

**NOTICE 1131 OF 2009**

**DEPARTMENT OF AGRICULTURE, FORESTRY AND FISHERIES**

**FERTILIZERS, FARM FEEDS, AGRICULTURAL REMEDIES AND STOCK  
REMEDIES ACT, 1947 (ACT NO. 36 OF 1947)**

**PUBLICATION OF PROPOSED FEEDS BILL**

I, Tina Joemat-Pettersson, Minister of Agriculture, Forestry and Fisheries hereby invite public comments on the proposed Feeds Bill.

Comments must be submitted before 15 September 2009. They must be sent to:

The Registrar  
Act No. 36 of 1947  
Department of Agriculture, Forestry and Fisheries  
Private Bag X 343  
Pretoria  
0001  
Tel: 012 319 7303  
Fax: 012 319 7179  
e-mail: [MalutaM@daff.gov.za](mailto:MalutaM@daff.gov.za)

## STATUTES OF THE REPUBLIC OF SOUTH AFRICA - AGRICULTURE

## FEEDS BILL

To provide for the licensing of facilities and rendering plants; to provide for the registration of feed additives and nutraceuticals; the appointment of the Registrar to administer the Act; the establishment of the technical standards control council; the designation of technical advisers and analysts; prohibition of the import, export, acquisition, disposal, sale or use of feeds, repeal certain laws relating to feeds and sterilizing plants; and for the incidental matters thereof.

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

**"additive"** means any intentionally added substance to feedstuffs, premixes, feed or food, not normally consumed as feed by itself, whether or not it has a direct or indirect nutritional value and is not classified as a medicine, which affects the characteristics of feedstuffs, feed, food, animal products, animal production or animal performance and is generally recognized or proven to be safe under the conditions of its intended use;

**"advertisement"** means any written, illustrated, visual or other descriptive material or oral statement, communication, representation or reference distributed to members of the public or brought to their attention in any other manner and which is intended to promote the sale of feeds or encourage the use thereof or draw attention to the nature, properties, advantages or uses thereof, and **"advertise"** has a corresponding meaning;

**"analyst"** means a person appointed as such in terms of section 29 of the Act;

**"animal"** means any mammal, bird, fish, reptile or amphibian which is a member of the phylum vertebrates;

**"auditor"** means a person appointed as auditor in terms of section 30 of the Act;

**"brand"** means a word, name, symbol, or device, or combination thereof which identifies the feed of a distributor and distinguishes it from that of others;

**"board"** means any board appointed by the Minister in terms of section 17 of the Act

**"bulk feed"** means a type of feed in solid or liquid state in a non-packed form;

**"contract feeder"** means a person who as an independent contractor, feeds feed to animal pursuant to a contract in terms of which the feed is supplied, furnished or otherwise provided to the person and whereby the person's remuneration is determined all or in part by feed consumption, mortality, profits or amount or quality of product;

**"council"** means the Technical Standard Council established by section two;

## Feeds Bill

**"custom formula feed"** means a feed which consist of a mixture of feed ingredients and each batch is manufactured according to the specific instructions of the feed purchaser;

**"distribute"** means to sell or offer for sale, exchange or barter feed or to supply, furnish or otherwise provide feed and distribution has a corresponding meaning;

**"distributor"** means any person who distributes feed ;

**"export"** means the delivery or supply of feed within the Republic for sole purpose of dispatching such feed to any destination outside the Republic;

**"facilities"**, means the premises where feed and/or pet food is manufactured, handled, controlled, packed, marked or labelled for the purposes of sale or distribution and has the same meaning as establishment;

**"feed"** means all liquid or solid materials or combination of materials, including custom formula feed prepared for any person or by that person, in accordance with his/her directions for his/her own use, medicated feed, additives and nutraceuticals, which are distributed or intended for distribution for use as feed or for mixing in feed for animals, and any substances which are not adulterated within the meaning of section 21 except the following-

- (a) straw, chaff, unground hay, silage, any cereal in the grain or any substance which would otherwise be an animal feed but has not been ground, crushed or gristed , unless the Minister has by notice in the *Gazette* declared such substance an animal feed for the purposes of this Act;
- (b) the private production of feed for research or teaching purposes;
- (c) the private domestic production of feed;
  - (i) for food-producing animals kept for domestic consumption; and
  - (ii) for animals not kept for food production.

**"feed"** means animal feed, pet food and speciality pet food;

**"feed ingredient"** means each of the constituent materials making up a feed;

**"herbal supplements"** means herbs, botanicals or herbal remedies which include phytonutrients and phytomedicines; and belong to the group of neutraceuticals;

**"inspector"** means a person appointed as an inspector in terms of section 30 of the Act;

**"label"** means a display of written, printed or graphic matter upon or affixed to the container in which a feed is distributed, or on the invoice or delivery slip with which a feed is distributed;

**"labelling"** means all labels and other written, printed or graphic matter upon a feed, any of its containers or wrappers, or accompanying such feed;

## Feeds Bill

"**manufacture**" means to grind, mix or blend, produce, or further process a feed;

"**mark**" means a mark as defined in section one of the Trade Marks Act, 1993 (Act No. 194 of 1993);

"**medicated feed**" means any feed which contains drug ingredients intended for the cure, mitigation, treatment or prevention of diseases of animals, or which contains drug ingredients intended to affect the structure or any function of the body of animals;

"**medicinal claim**" means any claim or statement made, used or purported regarding the suitability of any substance, for use as a medical substance in terms of the stock remedy definition and the Medicines and Related Substances Control Act, 1965 (Act No. 101 of 1965) definition;

"**Minister**" means the Minister of Agriculture;

"**neutraceutical**" means a formulation or formulations of isolated nutrients, dietary supplements, diets and herbal preparations or any substance that may be considered as food or part of food and that can provide medical or health benefits, including assisting in the prevention and treatment of diseases;

"**official sample**" means any sample of feed taken in accordance with the prescribed method by the Registrar or his delegate; or any other person designated by the Registrar or the agent of such a designated person;

"**officer**" means an officer as defined in section 1 of the Public Service Act, 1994 (Proclamation 103 published in *Government Gazette* 15791 of 3 June 1994);

"**pet**" means an animal belonging to a specie normally kept as a companion and nourished by man;

"**pet food**" means any feed prepared and distributed for consumption by pets;

