marks and make different regulations in respect of-
 - (i) different kinds or classes of commodities or articles;
 - (ii) different purposes for which any relevant kind or class of commodities or articles may be manufactured, produced, processed or treated; and
 - (iii) different materials or matter from or with which any relevant kind or class of commodities or articles may be so manufactured, produced, processed or treated; and
- (b) make regulations granting exemption from any provision of any regulation made under that subsection and prescribing the circumstances in which such exemption shall apply, or providing for the granting of such exemption by any person or authority.

(3) No commodity or article in respect of which a mark of proof or authenticity has been established in terms of subsection (1), and in respect of which the relevant mark has not been applied in accordance with the regulations made under this section, shall be sold or alienated, unless the commodity or article in question has in accordance with the provisions of the said regulations been exempted from having the relevant mark applied to it.

[Sec 14^{ter} inserted by sec 8 of Act 59 of 1976.]

14quat Code of practice may contain certain provision

A code of practice may contain a provision rendering compliance with any specified rule obligatory for any person who alleges, professes or claims that such rule has been, is being or will be complied with in connection with the construction, installation, testing, operation or use of any article, apparatus, instrument, device or process.

[Sec 14^{quat} inserted by sec 2 of Act 100 of 1977.]

15 Compulsory standard specifications and distinctive marks in connection there with

(1) Subject to the provisions of subsections (2), (3), (4), (5) and (6) the Minister may by notice in the *Gazette*-

- (a) on the recommendation of the council-
 - (i) declare any standard specification for any commodity or for the manufacture, production, processing or treatment of any commodity, to be a compulsory standard specification for that commodity or, as the case may be, for the manufacture, production, processing or treatment of that commodity, as from a

date to be fixed in the notice, which shall be a date not less than two months after the date of the notice;

- (ii) amend any compulsory standard specification with effect as from such a date so fixed;
- (b) prescribe in respect of any compulsory standard specification, a distinctive mark for any commodity which complies with that specification or which has been manufactured, produced, processed or treated in accordance with that specification; and
- (c) withdraw any notice issued in terms of paragraph (a) or (b), or amend any notice issued in terms of paragraph (a), as to the date fixed in terms of the said paragraph, or amend any mark prescribed in terms of paragraph (b).

(2) The council shall not recommend to the Minister that a standard specification be declared a compulsory standard specification for the manufacture, production, processing or treatment of a commodity, and the Minister shall not declare a standard specification to be such a compulsory standard specification, unless the council or the Minister, as the case may be, is satisfied that it is not practicable to achieve the purposes of such a compulsory standard specification by a compulsory standard specification for the commodity.

(3) Before publishing a notice in terms of paragraph (a) of subsection (1), the Minister shall-

- (a) cause to be published in the *Gazette* a preliminary notice setting forth the purport of such first-mentioned notice and calling upon all interested persons who have any objections against the proposed provisions thereof, to lodge them in writing with the council at an address stated in the preliminary notice, within two months after the publication thereof; and
- (b) if the proposed notice relates to any commodity, or to the manufacture, production, processing or treatment of any commodity, which is the subject of any other law providing for the making of regulations prescribing any characteristics of that commodity, consult the Minister to whom the administration of that other law has been assigned or, in the case of a law which applies only in the Territory, the Administrator of the Territory.

(4) Any person who has lodged an objection in terms of subsection (3) shall be entitled-

- (a) to appear before the Minister and to be heard, either personally or through a representative, at such time and place as the Minister may determine; and
- (b) if the Minister publishes the notice in question in terms of subsection (1) notwithstanding his objection, to be furnished in writing with the Minister's reasons for doing so.

(5) The Minister shall not publish any notice in terms of paragraph (a) of subsection (1) if, in his opinion, it will differ materially from the appropriate preliminary notice published in terms of paragraph (a) of subsection (3).

(6) Any notice published in terms of paragraph (a) of subsection (1) or in terms of subsection (3) shall contain full particulars of the standard specification in question or amendment thereof.

