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DEPARTMENT OF THE PRIME MINISTER

No. 619.

9 April 1976.

It is hereby notified that the State President has assented to the following Act which is hereby published for general information:—

No. 53 of 1976: Plant Improvement Act, 1976.

DEPARTEMENT VAN DIE EERSTE MINISTER

No. 619.

9 April 1976.

Hierby word bekend gemaak dat die Staatspresident sy goedkeuring geheg het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

No. 53 van 1976: Plantverbeteringswet, 1976.

PLANT IMPROVEMENT ACT, 1976

Act No. 53, 1976

ACT

To provide for the registration of establishments from which the sale of certain plants or the cleansing, packing and sale of certain propagating material may be undertaken; to prescribe the conditions subject to which such plants or propagating material may be sold for the purposes of cultivation; to provide for the recognition of certain varieties of plants; for a system of certification of plants and propagating material with the object of maintaining the quality of certain plants and propagating material, and ensuring the usefulness of the products thereof for agricultural and industrial purposes; and for the control of the import and export of certain plants and propagating material; and to provide for incidental matters.

(English text signed by the State President.)
(Assented to 29 March 1976.)

BE IT ENACTED by the State President, the Senate and the House of Assembly of the Republic of South Africa, as follows:—

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

Definitions.

- (i) "advertise" means to distribute to members of the public or to bring to their notice in any manner whatsoever any written, illustrated, visual or other descriptive material, oral statement, communication, representation or reference with the intention to promote the sale of any plant or propagating material, or to encourage the use thereof or to draw attention to the nature, properties, advantages or uses thereof or to the manner in which or the conditions on which it may be purchased or otherwise be acquired; (i)
- (ii) "board" means the board referred to in section 32; (xiii)
- (iii) "certified" means certified in terms of a scheme; (vii)
- (iv) "cleansing" means the treatment or processing of propagating material, either manually or mechanically, in order to improve the general quality thereof; (xviii)
- (v) "denomination", in relation to a variety entered in the varietal list, means the generic name for that variety; (iii)
- (vi) "department" means the Department of Agricultural Technical Services; (iv)
- (vii) "establishment" means premises—
 - (a) on which the business of a nursery is conducted; or
 - (b) on which the cleansing, prepacking or sale of propagating material is undertaken, and which is registered in terms of this Act; (xi)
- (viii) "kind of plant" means all related genera, species or subspecies of a plant which are known by the same common name; (xix)
- (ix) "Minister" means the Minister of Agriculture; (x)

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- (x) "nursery" means a business from which plants are sold; (ix)
- (xi) "officer" means an officer as defined in section 1 of the Public Service Act, 1957 (Act 54 of 1957); (ii)
- (xii) "owner or occupier", in relation to an establishment, means the person to whom a certificate of registration in respect of an establishment has been issued under this Act and who is the owner or lessee of the establishment or who otherwise has the right of management, care, control or use thereof; (vi)
- (xiii) "pack" means pack or cause to be packed for sale; (xxiii)
- (xiv) "plant" means any tree, shrub or vegetation and includes any live part thereof but not any propagating material or a derivation thereof which is used for a purpose other than the cultivation of the plant; (xii)
- (xv) "prepack" means to pack propagating material which complies with the prescribed requirements, in the mass or quantity prescribed in respect thereof, in containers which comply with the prescribed requirements and which are sealed and branded, marked or labelled in the prescribed manner with the prescribed information; and "prepacking" has a corresponding meaning; (xxiv)
- (xvi) "prescribed" means prescribed by regulation; (xxv)
- (xvii) "propagating material" means any bulb, tuber, rhizome, shoot, bud or other vegetative part of a plant which reproduces asexually, and includes, unless otherwise indicated, the seed of a plant; (xxvi)
- (xviii) "register" means the register kept in terms of section 4; (xiv)
- (xix) "registrar" means the officer designated under section 3 as Registrar of Plant Improvement, and includes an officer acting under a delegation from or under the control or direction of the registrar; (xv)
- (xx) "regulation" means a regulation made under this Act; (xvi)
- (xxi) "scheme" means a scheme established in terms of section 23; (xvii)
- (xxii) "sell" includes agree to sell, or to offer, advertise, keep, expose, transmit, send, convey or deliver for sale, or to exchange or to dispose of to any person in any manner for a consideration; and "sold" and "sale" have corresponding meanings; (xxii)
- (xxiii) "this Act" includes the regulations; (viii)
- (xxiv) "unit for certification" means an area of land which is registered in terms of a scheme and on which plants and propagating material of the kinds and varieties to which the scheme applies, are propagated or multiplied in accordance with the provisions of the scheme; (v)
- (xxv) "varietal list" means the list kept in terms of section 15; (xxi)
- (xxvi) "variety" means any cultivar, clone, breeding line or hybrid of a kind of plant which can be cultivated. (xx)

2. (1) The provisions of this Act shall apply with reference to any kind of plant which the Minister by notice in the *Gazette* declares to be a kind for the purposes of this Act.

(2) Different kinds of plants may be thus declared with respect to different provisions of this Act.

3. (1) The Minister shall designate an officer in the department as the Registrar of Plant Improvement, who shall exercise the powers, perform the functions and carry out the duties conferred upon, assigned to or imposed upon the registrar under this Act.

Designation of registrar.

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(2) The registrar shall exercise his powers, perform his functions and carry out his duties subject to any instructions issued by the Minister.

(3) (a) Any power conferred upon, function assigned to or duty imposed upon the registrar may be exercised, performed or carried out by the registrar personally or by an officer under the delegation, control or direction of the registrar.

(b) Any decision made or order given by any such officer may be withdrawn or amended by the registrar, and shall, until it has been so withdrawn or amended, be deemed, except for the purposes of this paragraph, to have been made or given by the registrar.

(4) The officer designated as registering officer in terms of section 2 of the Seeds Act, 1961 (Act 28 of 1961), shall be deemed to have been designated as Registrar of Plant Improvement in terms of this section.

4. (1) The registrar shall keep a register of establishments registered in terms of this Act in which shall be entered— Register of establishments.