"**prescribed**" means prescribed by regulation under this Act;

"**product name**" means the name of the feed which identifies it as a kind, class or specific use;

"**Registrar**" means the Registrar of animal feeds and rendering plants designated in terms of section 10

"**regulation**" means any regulation made under this Act;

"**rendering plant**" means a plant used for sterilization and rendering of bones or other substances derived from cattle, members of the horse family, sheep, goats, pigs, poultry, fish or ostriches, of any age, or from any vertebrate or invertebrate;

"**sell**" includes agree to sell, or to offer, advertise, keep, expose, transmit, convey, deliver or manufacture for sale or to exchange or to dispose of to any person in any manner for any consideration whatsoever, or to transmit, convey or deliver in

## Feeds Bill

pursuance of a sale, exchange or disposal as aforesaid; and "sale" has a corresponding meaning;

"**speciality pet**" means any domesticated animal pet normally maintained in a cage or tank, such as, but not limited to, gerbils, hamsters, canaries, psittacine birds, mynahs, finches, tropical fish, gold fish, snakes and turtles;

"**speciality pet food**" means any feed prepared and distributed for consumption by a speciality pet;

"**stock remedy**" means a substance intended or offered to be used in connection with domestic animals, livestock, poultry, fish or wild animals (including wild birds), for the diagnosis, prevention, treatment or cure of any disease, infection or other unhealthy condition, or for the maintenance or improvement of health, growth, production or working capacity, but excluding any substance in so far as it is controlled under the Medicines and Related Substances Control Act, 1965 (Act No. 101 of 1965) as amended ;

"**technical adviser**" means a technical adviser designated in terms of section 29 of the Act;

"**this Act**" means the Feeds Act and it includes any regulations there under;

"**tonne**" means a net weight of one thousand kilograms;

## **2. Establishment, powers and functions of Council.**

(1) There is hereby established a juristic person to be known as the Technical Standard Council, which may exercise the powers and shall perform the functions conferred upon or assigned to the Council by this Act.

(2) The Council may advise the Minister or furnish a report to the Minister on any matter referred to the Council by the Minister for consideration and arising from the application of this Act.

(3) The Council shall be a juristic person.

## **3. Constitution of Council.**

(1) The Council shall consist of seven (7) members appointed by the Minister.

(2) The members of the Council shall be persons who have practical knowledge and experience of one or more of the following, namely-

- (a) Animal nutrition;
- (b) Animal science;
- (c) Animal health and husbandry;

## Feeds Bill

- (d) Chemistry
- (e) Biochemistry; and
- (f) Microbiology

(3) The membership of the Council shall consist of one person from each of the categories listed in subsection (2).

(4) Whenever it is necessary to appoint a member of the Council -

- (a) the Minister shall, by notice in the *Gazette* as well as other appropriate media, call for the nomination of persons who comply with the criteria referred to in subsection (2);
- (b) the Minister shall establish a selection committee, consisting of not more than five members appointed by the Minister;
- (c) the Minister shall refer all nominations received to such selection committee;
- (d) the selection committee shall compile a short-list of candidates in accordance with the provisions of subsections (2) and (3);
- (e) the selection committee shall, within 30 days after the signing of the letters of appointment of its members, recommend to the Minister a list of not less than three candidates for each of the categories contemplated in subsection (2);
- (f) the Minister shall appoint such number of members as is required from the list of candidates recommended by the selection committee; and
- (g) within 30 days after making any appointment in terms of paragraph (f), the Minister shall inform the parliamentary committees in writing of the appointment made.

(5) Until the selection committee recommends candidates as contemplated in subsection (4) (e), the Minister may temporarily reappoint Council members whose terms of office have expired.

(6) Before the expiration of a member's term of office the procedure set out in subsection (4) shall be followed for the appointment of a successor.

#### **4. Period of office and remuneration of members of the Council.**

(1) A member of the Council shall, subject to the provisions of subsection 6(3), be appointed for a period of five years.

(2) The conditions of service of a member of the Council who is not an officer

## Feeds Bill

as defined in section 1 (1) of the Public Service Act, 1994 (Proclamation 103 of 1994), shall be determined by the Minister with the concurrence of the Minister of Finance.

(3) Any person whose period of office as a member of the Council has expired, shall be eligible for reappointment.

(4) The Minister shall give notice in the Gazette of the appointment of any member of the Council and the date from which his membership commences and, in the case of a member appointed to fill a casual vacancy on the Council, the period for which he is appointed.

(5) A member of the Council (other than a person who is in the full-time employment of the State) shall receive such remuneration and such allowances in respect of his services as a member of the Council or of any committee thereof, as the Minister in consultation with the Minister of Finance may determine.

#### **5. Chairman and vice-chairman**

(1) The Registrar shall be the chairman of the Council.

(2) The Minister shall designate another member of the Council.

(3) The vice-chairman shall Act as chairman during the absence of the Registrar.

(4) The vice-chairman, when acting as chairman shall have all the powers and discharge all the duties of the chairman.

#### **6. Disqualifications, and vacation of office by members of Council.**

(1) A member of the Council shall not be eligible for appointment into the Council if-

- (a) his estate is sequestrated or he is an unrehabilitated insolvent;;
- (b) he is mentally ill as defined in the Mental Health Act, 2002 (Act No. 17 of 2002)
- (c) he is convicted of any offence and is sentenced to imprisonment without the option of a fine;
- (d) he has resigned as a Council member previously;
- (e) he is removed from office in terms of subsection (2)

## Feeds Bill

- (f) he is not registered under the Natural Scientific Professions Act, 2003 (Act No. 27 of 2003) from carrying on his profession, while so disqualified;
- (g) he is not a South African citizen permanently resident in the Republic; or
- (h) he is employed in the animal feed and related industry.

(2) A member of the Council shall vacate his office if-

- (a) he becomes subject to any disqualification referred to in subsection (1);
- (b) he has been absent from more than two consecutive meetings of the Council without the Council's leave;
- (c) the Minister is satisfied that the member has violated the internal rules of conduct as determined by the Council and published in the Gazette.

(3) If the office of any member becomes vacant before the expiration of the period for which he or she was appointed, the Minister may appoint another person to hold office for the unexpired portion of the period for which his or her predecessor was appointed.

