

SEEDS.

14° and 15° Geo. VI., No. LXXIII.

No. 73 of 1950.

AN ACT to consolidate and amend the law relating to the sale of seeds and for other purposes.

[Assented to 5th January, 1951.]

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

1. This Act may be cited as the *Seeds Act, 1950*. Short title.
2. This Act shall come into operation on a date to be fixed by Proclamation. Commencement of Act.
3. The Agricultural Seeds Act, 1922, is repealed. Repeal of No. 21 of 1923.
4. This Act shall be construed subject to the Commonwealth of Australia Constitution Act, and so as not to exceed the legislative power of the State to the intent that where any provision hereof would Construction.

but for this section be in excess of that power it shall, nevertheless, be a valid enactment to the extent to which it is not in excess of that power.

Definitions.

5. In this Act, unless inconsistent with the context—

“crop seeds” means those seeds prescribed as crop seeds;

“extraneous seeds” means those seeds prescribed as extraneous seeds;

“inert matter” includes all portions of seeds or fruit that are not more than one-half of the normal size, completely decorticated seeds of legumes, clusters of mangel, beet and sugar beet not containing seeds and clusters which will pass through a two millimetre slit sieve, and all stones, chaff, sand, grit, soil, fragments of roots, stems, leaves and flowers, empty glumes, single palea, sterile flowers of grasses, parts of insects, dead insects, scales and any other matter, including larvae of parasitic insects, Fox-tail seeds with larvae of *Oligotrophus* sp. and *Claviceps sclerotia* in grass seeds;

“inspector” means an inspector of seeds appointed under this Act;

“Minister” means the Minister of Agriculture or other Minister of the Crown charged for the time being with the administration of this Act;

“officer” means an officer appointed for the purposes of the administration of this Act;

“package” includes sack, bag, barrel, case, tin, jar, packet, parcel, tube or other container or carrier;

“prohibited seeds” means those seeds prescribed as prohibited seeds;

“seed” means any part of a plant by which it is reproduced sexually and in case of seeds to which or to clusters of which any fruit or part thereof normally adheres, such fruit or part thereof so adhering shall be deemed to form part of the seed;

“seed analyst” means a seed analyst appointed under this Act;

“sell” includes offering or attempting to sell, exposing for sale and sending, forwarding, delivering or having in possession for sale or exchange and “sale” and “seller” shall include corresponding meanings;

“weed seeds” means those seeds prescribed as weed seeds.

6. (1) This Act shall apply to such seeds as are prescribed. Application of Act.

(2) Nothing in this Act shall apply to the sale of seeds to a person who is in business as a seeds grader and/or cleaner who may purchase seeds for such purpose of grading and/or cleaning to bring seeds to the prescribed standard to comply with this Act.

7. (1) No person shall sell seed otherwise than in a package. Labelling of seed.

(2) Any person who sells any seed shall mark legibly and indelibly on the outside of every package containing any of the said seeds, or on a label attached to the package, a statement specifying—

- (a) the name and address of the seller;
- (b) the name of the seed contained in the package, describing the seed by the recognised common name or its botanical equivalent, and where practicable, the variety or strain.

(3) Any such statement shall, notwithstanding any agreement to the contrary, constitute a warranty that the contents of the package are in accordance with this Act.

(4) No person shall be bound to accept delivery on sale of any crop seeds unless the provisions of subsection (2) of this section are complied with as to the seeds.

8. Any person who sells any crop seeds in respect of which— Sale of seed in packages not complying with the Act.

- (a) the statements required by section seven are not clearly and legibly marked on the package or on the label attached to the package; or

- (b) any statement required by section seven is marked but is false, whether to the knowledge of the seller or not, in any particular as applied to seeds contained in the package,

shall be guilty of an offence and liable to a penalty not exceeding ten pounds for a first offence and not exceeding twenty pounds for any subsequent offence.

Prohibition
of sale of
certain seeds.

