

Government Gazette 15347

STATE PRESIDENT'S OFFICE

No. 2430.  
17 December 1993

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

No. 169 of 1993: Societies for the Prevention of Cruelty to Animals Act, 1993.

ACT

To provide for control of societies for the prevention of cruelty to animals; and for matters connected therewith.

(English text signed by the Acting State President.)  
(Assented to 8 December 1993.)

BE IT ENACTED by the State President and the Parliament of the Republic of South Africa, as follows:-

Definitions

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

- (i) "animal" means an animal as defined in the Animals Protection Act; (iv)
- (ii) "Animals Protection Act" means the Animals Protection Act, 1962 (Act No. 71 of 1962); (v)
- (iii) "associated Act" means-
  - (a) the Performing Animals Protection Act, 1935 (Act No. 24 of 1935); (b) the Medicine and Related Substances Control Act, 1965 (Act No. 101 of 1965);
  - (c) the Veterinary and Para-Veterinary Professions Act, 1982 (Act No. 19 of 1982);
  - (d) the Animal Diseases Act, 1984 (Act No. 35 of 1984); or
  - (e) the Abattoir Hygiene Act, 1992 (Act No. 121 of 1992);

(vii)

- (iv) "Association" means the SPCA National Council of Southern Africa which was incorporated under the Companies Act, 1973 (Act No. 61 of 1973), as an association not for gain; (viii)
- (v) "board" means the board established by section 2(3); (ii)
- (vi) "constitution" means the constitution of the Council referred to in section 4; (xi)
- (vii) "Council" means the National Council of Societies for the Prevention of Cruelty to Animals mentioned in section 2(1); (xiii)
- (viii) "director" means a director of the board nominated or elected or deemed to be elected in terms of section 2(3); (vi)
- (ix) "financial year" means a year from 1 April in any year to 31 March in the following year; (iii)
- (x) "Minister" means the Minister of Agriculture; (xii)
- (xi) "ordinary resolution" means a resolution reduced to writing and passed by the majority of the societies present at a general meeting of the societies convened in terms of the constitution; (ix)
- (xii) "restricted name" means an expression referred to in section 8(1); (i)
- (xiii) "rules" means the rules made by the board under section 7; (xiv)
- (xiv) "society" means a society registered or deemed to be registered in terms of section 8; (xvi)
- (xv) "special resolution" means a resolution reduced to writing and passed by a majority of at least two-thirds of the societies present at a general meeting of the societies convened in terms of the constitution; (xv)
- (xvi) "this Act" includes the rules and the constitution. (x)

#### Establishment of Council and board and abolition of Association

2. (1) There is hereby established a juristic person to be known as the

National Council of Societies for the Prevention of Cruelty to Animals (in Afrikaans Nasionale Raad van Dierbeskermingsverenigings).

(2) At the commencement of this Act the Association shall cease to exist.

(3) With a view to the achievement of the objects of the Council its affairs shall be managed and controlled by a board consisting of-

(a) directors elected in accordance with the constitution; and

(b) a director nominated by the Minister.

(4) The directors of the Association at the commencement of this Act shall be deemed to have been elected in terms of subsection (3)(a).

#### Objects of Council

3. The objects of the Council are-

(a) to determine, control and co-ordinate the policies and standards of societies, in order to promote uniformity;

(b) to promote co-operation among societies;

(c) to prevent the ill-treatment of animals by promoting their good treatment by man;

(d) to promote the interests of societies;

(e) to take cognizance of the, application of laws affecting animals and societies and to make representations in connection therewith to the appropriate authority;

(f) to do all things reasonably necessary for or incidental to the achievement of the objects mentioned in paragraphs (a) to (e).

#### Constitution of Council

4. (1) The board shall frame a constitution for the Council, which shall provide for-

(a) amendment thereof;

(b) the representation of societies on the board;

(c) the quorum for meetings of the board;

- (d) the voting rights of societies;
- (e) meetings of societies;
- (f) alteration in the composition of the board;
- (g) other matters the regulation of which is necessary for the proper functioning of the Council and the board.

(2) Any amendment of the constitution shall be approved by a special resolution.

(3) (a) The constitution and each amendment thereof shall be published in the Gazette.

(b) An amendment of the constitution shall come into operation on a date 60 days after it was published in the Gazette.

(c) The board shall, within 30 days after publication in terms of paragraph (a), furnish each society with a copy of such constitution or amendment thereof.

(4) (a) Copies of the constitution shall be obtainable from the board on payment of the amount determined by the board.