(4) A member of the Council or of a committee appointed in terms of section 9 shall declare his or her commercial interests related to the animal feed or related industry, which interests shall include, but shall not be limited to, any consultancy, paid or unpaid, any research grant from which the member directly or indirectly benefits, or any equity holding or any executive or non-executive directorship or any other payment or benefit in kind, and shall recuse himself or herself from any discussion or decision-making to which the said interests relate or may relate.

## **7. Meetings of the Council.**

(1) The council shall have its first meeting at the time and place determined by the Registrar. The first meeting of the Council shall be held at a time and place to be fixed by the Registrar, and all subsequent meetings shall be held at such times and places as may be determined by the Council.

(2) The Council meetings shall be held quarterly. In the event that the council fails at the close of such quarterly meeting, to determine the time and place for the next the quarterly meeting such time and place shall be determined by the Registrar.

(3) The Registrar may at any time call a special meeting of the Council to be held at such time and place as he may determine, and shall, upon a written request by the Minister or a written request signed by not less than three members of the Council, call a special meeting thereof to be held within thirty days after the date of receipt of such request, at such time and place as he may determine.



## Feeds Bill

**8. Quorum, majority decision and chairman's casting vote.**

(1) A majority of all the members of the Council shall form a quorum for any meeting of the Council.

(2) At all meetings of the Council the Registrar, or in his absence the vice-chairman shall preside. In the event that both the Registrar and the vice – chairman are absent from the meeting, the members present shall appoint one of them to preside at such meeting.

(3) The decision of a majority of the members of the Council present at any meeting thereof shall constitute a decision of the Council, and in the event of an equality of votes in regard to any matter, the person presiding at the meeting in question shall have a casting vote in addition to his deliberative vote.

(4) No decision or act done under the authority of the Council shall be invalid by reason only of an interim vacancy on the Council or of the fact that a person who is disqualified from being a member of the Council, or with respect to whose appointment the provisions of this Act have not been observed, sat or acted as a member at the time when the decision was taken or the Act was performed or authorised, if the decision was taken or the Act was performed or authorized by the requisite majority of the members of the Council present at the time who were entitled to sit and act as members.

**9. Appointment of executive committee and other committees.**

(1) The Council may subject to the approval of the Minister appoint-

- (a) from among its members an executive committee; and
- (b) such other committees as it may deem necessary, to investigate and report to it on any matter within the purview of the Council in terms of this Act.

(2) The executive committee may, subject to the directions of the Council, exercise all the powers and perform all the functions of the Council during periods between meetings of the Council, but shall not have the power to set aside or vary any decision of the Council. Any Action taken or decision made by the executive committee shall be subject to review at the first ensuing meeting of the Council.

(3) The Council may appoint such persons, including persons other than members of the Council, as it may deem fit, to be members of any committee appointed in terms of sub-section (1) (b).

## Feeds Bill

**10. Appointment of the Registrar.**

- (1) The Minister shall appoint a Registrar to administer the Act.
- (2) The Minister shall have all the powers to revoke such an appointment.
- (3) The Registrar shall exercise the powers and perform the duties assigned to or imposed upon by the Minister.
- (4)
  - (a) Any power conferred upon, function assigned to or duty imposed upon the Registrar may be exercised, performed or carried out by an officer, person or organization under a delegation or designation from or under the control or direction of the Registrar.
  - (b) Any decision made or instruction issued by any such officer, person or organisation may be withdrawn or amended by the Registrar, and shall, until it has been so withdrawn or amended, be deemed, except for the purpose of this paragraph, to have been made or given by the Registrar.

**11. Feeds register.**

The Registrar shall keep in the prescribed form a register, to be known as the additives register, in which he shall register all additives and neutraceuticals which the registration of, has been authorised by the Registrar. The Registrar shall enter into the abovementioned register, all such particulars in regard to such feeds; and the holder of the certificate of registration in respect of such a feed as are required by this Act to be entered therein.

**12. Registration of additives and neutraceuticals; and licensing of facilities and rendering plants.**

- (1)
  - (a) Application for registration of an additive, neutraceutical or licensing of facilities and rendering plants shall be made to the Registrar in the prescribed manner and shall be accompanied by the prescribed application fee.
  - (b) Any person applying for registration or licensing in terms of paragraph (a) shall supply or make available to the Registrar, in the manner and at the time and place that he determines, the samples and particulars that he/she requires.
  - (c) Once an application has been received for the licensing of a facility or rendering plant, the Registrar shall order an inspection or audit of the facilities or rendering plant before registration process can proceed.
  - (d) A distributor shall not be required to obtain a license to distribute a brand or product if the manufacturer is already licensed under subsection (3).

(2) If, after consideration of any such application and after such investigation and enquiry as the Registrar may deem it necessary, he is satisfied that -

## Feeds Bill

- (a) the additive or nutraceutical in respect of which registration is applied for:
- (i) is suitable and sufficiently effective for the purposes for which it is intended;
  - (ii) complies with such requirements as may be prescribed,
  - (iii) is not contrary to the public interest that it be registered, and
  - (iv) the establishment where it is manufactured is suitable for such manufacture,

he shall register such as feed;

- (b) the facilities in respect of which licensing is applied for:
- (i) is suitable and sufficiently effective for the purpose for which it is intended,
  - (ii) complies with such requirements as may be prescribed, and
  - (iii) it is not contrary to the public interest that such facility be licensed,

he shall licence such a facility; and

- (c) the Rendering plant in respect of which licensing is applied for:
- (i) is suitable and sufficiently effective for the purpose for which it is intended,
  - (ii) complies with such requirements as may be prescribed, and
  - (iii) that it is not contrary to the public interest that such rendering plant be licensed,

he shall register such rendering plant;

Provided that the Registrar may refuse an application for registration or licensing of feed or facility if any previous registration or licensing of such a feed, facility or rendering plant has been cancelled under section 12.

(3) Any registration or licensing under this section shall be subject to the prescribed and any additional conditions as may be determined by the Registrar and shall be valid for such period as may be prescribed, and the Registrar shall issue in respect of such registration or licence a certificate of registration or licensing to the person applying therefore.

- (4) (a) Any registration or licensing under this section may be renewed when the period for which it is valid has lapsed.
- (b) The provisions of subsections (1), (2) and (3) shall *mutatis mutandis* apply to the renewal of any registration or licensing.

