

## **Hazardous Substances Act**

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

### General note

The provisions of this Act relating to Group I hazardous substances came into operation on 25 March, 1997.

The provisions of this Act relating to Group II hazardous substances are deemed to have come into operation on 21 December, 1984.

The provisions of this Act relating to Group III hazardous substances came into operation on 24 December, 1976.

The provisions of this Act relating to Group IV hazardous substances came into operation on 1 March, 1993.

### **1. Definitions**

In this Act, unless the context otherwise indicates--

"advertisement"

in relation to any grouped hazardous substance, means any written, pictorial, visual or other descriptive matter or verbal statement, communication, representation or reference--

- a) appearing in a newspaper or other publication;
  - b) distributed to members of the public; or
  - c) brought to the notice of members of the public in any manner,
- and which is intended to promote the sale or encourage the use of such a substance; and "advertise" has a corresponding meaning;

"analyst"

means a person appointed as such under section 10(1);

"appliance"

means the whole or any part of any implement, machine, instrument, apparatus or other object used or capable of being used for, in or in connection with the manufacture, treatment, packing, labelling, storage, conveyance, preparation, serving or administering of any grouped hazardous substance;

"describe"

includes advertise or label;

"Director-General"

means the Director-General: National Health and Population Development;

"dump"

in relation to a grouped hazardous substance, means deposit, discharge, spill, release or cause or permit to be deposited, discharged, spilled or released (whether or not the substance in question is enclosed in a container), in such a place, under such circumstances or for such a period that the person depositing, discharging, spilling, or releasing or causing or permitting it to be deposited, discharged, spilled, or released, may reasonably be assumed to have abandoned it; and "dumping" has a corresponding meaning;

"electronic product"

means--

- a) any manufactured product which, when in operation, contains or acts as part of an electronic circuit; and--
  - i) emits (or in the absence of effective shielding or other controls would emit) electronic product radiation; or
  - ii) would, as a result of the failure or breakdown of any built-in safety measure or shielding, pose an electrical, mechanical, chemical, biological, ergonomic or other hazard, or cause excessive temperature, excessive pressure or ignition of flammable material, which may cause injury, ill-health or death to human beings; or
- b) any manufactured article which is intended for use as a component, part or accessory of a product described in paragraph (a) and which, when in operation--
  - i) emits (or in the absence of effective shielding or other controls would emit) such radiation; or
  - ii) would, as a result of the failure or breakdown of any built-in safety measures or shielding, pose an electrical, mechanical, chemical, biological, ergonomic or other hazard, or cause excessive temperature, excessive pressure or ignition of flammable material, which may cause injury, ill-health or death to human beings;

"electronic product radiation"

means--

- a) any ionizing or non-ionizing electro-magnetic or particulate radiation; or
- b) any sonic, infrasonic or ultrasonic wave which is emitted from an electronic product as the result of the operation of an electric circuit in such product:

"grouped hazardous substance"

means any Group IV hazardous substance and any substance, mixture of substances, product or material declared in terms of section 2(1) to be a hazardous substance of any kind;

"Group I, Group II or Group III hazardous substance"

means a substance, mixture of substances, product or material declared in terms of section 2(1) to be a Group I, Group II or Group III hazardous substance, respectively;

"Group IV hazardous substance"

means radioactive material which is outside a nuclear installation as defined in the Nuclear Energy Act, 1993, and is not a material which forms part of or is used or intended to be used in the nuclear fuel cycle, and--

- a) has an activity concentration of more than 100 becquerels per gram and a total activity of more than 4 000 becquerels; or
- b) has an activity concentration of 100 becquerels or less per gram or a total activity of 4 000 becquerels or less and which the Minister has by notice in the *Gazette* declared to be a Group IV hazardous substance, and which is used or intended to be used for medical, scientific, agricultural, commercial or industrial purposes, and any radioactive waste arising from such radioactive material;

"import"

means import into the Republic by any means; and "importation" has a corresponding meaning;

"importer"

includes any person who, whether as owner, consignor, consignee, agent or broker, is in possession of or in any way entitled to the custody or control of any grouped hazardous substance imported;

"import harbour"

[Definition of "import harbour" deleted by s. 1(b) of Act No. 31 of 1981];

"inspector"

means a person appointed as such under section 8(1), and includes any person who may, in terms of section 8(3), exercise or perform the powers, duties and functions of such an inspector;

"label"

when used as a noun, means any brand or mark or any written, pictorial or other descriptive matter appearing on or attached to or packed with any grouped hazardous substance or its package, and referring to such substance, and, when used as a verb, means brand or mark or attach or provide in any other manner with, any written, pictorial or other descriptive matter;

"licence"

means any licence issued in terms of section 4;

"local authority"

means a municipal institution and includes an institution or body with functions similar to those of a municipal institution;

"manufacture"

when used as a noun, includes assembly, production, preparation, processing, repair or any other manufacturing or maintenance process and, when used as a verb, has a corresponding meaning;

"Minister"

means the Minister of National Health;

"package"

means anything by or in which any substance is covered, enclosed, contained or packed;

"premises"

means land or any building or other structure and includes any train, boat, ship, aircraft or other vehicle;

"prescribed"

means prescribed by regulation;

"radio-active material"

[Definition of "radio-active material" deleted by s. 1(j) of Act No. 53 of 1992];

"regulation"

means a regulation made under this Act;

"sealed package"

means an unopened package which cannot be opened without breaking or damaging such package or any seal, adhesive label or other part of or attachment to such package;

"Secretary"

[Definition of "Secretary" deleted by s. 1(d) of Act No. 31 of 1981];

"sell"

includes offer, advertise, keep, display, transmit, consign, convey or deliver for sale, or exchange, or dispose of to any person in any manner, whether for a consideration or otherwise, or manufacture or import for use in the Republic; and "selling" and "sale" have a corresponding meaning;

"this Act"

includes any regulation.