(b) The amount so determined shall be a reasonable amount, regard being had to the costs to the board of such a copy.

#### Substitution for Association of Council

5. (1) At the commencement of this Act-

- (a) all the rights and liabilities of the Association shall pass to the Council;
- (b) the name of the Association shall in every document, including a document in connection with a legal proceeding, be deemed to have been replaced by the name of the Council;
- (c) agents, representatives and other persons in the employ of the Association shall become agents, representatives and persons in the employ of the Council, as the case may be, on and subject to the same terms and conditions as those which applied between them and the Association at the said commencement;
- (d) the Registrar of Companies shall deregister the Association in terms of the Companies Act, 1973 (Act No. 61 of 1973).

(2) Any reference in any will or deed of donation to the Association or the SPCA or a society for the prevention of cruelty to animals or any abbreviation or translation thereof which cannot be construed as a reference to a particular society for the prevention of cruelty to animals, shall be deemed to be a reference to the Council.

(3) If the Association was the owner of any immovable property which passed to the Council in terms of this section, the Registrar of Deeds concerned shall at the request of the board make an appropriate endorsement in his registers and on the title deeds in question.

(4) No transfer duty, stamp duty or other tax or fees of office shall be payable by the Council in order to give effect to the provisions of this section.

#### Functions, powers and duties of Council and board

6. (1) The Council shall for the purposes of section 8 of the Animals Protection Act be a society for the prevention of cruelty to animals.

(2) In order to perform its functions and to achieve the objects of the Council the board may-

- (a) subject to the provisions of, and as contemplated in, the Fund-raising Act, 1978 (Act No. 107 of 1978), collect contributions or raise funds country-wide in any lawful manner;
- (b) receive financial grants from public funds and accept donations and bequests from any person or estate;
- (c) appoint suitably qualified persons as inspectors and other employees of the Council, as well as agents and representatives, to assist it;
- (d) confer or impose upon an inspector appointed in terms of paragraph (c) such functions, powers and duties as the board may deem necessary, including the powers-
  - (i) to enter upon any premises or conveyance of a society;
  - (ii) to examine or test or cause to be examined or tested any animal, material, substance or other article on such premises or conveyance;
  - (iii) to take samples of any such material, substance or other article;
  - (iv) to examine and make copies of or extracts from any book or

document of a society;

- (v) to give written instructions to societies regarding the execution of the board's requirements in terms of this Act;
- (vi) to seize any such animal or the whole or any part or quantity of such material, substance or other article, or any such book or document that relates to, or is on reasonable grounds believed by him to relate to, or may afford proof of, the failure of a society to perform its duties or to pursue its objects;
- (e) defend legal proceedings instituted against the Councils and institute legal proceedings connected with its functions, including such proceedings in an appropriate court of law or prohibit the commission by any person of a particular kind of cruelty to animals, and assist a society in connection with such proceedings against or by it;
- (f) for or on behalf of the Council purchase or otherwise acquire, or possess or hire, movable and immovable property, and alienate, let, pledge or otherwise encumber such property;
- (g) spend or invest funds of the Council;
- (h) from time to time borrow money by way of loans from any source and against the security which the board may deem fit;
- (i) of itself, or in association with any person, establish a company or acquire an interest in or control over a company;
- (j) hire or, on payment, provide services;
- (k) publish information concerning the objects and functions of the Council;
- (l) produce, process and sell products;
- (m) approve products or services connected with its functions, and promote the production or supply thereof;
- (n) co-operate or enter into agreements with any person, institution, government or administration, upon such conditions as may be agreed upon;
- (o) act as official national representative of societies at all national and international organizations and meetings;

- (p) appoint committees consisting of directors or directors and other persons or other persons only and delegate to any such committee such of its powers or assign to it such of its duties as it may deem fit;
- (q) upon payment of such deposit as the board may determine, arbitrate in disputes between societies or between a society and a member of the public, and at its discretion refund such deposit or any part thereof at the conclusion of the arbitration;
- (r) do everything which in its opinion is conducive to the performance of its functions or the achievement of the objects of the Council or is calculated directly to enhance the value of, or render profitable, the property or rights of the Council.

(3) The board shall not be divested of any power or duty delegated or assigned to a committee in terms of subsection (2)(p), and may rescind or vary any decision of a committee.