## Feeds Bill

**13. Cancellation, refusal, revocation, suspension of registration or license.**

(1) The Registrar may cancel, revoke or suspend the approved registration or licence if is satisfied that the registration holder or licensee after being given an opportunity to appear for a hearings: -

- (a) has in connection with the registration concerned or licence issued contravened or failed to comply with a provision of this Act;
- (b) has contravened or failed to comply with the registration/ licence condition(s);
- (c) such feed:
  - (i) is not of the composition and efficacy specified in the application for registration thereof,
  - (ii) does not possess the chemical, physical and other properties so specified; and
  - (iii) does not comply with any requirements that may be prescribed;
- (d) the practices followed and equipment available at or in respect of the facility or the operation of the undertaking at such a facility are not suitable for the manufacture of the feed concerned;
- (e) the person managing such undertaking does not have sufficient knowledge of the relevant provisions of this Act or of the practices to be followed in the operation of such undertaking;
- (f) it is contrary to the public interest that the feed shall remain registered or the facility shall remain licensed; or
- (g) any incorrect or misleading advertisement is used in connection with such feed.

(2) The Registrar may cancel, revoke, suspend the licence of any rendering plant at any time if he/she is satisfied that -

- (a) a person has in connection with the licence concerned contravened or failed to comply with a provision of this Act;
- (b) a person has contravened or failed to comply with the licence condition(s);
- (c) the rendering plant does not comply with the prescribed conditions or is otherwise not effectively equipped for the sterilization of the substances referred to in the definition of "rendering plant";

## Feeds Bill

- (d) it is contrary to the public interest that the rendering plant remains registered.
- (e) the person managing such undertaking does not have sufficient knowledge of the relevant provisions of this Act or of the practices to be followed in the operation of such undertaking;
- (f) any incorrect or misleading advertisement is used in connection with rendering feed.

(3) The Registrar may cancel, revoke or suspend the license of any distributor at any time if he is satisfied that -

- (a) the distributor has contravened or failed to comply with a provision of this Act or a condition of his licence;
- (b) a distributor has contravened or failed to comply with the licence condition(s);
- (c) it is contrary to the public interest that the distributor shall remain licensed.

**14. Availability, lapse and return of certificate of registration or license.**

(1) The person to whom a certificate of registration or licence has been issued in terms of section 12(2) shall -

- (a) in the case of a feed and facility, cause that certificate of registration and licensing or a copy thereof to be available for inspection by the Registrar, inspector or auditor at all times at the establishment where such feed is manufactured or distributed; or
- (b) in the case of a rendering plant produce that license certificate or a copy thereof to the Registrar, inspector or auditor when he is so requested.

(2) The registration of any feed or licensing of any facility or rendering plant issued in respect of such registration or licence shall lapse -

- (a) if the person to whom that registration or license certificate has been issued, ceases to manufacture, distribute or sell the feed or to operate the facilities or rendering plant in question; or
- (b) if the facility in question is no longer used for the manufacture of such feed.

(3) When the registration of additive or neutraceutical or licensing of facility or rendering plant has lapsed in terms of subsection (2) or has been cancelled in terms of section 13, the certificate of registration or licensing in question shall, within the prescribed period, be returned to the Registrar by the person to whom it was issued.

## Feeds Bill

**15. Tonnage auditing fee; filling statement of tonnage and fees; penalty; verification of statements; disclosure of information.**

- (1) A licensee shall pay the Registrar a tonnage auditing fee-
- (a) The prescribed tonnage auditing fee shall be levied by the Registrar on each tonne of feed manufactured or distributed in the Republic;
  - (b) The auditing fee and tonnage shall be reported by the auditor to the Registrar on the forms furnished by the Registrar;
  - (c) A tonnage fee shall not be paid on a feed if payment was made by a previous distributor, or on feeds which are used as ingredients for the further manufacture of feeds on which a tonnage fee is to be paid by the same manufacturer.

(2) The Registrar may verify the accuracy of a volume sales tonnage statement required by subsection 1. Information furnished under this section shall not be disclosed by an employee of the department in a manner which divulges the business operations of a licensee.

**16. Furnishing of reasons for refusal of, determination of conditions on or cancellation of registration or license.**

If -

- (a) any application for registration in terms of this Act is refused;
- (b) conditions are determined under section 12(3) on registration or licensing; or
- (c) any registration is cancelled in terms of section 13,

the Registrar shall in writing furnish the applicant concerned or the person to whom the certificate of registration or licensing in question was issued, with the reasons for such refusal, determination of conditions or cancellation, as the case may be.

**17. Appeal against decision of Registrar.**

(1) A person who feels aggrieved by any decision referred to in section 13 may, within the prescribed period and in the manner prescribed and upon payment of the prescribed fees, lodge an appeal to the Minister against such decision.

(2) The Minister shall refer the appeal for consideration and decision to a board of which the members shall be appointed by him, and which shall consist of –

## Feeds Bill

- (a) one person designated as chairman on account of his knowledge of law; and
  - (b) three persons who in the opinion of the Minister command sufficient knowledge regarding the matters in issue when the appeal is considered.
- (3) Any appeal lodged in terms of subsection (1) shall be heard on the date and at the time and place fixed by the chairman of the board and he shall advise the appellant and the Registrar in writing thereof.
- (4) The chairman of the board may for the purposes of the decision of an appeal -
- (a) summon any person who, in his opinion,
    - (i) may give relevant information concerning the issues in the appeal or who has or
    - (ii) is suspected to have in his possession or custody or under his control any document which has any bearing upon the issues in the appeal,to appear before the board as a witness at a time and place specified in the summons, to be interrogated or to produce any document. The chairman may retain for examination any document so produced;
  - (b) administer an oath to or accept an affirmation from any person called as a witness at the hearing of the appeal;
  - (c) call any person summoned to appear at the hearing of the appeal as a witness and interrogate him and require him to produce any document in his possession or custody or under his control.
- (5) The procedure at the hearing of an appeal shall be determined by the chairman of the board in question.
- (6) Any person appealing in terms of this section and the Registrar may be represented at the hearing of such appeal by an advocate or an attorney.
- (7) If a person appointed under subsection (2) -
- (a) dies during the hearing of the appeal or so soon before the commencement of such hearing that the vacancy cannot be filled in time;
  - (b) is unable to act and another person cannot be appointed in time; or
  - (c) is, after the hearing has commenced, unable to continue therewith;

## Feeds Bill

the appellant and the Registrar may agree that the hearing be conducted by the remaining members. In the event where the member who has died or has become incapacitated was or is the chairman of the board, the Minister shall designate one of the remaining members to Act as chairman.

