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REPUBLIC OF  
CISKEI

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DEPARTMENT OF AGRICULTURE AND  
FORESTRY

GOVERNMENT NOTICE NO. 77

IT IS HEREBY NOTIFIED THAT THE PRESIDENT HAS  
ASSENTED TO THE FOLLOWING ACT WHICH IS HEREBY  
PUBLISHED FOR GENERAL INFORMATION:-

MARKETING ACT, 1986

ACT NO. 22 OF 1986

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# MARKETING ACT, 1986

## ACT

To consolidate and amend the laws relating to agricultural products, to abolish the Ciskeian Agricultural Marketing Board and to provide for matters incidental thereto.

(English text signed by the President. Assented to on 18 September 1986.)

*BE IT ENACTED by the National Assembly of the Republic of Ciskei, as follows:-*

### PART 1 : INTERPRETATION

1. Definitions. - (1) In this Act, unless the context indicates otherwise -

"Agricultural Corporation" means the Ciskei Agricultural Corporation Limited established under section 5 (1) of the Ciskeian Corporations Act, 1981 (Act 16 of 1981) and, in relation to any power or function assigned by the said Corporation to the marketing committee referred to in section 4 (1), includes the control committee;

"Ciskei" means the Republic of Ciskei;

"class" in relation to any product includes, except (in the case of marketed product) to the extent excluded in the relevant scheme any category, kind or variety of such product determined according to -

(a) the appearance, colour, composition, mass, measure, measurements, number, purity, quality or other feature or characteristic of such product, or of a quantity or unit thereof, or

(b) the area, country, place or premises in, upon, to or from which the person or class of persons by, to or through whom, the manner in which, the time at which, the conditions under which, or the purpose for which such product is or has been acquired, consigned, conveyed, delivered, kept, manufactured, packed, processed, produced, received, sold, treated or used or dealt with in any other manner, or any other act in connection therewith is or has been performed;

or on the basis of any other circumstances or matter in connection with such product, and the words "Classify", "reclassify" and "classification" have corresponding meanings;

"Constitution Act" means the Republic of Ciskei Constitution Act, 1981 (Act 20 of 1981);

"Marketing Committee" means the marketing committee referred to in section 4 (1);

"dealing in the course of trade" in relation to any marketed product includes, except to the extent excluded in any scheme for that product -

(a) every purchase and every act performed in the manufacture or processing of that product by any person, if the product so purchased, manufactured, or processed, or any quantity thereof, is or is intended to be disposed of by that person for any consideration whatsoever, whether in the form in which it was purchased or into which it was manufactured or processed or in any other form, or is used or is intended to be used in the manufacture or processing of any product or commodity disposed of, or intended to be disposed of, by that person for any consideration whatsoever;

(b) every purchase and every act performed in the manufacture, processing or preparation of that product by any person, if the product so purchased, manufactured, processed or prepared, or any quantity thereof, is or is intended to be supplied, in any form whatsoever and whether separately or as part of any meal or dish, to any other person not being a member of the first person's household or *bona fide* non-paying guest of himself or of a member of his household;

"Department" means the Department of Agriculture and Forestry;

"Director-General" means the Director-General of the Department;

"existing scheme" means a scheme contemplated in section 38 (3);

"Gazette" means the Government Gazette of Ciskei;

"inspector" means any person designated as an inspector in terms of section 29;

"Marketing Board" means the Ciskeian Agricultural Marketing Board referred to in section 2 of the previous Marketing Act;

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**"Member"** means a person who has contracted into a scheme for the purposes of the scheme;

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

**"President-in-Council"** means the President in Executive Council;

**"Producer"** includes –

(a) any person, including the Agricultural Corporation, concerned in the production, manufacturing or processing of a marketed product;

(b) in relation to any quantity of a marketed product which has been acquired from any person as a consideration for the right to use land on which that person has produced a quantity of that product, or as remuneration for services rendered to a producer of that product, the person who so acquired that quantity;

(c) in relation to any quantity of the product which is imported or introduced into Ciskei, the person who so imports or introduces that quantity;

(d) any person or class of persons deemed in terms of sub-section (2) to be a producer of such product;

**"product"** means any agricultural product whatsoever, including any dairy product, poultry, meat, wool, mohair, hides and skins and any wattle bark or wattle extract;

**"marketed product"** means any product declared to be a marketed product under section 7 or in respect of which a scheme is or is deemed to be in force;

**"regulation"** means any regulation made or in force under this Act;

**"repealed law"** means any law repealed by section 36 (1);

**"scheme"** means a scheme for the production, sale, distribution, manufacture and processing of any product which complies substantially with the applicable provisions of Part 4 of this Act and includes any force by virtue of the provisions of section 36 (3).

