

AGRICULTURAL SEEDS.

13° GEO. V., No. XLIV.

No. 21 of 1923.

AN ACT to regulate the Sale of Agricultural Seeds, and for purposes connected therewith.

[Assented to 22nd February, 1923.]

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 Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

Short title.

1. This Act may be cited as the *Agricultural Seeds Act, 1922.*

Interpretation.
See N.S.W., 1921.
No. 15, sec. 2.

2. (1.) In this Act, unless the context otherwise requires—

“Agricultural seed” means farm and garden seeds which are sold for the purposes of planting, except flower seeds, and includes vegetable and palm seeds.

“Botanist” means a botanist of the Department of Agriculture, or other officer of the Department, appointed to examine seeds for the purpose of this Act;

“Impurities” includes ergot, smuts, dirt, and broken or diseased or insect-infested seeds;

“Minister” means the Minister for Agriculture;

“Noxious weed seed” means a seed declared by regulation to be a noxious weed seed;

“Officer” means an officer appointed or deemed to be appointed under and for the purposes of this Act;

“Parcel” includes sack, barrel, case, packet, and package;

“Sell” or “sale” includes offering or attempting to sell, exposing for sale, and sending, forwarding, delivering, or having in possession for sale;

“Vendor” means any person who sells or offers or exposes for sale, or contracts or agrees to sell or deliver, any seeds;

“Weed seeds,” when used in connection with a parcel of agricultural seeds, means all seeds of a kind other than that specified on such parcel.

(2.) This Act does not apply to any sale of seeds by the grower to a seed merchant, or by a farmer to another farmer, so far as such sales are by regulation exempted from the operation of this Act.

3. The Governor may from time to time appoint such officers as may be necessary for the effectual execution of this Act. Every inspector under the Plant Diseases Act, 1914, shall, without further appointment, be deemed to be appointed an officer under and for the purposes of this Act.

Officers.

4. The Governor may prescribe—

(a) the minimum percentages of pure germinable seeds which must be contained in any quantity of any kind of agricultural seeds;

Minimum percentages of pure and germinable seeds.

(b) the proportion or amount of impurities or weed seeds which shall not be exceeded in any quantity of any kind of agricultural seeds.

Maximum proportion of foreign ingredients.

5. Agricultural seeds of more than one species or variety shall not be sold together in a single parcel, unless the species or varieties are specified by the seller and ordered by the purchaser.

Mixed seeds.
N.S.W., 1921,
No. 15, sec. 3

6. (1.) There shall be legibly written on or attached to every parcel of agricultural seed which is sold a statement or label indicating—

Sale of agricultural seeds.

(a) the name and address of the seller;

(b) the name of the seed as prescribed by regulation;

(c) the several kinds of seeds contained in a mixture, and in what proportion such seeds are mixed;

(d) the percentage of pure germinable seeds; and

See *ibid.*, sec. 4.
Vic., No. 2722,
secs. 5, 7.
Q., 1913 No. 30,
sec. 4.

- (e) the proportion or amount of impurities and weed seeds contained in the seeds (or in the several kinds of seeds contained in a mixture) passing on such sale; and
- (f) subject to the regulations, the country of origin.

Provided that in stating the percentage of pure germinable seeds of a prescribed kind the percentage of hard seeds must also be stated.

(2.) Such statement or label shall, notwithstanding any agreement to the contrary, constitute a warranty of the matters therein stated, and that the purity and percentage of germination of the seed are in accordance with this Act and the regulations thereunder.

(3.) A vendor shall not be liable in damages for breach of any warranty as aforesaid to an amount exceeding the price of the seeds sold, and the expense incurred by the purchaser in relation to the sale, delivery, and testing of the seeds.

7. (1.) Any purchaser of agricultural seeds shall, on payment of the prescribed fee, be entitled to have such seeds examined by a botanist, and to receive from him a certificate of the results of the examination.

(2.) Any such purchaser intending to submit such seeds for examination shall, at the time of purchase, or not later than twenty-one days after the delivery of the seeds, give notice, in writing, to the vendor of his intention to have the seeds examined by a botanist.

(3.) For the purpose of such examination, a sample of the seeds shall be taken by an officer. Unless such sample is taken in the presence of the vendor or his agent before the seeds are delivered to the purchaser, notice of intention to take the sample, and of the time when and of the place where the sample will be taken, shall be given to the vendor, who by himself or his agent may be present when the sample is taken.

