

Western Australia

**Veterinary Chemical Control and Animal
Feeding Stuffs Act 1976**

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Veterinary Chemical Control and Animal Feeding Stuffs Act 1976

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Veterinary Chemical Control and Animal Feeding Stuffs Act 1976

An Act —

- **to provide for the control of the use of veterinary chemical products and the regulation of the sale of certain stock, stock products, and carcasses of stock treated with veterinary chemical products;**
 - **to provide for the regulation of the sale and use of certain substances that promote, or are intended to promote, growth in stock and also of the sale of stock, or the carcasses of stock, which have been or are declared not to have been treated with a substance of that kind;**
 - **to control and regulate the production, importation, treatment, preparation for sale, marketing, storage, and sale of animal feeding stuffs,**
- and for incidental and other purposes.**

[Long title inserted by No. 76 of 2004 s. 3.]

Part I — Introductory provisions

1. Short title

This Act may be cited as the *Veterinary Chemical Control and Animal Feeding Stuffs Act 1976*¹.

[Section 1 amended by No. 76 of 2004 s. 4(1).]

2. Commencement

This Act, or any provision of this Act, shall come into operation on such date as is fixed by proclamation¹.

3. Repeals and saving

[Omitted under the Reprints Act 1984 s.7(4)(f) and (g).]

[4. Repealed by No. 20 of 1993 s.4.]

5. Interpretation

(1) In this Act, unless a contrary or other intention appears —

“**additive**” means a substance or combination of substances added to the basic feed mix for continuous long term administration to stock for a specific purpose;

“**adulterant**” in relation to any product means any ingredient mixed in with or forming part of it and which is of inferior quality or has injurious properties, and includes any substance classified as an adulterant for the purposes of this Act;

“**advertisement**” in relation to any product means any method of advertising or conveying information or making a claim with respect to that product whether orally or by writing or pictorially or otherwise, and includes any notice, circular, catalogue, label, packaging, invoice or other document, and any public announcement made orally or by writing or by any means of producing or transmitting light or sound;

“Agvet Code of Western Australia” has the same meaning as it has in the *Agricultural and Veterinary Chemicals (Western Australia) Act 1995*;

“analysis” means an examination, or any other test or determination relative to standard, of the quality or composition or of any other particular with respect to any product required to be ascertained for the purposes of this Act, and includes biological and bacteriological assay;

“analyst” means a person appointed as an analyst under the provisions of section 46;

“animal” includes birds, bees and fish, whether or not kept in captivity;

“animal feeding stuff” means any substance, including any mixture or compound, or any biological product, and whether in package form or in bulk, used or intended for consumption, or offered for sale for consumption, by any animal other than —

- (a) a dog or cat;
- (b) a fish kept as a domestic pet and not for the purpose of human consumption; or
- (c) a bird kept as a domestic pet and not for the purpose of human consumption or the laying of eggs for human consumption,

and includes basic feed, processed food, manufactured stock foods, additives, supplements, nutrients, and by-products, and any substance classified as an animal feeding stuff for the purposes of this Act;

“approved label”, in relation to a registered veterinary chemical product, means a label approved under Part 2 of the Agvet Code of Western Australia for containers for the veterinary chemical product;

“basic feed” means any grain, seeds, hay, meat, or fish used as, or in the preparation of, an animal feeding stuff;

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“biological product” means any vaccine, serum or virus whether living or dead, aggressin, or gland extract, and any other product of bacterial or fungal growth;

“by-product” means any substance produced from an animal or plant, in any process of treatment or manufacture, not being the primary object of such process; and includes any other substance, matter or thing used in the feeding or treatment of stock classified as a by-product for the purposes of this Act;

“carcass”, in relation to any stock, includes skin, hair, wool, offal, viscera, tissue or any portion of the carcass;

“container” includes any basket, tray, packaging, wrapper, bottle or receptacle of any kind, whether open or closed, in or with which any product is or is intended to be contained, covered, enclosed or packed; and in the case of bulk consignments may include a vehicle used as a container;

“import” means to bring into the State;

“impurity” in relation to any product means any substance, matter or thing classified as an impurity with respect to that product for the purposes of this Act;

“ingredient” means a component part, constituent or element of the original composition of any substance; and may include any matter or thing derived from the application of any recognised process or chemical reaction on original ingredients;

“inspector” means a person appointed as an inspector under the provisions of section 37;

“invoice” in relation to the provisions of Part IX means a statement, or a registered label or packet, conveying the information required by section 57, but in any other case bears its primary meaning;

“label” includes any tag, brand, stamp, mark or statement in writing however effected, affixed to or upon or inserted in or used or intended for use in connection with any

container or the packaging of any product, and whether or not comprising any trade mark or pictorial or other descriptive matter distinguishing or identifying that product;

“manufactured stock food” means any feed made up in whole or in part from basic feed (but not being composed solely of basic feed), processed food, by-products, additives or supplements; and includes stock licks;

“package” includes any container in or by which any product is contained; and where products are sold or offered for sale without containers or exterior covering, any bale, block, cake, or slab comprising any product;

“packaging” includes any exterior cover or wrapping or any bottle, carton, tin, material or other thing in or by which any product is or is intended to be contained;

“pesticide” has the same meaning as “agricultural chemical product” has in the Agvet Code of Western Australia;

“premises” means any place in which animal feeding stuffs are produced, stored or held or in relation to which there are reasonable grounds for believing that it is so used;

“preparation” in relation to any product includes manufacture and any form of treatment, processing, or packing; and **“preparation for sale”** shall be construed accordingly;

“prescribed substance”, for the purpose of Part VA, means a substance —

- (a) prescribed as a substance to which Part VA applies; and
- (b) used or intended to be used to promote growth in cattle or in any other animal prescribed as an animal to which Part VA applies;

“processed food” means a basic feed which has been changed in form by chemical, physical, or mechanical treatment; and includes by-products;

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“product” means a veterinary chemical product or animal feeding stuff to which this Act applies; and includes an ingredient used or intended to be used in the preparation of any product;

“purchaser” includes any person, other than a carrying agent, acting on behalf of a purchaser;

“registered veterinary chemical product” means a veterinary chemical product registered under Part 2 of the Agvet Code of Western Australia;

“sell”, without limiting the scope of the primary meaning, includes —

- (a) placing on the market for sale;
- (b) bargaining, barter or exchange;
- (c) supply and use of any product under a contract for work and materials;
- (d) offering, exposing, receiving, supplying or possessing for the purposes of sale;
- (e) delivery for sale or on sale with or without consideration;
- (f) wholesale, bulk and retail trading;
- (g) disposal or offer for disposal under hire purchase or credit sale terms;
- (h) dealing in or agreeing to sell;
- (i) the supply of a substance as a sample for the purpose of inducing any person to purchase the product of which the sample consists or which it comprises; and
- (j) causing, suffering, permitting, or attempting to sell;

“seller” includes any person acting or representing himself to be acting for a seller;

“stock” means —

- (a) for the purposes of Part VA, cattle and any other animal prescribed as an animal to which Part VA applies; and
- (b) otherwise, any animal normally domesticated or any animal kept in captivity;

“stock product” means —

- (a) anything obtained from stock to be used as, or processed into, food for humans or animals; or
- (b) the hide, hair or fleece of any stock;

“substance” includes a liquid or a gas, and any compound or mixture;

“supplement” means any substance not in itself a complete food but which when used with normal nutritive substances forms a product used for the purpose of feeding stock; and includes any substance classified as a supplement for the purposes of this Act;

“the Director” means the Director-General of the Department of Agriculture²;

“tissue”, in relation to any animal or carcass, includes a reference to blood, secretions, or faecal material obtainable from that animal or carcass;

“veterinary chemical product” has the same meaning as it has in the Agvet Code of Western Australia except that —

- (a) despite section 5(4) of that Code, it includes a substance or mixture of substances that is —
 - (i) prepared in accordance with the instructions of a veterinary surgeon by a pharmaceutical chemist registered under the *Pharmacy Act 1964*; or
 - (ii) prepared by a veterinary surgeon,

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in the course of the practice, by the person preparing the substance or mixture of substances, of that person's profession; and

(b) it does not include a prescribed substance;

“veterinary surgeon” means a veterinary surgeon registered under the *Veterinary Surgeons Act 1960*;

“wholesale” means to sell to another person for the purposes of sale by that other person;

(2) Where a meaning is assigned to any term by this section cognate expressions used in this Act, unless a contrary or other intention appears, have a corresponding meaning.