**"sell"** includes to export, offer, advertise, keep, expose, transmit, convey, deliver or prepare for sale, or to exchange or to dispose of for any consideration whatsoever, or to export, transmit, convey or deliver in pursuance of a sale, exchange or disposal as aforesaid, and **"seller"**, **"sale"** and **"sold"** have corresponding meanings;

**"special levy"** means a special levy referred to in section 19;

**"the previous Marketing Act"** means the Ciskeian Marketing Act, 1981 (Act 7 of 1981);

**"this Act"** includes the regulations and every scheme;

**"Treasury"** means the Minister of Finance and Economic Development and includes any officer of his department acting under his authority;

(2) Unless the context otherwise indicates, any reference in this Act –

(a) to a person, includes a reference to a person belonging to any class or group of persons or to a person other than a person belonging to any class or group of persons;

(b) to a producer, includes a reference to a producer belonging to any class or group of producers or to a producer other than a producer belonging to any class or group of producers;

(c) to a product, includes a reference to any class, grade, quantity or standard of quality of a product.

## PART 2 : ORGANISATION AND ADMINISTRATION

2. **Abolition of Marketing Board.** - (1) The Marketing Board is hereby abolished.

(2) At the commencement of this section the assets, liabilities, rights and obligations of the Marketing Board shall vest in the Agricultural Corporation.

(3) The registrar of deeds shall make the necessary entries in his records and other documents to give effect to the provisions of this section and shall make the necessary endorsements on any relevant title deed, mortgage bond or other document upon production thereof.

(4) No transfer duty, stamp duty or other fees shall be payable in respect of such endorsements or entries.

(5) For the purposes of this section "assets" includes any moneys remaining in the general fund and any special fund established under the previous Marketing Act: Provided



that, except with the prior approval of the Minister, the Agricultural Corporation shall not use the moneys remaining in any such special fund for any purpose other than the purpose for which such special fund was established.

**3. Transfer of persons in service of Marketing Board to Agricultural Corporation. -**

(1) Every person in the service of the Marketing Board immediately prior to the commencement of this section shall, with the retention of his conditions of service (including remuneration) be transferred at such commencement to the service of the Agricultural Corporation.

(2) Any such person shall be deemed to have been duly appointed by the Agricultural Corporation and the service rendered by him as any employee of the Marketing Board and any leave, pension or other benefits which may have accrued in his favour by virtue of service with the Marketing Board shall be deemed to have accrued in his favour by virtue of service with the Agricultural Corporation.

(3) Nothing in subsection (2) contained shall be construed as prohibiting or preventing the Agricultural Corporation from altering or adapting the conditions of service of the persons transferred to its employ under that subsection: Provided that such a person may not, as a result of that alteration or adaptation, be in a less favourable position than that before his transfer and that his remuneration may not, save in accordance with disciplinary measures applied by the Agricultural Corporation, be reduced without his consent.

**4. Appointment of Marketing Committee. -** (1) For the attainment of its object under this Act the Agricultural Corporation shall appoint a marketing committee consisting of two or more directors of the Agricultural Corporation or, with the approval of the Minister, of such directors as well as other persons, not exceeding three in number as the Minister may approve and may assign any of its powers and functions under this Act to such committee: Provided that the Agricultural Corporation shall not be divested of any power or function so assigned and that any decision of the marketing committee may at any time be altered or set aside by the Agricultural Corporation.

(2) A member of the marketing committee who is not in the full-time employment of the State or the Agricultural Corporation or who is not a director of the Agricultural Corporation shall be paid out of the funds of the Agricultural Corporation such remuneration and allowances as may be determined from time to time generally or in any particular case by the Minister with the concurrence of the Treasury.

**5. Object under this Act of Agricultural Corporation. -** The object of the Agricultural Corporation under this Act shall be to promote the marketing, distribution, processing, production or manufacture of products.

