

WESTERN AUSTRALIA

**VETERINARY PREPARATIONS
AND ANIMAL FEEDING STUFFS
AMENDMENT ACT 1993**

No. 20 of 1993

AN ACT to amend the *Veterinary Preparations and Animal Feeding Stuffs Act 1976*.

[Assented to 9 December 1993.]

The Parliament of Western Australia enacts as follows:

Short title

1. This Act may be cited as the *Veterinary Preparations and Animal Feeding Stuffs Amendment Act 1993*.

Commencement

2. This Act shall come into operation on such day as is fixed by proclamation.

Principal Act

3. In this Act the *Veterinary Preparations and Animal Feeding Stuffs Act 1976** is referred to as the principal Act.

[* Act No. 56 of 1976.

*For subsequent amendments see 1992 Index to
Legislation of Western Australia, Table 1, p. 222.]*

Long title amended

4. The long title to the principal Act is amended by inserting, after "**Animal Feeding Stuffs**," the following —

“

**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,**

”

Section 4 repealed

5. Section 4 of the principal Act is repealed.

Section 5 amended

6. (1) Section 5 of the principal Act is amended, in subsection (1), by inserting, in their respective appropriate alphabetical sequence, the following definitions —

“

“**carcass**”, in relation to cattle and to any other animal prescribed as an animal to which Part VA applies, includes skin, hair, wool, offal, viscera, tissue or any portion of the carcass;

“**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;

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

“**treat**” means, for the purposes of Part VA, to administer a prescribed substance;

“**treated**” means, for the purposes of Part VA in relation to any animal, that a prescribed substance has been administered to that animal;

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

”

(2) Section 5 of the principal Act is further amended, in subsection (1) —

- (a) by deleting the definition of “section”;
- (b) by deleting the definition of “stock” and substituting the definition following —

“

“**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;

”;

- (c) in the definition of “the Director”, by deleting “Director of Agriculture” and substituting the following —

“

Director-General of the Department of
Agriculture

”;

and

- (d) in the definition of “veterinary preparation” —

- (i) at paragraph (h), by inserting after “process,” the following —

“ or promoting growth, ”;

- (ii) by inserting after “dehorning preparations” the following —

“ , hormonal growth promotants, ”; and

- (iii) by deleting the fullstop, and substituting a semicolon.

(3) Section 5 of the principal Act is further amended by adding the subsection following —

“

(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 unless a declaration has been made under this Act that the stock, or the carcass, has not been treated.

”.

Section 6 amended

7. Section 6 of the principal Act is amended by adding the subsection following —

“

(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.

”.

Section 7 amended

8. Section 7 of the principal Act is amended by inserting, after “animal feeding stuff”, the following —

“ , or to any stock or carcass to which Part VA applies, ”.

Section 10 amended

9. Section 10 of the principal Act is amended —

(a) by inserting after the section designation “10.” the subsection designation “(1)”; and

(b) by adding the subsections following —

“

(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 Agriculture under section 62 of the *Financial Administration and Audit Act 1985*.

”.

Section 12 amended

10. Section 12 of the principal Act is amended by inserting, after “may”, the following —

“ , subject to section 36C, ”.

Section 24 amended

11. Section 24 of the principal Act is amended, in paragraph (a), by inserting, after “Act”, the following —

“ , and administer the system of registration of the sellers of prescribed substances required for the purposes of Part VA

”.

Section 31 amended

12. Section 31 of the principal Act is amended, in subsection (1), by inserting, after “premises” where it first occurs, the following —

“ , or as a seller of prescribed substances, ”.

Part VA added

13. After Part V of the principal Act the following Part is added —

“

**PART VA — REGULATION OF PRESCRIBED
SUBSTANCES**

Regulations relating to prescribed substances

36A. (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) the registration of persons who sell a prescribed substance, and the renewal, suspension or cancellation of that registration;
- (c) the duties and obligations of persons who —
 - (i) sell a prescribed substance;
 - (ii) are an agent for a seller of a prescribed substance;
 - (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 sale or 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 Territory, and extend to acts done or omitted to be done outside the State.

