

PEST DESTROYERS ACT.

Act No. 10, 1945.

An Act to regulate the sale and prevent the adulteration of pest destroyers; to provide for the inspection and analysis and for the registration of pest destroyers; and for purposes connected therewith. [Assented to, 21st March, 1945.]

George VI.
No. 10, 1945.

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

1. (1) This Act may be cited as the "Pest Destroyers Act, 1945."

Short title
and
commence-
ment.

(2) This Act shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette.

2. (1) In this Act, unless the context or subject-matter otherwise indicates or requires—

Interpreta-
tion.

"Analyst" means analyst appointed under this Act.

"Fungicide" means any substance used or intended to be used for the purpose of destroying or preventing the attacks of fungi or other parasitic plants or bacteria affecting or which may affect seeds, fruit, vegetables, plants or other produce of the soil and any substance which may be prescribed by the regulations as a fungicide for the purposes of this Act.

cf. Vict. Act
No. 3688
(1928), s. 3.

"Insecticide" means—

(a) any substance used or intended to be used for the purpose of destroying, or preventing the infestations or attacks of, insects or other pests;

(b) a lure; and

(c) any substance which may be prescribed by the regulations as an insecticide for the purposes of this Act.

"Inspector"

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cf. Q'land
Act, 3 Geo.
VI, No. 8,
s. 3.

“Inspector” means an inspector appointed under this Act.

“Lure” means any material used or intended to be used to lure or attract any insect or pest for purposes of destruction.

“Package” includes anything in or by which a pest destroyer is cased, covered, enclosed, contained or packed.

“Pest destroyer” means any fungicide, insecticide or weed destroyer.

“Prescribed” means prescribed by this Act or by the regulations.

“Regulations” means regulations made under this Act.

cf. Act No.
19, 1940,
s. 3.

“Sell” includes barter or exchange and also includes agreeing to sell or offering or exposing for sale or having in possession for sale or sending, forwarding or delivering for or on sale or causing, suffering or attempting any of such acts or things; and derivatives from “sell” have a corresponding meaning.

“Under Secretary and Director” means the Under Secretary and Director of the Department of Agriculture, and any person for the time being acting in his place.

cf. Viet. Act
No. 3688
(1928), s. 3.

“Weed destroyer” means any substance used or intended to be used for the purpose of destroying or preventing the spread of weeds or noxious plants and any substance which may be prescribed by the regulations as a weed destroyer for the purposes of this Act.

“Wholesale dealer” means the manufacturer, importer or other person primarily responsible for placing any pest destroyer on the market in New South Wales.

(2) Nothing in this Act shall affect the provisions of the Poisons Act, 1902, or the Stock Foods and Medicines Act, 1940.

Exemption.
cf. Act No. 51,
1934, s. 4 (a).
Q'land, 3 Geo.
VI, No. 8, s. 4.

3. This Act shall not apply to the sale to a manufacturer of pest destroyers of bulk lots of pest destroyers not packed ready for resale.

4.

4. (1) Every wholesale dealer in any pest destroyer shall within thirty days after the commencement of this Act or within thirty days after the date of his commencing in business or trade as a wholesale dealer in any pest destroyer (whichever is the later date) and thereafter in each year on or before the thirtieth day of September make to the Under Secretary and Director an application for registration of such pest destroyer in writing in or to the effect of the prescribed form setting out the following particulars:—

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 Vict. Act No. 4295 (1935), s. 3.

- (a) his name and place of business;
- (b) all marks, figures, words or letters (in this Act referred to as "the distinguishing name") used or intended to be used in connection with such pest destroyer;
- (c) the name of the manufacturer and the place of manufacture;
- (d) the actual prescription to which such pest destroyer is made, stating the names of the active constituents and the forms in which they occur and the proportion per centum of each constituent therein, or if a standard has been prescribed and is in force for such pest destroyer, the nature and the quantities or proportions of constituents specified in the regulation prescribing the standard; such name, proportions and quantities shall be declared in the manner prescribed (if any);
- (e) all directions for the use of the pest destroyer; and
- (f) such further particulars as may be prescribed.

(2) Every such application shall be accompanied by—

- (a) the prescribed fee;
- (b) such other matters or things as are prescribed.