**6. Powers and functions of Agricultural Corporation under this Act. -** For the attainment of its objects the Agricultural Corporation as such or through the marketing committee, if the latter has so been authorised under section 4 (1) -

(a) may undertake the preservation, processing, manufacture or storage of any product or, with the approval of the Minister acting in consultation with the Treasury, assist financially or otherwise -

- (i) any undertaking for the preservation, processing, manufacture or storage of any product or anything derived from a product; or
- (ii) any research relating to the improvement, production, manufacture, storage or marketing of anything derived from a product;

(b) may -

- (i) at such price or on such basis as the Minister may approve, purchase any product;
- (ii) treat in such manner as it may deem fit, classify, pack, store, process, adapt for sale, insure, advertise and transport any quantity of a product which it has bought; or
- (iii) sell, whether in its original form or processed wholly or in part, any product which it has bought at such price or on such basis as the Minister may approve, or withhold any part of it from market;

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- (c) may, with the approval of the Minister, act as agent for the receipt, transportation, adaptation for sale, classification, processing or sale of any product;
- (d) may, on such conditions as the Minister may approve finance out of its funds the development, improvement or multiplication of any plant material and the manufacture of any packing material and containers;
- (e) may, with the approval of the Minister, take such steps as it may deem necessary to foster, promote and stimulate the demand, whether within or outside Ciskei any product or anything which is derived from any product;
- (f) may, on such basis as may be determined by the Minister either generally or in any particular case, advance money to any producer in respect of any product, whether or not such product has been delivered to the Agricultural Corporation by such producer and whether or not such product has been or is still to be produced or gathered;
- (g) may investigate, or cause to be investigated, marketing conditions in Ciskei in general or the conditions relating to any particular product or ruling on any particular market;
- (h) shall examine, and report to the Minister on, any scheme, or any proposed amendment of any existing scheme, which the Minister may refer to the Agricultural Corporation;
- (i) may examine, report and make proposals to the Minister on the desirability of the production, distribution, and marketing of any product and for that purpose draft and submit to the Minister any proposed scheme or any proposed amendment of any scheme;
- (j) shall administer every scheme in operation or deemed to be in operation under this Act and to that end –
  - (i) exercise or perform all or any of the powers, authorities and functions prescribed or authorised by or under any law for the purposes of such administration; and
  - (ii) appoint such number of agents as it may deem necessary for the effective operation of any scheme;
- (k) may, with the approval of the Minister and on such conditions as may be acceptable to him, enter into an agreement with any other agricultural marketing or control organisation administering any scheme or provision of a similar nature in operation under the Marketing Act, 1968 (Act 59 of 1968) whereby –
  - (i) such organisation shall be the agent, or perform any function on behalf, of the Agricultural Corporation;
  - (ii) the marketing of any product produced or manufactured in Ciskei is undertaken by such other organisation;
  - (iii) the Agricultural Corporation and such organisation co-ordinate their respective activities;
  - (iv) the Agricultural Corporation and such organisation co-operate as partners in doing any act which the said Corporation is empowered to perform;
- (l) may establish an information service, and give advice and guidance to producers and other interested persons, in connection with marketing conditions in general or on any particular market or in connection with the agricultural industry as a whole;
- (m) may advise and make recommendations to the Minister in regard to any matter whatsoever falling within the purview of this Act; and
- (n) may generally do all such other things as may be necessary for or are incidental to the attainment of the aims and objects of this Act.

### PART 3 : MARKETING PRODUCTS

**7. Minister may declare a product to be a marketed product.** - (1) The Minister may by notice in the *Gazette*, declare any product or any commodity which is wholly or partially derived from a product to be a marketed product.

(2) Any such notice may define the person or persons who shall be deemed to be the producer of any product or commodity so declared to be a marketed product.

**8. Other powers of Minister.** - The Minister may by notice in the *Gazette* –

- (a) prohibit the sale, under the name or description of a product, or any article which is not that product or a product described in such notice, as the case may be;

(b) prohibit or regulate the importation into or the exportation from Ciskei of a product specified in such notice; or

(c) subject to such conditions as he may prescribe, prohibit the importation into or exportation from Ciskei of a product specified in such notice –

(i) by any person other than the Agricultural Corporation;

(ii) by any person other than a person authorised thereto by the Agricultural Corporation at its discretion by permit and on such conditions as may be stipulated in such permit.

#### PART 4 : SCHEMES

**9. Submission of scheme to Minister.** - The Agricultural Corporation or the marketing committee as the case may be, shall submit to the Minister through the Director-General –

(a) its report on, or any proposed amendment of, any existing scheme referred to the corporation under section 6 (h); or

(b) any proposed scheme, or any amendment of any scheme, which has been drafted in terms of section 6 (i).