- (a) the kind of business conducted or undertaken at every establishment;
- (b) the name and address of the owner or occupier of every establishment;
- (c) the address in respect of the premises of every establishment;
- (d) the date of inception of the registration of each establishment;
- (e) the date on which the registration of an establishment ceases to exist and the reason therefor; and
- (f) such other particulars regarding the registration of an establishment as the registrar may, subject to the provisions of this Act, deem necessary.

(2) The register shall, upon payment of the prescribed fee, be open for inspection at the office of the registrar during office hours.

(3) The registrar shall furnish, at the request of any person and on payment of the prescribed fee, a copy of any particulars in the register or a certificate in respect thereof.

5. (1) The register shall be *prima facie* evidence of all matters directed or authorised by this Act to be noted therein. Register to be evidence.

(2) A certificate by the registrar to the effect that an entry has or has not been made in the register or that any other thing authorised by this Act to be done, has or has not been done, shall be *prima facie* evidence of the matters specified in that certificate.

(3) A copy of an entry in the register or an extract from the register, certified by the registrar, shall be admitted in evidence in any court without further proof or production of the register.

6. (1) (a) No person shall conduct the business of a nursery or undertake the business of cleansing, prepacking or selling propagating material unless such business is registered as an establishment under this Act or is exempt from registration under section 10. Prohibition of use of establishment unless registered.

(b) The registration of a cleaner or seller of seed under section 3 of the Seeds Act, 1961 (Act 28 of 1961), or of a nursery under section 2 of the Agricultural Pests Act, 1973 (Act 3 of 1973), shall, if current at the date of commencement of this Act, remain valid until 31 August first following on the date of expiration of such registration.

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(2) The owner or occupier of a registered establishment shall not conduct on or from the premises any activity in respect of which registration is required under this Act unless such activity is specified in the relevant certificate of registration as an activity which may be undertaken by such establishment, and such owner or occupier shall comply with any condition specified in such certificate.

7. (1) An application for the registration of a business as an establishment under this Act shall be made to the registrar by the owner or occupier of the establishment in the form and manner prescribed, and shall be accompanied by the application fee prescribed for the kind of establishment in question. Registration of establishment.

(2) The registrar shall consider an application referred to in subsection (1) and may undertake any investigation in connection therewith which he may deem necessary.

(3) If the registrar, after considering an application under subsection (2), is satisfied that the business may be registered as an establishment in terms of this Act, he shall register the establishment and—

- (a) issue a certificate of registration in respect thereof to the person who applied for the registration; and
- (b) enter the applicable particulars referred to in section 4 (1) in the register.

(4) The registration of an establishment under subsection (3) shall not necessarily imply that the establishment conforms to the requirements referred to in section 9 (2), and the registrar may, if he deems it necessary, make the registration subject to such conditions as he may in each case determine.

(5) If the registrar refuses the registration of a business as an establishment, he shall in writing advise the person who applied for the registration of his decision and of the grounds on which it is based.

8. The registration of an establishment shall, subject to earlier termination under this Act, be valid from the date of issue of the certificate of registration under section 7 (3) to 31 August first following on such date of issue; and shall be renewable. Term of registration.

9. (1) The person to whom a certificate of registration has been issued under section 7 (3) may, before the expiry of the registration, apply to the registrar in the form and manner prescribed, for the renewal of the registration, and the application shall be accompanied by the renewal fee prescribed for the kind of establishment in question. Renewal of registration.

(2) The registrar may renew the registration if he is satisfied—

- (a) that the establishment in question conforms to any requirements prescribed in respect thereof;
- (b) that the practices employed in the operation of the establishment conform to the requirements prescribed in respect of that establishment;
- (c) that the prescribed facilities for the kind of establishment in question are available at the establishment;
- (d) that the person in direct control of the establishment has sufficient knowledge of the practices to be employed in the operation thereof, and of the relevant provisions of this Act;
- (e) that the prescribed records regarding the propagating material handled at the establishment are being kept, and that such information in connection therewith as he may require has been furnished to him; and
- (f) that any condition contemplated in section 7 (4) or any decision or direction resulting from an inspection of the establishment in terms of section 25 has been complied with.

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(3) The registrar may renew the registration of an establishment subject to such conditions as he may in each case determine.

(4) If the registrar renews the registration of an establishment—

- (a) he shall notify the person who applied for such renewal in writing thereof, and may, if he deems it necessary, issue a fresh certificate of registration in respect thereof; and
- (b) he shall enter the applicable particulars referred to in section 4 (1) in the register.

(5) The renewal of the registration of an establishment shall be valid until 31 August of the year following the year in which the renewal is effected, and an application for the further renewal thereof shall be made annually in accordance with the provisions of subsection (1).

(6) The registrar shall, subject to the payment of such additional fee as may be prescribed, consider any application for the renewal of a registration received after 31 August but not later than 30 September in any particular year.

(7) If the registrar refuses the renewal of the registration of an establishment, he shall advise the person who applied for the renewal in writing of his decision and of the grounds on which it is based.

10. (1) The Minister may by notice in the *Gazette* and on such conditions as he may specify in the notice, exempt from registration under section 6 any specific nursery or nurseries in general. Exemption from registration.

(2) A business from which only propagating material prepacked at a registered establishment is sold, is exempt from registration if such propagating material is sold in the original unopened containers in which it was thus prepacked.

11. (1) The registrar may at any time terminate the registration of an establishment if he is satisfied that a requirement referred to in section 9 (2) or a condition determined under section 7 (4) or 9 (3) has not been complied with. Termination of registration.

(2) If the registrar terminates the registration of an establishment in terms of this section, he shall in writing advise the person to whom the certificate of registration in respect thereof was issued of his decision and of the grounds on which it is based.

12. (1) (a) The owner or occupier of an establishment shall cause the certificate of registration issued in respect thereof to be displayed at all times in a prominent position at or near the main entrance to the establishment. Display, lapsing and return of certificate of registration.

(b) Where the business of an establishment is conducted on premises separated from one another, a reproduction of such certificate shall be thus displayed at the main entrance to each of such premises.

(2) The registration of an establishment shall lapse—

- (a) if the person to whom the certificate of registration in respect thereof was issued ceases to be the owner or occupier of the establishment;
- (b) if the premises in question cease to be used for the purposes of an establishment; or
- (c) if an application for the renewal thereof is not received by the registrar on or before 30 September in any particular year.