(3) For the purposes of Part VA —

(a) a reference in that Part or in regulations made for the purposes of that Part, to an owner of stock includes a reference to a person who is in charge of the husbandry of stock on a property; and

(b) it is to be presumed that stock, or a carcass, intended for sale to a market to which that Part applies has been treated with a prescribed substance unless a declaration has been made under this Act that the stock, or the carcass, has not been treated with a prescribed substance.

(4) A reference in this Act to a stock product treated with a veterinary chemical product is to be taken to be a reference to a stock product from stock treated with a veterinary chemical product.

[Section 5 amended by No. 54 of 1981 s.2; No. 20 of 1993 s.6; No. 3 of 1995 s.39; No. 9 of 1998 s.23; No. 76 of 2004 s. 5 and 27(1).]

Part II — Exemptions, prohibitions and construction

6. Application

- (1) This Act applies —
- (a) to all animal feeding stuffs, not being basic feed to which no other thing is added, and whether contained in a mixture or compound or otherwise, including bulk consignments;
 - (b) to prescribed substances; and
 - (c) subject to subsection (4), to veterinary chemical products,

produced in or imported into the State and sold in the State whether by wholesale or retail.

[(2) repealed]

- (3) The objects of Part VA are —
- (a) to make provision for the control and regulation of certain substances that are intended to promote growth in —
 - (i) cattle; or
 - (ii) any other animal prescribed as an animal to which that Part applies;
- and
- (b) for that purpose, to regulate the sale to a market to which that Part applies of stock, or the carcasses of stock, which have been or are declared not to have been treated with a substance of that kind.
- (4) If there is, in respect of veterinary chemical products, an inconsistency between this Act and the *Agricultural and Veterinary Chemicals (Western Australia) Act 1995*, that Act is to prevail to the extent of the inconsistency.

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[Section 6 amended by No. 20 of 1993 s.7; No. 3 of 1995 ss.40 and 56; No. 9 of 1998 s.23; No. 76 of 2004 s. 6 and 27(2).]

7. Exemptions by Order

The Governor may by Order in Council declare that this Act, or any provision of this Act specified in the Order, shall not apply to any veterinary chemical product or to any animal feeding stuff, or to any stock, stock product or carcass, either generally or when sold in any specified circumstances or quantities or part of the State, or which is intended to be used solely for research purposes, and may by subsequent Order in Council from time to time revoke or vary such Order in Council.

[Section 7 amended by No. 20 of 1993 s.8; No. 76 of 2004 s. 7 and 27(3).]

8. Prohibition

- (1) The Governor, on the recommendation of the Minister, may make regulations to prohibit the sale of any animal feeding stuff or any substance which may be used as an ingredient thereof, either —
 - (a) absolutely; or
 - (b) except upon and subject to such conditions, restrictions and limitations and for such period or periods as the Governor considers desirable in the public interest, having regard to the potentially harmful nature of the substance and the need —
 - (c) to evaluate its toxic or deleterious nature;
 - (d) to establish special procedures in its marketing; or
 - (e) to exercise special precautions in relation to its use.
- (2) The Minister may, by notice served on the owner of the premises concerned, prohibit the use of any premises for the purposes of the production of any animal feeding stuff, or any

kind or class of animal feeding stuff therein specified, for the purposes of sale.

[Section 8 amended by No. 3 of 1995 s.56; No. 9 of 1998 s.23.]

9. Act to be construed subject to certain laws

The provisions of this Act are in addition to and not in derogation of the provisions of the *Health Act 1911*, and the *Poisons Act 1964*, but where and to the extent that inconsistency exists between the provisions of this Act, or of any regulations made under this Act, and the provisions of the *Health Act 1911*, and the *Poisons Act 1964*, or of any regulations made under those Acts, the provisions of those Acts and any regulations made thereunder prevail.

[Section 9 amended by No. 70 of 2004 s. 82.]

10. Administration

- (1) Subject to the Minister and to the provisions of this Act the Director shall be responsible for the administration of this Act.
- (2) The Minister may give directions in writing to the Director with respect to the performance of any function under Part VA, either generally or in relation to a particular matter, and the Director shall give effect to any such direction.
- (3) The Director shall ensure that the text of any direction given under subsection (2) is to be included in the annual report submitted by the accountable authority of the Department of Agriculture² under section 62 of the *Financial Administration and Audit Act 1985*.

[Section 10 amended by No. 20 of 1993 s.9.]

Part III — Control of production and sales

11. Unhygienic production etc. of animal feeding stuffs

- (1) A person who produces, holds or stores any animal feeding stuff for the purposes of sale in a manner that is unsanitary or is otherwise not in accordance with the regulations commits an offence against this Act.
- (2) The owner or occupier of any premises that are unsanitary or that otherwise do not comply with the regulations commits an offence against this Act.

[Section 11 inserted by No. 9 of 1998 s.19.]

[12. Repealed by No. 9 of 1998 s.23.]

13. Prohibition on sale of prohibited products and substances, and use of certain premises

- (1) A person who sells any animal feeding stuff or substance which is at the time of such sale a product or substance the sale of which is prohibited, or prohibited in relation to the conditions under which such sale took place, commits an offence against this Act.
- (2) A person who produces any animal feeding stuff in premises the use of which has been prohibited under this Act commits an offence against this Act.

Penalty: \$4 000 or imprisonment for 12 months.

[Section 13 amended by No. 20 of 1989 s.3; No. 3 of 1995 s.56; No. 9 of 1998 s.23.]

14. Sale of sub-standard animal feeding stuff

- (1) In this section —
“**sub-standard animal feeding stuff**” means an animal feeding stuff —
 - (a) that does not comply with a grade or standard prescribed for that animal feeding stuff; or

- (b) that contains an ingredient that does not comply with a grade or standard prescribed for that ingredient.
- (2) A person who sells a sub-standard animal feeding stuff commits an offence against this Act.

[Section 14 inserted by No. 9 of 1998 s.20.]

**Part IV — Control of use of veterinary
chemical products**

[Heading inserted by No. 76 of 2004 s. 8.]

15. Regulations relating to control of use of veterinary chemical products

- (1) Regulations may be made under section 68 for the purposes of controlling the use of veterinary chemical products.
- (2) Without limiting subsection (1), regulations referred to in that subsection —
 - (a) may prohibit, restrict or otherwise regulate the use of veterinary chemical products;
 - (b) may have effect by reference to approved labels or to registration under Part 2 of the Agvet Code of Western Australia;
 - (c) may provide for the duties and obligations of veterinary surgeons or other persons in relation to the use of veterinary chemical products;
 - (d) may provide for the keeping of records and a system of declarations or returns in relation to the use of veterinary chemical products, and for the verification of the information supplied; and
 - (e) may provide for the imposition of penalties, not exceeding \$5 000, for offences against those regulations.

[Section 15 inserted by No. 76 of 2004 s. 8.]

**Part V — Regulation of sale of certain stock, stock
products and carcasses**

[Heading inserted by No. 76 of 2004 s. 8.]

**16. Regulations relating to sale of certain stock, stock products
and carcasses**

- (1) Regulations may be made under section 68 for the purposes of prohibiting, restricting or otherwise regulating the sale of any stock, any stock product, or the carcass of any stock treated with a veterinary chemical product.
- (2) Without limiting subsection (1), regulations referred to in that subsection —
 - (a) may have effect by reference to —
 - (i) a permit issued under section 114 of the Agvet Code of Western Australia;
 - (ii) the instructions relating to the use of a veterinary chemical product given by a veterinary surgeon in the course of the practice of the veterinary surgeon's profession; and
 - (iii) in the case of a registered veterinary chemical product — any direction, instruction, caution, warning or recommendation on an approved label relating to the use of the veterinary chemical product;
 - and
 - (b) may provide for the imposition of penalties, not exceeding \$5 000, for offences against those regulations.

[Section 16 inserted by No. 76 of 2004 s. 8.]

[17-23. Repealed by No. 9 of 1998 s.21.]

[Part V (Sections 24-36). Repealed by No. 9 of 1998 s.22.]

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Part VA — Regulation of prescribed substances

[Heading inserted by No. 20 of 1993 s.13.]

36AA. Definition

In this Part —

“treated”, in relation to an animal, means that the animal has been treated with a prescribed substance.

[Section 36AA inserted by No. 76 of 2004 s. 9.]