**10 Acceptance or rejection by Minister of scheme or amendment of scheme.** - Upon receipt of any proposed scheme or amendment of any scheme the Minister may, after consideration of any report thereon by the Department and subject to any direction of the President-in-Council –

(a) reject the proposed scheme or amendment; or

(b) refer the proposed scheme or amendment back to the Agricultural Corporation for consideration of such modification as the Minister may suggest; or

(c) approve the scheme.

**11. Application of approved scheme or amendment.** - (1) The provisions of every scheme, or amendment of any scheme, approved by the Minister and the date on which such provisions shall come into operation shall be made known by the Minister by notice in the *Gazette*.

(2) As from the date specified in the notice referred to in subsection (1) the scheme or the amendment concerned shall be binding on all persons within the area, and in respect of the marketed product, specified in the scheme.

**12. Revocation of scheme.** - The Minister may at any time by notice in the *Gazette* revoke a scheme if, after such enquiry as he may deem necessary, he is of the opinion that the scheme imposes an undue burden upon producers or consumers of the marketed product to which the scheme relates or is contrary to the public interest: Provided that the Minister shall revoke a scheme if the President-in-Council so directs or if the National Assembly has, by resolution, requested that the scheme be revoked.

**13. Name, marketed product and area of scheme to be specified.** - A scheme shall specify –

(a) the name of the scheme;

(b) the marketed product or, as the case may be, the particular class or grade of marketed product to which the scheme applies; and

(c) the area or areas in which the scheme applies.

**14. Provisions in scheme concerning marketed product.** - (1) A scheme may include under any class or grade of the marketed product to which it relates –

(a) any quantity thereof which has been imported into Ciskei; or

(b) any quantity thereof, which has been produced outside Ciskei and is introduced into any area in which the scheme applies, for the purposes of sale or processing therein.



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- (2) Any requirement of or prohibition imposed in any scheme –
- (a) may be applicable only to a specified class or grade of the marketed product;
  - (b) may, in its application to any particular class or grade of the marketed product, differ from any such requirement or prohibition relating to any other class of such product.

**15. Provisions concerning area of scheme.** - The regulations of or prohibition imposed in any scheme –

- (a) may be made applicable only to one or more of the areas in which the scheme otherwise applies, or only to a specified portion of any such area;
- (b) may differ according to the different areas in which the scheme applies.

**16. Persons to whom scheme applies.** - (1) A scheme shall indicate the persons, or the classes of persons (if any), producing or dealing in the course of trade with the marketed product, to whom the scheme or any provision thereof applies.

(2) A scheme may provide that any provision thereof shall apply to a co-operative society or co-operative company which handles the marketed product in the same manner as if such society or company were a producer of that product.

**17. Enforcement of scheme.** - Any member who has contracted into a scheme shall be bound by the regulations and stipulations so agreed upon, and shall be liable for any penalty stipulated in such a scheme in the event of his breaching such conditions or stipulations of such scheme.

**18. Scheme may impose general levy.** - (1) A scheme may provide for the imposition, on such basis as may be determined by the Agricultural Corporation, with the approval of the Minister, of a general levy on the marketed product, or on any such product of a particular class, grade or standard of quality.

(2) Such levy, if any, shall be payable to the Agricultural Corporation by such persons or classes of persons, and at such times as may be prescribed in the scheme and may differ in amount according to –

- (a) the different classes, grades or standards of quality of the marketed product; or
- (b) the place of production or sale of the marketed product.

(3) Provision may be made, in any case where the Agricultural Corporation has prohibited producers of the product in question from selling the product except to or through the said Corporation for the general levy to be deducted from the price payable to such producers or added to the price at which the said Corporation disposes of the product to any person.

**19. Provision for imposition of special levy.** - (1) A scheme may provide for the imposition of a special levy on the marketed product or on any such product of a particular class, grade or standard of quality.

(2) The provisions of section 18 (2) shall apply *mutatis mutandis* in respect of any special levy.

**20. Registration of producers of, and of persons dealing in the course of trade with, marketed product.** - (1) A scheme may provide –

- (a) that no producer contracted into the scheme of a marketed product shall –
  - (i) sell that product within Ciskei or within any area in Ciskei prescribed in the scheme unless he has been registered with the marketing committee; or
  - (ii) sell that product within any area other than an area specified by the marketing committee.