(3) If any wholesale dealer in any pest destroyer proposes to sell any pest destroyer in addition to those already registered by him under this section, such wholesale dealer shall before commencing to sell such additional pest destroyer make with respect to the same a like application for registration as hereinbefore prescribed.

(4)

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(4) No pest destroyer shall be registered under this Act unless—

- (a) the Under Secretary and Director approves; and
- (b) such pest destroyer conforms to the standard (if any) prescribed therefor pursuant to section seven of this Act.

(5) The registration of any pest destroyer shall continue in force until the thirtieth day of September next following the date of registration.

(6) Any wholesale dealer who contravenes or fails to comply with any of the provisions of subsections one, two and three of this section or who in any application for registration of a pest destroyer under this section makes any statement which is false in any material particular shall be guilty of an offence against this Act.

Appeal
against
refusal of
registration
cf. Act
No. 19,
1940, s. 16.

5. (1) Where an application for registration of a pest destroyer is refused the Under Secretary and Director shall within seven days after such refusal send by post to the applicant a notice in writing setting out that the application has been refused and the grounds of such refusal.

(2) The applicant may within the time prescribed appeal against such refusal to a District Court judge having jurisdiction in the district within which the applicant's place of business is situated.

(3) Such judge may summon witnesses, hear evidence and determine the matter having regard to the provisions of this Act, the regulations, the circumstances of the case and the public interest.

(4) The decision of such judge upon any such appeal shall be final, and shall be binding upon the Under Secretary and Director and the appellant, and shall be carried into effect accordingly.

(5) If in any decision under this section costs are awarded, such costs may be enforced and recovered in like manner to costs awarded in a judgment of the District Court.

(6) A District Court judge determining any matter upon appeal under this section shall be assisted by two assessors, who may advise such judge, but shall not be entitled to take any other part in determining the matter.

(7)

(7) Such assessors shall be two members of the Faculty of Agriculture of the University of Sydney appointed by the Minister. No. 10, 1945.

(8) Each assessor shall for every day or portion of a day during which he is engaged as such upon an appeal under this section be entitled to be paid a fee of three guineas.

6. (1) No person shall, after the expiration of a period of three months from the commencement of this Act, sell any pest destroyer unless there is securely and conspicuously affixed to every package of pest destroyer a label setting out the following particulars:— Packages to be labelled. cf. Q'land Act, 3 Geo. VI, No. 8, s. 18.

- (a) the name and place of business of the wholesale dealer who manufactured or imported the pest destroyer or who is primarily responsible for placing the same on the market in New South Wales;
- (b) the distinguishing name of the pest destroyer;
- (c) the net weight or volume of the contents of the package;
- (d) all directions for the use of the pest destroyer;
- (e) a statement of any prescribed particulars relative to standards in respect of the pest destroyer concerned;
- (f) the words "Registered under the Pest Destroyers Act, 1945 (New South Wales)"; and
- (g) such further particulars as may be prescribed:

Provided that it shall be sufficient compliance with the provisions of this subsection if the particulars required by this subsection to be set out on a label affixed to the package of pest destroyer are written, printed or impressed upon such package.

(2) The particulars required by this section to be set out on the label affixed to, or written, printed or impressed upon every package of pest destroyer, shall, notwithstanding any agreement to the contrary, have effect as a warranty by the vendor of the accuracy of such particulars.

7. The regulations may prescribe standards for any particular pest destroyer or class of pest destroyers. Power to fix standards for pest destroyers.
Without prejudice to the generality of the foregoing provisions

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No. 10, 1945. provisions the regulations may, in prescribing such standards, prescribe—

- (a) constituents which shall or shall not be included in the pest destroyer or class of pest destroyers;
- (b) the minimum and/or maximum proportions or quantity of any constituent in any pest destroyer or class of pest destroyers; or
- (c) the chemical or physical standard or condition of any constituent in any pest destroyer or class of pest destroyers.