(7) If the Minister has in terms of subsection (1) declared any standard specification to be a compulsory standard specification for any commodity or for the manufacture, production, processing or treatment of any commodity, no person shall as from the appropriate specified date, except under a permit issued by the council or a person acting under its authority, sell that commodity, unless it complies with that specification or has been manufactured, produced, processed or treated in accordance with that specification.

(8) If the Minister has in terms of subsection (1) prescribed a distinctive mark in respect of any compulsory standard specification, no person shall apply that mark to any commodity except under a permit issued by the council or a person acting under its authority, and unless that commodity complies with that specification or has been manufactured, produced, processed or treated in accordance with that specification.

(9) The provisions of subsections (3) and (5) of section *fourteen* shall *mutatis mutandis* apply with reference to any such distinctive mark, and the provisions of subsection (6) of the said section shall so apply with reference to any permit referred to in subsection (7) or (8) of this section.

16 Appeal to Minister against refusal or withdrawal of permit

Any person who is dissatisfied with the decision of the council or a person acting under its authority, in regard to any application by him for a permit referred to in subsection (4) of section *fourteen* or in subsection (7) or (8) of section *fifteen*, or in regard to the withdrawal of any such permit, may appeal to the Minister, and the Minister may confirm, set aside or vary the decision.

17 Furnishing to council of samples of and information as to commodities

Any person to whom a permit has been issued in terms of subsection (6) of section *fourteen* or subsection (9) of section *fifteen* shall, upon a written request from the council, transmit to the council or the person specified in the request, within the period so specified, such samples as may be so specified of any commodity in respect of which that permit has been issued, or furnish to the council within the period so specified, such information as may be so specified in regard to any such commodity or the manufacture, production, processing or treatment thereof.

18 Appointment of inspectors

(1) The Minister may at the request of the council appoint any person who is an officer in

the public service or a member of the staff of the council and who, in his opinion, is suitably qualified, as an inspector for the purposes of this Act: Provided that no person shall be so appointed unless the council is satisfied that his proficiency in the use of the official languages is such as to render him capable of performing efficiently the duties of an inspector.

[Subsec (1) substituted by sec 3 of Act 77 of 1970.]

(2) Every inspector shall be furnished with a certificate signed by an officer thereto designated by the Minister and stating that he has been appointed as an inspector for the purposes of this Act.

19 Powers of inspectors

(1) If an inspector has been generally or specifically instructed thereto by the council in writing, he may for the purposes of this Act-

- (a) without previous notice at any time during business hours, enter upon any premises in or upon which any commodity or article specified in such instruction is or is reasonably suspected to be manufactured, produced, processed, treated or kept for the purpose of trade, if there is a compulsory standard specification, a standardization mark or a mark of proof or authenticity for such commodity or article or for the manufacture, production, processing or treatment thereof;

[Para (a) substituted by sec 9(a) of Act 59 of 1976.]

- (b) inspect and take samples of any such commodity, article, or any material or substance in or on such premises used or suspected to be intended for use in the manufacture, production, processing or treatment thereof, and open any package or container in or on such premises which contains or is suspected to contain any quantity of any such commodity, article, material or substance;

[Para (b) substituted by sec 9(b) of Act 59 of 1976.]

- (c) inspect any operations carried out in or upon any such premises in connection with the manufacture, production, processing or treatment of any commodity or article, if there is a compulsory standard specification, a standardization mark or a mark of proof or authenticity for such manufacture, production, processing or treatment;

[Para (c) substituted by sec 9(c) of Act 59 of 1976.]

- (cA) conduct such enquiry as may be necessary to ascertain whether a rule of any code of practice, the compliance with which is in terms of section 14^{quat} obligatory for any person, is being complied with by that person;

[Para (cA) inserted by sec 3 of Act 100 of 1977.]

