



GOVERNMENT GAZETTE

OF THE

REPUBLIC OF NAMIBIA

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Government Notice

OFFICE OF THE PRIME MINISTER

No. 189

2005

PROMULGATION OF ACT OF PARLIAMENT

The following Act which has been passed by the Parliament and signed by the President in terms of the Namibian Constitution is hereby published in terms of Article 56 of that Constitution.

No. 18 of 2005: Standards Act, 2005.

Act No. 18, 2005

STANDARDS ACT, 2005

ACT

To provide for the promotion, regulation and maintenance of standardisation relating to the quality of commodities; to establish the Namibian Standards Institution for the purpose of acting as the authority responsible for the determining of Namibian standards; to determine the functions of the Namibian Standards Institution; to establish and constitute the Namibian Standards Council for the purpose of managing and controlling the affairs of the Namibian Standards Institution; and to provide for matters incidental thereto.

(Signed by the President on 23 December 2005)

ARRANGEMENT OF SECTIONS

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36. Short title and commencement

BE IT ENACTED by the Parliament of the Republic of Namibia, as follows:-

Definitions

1. In this Act, unless the context otherwise indicates –

“amendment”, in relation to a Namibian standard, includes the complete substitution of one or more or all of the provisions of the Namibian Standard, and “amend” has a corresponding meaning;

“body” includes any company, close corporation, institute or other organisation or association which is a juristic person;

“certification” means a procedure by which the NSI certifies or gives written assurance that a product, process, service or system conforms to specified requirements, and “certify” has a corresponding meaning;

“chief executive officer” means the chief executive officer of the NSI appointed in terms of section 16(1);

“committee” means an advisory committee or technical committee of the NSC established under section 13(1), and “other committee” has a corresponding meaning;

“commodity” includes any product, process or service, or the manufacture, production, processing or treatment of any such commodity, or any element or characteristic, or any part, of such commodity;

“employee of the NSI” means a person appointed as such under section 16(4);

“executive committee” means the executive committee of the NSC established in terms of section 12(1);

“International Electrotechnical Commission” means the International Electrotechnical Commission established in 1906, and which is the global organisation that prepares international standards for all electrical, electronic and related technologies;

“International Organisation for Standardisation” means the International Organisation for Standardisation established in 1947 for the purpose of facilitating international co-ordination and unification of industrial standards;

“international standard” means a standard that is adopted by an international standardising organisation or international standards organisation, and made available to the public;

“licence” means a licence granted and issued in terms of section 21 to use a specified mark of conformity in relation to a commodity, system or document that complies with the specifications of the relevant Namibian standard;

“manufacture” includes to produce, assemble, alter, modify, adapt, convert, process or treat;

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“mark” includes any symbol, sign, emblem, device, brand, heading, label, ticket, pictorial representation, name, signature, word, letter or number, or any combination thereof;

“mark of conformity” means a protected mark applied or issued in accordance with the rules relating to a certification system, indicating or certifying that the relevant commodity, product, process, service or system is in conformity with a specified standard or other normative document, and which mark has under section 21(1) been declared to be a mark of conformity, including any such protected mark after the amendment thereof, and “NSI mark of conformity” has a corresponding meaning;

“Minister” means the Minister responsible for trade and industry;

“Namibian standard” means a standard prepared and issued by the NSI in relation to any commodity, system or document, indicating the required quality and specification in respect of that commodity, system or document, and includes a standard issued by the NSI in accordance with section 20(2)(b);

“NSC” means the Namibian Standards Council established by section 6(2);

“NSI” means the Namibian Standards Institution established by section 2(1);

“product” means the end result of a process, including services, software, hardware, processed materials and raw materials;

“quality” means the degree to which a set of inherent characteristics of a commodity fulfils the requirements of a standard;

“regulation” means a regulation made under section 34;

“rule” means a rule made under section 33;

“sale”, in relation to a commodity, includes –

- (a) the display, offer or advertise for sale;
- (b) the export from Namibia for sale; or
- (c) the possession for the purpose of sale, trade, manufacture or export from Namibia, of that commodity;

“specification” means the description of a commodity or system as far as practicable by reference to its nature, strength, purity, composition, quality, dimensions, weight, grade, durability, origin, age, material, mode of manufacture or other characteristics in order to distinguish it from any other commodity or system;

“standard” means a document in the nature of a standard established and approved by the NSI or by a body recognised by the NSI in writing for that purpose, which standard provides, for common and repeated use, the rules, guidelines or characteristics for activities, or their results, aimed at the achievement of the optimum degree of order in a given context and with which compliance is, subject to this Act, not compulsory;

“standardisation” means the activity or process of establishing standards in terms of this

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Act, with regard to actual or potential problems relating to any commodity, for common and repeated use, aimed at the achievement of the optimum degree of order in a given context;

“system”, in relation to a commodity, means a system that is designed to achieve a particular purpose or to perform a specific function;

“this Act” includes any rule and regulation.

Establishment of Namibian Standards Institution

2. (1) There is established an institution to be known as the Namibian Standards Institution.

(2) The NSI is –

- (a) a juristic person with the capacity to sue and be sued in its own name; and
- (b) the national institution for the promotion, issue and maintenance of standards in Namibia.

Management and control of NSI

3. The NSI is managed and controlled by the NSC which, acting for and on behalf of the NSI, must perform the functions of the NSI subject to this Act.

Objects of NSI

4. The objects of the NSI are –

- (a) to promote standardisation and quality assurance in the industry, commerce and the public sector in Namibia, with the aim of improving product quality, industrial efficiency and productivity, and to promote trade, so as to achieve optimum benefits for the public of Namibia in general;
- (b) to liaise with, and obtain membership of, international and regional standards bodies that have objects similar to those of the NSI, and to achieve compliance with any internationally or regionally agreed instruments or organisations regarding standardisation, of which bodies Namibia is a member or is intending to become a member; and
- (c) to become progressively more self-sufficient and self-supportive.