36A. Regulations relating to prescribed substances

(1) Regulations may be made under section 68 for or with respect to —

- (a) the application, or otherwise, of this Part in relation to —
 - (i) any substance;
 - (ii) any particular market; or
 - (iii) any kind of animal;

[(b) deleted]

(c) the duties and obligations of persons who —

[(i), (ii) deleted]

- (iii) treat stock with a prescribed substance;
 - (iv) own, hold, sell or purchase stock, which has been treated or declared to be not treated, or who are an agent for such a person;
 - (v) transport stock, or the carcass of any stock, which has been treated or declared to be not treated;
 - (vi) slaughter stock, or hold, sell, purchase or otherwise deal with the carcass of any stock, which has been treated or declared to be not treated;
- (d) the treatment of stock with a prescribed substance;

- (e) the identification of unslaughtered stock which has been —
 - (i) treated; or
 - (ii) declared to be not treated,to enable that stock to be distinguished from other stock;
 - (f) the labelling or marking of slaughtered stock, or the carcass of any stock, to indicate that it has been treated or that it has been declared to be not treated, and of the containers and packages which are to be used to contain the carcass of any stock to indicate that the stock has been —
 - (i) treated; or
 - (ii) declared to be not treated,respectively, in accordance with market requirements;
 - (g) a system of declarations or returns —
 - (i) as to the use of prescribed substances; and
 - (ii) by persons who sell stock, or the carcass of any stock, which has been treated or is declared to be not treated,and the verification of the information supplied; and
 - (h) the imposition of penalties, not exceeding \$5 000, for offences against those regulations.
- (2) The regulations which are made for the purposes of this Part may be made so as to apply also to and in relation to stock, being stock —
- (a) which has been treated;
 - (b) which an inspector has reasonable grounds to believe may have been treated; or
 - (c) which is declared to be not treated,
- and is from another State or a Territory of the Commonwealth, or from a specified part of the State or of another State or of a

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Territory, and extend to acts done or omitted to be done outside the State.

[Section 36A inserted by No. 20 of 1993 s.13; amended by No. 9 of 1998 s.23.]

36B. Certain agreements void

- (1) An agreement, whether made in the State or elsewhere, relating to the sale of stock in the State that purports to exclude the application of this Act is void.
- (2) A person who agrees or purports to agree to sell stock under an agreement that is void by virtue of this section is guilty of an offence.
- (3) An agreement, whether made in the State or elsewhere, relating to the sale of stock in the State that contains a provision to the effect that the stock are treated or declared to be not treated is voidable by the purchaser, unless the requirements imposed by —
 - (a) this Act; and
 - (b) any system of declarations or returns devised or approved by the Director under this Act in relation to a sale of that kind,have been observed and are met.
- (4) Notwithstanding any other law in force in the State, a purchaser under an agreement that is, by virtue of this section, void or voidable —
 - (a) is not prevented from making a claim with respect to damages suffered by the purchaser; and
 - (b) may recover any moneys paid under the agreement.

[Section 36B inserted by No. 20 of 1993 s.13.]

[36C. Repealed by No. 9 of 1998 s.23.]

36D. False statements as to prescribed substances

A person who makes, in, or in respect of, any declaration or return made or given for the purposes of this Part, a statement

that is false or misleading in a material particular commits an offence against this Act.

Penalty: \$5 000.

[Section 36D inserted by No. 20 of 1993 s.13.]

Part VI — Inspection, sampling and analysis

37. Appointment of inspectors

- (1) The Minister may appoint any person to be an inspector for the purposes of this Act.
- (2) Every person appointed to be an inspector shall be furnished with a certificate in the prescribed form evidencing his appointment and shall produce the certificate whenever required so to do by any person in respect of whom he has exercised or is about to exercise any of his powers under this Act.
- (3) Production of a certificate in the prescribed form is conclusive proof in any court of the appointment of the inspector to whom that certificate relates and of his authority to exercise the powers conferred upon an inspector.
- (4) Where the appointment of a person under this section expires or is revoked, that person shall forthwith surrender the certificate furnished to him under this section to the Minister or, if the Minister by instrument in writing served on that person specifies another person to whom the certificate is to be surrendered, to that other person.

Penalty: \$200.

[Section 37 amended by No. 20 of 1987 s.3.]

38. Powers of entry, search and in relation to movement of stock

- (1) For the purpose of ascertaining whether the provisions of this Act are being complied with an inspector may at any time —
 - (a) enter and search any land, building, premises or place which he has reasonable grounds for believing is used for or in connection with —
 - (i) the treatment of any stock with a veterinary chemical product or the holding of any stock, stock product or carcass of any stock which has

- or may have been treated with a veterinary chemical product; or
- (ii) the production, importation, treatment, storage, preparation for sale, marketing, or sale of an animal feeding stuff or, for the purposes of Part VA, of any stock or carcass which has or may have been treated with a prescribed substance or has been declared to have been not treated with a prescribed substance;
- (b) stop, enter and search any vehicle, ship, aircraft or other conveyance which he has reasonable cause for believing is used for, or in connection with, the transportation of an animal feeding stuff in the course of trade, sale or delivery or, for the purposes of Part IV, V or VA, of any prescribed substance or of any stock, stock product, or carcass of any stock which has or may have been treated with a veterinary chemical product, or of any stock or carcass of any stock which has or may have been treated with a prescribed substance or has been declared to have been not treated with a prescribed substance, and for that purpose may detain any such conveyance;
 - (c) break open and search any box or other packaging, or any receptacle (including any thing that could be used as a receptacle);
 - (ca) for the purposes of Part IV or V, stop, or order, the movement of any stock, stock product or carcass; and
 - (d) for the purposes of Part VA, stop, or order, the movement of any stock or carcass.
- (2) In the exercise of his powers under this section an inspector shall conform so far as is practicable to such reasonable requirements of the person owning or using the premises or conveyance as are necessary to prevent the working of the business or the use of the conveyance being obstructed.

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- (3) An inspector may take with him such other persons as may be necessary to assist him in the proper exercise of his powers, and on leaving any unoccupied premises which he has entered shall leave them as effectively secured as he found them.
- (4) A person who is admitted into or enters any factory or working place in pursuance of the provisions of this section and who discloses to any person any information obtained by him in the factory or working place with regard to any manufacturing process or trade secret, unless that disclosure is made in the performance of his duty under this Act, commits an offence against this Act.

Penalty: \$3 000 or imprisonment for 12 months.

- (5) If a justice of the peace is satisfied on oath by an inspector that —
- (a) entry in exercise of the right conferred by subsection (1) has been refused; or
 - (b) there are reasonable grounds for suspecting that an offence under any of the provisions of this Act has been or is being committed in or in connection with any building or place of whatever description,

the justice may by warrant under his hand authorize any person named in the warrant together with any constable to enter and search that building or place, if necessary by force.

[Section 38 amended by No. 20 of 1989 s.3; No. 20 of 1993 s.14; No. 3 of 1995 s.56; No. 9 of 1998 s.23; No. 76 of 2004 s. 10.]

39. Supply of information

- (1) An inspector may at any time require —
- (a) any person —
 - (i) who is in possession of or the purchaser of any veterinary chemical product or animal feeding stuff; or

- (ii) for the purposes of Part IV, V or VA, who the inspector has reasonable cause to believe may be in possession of or the purchaser of any prescribed substance or any stock, stock product, or the carcass of any stock which has been treated with a veterinary chemical product, or any stock, or the carcass of any stock, which has been treated with a prescribed substance or declared to be not treated with a prescribed substance,

to furnish him with his name and address and the name and address of the person from whom he obtained that product, prescribed substance, stock or carcass, to supply satisfactory evidence of an alleged purchase, and to produce for inspection any invoice, receipt, correspondence or other document, label or advertisement relating to that purchase;

- (b) the seller of any animal feeding stuff, or for the purposes of Part IV, V or VA any person who the inspector has reasonable cause to believe to be a seller of any stock, stock product, or the carcass of any stock which has been treated with a veterinary chemical product, or any stock, or the carcass of any stock, which has been treated with a prescribed substance or declared to be not treated with a prescribed substance, to furnish him with the name and address of the purchaser, to supply further information relative to the matter, and to produce for inspection any book, document or advertisement relating to that sale;
- (c) the production by any other person of any accounts, books, invoices, advertisements or other documents relating to a sale to which this Act applies;
- (d) a person found in possession of any prohibited substance or a substance which is for the purposes of Part VA a prescribed substance or of anything which the inspector has reasonable grounds for believing to be an ingredient

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intended for use in a prohibited substance or a substance which is for the purposes of Part VA a prescribed substance, or any stock, or the carcass of any stock, to which Part VA applies and which has been treated with a prescribed substance or declared to be not treated with a prescribed substance, to supply his name and address or place of abode.