(8) (a) If the parties do not agree under subsection (7), the hearing shall be adjourned in order that the Minister may appoint a member, in accordance with subsection (2), to replace the member who has died or has become incapacitated.

(b) Where an appointment has been made in terms of paragraph (a) above, the hearing shall, if the parties so agree, be continued as from the stage at which the hearing was interrupted by the death or incapacitation of the member in question, or shall, if the parties do not so agree, be commenced *de novo*.

(9) The board may after hearing and considering the appeal -

(a) confirm, set aside or vary the relevant decision of the Registrar;

(b) order the Registrar to execute the decision of the board in connection therewith.

(10) The chairman of the board shall notify the appellant and the Registrar in writing of the decision of the board.

(11) If the board sets aside any decision by the Registrar, the prescribed fees paid by the appellant in respect of the appeal in question shall be refunded to him; if the board varies any such decision, it may in its discretion direct that the whole or any part of such fees be refunded to the appellant.

(12) A member of the board who is not in the full-time service of the State may be paid such allowances as the Minister may, with the concurrence of the Minister of Finance, determine.

#### **18. Order by the Registrar.**

(1) The Registrar may order animal feed manufacturers or rendering plant operators to discontinue use of certain equipment if he is of opinion that:

(a) any equipment used by any registered animal feed manufacturer or rendering plant operator for the purpose of manufacturing animal feeds or rendering is so unsuited for the manufacture of such a feed or rendering that the purpose for which the feed is intended may be defeated, or the purpose for rendering may be defeated.

#### **19. Manufacture and/or distribute or sell any feeds.**

(1) No person shall manufacture and/or distribute or sell any feed unless –



## Feeds Bill

- (a) the facility where the feed is manufactured and/or distributed is licensed; and the feed additive is registered; under this Act and the feed name or mark under which it is so sold is declared to the Registrar: Provided that the facility or feed additive in respect of which the period of validity of the registration has expired, the certificate of registration has been cancelled in terms of section 14 or has lapsed in terms of section 14(2) and which, before or on the date of such cancellation or lapse, was no longer under the control of, or owned by the person to whom that certificate of registration was issued may, subject to the provisions of section 20 be sold;
- (b) it is, subject to the provisions of paragraph (c) below, packed in such manner and mass or volume as may be prescribed;
- (c) the container in which it is sold, complies with the prescribed requirements and is sealed and labelled or marked in such manner as may be prescribed or, if it is not sold in a container, it is accompanied by the invoice referred to in section 24;
- (d) it is of the composition and efficacy specified in the application for registration thereof, possesses all chemical, physical and other properties so specified, and complies with the prescribed requirements; and
- (e) there is an auditable traceability system in place that can track and trace products from raw material through processing up to finished products manufacture.

**20. Prohibition on manufacture, acquisition, distribution, disposal, sale or use of certain feeds.**

- (1) The Registrar may by notice in the *Gazette* -
  - (a) prohibit the manufacture, acquisition, distribution, disposal, sale or use of feeds; or provided that the Minister may exempt any person from this prohibition subject to such conditions as may be specified in the notice or except under the authority of permit issued by the Registrar and in accordance with such conditions as may be specified in such permit;and may in like manner repeal or amend any such notice.
- (2) Any prohibition issued under subsection (1) may apply -
  - (a) throughout the Republic or in one or more specified areas;
  - (b) to any person or to persons belonging to any specified class or group of persons or to persons other than persons belonging to any such class or group of persons; or

## Feeds Bill

- (c) in respect of all or one or more classes or kinds of animal feeds.

(3) Any condition referred to in subsection (1) shall not be subject to any limitations of whatever nature, and such conditions may differ in respect of different areas, persons or classes or groups of persons.

**21. Feed deemed to be adulterated.**

- (1) A feed is, or deemed to be adulterated and in violation of this Act if-
- (a) it bears a poisonous or deleterious substance which may render the feed injurious to health, except if the substance is not an added substance in which case the feed shall not be considered adulterated under this section if the quantity of the substance does not ordinarily render the feed injurious to health;
  - (b) it bears or contains an unapproved food, medication or stock remedy;
  - (c) any valuable constituent has been in whole or in part omitted or abstracted there from or any less valuable substance substituted thereof;
  - (d) it contains any prohibited substance or exceeds the tolerance established on restricted substances.

**22. Feed deemed to be misbranded.**

A feed is deemed to be misbranded and in violation of this Act if any of the following occur-

- (a) its labelling is false or misleading in any particular way or manner;
- (b) it is distributed under the name of another feed;
- (c) it is not labelled in such as manner as may be prescribed; and
- (d) it purports to be or is represented as a feed, or it purports to contain or is represented as containing a feed ingredient, unless the feed ingredient conforms to the definition prescribed in this Act;
- (e) a word, statement, or other information required by or under authority of this Act to appear on the label or labelling is not prominently placed thereon with the conspicuousness as compared with other words, statements, design, or devices in the labelling and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

## Feeds Bill

**23. Use of rendering plant.**

No person shall use any rendering plant unless such plant has been registered in terms of section 12.

**24. Invoices required in case of sale or distribution of feeds not in a container.**

Any person who sells or distributes any feed not in a container, shall give to the purchaser at the time of delivery or send to him at the time of despatch an invoice setting forth such particulars in respect of such feed as may be prescribed.

**25. Furnishing of particulars before administration of feeds.**

(1) Any person who at the request of the owner or the person in control of an animal administers for consideration any feed to the said animal, shall, before such administration, notify such owner or person of –

- (a) the purpose of such administration;
- (b) the registered name and number of the additive, neutraceutical or facility licence number where such a feed was manufactured before it is so administered;
- (c) the precautions to be taken before, during and after such administration;

(2) The notification referred to in subsection (1) may be furnished verbally provided it is confirmed in writing within three days after the administration concerned.