(3) (a) If a person to whom a certificate of registration in respect of an establishment has been issued dies or is declared by any court to be incapable of managing his own affairs or a prodigal or becomes a patient as defined in section 1 of the Mental Health Act, 1973 (Act 18 of 1973), or if the estate of such a person is

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sequestrated, the executor, curator or trustee of such person, as the case may be, may, subject to any law relating to deceased estates, mental health or insolvency, during the currency of the certificate of registration and without formal transfer of the certificate, operate the establishment either personally or by an agent approved by the registrar in writing.

- (b) For the period pending the appointment of such executor, curator or trustee, the person managing the affairs of the person concerned shall, for the purposes of this subsection, be deemed to be his executor, curator or trustee, as the case may be.

(4) When the registration of an establishment has been terminated under section 11 or has lapsed in terms of subsection (2) of this section, the relevant certificate of registration shall be returned within the prescribed period to the registrar by the person to whom it was issued.

13. (1) No plant or propagating material shall without the written authority of the registrar be sold for the purposes of cultivation—

Requirements relating to the sale of plants and propagating material.

- (a) unless it is of a variety which is entered in the varietal list;
- (b) under a denomination other than the denomination entered in respect thereof in the varietal list;
- (c) if any qualifying term or reference whatsoever is added to or used in connection with the denomination entered in respect thereof in the varietal list;
- (d) unless the plant or propagating material, as the case may be, complies with the requirements prescribed in respect thereof; and
- (e) unless, in the case of propagating material, the material is either prepacked or is packed in containers which comply with the prescribed requirements and are sealed and branded, marked or labelled in the prescribed manner with the prescribed information; or
- (f) unless, in the case of a plant, the prescribed information appears on a label affixed to the plant or on the container in which it grows or is packed.

(2) The registrar may in an authority under subsection (1) impose such conditions as he may in each case determine.

14. The provisions of this Act shall not apply—

Savings regarding certain propagating material.

- (a) to the cleansing of propagating material intended for a purpose other than the cultivation thereof;
- (b) to the sale of propagating material intended for a purpose other than the cultivation thereof: Provided—
 - (i) that the denomination of the variety concerned shall not, without the written permission of the registrar, be used in any manner whatsoever in connection with the sale; and
 - (ii) that the sale shall be effected only through the channels and in the manner customary for the kind of propagating material in question, or established for that purpose; or
- (c) to the cleansing and sale of propagating material sold by the producer thereof to a registered establishment: Provided—
 - (i) that, in the case of propagating material certified under a scheme, the containers of the material shall be sealed and labelled or marked in accordance with the provisions of the scheme; and

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- (ii) that, in the case of propagating material not certified under a scheme, the name and address of the producer, the kind of plant and the denomination of the variety concerned shall be clearly and legibly marked on the container thereof or on a label attached thereto.

15. (1) The registrar shall keep a list in which shall be entered— Varietal list.

- (a) the denomination used in the Republic for a variety on the date on which the kind of plant to which such variety belongs became or becomes a kind of plant to which this Act applies;
- (b) the denomination of a variety recognised in terms of section 20;
- (c) the denomination of a variety in respect of which a plant breeder's right has been granted in terms of the Plant Breeders' Rights Act, 1976, and in respect of which the holder of such right requests that it be entered in such list; and
- (d) such other particulars regarding any variety referred to in paragraph (a), (b) or (c) as the registrar, subject to the provisions of this Act, may deem necessary.

(2) A denomination referred to in subsection (1)—

- (a) shall, in the case of a variety referred to in paragraph (a), be the denomination by which the variety is generally known or, if the variety is generally known by more than one denomination, the denomination determined therefor by the registrar;
- (b) shall, in the case of a variety referred to in paragraph (b), be the denomination approved in respect thereof; and
- (c) shall, in the case of a variety referred to in paragraph (c), be the denomination registered in respect thereof.

(3) Notwithstanding the provisions of subsection (1), the registrar may, independent of any specific variety or in addition to any variety entered in the list, include all the varieties or any further variety of any kind of plant in the varietal list.

(4) The provisions of sections 4 (2) and (3) and 5 shall *mutatis mutandis* apply with reference to the varietal list.

(5) The varietal list kept in terms of section 8 of the Seeds Act, 1961 (Act 28 of 1961), shall be incorporated in and form part of the list kept under this section, and any document supplied to the registrar under that Act in terms of any provision thereof, shall be deemed to have been furnished to the registrar under the corresponding provision of this Act.

16. (1) An application for the recognition of a variety for entry in the varietal list may be made by any person: Provided that where an applicant is not resident in the Republic or, in the case of a juristic person, where an applicant does not have a registered office in the Republic, an application shall be submitted only through a person who is resident in the Republic.

Application for recognition of variety.

(2) Such application—

- (a) shall be made to the registrar in the form and manner prescribed;
- (b) shall be accompanied by the prescribed application fee; and
- (c) shall, in the case of a variety bred or discovered by a person other than the applicant be accompanied, if so required by the registrar, by the written authority of the breeder or discoverer.

17. (1) A variety may be recognised if—

- (a) it is by reason of any important characteristic clearly distinguishable from any other variety of the same kind of plant of which the existence is a matter of common knowledge, whatever the origin, artificial or natural, of the initial variation from which it resulted may be;

Requirements for recognition of variety.

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(b) it is sufficiently homogeneous having regard to the particular features of the sexual reproduction or vegetative propagation thereof;

(c) it is stable with regard to the essential characteristics thereof and remains true to the description thereof after repeated reproduction or propagation or, where the breeder has defined a particular cycle of reproduction or multiplication, at the end of each cycle; and

(d) it is identified by a denomination which complies with the provisions of subsections (3) and (4).

(2) A characteristic referred to in subsection (1) (a) may be of a morphological or physiological or any other nature and shall be such that it is clearly recognizable and precisely describable.

(3) The denomination of a variety for which an application for recognition is being considered shall be proposed by the person who applies for such recognition and—

(a) shall be suitable to identify a variety;

(b) shall not be such as to be liable to mislead or to lead to confusion concerning the characteristics, value or identity of the variety in question or the identity of the breeder thereof;

(c) shall be different from every denomination which designates existing varieties of the same or a closely related kind of plant;

(d) shall not be inimical to public order or contrary to morality; and

(e) shall comply with such further requirements as the registrar may determine.