Functions of NSI

5. (1) (a) In this section “code of practice” means a written code that recommends practices or procedures for the design, manufacture, installation, maintenance or utilisation of equipment, structures or products.

(b) A code of practice may be a standard or a part of a standard, or may be separate and independent of a standard.

(2) The functions of the NSI are –

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- (a) to prepare, issue and promote Namibian standards and other standards, including specifications and codes of practice, in relation to any commodity;
- (b) to comply with the Code of Good Practice for the Preparation, Adoption and Application of Standards as set out in Annexure 3 to the World Trade Organisation Agreement on Technical Barriers to Trade, 1994;
- (c) to obtain the co-operation of any other person or body, whether public or private, with an interest in standardisation and related activities at all levels;
- (d) to supply information, training and guidance, and such other services as provided for in this Act to any person or public body or private body, on such terms and conditions as may be mutually agreed upon;
- (e) to collect, disseminate and provide information relating to standards and related technical matters on international, national and regional level;
- (f) to certify, by means of marks of conformity, certificates of conformity or other means prescribed by the rules, and in the form and manner likewise prescribed, that specified commodities, systems or documents conform to specified requirements;
- (g) to establish NSI marks of conformity and to administer and control the use thereof by means of a licensing system;
- (h) to enter, subject to Article 32(3)(e) of the Namibian Constitution and with the written approval of the Minister, which approval may be given specifically or generally, into an agreement with any person or public body or private body in Namibia or in any other country or territory, for the purpose of promoting the objects of the NSI or to assist in the performance of its functions;
- (i) to examine, test or analyse articles, materials and substances, and to issue test reports or certificates in connection therewith, subject to the rules and to the conditions it may consider expedient;
- (j) to determine and prescribe fees by means of the rules, subject to this Act and in consultation with the Minister, for any services rendered by the NSI under this Act, and to collect such fees and recover interest on the late payment thereof;
- (k) to purchase, lease or otherwise acquire, or possess or alienate, or mortgage, let or otherwise encumber, with the written approval of the Minister, immovable property;
- (l) to advise the Minister on matters pertaining to standards, quality and certification;
- (m) to enter, on such terms as it may deem appropriate, into an agreement with any person to assist the NSI in the performance of its functions and activities;
- (n) to establish and control laboratory facilities in relation to its functions;
- (o) to make available in the form and manner, and at the place and time, prescribed by the rules a list of all certified or registered bodies to whom or

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to which marks of conformity have been issued by the NSI, including particulars of such marks;

- (p) to determine, prepare and implement procedures relating to the execution of its responsibilities;
- (q) to procure, by means of insurance policies, cover for the NSI and the NSC against and in respect of any loss, damage, risk or liability that they may suffer or incur; and
- (r) to do anything that is conducive to the achievement of its objects or is calculated, directly or indirectly, to enhance the value or render profitable the property or rights of the NSI.

Establishment and composition of Namibian Standards Council

6. (1) In this section "stakeholder" means any organisation, association, authority or other body of persons, whether in the public sector or the private sector, including a parastatal, which has an interest in standardisation in Namibia or which may be affected thereby.

(2) There is established a council to be known as the Namibian Standards Council.

(3) (a) Subject to paragraph (b), the members of the NSC are –

- (i) four persons appointed in writing by the Minister to each represent a different stakeholder within the Government of Namibia and who have particular knowledge of or experience in matters relevant to the NSI; and
- (ii) four persons appointed in writing by the Minister to each represent a different stakeholder in the private sector and who have particular knowledge of or experience in one or more of the fields of commercial standards, commerce, industry, and consumer and labour matters.

(b) The chief executive officer is, as from the date of appointment in terms of section 16(1), a member of the NSC by virtue of his or her office and may take part in the deliberations of the NSC and has, subject to this Act, the same rights and duties as the other members of the NSC, but has no right to vote.

(4) The Minister may, having regard to subsection (3)(a), appoint in writing an alternate member to every member of the NSC appointed in terms of that subsection to act as member of the NSC in the place of the member to whom he or she is the alternate only in the event of that member's absence or inability to act as such a member.

(5) At the first meeting of the NSC convened in terms of section 11(2), the members of the NSC appointed in terms of subsection (3)(a) must elect one of their number as the chairperson of the NSC.

(6) The Minister must notify in the *Gazette*, as soon as practicable after –

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- (a) an appointment made in terms of subsection (3) or (4), the name of every person appointed as a member or alternate member of the NSC; and
- (b) the vacation of office in terms of section 10 by any member or alternate member of the NSC.

Functions of NSC

7. (1) The NSC is responsible for –

- (a) the management, conducting, supervision and control of the affairs and activities, and the performance of the functions, of the NSI, including the maintaining and safekeeping of proper records of account and financial statements of the NSI, as prescribed by the rules;
- (b) the formulation of the policy and procedures for the purpose of providing specific or general guidance to the NSI in respect of the performance of its functions; and
- (c) all other activities or such things as are necessary or desirable for the better carrying out of the provisions of this Act as the Minister may determine and notify the NSC in writing.

(2) The Minister may give directions in writing, either specifically or generally, to the NSC relating to its functions, which directions must be complied with by the NSC.

Term of office of members of NSC

8. (1) A member or alternate member of the NSC appointed in terms of section 6(3)(a) and (4), respectively, holds office for a period of three years.

(2) A member or alternate member of the NSC referred to in subsection (1) whose term of office has expired is eligible for reappointment, in accordance with section 6 and subject to subsection (1) of this section, as such a member or alternate member.