**26. Manufacture and sale of feeds containing substances derived from animal carcasses.**

No person shall manufacture or sell any feed containing bone or any other substance derived from an animal carcass, unless such bone or substance –

- (a) has been produced from a registered facility under the Meat and Safety Act of 2000 (Act No.40 of 2000); and the such bone or substance is fit for human consumption; or
- (b) has been sterilized in such manner as may be prescribed; or
- (c) has, subject to the provisions of section 31, been imported in terms of a permit issued under the Animal Diseases Act, 1984 (Act No. 35 of 1984) as amended.

## Feeds Bill

**27. Recall of adulterated or misbranded feed**

(1) A feed manufacturer who voluntarily recalls a feed which has been introduced into the channels of trade beyond his/her control, and which supports the conclusion that the feed processed by him is adulterated or misbranded in a manner which would create a risk to animals or to the public health, shall immediately notify the Registrar of the recall and the reasons therefore.

(2) Information or a statement exclusively derived from the notification required under this section, except for information contained in records required to be maintained under this Act, shall not be used as evidence in a proceeding brought against such person pursuant to this Act. Provided that such notification occurred prior or concurrently with the contravention of the Act.

(3) The notification required in terms of this section shall contain a clear description of the adulterated or misbranded feed, an evaluation of the risk related thereto, and a statement of the measures to be taken to protect animals or the public from the risk.

(4) A feed manufacturer, distributor or trader who sells a feed which has been introduced into the channels of trade that is manufactured from unlicensed facilities or an additive and/or nutraceutical that is not registered in terms of this Act, or adulterated and/or misbranded in a manner which would create a risk to animals or to the public health, shall immediately notify the Registrar and recall the feed in question at his/her own expense.

**28. Exclusion of any feed from operation of the Act.**

The Minister may by notice in the *Gazette* exclude, subject to such conditions as he/she may determine, any feed from the operation of any or all of the provisions of this Act.

**29. Designation of technical advisers and analysts.**

For the purpose of this Act, the Minister may from time to time designate persons, including officers, as -

- (a) technical advisers who shall advise the Registrar in regard to matters referred to them by the Registrar; and
- (b) analysts to analyse samples of feeds sent to them by the Registrar, and to report thereon in the form and manner prescribed.

**30. Inspectors and auditors**

- (1) The Registrar may in general or for specific purposes-
  - (a) delegate an employee as an inspector; or
  - (b) delegate or designate a person, institution or organisation as an auditor for the purposes of this Act.

## Feeds Bill

(2) The Registrar may withdraw the delegation or designation referred to in subsection (1).

(3) An inspector or auditor shall be furnished with a certificate stating that he has been delegated or designated in general or for a specific purpose as an inspector or auditor, as the case may be, for the purposes of this Act.

(4) The certificate referred to in subsection 3 above shall be signed by the Minister.

(5) The Registrar may pay to an auditor the compensation fee, remuneration or allowances as the Minister may determine with the concurrence of the Minister of Finance.

(6) Institutions or organisations appointed under subsection (1) shall be accredited by the South African National Accreditation System as auditors for feeds, feed business and rendering plants.

(7) An inspector or auditor shall, subject to the provisions of his/her delegation or designation by the Registrar, -

- (a) enter upon and examine any place, premises or vehicle in respect of which he has reason to believe that there is manufactured, processed, treated, prepared, graded, classified, packed, marked, labelled, held, bottled, removed, transported, exhibited, sold or used any feed and examine or test any such feed or any ingredient thereof;
- (b) examine all books and documents on or in any place, premises or vehicle referred to in paragraph (a) in respect of which he has reasonable grounds for believing that they relate to any feed or an ingredient thereof, and make copies of or extracts from such books or documents;
- (c) examine any operations or processes carried out at any place or premises referred to in paragraph (a) in connection with the manufacture, processing, treatment, preparation, grading, classification, packing, marking, labelling, holding, bottling, removal, transport, exhibition, selling or use of any feed and demand from the person in charge of such operations or processes, or the owner of or the person having the custody of any feed or an ingredient thereof, any relevant information or explanation relating to any such operations or processes, or feed or ingredient;
- (d) demand from the owner or any person having the custody of any book or document referred to in paragraph (b) an explanation relating to any record or entry therein;
- (e) seize any book, document, feed and feed additive which may furnish proof of an offence in terms of this Act, or any quantity of any feed in respect of which there is reason to believe that any such

## Feeds Bill

offence has been committed, and remove from or leave on or in the place, premises or vehicle in question, any book, document, feed, or any quantity thereof, which has so been seized, and may in his discretion place on such book, document, feed or the container thereof, such identification mark or seal as he may deem necessary;

- (f) take samples or cause samples to be taken of any feed or an ingredient thereof, and open any container which contains or is suspected to contain anything used or intended for use in the manufacture, processing, treatment, preparation, grading, classification, packing, marking, labelling, holding, bottling, removal, transport, exhibition or sale of any feed and examine, analyse, grade or classify such samples, or cause such samples to be examined, analysed, graded or classified.

(8) Where the inspector or auditor carries out any examination in terms of subsection (7) in the presence of any person affected thereby, he shall first produce his written authority to such person.

(9) Any sample taken in terms of subsection (7) (f) shall –

- (a) be taken in accordance with the prescribed method;
- (b) be taken in the presence of the owner or the person having custody of that feed or ingredient thereof, or if such owner or person is not available, in the presence of any other witness; and
- (c) in the presence of such owner or person, or such witness, be divided into three parts, and each part shall be packed in a suitable container and sealed with a seal and be labelled or marked in such manner as the nature thereof permits, so that such sample may be readily identified.

(10) One part each of the sample which has been thus divided shall -

- (a) be handed or forwarded by registered post to such owner or person;
- (b) together with a certificate in the prescribed form be forwarded to an analyst who shall as soon as practicable test, examine or analyse the said part in accordance with the methods which the Registrar may determine, and the result of such test, examination or analysis shall be recorded by such analyst on the prescribed form and be submitted to the Registrar; and
- (c) be retained by the Registrar.

## Feeds Bill

(11) The owner of anything from which any sample referred to in subsection (7)(f) was taken, may claim from the Registrar an amount equal to the market value of such sample.