(4) (a) A denomination shall, subject to the provisions of paragraph (b), not be identical with or similar to or liable to lead to confusion with a designation which enjoys the protection accorded to a mark within the meaning of the Trade Marks Act, 1963 (Act 62 of 1963), and which applies to plants or propagating material or the use in connection therewith or in connection with a product thereof.

(b) If the denomination of a variety proposed by a person under subsection (3) is a designation in respect of which he enjoys the protection referred to in paragraph (a), the registrar shall not approve such denomination unless such person in writing renounces his right to such mark as from the date on which the variety in question is recognized.

18. (1) The registrar shall consider every application for the recognition of a variety and all documents and any other proof submitted to him in connection therewith in order to ascertain whether the application complies with the requirements of this Act. Consideration and examination of applications.

(2) The registrar shall undertake such tests and trials as he may deem necessary with a variety in respect of which an application is being considered under subsection (1) or have such tests and trials undertaken in terms of subsection (6) in order to enable him to determine whether such a variety may be recognised.

(3) A person whose application is being considered shall, for the purposes of such tests and trials and at the prescribed time and place—

(a) pay the appropriate prescribed examination fee; and

(b) furnish the registrar—

(i) with the prescribed quantity or mass of plants and propagating material of the variety;

(ii) with such specimens of plants of the variety or of such parts thereof as he may require; and

(iii) with such information in connection with the variety as he may require.

(4) (a) Notwithstanding the provisions of subsection (2), the registrar may, if he can obtain acceptable results of tests and trials with the variety in question from

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the appropriate authority of another country, in his discretion decide not to undertake any tests or trials with a variety in respect of which an application is being considered under subsection (1).

(b) The costs involved in obtaining the results under paragraph (a) shall be paid to the registrar by the person whose application is being considered.

(5) Different examination fees may be prescribed in respect of tests and trials with different kinds of plants.

(6) The registrar may submit plants or propagating material of a variety in respect of which an application is being considered under subsection (1) to the appropriate authority in another country in order to have the necessary tests and trials undertaken therewith, and the registrar shall accept the results of any such tests or trials which such authority may furnish to him.

19. (1) The registrar may reject an application for the recognition of a variety if it appears to him—

Rejection of application.

(a) that the application does not comply with any provision of this Act;

(b) that the variety in respect of which the application is made—

(i) has previously been recognised in terms of this Act or the Seeds Act, 1961 (Act 28 of 1961);

(ii) does not comply with any provision of this Act; or

(iii) does not belong to a kind of plant to which this Act applies;

(c) that the applicant is not under this Act entitled to make the application;

(d) that the application contains a material misrepresentation;

(e) that the application fraudulently affects the rights of the holder of a plant breeder's right granted in terms of the Plant Breeders' Rights Act, 1976, or of the person to whom provisional protection has been granted in terms of that Act;

(f) that the applicant refuses or has failed or is not able to propose an acceptable denomination;

(g) that the propagation of the variety in question would require repeated use of plants or propagating material of another variety for which plant breeders' rights have been granted to or applied for by another person under the Plant Breeders' Rights Act, 1976, unless such plants are or such propagating material is used under a licence issued in terms of that Act; or

(h) that the description submitted does not clearly describe the variety.

(2) If the registrar rejects an application under subsection (1) or refuses an application under section 20 (2), he shall advise the person who applied for recognition in writing of his decision and of the grounds on which it is based.

20. (1) If the registrar, after considering an application in terms of section 18 and examining the results of any tests or trials conducted with the variety in question, is of the opinion—

Recognition of variety.

(a) that the application conforms to the requirements of this Act; and

(b) that the variety complies with the requirements referred to in section 17,

he shall recognise the variety and enter it in the varietal list.

(2) Notwithstanding the provisions of subsection (1)—

(a) the registrar may refuse to recognise a variety if, in his opinion, it is in the public interest to do so;

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- (b) the registrar shall refuse to recognise a variety if the Minister, after an evaluation referred to in section 22, directs him to do so; and
- (c) the registrar shall not recognise a variety before—
 - (i) the Minister has decided under section 22 (1) not to investigate the variety;
 - (ii) the Minister has under section 22 (5) published the results of the evaluation or has under section 22 (6) informed the registrar that he has decided not to publish such results; or
 - (iii) the prescribed period, reckoned from the date on which the plants and propagating material were supplied to the Minister under section 22 (3) (a) for the first time, has expired, whichever event may occur first.
- (3) The registrar shall in respect of each variety which is recognised—
 - (a) enter the applicable particulars referred to in section 15 in the varietal list;
 - (b) by notice in the *Gazette* publish such particulars relating to the recognition of the variety as may be prescribed; and
 - (c) inform the applicant in writing of such recognition.

21. (1) A denomination of a variety entered in the varietal list may be altered or supplemented by the registrar—

Alterations in
and deletions
from varietal
list.

- (a) on application made to him;
- (b) in the case of a denomination referred to in paragraph (a) or (b) of section 15 (1)—
 - (i) if the information submitted to the registrar in the application for approval of, or in connection with, the denomination in question was incorrect and the registrar is of the opinion that such denomination would not have been approved had he known that such information was incorrect; or
 - (ii) if information comes to light which, if discovered earlier, would in the opinion of the registrar have resulted in a refusal to enter the denomination in the varietal list; or
- (c) in the case of a denomination referred to in paragraph (c) of section 15 (1), if the denomination is altered or supplemented under the Plant Breeders' Rights Act, 1976.

(2) The registrar may delete the denomination of a variety entered in the varietal list if he is satisfied—

- (a) that any information submitted to him in the application for the recognition of such variety or in connection with such an application was incorrect and that the variety would not have been recognised if he had known that the information was incorrect;
- (b) that information has come to light which, if discovered earlier, would have resulted in the refusal of such application;
- (c) that it is in the public interest to delete it;
- (d) that plants and propagating material of such variety, capable of reproducing the variety in such a manner that the morphological, physiological and other characteristics thereof correspond with the characteristics described at the time of the recognition thereof, cannot readily be obtained; or
- (e) that the variety no longer conforms to the requirements referred to in section 17,

and the registrar shall delete the denomination of such a variety if the Minister, after an evaluation referred to in section 22, directs him to do so.