## **2. Declaration of grouped hazardous substances**

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

- a) any substance or mixture of substances which, in the course of customary or reasonable handling or use, including ingestion, might, by reason of its toxic, corrosive, irritant, strongly sensitizing or flammable nature or because it generates pressure through decomposition, heat or other means, cause injury, ill-health or death to human beings, to be a Group I or a Group II hazardous substance;
- b) any electronic product to be a Group III hazardous substance.
- c) [Para. (c) deleted by s. 2(a) of Act No. 53 of 1992].

2)

- a) If the Minister intends to declare any substance or mixture of substances to be a Group I or Group II hazardous substance or any electronic product to be a Group III hazardous substance or any substance referred to in paragraph (b) of the definition of

"Group IV hazardous substance" to be a Group IV hazardous substance, he shall cause to be published in the *Gazette* a notice of his intention to do so and in such notice invite interested persons to submit to the Director-General any comments and representations they may wish to make in connection therewith.

- b) A period of not less than three months shall elapse between the publication of such a notice and any relevant declaration under subsection (1).
- 3) The provisions of subsection (2) shall not apply in respect of--
  - a) an amendment of any proposed declaration in pursuance of a notice published in terms of that subsection; and
  - b) any declaration in respect of which the Minister is of the opinion that the public interest requires that it be made without delay.

### **3. Sale of Group I and Group III, and letting, use, operation, application and installation of Group III, hazardous substances**

- 1) Subject to the provisions of subsections (1A) and (2) no person shall--
  - a) sell any Group I hazardous substance--
    - i) unless he is the holder of a licence issued to him in terms of section 4(a); and
    - ii) otherwise than subject to the conditions prescribed or determined by the Director-General;
  - b) sell, let, use, operate or apply any Group III hazardous substance unless a licence under section 4(b) is in force in respect thereof, and otherwise than subject to the conditions prescribed or determined by the Director-General;
  - c) install or keep installed any Group III hazardous substance on any premises unless a licence under section 4(c) is in force in respect of such premises, and otherwise than subject to the conditions prescribed or determined by the Director-General.

- 1A) The Minister may by notice in the *Gazette* from time to time--
  - a) determine that any provision of subsection(1) shall not apply to any Group I or Group III hazardous substance mentioned in the notice; or
  - b) exempt any person or category of persons from any provision of subsection(1), and may in like manner at any time amend or withdraw any such notice.

- 2) If a person has in his possession a substance immediately before the date on which it is declared to be a Group I or a Group III hazardous substance in terms of section 2, he may, notwithstanding the provisions of subsection (1) of this section, sell, lease, use, operate, apply or install or keep installed on any premises, as the case may be, that substance--
  - a) at any time during a period of 180 days calculated from the date on which it was so declared to be such a substance; and
  - b) if, before the expiry of the period mentioned in paragraph (a), an application was made in terms of section 4 for a licence which would authorize such sale, lease, use, operation, application or installation, at any time until such application has been finally refused in terms of this Act.

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

### **3A. Production, acquisition, disposal, and importation and exportation, of Group IV hazardous substances**

- 1) Subject to the provisions of this section, no person shall produce or otherwise acquire, or dispose of, or import into the Republic or export from there, or be in possession of, or use, or convey or cause to be conveyed, any Group IV hazardous substance, except in terms of a written authority under subsection (2) and in accordance with--
  - a) the prescribed conditions; and
  - b) such further conditions (if any) as the Director-General may in each case determine.
  
- 2) The Director-General may on application by any person in the prescribed manner and on payment of the prescribed fee, and on such conditions as he may in each case determine, in writing authorize the performance of any of or all the activities mentioned in subsection (1) in respect of any Group IV hazardous substance.
  
- 3) Any employee of a holder of a written authority referred to in subsection (2) may in the course of his employment in respect of the Group IV hazardous substance concerned perform any of the activities in respect of which authority has been so granted in accordance with the conditions of the authorization in question.
  
- 4) A written authority under section 50 of the Nuclear Energy Act, 1982 (Act No. 92 of 1982), shall remain valid, but shall lapse--
  - a) if application for a written authority under section 4 of the Hazardous Substances Amendment Act, 1992, is not made within 60 days after the date of commencement of the said section; or
  - b) if an application mentioned in paragraph (a) is made within the said period of 60 days, when such application is granted or refused.
  
- 5) The Minister may from time to time by notice in the *Gazette*--
  - a) determine that any provision of subsection (1) shall not apply in respect of any Group IV hazardous substance mentioned in the notice; or
  - b) exempt any person or category of persons from any provision of subsection (1), and may in like manner at any time amend or withdraw such notice.
  
- 6) Any person who contravenes or fails to comply with any provision of subsection (1) or any condition imposed thereunder shall be guilty of an offence.
  