- (d) at any time require any person to produce then and there, or at a time and place fixed by the inspector, any book, notice, record, list or other document which is in the

possession or custody or under the control of that person or of any other person on his behalf;

- (e) examine any such book, notice, record, list or document, and make copies of or take extracts from any such book, notice, record, list or document which relates to any commodity or article referred to in paragraph (a), or to any permit issued or to be issued in terms of section 14(6) or section 15(9), and require from any person an explanation of any entries therein, and seize any such book, notice, record, list or document which in his opinion may afford evidence of any offence under this Act;

[Para (e) substituted by sec 9(d) of Act 59 of 1976.]

- (f) in regard to any matter which is being investigated by him, question, either alone or in the presence of any other person, as he thinks fit, every person whom he finds on premises entered in terms of this section, or who he has reasonable grounds for believing is or has been employed on any such premises or is in possession, custody or control of anything referred to in this subsection;
- (g) order any person referred to in paragraph (d), (e) or (f) to appear before him at a time and place fixed by him, and at such time and place question that person concerning any matter which is being investigated by him.

(2) An inspector entering any premises in terms of subsection (1) may take an interpreter with him.

(3) Any person who is in charge of any premises referred to in subsection (1) shall at all times furnish such facilities as are required by an inspector for the purpose of exercising his powers in terms of the said subsection.

(4) Any inspector exercising any power conferred on him by this section shall, on demand, produce the certificate furnished to him in terms of subsection (2) of section *eighteen*, and the written instructions contemplated in subsection (1) of this section.

20 Auditing and annual report

(1) The Controller and Auditor-General shall audit the accounts and balance sheet of the council.

(2)(a) The council shall furnish to the Minister such information as he may call for from time to time in connection with the activities and financial position of the council, and shall in addition submit to the Minister an annual report, including a balance sheet and a statement of income and expenditure certified by the Controller and Auditor-General, and such other particulars as the Minister may require.

(b) The Minister shall lay the said report upon the Table of the Senate and of the House of Assembly within fourteen days after receipt thereof, if Parliament is in ordinary session or, if Parliament is not in ordinary session, within fourteen days after the commencement of its

next ensuing ordinary session.

21 Protection of State council and members of council

The fact-

- (a) that any commodity complies, or is alleged to comply with a standard specification or a compulsory standard specification, or has been or is alleged to have been manufactured, produced, processed or treated in accordance with any such specification; or
- (b) that a standardization mark or a distinctive mark has been used in connection with any commodity; or
- (c) that any commodity or article is as respects the relevant characteristic, material or matter from or with which it has been manufactured, produced, processed or treated, or manner in which it has been done, in accordance with any mark of proof or authenticity, or is alleged to be in accordance with any such mark, or that any such mark has been used in connection with any commodity or article,

shall not give rise to any claim against the State or the Administration of the Territory, or the council or any member of the council.

[Sec 21 substituted by sec 10 of Act 59 of 1976.]

22 Secrecy and effect of disclosure of information on application for patent

(1) A member of the council or of a committee thereof, the director-general, a member of the staff of the council, an inspector or other person who is or was engaged in the administration of this Act, shall not disclose to any other person, except to the Minister or for the purposes of the performance of his duties or the exercise of his powers or except when required to do so before a court or in terms of any law, any information acquired by him in the performance of his duties or the exercise of his powers.

(2) The disclosure of any information to the Minister or to the council or any committee or representative thereof or to an inspector or any other person for a purpose connected with the administration of this Act, shall not prejudice the rights of any person who subsequently applies for a patent.

23 Restriction on the use of word "standard" in certain names

(1) Subject to the provisions of subsections (2) and (3), and except with the written consent of the Minister-

- (a) no association or company shall carry on its activities under a name which contains the word "standard";
- (b) no association or company shall be registered under such a name;

- (c) no individual shall carry on any business, trade or occupation under any such name not being his own;
- (d) no trade mark which contains the word "standard" shall be registered under the Designs, Trade Marks and Copyright Act, 1916 (Act 9 of 1916), or the Patents, Designs, Trade Marks and Copyright Proclamation, 1923 (Proclamation 17 of 1923 of the Territory); and
- (e) no person shall, except under a permit issued in terms of subsection (6) of section *fourteen*, sell any commodity under a mark which contains the word "standard" or under a description in which the said word is used in a manner which may create the impression that that commodity or the manufacture, production, processing or treatment thereof complies with a standard specification.