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(3) The registrar shall by notice in the *Gazette* publish the prescribed particulars relating to an alteration, supplementation or deletion in terms of this section.

22. (1) The Minister may, if he deems it necessary, investigate— Evaluation of variety.

(a) a variety in respect of which an application for recognition has been submitted in terms of section 16;

(b) a variety of which the denomination has been entered in the varietal list,

in order that the usefulness thereof for agricultural or industrial purposes may be evaluated.

(2) The evaluation of a variety referred to in subsection (1) (a) shall commence within 12 months from the date on which the relevant application for recognition is received by the registrar, and the applicant concerned shall within that period be advised in writing whether the Minister intends investigating the variety under the said subsection.

(3) The prescribed quantity or mass of plants or propagating material of the variety in question required for the purposes of the evaluation—

(a) shall, in the case of a variety referred to in subsection (1) (a), be supplied free of charge to the Minister by the applicant at the prescribed time and place; and

(b) may, in the case of a variety referred to in subsection (1) (b), be procured by the Minister against payment from any person.

(4) The investigation may be undertaken in the manner which the Minister deems expedient and the tests and trials in connection therewith shall be adapted with due allowance to the manner of reproduction of the kind of plant in question to enable the Minister to make the evaluation.

(5) The Minister may publish the results of an evaluation together with such comments in connection therewith as he may deem necessary.

(6) If the Minister decides not to publish the results of an evaluation he shall inform the registrar and the person who supplied or from whom he procured the plants and propagating material for the evaluation, in writing of his decision.

(7) If the results of an evaluation satisfy the Minister that the variety in question is, in relation to other varieties of the same kind, of such inferior quality that it is undesirable for use for agricultural or industrial purposes, or if plants are not or propagating material is not supplied or cannot be procured as contemplated in subsection (3), the Minister may direct the registrar—

(a) in the case of a variety referred to in subsection (1) (a), to refuse the application for the recognition of the variety in question; or

(b) in the case of a variety referred to in subsection (1) (b), to delete the denomination of the variety entered in the varietal list.

(8) The Minister may at any time after an investigation under subsection (1) has been undertaken, repeat the investigation, irrespective of whether the results of a previous evaluation arising therefrom have been published.

23. (1) The Minister may, after consultation with the Minister of Finance, by notice in the *Gazette* establish a scheme for the certification of plants and propagating material of the kinds of plants referred to in the scheme, with the object of maintaining the quality of plants and propagating material of such kinds and of ensuring the usefulness for agricultural or industrial purposes of the products derived therefrom. Establishment of certification schemes.

(2) Different schemes may be established for plants and propagating material of different kinds of plants, and the requirements for different kinds and varieties of plants and propagating material in a scheme may differ.

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(3) Before the Minister establishes a scheme or amends any provision of a scheme, he shall publish the proposed scheme or amendment in the *Gazette* together with a notice inviting interested persons to submit to him, within the period specified in the notice, which period shall not be less than 28 days as from the date of such publication, any objections to or representations concerning the proposed scheme or amendment.

(4) If the Minister as a result of any objection or representations under subsection (3), effects any alteration to the proposed scheme or amendment, it shall not be necessary to publish such alteration before the final publication of such scheme or such amendment.

(5) The Minister may at any time by notice in the *Gazette* amend or revoke a scheme.

24. The Minister may in a notice relating to the establishment of a scheme—

Provisions of scheme.

- (a) designate the person who or the body which shall exercise the powers, perform the functions and carry out the duties conferred upon, assigned to or imposed upon such person or body under a scheme;
- (b) provide that any person intending to participate in a scheme and any unit for certification intended for consideration in terms of a scheme, shall be registered with the person or body referred to in paragraph (a);
- (c) provide for the manner in which a person or a unit for certification shall be registered, the forms to be used for an application for registration, the information which shall accompany such an application and the circumstances under which such registration shall lapse, be refused or be cancelled;
- (d) determine the requirements for registration to be complied with by a person or a unit for certification, the conditions on which such a person or unit shall be registered and the period of validity of such registration;
- (e) determine that, as from the date on which a person or a unit for certification is registered in terms of a scheme, the provisions of such scheme shall be binding on such person or unit;
- (f) indicate the kinds or varieties of plants and propagating material to which the provisions of a scheme shall apply;
- (g) provide for the manner in which and the control subject to which plants and propagating material intended for certification under a scheme shall be produced and treated;
- (h) determine the manner in which and the times at which any inspection of units for certification, or of plants or propagating material with reference to which the provisions of a scheme are applicable, shall be carried out, and the forms to be used in connection with such an inspection;
- (i) determine the requirements and standards of quality which plants and propagating material shall comply with for certification in terms of a scheme;
- (j) determine the manner in which plants and propagating material shall be certified, the form of a certificate in connection therewith and the circumstances under which such a certificate shall lapse;
- (k) determine the manner in which certified plants and propagating material shall be packed, marked, labelled, sealed, stored or distributed, and the specifications of the labels and seals to be used therefor;

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- (l) determine the information which shall appear on the containers in which certified plants and propagating material are packed, or on labels affixed thereto;
- (m) determine the records to be kept and the information to be furnished by any person registered under a scheme;
- (n) determine the fees or charges payable to any person or body designated in terms of paragraph (a), by any person registered in terms of a scheme, and stipulate that the rendering of any service may be refused to a person who is indebted to any such person or body in any amount in respect of such fees or charges;
- (o) confer on any person or body designated in terms of paragraph (a), or on any person authorised in writing by any such person or body to enforce any provision of a scheme, the powers of inspection referred to in section 25 (1);
- (p) declare that the provisions of section 32 shall *mutatis mutandis* apply with reference to any person who feels aggrieved by any decision or action taken in connection with a scheme by any person or body designated in terms of paragraph (a) of this section; and
- (q) provide generally for any other matter which, in the opinion of the Minister, is necessary or expedient in order to further or better achieve the objects of a scheme, the generality of the powers conferred by this paragraph not being limited by the preceding paragraphs.