**Offences
and
penalties.**

8. Any person who after the expiration of a period of three months from the commencement of this Act—

- (a) sells any pest destroyer which—
 - (i) is not registered in accordance with the provisions of this Act and the regulations thereunder;
 - (ii) is not in accordance with the actual prescription set out in the application for registration of such pest destroyer;
 - or**
 - (iii) is not in accordance with the standards (if any) prescribed therefor;
- (b) in any written, typed or printed matter or in any advertisement by broadcast transmission makes or causes to be made any statement or claim in respect of any pest destroyer which is false or misleading in any material particular; or
- (c) contravenes or fails to comply with any provision of subsection one of section six of this Act,

shall be guilty of an offence against this Act and shall be liable on conviction to a penalty not exceeding one hundred pounds.

**Appoint-
ment of
inspectors
and
analysts.
Act No. 19,
1940, s. 20.**

9. (1) The Governor may, subject to the provisions of the Public Service Act, 1902, appoint such inspectors, analysts and other persons as may be deemed necessary for the purposes of this Act.

(2) The Minister may by writing under his hand authorise any officer of the Public Service or member of the police force to exercise, either generally or in any particular case or class of cases or for any specified place,
all

all or any of the powers, authorities, duties and functions conferred or imposed on an inspector by this Act. Any person so authorised shall, when acting within the scope of his authority, be deemed to be an inspector for the purposes of this Act. No. 10, 1945.

10. (1) Any inspector or any person duly authorised in that behalf under subsection two of section nine of this Act may— Powers of inspectors and officers.

- (a) enter and search any land, building, premises or place which he has reasonable grounds for believing is used for the making, manufacture, sale, storage, delivery or preparation for sale of any pest destroyer; Act No. 19, 1940, s. 21.
- (b) enter and search any vehicle, ship, vessel, aeroplane or other means of transport which he has reasonable grounds for believing is used for the conveyance of any pest destroyer in the course of trade, sale or delivery;
- (c) examine any pest destroyer found upon such land, building, premises, place, vehicle, ship, vessel, aeroplane or other means of transport and open any package containing any such pest destroyer;
- (d) take for analysis or examination samples of any such pest destroyer without payment. The quantity and nature of samples and the proportion of the bulk from which such samples are to be taken shall be as prescribed;
- (e) inspect any books, accounts, registers or documents found in or upon such land, building, premises, place, vehicle, ship, vessel, aeroplane or means of transport relating to any transaction in connection with pest destroyers and take copies thereof or of any entries therein.

(2) Where any pest destroyer is taken for analysis or examination the inspector or person duly authorised as aforesaid shall divide the sample into three approximately equal parts and deal with each part in the manner prescribed: Provided that where any such pest destroyer is made up in packages, three of such packages may be taken and dealt with as if they were the three parts obtained by dividing the sample.

11.

Pest Destroyers Act.**No. 10, 1945.**Tampering
with
samples.Act No. 19,
1940, s. 23.Officer may
demand
informa-
tion.*Ibid.* s. 24.

11. Any person who improperly tampers with any sample or part of a sample taken under this Act shall be guilty of an offence against this Act.

12. (1) Any inspector or other person duly authorised in that behalf under subsection two of section nine of this Act may at any time require the buyer, whether by wholesale or retail, of any pest destroyer to state the name and address of the person from whom he purchased such pest destroyer and to furnish any other information in connection with the purchase which such inspector or person may require and also to produce for inspection any invoice, agreement, circular or advertisement given to him by the vendor.

(2) Any person who withholds any such information or who fails without lawful excuse to produce such invoice, agreement, circular or advertisement shall be guilty of an offence against this Act.

Information
as to
prescription
or composi-
tion of pest
destroyer to
be deemed
confidential.
cf. *Ibid.* s.
14.

13. The information as to the prescription or composition of any pest destroyer contained in any application for registration of such pest destroyer shall be deemed confidential and shall not be disclosed by any officer of the Department of Agriculture to any other person without the authority in writing of the wholesale dealer in such pest destroyer except in pursuance of this Act or so far as is necessary in respect of any proceedings for an offence instituted or proposed to be instituted under this Act.

Certificate
of analyst
to be
evidence.

Ibid. s. 25.

14. (1) Any analyst who analyses any pest destroyer submitted to him in pursuance of this Act or the regulations for analysis may give a certificate in or to the effect of the form prescribed as to the result of the analysis.

(2) In any legal proceedings under this Act or the regulations the production of a certificate purporting to be signed by an analyst shall be prima facie evidence of the identity of the pest destroyer analysed and of the result of the analysis without proof of the signature of the person appearing to have signed the same.