- 7) The provisions of sections 4, 5 and 7 shall, in so far as they can be applied, apply to a written authority under subsection (2).

### **4. Licensing**

- 1) Subject to the provisions of this section, the Director-General may on application in the prescribed manner and on payment of the prescribed fee (if any) and subject to the prescribed conditions and such further conditions as the Director-General may in each case determine, issue to any person a licence--

- a) to carry on business as a supplier of Group I hazardous substances;
  - b) to sell, let, use, operate or apply any Group III hazardous substance;
  - c) to install a Group III hazardous substance on any premises mentioned in such licence.
- 2) The Director-general may require an applicant contemplated in subsection (1) to furnish him with such information, in addition to any information furnished by the applicant in terms of the said subsection, as the Director-General may deem necessary.
- 3) In considering an application under subsection (1) the Director-General may conduct any investigation in respect of the applicant concerned.
- 4) The Director-General may not grant an application under subsection (1) unless he is satisfied that--
- a) if the applicant is a natural person, he, or, if the applicant is a company, a director of the company, or, if the applicant is a close corporation, a member of the corporation, is a suitable person to carry on, or be involved in, the activities authorized by the licence;
  - b) an interest which any person has in the applicant concerned, is reconcilable with the provisions of this Act;
  - c) the applicant will be able to exercise sufficient control over the activities authorized by the licence;
  - d) the licence concerned has not been issued to a sufficient number of persons: and the issue of the licence will be in the public interest.
- 5) When the Director-General grants or refuses an application for a licence, he shall give written notice of that fact to the applicant concerned.
- 6) If the Director-General refuses an application for a licence, he shall in writing--
- a) furnish the applicant concerned with the reasons for such refusal; and
  - b) notify such applicant that he may in accordance with the provisions of section 6 appeal to the Minister against such refusal.
- 7) The Director-General may by written notice to the person concerned at any time--
- a) cancel or vary any condition to which a licence is subject; or
  - b) impose any condition or any further condition in respect of a licence.

## **5. Period of validity and renewal of licences**

A licence under section 4 shall be valid for an indefinite or the prescribed period, but may on application in the prescribed manner and before the prescribed time or such later time as the Director-General may allow and on payment of the prescribed fee (if any) be renewed.

## **6. Appeals to Minister against decisions of, and conditions imposed by, Director General**

- 1) Any person aggrieved by a decision of the Director-General under this Act or any condition imposed thereunder, may in the prescribed manner and within the prescribed period appeal to the Minister, who may in his discretion confirm, set aside, amend or replace such refusal or condition.
- 2) The operation of a decision of the Director-General, or a condition imposed by him, in terms of this Act shall not be suspended pending the outcome of an appeal under subsection (1).

## **7. Suspension and cancellation of licences**

- 1) If the holder of a licence under section 4--
  - a) has in or in connection with an application for a licence or renewal of a licence furnished the Director-General with any information which to the knowledge of such holder is untrue or misleading in any material respect;
  - b) has contravened or failed to comply with a Condition subject to which the licence was issued;
  - c) has contravened or failed to comply with a provision of this Act;
  - d) has at any time been convicted of any offence which is of such a nature that in the opinion of the Director-General it renders him unsuitable or if such person is for any other reason in the opinion of the Director-General not a suitable person to carry on the activities authorized by the licence, or to be involved in such activities; or
  - e) has ceased to carry on the activities authorized by the licence, the Director-General may by way of a notice in writing call upon him to show cause within the period specified in the notice, which period shall not be less than 20 days as from the date of the notice, why the licence in question should not be suspended or cancelled.
- 2) The Director-General may, after considering the reasons furnished to him in terms of subsection (1), in his discretion--
  - a) suspend the licence in question for such period as he may determine; or
  - b) withdraw such licence.
- 3) While a licence is suspended under subsection (2)(a), the licence concerned shall be deemed never to have been issued.
- 4) The Director-General shall withdraw the licence of a licensee if requested to do so by the licensee.
- 5) The holder of a licence under section 4(1)(a) may, if such licence is withdrawn under subsection (2)(b) of this section, continue on such conditions as the Director-General may determine to carry on business as a supplier of Group I hazardous substances, for a period of 30 days or such longer period as the Director-General may determine.
- 6) No person shall be entitled to repayment of any prescribed fees in respect of any application for the granting or renewal of a licence if such application has been refused or if the licence has been suspended or withdrawn.

## **8. Inspectors**



- 1) The Director-General may appoint any person he may deem fit as an inspector for--
  - a) Group I and Group II hazardous substances; or
  - b) Group III and Group IV hazardous substances,and any such inspector shall, in respect of any substance in respect of which he has been so appointed, and subject to the control of the Director-General, be vested with the powers, duties and functions conferred or imposed on an inspector by this Act.
- 2) Each person appointed under subsection (1) shall be provided with a letter of authority signed by or on behalf of the Director-General and certifying that such person has been appointed as an inspector in terms of this Act and indicating for which groups of hazardous substances he has been so appointed.
- 3) The powers, duties and functions of an inspector for Group I and Group II hazardous substances may also be exercised or performed--
  - a) by an officer of the Office of the Commissioner for Customs and Excise authorized thereto in writing by the Commissioner for Customs and Excise;
  - b) for the purposes of the enforcement of any provision of this Act, by a local authority under the provisions of section 24, by any person employed by such local authority and authorized thereto in writing by such local authority;
  - c) by any member of the South African Police of or above the rank of sergeant;
  - d) by any member of the South African Police below the rank of sergeant authorized thereto in writing by a member referred to in paragraph (c).