- (2) Where a document is required to be produced under subsection (1) —
- (a) if in a physical form, or if stored, otherwise than in a readily intelligible format, the inspector may require a person to produce the information sought in a legible form or to provide an explanation of the matter recorded;
 - (b) the inspector may make copies of, or take extracts from, the document, or may take possession of it for such reasonable period as may be necessary for the purposes of this Act, regardless of its physical form or how it is stored; and
 - (c) if the document required is not produced, the inspector may require the person to whom that requirement was made known to state, to the best of the knowledge and belief of that person, where the document is,

but the inspector shall endeavour to ensure that, so far as is practicable, the confidentiality of the information recorded in that document, or of any related information, is not thereby prejudiced.

- (3) On possession of any document being taken under this section, the inspector shall cause notice of the taking to be given to the person from whom the document was received.

[Section 39 amended by No. 20 of 1993 s.15; No. 3 of 1995 s.56; No. 9 of 1998 s.23; No. 76 of 2004 s. 11.]

40. Power to seize and detain

- (1) An inspector may seize and detain any prohibited substance or any animal feeding stuff, or any ingredient or packaging or related matter, or for the purposes of Part IV, V or VA any veterinary chemical product or any substance, stock, stock product or carcass, which or any part of which he has reasonable grounds for believing does not comply with all the requirements of this Act or otherwise relates to a contravention of this Act.
- (2) Any matter or thing seized under the provisions of subsection (1) may be removed, or left *in situ* clearly marked and sufficiently secured against unauthorized removal, and may thereafter be held for a period of 6 months or until the final determination of any proceedings under this Act relating thereto and instituted within that period, whichever is the later.
- (3) Any person aggrieved by the seizure or detention of any matter or thing under the provisions of this section may within 6 months of such seizure apply to the State Administrative Tribunal for a review of the seizure or detention.
- (4) Where any matter or thing is detained in accordance with the provisions of this section, for a period of 6 months following the date of the seizure, and without any proceedings or review in respect of it having been instituted within that period, it is without further or other authority forfeit to Her Majesty.
- (5) Where any matter or thing detained in accordance with the provisions of this section is the subject of any proceedings or review instituted within the period of 6 months of the date of the seizure then it shall be disposed of in such manner as is ordered in those proceedings or on that review.

[Section 40 amended by No. 20 of 1993 s.16; No. 3 of 1995 s.56; No. 55 of 2004 s. 1273; No. 76 of 2004 s. 12.]

40A. Other powers of an inspector

- (1) An inspector who has reasonable grounds for believing that any stock, stock product or carcass has or may have been treated

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with a veterinary chemical product, or that any stock or carcass has or may have been treated with a prescribed substance, or is or may have been declared to be not treated with a prescribed substance, may require any person apparently in charge of that stock, stock product or carcass —

- (a) to muster, round up, yard, confine, draft, or otherwise move or handle any of that stock, or cause it to be removed to another place;
 - (b) to produce for inspection any stock, stock product or carcass required;
 - (c) to permit the sampling procedures required for the purposes of Part IV, V or VA;
 - (d) to provide or repair any enclosure, yard, crush or anything else —
 - (i) needed for the purpose of confining stock or preserving any stock product or carcass; or
 - (ii) which the inspector may require to inspect, examine or take samples of any stock, stock product or carcass;
- and
- (e) to provide information, in addition to that which is otherwise specifically required by this Act, being information which the inspector requires for the purpose of assisting him in the performance of his functions under this Act,

and may do anything required or permitted by regulations to be done for the purposes of, or in connection with, the exercise of a power conferred by this Act.

- (2) Where a person for any reason fails to comply with the requirement of an inspector made for the purposes of Part IV, V or VA the inspector may do what is required or cause effect to be given to the requirement.

*[Section 40A inserted by No. 20 of 1993 s.17; amended by
No. 76 of 2004 s. 13.]*

40B. Recovery of inspection costs

All reasonable costs and expenses incurred by, or at the requirement of, an inspector as a result of the failure of a person to comply with a requirement made known by an inspector for the purposes of Part IV, V or VA may be recovered from —

- (a) the person to whom that requirement was made known;
or
- (b) any other person who was responsible for the failure of a person to comply with that requirement,

as a debt due and owing to the Crown, in any court of competent jurisdiction.

*[Section 40B inserted by No. 20 of 1993 s.17; amended by
No. 76 of 2004 s. 14.]*

41. Powers of sampling

- (1) An inspector who has reasonable grounds for believing that any substance is, or that any package contains a substance which is, a prohibited substance or an animal feeding stuff or an ingredient may take for analysis and examination a sample of that substance and where necessary may open the packaging to enable that power to be exercised.

- (1aa) An inspector who has reasonable grounds for believing —
 - (a) that a substance is a veterinary chemical product; or
 - (b) that any stock, stock product or the carcass of any stock has been treated with a veterinary chemical product,

may, for the purposes of Part IV or V, inspect and test that substance, stock, stock product or carcass, or any tissue obtained from that stock or carcass, and may take samples for analysis and examination.

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- (1a) An inspector who has reasonable grounds for believing —
- (a) that a substance is prescribed as a substance to which Part VA applies; or
 - (b) that any stock, or the carcass of any stock, has been treated with a prescribed substance or declared to be not treated with a prescribed substance,

may, for the purposes of Part VA, inspect and test that substance, stock or carcass, or any tissue obtained from that stock or carcass, and may take samples for analysis and examination.

- (2) Any sample taken under this section shall if possible be taken in the presence of the seller or other person apparently in charge of the substance, stock, stock product, carcass or tissue from which the sample was taken.
- (3) The inspector removing the sample shall give to the person apparently in charge of the substance, stock, stock product, carcass or tissue from which the sample was taken, or of the place where it was located (if that person is known to him), a notification of such removal.
- (4) The method of the taking and treatment of a sample under the provisions of this section shall, where the circumstances are relevant, be such as the Governor may from time to time prescribe.
- (5) Regulations may be made under this section —
 - (a) so as to apply —
 - (i) generally or in a particular class of case or in particular classes of cases;
 - (ii) at all times or at a specified time or times; and
 - (iii) throughout the State or in a specified part or parts of the State;

- (b) so as to require a matter affected by them to be —
- (i) in accordance with a specified standard or specified requirement; or
 - (ii) as approved by, or to the satisfaction of, a specified person or body or a specified class of person or body.
- (6) In subsection (5) “**specified**” means specified in the regulations.
[Section 41 amended by No. 20 of 1993 s.18; No. 3 of 1995 s.56; No. 76 of 2004 s. 15.]

42. Duty of dealers to provide samples and information when required

- (1) A person who by way of trade or business sells or intends to sell any animal feeding stuff shall if so required by an inspector provide without payment a sample containing a sufficient quantity of that substance for the purpose of analysis and shall deliver the sample for analysis in such manner and to such person as the inspector may require.
- (2) A person who sells any animal feeding stuff by wholesale shall furnish to an inspector, whenever required to do so, full and complete information in relation to any sale including the name of the purchaser, the date of the sale and the place at which the sale was effected.

[Section 42 amended by No. 3 of 1995 s.56; No. 9 of 1998 s.23.]

42A. Duty of persons to facilitate the operation of Part VA

A person who sells, or who intends to sell, any —

- (a) stock, stock product or carcass of any stock which has been treated with a veterinary chemical product;
- (b) stock, or carcass, which has been treated with a prescribed substance; or
- (c) stock, or carcass, which has been declared to be not treated with a prescribed substance,

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shall, if required by an inspector, without payment provide a sample containing a sufficient quantity of the stock, stock product or carcass, or of the tissue of the stock or carcass, for the purpose of analysis and shall deliver the sample for analysis in such manner and to such person as the inspector may require.

[Section 42A inserted by No. 20 of 1993 s.19; amended by No. 9 of 1998 s.23; No. 76 of 2004 s. 16.]