#### Rules by board

7. (1) The board may by special resolution make rules as to-

- (a) the course of conduct to be followed by societies;
- (b) requirements to be complied with in connection with the advertising of societies, including requirements relating to name-plates, signboards, lectures, interviews, publications in the lay press, printing on letter heads, and the use of any other name, mark or depiction in conjunction with a restricted name;
- (c) the minimum standards for facilities and services used or provided by a society;
- (d) the manner in which and the time at which an application for registration in terms of section 8 is to be made, and the application fee which is payable;
- (e) any matter the regulation of which the board considers necessary or expedient for the achievement or promotion of the objects of the Council or for the exercise of the powers or the performance of the functions and duties of the board.

(2) A rule made in terms of subsection (1) or any amendment or the repeal thereof shall come into operation on a date 30 days after the board has given notice thereof in the Gazette.

(3) The board shall furnish every society and every inspector, employee

and other officer of the board with a copy of each rule made by it and of each amendment or repeal of a rule, within 30 days after notice thereof has been given in terms of subsection (2).

#### Registration of societies

8. (1) No person shall without being registered with the Council use, in connection with any activity performed by him, the expression "Society for the Prevention of Cruelty to Animals" or "Dierebeskermingsvereniging" or any abbreviation thereof or any expression which so closely corresponds thereto that it may be misleading.

(2) A person desiring to be registered with the Council shall apply to the board in the manner and at the time prescribed by the rules, and the application shall be accompanied by the application fee and the documents likewise prescribed.

(3) No person shall be registered in terms of subsection (4) (b) (i) if he is a natural person.

(4) The board may-

(a) refuse an application for registration if in its opinion such registration would not serve the objects of the Council or if in its opinion there are already sufficient societies serving the area or community likely to be served by the applicant concerned;

(b) subject to the provisions of subsections (3) and (5)-

(i) grant any such application on such conditions as it may determine;

(ii) make the continued validity of any such registration subject to such conditions as the board may determine, whether by the imposition of further or new conditions or by the amendment or cancellation of existing conditions;

(c) cancel any such registration if the society concerned has contravened or failed to comply with any condition imposed by the board under paragraph (b).

(5) Conditions referred to in subsection (4)(b) shall relate to the achievement of the objects of the Council, the performance of its functions and duties and the exercise of its powers in terms of this Act.

(6) If the board refuses to grant an application for registration, the applicant concerned shall be notified in writing of the decision in question and of the grounds on which it is based.



(7) If the board has granted an application for registration it shall issue a certificate of registration to the society concerned, and such society shall at all times display a copy thereof at every place where it ordinarily conducts its affairs.

(8) If the board has cancelled a registration certificate it shall cease to be valid and the society concerned shall forthwith return it to the board.

(9) A society registered under subsection (4)(b)(i) shall only use an expression referred to in subsection (1) in connection with the performance of its functions for the purposes of this Act, the Animals Protection Act and the associated Acts.

(10) Any society for the prevention of cruelty to animals which is a member of the Association immediately prior to the commencement of this Act, shall for all purposes be deemed to be registered in terms of this section.

#### Functions, powers and duties of society

9. (1) A society shall for the purposes of section 8 of the Animals Protection Act be a society for the prevention of cruelty to animals.

(2) A society-

(a) shall act in accordance with the course of conduct prescribed by the rules;

(b) shall at all times be the holder of a valid authority under the Fund-raising Act, 1978 (Act No. 107 of 1978), when it collects contributions in the Republic for the achievement of its objects;

(c) shall cause proper records, statements and accounts to be kept of all its financial affairs and transactions, assets and liabilities in respect of each financial year;

(d) shall at the end of each financial year cause such records, statements and accounts to be audited and certified by a person registered as a public accountant and auditor under the Public Accountants' and Auditors' Act, 1991 (Act No. 80 of 1991);

(e) shall on or before the last day of July in each year submit to the board a report on its financial affairs of, and activities during, the preceding financial year, accompanied by a copy of its relevant audited and certified records, statements and accounts;

- (f) shall furnish an inspector appointed under section 6(2)(c) with any information or document at its disposal to assist the board in any investigation conducted by the board;
- (g) shall permit any representative appointed by the board to accompany any inspector or other officer of the society in the performance of his duties for or on behalf of the society;
- (h) shall pay timeously its contributions due to the board in terms of this Act;
- (i) shall co-operate with or permit the board to institute legal proceedings where the society is capable of instituting such proceedings under this Act, the Animals Protection Act or the associated Acts;
- (j) shall only adopt or apply such memorandum, articles of association, constitution or other founding documents as may previously have been approved by the board in writing in its discretion, or make amendments thereto which have, subject to subsection (3), been so approved;
- (k) shall use a restricted name only in accordance with the provisions of the rules;
- (l) may defend legal proceedings instituted against it and institute legal proceedings connected with its functions, including, but not limited to, such proceedings in an appropriate court of law to prohibit the commission by any person of a particular kind of cruelty to animals.