## **9. Powers of inspectors**

- 1) An inspector may at all reasonable times enter any premises on or in which any substance suspected to be a grouped hazardous substance is or is suspected to be manufactured, packed, marked, labelled, kept, stored, conveyed, sold, used, operated, applied, administered or dumped or on or in which any other operation or activity with or in connection with any such substance is or is suspected to be carried out, and may, subject to the provisions of this Act--
  - a) inspect or search such premises, or examine, or extract, take and remove samples of, any substance (other than a Group III or a Group IV hazardous substance) found in or upon such premises, or any appliance or other object so found which is or is suspected to be used, or to be destined or intended for use, for, in or in connection with the manufacture, packing, marking, labelling, storage, conveyance, use, application or administration of a grouped hazardous substance, or for, in or in connection with any other operation or activity with or in connection with any grouped hazardous substance, or open any package suspected to contain a grouped hazardous substance;
  - b) inspect any Group III or Group IV hazardous substance;
  - c) demand any information regarding any such substance, appliance or object from any person in whose possession or charge it is or from the owner or person in charge of such premises;
  - d) weigh, count, measure, mark or seal any such substance, appliance or object or its package, or lock, secure, seal or close any door or opening giving access to it;
  - e) examine or make copies of, or take extracts from, any book, statement or other document found in or upon such premises and which refers or is suspected to refer to such substance, appliance or object;

- f) demand from the owner or any person in charge of such premises or from any person in whose possession or charge such book, statement or other document is, an explanation of any entry therein;
  - g) inspect any operation or process carried out in or upon such premises in connection with any activity referred to in paragraph (a);
  - h) demand any information regarding such operation or process from the owner or person in charge of such premises or from any person carrying out or in charge of the carrying out of such operation or process;
  - i) seize any substance, appliance, book, statement or document or other object which appears to provide proof of a contravention of any provision of this Act.
- 2) If an inspector referred to in section 8(1) or (3)(a), (b) or (d) intends to exercise or perform any power, duty or function under this Act in the presence of any persons affected thereby, he shall first exhibit the written authority issued to him in terms of section 8(2) or (3) to any of those persons.
- 3) The procedure to be followed by an inspector in obtaining, transmitting for analysis or examination or otherwise dealing with any sample, shall be as prescribed.

#### **9A. Embargo**

- 1) An inspector may at any time place an embargo for an indefinite or prescribed period on any grouped hazardous substance, appliance, vehicle or other object which is concerned in or is on reasonable grounds believed by him to be concerned in a contravention or suspected contravention of any provision of this Act, irrespective of where or in whose possession he finds such substance, appliance, vehicle or object.
- 2) For the purposes of this Act "embargo", in relation to any grouped hazardous substance, appliance, vehicle or other object, means a prohibition on the export, sale, dumping, lease, use, operation, application, or installation on any premises, thereof.
- 3) If an inspector deems it expedient, he may at any time--
- a) remove any grouped hazardous substance, appliance, vehicle or other object under an embargo in terms of subsection (1) to any place he may determine;
  - b) lift such embargo.
- 4) Except with the permission of an inspector, no person shall remove, aid and abet to remove, or cause or permit to be removed, any substance, appliance, vehicle or other object under an embargo out of the possession or control of an inspector, or in any other way deal therewith.
- 5) Any person who contravenes any provision of subsection (4), shall be guilty of an offence.

#### **9B. Seizure**

- 1) An inspector or police official as defined in section 1(1) of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), may, at any time and in such manner as he may deem fit and without prior notice to any person, seize any grouped hazardous substance, appliance, vehicle or other object--

- a) which is concerned in or is on reasonable grounds believed by him to be concerned in the commission or suspected commission of an offence in terms of this Act;
  - b) which in his opinion may afford evidence of the commission or suspected commission of such offence; or
  - c) which is intended to be used or is on reasonable grounds believed by him to be intended to be used in the commission of such offence.
- 2) Any grouped hazardous substance, appliance, vehicle or other object seized in terms of subsection (1), shall be disposed of in accordance with the applicable provisions of the Criminal Procedure Act, 1977, regarding seizure of objects by the State.
- 3) Any substance, appliance, vehicle or other object seized in terms of subsection (1) by an inspector or police official may be--
- a) kept in custody at the place where it has been found; or
  - b) removed to any place where in his opinion it can be kept in safe custody, and he may in respect thereof conduct such investigation or perform such functions as he may deem necessary.
- 4) If--
- a) an inspector is satisfied that the custody of an object is no longer required for the purposes of this Act;
  - b) no criminal proceedings are instituted in connection with such object; or
  - c) it appears that such object is not required at a trial for the purposes of an order of court, the object concerned shall be returned to the person from whom it was seized, if such person may lawfully possess such object, or, if such person may not lawfully possess such object, to the person who may lawfully possess it.
- 5) The Director-General may recover from the owner of an object seized under subsection (1) the reasonable expenses incurred by an inspector in connection with any action in terms of this section in respect of such object: Provided that such expenses shall not be recovered from such owner if no criminal proceedings have been instituted in respect of the object concerned.
- 6) Any person who--
- a) damages or destroys any grouped hazardous substance, appliance, vehicle or other object referred to in subsection(1) with a view to obstructing the seizure or custody thereof; or
  - b) without the written permission of an inspector or police official referred to in subsection (1), removes it from the custody or control of such inspector or police official, shall be guilty of an offence.