**31. Import of feeds.**

(1) No person shall import any feed into the Republic unless -

(a) such feed:

- (i) is registered in terms of this Act,
- (ii) is of the composition and efficacy specified in the application of registration thereof,
- (iii) possesses all chemical, physical and other properties so specified and complies with the requirements prescribed in respect thereof; and
- (iv) is packed in a sealed container which is marked or labelled in the prescribed manner with the prescribed particulars;

(b) in the case of a feed containing bone or any other substance derived from the carcass of an animal, a permit referred to in section 26(c) has been issued in respect thereof.

(2) Notwithstanding the provisions of subsection (1) the Registrar may, in his/her discretion and on such conditions as he/she may determine, in writing permit the import of any consignment of any feed which does not comply with the requirements referred to in subsection (1)(a).

(3) Imported feed shall -

- (a) only be imported through a prescribed port of entry;
- (b) if the Registrar directs that a sample thereof be taken, not be removed from any such port or place without the written authority of the Registrar;
- (c) if the Registrar thus directs, be made available for examination and the taking of a sample at any such port or place in the prescribed manner; and
- (d) if a sample thereof has thus been taken, not be sold in the Republic except on the written authority of the Registrar and subject to the conditions specified therein.

(4) The provisions of section 30 related to samples shall *mutatis mutandis* apply with reference to a sample taken in terms of this section.

## Feeds Bill

- (5) (a) If any feed which is subjected to the provisions of subsection (3)(b), is found to comply with the requirements of this Act, no rent charges shall be payable by the importer in respect:
- (i) of the period in which it could not be so removed, or
  - (ii) where transportation administration is required to deliver or to forward that feed in respect of any portion of the period in question which is subsequent to the presentation to the transportation administration of a delivery order, or a forwarding order, as the case may be.
- (6) (a) If any feed has been imported contrary to the provisions of this section, the Registrar shall give the importer the following options for the disposal of such imported feed:
- (i) at the expense of such importer the feed be removed by the importer from the Republic within such period as the Registrar may determine; or
  - (ii) the feed be forfeited to the State and be either destroyed or otherwise disposed of as the Registrar may direct;
- (b) Any costs incurred by the State in connection with the destruction or disposal of any feed in terms of the provisions of paragraph (a), shall be recovered from the importer concerned.

**32. Preservation of secrecy.**

Any person who discloses except to the Minister or to any other person for the purpose of the performance of his duties or the exercise of his functions under this Act or when required to do so by any court of law or under any law, any information acquired by him in the exercise of any duty or function under this Act, in relation to the business or affairs of any other person shall be guilty of an offence and liable on conviction to a fine not exceeding 10% of business turn over or imprisonment for a period not exceeding ten years.

**33. Offences and penalties.**

- (1) Any person who -
- (a) fails to comply with the provisions of section 20 and section 27(1);
  - (b) obstructs or hinders the Registrar, any inspector, any auditor, any technical adviser or any analyst in the exercise of his or her powers or performance of his duties under this Act;
  - (c) fails to make any statement or give any explanation if he is requested thereto by the Registrar in the exercise of his powers or the performance of his duties under this Act;



## Feeds Bill

- (d) fails to comply with an order issued under section 31;
- (e) contravenes or fails to comply with the provisions of section 18, 19, 21 or 22 or with any condition contemplated in section 12(3), 31(2) or 31(3)(d);
- (f) acquires, disposes of, sells or uses feeds contrary to a prohibition issued under section 20;
- (g) tampers with any sample taken in terms of this Act, or with anything seized in terms of this Act;
- (h) makes use, in connection with any feed of any certificate, invoice or other document issued in respect of any other feed which is no longer valid;
- (i) makes any false or misleading statement in connection with any feed -
  - (i) in any application for the registration thereof;
  - (ii) in any invoice issued in terms of section 24;
  - (iii) in any advertisement thereof;
  - (iv) in the course of the sale thereof;
  - (v) in an application for a permit referred to in section 20 (1)(a);
  - (vi) in a notice referred to in section 25;
  - (vii) regarding the permit referred to in section 31(1)(b);
- (j) sells any feed in the container upon / on which a false or misleading statement in connection with such contents is printed or written;
- (k) sells any feed which is not of the kind, nature, composition, strength, potency or quality described or represented when so sold;
- (l) having been duly summoned in terms of section 17(4)(a) to appear before the board, fails without lawful excuse so to appear;
- (m) having appeared as a witness before the board, refuses without lawful excuse to be sworn or to make affirmation or to produce any document or answer any question which he may be lawfully required to produce or answer;
- (n) fails to comply with the provisions of section 14(1) or (3);

shall be guilty of an offence and liable on conviction -

- (ii) in the case of a contravention under paragraph (a), (b), (c) or (l) to a fine not exceeding five percent of business turn over or imprisonment for a period not exceeding five years or to both such fine and such imprisonment; and

## Feeds Bill

- (ii) in the case of a contravention under paragraph (b), (c), (e), (f) (g), (h), (i), (j) or (k) to a fine not exceeding ten percent of business turnover or imprisonment for a period not exceeding ten years or to both such fine and such imprisonment;

(2) The court convicting any person of any offence under this Act, may, upon the application of the prosecutor, declare any feed in respect of which the offence has been committed and all feeds of a similar nature to that in respect of which such person has been convicted, and of which such person is the owner, or which are in his possession, to be forfeited to the State.

(3) All feeds forfeited under this Act shall be destroyed or otherwise disposed of as the Registrar may direct at the cost of the offender.

**34. Jurisdiction of magistrate's court.**

Notwithstanding anything to the contrary in any other law, a magistrate's court shall have jurisdiction to impose any penalty prescribed by this Act.

**35. Procedure and evidence.**

- (1) In any criminal proceedings under this Act -
  - (a) any quantity of a feed in or upon any premises, place, vessel or vehicle at the time a sample thereof is taken pursuant to the provisions of this Act shall, unless the contrary is proved, be deemed to be of the same composition, to have the same degree of efficacy and to possess in all other respects the same properties as that sample;
  - (b) Any person who is proved to have tampered with any sample shall be deemed to have acted with fraudulent intent unless the contrary is proved;
  - (c) a certificate stating the result of an analysis or test carried out in pursuance of the provisions section 30(3) purporting to be signed by the analyst who carried out such analysis or test shall be accepted as *prima facie* proof of the fact stated therein;
  - (d) any statement or entry contained in any book or document kept by any manufacturer, importer or owner of a feed, or by the manager, agent or employee of such person, or found upon or in any premises occupied by, or any vehicle used in the business of such person shall be admissible in evidence against him as an admission of the facts set forth in that statement or entry, unless it is proved that the statement or entry was not made by such person, or by any manager, agent or employee of such person in the course of his work as manager, or in the course of his agency or employment.