25. (1) The registrar or an officer authorised thereto in writing by the registrar may at any reasonable time—

- (a) enter upon and inspect any place, premises or vehicle on which or in which there is or is suspected to be produced, processed, treated, prepared, graded, classified, prepacked, marked, labelled, held, packed, removed, transported, exhibited or sold, any plants, propagating material, substance or other article in respect of which this Act or any scheme applies;
- (b) inspect or test any such plant, propagating material, substance or other article, and examine all books and documents at, on or in such place, premises or vehicle which on reasonable grounds are suspected to relate to such plant, propagating material, substance or other article, and make copies of or extracts from any such book or document;
- (c) demand from the owner or custodian of any such book or document an explanation of any record or entry therein;
- (d) inspect any operation or process carried out at or on such place or premises in connection with the production, processing, treatment, preparation, grading, classification, prepacking, marking, labelling, holding, packing, removal, transport, exhibition or selling of such plant, propagating material, substance or other article, and demand from the person in charge of such operation or process, or the owner or custodian of such plant, propagating material, substance or other article, any information or explanation regarding such operation, process, plant, propagating material, substance or other article;
- (e) seize any book, document, plant, propagating material, substance or other article which may afford evidence

Power to enter premises, carry out inspections, take samples for analysis and seize substances or articles.

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of any offence under this Act or under a scheme, or seize any quantity of such a plant, propagating material, substance or other article in respect of which such an offence is suspected to have been committed, and remove from, or leave on, the place, premises or vehicle in question any such book, document, plant, propagating material, substance or other article, or any quantity thereof, and, if he considers it necessary, leave on such book, document, plant, propagating material, substance or other article, or the container thereof, any identification mark or seal which he considers necessary; and

(f) take samples of any plant, propagating material, substance or other article used or suspected to be intended for use in the production, processing, treatment, preparation, grading, classification, prepacking, marking, labelling, holding, packing, removal, transport, exhibition or selling of any plant, propagating material, substance or other article referred to in paragraph (a) or seized in terms of paragraph (e), and examine, analyse, grade or classify such samples, or cause them to be examined, analysed, graded or classified, and open any container which contains or is suspected to contain any such plant, propagating material, substance or other article.

(2) (a) Where an officer acting under the written authority of the registrar carries out any inspection in terms of subsection (1) in the presence of any person affected by the inspection, the officer shall first produce such written authority to such person.

(b) If the registrar or an officer has carried out an inspection in terms of subsection (1), he shall enter the particulars of the inspection and any decision or instruction arising therefrom on the prescribed form and hand or transmit by post a copy thereof to the person in charge of the place or premises in question.

(3) Any sample taken in terms of subsection (1)—

(a) shall consist of the prescribed quantity or mass, taken in accordance with prescribed methods;

(b) shall be taken in the presence of the person in charge of, or the owner or custodian of, such plant, propagating material, substance or other article, or, if such person, owner or custodian is not available, in the presence of any other witness, and the prescribed form shall be completed in respect thereof;

(c) shall be packed and sealed in a suitable container which shall be labelled or marked in such manner as the nature thereof permits, to identify the sample; and

(d) shall with all convenient speed be tested, examined or analysed by the registrar in accordance with the methods which he may determine or which may be prescribed, and the result of such test, examination or analysis shall be entered on the prescribed form.

26. (1) No person shall import into the Republic any plant or propagating material unless the plant or propagating material—

Importation of plants and propagating material.

(a) is of a variety of which the denomination is entered in the varietal list;

(b) complies with the requirements prescribed in respect thereof;

(c) is packed in a container which is sealed and branded, marked or labelled in the prescribed manner with the prescribed information; and

(d) is imported through a prescribed port of entry or such other place as the registrar may determine.

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(2) (a) Notwithstanding the provisions of subsection (1) the registrar may in his discretion and on such conditions as he may determine in writing allow the importation of a consignment of plants or propagating material which does not conform to all or any of the requirements referred to in subsection (1).

(b) A person requiring the permission of the registrar under paragraph (a) shall apply therefor to the registrar in the prescribed manner and form.

(3) A person importing a consignment of plants or propagating material shall furnish the registrar with the prescribed particulars regarding such consignment, and such consignment shall not be removed from a port or place contemplated in subsection (1) (d) unless the registrar has authorised the removal thereof in writing.

(4) Plants and propagating material imported in terms of subsection (1) or (2) shall, if the registrar so requires, be presented for examination and sampling in terms of this section at a port or place contemplated in subsection (1) (d), and shall not be sold in the Republic except under a permit in writing by the registrar which may be issued on such conditions as the registrar may determine.

(5) (a) The manner in which plants and propagating material imported in terms of subsection (1) or (2) shall be presented for examination and sampling in terms of subsection (4), and the manner in which and the time and place at which the examination and sampling shall be carried out, shall be as prescribed.

(b) The provisions of sections 25 (1) and (3) shall *mutatis mutandis* apply with reference to such examination and sampling and the analysis of such sample.

(6) The provisions of this section shall not apply with reference to the importation of plants and propagating material intended for—

(a) purposes other than cultivation; or

(b) immediate export: Provided that the person importing such plants and propagating material shall, prior to or on arrival thereof in the Republic, furnish to the registrar a declaration to that effect in the prescribed form.

(7) If plants and propagating material have been imported contrary to the provisions of this section, the registrar may—

(a) in accordance with the election of the importer, order that the plants or propagating material in question shall within the period determined by the registrar—

(i) be destroyed without compensation; or

(ii) be removed from the Republic at the expense of the importer; or

(b) permit the disposal thereof in the Republic in such manner and on such conditions as he may determine.

27. (1) No person shall export from the Republic any plant or propagating material unless he is in possession of a certificate from the registrar authorising such export. Export of plants and propagating material.

(2) Any person desiring to obtain any such certificate shall apply therefor to the registrar at the prescribed time and in the prescribed manner and form, and such application shall be accompanied by the prescribed application fee.

(3) After receipt of an application referred to in subsection (2) the registrar may undertake such inspection of the plants and propagating material intended for export as he may deem necessary, take such samples thereof as he may deem necessary and test, examine or analyse the samples in the manner referred to in paragraph (c) of section 25 (3), and the person who has thus applied shall pay to the registrar on demand the prescribed fees in connection with such inspection and for the testing, examination or analysis of such samples.

(4) The registrar shall not issue a certificate referred to in subsection (1) unless the fees referred to in subsection (3) have been paid to him.