(4.) Every sample taken under this section for purposes of examination shall be taken from the bulk, and shall be of the weight prescribed.

(5.) The sample shall be divided into three approximately equal parts.

(6.) Each of such parts shall be marked and sealed or fastened up in such manner as its nature permits; and the officer shall deliver or forward two of such parts to the Department of Agriculture, and shall deliver or forward one of such parts to the vendor.

Power to submit samples of seeds for examination.

See Vic., No. 2722, sec. 9.

(7.) Of the parts delivered or forwarded to the Department of Agriculture one shall be for examination by a botanist, and the other shall be retained by the Department.

8. (1.) For the purposes of this Act a sample of seeds shall mean any quantity not less than is prescribed for any kind of seed.

Meaning of sample of seeds. Vic., No. 2722, sec. 10.

(2.) Where in any prosecution or proceeding under this Act a contravention of any of the provisions of this Act is proved in regard to any such sample or any part thereof, such contravention shall be deemed to have been proved with regard to the bulk from which the sample was taken.

9. (1.) Any officer may—

- (a) enter and inspect any place which he has reasonable ground for believing is kept or used for the sale of agricultural seeds, and inspect any such seeds;
- (b) inspect any agricultural seeds which are being conveyed by railway or any other means of transit, apparently for the purposes of sale or delivery;
- (c) examine and open any parcel enclosing seeds in any such place, or conveyed as aforesaid;
- (d) remove for examination any such seeds or portions or samples of any such seeds;
- (e) weigh, measure, or mark such seeds or parcel, and secure or seal the same; and
- (f) seize any such seeds which are, or appear to him to be, unfit for use, and any parcel enclosing or containing the same.

Entry and inspection. See Q., 1913, No. 30, sec. 7. N.S.W., 1921, No. 15, sec. 9.

(2.) If any seeds are removed or seized by an officer under this section, he shall forthwith deliver or forward a portion marked and sealed or fastened up in such manner as its nature permits to the vendor in whose possession they have been found, or to the consignor thereof if his name and address are on or attached to such seeds, or any parcel enclosing or containing the same.

Portion of sample to be sent to vendor or consignor.

(3.) Any justice may grant a summons calling upon the vendor or consignor of the seeds so seized to appear before a court of summary jurisdiction to show cause why such seeds and any parcel as aforesaid should not be forfeited.

Summons.

Proceedings upon
summons.*

(4.) Upon such vendor or consignor so appearing, or if after being so summoned he fails to appear, the court may, after inquiry into the matter, and if satisfied by reasonable proof that the seeds were intended to be sold or used for planting or sowing and were unfit for use, adjudge such seeds, and also every such parcel, to be forfeited.

In default of such reasonable proof, the seeds and the said parcel shall be forthwith restored to the vendor or person in whose possession they were found.

Power to demand,
select, and take
samples.
Q., 1913, No. 30,
sec. 8.
N.S.W., 1921,
No. 15, sec. 9.

10. (1.) On payment or offer to any vendor or to any person apparently acting as his agent or servant, of the current market value of any agricultural seeds, or at the rate of payment prescribed therefor, any officer may demand and select and take or obtain samples of the seeds for the purposes of this Act.

(2.) Any officer may require any vendor or person as aforesaid to show and permit the inspection of the parcel in which such seeds are at the time kept, and may take or may require the vendor or person as aforesaid to take therefrom the samples demanded.

Manner in which
sample may be
dealt with.

(3.) An officer taking or obtaining any sample of seeds as last aforesaid shall divide the sample into three parts, and shall mark and seal or fasten up each such part in such manner as its nature permits, and shall offer one of such parts to the person from whom he took or obtained the sample:

Provided that when any seeds are contained in a parcel in such quantity that their division into three parts, as hereinbefore provided, would furnish parts insufficient for accurate examination, additional parcels, which purport to contain similar seeds, may be taken or obtained; and the contents of two or more parcels may be mixed together and the mixture divided and submitted for examination as herein provided.

Such officer shall subsequently deliver another of such parts to a botanist for examination, and shall retain the third of such parts at the Department of Agriculture.

Such delivery to a botanist may be effected either personally or by sending the seeds by post addressed, or by railway consigned, to the botanist at his usual address or in such other manner as may be prescribed.