## **10. Analysts**

- 1) The Director-General may in writing appoint any person he may deem fit, as an analyst in respect of Group I and Group II hazardous substances to analyse or examine samples of any substance for the purposes of this Act.

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

## **11. Further analysis or examination of samples**

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

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

3)

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

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

## **12. Examination, control and disposal of imported substances**

1) If any substance is in terms of paragraph (a) of section 107(2) of the Customs and Excise Act, 1964 (Act No. 91 of 1964), under the control of the Commissioner for Customs and Excise because he has not yet satisfied himself that the provisions of this Act relating to the importation of grouped hazardous substances have been complied with in respect thereof, the said Commissioner may, notwithstanding the provisions of that paragraph but subject to the provisions of subsection (2) of this section, with the concurrence of the Director-General allow such substances and similar substances in the same consignment to pass from his control on condition that they are removed to a place approved by the Director-General and are there detained, at the expense and risk and under the control of the importer, for examination or analysis thereof or of a sample thereof under the provisions of this Act or until the result of any such examination already commenced or carried out is known and, under the circumstances contemplated in subsection (3), until the Director-General has made an order in respect thereof.

2) The Commissioner for Customs and Excise shall not under subsection (1) allow any substances to pass from his control unless the importer has furnished the Director-General with a guarantee, to the satisfaction of the Director-General, that he will pay

to the Director-General for the benefit of the State Revenue Fund an amount determined by agreement between himself and the Director-General and specified in the guarantee, if in the opinion of the Director-General he fails to comply with any condition referred to in that subsection in relation to such substances.

- 3) If as a result of the examination or analysis of any substance which in terms of the Customs and Excise Act, 1964, is under the control of the Commissioner for Customs and Excise or in terms of subsection (1) of this section is detained under the control of an importer, or of a sample thereof, it appears that it may in terms of this Act not be imported, the Director-General may by order in writing at his discretion direct that such substances and all similar substances in the same consignment--
- a) shall be confiscated and destroyed; or
  - b) shall be returned to the port of shipment or place of origin; or
  - c) may be imported on compliance by the importer with such conditions as may be specified by the Director-General in such order, including any condition requiring the substitution of a label approved by the Director-General for any existing label; or
  - d) shall be dealt with or disposed of in such other manner as may be specified by the Director-General in such order.

### **13. Liability in regard to substance sold in a sealed package**

- 1) Any person who, according to the label of any Group I or any Group II hazardous substance, which is sold in a sealed package, imported, manufactured or packed the substance in question, shall be presumed to have imported, manufactured or packed, as the case may be, such substance unless he proves that he did not import, manufacture or pack, as the case may be, such substance.
- 2) The provisions of subsection (1) shall not relieve any person from liability incurred by him in terms of this Act in respect of the sale of any substance referred to in that subsection.

### **14. Special defences**

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

- a) that he or his employer or principal acquired or imported the grouped hazardous substance in question under a written warranty complying with the provisions of section 15 and furnished to him or to his employer or principal; and
- b) in the case of a sale of the grouped hazardous substance in question, that he sold it in the condition in which he acquired or imported it, or, if it was acquired or imported by his employer or principal, that he at no relevant time had reason to suspect that it was in any other condition than that in which it was so acquired or imported.

### **15. Warranties**

- 1) A warranty referred to in section 14(a) shall-
- a) not be valid unless furnished by a person resident in the Republic, and, if it is furnished on behalf of a third person, unless such third person is resident or, in the case of a company, has a registered office in the Republic;

- b) reflect the name and address of the person by whom it is furnished and, if it is furnished on behalf of a third person, the name and address (including, in the case of a company, the registered office) of such third person;
  - c) guarantee that any substance to which it applies, is not a grouped hazardous substance in respect of which any prohibition in terms of the regulations applies; and
  - d) contain particulars by which any substance to which it applies can be identified and particulars of the number of packages of such substance.
- 2) Any person who furnishes a warranty for the purposes of this Act which is false or misleading in any respect, shall be guilty of an offence.
- 3) Any court within whose area of jurisdiction the place is situated where a warranty has been furnished (including any address reflected on such warranty for the purposes of subsection (1)(b)) or where a substance to which such warranty applies is sold or where a sample of such substance is obtained in terms of this Act, shall have jurisdiction in respect of any offence committed in respect of such warranty under subsection (2).

## **16. Liability of employer or principal**

- 1) An act or omission of an employee, mandatory or agent which constitutes an offence under this Act shall be deemed to be the act or omission of his employer, mandator or principal, and the said employer, mandator or principal may be convicted and sentenced in respect of it unless he proves--
- a) that he did not permit or connive at such act or omission; and
  - b) that he took all reasonable measures to prevent an act or omission of the nature in question; and
  - c) that an act or omission, whether legal or illegal, of the nature in question did not under any conditions or in any circumstances fall within the course of the employment or the performance of the mandate or the scope of the authority of the employee, mandatory or agent concerned.
- 2) For the purposes of subsection (1)(b) the fact that an employer or principal forbade an act or omission of the nature in question shall not by itself be regarded as sufficient proof that he took all reasonable measures to prevent such an act or omission.
- 3) The provisions of subsection (1) shall not relieve the employee, manager or agent concerned from liability to be convicted and sentenced in respect of the act or omission in question.
- 4) Whenever an employee, mandatory or agent does anything or fails to do anything which would have been an offence in terms of this Act if the employer, mandator or principal concerned had done it or had failed to do it, such employee, mandatory or agent shall be guilty of such offence.