(2) An association, company or individual who immediately prior to the commencement of this Act lawfully carries on any activity, business, trade or occupation or is registered under any name contemplated in paragraph (a) of subsection (1) may, notwithstanding the provisions of subsection (1), continue to carry on that activity, business, trade or occupation, or to be registered, as the case may be, under that name.

(3) Any trade mark registered at the commencement of this Act and the sake of any commodity under any such trade mark shall not be affected by the provisions of subsection (1).

(4) The Minister may at any time withdraw any consent given by him in terms of subsection (1) if, in his opinion, it is necessary to do so in order to avoid confusion or abuse.

23A Incorporation of rules or provisions of codes of practice and specifications in laws

(1) The rules or provisions of any code of practice, standard specification or compulsory standard specification framed under this Act and published in the *Gazette*, may be incorporated in any law without stating the particulars of the said rules or provisions-

- (a) by identifying the code of practice or specification in question-
 - (i) by referring to its title, number and date; or
 - (ii) in the absence of any such particulars, by any other means; and
- (b) by referring to the number and date of the notice whereby publication has been affected in the *Gazette*.

[Subsec (1) amended by sec 1 of Act 85 of 1978.]

(2) Whenever any code of practice or specification incorporated under subsection (1) has at any time after such incorporation has been amended or substituted under this Act, and particulars of any such amendment or substitution have been published in the *Gazette*, it shall be deemed that any law incorporating the rules or provisions of the code or specification in

question in accordance with the provisions of subsection (1), refers as from the date of the said publication, to the rules or provisions of the code of practice or specification in question as so amended or substituted.

(3) If any code of practice, standard specification or compulsory standard specifications incorporates the rules or provisions of any other such code of practice or specification without stating the particulars of such rules or provisions and the rules or provisions of such first-mentioned code of practice or specification are incorporated in terms of subsection (1) in any law (except any Act of Parliament) such first-mentioned incorporation shall for the purposes of such law only be valid if the rules or provisions to which such first-mentioned incorporation relates have been clearly identified in the first-mentioned code of practice or specification and have been published in the *Gazette*.

[Sec 23A inserted by sec 4(1) of Act 100 of 1977.]

23B Copyright in certain works to vest in council

(1) The provisions of section 39 of the Copyright Act, 1965 (Act 63 of 1965), shall *mutatis mutandis* apply in respect of any original literary or artistic work first published in the Republic or made under the direction or control of the council, and for the purposes of such application a reference to "Government" or "State" shall be construed as a reference to the council.

(2) The provisions of subsection (1) shall also apply in respect of any work contemplated therein, made or published as so contemplated before the commencement of the Standards Amendment Act, 1977, and the copyright in any such work shall as from such commencement vest in the council.

[Sec 23B inserted by sec 4(1) of Act 100 of 1977.]

24 Victimization forbidden

(1) An employer shall not dismiss any person employed by him or reduce his rate of remuneration or otherwise alter the conditions of his employment to conditions less favourable to him, or alter his position to his disadvantage relatively to other persons employed by him, by reason of the fact that that person has given to an inspector any information which in terms of this Act he could be required to give to him, or has complied with any lawful requirement of an inspector, or has given evidence in any proceedings under this Act, or by reason of the fact that he suspects that person of having done it.