43. Tampering with samples

A person who —

- (a) tampers with any veterinary chemical product, animal feeding stuff, stock, stock product, carcass, tissue or other substance so as to procure that any sample of it taken or delivered under the provisions of this Act does not correctly represent the bulk from which the sample was taken; or
- (b) tampers or interferes with any sample or part of a sample taken or delivered under the provisions of this Act,

commits an offence against this Act.

[Section 43 amended by No. 20 of 1993 s.20; No. 3 of 1995 s.48; No. 76 of 2004 s. 17.]

44. Use of samples for prosecutions

- (1) Where a sample has been procured under this Act, no prosecution for an offence in respect of the substance stock, stock product, carcass or tissue sampled shall be commenced after the expiration of a period of 4 months beginning with the date on which the sample was procured unless the person before whom the prosecution notice is signed, on being satisfied on oath that having regard to the circumstances of the case it was not practicable to commence the prosecution at an earlier date, gives or renews a certificate to that effect.
- (2) Where a certificate is given or renewed in accordance with the provisions of subsection (1), that certificate authorizes the

commencement of a prosecution within a period of one month after the date of that certificate, the provisions of any other law relating to the limitation of actions notwithstanding.

- (3) In any proceedings for an offence against this Act in respect of a substance stock, stock product, carcass or tissue sampled, the summons shall not be returnable less than 14 days from the day on which it was served, and a copy of any certificate of analysis obtained on behalf of the prosecutor, and of any certificate given by a Justice under subsection (1), shall be served with the summons.

[Section 44 amended by No. 20 of 1993 s.21; No. 76 of 2004 s. 18; No. 84 of 2004 s. 80.]

45. Production of part retained for comparison

In any proceedings under this Act, where a sample has been procured in such circumstances that its division into parts is required by this Act, the part of the sample retained by the person who procured it shall be produced at the hearing, and the court may, if it thinks fit, and upon the request of either party shall, cause that part to be sent to an analyst who shall cause an analysis of that part to be made and shall transmit to the court a certificate of the result.

46. Analysts

- (1) The Minister may appoint qualified persons to be analysts for the purposes of this Act.
- (2) Subject to section 47(3), a person, not being a person appointed under subsection (1), who performs or purports to perform the duties of an analyst under this Act commits an offence against this Act.

Penalty: \$500

[Section 46 amended by No. 20 of 1989 s.3.]

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47. Analysis

- (1) On receipt of a sample provided for analysis under this Act the analyst shall as soon as practicable analyse that sample provided and shall furnish his certificate of the results of that analysis to the Director.
- (2) A copy of the certificate of the results of the analysis shall be given by the Director to the person from whom the sample analysed was obtained.
- (3) A certificate of the results of an analysis carried out under this Act shall be signed by the analyst, but the analysis may be made by a person acting under the direction of the analyst.

[Section 47 amended by No. 20 of 1993 s.22.]

48. Results of analysis may be published

- (1) The Director may publish the result of the analysis of any sample provided for analysis under this Act, together with the name and address or place of business of the person from whom the substance, stock, stock product, carcass or tissue sampled was obtained, or the seller or person apparently in charge of it, or the place where it was obtained or distributor of the animal feeding stuff or seller of the stock, stock product, carcass or tissue sampled or of all or any such persons and any other particulars relating thereto together with any explanation and comment upon the result of the analysis which the Director thinks desirable in the public interest and no action shall lie in respect of that publication.
- (2) Any proprietor or manager of a newspaper or public print may republish any report which has been published by the Director in accordance with the provisions of subsection (1), and no action shall lie against such proprietor or manager in respect of the republication.

[Section 48 amended by No. 20 of 1993 s.23; No. 3 of 1995 s.56; No. 9 of 1998 s.23; No. 76 of 2004 s. 19.]

49. Evidence of analysis and relation of sample to bulk

- (1) At the hearing of any proceedings with respect to a sample analysed under the provisions of this Act the production of a certificate purporting to be signed by an analyst under this Act, without proof of the signature of the person appearing to have signed the certificate or that he is an analyst, is sufficient *prima facie* evidence —
- (a) of the identity of the sample analysed;
 - (b) of the result of the analysis;
 - (c) of the matters relevant to such proceedings stated in the certificate; and
 - (d) of the prescribed method of analysis (if any) having been followed by the analyst in making the analysis,

unless the defendant or accused by not less than 3 days' notice in writing delivered to the plaintiff or prosecutor and by a like 3 days' notice delivered to the analyst (opportunity to deliver which notices shall be afforded the defendant or accused) requires the analyst to attend as a witness.

- (2) Where in any proceedings under this Act a contravention of any of the provisions of this Act is proved with respect to any sample delivered for analysis, the contravention is deemed to have been proved with respect to the bulk, stock or carcass from which the sample was taken, and it is no defence that the purchaser, having obtained the sample only for analysis, was not prejudiced by the sale or that the sample though deficient or not conforming to prescribed standards in one or more respects was not so in other respects.

[Section 49 amended by No. 20 of 1993 s. 24; No. 84 of 2004 s. 80.]

50. Omissions not to prejudice proceedings

In any proceedings for an offence against this Act proof on non-compliance, or failure to prove compliance, on the part of

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any prosecution witness with any of the provisions of this Part which ought to have been complied with by him, shall not entitle the accused to be acquitted unless he shall show that the non-compliance has in fact prejudiced him.

[Section 50 amended by No. 84 of 2004 s. 80 and 82.]

Part VII — Packaging, labelling and standards

[51. *Repealed by No. 69 of 1982 s.5.*]

52. Regulations

- (1) The Governor may make regulations in respect to any animal feeding stuff —
 - (a) prohibiting the marketing or sale of any product —
 - (i) otherwise than in containers the nature, weight and dimensions or sizes of which are prescribed;
 - (ii) in any container of a nature, or weight or dimension or size which regulations require shall not be used in relation to that product;
 - (iii) otherwise than in the amounts that are prescribed;
 - (iv) unless the date of manufacture is stated in the prescribed manner on all containers or other packaging in which the product is sold or offered for sale;
 - (v) after the expiration of the prescribed period from the date of manufacture;
 - (vi) unless the proprietary name, or such accepted scientific name or name descriptive of the true nature or origin of the product as is prescribed appears on the label;
 - (vii) unless the container immediately containing it is marked or labelled in such manner and with such particulars as are prescribed;
 - (viii) unless it is taken in the presence of the purchaser and in such quantities as are prescribed from a container marked or labelled in a conspicuous manner with such particulars as are prescribed;
 - (ix) unless, in the case of bulk supply, it has an invoice issued with it;

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- (x) unless the exterior of the container or other packaging in which the product is sold or offered for sale is marked or securely and conspicuously labelled with such particulars as are prescribed; or
- (xi) which is marked or labelled, or in relation to which any advertisement or other document is published, circulated or distributed, in a manner which in the opinion of the Minister is contrary to the public interest and to the objects and intent of this Act;
- (b) regulating the advertising of that animal feeding stuff, and the descriptions which may be applied thereto;
- [(c) *deleted*]
- (d) regulating and controlling grades and standards of that animal feeding stuff, and of ingredients, including —
 - (i) the prescribing of ingredients which shall or shall not be used, and the strength, quality or quantity to which they are to conform;
 - (ii) the prescribing of maximum, minimum or actual percentages, proportions or amounts of ingredients to be used;
 - (iii) the prescribing of chemical or physical standards or conditions of ingredients;
 - (iv) the control or prohibition of adulterants and impurities and the extent of damage which may be accepted in relation to any animal feeding stuff; and
 - (v) any other matters or things capable of denoting any properties of use in evaluating substances for the purposes of this Act;

- (e) prescribing all matters and things with respect to investigations, experiments or enquiries into the efficacy of that product, including —
 - (i) the conditions under which an investigation, experiment or enquiry will be undertaken at the request of any person;
 - (ii) the payment of deposits and charges;
 - (iii) the provision of information, including recommended usages, treatments and precautions;
 - (iv) the provision of assistance, facilities or materials; and
 - (v) the publication of proceedings, results or purported results;
 - (f) prescribing, regulating and controlling the supply of samples, including the persons required to supply samples, the methods and frequency of taking samples, the quantity, weight and labelling of samples, and the delivery of samples for analysis;
 - (g) prescribing methods of analysis for the purposes of this Act in relation to that animal feeding stuff; and
 - (h) prescribing methods of storage, holding and handling in relation to that animal feeding stuff and regulating and controlling the use of premises therefor.
- (2) Regulations made under this Part may be of general or limited application and may apply the whole of this Part, or any provision of this Part, in relation to any animal feeding stuff and may make different provision (including transitional provisions) for different cases or classes of case determined according to time, place, purpose of sale, quantity supplied, or other circumstances.