Forfeiture
of pest
destroyers.
Ibid. s. 26.

15. (1) In the case of any conviction under this Act for any offence specified in paragraph (a) of section eight of this Act any pest destroyer to which the conviction relates may by order of the court become and be forfeited

to

to His Majesty. Such forfeiture may extend to the whole of the pest destroyer and to all packages containing any similar pest destroyer belonging to the defendant or in his possession at the time of committing the offence. No. 10, 1945.

(2) All pest destroyers forfeited under this Act shall be disposed of as the Minister may direct.

16. In the case of any conviction under this Act in respect of any pest destroyer which has been analysed by an analyst the court may award the reasonable expenses of and attending such analysis against the defendant as part of the costs of the prosecution. Cost of analysis.
Act No. 19,
1940, s. 27.

17. Any person who prevents, delays, obstructs or hinders any inspector or person duly authorised under subsection two of section nine of this Act from or in the execution of his powers, authorities, duties and functions under this Act shall be guilty of an offence against this Act. Penalty for obstructing inspectors.
Ibid. s. 28.

18. Any person who retakes or attempts to retake any pest destroyer ordered to be forfeited under this Act shall be guilty of an offence against this Act. Retaking of seized pest destroyers.
Ibid. s. 30.

19. Any person who is guilty of an offence against this Act or the regulations shall where no other penalty is expressly provided therefor be liable to a penalty not exceeding fifty pounds. Penalty for offences.

20. Penalties imposed by this Act or the regulations shall be recoverable in a summary manner before a stipendiary or police magistrate or any two justices in petty sessions. Recovery of penalties.

21. (1) Where a copy of a certificate given by an analyst under this Act has been served upon a defendant who is charged with the commission of an offence against the provisions of this Act or the regulations it shall not be competent for the defendant upon the hearing of the charge to dispute the accuracy of any statement contained in the certificate unless within seven clear days after service upon him of the copy of the certificate he has notified the Under Secretary and Director by letter forwarded by registered post that the accuracy of the certificate will be disputed at the hearing of the charge. Certificate not to be disputed.
Ibid. s. 33.

(2) Service of the copy of a certificate may be proved in the same manner as service of the summons.

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Certificate
of registra-
tion or non-
registration.
Act No. 19.
1940, s. 34.

22. In any legal proceedings under this Act the production of a certificate purporting to be signed by the Under Secretary and Director that any pest destroyer is or is not registered under this Act shall be prima facie evidence of the fact so certified without proof of the signature of the Under Secretary and Director.

Regulations.

23. (1) The Governor may make regulations not inconsistent with this Act prescribing all matters which by this Act are required or permitted to be prescribed or which are necessary or convenient to be prescribed for carrying out or giving effect to the provisions of this Act.

(2) In particular and without prejudice to the generality of subsection one of this section the Governor may make regulations in respect of the following matters:—

- (a) prescribing the manner in which the particulars relating to a pest destroyer shall be written, printed or impressed on the package containing it or on a label affixed to the package and the manner in which a label containing the particulars shall be affixed to the package;
- (b) prescribing the size and type of labels to be affixed to packages of pest destroyer;
- (c) prescribing the manner in which samples taken under this Act shall be dealt with;
- (d) prescribing methods of analysis or examination for any pest destroyer or class of pest destroyers;
- (e) prescribing what name or names may or may not be used to designate any pest destroyer;
- (f) prescribing forms for the purposes of this Act;
- (g) prescribing the fees to be paid under this Act;
- (h) requiring that prescribed pest destroyers shall be sold only in packages of such kind and size and made of such material as may be prescribed.

(3) The regulations may prescribe a penalty not exceeding fifty pounds for any breach thereof.

(4) The regulations shall—

- (a) be published in the Gazette;
- (b) take effect from the date of publication or from a later date to be specified in such regulations;
- (c)

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- (c) be laid before both Houses of Parliament within fourteen sitting days after publication if Parliament is in session and, if not, then within fourteen sitting days after the commencement of the next session. ^{No. 10, 1945.}

If either House of Parliament passes a resolution of which notice has been given at any time within fifteen sitting days after such regulations have been laid before such House, disallowing any regulation or part thereof, such regulation or part shall thereupon cease to have effect.