(b) that no person contracted into the scheme shall deal with the marketed product in the course of trade —

- (i) within Ciskei or within any area in Ciskei specified in the scheme unless he has been registered with the marketing committee; or
- (ii) sell that product within Ciskei or within any area other than an area specified by the marketing committee.

(b) that no person contracted into the scheme shall deal with the marketed product in the course of trade —

- within Ciskei or within any area in Ciskei specified in the scheme unless he has been registered with the marketing committee; or
- (ii) within any area other than an area specified by and in respect of which he has been registered with the marketing committee.

(2) Under a scheme providing for such registration as aforesaid, it shall be competent for the marketing committee at its discretion —

- (a) to refuse any application for such registration; or
- (b) to grant such application on such conditions as it may prescribe, including conditions prescribing the nature of the equipment and the capacity of the plant or machinery which may be installed, or the class, grade or maximum quantity of any product or commodity which may be manufactured or processed or converted or be dealt with in the course of trade by the applicant, and the manner in which, and the place where or the areas within which, and the purpose for which, and the person or persons to whom that product or any product or commodity derived therefrom, may be disposed of;
- (c) to amend or withdraw any such condition or to impose any further or new condition;
- (d) to cancel any such registration if the holder thereof has contravened or failed to comply with any provision of the scheme or any condition imposed thereunder by the marketing committee or any provision of this Act.

(3) Notwithstanding the foregoing provision of this section the marketing committee may under such scheme as aforesaid refuse an application for registration, if in its opinion there are already sufficient persons dealing in the course of trade with the marketed product to meet the needs of all persons likely to be served by the applicant in the event of his application being granted.

**21. Prohibition in relation to sale, purchase, supply, delivery, conveyance, production, manufacture or processing of related product -** (1) A scheme may empower the marketing committee to prohibit any member of the marketed product from selling that product or such class, grade or quantity thereof as it may determine except to or through such persons as may be specified in the scheme or determined by such committee: Provided that any such scheme shall also empower the marketing committee to grant exemption from such prohibition on such conditions as it may prescribe which shall include the condition that the person so exempted shall pay to the Agricultural Corporation at such times and in such manner as the said committee may determine, an amount equal to the general levy and special levy (if any) which would, but for such exemption, have been payable.

(2) A scheme may empower the marketing committee to prohibit any producer of the marketed product from selling such product, except such class, grade or quantity thereof as it has determined, or except for such purposes as it may specify.

(3) A scheme may empower the marketing committee to prohibit any person from selling, purchasing, delivering or conveying the marketed product or any class thereof at or during any day, time or period specified by it or more or less frequently than so specified.

(4) A scheme may empower the marketing committee to prohibit any person from producing, manufacturing, processing, conveying, purchasing, or selling the marketed product or any class or grade thereof except under the authority of a permit, the issue of which shall be at the discretion of the control committee, and which may be cancelled by the said committee if the holder thereof has contravened or failed to comply with any provision of the scheme of this Act or any condition specified in such permit.

**22. Pooling of marketed product.** - A scheme may empower the marketing committee to conduct a pool or pools for the sake of any marketed product delivered to it in pursuance of —



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(a) a prohibition under any scheme of the sale of the marketed product except through it; or

(b) a voluntary arrangement with producers to sell the marketed product on a pooling system.

(2) Under such scheme as aforesaid, the marketing committee may —

(a) treat in such a manner as it may deem fit, classify, grade, pack, store, process, adapt for sale, insure, advertise and transport any quantity of a marketed product in relation to which it conducts a pool;

(b) finance any pool conducted by it and make such advances to the contributors to the pool as the Agricultural Corporation may approve with the concurrence of the Minister;

(c) define the time when and the place where delivery of the marketed product to the marketing committee for the purposes of the pool shall take place or be deemed to have taken place.

(3) The ownership of any quantity of a marketed product delivered to the marketing committee for sale through a pool vests in the Agricultural Corporation at the time when the marketed product is so delivered or deemed to have been delivered.

(4) Any amount payable to any producer in respect of any pool conducted by the marketing committee and which remains unclaimed after the expiration of a period of three years shall, unless the Minister has directed otherwise, be paid to the Agricultural Corporation.

**23. Records, returns and information** - A scheme may empower the marketing committee to —

(a) require any person to furnish it with such information relating to the marketed product as may be available to such person, and as it may specify;

(b) prescribe the records to be kept in connection with the marketed product, the period for which such records shall be retained and the returns to be rendered in regard to the marketed product by any person and the times at which, and the manner and form in which such returns shall be so rendered.