[Section 52 amended by No. 69 of 1982 s.6; No. 3 of 1995 ss.49 and 56; No. 9 of 1998 s.23.]

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53. Offences relating to labelling

A person who sells or offers to sell any animal feeding stuff —

[(a) deleted]

(b) which is not labelled in accordance with any prescribed labelling requirements;

[(c) deleted]

(d) otherwise than in such packaging or container or in such amount as is prescribed;

(e) which is marked or labelled, or in relation to which any advertisement is at the time of such sale published, circulated or distributed contrary to regulations made under this Part;

(f) which consists of a special mixture compounded for any person unless that mixture is specifically identifiable by and to the seller and can be shown to have been compounded for a specific person,

commits an offence against this Act.

[Section 53 amended by No. 3 of 1995 s.56; No. 9 of 1998 s.23.]

Part VIII — Advertisements

54. Advertisements

- (1) A person shall not publish, or cause to be published, an advertisement in relation to any animal feeding stuff that is false, misleading or deceptive or that cannot be substantiated in any particular.
- (2) No prosecution shall be instituted against a person, not being the author of the advertisement, who prints or publishes an advertisement in breach of the provisions of subsection (1) unless —
 - (a) a warning has been delivered to that person under the hand of the Director within the 3 months immediately preceding the day of the publication, that in the opinion of the Director the advertisement, or some other advertisement substantially to the same effect, is not in the public interest; or
 - (b) that person can be shown to have an interest in the promotion of the sale of the product advertised otherwise than in the normal course of the business of a printer or a publisher.

[Section 54 amended by No. 69 of 1982 s.7; No. 3 of 1995 s.56; No. 9 of 1998 s.23.]

55. Prohibited statements

Except where authorized or required by or under this Act and in accordance with such authority or requirement, a person who makes or uses in connection with any animal feeding stuff, or the sale of any animal feeding stuff, or in any invoice or advertisement relating thereto —

- (a) any statement or implication that the product is approved or guaranteed under this Act;

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- (b) any statement or implication that the product is recommended or approved by the Government or any Department; or
- (c) any statement, comment, reference or explanation which directly or by implication contradicts, qualifies or modifies any particulars required by or under this Act to be shown on any label, invoice, directions or recommendations for use, or advertisement,

commits an offence against this Act.

[Section 55 amended by No. 3 of 1995 s.56.]

Part IX — Invoices and warranties

[56. *Repealed by No. 69 of 1982 s.8.*]

57. Invoices

- (1) Every person who sells an animal feeding stuff, whatever may be the name under which it is sold and whether paid for at the time of sale or not, shall give the purchaser on or before delivery, or within 7 days thereafter, a statement in writing, in this Part referred to as an invoice, in such form, if any, as may be prescribed, containing the following particulars —
 - (a) the name and place of business of the seller;
 - (b) the name under which the animal feeding stuff is sold; and
 - (c) such particulars, if any, of the nature, substance, or quality as are prescribed in relation to that animal feeding stuff.
- (2) The obligation imposed by subsection (1) shall not apply —
 - (a) to sales of 2 or more animal feeding stuffs which are mixed at the request of the purchaser before delivery to him; or
 - (b) to sales of small quantities (that is to say, sales in quantities of such amount as is prescribed in relation to that animal feeding stuff, or of any lesser amount) if the animal feeding stuff is taken in the presence of the purchaser from a container marked or labelled in a conspicuous manner with the particulars required by this section to be contained in the invoice.

[Section 57 amended by No. 69 of 1982 s.9; No. 3 of 1995 ss.50 and 56; No. 9 of 1998 s.23.]

58. Warranties

- (1) Notwithstanding any agreement or notice to the contrary, a statement in any advertisement for, label on, or invoice for the

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sale of, any animal feeding stuff has effect as a warranty by the seller of the accuracy of the statement.

- (2) Where an animal feeding stuff is sold under a name or description implying that it was prepared from any particular substance, or from 2 or more particular substances, and without any indication that it is mixed or compounded with any other substance, there is an implied warranty by the seller that it is pure, that is to say, that it is prepared from that substance or those substances only.
- (3) No action on any warranty implied under the provisions of this section lies for any mis-statement as to the particulars of the nature, substance or quality of the animal feeding stuff, or as to the quantity or quality of any ingredient, where the mis-statement does not exceed the limits of variation, if any, prescribed under this Act in relation to those particulars, but where the mis-statement exceeds the limits, the right of the purchaser under the warranty is not affected by the limits.

[Section 58 amended by No. 69 of 1982 s.10; No. 3 of 1995 ss.51 and 56; No. 9 of 1998 s.23.]

59. Breach of duty by seller is an offence

- (1) A person who sells an animal feeding stuff and —
 - (a) fails without reasonable excuse to give to the purchaser, on or before delivery or within 7 days thereafter the invoice or information in lieu of an invoice required by section 57; or
 - (b) causes or permits any invoice or information given to be false or misleading in any material particular,

commits an offence against this Act.

- (2) It is a defence for a person charged with an offence under subsection (1) to prove that he took all reasonable steps to avoid committing the offence and that he acted without intent to defraud.

[Section 59 amended by No. 69 of 1982 s.11; No. 3 of 1995 s.52.]

Part X — Miscellaneous and general

59A. Application of *Financial Administration and Audit Act 1985*

The provisions of the *Financial Administration and Audit Act 1985* regulating the financial administration, audit and reporting of departments apply to and in respect of the Department of Agriculture² and its operations under this Act.

[Section 59A inserted by No. 98 of 1985 Schedule 1.]

60. Persons obstructing execution of this Act

- (1) A person who wilfully obstructs any person acting in the execution of this Act commits an offence against this Act.
- (2) If a person having the charge for the time being of any substance, stock, stock product or carcass refuses to allow any person acting in the execution of this Act to take the sample which that person requires, the first-mentioned person is deemed to have wilfully obstructed that person.
- (3) A person who fails to give to any person acting in the execution of this Act any assistance which that person reasonably requests him to give, or any information which that person is expressly authorized by this Act to call for or reasonably requires, or who, when required to give any such information, knowingly makes any mis-statement in relation thereto, is deemed to have wilfully obstructed that person.
- (4) Nothing in subsection (3) shall be construed as requiring a person to answer any question or give any information, if to do so might incriminate him.

[Section 60 amended by No. 20 of 1993 s.25; No. 74 of 2003 s. 124; No. 76 of 2004 s. 20.]

61. Vicarious liability

- (1) Where an offence under this Act which has been committed by a body corporate is proved to have been committed with the

consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer, of the body corporate, or any person who was purporting to act in any such capacity, he as well as the body corporate shall be deemed to have committed that offence and is liable to be proceeded against and punished accordingly.

- (2) For the purposes of Part V any stock, stock product or carcass, or for the purposes of this Act any person on whose behalf the sale of an animal feeding stuff, or for the purposes of Part VA any stock or carcass, is made is deemed to be the person who sells, and every servant or agent of that person making the sale is liable to the like penalties as the person on whose behalf he makes the sale.
- (3) A principal or employee may be proceeded against under this section and may be convicted of an offence notwithstanding that his agent or employee has not been proceeded against or has not been convicted of an offence against this Act.
- (4) Nothing in this section prejudices or affects a liability imposed by this Act on a person by whom an offence against this Act is actually committed.
- (5) A person liable to be proceeded against under this section may, on the request of the prosecutor, be convicted on the same proceedings on which another person is convicted if the court is satisfied that the person so liable had reasonable notice that the request was intended to be made.

[Section 61 amended by No. 20 of 1993 s.26; No. 3 of 1995 s.53; No. 9 of 1998 s.23; No. 76 of 2004 s. 21; No. 84 of 2004 s. 80.]

62. Forfeiture

- (1) Where any person is convicted of an offence against this Act any animal feeding stuff, packaging or other thing to or to any part of which the conviction relates, and if the offence relates to Part IV, V or VA any veterinary chemical product, stock, stock

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product, carcass or prescribed substance concerned in the offence, may be ordered by the court before which proceedings for the offence are taken to be forfeited to Her Majesty.