(3) If a member or alternate member of the NSC referred to in subsection (1) or (2) vacates office in terms of section 10, or dies, before the expiration of the period for which that member or alternate member was appointed, the Minister may appoint, in accordance with section 6, a person to fill the vacancy for the unexpired period of the term of office of the member or alternate member who vacated office or died.

Disqualification for appointment as member of NSC

9. A person may not be appointed as a member or alternate member of the NSC in terms of section 6(3)(a) and (4), respectively, if that person –

- (a) is an unrehabilitated insolvent;
- (b) has been convicted, whether in Namibia or elsewhere, of an offence and sentenced to imprisonment without the option of a fine, unless a period of at least ten years has expired after the date on which that sentence was served;

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- (c) has been removed, as a result of improper conduct, from an office of trust;
- (d) has been declared a mentally ill person by a competent court in terms of the Mental Health Act, 1973 (Act No. 18 of 1973);
- (e) is not a Namibian citizen and ordinarily resident in Namibia;
- (f) is a member of Parliament or a regional council or a local authority council;
or
- (g) has attained the age of 65 years.

Vacation of office

10. A member or alternate member of the NSC must vacate office if that member or alternate member –

- (a) in the case of a member or alternate member appointed in terms of section 6(3)(a) and (4), respectively –
 - (i) becomes disqualified in terms of section 9 from being appointed as a member or alternate member of the NSC;
 - (ii) resigns from office by written notice addressed and delivered to the Minister;
 - (iii) has been absent without the leave of the NSC –
 - (aa) in the case of such a member, from three consecutive meetings of the NSC; or
 - (bb) in the case of such an alternate member, from three consecutive meetings of the NSC during the absence or vacancy in the office of the member of the NSC to whom he or she has been appointed as alternate member; or
 - (iv) is removed as a member or alternate member of the NSC by the Minister, by written notice addressed to that member or alternate member, if there is sufficient reason for the Minister to do so, and after having given that member or alternate member a reasonable opportunity to be heard; or
- (b) in the case of the member referred to in section 6(3)(b), ceases to hold the office by virtue of which he or she became a member of the NSC.

Meetings of NSC

11. (1) In this section –

“member” includes an alternate member present at the relevant meeting of the NSC during the absence or vacancy in the office of the member of the NSC to whom he or she has been appointed as alternate member;

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“voting member” means a member of the NSC who is entitled to vote at meetings of the NSC.

(2) The Minister must –

- (a) convene the first meeting of the NSC to be held on the date and at the time and venue determined by the Minister; and
- (b) appoint a person to act as chairperson at the meeting convened in terms of paragraph (a) until such time as the chairperson of the NSC is elected in terms of section 6(5).

(3) After the first meeting of the NSC referred to in subsection (2), the NSC must hold not less than four meetings during every year, which meetings must be convened by the chairperson of the NSC and held on the date and at the time and venue determined by the chairperson.

(4) In addition to the meetings of the NSC held in terms of subsection (3), the chairperson of the NSC –

- (a) may convene at any time; and
- (b) must convene, within 14 days after receipt of a written request signed by the majority of the members of the NSC,

a special meeting of the NSC.

(5) The chairperson of the NSC presides at meetings of the NSC at which he or she is present.

(6) If the chairperson of the NSC is absent from a meeting of the NSC, the members of the NSC present at that meeting must elect from among their number one voting member to preside at the meeting, and the member so elected must perform all the functions of the chairperson during that meeting and until such time after the meeting as the chairperson is able to resume his or her duties.

(7) The quorum for a meeting of the NSC is the majority of the members of the NSC.

(8) The decision taken by the majority of the voting members of the NSC present at a meeting of the NSC constitutes a decision of the NSC, and in the event of an equality of votes, the chairperson of the NSC or other member of the NSC presiding at the meeting has a casting vote in addition to his or her deliberative vote.

(9) The chairperson of the NSC may allow any person, or representative of a body or organisation, that in the opinion of the chairperson has an interest in the functions of the NSI or whom the NSI wishes to invite for any other purpose –

- (a) to attend a meeting of the NSC, or any part of such a meeting; and
- (b) to take part in such discussions of the NSC as in the opinion of the chairperson of the NSC relate to the interest of that person or body or organisation in the

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functions of the NSC, or in the discussions that relate to the purpose for which that person or representative was invited to attend the meeting.

(10) A person, or representative of a body or organisation, referred to in subsection (9) –

- (a) may not vote in respect of any decision taken by the NSC at that meeting; and
- (b) must leave the meeting immediately if so requested by the chairperson of the NSC.

(11) The NSC must cause proper minutes to be kept of the proceedings at its meetings and must submit copies of those minutes, duly certified by the chairperson of the NSC, to the Minister.

(12) The NSI may, subject to this Act, make rules relating to the convening of and procedures at meetings of the NSC, including the procedures relating to voting and the keeping and safekeeping of minutes and other records of the NSC.

Executive committee

12. (1) The NSC must establish an executive committee consisting of –

- (a) the chairperson of the NSC;
- (b) the chief executive officer; and
- (c) such other member or members of the NSC as the NSC may designate.

(2) The chairperson of the NSC is the chairperson of the executive committee.

(3) A member of the executive committee ceases to be a member thereof if that member ceases to hold the office by virtue of which he or she became a member of the executive committee.

(4) During periods between meetings of the NSC, the executive committee performs, subject to the directions of the NSC, the functions of the NSC, but may not set aside or vary a decision of the NSC unless the NSC has authorised the executive committee to set aside or vary a decision of the NSC.

(5) The chairperson of the executive committee determines the date and time of and the venue for meetings of the executive committee.