(4.) On receipt of any sample of seeds, the botanist shall examine the same and give a certificate of the result thereof.

Duty of botanist,
etc.
Q., 1913, No. 30,
sec. 9.

A copy of the result of any examination of any seeds procured by an officer may be obtained from the botanist by the person from whom the seeds so examined were purchased or obtained, on payment of the prescribed fee not exceeding two shillings and sixpence.

No copy of any such certificate shall be used in any writing for trade purposes or as an advertisement, and if any person so uses it he shall be liable to a penalty not exceeding ten pounds.

11. Any person who—

(a) sells or offers or exposes for sale or contracts or agrees to sell or deliver—

Offences and
penalties.
See N.S.W., 1921,
No. 15, s. 5.
Q., 1913, No. 30,
sec. 10.
Vic., No. 2722,
sec. 8.

(i) agricultural seeds the percentage of germination of which is lower than as prescribed;
or

(ii) agricultural seeds which contain a larger proportion or amount of impurities or weed seeds than is prescribed; or

(iii) agricultural seeds which are mixed with noxious weed seeds; or

(iv) noxious weed seeds, or plants which are the produce of noxious weed seeds; or

(b) being the vendor of any agricultural seeds fails to legibly write on or attach to the parcel of seed the statement or label as required by this Act, or sells or delivers to the purchaser any agricultural seeds which are not solely of the kind or kinds specified in such statement or label; or

(c) being a vendor of any agricultural seeds writes or attaches to any parcel of seeds a statement or label which, as a warranty under section six, is false in any material particular; or

(d) refuses to allow to be taken any sample demanded in accordance with this Act, or improperly tampers with any sample or part of a sample taken under this Act; or

- (e) assaults, intimidates, or obstructs, gives, procures, offers, or promises any bribe, recompense, inducement, or reward to influence any officer in the exercise of his powers or in the discharge of his duties under this Act, or attempts so to do; or
- (f) retakes or attempts to retake any seeds seized, taken, or obtained under this Act, or resists or attempts to prevent such seizure; or
- (g) without authority (the proof whereof shall lie upon him), alters, erases, or removes any mark, or opens, breaks, or removes any fastening or seal, placed by an officer, in pursuance of this Act, upon any seeds or parcel of seeds, or upon any place, door, or opening containing or affording access to the same,

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

12. (1.) In the case of any conviction under this Act, any seeds to which the conviction relates may, by order of the court, be forfeited to His Majesty.

(2.) All seeds forfeited under this Act shall be disposed of as the Minister for Agriculture may direct.

13. The court shall, on the request of either party to any proceedings for an offence against this Act, and may, if it thinks fit, without such request, order that the part of a sample retained by the officer when purchasing or obtaining the sample shall be submitted to another expert for examination; and the officer shall comply with every such order accordingly.

14. (1.) Where any person is convicted of an offence against this Act, the court shall order that all fees and other expenses incident to the examination of any seeds in respect of which the conviction is obtained (including examination made under the last preceding section) shall be paid by the person convicted.

(2.) All such fees and expenses shall be deemed to be part of the costs attending the conviction, and shall be recoverable in the same manner as such costs are recoverable.

15. (1.) Proceedings for any contravention of this Act may be instituted by any officer, or by any person aggrieved.

Forfeiture.
Q., 1913 No. 30,
sec. 11.

Court may order
independent
examination.
Q., 1913, No. 30,
sec. 12.

Expenses of
examination to
be paid by offender.
Q. 1913, No. 30,
sec. 13.

Prosecutions.
Q., 1913, No. 30,
sec. 14.

(2.) There shall be served with the summons a copy of the botanist's certificate (if any) obtained on behalf of the prosecution.

(3.) When any seeds have been taken or obtained for examination, no prosecution under this Act in respect thereof shall be instituted after the expiration of ninety days from the time they were so taken or obtained.

16. (1.) In any proceeding under this Act, the production of a certificate of examination purporting to be under the hand of a botanist shall be *primâ facie* evidence of the facts stated therein, unless the defendant requires that the botanist shall be called as a witness, in which case he shall give notice thereof to the plaintiff or prosecutor not less than three clear days before the return day.

Simplification of proof in certain cases.
Q., 1913, No. 30, sec. 15.
Vic., No. 2722, sec. 14.
N.S.W., 1921, No. 15, sec. 13.