## **17. Preservation of secrecy**

- 1) No person shall, except for the purposes of carrying out his functions or the performance of his duties under this Act or for the purpose of legal proceedings under this Act or when required to do so by any court or under any law--
  - a) without the authority in writing of the Director-General, disclose to any other person the contents of any certificate or report on the analysis or examination of a sample in terms of this Act; or
  - b) disclose to any other person any information acquired by him in the carrying out of his functions or the performance of his duties under this Act and relating to the business or affairs of any other person.
- 2) Any person who contravenes the provisions of subsection (1) shall be guilty of an offence.

## **18. Offences**

Any person who--

- a) obstructs or hinders an inspector in the performance of his functions or duties or the exercise of his powers under this Act;
  - b) when an inspector demands of him an explanation or particulars or information relating to a matter within his knowledge, refuses or fails to give such explanation, particulars or information or gives an explanation or particulars or information which is false or misleading knowing it to be false or misleading;
  - c) otherwise than in the exercise or performance of a power, duty or function under this Act, removes, obliterates, alters, damages, breaks or opens a mark, seal or fastening placed by an inspector on any substance or its package or on or over any door or opening giving access to it;
  - d) falsely represents himself to be an inspector;
  - e) retakes any sample or other substance obtained or seized under this Act, or hinders or obstructs the obtaining or seizure of any such sample or other substance;
  - f) falsely in connection with any grouped hazardous substance makes use of, or applies to any such substance, any warranty, certificate, report, invoice or other document; or
  - g) for purposes of business or trade makes use of any report or certificate furnished in terms of this Act by an inspector or an analyst,
- shall be guilty of an offence.

## **19. Penalties**

- 1) Any person convicted of an offence under this Act, shall, subject to the provisions of subsection (2), be liable--
  - a) in the case of an offence referred to in section 3A or 18(g), to a fine or to imprisonment for a period not exceeding 10 years or to both a fine and such imprisonment;
  - b) in the case of an offence referred to in section 3(1)(b) or (c), to a fine or to imprisonment for a period not exceeding six years or to both a fine and such imprisonment;
  - c) in the case of an offence referred to in sections 3(1)(a), 15(2), 17(2), 9A, 9B or 18(c), (d), (e) or (f), to a fine or to imprisonment for a period not exceeding two years or to both a fine and such imprisonment;

- d) in the case of an offence referred to in section 18(a) or (b), to a fine or to imprisonment for a period not exceeding 12 months or to both a fine and such imprisonment; and
  - e) in the case of an offence referred to in section 29(8), to a fine or to imprisonment for a period not exceeding six months or to both a fine and such imprisonment, and to a further fine not exceeding R10 or to further imprisonment not exceeding one day for every day on which he so contravened the provision concerned or failed to comply therewith: Provided that the period of such further imprisonment shall not exceed 90 days.
- 2) Where a penalty is prescribed by regulation for a contravention of or failure to comply with any regulation, a person convicted of any such contravention or failure shall be liable only to the penalty so prescribed.

## **20. Jurisdiction**

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

## **21. Forfeiture and disposal of goods**

- 1) The court convicting any person of an offence under this Act may declare any grouped hazardous substance, appliance, product, or other object in respect of which the offence has been committed or which was used for, in or in connection with the commission of the offence, to be forfeited to the State.
- 2) Anything forfeited under subsection (1) shall be disposed of in such manner as the Director-General may direct.
- 3) Costs incurred in respect of any action under subsection (2) may be recovered from the person convicted.

## **22. Time limits and other requirements in connection with prosecution**

- 1) In any criminal proceedings under this Act the period between the service of the summons and the commencement of the trial shall not be less than 10 days.
- 2)
  - a) Subject to the provisions of paragraph (b), no prosecution for a contravention of a provision of this Act disclosed by the analysis or examination of a sample shall be instituted after sixty days from the date on which the sample was obtained for the purpose of such analysis or examination.
  - b) The provisions of paragraph (a) shall not apply to proceedings against any person who furnished a warranty in respect of the substance of which the sample in question was obtained.
- 3) A copy of any certificate or report by an analyst which the prosecutor intends to produce in evidence in any prosecution under this Act, shall be served on the accused with the summons.



- 4) If the accused has within three days after having been so served with a copy of a certificate or report, demanded in writing that the analyst who furnished the certificate or report be called as a witness at the trial, and has paid or tendered to the prosecutor a sum of money sufficient to defray the expenses incidental to the calling and attendance of the said analyst as a witness, and if the prosecutor produces the certificate or report in evidence at the trial, the prosecutor shall call the said analyst as a witness at such trial.
- 5) The accused may, instead of requiring the calling of the said analyst as a witness, submit to him written interrogatories approved by the court, and such interrogatories and any reply thereto, purporting to be a reply from the said analyst, shall be admissible in evidence in the proceedings.