- (2) A forfeiture so ordered may extend to the whole of the animal feeding stuff or other thing, and to the whole of any similar animal feeding stuff and other related things, and if the offence relates to Part IV, V or VA to the whole supply of the veterinary chemical product or any similar veterinary chemical product, the whole supply of any prescribed substance, and the total number of any stock, stock products or carcasses concerned in, or similar to those concerned in, the offence belonging to the accused or found on the accused's premises or in his possession at the time of the commission of the offence.

[Section 62 amended by No. 20 of 1993 s.27; No. 3 of 1995 s.56; No. 76 of 2004 s. 22; No. 84 of 2004 s. 82.]

63. Offences and penalties

- (1) A person who —
- (a) fails to comply with any of the requirements of this Act within the time or in the manner provided; or
 - (b) contravenes or fails to comply with any other provisions of this Act,

commits an offence.

- (2) Any person convicted of an offence against this Act is liable on summary conviction, where no penalty is expressly provided for the offence —
- (a) if he has not been previously convicted of any offence against this Act, to —
 - (i) a penalty of \$1 000; or
 - [(ii) deleted]
 - (b) if he has been previously convicted of any offence against this Act, to —
 - (i) a penalty of \$2 000; or

- (ii) imprisonment for 12 months;
- and
- (c) in the case of a continuing offence, whether of commission or of omission, to a daily penalty of \$200 for every day that the offence continues after the offender is convicted.

[Section 63 amended by No. 20 of 1989 s.3; No. 78 of 1995 s.147.]

64. Proceedings for offences

- (1) A court of summary jurisdiction dealing with an offence under this Act is to be constituted by a magistrate.
- (2) A prosecution for an offence against this Act may be instituted by an inspector, or by any person authorized by the Minister.
- (3) Subject to section 44, a prosecution for an offence against this Act may be instituted at any time within 3 years after the date on which it is alleged the offence was committed.

[Section 64 amended by No. 76 of 2004 s. 23; No. 59 of 2004 s. 141; No. 84 of 2004 s. 78.]

65. Evidence of qualifications

In any proceedings under this Act —

- (a) the appointment of any person as an analyst and the authority of any person to prosecute for any offence shall be presumed, unless the contrary is proved;
- [(aa) deleted]*
- (b) the production of a copy of the *Government Gazette* containing the several registers or lists as last published in relation to the time in question of pharmaceutical chemists or veterinary surgeons, shall, if the name of the accused does not appear in any of such registers or lists, be sufficient *prima facie* evidence that he is not a

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pharmaceutical chemist or veterinary surgeon so registered;

- (c) a certificate that any person is or is not, or was or was not, on a certain date or for a certain period a registered pharmaceutical chemist, a veterinary surgeon or an analyst shall be sufficient *prima facie* evidence of the facts therein stated if the certificate purports to be signed —
- (i) in the case of a registered pharmaceutical chemist, by the registrar of the Pharmaceutical Council of Western Australia, constituted under the *Pharmacy Act 1964*;
 - (ii) in the case of a veterinary surgeon, by the registrar of the Veterinary Surgeons' Board constituted under the *Veterinary Surgeons Act 1960*; and
 - (iii) in the case of an analyst appointed by the Minister under section 46(1), by the Minister.

[Section 65 amended by No. 69 of 1982 s.12; No. 20 of 1993 s.28; No. 3 of 1995 s.56; No. 9 of 1998 s.23; No. 76 of 2004 s. 24; No. 84 of 2004 s. 82.]

66. Onus of proof

- (1) In any proceedings with respect to a substance to which the provisions of this Act apply, the allegation that the substance was sold shall be sufficient *prima facie* evidence of the fact which constitutes a sale as defined in this Act until the contrary is proved, and the onus of proof that any substance was not intended for sale, or prepared for sale, or was not a veterinary chemical product or stock product, or was not an animal feeding stuff or intended as an ingredient of any such product, shall lie upon the accused.
- (1a) In the absence of evidence to the contrary, the allegation that stock, a stock product or a carcass was sold or intended to be

sold may be taken to be sufficient evidence of a sale alleged in proceedings for the purposes of Part V.

- (2) In the absence of evidence to the contrary, the allegation —
- (a) that stock or a carcass was sold or intended to be sold; and
 - (b) that the sale or intended sale of any stock or carcass was to a particular market,

may be taken to be sufficient evidence of a sale alleged in proceedings for the purposes of Part VA.

[Section 66 amended by No. 20 of 1993 s.29; No. 3 of 1995 s.54; No. 76 of 2004 s. 25; No. 84 of 2004 s. 82.]

67. Protection from liability

No act, matter or thing done or omitted to be done in good faith by the Minister or by any inspector or analyst in the execution or intended execution of this Act, or in the exercise or performance or intended exercise or performance of any of his powers, functions or duties under this Act, subjects that person to any liability.

[Section 67 amended by No. 9 of 1998 s.23; No. 42 of 1999 s.11.]

68. Regulations

- (1) The Governor may make regulations in regard to any matter or for any purpose for which regulations are prescribed or contemplated by this Act and may make all such other regulations as may in his opinion be required or permitted by this Act for giving effect to the provisions of, and for the full execution and due administration of this Act.

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- (2) Without limiting the generality of the powers conferred by subsection (1), the Governor may make regulations for or with respect to —
- (a) the application for and the grant, issue, renewal, cancellation or suspension of licences, permits and authorities under this Act other than Part VA, and for and with respect to the matters referred to in section 36A;
 - (aa) the matters referred to in sections 15 and 16;
 - (b) the conditions, restrictions and limitations to be imposed on any grant;
 - [(c)-(e) deleted]*
 - (f) the forms to be used for the purposes of this Act, and the manner of, and time for, their completion including a requirement that information supplied be verified by statutory declaration;
 - (g) the accounts, facts and matters which ought in the opinion of the Director to be recorded and vouched in relation to the production or sale of any animal feeding stuff, and the manner in which such records are to be kept and vouched;
 - (h) the accounts and returns to be kept and furnished by wholesalers, salesmen, and others for the purposes of this Act;
 - (i) controlling the sale of specified products for specified purposes;
 - (j) controlling the matters included in directions and recommendations for the use of specified products;
 - (k) the names that may or may not be used with reference to specified substances for the purposes of this Act;
 - (l) controlling all matters with respect to the nature, content and use of labels in relation to a specified animal feeding stuff, and the identification of bulk consignments;

- (m) the investigation as to the efficacy of products or ingredients;
- (n) the taking of samples by inspectors and purchasers;
- (o) the conduct and methods of analysis;
- (p) methods of treatment, processing and storage of products or ingredients;
- (q) the classifying of substances for the purposes of this Act as animal feeding stuffs, or as prescribed substances under Part VA;
- (r) the classification for the purposes of this Act of substances as food additives, by-products, supplements, adulterants, impurities, and pesticides and regulating the manner of their marketing and sale;
- (s) the nature and degree of damage to products such as to render them unfit for use or consumption, including damage by heat, pesticides, fungi, toxins, bacteria, oxidation, putrefaction, chemical action or interaction, and prohibiting the use of any product so damaged;
- (t) the definition of terms for the purposes of this Act including the use of chemical and physical expressions;
- (u) the manner in which animal feeding stuffs are held or stored for the purposes of sale;
- (v) the use of premises for the production of animal feeding stuffs for the purposes of sale;
- (w) the sale and use of products the residues of which may have deleterious effects if consumed by humans;
- (x) the disposal of any substance or thing seized or forfeited pursuant to the provisions of this Act;
- (y) any other purpose that the Governor deems necessary for safeguarding the public and the public interest in relation to veterinary chemical products and animal feeding stuffs, or in relation to prescribed substances under Part VA; and

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- (z) such transitional, incidental and supplementary provisions as the Governor deems necessary or expedient for the purpose of this Act.
- (3) Any regulations made under this Act may —
 - (a) be of general or limited application, according to time, place or circumstance;
 - (b) prescribe the charges that shall be made for any matter under this Act, other than an application to the State Administrative Tribunal for a review, the persons liable to pay the charges and the method of recovering amounts not duly paid;
 - (c) impose upon any person or class of person a discretionary authority;
 - (d) subject to sections 15(2)(e), 16(2)(b) and 36A(1)(h), provide penalties not exceeding \$2 000 for offences against the regulations, and daily penalties not exceeding \$200 for every day that an offence continues after the offender is convicted.