9. Any person who sells—

- (a) prohibited seeds; or
- (b) crop seeds with which are mixed prohibited seeds; or
- (c) crop seeds with which are mixed weed seeds, extraneous crop seeds or inert matter in excess of the proportion prescribed; or
- (d) crop seeds of which the proportion of germinable seed is lower than the proportion prescribed; or
- (e) crop seeds which are infected with any prescribed disease or infested with any prescribed pest,

shall be guilty of an offence and liable to a penalty not exceeding ten pounds for a first offence and not exceeding twenty pounds for any subsequent offence.

Purchaser
may return
seeds not
complying
with this
Act.

10. The purchaser of any seed which does not conform to the requirements of subsection (2) of section seven of this Act or which has been sold in contravention of the provisions of section nine of this Act, may, subject to the prescribed conditions, return the same to the seller, notwithstanding that he has accepted delivery thereof, and may recover in any court of competent jurisdiction the price paid for or any expenses incurred in respect of any seed so returned.

Officers.

11. The Governor may appoint such officers as are necessary for the purposes of this Act.

12. Any inspector—

Powers of
inspectors.

- (a) shall have reasonable access at any time to any place where the inspector believes that any seeds are stored or sold or kept for sale;
- (b) may inspect any seeds which are being conveyed by railway or any other means of transport;
- (c) may examine and sample any package containing any seeds in any such place or in transit as aforesaid;
- (d) may, without payment therefor, remove a sample of any seed for analysis;
- (e) may demand the name of the person from whom the seed under inspection was bought, and the production of any invoices or other documents connected with the same;
- (f) seize any seed or any package enclosing or containing any seed which he reasonably suspects does not comply in full with the requirements of this Act or in respect of which he reasonably suspects that all or any of the provisions of this Act have not been complied with in full;
- (g) weigh, count, measure, gauge or mark any such seed or any package enclosing or containing any such seed, and fasten, secure and seal the same;
- (h) may do any act or thing required or permitted by regulation to be done in connection with or for the purpose of anything authorised by this section or the analysis of samples taken under this section.

13. When, in any proceeding in respect of an offence against this Act, a contravention of any of the provisions of this Act is proved in respect of any sample of seeds, the contravention shall be deemed

Sample to
represent
whole.

to have been proved in respect of the whole lot from which the sample was taken, or all the seeds bought at the same time as the sample.

Right to
analysis.

14. Any person may, on payment of the prescribed fee, have any seed analysed by an officer of the Department of Agriculture, and shall be entitled to receive the report of the result of the analysis.

Obstructing
or interfering
with
inspectors.

15. Any person who—

- (a) in any way obstructs or interferes with an inspector in the discharge of any of his duties or the exercise of any of his powers under this Act; or
- (b) assaults or intimidates, or gives, procures, offers, or promises any bribe, recompense, inducement, or reward to influence an officer in the discharge of any of his duties or the exercise of any of his powers under this Act; or
- (c) refuses to allow to be taken any sample sought to be taken by an inspector in accordance with this Act; or
- (d) retakes any seed seized or taken under this Act, or resists or prevents such seizure or taking; or
- (e) without authority (the proof of which authority shall be upon him) alters, erases, or removes any mark, or opens, breaks, or removes any fastening or seal, placed by an inspector in pursuance of this Act upon any seed or package of seed—

shall be guilty of an offence and liable for a first offence to a penalty not exceeding twenty pounds, and for every subsequent offence to a penalty not exceeding fifty pounds.

16. Any person who knowingly and fraudulently—

Tampering
with
samples.

- (a) tampers with any package of seed so as to procure that any sample of it taken under this Act does not correctly represent the contents of the package; or
- (b) tampers with any sample taken under this Act,

shall be guilty of an offence and liable to a penalty not exceeding fifty pounds, or to imprisonment for any term not exceeding six months.