### **23. Proof and presumptions**

In any prosecution under this Act--

- a) a copy of or extract from a book, statement or other document, made by an inspector under section 9(1)(e) and certified by him to be true and correct, shall, unless the contrary is proved, be presumed to be a true and correct copy of or extract from the relevant book, statement or other document, and shall on its production in court be *prima facie* proof of any entry to which it relates;
- b) a certificate or report on the analysis or examination of a sample and purporting to be signed by an analyst, shall on its production in court be *prima facie* proof of the facts stated in it;
- c) any quantity of a substance in or upon any premises at the time a sample of it is obtained by an inspector for the purpose of this Act, shall, unless the contrary is proved, be presumed to be in the same condition or possess the same properties as such sample;
- d) a sample of a substance obtained by an inspector for analysis or examination in terms of this Act, shall be presumed to have been sold to him by the person selling the substance of which it is a sample;
- e) if it is proved that any person has manufactured or imported any grouped hazardous substance it shall be presumed, unless the contrary is proved, that he manufactured or imported it for use in the Republic;
- f) any substance, appliance or other object found in or upon any premises where any grouped hazardous substances manufactured, treated, packed, labelled, stored, conveyed, applied, used, operated or administered, shall, unless the contrary is proved, be presumed to be used for, in or in connection with the manufacture, treatment, packing, labelling, storage, conveyance, application, use, operation or administration of such grouped hazardous substance;
- g) any person who sells, manufactures or imports any substance which contains any grouped hazardous substance or in or on which any grouped hazardous substance is present, shall be presumed to sell, manufacture or import, as the case may be, such grouped hazardous substance.

### **24. Administration of Act by authorized local authority**

- 1) The Minister may by notice in the *Gazette* authorize any local authority to enforce within its area of jurisdiction and through its officers authorized thereto by it, such provisions of this Act as the Minister may specify in the notice.

- 2) The Minister may restrict such authority to such substances or classes of substances as he may specify in the notice, and may grant the authority subject to such further restrictions or such conditions as he may so specify.
- 3) The Minister may by notice in the *Gazette* withdraw or amend any notice published under subsection (1), after having given not less than three months' notice of his intention to do so to the local authority concerned.
- 4) The Director-General may in writing permit a local authority authorized as contemplated in subsection (1), to transmit to an analyst, for analysis or examination free of charge, as many samples as the Director-General may specify, and may at any time amend or withdraw such permission.

## **25. Right to prosecute**

- 1) A local authority authorized under section 24 to enforce any provision of this Act in its area of jurisdiction may, through any person generally or specially authorized by it, prosecute in respect of any contravention of or failure to comply with the provision in question which is alleged to have taken place in the said area.
- 2) Any fines recovered pursuant to a prosecution under subsection (1) shall be paid to the local authority concerned.
- 3) The provisions of subsection (1) shall not affect the authority of an attorney general to prosecute in respect of the offence in question.

## **26. Delegation of powers**

The Director-General may in writing authorize any officer of the Department of Health, Welfare and Pensions to exercise or perform in general or in a particular case or in cases of a particular nature, any power, duty or function conferred or imposed on the Director-General by or in terms of this Act.

## **27. Defects in form**

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

## **28. Restriction of liability**

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

## 29. Regulations

- 1) The Minister may make regulations--
  - a) authorizing, regulating, controlling, restricting or prohibiting the--
    - i) manufacture;
    - ii) modification;
    - iii) importation;
    - iv) storage;
    - v) transportation; or
    - vi) dumping and other disposal,  
of any grouped hazardous substance or class of grouped hazardous substances;
  - b) regulating, controlling, restricting or prohibiting the application of a grouped hazardous substance for any specific purpose;
  - c) prescribing the manner in which any particular grouped hazardous substance shall be described or the name under which any such substance may be sold, or prohibiting the sale of any particular grouped hazardous substance under a name other than a name so prescribed or under a specified name, or the advertisement thereof in a manner other than the manner prescribed,
  - d) prescribing the procedures to be followed, the forms to be completed, the records to be kept and the other requirements to be complied with in connection with the issue of licences in respect of Group III hazardous substances and in respect of the premises on which they are installed, and the conditions to which the issue of any such licence shall be subject;
  - e) prescribing the precautions to be taken for the protection from injury, ill-health or death of persons in control of or employed or engaged in the manufacture, operation, application or use of grouped hazardous substances or of any other persons who is likely to or may be exposed to grouped hazardous substances as a result of the manufacture, operation, application, use, disposal or dumping thereof;
  - f) providing for the keeping of records and the submission of statistics and reports relating to--
    - i) the manufacture, operation, application, modification, use or sale of grouped hazardous substances;
    - ii) the premises on which grouped hazardous substances are used, sold or installed;  
or
    - iii) persons employed in connection with or in control of Group III hazardous substances;
  - g) prescribing, prohibiting, restricting or otherwise regulating--
    - i) the packing of any Group I or any Group II hazardous substance or the packing of any such substance in a specified manner or in a manner other than a specified manner; or
    - ii) the use for the packing of any Group I or any Group II hazardous substance, or any package of a specified condition, form or nature or made from or treated with any specified material or substance;
    - h) exempting any Group I or any Group II hazardous substance or any such substance of a specified nature or class from the requirements of this Act relating to labelling, and prescribing the conditions (if any) subject to which such exemption shall apply and the prerequisites to be observed before it shall apply;
    - i) prescribing the addition to a Group I or a Group II hazardous substance of specified additives, in order to render such substance easily distinguishable as such a substance;