[Section 68 amended by No. 69 of 1982 s.13; No. 20 of 1989 s.3; No. 20 of 1993 s.30; No. 3 of 1995 ss.55 and 56; No. 78 of 1995 s.147; No. 9 of 1998 s.23; No. 55 of 2004 s. 1274; No. 76 of 2004 s. 26 and 27(4), (5).]

[Schedule omitted under the Reprints Act 1984 s.7(4)(f).]

Notes

¹ This is a compilation of the *Veterinary Chemical Control and Animal Feeding Stuffs Act 1976* and includes the amendments made by the other written laws referred to in the following table ^{1a}.

Compilation table

Short title	Number and year	Assent	Commencement
<i>Veterinary Preparations and Animal Feeding Stuffs Act 1976</i> ⁸	56 of 1976	16 Sep 1976	15 Jul 1977 (see s. 2 and <i>Gazette</i> 15 Jul 1977 p. 2200)
<i>Veterinary Preparations and Animal Feeding Stuffs Amendment Act 1981</i>	54 of 1981	13 Oct 1981	13 Oct 1981
<i>Acts Amendment (Statutory Designations) and Validation Act 1981</i> , section 4	63 of 1981	13 Oct 1981	13 Oct 1981
<i>Veterinary Preparations and Animal Feeding Stuffs Amendment Act 1982</i>	69 of 1982	19 Oct 1982	13 Sep 1991 (see s. 2 and <i>Gazette</i> 13 Sep 1991 p. 4767)
<i>Acts Amendment (Financial Administration and Audit) Act 1985</i> , section 3	98 of 1985	4 Dec 1985	1 Jul 1986 (see s. 2 and <i>Gazette</i> 30 Jun 1986 p. 2255)
<i>Agricultural Legislation (Penalties) Amendment Act 1989</i> , section 3	20 of 1989	1 Dec 1989	15 Dec 1989 (see s. 2 and <i>Gazette</i> 15 Dec 1989 p. 4513)
<i>Acts Amendment (Chemistry Centre (WA)) Act 1990</i> , Part 4 ³	19 of 1990	24 Jul 1990	9 Aug 1991 (see s. 2 and <i>Gazette</i> 9 Aug 1991 p. 4101)
<i>Veterinary Preparations and Animal Feeding Stuffs Amendment Act 1993</i>	20 of 1993	9 Dec 1993	1 Jul 1994 (see s. 2 and <i>Gazette</i> 24 Jun 1994 p. 2819)
<i>Acts Amendment (Public Sector Management) Act 1994</i> , section 3(1)	32 of 1994	29 Jun 1994	1 Oct 1994 (see s. 2 and <i>Gazette</i> 30 Sep 1994 p. 4948)

Veterinary Chemical Control and Animal Feeding Stuffs Act 1976

Short title	Number and year	Assent	Commencement
<i>Agricultural and Veterinary Chemicals (Western Australia) Act 1995, Part 11, Division 1</i>	3 of 1995	17 May 1995	24 Jun 1995 (see s. 2 and <i>Gazette</i> 23 Jun 1995 p. 2419)
<i>Sentencing (Consequential Provisions) Act 1995, section 147</i>	78 of 1995	16 Jan 1996	4 Nov 1996 (see s. 2 and <i>Gazette</i> 25 Oct 1996 p. 5632)
<i>Agricultural Legislation Amendment and Repeal Act 1998, Part 8⁴</i>	9 of 1998	30 Apr 1998	1 Nov 1998 (see s. 2 and <i>Gazette</i> 30 Oct 1998 p. 5993)
<i>Acts Amendment (Police Immunity) Act 1999, section 11</i>	42 of 1999	25 Nov 1999	25 Nov 1999 (see s. 2)
<i>Statutes (Repeals and Minor Amendments) Act 2003 s. 124</i>	74 of 2003	15 Dec 2003	15 Dec 2003 (see s. 2)
<i>Courts Legislation Amendment and Repeal Act 2004 s. 141</i>	59 of 2004	23 Nov 2004	1 May 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7128)
<i>State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004 Pt. 2 Div. 130⁷</i>	55 of 2004	24 Nov 2004	1 Jan 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7130)
<i>Criminal Law Amendment (Simple Offences) Act 2004 s. 82</i>	70 of 2004	8 Dec 2004	31 May 2005 (see s. 2 and <i>Gazette</i> 14 Jan 2005 p. 163)
<i>Veterinary Preparations and Animal Feeding Stuffs Amendment Act 2004</i>	76 of 2004	8 Dec 2004	5 Jan 2005
<i>Criminal Procedure and Appeals (Consequential and Other Provisions) Act 2004 s. 78, 80 and 82</i>	84 of 2004	16 Dec 2004	2 May 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7129 (correction in <i>Gazette</i> 7 Jan 2005 p. 53))

^{1a} On the date as at which this compilation was prepared, provisions referred to in the following table had not come into operation and were therefore not included in this compilation. For the text of the provisions see the endnotes referred to in the table.

Provisions that have not come into operation

Short title	Number and year	Assent	Commencement
<i>Criminal Procedure and Appeals (Consequential and Other Provisions) Act 2004</i> s. 142 ⁵	84 of 2004	16 Dec 2004	s. 142 cl. 51: to be proclaimed
<i>Financial Administration Legislation Amendment Act 2005</i> s. 45 ⁶	5 of 2005	27 Jun 2005	To be proclaimed (see s. 2)

² Now called Agriculture Western Australia.

³ Section 13 of the *Acts Amendment (Chemistry Centre (W.A.) Act 1990* (No. 19 of 1990) reads as follows —

“

13. Saving of approved methods of analysis

A method of analysis of samples that is, immediately before the commencement of this Act, a method approved by the director of the Government Chemical Laboratories under the principal Act, shall upon the commencement of this Act be deemed to be a method that has been approved by the Director of the Chemistry Centre (WA), until such time as the Director of the Chemistry Centre (WA) directs otherwise.

”

⁴ Sections 24 and 25 of the *Agricultural Legislation Amendment and Repeal Act 1998* (No. 9 of 1998) reads as follows —

“

24. Refund of registration fees

- (1) If immediately before the commencement of this Act an animal feeding stuff is registered in the name of a person under Part V of the principal Act, the chief executive officer of the department of the Public Service principally assisting the Minister administering the principal Act shall refund to the person some or all of the fee paid for the registration.
- (2) The refund shall be calculated as follows:

$$\text{Re fund} = F \times \frac{P}{RP}$$

where:

F = The fee paid for the registration.

P = The period (to the nearest whole month) beginning on the commencement of this Act and ending when the registration was due to expire.

RP = The period for which the registration was in force under section 30 of the principal Act (to the nearest whole month).

25. Transitional provision

On the commencement of this Act, the chief executive officer of the department of the Public Service principally assisting the Minister administering the principal Act is to take delivery of the Register referred to in section 24 of the principal Act and retain possession of it for 3 years after the commencement of this Act.

”

⁵ On the date as at which this compilation was prepared, the *Courts Legislation Amendment and Repeal Act 2004* s. 142, which gives effect to Sch. 2, had not come into operation. It reads as follows:

“

142. Other amendments to various Acts

Each Act listed in Schedule 2 is amended as set out in that Schedule immediately below the short title of the Act.

”

Schedule 2 cl. 51 reads as follows:

“

Schedule 2 — Other amendments to Acts

51. *Veterinary Preparations and Animal Feeding Stuffs Act 1976*

s. 40(3)	Delete “a stipendiary magistrate sitting as a court of summary jurisdiction who may make such order in the matter as he thinks just.” and insert instead — “ the Magistrates Court. ”.
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”

⁶ On the date as at which this compilation was prepared, the *Financial Administration Legislation Amendment Act 2005* s. 45, had not come into operation. It reads as follows:

“

45. *Veterinary Chemical Control and Animal Feeding Stuffs Act 1976 amended*

- (1) The amendments in this section are to the *Veterinary Chemical Control and Animal Feeding Stuffs Act 1976*.
- (2) Section 10(3) is amended by deleting “section 62” and inserting instead —
“ section 66 ”.

”.

⁷ The *State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004* Pt. 5, the *State Administration Tribunal Act 2004* s. 167 and 169, and the *State Administrative Tribunal Regulations 2004* r. 28 and 42 deal with certain transitional issues some of which may be relevant for this Act.

⁸ Now known as the *Veterinary Chemical Control and Animal Feeding Stuffs Act 1975* (see note under s. 1)