Certain agreements void

36B. (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.

Registration of persons who sell prescribed substances

36C. A person who sells a prescribed substance, unless that person is registered for that purpose under regulations made for the purposes of this Part, commits an offence against this Act.

Penalty: \$10 000.

False statements as to prescribed substances

36D. 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 38 amended

14. Section 38 of the principal Act is amended, in subsection (1) —

- (a) in paragraph (a), by inserting, after “feeding stuff”, the following —

“

or, for the purposes of Part VA, of any prescribed substance or of any stock or carcass which has or may have been treated or has been declared not to have been treated

”;

- (b) in paragraph (b), by inserting, after “delivery”, the following —

“

or, for the purposes of Part VA, of any prescribed substance or of any stock or carcass which has or may have been treated or has been declared not to have been treated

”;

and

- (c) after paragraph (b), by deleting the full stop and substituting the following —

“

;

- (c) break open and search any box or other packaging, or any receptacle (including any thing that could be used as a receptacle); and
- (d) for the purposes of Part VA, stop, or order, the movement of any stock or carcass.

”.

Section 39 amended

15. Section 39 of the principal Act is amended —

- (a) by inserting after the section designation “**39.**” the subsection designation “(1)”;
(b) in paragraph (a) —
(i) by inserting, after “product” where it first occurs, the following —

“

, or for the purposes of Part VA any person whom the inspector has reasonable cause to believe may be in possession of or the purchaser of any prescribed substance or any stock, or the carcass of any stock, which has been treated or declared to be not treated,

”;

and

- (ii) by inserting, after “product” in the second place where it occurs, the following —

“
 , prescribed substance, stock or
 carcass
”;

- (c) in paragraph (b) —

- (i) by inserting, after “product” where it first occurs, the following —

“
 , or for the purposes of Part VA any
 person whom the inspector has
 reasonable cause to believe to be a
 seller of any prescribed substance or
 any stock, or the carcass of any stock,
 which has been treated or declared to
 be not treated,
”;

and

- (ii) by deleting “of that product”;

- (d) in paragraph (c), by deleting “the sale of any product” and substituting the following —

“ a sale to which this Act applies ”;

- (e) in paragraph (d) —

- (i) by inserting after “prohibited substance”, in both places where it occurs, the following —

“
 or a substance which is for the
 purposes of Part VA a prescribed
 substance
and
”;

(ii) by inserting, before “to supply”, the following —

“

or any stock, or the carcass of any stock, to which Part VA applies and which has been treated or declared to be not treated,

”;

and

(f) by adding the subsections following —

“

(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 40 amended

16. Section 40 of the principal Act is amended in
subsection (1) —

(a) by inserting, after “matter,” the following —

“

, or for the purposes of Part VA any
substance, stock or carcass,

and

”;

(b) by inserting, after “Act”, the following —

“

or otherwise relates to a contravention of
this Act

”

Sections 40A and 40B added

17. The principal Act is amended by adding, after section 40, the sections following —

“

Other powers of an inspector

40A. (1) An inspector who has reasonable grounds for believing that any stock or carcass has or may have been treated, or is or may have been declared to be not treated, may require any person apparently in charge of that stock 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 or carcass required;
- (c) to permit the sampling procedures required for the purposes of Part VA;
- (d) to provide or repair any enclosure, yard, crush or other facility —
 - (i) needed for the purpose of confining stock or preserving any carcass; or
 - (ii) which the inspector may require to inspect, examine or take samples of any stock 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 VA the inspector may do what is required or cause effect to be given to the requirement.

Recovery of inspection costs

40B. 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 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 41 amended

18. Section 41 of the principal Act is amended —

- (a) by adding, after subsection (1), the subsection following —

“

(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, is stock, or a carcass, which has been treated or declared to be not treated,

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.