(3) The board shall not refuse to approve in terms of subsection 2(j) an amendment which a society proposes to make so as to provide for its internal conditions or affairs and which is not in conflict with the objects of the society or the Council.

#### Contributions of societies

10. (1) Subject to the provisions of subsection (2), an ordinary resolution may determine that financial contributions shall be paid by every society to the board, and determine the amount of such contributions required to be paid by each society and the due date for payment of such contributions.

(2) The said financial contributions shall be determined in accordance with the constitution.

(3) (a) Subject to paragraphs (b) and (c), a society which fails to

comply with any provision of this Act shall on demand by the board pay to the board an amount which a special resolution considers to be a fair and reasonable contribution to cover the actual costs which the board had to incur as a result of such failure.

(b) The said costs may include legal expenses between the board and its own legal representation as well as the pro rata costs of the board as a result of the employment of any inspector, employee or any other officer, or the appointment of any representative of the board, to investigate such failure by such society, or to exercise the board's rights and powers consequent upon such failure.

(c) If any award of costs of a court in favour of the board has been complied with by a society, the amount thereof shall be deducted from any amount payable by that society to the board in terms of this subsection.

(d) If a court awards costs in favour of a society against the Council, the board shall on demand of such society pay all reasonable expenses of the society over and above the costs awarded by the court.

(4) If the board undertakes any campaign, investigation or proceeding which is of national relevance or is important to the objects of the Council as well as those of the societies or certain societies and the board gives written notice thereof to the societies or the societies concerned, the board may in terms of an ordinary resolution require the societies or any society benefited thereby to pay towards the defrayal of the costs and expenses incurred or to be incurred by the board as a result of that undertaking a contribution determined by the board, which shall be proportional to the contributions of the societies payable in terms of subsection (1).

(5) If a society fails to pay any contribution due by it to the board on the due date for payment thereof, the board may in its discretion require such society to pay interest on the overdue amount at the rate of interest prescribed by the rules, from the due date for payment to the date of payment.

(6) The board may institute legal proceedings to recover from a society any amount due by it to the board.

#### Failure by society

11. (1) If a society fails to perform any of its duties in terms of this Act and does not remedy such failure within a period of 30 days after the board has, subject to subsection (2), by written notice to such society, addressed by registered post or delivered to its controlling body, called upon it to cease or remedy such failure, the board may, by a decision of at least two-thirds of the directors and subject to the

provisions of subsection (3)-

- (a) designate a representative or representatives of the board as a member or members on such society's controlling body and order that the society replace a corresponding number of members of its controlling body by the representative or representatives so designated;
- (b) terminate the membership of, or remove from office, any member, director, committee member, employee or other officer of such society as such, or institute or direct such society to institute disciplinary steps against him, if the board is of the opinion that such member, director, committee member, employee or other officer is responsible for or is the cause of the failure; or
- (c) cancel the registration of such society.

(2) If during any calendar year the board has already issued two or more notices in terms of subsection (1) to a society, the board shall not be obliged to issue a further such notice calling upon such society to cease or remedy a further failure referred to in subsection (1) and may exercise its rights and powers in terms of subsection (1) without affording such society the opportunity to cease or remedy such failure.

(3) Subject to the provisions of subsection (4), the board shall afford any society allegedly failing to perform its duties in terms of this Act or any member, director, committee member, employee or other officer of such society the opportunity to appear before the board or any committee or subcommittee established by the board for that purpose, or to make written representations to the board or such committee or subcommittee, if such society, member, director, committee member, employee or other officer requests to be allowed to do so before the board acts in terms of subsection (1)(a), (b) or (c).

(4) If a society or any other person fails to submit a request in terms of subsection (3) within a period of 30 days after a relevant written notice in terms of subsection (1), the society shall be deemed to have refused to cease or remedy the failure.

(5) After the board has exercised its rights and powers in terms of subsection (1)(a) it may-

- (a) revoke the designation of a representative or representatives in terms of the said subsection;
- (b) replace any of the said representatives by representatives or members of the society concerned determined by the board in its discretion; or

(c) cancel the registration of such society.