**24. Minister may prescribe contents of scheme** - Notwithstanding the foregoing provisions of this Act the Minister may from time to time by notice in the Gazette prescribe any matter which in his opinion ought, for the attainment of the aims and objects of this Act, to be provided in any scheme.

## PART 5 : GENERAL

**25. Meetings of the marketing committee** - (a) Meetings of marketing committee shall be held as and when considered necessary by the chief executive of the Agricultural Corporation.

(b) At any meeting of the marketing committee there shall be deemed to be a quorum if a majority of the members appointed in terms of section 4(1) are present.

**26. Exercising of functions by marketing committee** - The marketing committee shall —

(a) consider all applications from persons wishing to be registered under any scheme and, at its discretion, approve or refuse such registration;

(b) cause to be made records of all proceedings of its meetings and duly keep or cause to be kept such records in respect of all persons who are registered with it in terms of any scheme or who have been refused registration or have had their registration cancelled in terms of section 20(2) or (3);

(c) prior to any meeting make, or cause to be made such enquiries regarding any applicant for registration as may be necessary to enable the marketing committee to arrive at any decision in respect of such applicant.

**27. Marketing committee not bound to give reasons for refusal to register person** - The marketing committee shall not be obliged to furnish reasons for refusing to register any person or group of persons in terms of any scheme.

**28. Appeal to Minister** - Any person who feels aggrieved at any decision under this Act of the Agricultural Corporation or the marketing committee may, not later than thirty days after such decision has, or may reasonably be expected to have come to his notice, appeal against such decision to the Minister who may thereupon confirm, set aside or vary, such decision, or make such order in connection therewith as he may deem just.

**29. Inspectors** - (1) For the purposes of the enforcement of the provisions of this Act or of a scheme, the Agricultural Corporation may from time to time designate any person in its employ as an inspector, either generally or in any particular case, to perform, subject to the directions and control of the Agricultural Corporation, all or any of the functions referred to in subsection (2) and shall furnish to every inspector a document in writing certifying that the person named therein has been designated as an inspector:

(2) For the purposes of the enforcement of the provisions of this Act, an inspector may, at reasonable times and places enter and search any premises or vehicles occupied, owned or operated, as the case may be by any person who is, or is suspected to be a member of a scheme under this Act, or a person dealing in the course of trade with any marketed product, or any place or vehicle in or on which there is suspected to be kept, sold, manufactured, produced, processed, treated, prepared, graded, classified, packed, marked, or conveyed, as the case may be, any marketed product, and may —

- (a) require the driver of such vehicle to stop such vehicle;
- (b) inspect any such product and examine all books and documents at any such place, or in or on any such vehicle, which are believed on reasonable grounds to relate to any such product and make copies of or take extracts from such books and documents;
- (c) demand from the owner or custodian of any such product any information concerning such product;
- (d) demand from the owner or custodian of any such book or document as aforesaid, any explanation of any entry therein;
- (e) seize and remove any book or document or article which may afford evidence of the commission of any breach of this Act, or any quantity of any such product in respect of which any such breach is suspected to have been committed or, if he deems fit, place on any such book, document, article or product a mark by which the same may be identified.
- (f) take a sample of any product whether it has been seized or not and examine, analyse, classify or grade such sample, or cause it to be examined, analysed, classified or graded;
- (g) grade, classify, pack or mark, in accordance with any requirement of this Act, any marketed product, or direct any person in charge of such place, vehicle or product, or any agent or employee of such person so to grade, classify, pack or mark it;
- (h) grade or regrade, classify or pack or repack any quantity of such marketed product, or mark or remark such product or its container, or direct any person in charge of such product to do so, if he is of the opinion that such product has not been lawfully graded, classified or packed, or that such product or its container has not been lawfully marked, as the case may be; or
- (i) inspect any operations carried out at such place as aforesaid in connection with the classification, grading, keeping, manufacture, marking, packaging, preparation, processing production or treatment of any such product and demand from the person in charge of such operation any information regarding such operation.

(3) Notwithstanding anything contained in subsection (1), any person in the employ of the Agricultural Corporation may, if occasion so requires, carry out all or any of the functions of an inspector prescribed in subsection (2).

(4) Any inspector and any employee of the Agricultural Corporation referred to in subsection (2), is called upon to do so shall produce the documentary proof of his designation as an inspector and issue receipts.