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(5) If the registrar is of opinion that a consignment of plants or propagating material may not be exported, he shall prohibit the export thereof in writing.

(6) The provisions of subsection (1) shall not apply with reference to the export of plants and propagating material intended for purposes other than cultivation.

28. No fees payable under this Act shall be payable by the State. Fees not payable by State.

29. (1) (a) Whenever any discretionary power is given to the registrar by this Act, he shall not exercise that power in a manner adverse to an applicant or any other person who appears to the registrar to be an interested party, without giving such applicant or interested person an opportunity of being heard within the time prescribed or, if no time has been prescribed, within such reasonable period as shall be fixed by the registrar. Discretionary power of registrar.

(b) An applicant or other interested person referred to in paragraph (a) may waive the right to be heard.

(2) Whenever by this Act any time is specified within which any act or thing is to be done, the registrar may, save where it is expressly otherwise provided, extend the time either before or after its expiration.

30. (1) All documents lodged with the registrar in terms of this Act shall, subject to the provisions of subsection (3), be preserved for the prescribed period. Preservation, inspection and proof of documents.

(2) Any document referred to in subsection (1) which, in the opinion of the registrar, may lie for inspection by the public, shall upon payment of the prescribed fees be open for inspection during office hours at the office of the registrar, and copies thereof shall on request and upon payment of the prescribed fees be furnished to any person.

(3) Where an application for the recognition of a variety has been withdrawn, the registrar shall return all the papers submitted in connection with the application to the applicant at the address indicated in the application or, if this is not practicable, destroy them after expiry of the prescribed period.

(4) The provisions of section 5 (3) shall *mutatis mutandis* apply with reference to all documents lodged with the registrar.

31. (1) No person shall, except—

Secrecy.

(a) to the Minister, the board, the registrar or any other person for the purpose of carrying out his duties or the performance of his functions under this Act;

(b) to a police official for the purposes of an inquiry relating to the enforcement of the provisions of this Act; or

(c) when required to do so by any court or under any law, disclose any information acquired by him in the carrying out of his duties or the performance of his functions under this Act or a scheme.

(2) Notwithstanding the provisions of subsection (1) the person or body designated in terms of section 24 (a) may, in respect of the relevant scheme, furnish to the holder of a plant breeder's right granted under the Plant Breeders' Rights Act, 1976, in respect of a variety, information regarding—

(a) the persons who applied for the certification of plants or propagating material of the variety in question;

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- (b) the area of land of each unit for certification for which application for registration in respect of such plants or propagating material has been made; and
- (c) the quantity of such plants or propagating material which has been certified.

32. (1) A person who feels aggrieved by any decision or action taken by the registrar in terms of this Act may, within the period and in the manner prescribed and upon payment of the prescribed fees, appeal to the Minister against the decision or action in question.

Appeal against decision or action of registrar.

- (2) (a) The Minister shall refer the appeal for investigation and decision to a board the members of which shall be appointed by the Minister and which shall consist of—
- (i) one person designated as chairman on account of his knowledge of law;
 - (ii) two persons who in the opinion of the Minister have expert knowledge of the subject of the appeal.

- (b) A person appointed under subparagraph (ii) of paragraph (a) shall be disqualified as a member of the board if he has any direct or indirect personal interest in the outcome of the appeal.

(3) An appeal shall be heard on the date and at the place and time fixed by the chairman of the board, who shall advise the appellant and the registrar in writing thereof.

(4) The chairman of the board may, for the purposes of the hearing of the appeal—

- (a) summon any person who, in his opinion, may give material information concerning the subject of the hearing or who he believes has in his possession or custody or under his control any document which has any bearing upon the subject of the hearing, to appear before him at a time and place specified in the summons, to be interrogated or to produce that document, and 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; and
- (c) call any person present at the hearing 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 as determined by the chairman.

(6) An appellant, if he appears before the board at the hearing of an appeal, and the registrar, may be represented by an advocate or an attorney.

(7) If a person appointed under subsection (2) (a)—

- (a) dies during the investigation of the appeal or so soon before the commencement of the investigation 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 investigation has commenced, unable to continue therewith,

the parties may agree that the investigation be continued by the remaining members, in which 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 investigation shall be adjourned in order that the Minister may appoint a member, in accordance with the requirements of subsection (2) (a), in the place of the member who has died or has become incapacitated.

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

(9) The board may after investigation of the appeal—

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

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

(10) (a) The decision of the board shall be in writing, and a copy thereof shall be furnished to the registrar, the appellant and any other party.

(b) No appeal shall lie against the decision of the board.

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

33. (1) No person shall publish or distribute or cause or permit to be published or distributed any false or misleading advertisement concerning plants, propagating material or any establishment. Publication or distribution of false or misleading advertisements.

(2) It shall be a sufficient defence for any person, other than the person selling the plants or propagating material to which the false or misleading advertisement relates, who is charged with a contravention of subsection (1), if he proves to the satisfaction of the court that he did not know and could not reasonably be expected to have known that the advertisement was false or misleading in any respect, unless it is proved that the accused failed on demand by the registrar or a police official to furnish the name and address of the person at whose instance the advertisement was published or distributed.

34. (1) The Minister may make regulations—

Regulations.

(a) prescribing any certificate or other document or form to be issued or used for the purposes of this Act;

(b) prescribing the fees payable in respect of any application, matter or document;

(c) prescribing the scale of remuneration which shall be paid to any member of the board, other than an officer, appointed in terms of section 32 (2);

(d) prescribing the information and facilities to be provided to the registrar by a person applying for the recognition of a variety, and the plants and propagating material to be submitted at the time of an application and thereafter;

(e) prescribing the tests, trials, examinations and other steps to be taken by an applicant or the registrar before a variety may be recognised, and the time within which they are to be taken;

(f) prescribing the records relating to plants and propagating material to be kept by any person who has such plants or material in his possession or under his control, the form and manner in which they are to be kept, and how and to whom they shall be available for inspection;

(g) concerning any matter which in terms of this Act is required or permitted to be prescribed; and

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- (h) concerning, generally, any matter which he considers necessary or expedient to prescribe in order that the objects and purposes of this Act may be better achieved, the generality of the powers conferred by this paragraph not being limited by the provisions of the preceding paragraphs.
- (2) Different regulations may be made in terms of this section in respect of different kinds of establishments or in respect of different kinds of plants or propagating material or in such other respects as the Minister may determine.
- (3) Before the Minister makes or amends any regulation he shall publish the proposed regulation or amendment in the *Gazette* together with a notice inviting interested persons to submit to him within the period specified in the notice, which period shall not be less than 28 days as from the date of such publication, any objections to or representations concerning the proposed regulation or amendment.
- (4) If the Minister as a result of any objection or representations under subsection (3), effects any alteration to the proposed regulation or amendment, it shall not be necessary to publish such alteration before the final publication of such regulation or such amendment.
- (5) The regulations may in respect of any contravention thereof or failure to comply therewith prescribe a penalty not exceeding a fine of two hundred rand or imprisonment for a period not exceeding six months.
- (6) A regulation prescribing any fees shall be made only after consultation with the Minister of Finance.