17. (1) The Minister may order any seeds which are found to contain prohibited seeds, weed seeds, inert matter, or extraneous crop seeds to a greater extent than is permitted by the regulations, to be treated or cleaned by the owner or his agent in the manner directed by the Minister and within a specified time. If the order is not complied with within the specified time, the person to whom the order was directed shall be guilty of an offence and liable to a penalty not exceeding twenty pounds.

Treatment
of seeds.

(2) If any such order is not complied with to the satisfaction of the Minister within the specified time, the Minister may, notwithstanding the imposition of any penalty under subsection (1) of this section, order the seeds to be treated, cleaned, or destroyed, and the seeds may be treated, cleaned, or destroyed accordingly, and the cost of so doing may be recovered by the Minister from the owner or his agent in any court of competent jurisdiction as a debt due to him by the owner or agent.

18. (1) A prosecution for an offence against this Act may be instituted by any person authorised in that behalf by the Minister.

Prosecutions.

(2) All proceedings in respect of offences against this Act shall be disposed of summarily.

(3) There shall be served with the summons a copy of the seed analyst's report (if any) obtained on behalf of the prosecution.

(4) Service of the copy of the said report may be proved in the same manner as service of the summons.

(5) When any seed has been taken or obtained for analysis, no prosecution under this Act for any offence in connection with the seed or the lot from which it was taken or obtained shall be instituted after the expiration of three months from the time when it was so taken or obtained.

Report of analysis *prima facie* evidence in proceedings under this Act.

19. (1) In any proceedings under this Act a report containing a statement of the result of the examination of any seed therein referred to, and purporting to be signed by a seed analyst, shall be *prima facie* evidence of the identity of the seed which is stated in the report to have been examined, and of the result of the examination, and also of the prescribed method of analysis (if any) having been followed by the seed analyst in making the analysis, without proof of the signature of the person appearing to have signed the same.

(2) When a copy of such a report has been served upon a defendant who is charged with the commission of an offence against the provisions of this Act, it shall not be competent for the defendant upon the hearing of the charge to dispute the accuracy of any statement contained in the report, or that the prescribed method of analysis (if any) was followed, unless the defendant shall within three clear days after the service upon him of the copy of the report, or within such further time as the court shall allow, has notified the Department of Agriculture that the accuracy of such statement, or that the prescribed method of analysis (if any) was followed, will be disputed at the hearing of the charge.

Report of analysis *prima facie* evidence in civil or criminal proceedings.

20. (1) At the hearing of any civil or criminal proceedings with regard to any sample or part thereof which has been analysed by a seed analyst, or the lot from which the sample was taken, or with regard to the contents of any package of seed which has been so analysed, the production of a report purporting to be signed by a seed analyst shall, with-

out proof of the signature of the person appearing to have signed the same, or that he is a seed analyst, be sufficient evidence—

- (a) of the identity of the seed analysed;
- (b) of the result of the analysis;
- (c) of the matters stated in the report; and
- (d) of the prescribed method of analysis (if any) having been followed by the seed analyst in making the analysis,

unless the defendant, by at least three clear days' (exclusive of Sundays and public holidays) notice in writing delivered to the plaintiff or complainant, and by a like three clear days' notice delivered, with a witness fee of one guinea, to the seed analyst, requires the seed analyst to attend as a witness.

(2) In any case where the attendance of a seed analyst is required as mentioned in this section, the court may, in addition to any other order which may be made as to costs, make such order as the court deems proper as to the witness fee to be paid to the seed analyst and as to the expenses of and remuneration to be paid for the analysis.

21. Subject to the provisions of section nineteen and section twenty of this Act, at the hearing of any proceedings under this Act or any civil or criminal proceedings with regard to any sample, or part thereof, which has been analysed by a seed analyst, or the lot from which the sample was taken, or with regard to the contents of any package of seed which has been so analysed, no evidence of the result of any analysis, whether made by a seed analyst or not, shall be admitted unless it is first proved that in making the analysis the seed analyst followed the method (if any) prescribed under this Act for the analysis of the said seed.