(6) The procedures relating to the meetings of the executive committee, including the convening of those meetings, are as prescribed by the rules.

(7) Section 11(7), (8), (9), (10) and (11) applies with the necessary changes to meetings held by the executive committee.

Other committees

13. (1) The NSC may establish such advisory committees and technical

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committees to assist the NSC in the performance of its functions as the NSC may consider necessary.

- (2) (a) An advisory committee or technical committee established under subsection (1) consists of one or more members of the NSC, nominated by the NSC for that purpose, and, if the NSC considers it necessary, one or more other persons not being a member or members of the NSC and whom the NSC may consider fit to appoint to any such committee.
- (b) The NSC must designate a member of an advisory committee or technical committee, who must also be a member of the NSC, as chairperson of that committee.
- (3) The NSC may at any time dissolve or reconstitute an advisory committee or technical committee established under subsection (1).
- (4) The procedures relating to the meetings of an advisory committee or technical committee established under subsection (1) are as prescribed by the rules.

Remuneration and allowances of members of NSC and committees

14. (1) The Minister must, in consultation with the Minister responsible for finance, determine the remuneration and allowances payable to –

- (a) members and alternate members of the NSC appointed in terms of section 6(3)(a) and (4), respectively; and
- (b) members of an advisory committee or technical committee established under section 13(1),

who are not in the full-time employment of the State, in respect of their services as such members.

(2) The remuneration and allowances of the members and alternate members referred to in subsection (1) may differ according to the different offices held by them or the different functions performed by them.

Validity of decisions

15. No decision or act of, or act performed under the authority of, the NSC or the executive committee or any other committee is invalid by reason only of –

- (a) a vacancy on the NSC or the executive committee or such other committee; or
- (b) the fact that a person who was not entitled to sit as a member of the NSC or the executive committee or such other committee sat as such a member at the time when the decision was taken or the act was authorised, if the decision was taken or the act was authorised by the required majority of such members who were present at the time and entitled to sit as such members and to vote.

Act No. 18, 2005**STANDARDS ACT, 2005****Appointment of chief executive officer and other employees of NSI**

16. (1) The NSI must appoint, in consultation with the Minister, as chief executive officer of the NSI a person who is, in the opinion of the NSI, suitably qualified and experienced for appointment to such a post –

- (a) on such terms and conditions of employment, including remuneration and allowances; and
- (b) for such period,

as the NSI, with the approval of the Minister acting in consultation with the Minister responsible for finance, may determine.

(2) When the chief executive officer is absent for any reason or unable to perform his or her functions in terms of this Act, or when the office of chief executive officer is vacant, the NSI may appoint, in consultation with the Minister and on such terms and conditions of employment as it may determine in the manner contemplated in subsection (1), another person to act as chief executive officer during such absence or inability, or until a chief executive officer has been appointed under that subsection, and that person, while so acting, has all the powers and must perform all the duties of the chief executive officer.

(3) Subject to the directions of the NSI, the chief executive officer is responsible –

- (a) for the executive and administrative functions of the NSI;
- (b) to control, manage and oversee the other employees of the NSI;
- (c) to direct, organise, plan and execute the activities of the NSI in accordance with the policies and procedures determined by the NSI; and
- (d) to perform such other functions as the NSI may direct.

(4) The chief executive officer may appoint, subject to subsection (5) and the directions of the NSI, such employees as are necessary for the efficient discharge of the functions of the NSI.

(5) The Minister must determine, in consultation with the Minister responsible for finance, the remuneration and other conditions of employment of employees of the NSI, which conditions of employment may include conditions of service with regard to medical aid, housing, gratuities, pension benefits and any other benefits so determined.

(6) The NSI may determine in writing a code of conduct applicable to the chief executive officer and other employees of the NSI.

Impartiality

17. The NSI and the NSC must act impartially in the performance of their respective functions in terms of this Act.

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Financing

18. (1) The funds of the NSI consist of –

- (a) moneys appropriated by Parliament for the NSI;
- (b) moneys obtained by virtue of this Act or any other law;
- (c) moneys, donations, interest, dividends, royalties, rental or contributions received from any source;
- (d) moneys obtained from the realisation of any assets of the NSI;
- (e) with the written approval of the Minister acting in consultation with the Minister responsible for finance, moneys obtained by way of raising loans;
- (f) revenue obtained from the sale of –
 - (i) publications prepared by the NSI, including publications containing Namibian standards; and
 - (ii) other publications that are relevant to the objects of the NSI; and
- (g) all other moneys that may accrue to the NSI from any other source.

(2) All moneys obtained for the benefit of the NSI must be deposited in one or more bank accounts opened in the name of the NSI with a banking institution authorised under the Banking Institutions Act, 1998 (Act No. 2 of 1998), to conduct business as such.

(3) The NSI –

- (a) must submit to the Minister for approval in each financial year, at the time and in the form determined by the Minister, a statement of the estimated income and expenditure of the NSI relating to the next financial year; and
- (b) may submit to the Minister for approval during a financial year supplementary statements of the estimated income and expenditure of the NSI for that financial year.

(4) The NSI may not incur, during any financial year, expenses that in total will exceed its gross income for that financial year.

(5) The funds of the NSI must be utilised for defraying, in accordance with an estimate of expenditure approved by the Minister in terms of subsection (3), the expenses incurred by the NSI in the performance of its functions under this Act, including the remuneration, allowances and other benefits payable to the chief executive officer and other members of the NSC, the employees of the NSI and members of any committee of the NSC.

(6) Any moneys standing to the credit of the NSI and which are not required for immediate use or as a reasonable operating balance must be invested in the manner and subject to the conditions prescribed by the rules.