(6) The board may in its discretion, by the institution of legal proceedings against a society, enforce specific performance by it of its duties in terms of this Act.

(7) The provisions of subsection (6) shall not derogate from the rights and powers of the board in terms of the other provisions of this section and may be applied in addition to the exercise of such rights and powers.

#### Dissolution of society

12. (1) If the registration of a society is cancelled or a society is for any reason wound up or dissolved or unable to carry on its activities or to achieve its objects, or for any reason any irresolvable deadlock develops in its controlling body, the board may in its discretion-

(a) constitute and register another society or designate any other existing society or organization to take over the functions of, and, in particular, to serve the territory and community formerly served by, that society; and

(b) transfer to, and vest in, the other society or organization referred to in paragraph (a) all the assets, liabilities, rights and duties of that society or burden it therewith, without the rights of third parties being prejudiced thereby; or

(c) assume control of that society by the appointment of representatives of the board as directors, committee members, employees or other officers of such society until the board has taken steps in terms of paragraph (a).

(2) If the board has not taken any steps in terms of subsection (1) (a) within six months after becoming entitled to do so, or if during such period such society has not resolved the deadlock in question or overcome its inability to perform its functions or achieve its objects, such society shall be wound up in accordance with its memorandum, articles of association, constitution or other founding deed, or any other applicable law, whichever may be applicable.

#### Report to Minister

13. (1) The board shall within six months after the end of every financial year submit to the Minister a report on the Council's activities and financial affairs in respect of the preceding financial year.

(2) After receipt of the report the Minister may request from the board

such further information in connection with the said activities and affairs of the Council as he may deem fit.

#### Limitation of liability

14. A director, inspector, employee or other officer or representative of the board shall not be liable in respect of anything done or omitted to be done in good faith in the exercise of a power or the performance of a duty conferred or imposed by or under this Act.

#### Offences and penalties

15. (1) Any person who-

- (a) contravenes or fails to comply with a provision of section 8(1) or (9);
- (b) obstructs or hinders the board or any inspector referred to in section 6(2) (c) or any officer of the board in the exercise of its or his powers or the performance of its or his duties or functions under this Act;
- (c) falsely holds himself out to be an inspector or representative of the board acting under this Act, the Animals Protection Act or an associated Act;
- (d) refuses or fails to comply with a direction of the Minister referred to in section 16(b) or (c), shall be guilty of an offence.

(2) Any person who is convicted of an offence in terms of this Act shall-

- (a) in the case of a first conviction of an offence referred to in subsection (1) (a), be liable to a fine, or to imprisonment for a period not exceeding two years;
- (b) in the case of a second or subsequent conviction of an offence mentioned in paragraph (a), whether it be the same or some other offence mentioned in that paragraph, be liable to a fine, or to imprisonment for a period not exceeding four years;
- (c) in the case of a conviction of an offence referred to in subsection (1) (d), be liable to a fine, or to imprisonment for a period not exceeding six months; and
- (d) in the case of a conviction of an offence mentioned in subsection (1)(b) or (c), be liable to a fine, or to imprisonment for a period not exceeding one year.

(3) Notwithstanding anything to the contrary in any law contained, a magistrate's court shall be competent to impose any penalty provided for in this Act.

(4) Any fine paid or recovered in respect of an offence under this Act shall be paid over to the Council.

#### Failure of board

16. If for any reason, including the failure or refusal by the directors to attend any meetings or vote thereat concerning the functions of the board, or an irresolvable deadlock among the directors regarding any decision or action concerning the functions of the board, the board is incapable and will not become capable of achieving its objects, performing its duties and exercising its rights and powers in terms of this Act, the Minister may-

- (a) give a ruling with regard to any dispute or other matter giving rise to such inability on the part of the board with a view to overcoming such inability;
- (b) give such directions concerning the functions of the board as he may deem fit, including the reconstitution of the board; or
- (c) direct the transfer of all the assets, liabilities, rights and obligations of the Council to any other juristic person the objects of which substantially correspond to those of the Council and see that it is done.

#### Dissolution of Council

17. (1) The board shall in terms of a unanimous resolution by the societies present at a general meeting of the societies convened in terms of the constitution, dissolve the Council.

(2) If the Council is dissolved the provisions of section 16 shall apply *mutatis mutandis*.

#### Lapsing of Act

18. If the Minister gives a direction in terms of section 16(c) and the implementation of such direction has been completed, this Act shall lapse.

#### Short title

19. This Act shall be called the Societies for the Prevention of Cruelty to Animals Act, 1993.