”;

- (b) in subsection (2) —

(i) by deleting “the provisions of subsection (1) of ”; and

- (ii) by inserting, after “substance”, the following —

“ , stock, carcass or tissue ”;

and

- (c) in subsection (3), by deleting “in charge of that substance” and substituting the following —

“
apparently in charge of the substance,
stock, carcass or tissue from which the
sample was taken

”.

Section 42A added

19. The principal Act is amended by adding, after section 42, the section following —

“

Duty of persons to facilitate the operation of Part VA

42A. A person who sells, or who intends to sell, any —

- (a) prescribed substance;

- (b) stock, or carcass, which has been treated;
or
- (c) stock, or carcass, which has been declared
to be not treated,

shall, if required by an inspector, without payment provide a sample containing a sufficient quantity of the substance, or of the 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 43 amended

20. Section 43 of the principal Act is amended, in paragraph (a), by inserting, after “feeding stuff”, the following —

“ , stock, carcass, tissue ”.

Section 44 amended

21. Section 44 of the principal Act is amended, in subsections (1) and (3) respectively, by inserting, after “substance”, the following —

“ stock, carcass or tissue ”.

Section 47 amended

22. Section 47 of the principal Act is amended, in subsection (1), by deleting “substance”, in each place where it occurs, and substituting the following —

“ sample provided ”.

Section 48 amended

23. Section 48 of the principal Act is amended —

- (a) by deleting “substance submitted” and substituting the following —

“ sample provided ”;

- (b) by deleting “such substance” and substituting the following —

“
the substance, stock, carcass or tissue
sampled
”;
and

- (c) by deleting “that substance” and substituting the following —

“
the veterinary preparation or animal
feeding stuff or seller of the stock, carcass
or tissue sampled
”.

Section 49 amended

24. Section 49 of the principal Act is amended —

- (a) in subsection (1) —

- (i) by deleting “substance”, in both places where it occurs, and substituting the following —

“ sample ”;

(ii) by inserting, after "plaintiff", the following —
" , complainant ";
and

(b) in subsection (2), by inserting, after "bulk", the following —
" , stock or carcass ".

Section 60 amended

25. Section 60 of the principal Act is amended, in subsection (2) —

(a) by inserting, after "substance", the following —
" , stock or carcass "; and

(b) by deleting "quantity which he requires as a sample he" and substituting the following —
" sample which that person requires ".

Section 61 amended

26. Section 61 of the principal Act is amended —

(a) in subsection (2), by inserting, after "product", the following —
"
 , or for the purposes of Part VA any
prescribed substance, stock or carcass,
";
and

(b) by adding the subsections following —

“

(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 complainant or 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 62 amended

27. Section 62 of the principal Act is amended —

(a) in subsection (1), by inserting, after “relates”, the following —

“

, and if the offence relates to Part VA any prescribed substance, stock or carcass concerned in the offence,

”;

and

(b) in subsection (2) —

(i) by deleting “substance, packaging”, in both places where it occurs, and substituting the following —

“

veterinary preparation or animal
feeding stuff

”;

and

(ii) by inserting, after “things”, the following —

“

, and if the offence relates to Part VA
to the whole supply of any prescribed
substance and the total number of
any stock or carcasses concerned in,
or similar to those concerned in, the
offence

”.

Section 65 amended

28. Section 65 of the principal Act is amended, in paragraph (aa), by deleting “product,” and substituting the following —

“

product; or

(iii) that on any date or during any period any person —

(I) was registered for the purposes of Part VA as a seller; or

(II) was not so registered,

in relation to a prescribed substance,

”.

Section 66 amended

29. Section 66 of the principal Act is amended —

- (a) by inserting after the section designation “66.” the subsection designation “(1)”;
- (b) by adding the subsection following —

“

(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 68 amended

30. Section 68 of the principal Act is amended —

- (a) in subsection (2) —
 - (i) in paragraph (a), by inserting, after “Act”, the following —

“

other than Part VA, and for and with respect to the matters referred to in section 36A

”;