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(7) In addition to the functions entrusted to the chief executive officer by or under this Act, the chief executive officer –

- (a) is the accounting officer of the NSI having the responsibility of accounting for all moneys received by the NSI, the utilisation of such moneys and the use, care and maintenance of the property of the NSI; and
- (b) must cause such records of account and financial statements to be kept as are necessary to reflect the state of affairs and the business of the NSI, and to explain the transactions entered into by, and the financial position of, the NSI,

subject to the rules.

(8) The NSI –

- (a) determines, in consultation with the Minister, the financial year of the NSI; and
- (b) may make rules relating to the conducting of the bank account or bank accounts referred to in subsection (2), including –
 - (i) the deposit of moneys in;
 - (ii) the withdrawal of moneys from; and
 - (iii) the signing and endorsing of cheques and other negotiable instruments relating to,

such bank account or bank accounts.

Auditing and annual report

19. (1) The accounting records and financial statements of the NSI referred to in section 18 must be audited annually, to the satisfaction of the Auditor-General and subject to such directions as the Auditor-General may issue, by a person registered as an accountant and auditor in terms of the Public Accountants' and Auditors' Act, 1951 (Act No. 51 of 1951), and appointed by the NSI with the written approval of the Auditor-General.

(2) Within six months after the end of each financial year of the NSI, the NSI must submit to the Minister an annual report containing –

- (a) particulars of all the activities of the NSI during that financial year, including –
 - (i) a statement of income and expenditure, and a balance sheet, of the NSI, certified by the Auditor-General after the conducting of an audit in accordance with subsection (1); and
 - (ii) a copy of the report on the audit conducted as contemplated in subparagraph (i); and
- (b) particulars of such other matters as the Minister may require in writing.

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(3) The Minister must lay upon the Table of the National Assembly the annual report submitted to the Minister in terms of subsection (2) within 30 days of the date of receipt thereof, if the National Assembly is then in ordinary session, or, if the National Assembly is not then in ordinary session, within 14 days after the commencement of its next ordinary session.

Namibian standards

20. (1) The NSI may –

- (a) set, establish and issue Namibian standards; and
- (b) amend or withdraw any Namibian standard set, established or issued under paragraph (a),

in the manner prescribed by regulation.

(2) In addition to the setting, establishing and issue of Namibian standards under subsection (1), a Namibian standard may be set and established by reference to a provision that occurs –

- (a) in any other Namibian standard set or established by the NSI under that subsection; or
- (b) in a document in the nature of a standard issued by any other body outside Namibia, having objects similar to those of the NSI, and which document the NSI regards appropriate to issue as a Namibian standard for the purposes of this Act.

(3) If a provision referred to in subsection (2) is amended subsequent to the reference thereto in accordance with that subsection, such reference to that provision is to be construed as including a reference to that amendment.

(4) The NSI must make known by notice in the *Gazette* the setting, establishing and issue of a Namibian standard, including full particulars and a description of the Namibian standard, and any amendment thereto or withdrawal thereof under subsection (1).

(5) The NSI may levy fees in respect of –

- (a) the setting, establishing and issue of a Namibian standard, and any amendment thereto or withdrawal thereof;
- (b) the making available of a copy of a Namibian standard to any person;
- (c) any other services rendered in connection with a Namibian standard,

as prescribed by regulation.

(6) Compliance with a Namibian standard set, established and issued by the NSI under this section is not compulsory, but compliance with such a standard may be declared compulsory by the Minister by regulation.

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(7) No standard may be referred to as a Namibian standard unless that standard has been set, established and issued by the NSI under and in accordance with this section.

Mark of conformity

21. (1) Subject to this Act and the laws relating to copyright, the NSI may by notice in the *Gazette* declare any mark to be a NSI mark of conformity that may be applied to any commodity, system or document falling within the scope of a Namibian standard that has been set, established and issued under section 20 in respect of that commodity, system or document.

(2) No person may apply a NSI mark of conformity to any commodity, system or document, except –

- (a) if the commodity, system or document complies with the specifications of the Namibian standard relating to that NSI mark of conformity; and
- (b) under a licence granted and issued by the NSI in accordance with this section.

(3) For the purposes of this section a person is deemed to have applied a NSI mark of conformity to a commodity, system or document if that person has –

- (a) applied that mark of conformity to any container, package or cover of that commodity, system or document, or to any label attached to that commodity, system or document, or to that container, package or cover;
- (b) placed or enclosed that commodity, system or document in any container, package or cover to which the NSI mark of conformity has been applied, or to which is attached any label to which the NSI mark of conformity has been applied; or
- (c) in connection with the sale of that commodity, system or document, referred, directly or indirectly, to the NSI mark of conformity in a manner or under circumstances likely to create the impression that that commodity, system or document complies with the specifications of the relevant Namibian standard.

(4) A person who requires a licence referred to in subsection (2)(b) must apply in the form and manner, and on payment of the application fees, prescribed by the rules to the NSI for the granting of such a licence.

(5) An application in terms of subsection (4) for the granting of a licence must be considered by the NSI in accordance with the procedures prescribed by the rules.

(6) The NSI, after having considered an application for the granting of a licence in terms of subsection (5), must either –

- (a) refuse to grant the licence;
- (b) grant the licence for such period as the NSI may determine; or
- (c) grant the licence for such period and subject to such conditions as the NSI may determine.