(2) The court convicting an employer of a contravention of the provisions of subsection (1) may, in addition to any sentence which it may impose-

- (a) if the subject of the charge was the reduction of the rate of remuneration of an employee or the alteration of the conditions of employment or position of an employee, order the employer to restore, with effect from the date on which the reduction or alteration was made, the rate of remuneration, conditions of

employment or the position of the employee in question to that existing in respect of him prior to the reduction or alteration; and

- (b) if the discharge of an employee was the subject of the charge, order the employer to pay to the employee in question a sum which, according to the estimate of the court, is equal to three months' remuneration at the rate according to which he was being remunerated at the time of his dismissal.

(3) Any order made in terms of paragraph (b) of subsection (2) shall have the effect of and may be executed as if it were a civil judgment in favour of the employee in question.

25 Offences

(1) Any person who-

- (a) contravenes or fails to comply with the provisions of subsection (4) or (7) of section *fourteen* or subsection (7) or (8) of section *fifteen* or section *twenty-four*, or the conditions of any permit issued in terms of section *fourteen* or *fifteen* or of any report furnished in terms of subsection (3) of section *ten*;

- (aA) contravenes or fails to comply with the provisions of subsection (3) of section *14ter*, or of any regulation made under that section;

[Para (aA) inserted by sec 11(a) of Act 59 of 1976.]

- (aB) fails to comply with any rule of any code of practice the compliance with which is obligatory for him in terms of section *14quat*;

[Para (aB) inserted by sec 5(a) of Act 100 of 1977.]

- (b) contravenes the provisions of section *twenty-two*, or of paragraph (a), (c) or (e) of subsection (1) of section *twenty-three*;
- (c) falsely holds himself out to be an inspector;
- (d) makes any relevant statement to an inspector, which is false in any material particular, knowing it to be false;
- (e) refuses or fails to answer to the best of his knowledge any relevant question which an inspector has in the exercise of his powers put to him;
- (f) refuses or fails to comply to the best of his power with any lawful requirement, demand or order made by an inspector;
- (g) hinders or obstructs any inspector in the exercise of his powers; or
- (h) fails to comply with any request in terms of section *seventeen* or with any provision of a regulation made in terms of paragraph (d) of section *twenty-seven*,

[Para. (h) amended by sec 11(b) of Act 59 of 1976.]

shall be guilty of an offence and liable-

- (i) in the case of an offence referred to in paragraphs (a), (aA) and (aB) to a fine not exceeding four hundred rand or to imprisonment for a period not exceeding two years, or to both such fine and such imprisonment;

[Para (i) substituted by sec 11(c) of Act 59 of 1976 and by sec 5(b) of Act 100 of 1977.]

- (ii) in the case of an offence referred to in paragraphs (b) to (g), inclusive, to a fine not exceeding two hundred rand or to imprisonment for a period not exceeding one year, or to both such fine and imprisonment; and
- (iii) in the case of an offence referred to in paragraph (h), to a fine not exceeding one hundred rand or to imprisonment for a period not exceeding six months, or to both such fine and imprisonment.

(2) If any person is convicted of an offence referred to in paragraphs (a) and (aA) of subsection (1) (other than a contravention of section 24), or of a contravention of paragraph (e) of section 23(1), the court convicting him may, in addition to any other penalty which it may impose, order the confiscation of all or any part of the goods in respect of which the offence was committed, and goods so ordered to be confiscated shall be dealt with as the Minister may direct.

[Subsec (2) substituted by sec 11(d) of Act 59 of 1976.]

(3) If any person is charged with any offence referred to in paragraphs (a) and (aA) of subsection (1) (other than a contravention of section 24), it shall be a defence-

- (a) that he took all reasonable precautions against committing the offence; and
- (b) that at the request of the council or an inspector, he furnished all information available to him as to the person from whom he acquired the commodity to which the charge relates:

Provided that it shall be no such defence if such person was unable to furnish such information which should reasonably have been available to him.

[Subsec (3) amended by sec 11(e) of Act 59 of 1976.]