**30. Offences and penalties** - (1) Any person who —

- (a) contravenes any prohibition imposed under section 9 or 10, or
- (b) hinders or obstructs any inspector or other official in the exercise of his powers or the performance of his duties under this Act, or
- (c) without valid excuse refuses or fails to answer to the best of his ability any questions which an inspector has put to him in the exercise of his functions under this Act, or furnishes information which is false or misleading, or

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(d) refuses or fails to comply to the best of his ability with any authorised or lawful requirement of an inspector in the exercise of his functions under this Act, or

(e) without the written permission of an inspector, removes, alters, destroys, disposes of or tampers with any book, document, article or product on which an identification mark has been placed by an inspector under section 30(2) (3) or removes, alters or obliterates any such mark, or

(f) fails to pay within the prescribed period and in the prescribed manner any general levy or special levy imposed under the provisions of this Act, or

(g) fails to comply with any requirement or prohibition prescribed or imposed by the Minister of the Agricultural Corporation or by regulation under the provisions of any repealed law prior to the commencement of this Act,

shall be guilty of an offence.

(2) Subject to the provisions of subsection (4) and (5), any person convicted of breach of the regulations in terms of any scheme under this Act shall be liable to a penalty not exceeding four hundred rand or three months imprisonment.

(3) Whenever a person has, in contravention of section 21 or any regulation, sold or disposed of any quantity of a marketed product to any other person, the person who so acquired that quantity from such first mentioned person shall be guilty of an offence and liable on conviction to the penalties prescribed in subsection (2).

(4) Whenever any person is convicted of an offence under this Act, the court convicting him shall —

(a) in the case of an offence which consists of failure to pay the full amount due by that person in respect of —

(i) any general levy or special levy; or

(ii) any exemption granted by the marketing committee by virtue of the provisions of section 21 (1), summarily enquire into and assess the amount due by that person to the Agricultural Corporation, and any such judgement may be executed in the same manner as if it had been pronounced in the course of civil proceedings in a magistrate's court; and

(b) in the case of any other offence, summarily enquire into and assess the monetary equivalent of any advantage gained by that person in consequence of that offence and impose on him an additional punishment of a fine equal to the amount so assessed, or, in default of payment, imprisonment for a period not exceeding three months.

(5) Whenever any person is convicted of an offence under subsection (3), the court convicting him shall —

(a) if the quantity of the product in respect of which the offence was committed is in the possession or under the control of the convicted person or has been seized by an inspector in terms of this Act, declare such quantity to be forfeited to the Agricultural Corporation; or

(b) if such quantity is not in the possession or under the control of the convicted person and has not been so seized, order that person to pay to the Agricultural Corporation an amount equal to the value of that quantity calculated at the price fixed in terms of this Act by the Minister for such product or the particular class or grade thereof, as the case may be, or if the class or grade of such quantity is not proved to the satisfaction of the court where at the price so fixed for the highest class or grade of such product, and any such order may be executed in the same manner as if it had been made in the course of civil proceedings in a magistrate's court.

(6) Whenever a producer of a marketed product or a person dealing with a marketed product in the course of trade is convicted of a contravention of any provision made in a scheme by virtue of the provisions of section 20 and it is proved that he was on at least two other occasions during the twenty-four months immediately preceding the date of such conviction found guilty of the same offence, the court convicting him may, in addition to imposing on him any other punishment in respect of the offence, it is satisfied that any equipment, machinery or apparatus, but excluding any vehicle, was used for the purpose of or in connection with the commission of the offence, declare such equipment, machinery or apparatus, or the convicted persons, rights thereto, to be forfeited to the State: Provided that such declaration shall not affect any right which any person other than the convicted person may have to the



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equipment, machinery or apparatus concerned if it is proved that such other person did not know that it was being used, or would be used for the purpose of or in connection with the commission of such offence, or that he could not prevent such use.

**31. Admissibility of certain statements and records** - At the trial of any person charged with the commission of an offence under this Act, any statement contained in any return furnished by or on behalf of the accused in terms of this Act, and any statement on record contained in any book or document kept by the accused or by any employee or agent of the accused, or which was at any time at any place during the occupancy of that place by the accused, shall be admissible against the accused as an admission of the facts set forth in that statement or record.

**32. Presumptions** - (1) If at the trial of any person charged with the commission of an offence under this Act it is proved that a false statement appears in any document signed, or any return furnished by such person, or on his behalf, it shall be presumed, until the contrary is proved, that he made such statement or caused it to be made knowing it to be false.