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- (7) If the NSI –
- (a) refuses, in terms of subsection (6)(a), to grant the licence applied for in terms of subsection (4), the NSI must notify the applicant concerned in writing of the refusal and of its reasons therefor;
 - (b) grants, in terms of subsection (6)(b) or (c), a licence applied for in terms of subsection (4), the NSI must issue a licence to the applicant in the form, and on payment of the licence fees, prescribed by the rules.
- (8) (a) The NSI, after having afforded the holder of a licence an opportunity to be heard, may –
- (i) subject to paragraph (b), suspend the licence for such period as the NSI considers appropriate, or withdraw the licence;
 - (ii) amend or set aside any condition subject to which the licence was granted and issued;
 - (iii) impose, subject to this Act, any additional condition in respect of the licence.
- (b) The NSI may under paragraph (a)(i) suspend or withdraw a licence if the holder of the licence concerned, in the opinion of the NSI, ceases to fulfil the necessary requirements prescribed by or under this Act, or if the holder of the licence concerned fails in some material respect to comply with any condition imposed in terms of subsection (6)(c).
- (c) The NSI must inform the holder of the licence concerned in writing of the suspension or withdrawal of the licence or the amendment or setting aside of any condition subject to which the licence was granted or the imposition of any additional condition, and of the reasons therefor.

Copyright in Namibian standards and publications

22. (1) Notwithstanding anything to the contrary contained in any other law –
- (a) the copyright in a Namibian standard or a publication issued by the NSI vests in the NSI;
 - (b) the NSI is not deprived of the copyright referred to in paragraph (a) if a Namibian standard, or a provision of a Namibian standard, or a publication issued by the NSI is incorporated in a law in terms of section 24(1) or any other law.
- (2) No person may, without the written approval of the NSI, in any manner or in any form publish, reproduce or record any document or part thereof in respect of which copyright vests in the NSI in terms of subsection (1)(a).
- (3) Notwithstanding subsection (2), a person may at any time make, at his or her own costs and for his or her own use, a copy of a document referred to in that subsection, or of a part thereof, at the places and times prescribed by the rules.

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Certification

23. (1) In order to ensure conformity of commodities, systems or documents, and on receipt of an application in writing, the NSI may –

- (a) assess any commodity, system or document; and
- (b) certify that the commodity, system or document referred to in paragraph (a) complies with the relevant Namibian standard.

(2) An assessment and certification under subsection (1) must be done in accordance with the relevant Namibian standard, or the relevant international standard or guide issued by the International Organisation for Standardisation or the International Electrotechnical Commission.

(3) The international standards or guides that apply to any specific assessment and certification referred to in subsection (2) are as prescribed by the rules.

(4) The NSI may, subject to subsection (5)(a), charge such fees for the assessment and certification under subsection (1) of a commodity, system or document as the NSI and the person requesting such assessment and certification may agree on.

(5) The rules may prescribe –

- (a) in consultation with the Minister, guidelines relating to the minimum or maximum fees that may be agreed on in accordance with subsection (4), or a formula for the calculation of such fees;
- (b) the procedures to be followed relating to the assessment and certification of a commodity, system or document; and
- (c) the form of the certificate to be issued under subsection (1)(b).

Incorporation of Namibian standards in law

24. (1) Any Namibian standard set, established and issued under this Act, and published in the *Gazette*, may be incorporated in any law without stating the particulars of the Namibian standard –

- (a) by identifying the Namibian standard by referring to its title, number and date; and
- (b) by referring to the number and date of the notice whereby the Namibian standard was published in the *Gazette* in terms of section 20(4).

(2) When a Namibian standard incorporated in any law under subsection (1) is after such incorporation amended or substituted under this Act, and particulars of the amendment or substitution are published in the *Gazette*, it is deemed that the law incorporating the Namibian standard refers, as from the date of publication of the amendment or substitution, to the Namibian standard so amended or substituted.

(3) At the commencement of this Act, a rule or provision of any code of practice, standard specification or compulsory standard specification incorporated under section

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23A(1) of the Standards Act, 1962 (Act No. 33 of 1962), and the incorporation of which is still in force, is deemed to be incorporated under subsection (1) of this section.

Appeals

25. (1) A person aggrieved by a decision of the NSI –
- (a) under section 21 relating to a licence or any condition thereof; or
 - (b) under section 23 relating to the assessment and certification of a commodity, system or document,

may appeal to the Minister against that decision in the form and manner, and within the period, and on payment of the fees prescribed by regulation.

(2) The Minister must consider every appeal lodged in accordance with subsection (1), but may, before deciding on the appeal, by notice in writing refer the matter to the NSI for compliance with subsection (3).

- (3) On receipt of a notice under subsection (2), the NSI must –
- (a) furnish the Minister with its reasons for the decision appealed against;
 - (b) investigate further or make further enquiries into the matter; or
 - (c) furnish the Minister with further particulars relating to the matter,

as the Minister may require, in the form and manner, and within the period, determined by the Minister in that notice.

(4) After considering the appeal noted under subsection (1) and, where applicable, the reasons for the decision of the NSI and any further particulars furnished to the Minister in terms of subsection (3), the Minister must –

- (a) confirm, set aside or vary the decision of the NSI appealed against; or
- (b) substitute any other decision for the decision referred to in paragraph (a).

(5) The procedures relating to an appeal under this section, including the procedures for obtaining additional information, documentation or evidence relating to the appeal, are as prescribed by regulation.

(6) The lodging of an appeal under subsection (1) against a decision of the NSI under section 21(8)(a)(i) to suspend or withdraw a licence does not in any way affect the decision of the NSI appealed against, until such time as the Minister makes known in writing his or her decision on the appeal under subsection (4).

Confidentiality

26. No person may disclose any information obtained, whether by that person or by any other person, in the course of the administration or implementation of any provision of this Act, except –

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- (a) if authorised thereto by or under this Act;
- (b) with the consent of the person from whom the information was obtained or in respect of whom the information relates; or
- (c) for the purpose of any legal proceedings arising out of the administration, implementation or enforcement of any provision of this Act or any other law.