## Feeds Bill

**36. Special defence in case of prosecutions.**

(1) It shall be a sufficient defence for a person charged with the sale of any feed in contravention of section 19(1)(d) if he proves to the satisfaction of the court that:

- (a) he purchased such feed under a registered name or mark as being the same in all respects as the article which he purported to sell;
- (b) he had no reason to believe at the time of the sale that it was in any respect different from such article;
- (c) he sold it in the original container and in the state in which it was when he purchased it; and
- (d) the container thereof complied with the prescribed requirements and was sealed and labelled or marked in the prescribed manner with the prescribed particulars.

**37. Acts or omissions by manager, agent or employee.**

(1) Whenever any manager, agent or employee of any manufacturer, importer or owner of a feed Acts or omits to do any act which it would be an offence under this Act for such manufacturer, importer or owner to do or omit to do, and unless it is proved that –

- (a) in doing or omitting to do that Act the manager, agent or employee was Acting without the connivance or the permission of the manufacturer, importer or owner;
- (b) all reasonable steps were taken by the manufacturer, importer or owner to prevent any act or omission of the kind in question; and
- (c) it was not under any condition or in any circumstance within the scope of the authority or in the course of the employment of the manager, agent or employee to do or to omit to do acts whether lawful or unlawful of the character of the Act or omission charged,

such manufacturer, importer or owner, as the case may be, shall be presumed to have done or omitted to do that act and be liable to be convicted and sentenced in respect thereof. The fact that such person issued instructions forbidding any act or omission of the kind in question shall not, of itself, be accepted as sufficient proof that he took all reasonable steps to prevent the act or omission.

(2) Whenever any manager, agent or employee of any such manufacturer, importer or owner does or omits to do an act which it would be an offence under this Act for the manufacturer, importer or owner to do or omit to do, he shall be liable to be committed and sentenced in respect thereof as if he were the manufacturer, importer or owner;

## Feeds Bill

(3) Any such manager, agent or employee may be so convicted and sentenced in addition to the manufacturer, importer or owner.

**38. Regulations.**

- (1) The Minister may make regulations -
- (a) prescribing the manner in which additives and neutraceuticals may be registered or facilities and rendering plants may be licensed, the manner in which any such registrations or licenses may be renewed and the information to be furnished and the fees to be paid with any application for registration or licensing and renewal of registration or licenses;
  - (b) prescribing the description and conditions under which any substance may be registered, labelled, imported or sold as a feed under any particular name or mark;
  - (c) prescribing the manner in which and the time within which an appeal under section 17 must be noted and prosecuted;
  - (d) prescribing the particulars to be set forth in any invoice to be furnished under section 24;
  - (e) prescribing the composition, efficacy, chemical, physical or other property required in respect of any substance in order that it may be imported, sold or registered as a feed, as the case may be;
  - (f) prescribing the limits within which any feed may be deficient in any of its ingredients and the proportion in which any preservative, antiseptic or other constituent may be present therein;
  - (g) prescribing requirements as to the mass and volume and containers in which feeds shall be packed, the manner in which they shall be packed into such containers, the manner in which such containers shall be sealed and labelled or marked and the particulars which shall appear on such labels and containers;
  - (h) prescribing the processes by which feeds, or substances used in the manufacture of feeds shall be sterilized, and the manner of inspection of rendering plants;
  - (i) prescribing the requirements with which any establishment shall comply, the practices which shall be followed in the operation of any undertaking at any establishment, the facilities which shall be available at any establishment, and the records to be kept and the information to be furnished in respect of any establishment and the operation of any undertaking at any establishment;

## Feeds Bill

- (j) prescribing the records to be kept and the returns to be rendered in respect of registered, licensed facilities and rendering plants;
- (k) for preventing the adulteration of feeds or the tampering with containers thereof;
- (l) prescribing the methods to be employed, the fees to be paid, and the certificates to be issued in respect of the examination, analysis or test of samples taken under this Act;
- (m) for preventing the use of false or misleading statements in advertisements, packaging inserts and labels of feeds;
- (n) requiring any person who has in his possession or under his control any feeds to keep records relating thereto in the form and manner prescribed, and to render returns in the form and manner and the times prescribed;
- (o) prohibiting the disposal, acquisition or use of any feed as a fertilizer;
- (p) prescribing how feeds shall be labelled and the approval procedure for feed labels; and
- (q) in respect of any other matter under this Act which is to be prescribed, and generally for the efficient carrying out of the objects and purposes of this Act.

(2) Different regulations may be made under this section in respect of different classes or kinds of feeds, and in respect of different kinds of facilities and different classes or groups of persons.

(3) Any regulations made under this section may prescribe penalties for any contravention thereof or failure to comply therewith, but not exceeding the maximum penalty prescribed by section 33.

(4) Before any regulations are made under this section, such regulations shall be published by the Minister in the *Gazette* together with a notice intimating that it is proposed to issue such regulations as regulations under this section within a stated period, but not less than eight weeks as from the date of the said publication, and inviting interested persons to submit any objections to or representations concerning the proposed regulations: Provided that, if the Minister thereafter determines on any alterations in the regulations published as aforesaid, as a result of any objections or representations submitted thereafter, it shall not be necessary to publish such alterations, before finally issuing the regulations in terms of subsection (1).

(5) Any regulation involving financial matters shall be made in consultation with the Minister of Finance.

## Feeds Bill

**39. Limitation of liability.**

Except where it is otherwise expressly provided for in this Act, no compensation shall be payable by the State, the Minister or the Registrar in respect of any Act done in good faith under this Act.

**40. Repeal.**

This Act repeals the Fertilizers, Farm Feeds, Agricultural Remedies and Stock Remedies Act, No. 36 of 1947 in so far as it relates to Farm Feeds and Sterilizing Plants.

**41. Short title.**

This Act shall be called the Feeds Act