(2) At the trial of any person charged with the commission of an offence under this Act any quantity of a product in or upon any place or vehicle at the time a sample of such product is taken pursuant to the provisions of this Act shall, unless the contrary is proved, be deemed to be of the same class or grade as that sample.

**33. Proof of certain facts by affidavit** - (1) Whenever, at the trial of any person charged with the commission of an offence under this Act, the question arises whether or not any person bearing a particular name —

(a) has furnished particular information, or a particular return or other information to the Agricultural Corporation within a particular period, or

(b) has paid a particular levy or a portion thereof to the Agricultural Corporation within a particular period, or

(c) is registered with the marketing committee, or

(d) is the holder of a particular permit under this Act,

a document purporting to be an affidavit made by a person who in that affidavit alleges that he is an employee of the Agricultural Corporation and that no person bearing the said name has furnished such information or return or other document to the Agricultural Corporation within such period, or has paid such levy or portion thereof to the Agricultural Corporation within such period, or is registered with the marketing committee, or is the holder of a particular permit under this Act, as the case may be, shall, on its mere production at such trial by any person be *prima facie* proof of the facts stated therein.

**34. Vicarious liability** - (1) Whenever any manager, agent or employee of any person (hereinafter referred to as the employer) does or omits to do anything which, if it has been done or omitted by the employer, would amount to an offence under this Act, the employer shall be deemed himself to have done or to have omitted to do such thing, and shall be liable on conviction to the penalties prescribed in respect thereof unless the employer proves to the satisfaction of the court —

(a) that he did not in any way connive at or permit such act of omission; or

(b) that such act or omission or any similar act or omission, whether lawful or unlawful, was not within the scope of the authority or in the course of the employment of the manager, agent or employee concerned, and

(c) that he had taken all reasonable steps to prevent any act or omission of that nature.

**35. Regulations** - (1) In unusual circumstances or an emergency relating to agriculture the Minister may make temporary regulations prescribing —

(a) classes or grades in respect of any marketed product and the manner in which any product shall be classified or graded, or shall be treated, prepared or processed for the purposes of such classification or grading;

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(b) standards for the composition of a marketed product and the ingredients and other substances which a marketed product shall contain or the substances which a marketed product may not contain;

(c) the containers and the manner in which, and the persons by whom, any marketed product shall be packed or may not be packed, as the case may be.

(d) the particulars with which and the manner in which any marketed product or the container containing such product shall be marked or labelled and the persons by whom such product or such container shall be so labelled, or the particulars with which, or the manner in which any such container or product may not be marked or labelled.

(e) the fees to be paid for the inspection by an inspector of any marketed product in respect of which a grade or other class has been prescribed and the person by whom, the times at which, and the manner in which such fees shall be paid;

(f) the methods to be employed, and the procedure to be followed when samples of any product are taken or any quantity of any product is inspected by an inspector and the percentage of any such quantity which shall be inspected and which shall be deemed to be representative of the said quantity; and

(g) any other matter whatsoever which the Minister may deem it necessary or expedient to prescribe in order to achieve the aims and objects of this Act.

(2) Regulations may be made under subsection (1) either generally or in respect of a specific marketed product, person or area or in respect of different marketed products, persons or areas.

(3) No regulation made under this section shall remain in force for more than twelve months unless the Minister, after an enquiry into its necessity reissues such regulation.

**36. Repeal of laws and savings -** (1) Subject to the provisions of subsection (2) the Ciskeian Marketing Act, 1981 (Act 7 of 1981) and the marketing Amendment Act, 1983 (Act 15 of 1983) are hereby repealed.

(2) Any designation, appointment, decision, levy, prohibition or requirement made, taken, imposed or issued or any other thing done by the competent authority under any provision of a repealed law shall be deemed to have been made, taken, imposed, issued or done by the appropriate authority under the corresponding provision of the Act.

(3) Notwithstanding anything in subsection (1) or in any repealed law contained, but subject otherwise to the provisions of this act, every scheme which is in operation in Ciskei under a repealed law or under the Marketing Act, 1968, together with any amendment thereof shall, in so far as it can be applied, continue to apply and be deemed to be in operation under this Act.

**37. Short title and commencement -** (1) This Act shall be called the Marketing Act, 1986 and, subject to the provisions of subsection (2), shall come into operation on a date to be fixed by the President by proclamation in the gazette.

(2) A proclamation under subsection (1) may fix different dates of commencement (if necessary with retrospective effect) in respect of different sections of this Act.

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