Declaration of interest

27. (1) A member of the NSC or the executive committee or any other committee who –

- (a) has in any way, whether directly or indirectly, any financial interest in an application for the granting of a licence or in any matter to be considered or discussed by the NSC or the executive committee or any other committee; or
- (b) obtains, at any time, a financial interest in any application or other matter referred to in paragraph (a),

must declare the nature, extent and full particulars of his or her interest referred to in paragraph (a) or (b) to the NSC or the executive committee or other committee at the meeting during which the application or other matter is considered or discussed, or at the first meeting of the NSC or the executive committee or other committee at which it is possible for that member to declare such interest.

(2) Full particulars of a declaration by a member referred to in subsection (1) made in terms of that subsection must be recorded in the minutes of the meeting at which the declaration was made.

(3) If an application for the granting of a licence or other matter referred to in subsection (1) is considered or discussed by the NSC or the executive committee or any other committee, the member referred to in that subsection must withdraw from the meeting during such consideration or discussion, and that member may not participate in any consideration or discussion, or in any voting, in connection with that application or other matter.

(4) A member of the NSC or the executive committee or any other committee may not approach or in any way lobby any such other member in respect of an application for the granting of a licence or other matter referred to in subsection (1) in which that member has any financial interest, or discuss that application or other matter with any such other member.

(5) For the purposes of this section, a financial interest of a member of the NSC or the executive committee or any other committee in an application for the granting of a licence or other matter referred to in subsection (1), includes a financial interest of the spouse, parent, child or business partner of that member in that application or other matter.

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Unauthorised reference to NSI or NSC, or claim of compliance with Namibian standard

28. No person may –

- (a) refer, directly or indirectly, in connection with the sale of a commodity or in relation to a system or document, to the NSI or the NSC in a manner or under circumstances likely to create the impression that that commodity or system or document has been approved by the NSI; or
- (b) claim compliance with a Namibian standard,

unless a licence has been granted and issued to that person by the NSI in terms of section 21 or the Minister has in writing approved such a reference to the NSI or the NSC.

Offences and penalties

29. (1) In this section –

“inspector” means an inspector appointed under or by virtue of section 30(1)(a);

“internal auditor” means an internal auditor appointed under or by virtue of section 30(1)(b).

(2) A person commits an offence if that person –

- (a) contravenes or fails to comply with –
 - (i) section 21(2), 22(2) or 28; or
 - (ii) section 26 or 27(1) or (4);
- (b) fraudulently represents as a Namibian standard any standard that is not a Namibian standard, or professes that that standard is a Namibian standard;
- (c) fraudulently represents, uses or applies as a mark of conformity any mark that is not a mark of conformity, or professes that that mark is a mark of conformity;
- (d) fraudulently uses any document or other material or any substance issued or supplied by the NSI or the NSC;
- (e) falsely represents himself or herself to be an inspector or internal auditor;
- (f) furnishes the NSI or the NSC, or the executive committee or any other committee, or an inspector or internal auditor with information that is false or misleading in any material respect, knowing that information to be false or misleading;
- (g) refuses or fails to answer to the best of his or her knowledge any relevant question put to him or her by an inspector or internal auditor in the performance by that inspector or internal auditor of his or her functions in terms of this Act;

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- (h) refuses or fails to comply to the best of his or her ability with any lawful requirement, demand or order of or made by an inspector or internal auditor; or
 - (i) hinders or obstructs an inspector or internal auditor in the performance of his or her functions in terms of this Act.
- (3) A person convicted of an offence under this Act is liable --
- (a) in the case of an offence referred to in subsection (2)(a)(i), (b) or (c), to a fine not exceeding N\$100 000 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment;
 - (b) in the case of an offence referred to in subsection (2)(a)(ii), (d), (e), (f), (g), (h) or (i), to a fine not exceeding N\$10 000 or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.
- (4) A court convicting a person of an offence under this Act may, in addition to any penalty imposed in respect of that offence --
- (a) order that the commodity, system, document or other article or substance in respect of which the offence was committed or which was used in the commission of the offence, be forfeited to the State; and
 - (b) summarily enquire into and assess the monetary value of any advantage gained or likely to be gained by that person in consequence of that offence and impose on that person a fine to a maximum equal to the monetary value so assessed or, in default of payment of the fine, to imprisonment for a period not exceeding one year.
- (5) Section 35(4) of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), applies with the necessary changes to a forfeiture under subsection (4)(a) of this section, and for the purpose of such application the expression "weapon, instrument, vehicle, container or other article" in the said section 35(4) is to be construed as "commodity, system, document or other article or substance" referred to in subsection (4)(a) of this section.
- (6) Notwithstanding anything to the contrary contained in any other law, a magistrate's court has jurisdiction to impose any penalty or additional penalty provided for in this Act.

Appointment of inspectors and internal auditors

30. (1) The Minister may, in general or for a specific purpose, appoint in writing a suitably qualified employee of the NSI or any other person, institution or organisation as --

- (a) an inspector or, in the case of an institution or organisation, an inspectorate; or
- (b) an internal auditor or, in the case of an institution or organisation, an internal auditing body,

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for the purpose of ensuring compliance with this Act.

(2) The Minister must issue a certificate of appointment, in the form determined by the Minister, to every inspector or inspectorate, or internal auditor or internal auditing body, appointed under subsection (1) stating that he or she or it has been appointed in general or for a specific purpose as such for the purposes of this Act.

(3) The functions of an inspector or internal auditor for the purposes of this Act are as prescribed by regulation, and may include the power to enter any premises for the purpose of performing any such functions.

(4) An inspector or internal auditor must –

- (a) have a certificate of appointment issued in terms of subsection (2) in his or her possession when performing any functions in terms of this Act; and
- (b) produce, at the request of a person affected or to be affected by the performance of the functions referred to in paragraph (a), the certificate of appointment referred to in that paragraph.