Admissibility
of report of
analyst.

22. In any proceedings under this Act or any civil or criminal proceedings with respect to any seed analysed under this Act, parole evidence that any person is a seed analyst or an inspector or other officer under this Act shall be sufficient.

Evidence of
person being
a seed
analyst or
inspector.

**Forfeiture
of seed.**

23. (1) When any person is convicted of any offence under section eight or section nine of this Act, the court may, in addition to making any other order in respect of the offence, adjudge that any seed or package of seed to which the conviction relates be forfeited to the Crown, whereupon the same shall be absolutely forfeited to and become the property of the Crown.

(2) All seeds and packages of seeds confiscated under this Act shall be disposed of as the Minister directs.

Regulations.

24. (1) The Governor may make regulations, not inconsistent with this Act, prescribing all things which by this Act are required, contemplated, or permitted to be prescribed, or which may be necessary to be prescribed for giving effect to the provisions and objects of this Act.

(2) In particular and without prejudice to the generality of subsection (1) of this section, the regulations may—

- (a) declare any seed to be a prohibited seed for the purposes of this Act;
- (b) prescribe the common name to be used on packages to describe the seeds contained therein;
- (c) prescribe the maximum proportion of weed seeds, inert matter or extraneous crop seeds that may be mixed with any crop seeds;
- (d) prescribe the minimum proportion of any crop seeds which are sold that shall be germinable;
- (e) prescribe the methods to be used in taking samples for analysis;
- (f) prohibit, regulate or control the importation into the State of any seed or any other thing which may be likely to introduce into the State any diseased, insect-infested or prohibited seed;
- (g) prescribe a period of incubation in respect of seed of any kind;

- (h) prescribe the treatment of imported seeds;
- (i) prescribe the methods of analysis to be adopted by a seed analyst in analysing samples of seed submitted for analysis under this Act;
- (j) prescribe the fees to be paid for obtaining an analysis and the seed analyst's report of the results of the analysis;
- (k) prescribe the forms to be used under this Act;
- (l) prescribe the manner in which the powers and duties of seed analysts and inspectors under this Act are to be exercised and discharged, and generally such things as may be necessary or convenient for enabling seed analysts and inspectors to exercise and discharge any such powers and duties, and to carry out the provisions and objects of this Act;
- (m) prescribe the method and manner of marking for the purposes of this Act of packages of seed, or labels attached thereto;
- (n) authorise the Minister to prepare schemes for the purpose of testing and certifying the strain of any kind of seed and the disease-resistant properties of seed; and for prohibiting the use of any of the words "certified," "certificated," "disease-resistant," "disease immune," "wilt resistant," "wilt immune" or any word or words of the like import in any label, invoice, circular, or advertisement in relation to any seed unless the seed has been tested and certified pursuant to any such scheme, or certified (subject to any conditions prescribed) by a Government department of any other part of His Majesty's Dominions under a seed certification scheme which is prescribed as satisfactory for the purpose of this Act;
- (o) prescribe the method to be adopted in making any germination test;

(p) prescribe penalties for offences against any regulation, not exceeding in any case the sum of ten pounds.

(3) Any regulation prescribing a proportion may prescribe the proportion by reference to weight, number, or volume, or by reference to any other matter, and any such proportion may be prescribed so as to vary according to the kind of seed, the size of the package, the quantity or kind of impurities, or according to any other matter.

Protection
of officers.

25. No analyst, inspector, or other officer shall be liable, except in respect of wilful misconduct or wilful neglect, to any legal proceedings for anything done or omitted in the exercise or execution of any of his powers or duties under this Act.

Saving of
civil rights.

26. Nothing contained in this Act, and no proceedings in respect of any offence against this Act against any person, shall in any way affect any right or remedy by civil process which any person aggrieved might have had if this Act had not been passed.