35. (1) Any person—

Offences and penalties.

- (a) who makes a false entry in the register or the varietal list or causes it to be made therein, or who makes a writing or causes a writing to be made which falsely purports to be a copy of an entry in the register or varietal list, or who produces or tenders or causes to be produced or tendered as evidence any such entry or any such copy thereof;
- (b) who fails or refuses to make any statement or to give any explanation demanded by the registrar or an officer or by any person or body designated in terms of section 24 (a) in the execution of the provisions of this Act or a scheme, or who makes a false statement or representation knowing it to be false;
- (c) who obstructs or hinders the registrar or an officer or a person or body designated under section 24 (a) in the exercise of his powers, the performance of his functions or the carrying out of his duties under this Act or a scheme;
- (d) who, having been duly summoned to appear at proceedings under section 32, fails without lawful excuse so to appear;
- (e) who, having appeared as a witness at proceedings under section 32, 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;
- (f) who conducts the business of a nursery, or who undertakes the cleansing, repacking or sale of propagating material on premises which are not registered in terms of this Act, or who operates an establishment which does not conform to the requirements referred to in section 9 (2);
- (g) who sells any plant or propagating material in contravention of section 13, or who imports or sells any plant or propagating material in contravention of section 26;

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or who exports any plant or propagating material in contravention of section 27;

- (h) who tampers with any sample taken or any plant, propagating material, substance or other article seized in terms of this Act;
- (i) who fails to display or return a certificate of registration of an establishment;
- (j) who fails to comply with a provision of a scheme while he is under an obligation to do so;
- (k) who, except in the circumstances referred to in section 31, discloses information acquired by him in the course of his duties or in the performance of his functions under this Act;
- (l) who contravenes any provision of section 33 (1), shall be guilty of an offence and liable on conviction—

- (i) in the case of a contravention referred to in paragraph (a), (b), (f), (g), (h), (k) or (l), to a fine not exceeding one thousand rand or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment; or
- (ii) in the case of a contravention referred to in paragraph (c), (d), (e), (i) or (j), to a fine not exceeding five hundred rand or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

(2) The court convicting any person of an offence under this Act may upon the application of the prosecutor declare any plant or propagating material in respect of which the offence was committed and all other plants and propagating material of a similar nature of which such person is the owner or which is in his possession, to be forfeited to the State.

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

36. In criminal proceedings under this Act or a scheme—

Presumptions
and evidence.

- (a) any plant, propagating material, substance or other article in or upon any premises, place 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 possess the same properties as such 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 form on which particulars have been entered as contemplated in section 25 (2) or (3), shall be accepted as *prima facie* proof of the facts stated therein; and
- (d) any statement or entry contained in any book or document kept by any person, or by the manager, agent or employee of such a person, or found upon or in any premises occupied by, or any vehicle used in the business of, any person, shall be admissible in evidence against such person as an admission of the facts set forth in that statement or entry, unless it is proved that such statement or entry was not made by such person, or by the manager, agent or employee of such person in the course of his work as manager or in the course of his agency or employment.

37. (1) Any act or omission of an employee, manager or agent which constitutes an offence under this Act or a scheme, shall be deemed to be the act or omission of his employer or principal, and such employer or principal may be convicted and sentenced in respect thereof unless he proves—

Liability of
employer
or principal.

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- (a) that he did not permit or connive at such act or omission;
- (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 condition or in any circumstances fall within the course of the employment or the scope of the authority of the employee, manager 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.

38. No compensation shall be payable by the State, the Minister, the registrar or an officer acting under a delegation from or under the control or direction of the registrar, or by a person or body designated in terms of section 24, in respect of any act done in good faith under this Act or a scheme. Limitation of liability.

39. The Minister may either generally or in relation to any particular matter assign to any officer of the department any power conferred or duty imposed upon him under this Act, other than a power referred to in section 24 or 34. Assignment of powers and duties by Minister.

40. Section 1 of the Agricultural Pests Act, 1973, is hereby amended by the substitution for the definition of "plant" of the following definition: Amendment of section 1 of Act 3 of 1973.

"plant" means any tree, shrub or vegetation, and includes any live portion of such a plant, whether severed from or attached to it, and any dead portion or any product of such a plant, but, except in the case of seed which is imported, does not include the seed of such a plant, unless the Minister has by notice in the *Gazette* declared such seed to be a plant;"

41. Section 4 of the Agricultural Pests Act, 1973, is hereby amended by the deletion of subsection (1) (a). Amendment of section 4 of Act 3 of 1973.

42. The laws mentioned in the Schedule are hereby repealed to the extent set out in the third column of the Schedule. Repeal of laws.

43. (1) This Act shall be called the Plant Improvement Act, 1976, and shall come into operation on a date to be fixed by the State President by proclamation in the *Gazette*. Short title and date of commencement.

(2) Different dates may be so fixed in respect of different provisions of this Act.

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Schedule

LAWS REPEALED

Number and year of law	Short Title	Extent of repeal
Act 28 of 1961 . .	Seeds Act, 1961	The whole
Act 29 of 1961 . .	Foundation Seed Act, 1961	The whole
Act 33 of 1967 . .	Seeds Amendment Act, 1967	The whole
Act 8 of 1971 . .	Seeds Amendment Act, 1971	The whole
Act 3 of 1973 . .	Agricultural Pests Act, 1973	Sections 2 and 3