(5) To the extent that this section authorises the interference with a person's fundamental right to privacy as contemplated in Article 13(1) of the Namibian Constitution, such interference is authorised only on the grounds of the economic well-being of Namibia and the prevention of crime as contemplated in that Article.

Delegation of powers and assignment of duties

31. (1) The NSI may, subject to such conditions as the NSI may determine, in writing –

- (a) delegate any power, excluding the power to grant, suspend or withdraw any licence under section 21, or to amend or supplement any condition subject to which such a licence was granted, and to make rules under section 33, conferred on the NSI by or under this Act;
- (b) assign the performance of any duty entrusted to the NSI by or under this Act,

to the chairperson of the NSC, the chief executive officer, the executive committee or any other committee.

(2) The chief executive officer, acting with the written approval of the NSI, may, subject to such conditions as the chief executive officer may determine, in writing –

- (a) delegate to an employee of the NSI any power;
- (b) assign to an employee of the NSI the performance of any duty,

delegated or assigned to the chief executive officer under subsection (1) or entrusted to the chief executive officer by or under this Act.

(3) The NSI or the chief executive officer is not divested of a power or duty delegated or assigned by the NSI or the chief executive officer under subsection (1) or

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(2), respectively, and may amend or withdraw any decision made in the exercise of that delegated power or performance of that assigned duty.

Limitation of liability

32. Neither the chief executive officer nor any other member of the NSC or member of any committee of the NSC or employee of the NSI is liable in respect of anything done or omitted in good faith and not attributable to gross negligence in the performance of any function under this Act.

Rules

33. (1) The NSI may, subject to subsection (2), make rules relating to –
- (a) the good management and administration of the affairs of the NSI and the effective performance of its functions;
 - (b) the convening of and procedures at meetings of the NSC or the executive committee or any other committee;
 - (c) the control of the employees of the NSI, including the disciplinary measures and procedures relating to such disciplinary matters;
 - (d) the keeping of records of account and financial statements, minutes of meetings or any other records to be kept in terms of this Act;
 - (e) the levying by the NSI of any fees in terms of this Act, excluding fees contemplated in section 34(1)(c), and the times at which and the manner in which such fees are payable, including the calculation of interest payable in respect of late payments;
 - (f) the use or application of a mark of conformity, and the procedures relating to such use or application;
 - (g) the procedures relating to and the form of the application for, and any other matter relating to or conditions attached to, a licence applied for or granted in terms of section 21, and the procedures relating to the considering of such application;
 - (h) any matter relating to an assessment and certification under section 23(1) and any conditions attached thereto; and
 - (i) any other matter in respect of which the NSI may make rules under this Act, or considers necessary or expedient to regulate, for the effective carrying out of its objects and functions, or for the achievement of the purposes of this Act.
- (2) No rule relating to fees leviable in terms of this Act may be made by the NSI except in consultation with the Minister.
- (3) No rules made by the NSI under subsection (1), or any amendment thereto or withdrawal thereof, is of force and effect until published in the *Gazette*.

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34. (1) The Minister may, after consultation with the NSI, make regulations relating to –

- (a) the setting, establishing, issuing, amendment and withdrawal of Namibian standards;
- (b) the form and manner in which, and the period within which, appeals must be lodged and be considered in terms of section 25;
- (c) the fees payable in respect of the matters referred to in sections 20(5) and 25(1), and the times at which and the manner in which such fees are payable, including the calculation of interest payable in respect of late payments; and
- (d) any other matter in respect of which regulations are permitted or required to be made under this Act or which the Minister considers necessary or expedient to regulate for the purpose of giving effect to the objects of this Act.

(2) A regulation made under subsection (1) may prescribe, unless otherwise provided for in this Act, a penalty, not exceeding a fine of N\$5 000 or imprisonment for a period of six months or not exceeding both such fine and such imprisonment, for the contravention of or failure to comply with any provision thereof.

Repeal of laws, and savings

35. (1) Subject to subsections (2) and (3), the laws mentioned in the Schedule are repealed to the extent indicated in the third column thereof.

(2) Any proclamation, regulation, notice, order, prohibition, authorisation, appointment, permission, information or document made, issued, imposed, granted or given or any other thing done under a provision of any law repealed by subsection (1), and which could have been made, issued, imposed, granted, given or done under a provision of this Act, is deemed to have been made, issued, imposed, granted, given or done under the corresponding provision of this Act.

(3) Any standard building regulation which was framed and published in terms of section 14*bis* of the Standards Act, 1962 (Act No. 33 of 1962), and which was in force immediately before the commencement of this Act, remains in force, as if that section had not been repealed by this Act, until otherwise provided by any other law.

Short title and commencement

36. This Act is called the Standards Act, 2005, and comes into operation on a date to be determined by the Minister by notice in the *Gazette*.

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STANDARDS ACT, 2005**SCHEDULE****Laws repealed
(Section 35(1))**

No. and year of law	Short title	Extent of repeal
Act No. 33 of 1962	Standards Act, 1962	The repeal of the whole
Act No. 72 of 1964	Standards Amendment Act, 1964	The repeal of the whole
Act No. 10 of 1967	Standards Amendment Act, 1967	The repeal of the whole
Act No. 61 of 1968	Standards Amendment Act, 1968	The repeal of the whole
Act No. 77 of 1970	Standards Amendment Act, 1970	The repeal of the whole
Act No. 57 of 1975	General Law Amendment Act, 1975	The repeal of section 27
Act No. 59 of 1976	Standards Amendment Act, 1976	The repeal of the whole
Act No. 100 of 1977	Standards Amendment Act, 1977	The repeal of the whole