26 Evidence

If any person is charged with having in contravention of the provisions of section *twenty-four*, dismissed any person employed by him or reduced the rate of his remuneration or otherwise altered the conditions of his employment to conditions less favourable to him, or altered his position to his disadvantage relatively to other persons employed by him, for a reason mentioned in the said section and in the charge, and it is proved that the accused committed the act with which he is charged, he shall be presumed, until the contrary is

proved, to have done so for the reason so mentioned.

27 Regulations

The Minister may make regulations as to-

- (a) the circumstances under which a member of the council shall vacate his office;
- (b) the procedure at meetings of the council and of committees thereof;
- (c) the procedure to be followed in connection with an appeal to the Minister in terms of section 16, and the period within which such an appeal shall be lodged;
- (d) the matters, other than those elsewhere mentioned in this Act, in respect of which fees shall be payable to the council, the amount of such fees, the times at which and the manner in which such fees shall be payable, and the persons who shall be liable for the payment thereof;
- (e) the circumstances in which any fees so paid shall be refunded;

and generally, as to any matter in respect of which he considers it necessary or expedient to make regulations to achieve the objects of this Act.

[Sec 27 substituted by sec 4 of Act 77 of 1970.]

28 Passing of certain assets and liabilities from research council to council

(1) All assets, rights, liabilities and obligations which immediately prior to the commencement of this Act vest in the research council or to which that council is then subject for the purposes of the bureau, shall at such commencement pass to the council.

(2) Any moneys which immediately prior to the commencement of this Act stand to the credit of the capital fund established in terms of subsection (1) of section *fourteen* of the Scientific Research Council Act, 1945 (Act 33 of 1945), and which are intended for the purposes of the bureau, shall at such commencement pass to the bureau

29 Application of Act in Territory

This Act, and any amendment thereof, shall also apply in the Territory.

[Sec 29 amended by sec 5 of Act 72 of 1964.]

30 Appropriation by Legislative Assembly of South-West Africa of moneys for functions of council

Notwithstanding anything to the contrary contained in the South-West Africa Constitution Act, 1925 (Act 42 of 1925), or any other law, the Legislative Assembly of South-West Africa may appropriate moneys from the Revenue Fund of South-West Africa for title purposes for which the moneys referred to in subsection (3) of section *thirteen* are to be utilized.

31 Repeal of laws and savings

(1) Subject to the provisions of subsections (2), (3) and (4) the laws specified in the Schedule are hereby repealed.

(2) Anything done or in terms of any law deemed to have been done by the research council or any person on the authority of the council in terms of any provision of a law repealed by subsection (1), which could be done by the council or any person on the authority of the council, in terms of any provision of this Act, shall be deemed to have been done in terms of such last-mentioned provision by the council or such person, as the case may be, and any other thing done in terms of a provision of a law so repealed and which could be done in terms of any provision of this Act, shall be deemed to have been done in terms of such last-mentioned provision.

(3) Any notice in force at the commencement of this Act by virtue of the fact that in terms of section *sixteen* of the Standards Amendment Act, 1951 (Act 33 of 1951), it is deemed to have been duly issued in terms of the provisions of the Standards Act, 1945 (Act 24 of 1945), shall be deemed to have been issued in terms of the provisions of this Act, and any standard specification (as defined in the last-mentioned Act) to which it relates, shall be deemed to be a standard specification as defined in this Act.

(4) The repeal of the laws specified in the Schedule shall not affect the validity or the application in the Territory of any notice issued in terms of the Standards Act, 1945, or in terms of any regulations issued in terms of the said Act.

32 Short title and commencement

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

Schedule LAWS REPEALED

No. and Year of Law	Title
Act 24 of 1945	Standards Act, 1945
Act 26 of 1946	Standards Amendment Act, 1946
Act 19 of 1948	Standards Amendment Act, 1948
Act 33 of 1951	Standards Amendment Act, 1951
Act 29 of 1952	Standards Amendment Act, 1952
Act 27 of 1954	Standards Amendment Act, 1954
Act 63 of 1956	Standards (Transfer of Administration) Act, 1956