(2.) In any proceedings the burden of proof that any agricultural seeds were not dealt with or prepared or offered or received or had in possession or kept or exposed or sent or forwarded or supplied or delivered or intended for sale or for purposes of sale, or sold, or that the same were not intended for planting or sowing, or that a statement or label containing the particulars mentioned in subsection (1) of section six was written or attached to the parcel of seeds, shall in every case be on the defendant.

Onus of proof.
Q., 1913, No. 30, sec. 15 (3).
See Vic., No. 2722, sec. 7 (2).
N.S.W., 1921, No. 15, sec. 13.

(4.) The purchase and sale of a sample of any seeds under this Act for the purpose of examination shall be deemed to be a purchase and sale of such seeds for planting or sowing, unless the vendor proves that the bulk from which such sample was taken was not offered, exposed, or intended for sale for planting or sowing.

Q., 1913, No. 30, sec. 15 (4).

(5.) Where in any prosecution under this Act a contravention of this Act is proved in regard to any sample of seed or any part thereof, such contravention shall be deemed to have been proved with regard to the bulk from which the sample was taken.

Proof of offence as to sample.
Ibid (5).

17. (1.) Any officer may at any time require the purchaser of any agricultural seeds to state the name and address of the vendor from whom he purchased such seeds and the price charged or paid therefor, and also to produce for inspection any invoice given to him by the vendor, and the statement or label written or attached to the parcel of seeds.

Power to demand information.
Vic., No. 2722, sec. 12.
Q., 1913, No. 30, sec. 16.
N.S.W., 1921, No. 15, sec. 10.

Penalty for
obstruction.

(2.) Any person who withholds any such information, or fails to produce such invoice, statement, or label, or obstructs the officer in the execution of his duties, shall be guilty of an offence against this Act.

Penalty for
contravention.
Vic., No. 2722,
sec. 15.

18. Any person who is guilty of an offence against this Act, or is guilty of a contravention of or who fails to comply with any of the provisions of this Act, shall, where no penalty is expressly provided therefor, be liable on conviction to a penalty of not more than twenty pounds.

Penalty on person
actually committing
offence.
Vic., No. 2722,
sec. 16.
Q., 1913, No. 30,
sec. 10 (2).

19. Where an offence for which a vendor is liable to a penalty has in fact been committed by some agent, such agent shall be liable to the like penalty as if he was the vendor.

Exemption of
Vendor from
penalty on
conviction of
actual offender.
Vic., No. 2722
sec. 17.

20. (1.) Where a vendor is charged with an offence against any of the provisions of this Act, he shall be entitled upon complaint duly made by him to have any other person whom he charges as the actual offender brought before the court at the hearing of the charge, and if after the commission of the offence has been proved the vendor proves to the satisfaction of the court—

- (a) that he had used due diligence to enforce the execution of this Act; and
- (b) that such other person was his agent and had committed the offence in question without his knowledge, consent, or connivance, and in contravention of his orders,

such other person shall be convicted of the offence, and the vendor shall be exempt from any penalty. The person so convicted shall, in the discretion of the court, be also liable to pay any costs incidental to the proceedings.

(2.) Where it is made to appear to the satisfaction of an officer at the time of discovering an offence—

- (a) that the vendor has used all due diligence to enforce the execution of this Act; and
- (b) by what person, being the agent of the vendor, the offence has been committed; and
- (c) that it has been committed without the knowledge, consent, or connivance of the vendor, and in contravention of his orders,

the officer shall proceed against the person whom he believes to be the actual offender without first proceeding against the vendor.

21. Nothing contained in this Act and no proceedings taken under this Act against any person shall in any way interfere with any right or remedy by civil process which any person aggrieved by any contravention of this Act might have had if this Act had not been passed.

Saving.
Vic., No. 2722,
sec. 18.
Q., 1913, No. 30,
sec. 17.

22. (1.) The Governor may from time to time make regulations as to any matters whatsoever necessary to give effect to this Act.

Power to make
regulations.
See Vic., No. 2722,
sec. 19.
Q., 1913, No. 30,
sec. 18.

(2.) Such regulations may provide for the annual registration at the Department of Agriculture of vendors at a prescribed fee not exceeding five shillings for each registration, may prescribe fees for any examination under this Act, and may prescribe penalties not exceeding ten pounds for a contravention of any regulation.

Fees and penalties.