- j) prescribing the manner in which any Group I or any Group II hazardous substance or its package, or the bulk stock from which it is taken for sale, shall be labelled, the nature of the information to be reflected on the label, the manner or form in which such information shall be so reflected or shall be arranged on the label, or prohibiting the reflecting of information of a specified nature on the label;
  - k) prescribing the procedures to be followed, the forms to be completed and the registers to be kept in connection with the licensing of persons as suppliers of Group I hazardous substances;
  - l) prohibiting or regulating the application or other use of any Group I or any Group II hazardous substances for gain;
  - m) providing for the keeping of records relating to the application or other use of grouped hazardous substances;
  - n) providing for the notification of cases or suspected cases of poisoning, intoxication, illness or death of persons who have been exposed to grouped hazardous substances;
  - o) prescribing the conditions under which persons involved in the operation or use of a Group III hazardous substance may be employed;
  - p) prescribing the duties and responsibilities of any person in control of a Group III hazardous substance or any premises on which such hazardous substance has been or is being used or of any person employed in connection with the operation of such a substance, and generally for the protection of any person from the harmful effects of exposure to radiation emanating from any Group III hazardous substance;
  - q) providing for the appointment of such committees as he may consider necessary, for the purpose of advising the Director-General on any matter concerning any Group III or Group IV hazardous substance, the calling of meeting of any such committee, the quorum for and procedure at such meetings and the remuneration and allowances, conditions of service and tenure of office of members of any such committee who are not in the full-time employment of the State;
  - r) prescribing the fees payable in respect of the issuing or renewal of any licence or any written authority under this Act, and the basis on which such fees shall be determined;
  - s) prescribing the duties to be performed by inspectors, including the procedures to be followed in connection with the inspection of premises, the obtaining or transmitting of samples for analysis or examination, the dealing in other respects with samples, and the records to be kept for the purposes of this Act;
  - t) prescribing the duties to be performed or the powers which may be exercised by analysts, methods of analysis or examination of samples for the purposes of this Act, the form of any certificate or report to be furnished in connection with such analysis or examination, or the nature or arrangement of particulars to be reflected in such certificate or report, and the records to be kept in connection therewith;
  - u) with regard to any matter which in terms of this Act may be prescribed or otherwise dealt with by regulation;
  - v) regarding safety standards in connection with the importation into and exportation from the Republic, manufacture, packing, disposal, dumping, sale, serving, applying, administering or use of grouped hazardous substances, and the manner in which such standards shall be brought to the notice of persons concerned in any of the said activities in respect thereof,
- and, in general, with regard to any matter which the Minister considers necessary or expedient to prescribe or regulate in order to attain or further the objects of the Act,

and the generality of this provision shall not be limited by the preceding paragraphs of this subsection.

2) Regulations made under--

a) subsection (1)(a) may make provision for the issuing of registration certificates or licences under this Act in respect of the performance of any actions mentioned in the said subsection, and the payment of any registration or licence fee in connection therewith; and

b) subsection (1)(t) may prescribe any method for the analysis or examination of a sample set out in any publication which in the opinion of the Minister is generally recognized as authoritative.

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

4) No regulation prescribing any fee, remuneration or allowance shall be made except after consultation with the Minister of Finance.

5) [Sub-s. (5) deleted by s. 12(e) of Act No. 53 of 1992.]

6) No regulation under subsection (1)(e) shall be made except after consultation with the Minister of Manpower.

7) Any regulation may be expressed to apply only in such areas as may be specified in it.

8) Any regulation made under subsection (1) may determine that any person who contravenes or fails to comply with any provision thereof, shall be guilty of an offence.

9)

a) If the Minister intends to make any regulation under this Act, he shall cause the text of the proposed regulation to be published in the *Gazette* together with a notice declaring his intention to make such a regulation and inviting interested persons to submit to the Director-General any comments and representations they may wish to make in connection therewith.

b) A period of not less than three months shall elapse between the publication of such text and the publication of the regulation in question.

10) The provisions of subsection (9) shall not apply in respect of--

a) an amendment of a proposed regulation in pursuance of the notice published in terms of that subsection; and

b) any regulation in respect of which the Minister is of the opinion that the public interest requires that it be made without delay.

### **30. Application of Act to grouped hazardous substances in transit**

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

### **31. Operation of Act in relation to other laws**

The provisions of this Act shall be in addition to and not in substitution for any other law which is not in conflict with or inconsistent with this Act.

### **32. Repeal of section 133A of Act 36 of 1919, and Act 42 of 1971**

- 1) Section 133A of the Public Health Act, 1919, and the Public Health Amendment Act, 1971, are hereby repealed.
- 2) A regulation made under any provision of the said section 133A and which can be made under a provision of this Act, shall be deemed to have been made under the last mentioned provision.

### **33. Short title and commencement**

- 1) This Act shall be called the Hazardous Substances Act, 1973, and its provisions shall come into operation on a date fixed by the State President by proclamation in the *Gazette*.
- 2) Different dates may under subsection (1) be fixed in respect of different provisions of this Act or in respect of such provisions with reference to different grouped hazardous substances.