

WESTERN AUSTRALIA.

SEEDS ACT 1981.

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SEEDS.

No. 35 of 1981.

AN ACT relating to the sale of certain seed and for connected purposes.

[Assented to 25 August 1981.]

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

PART I—PRELIMINARY.

1. This Act may be cited as the *Seeds Act 1981*. Short title.
2. This Act shall come into operation on a day to be fixed by proclamation. Commencement.

Interpreta-
tion.

3. (1) In this Act, unless the contrary intention appears—

“crop seed” means a seed prescribed to be a crop seed;

“cultivar” means an assemblage of cultivated plants clearly distinguishable by morphological or physiological characteristics which characteristics are retained upon reproduction;

“declared disease” means a disease declared by the Minister under section 12 to be a declared disease;

“declared pest” means a pest declared by the Minister under section 12 to be a declared pest;

“Department” means the Department of the Public Service of the State through which the Minister administers this Act;

“germinable”, in relation to crop seed, means, under prescribed test conditions, exhibiting such growth characteristics as are prescribed for that purpose;

“inspector” means a person appointed under section 14 to be an inspector;

“name”, in respect of a crop seed or weed seed, means the recognized botanical name or the common name by reference to which the crop seed or weed seed is described when it is prescribed to be a crop seed or weed seed, as the case may be;

“officer” means an officer employed in the Department under the Public Service Act 1978;

“package” includes sack, bag, bin, barrel, case, tin, jar, packet, parcel, tube, or other container in which seed is sold, and where the seed is encased in more than one container refers to the outside container;

“prohibited seed” means a seed declared by the Minister under section 12 to be a prohibited seed;

“section” refers to a provision of this Act;

“seed analyst” means a person appointed under section 14 to be a seed analyst;

“seed lot”, in relation to a sale, means the seed the subject of the sale and any other seed, inert matter, or other thing with which it is mixed;

“sell” includes—

- (a) barter, exchange, or give;
- (b) expose or offer for sale, barter, exchange, or gift; and
- (c) possess, deliver, or consign for the purposes of effecting, or deliver or consign pursuant to, any sale, barter, exchange, or gift,

or attempt to sell or do any of those things, and cognate expressions have corresponding meanings;

“subsection” means subsection of the section in which the word is used; and

“weed seed” means a seed prescribed to be a weed seed.

(2) In determining, for the purposes of this Act, the proportion in which a seed is contained or the proportion of seed that is germinable—

- (a) that which is to be taken as being a seed shall, subject to paragraph (b) of this subsection, be as prescribed in the regulations; and
- (b) where there is any pelleting material adhering to the seed, the mass of the seed shall not be taken to include the mass of such material.

(3) In computing a period of time specified in section 21 or 23, Saturdays, Sundays, and any day that is, by or under the Public and Bank Holidays Act 1972, appointed to be a public holiday or a bank holiday, shall not be included in the period.

Exemptions.

4. (1) Parts II and III of this Act do not apply to the sale of a seed lot to a person prescribed or of a class of persons prescribed for the purposes of this subsection unless that person elects, by notice in writing given to the seller, that the sale is to be made in accordance with the provisions of this Act, whereupon the provisions of this Act apply to a person who, after having been given such notice, sells the seed lot to the person giving the notice.

(2) Parts II and III of this Act do not apply to the sale of a seed lot to such persons as the Minister may authorize in writing for such purpose of an experimental or breeding nature as the Minister may so authorize.

PART II—STATEMENTS RELATING TO SEED SOLD.

Application
of this Part.

5. (1) This Part does not apply in relation to the sale of seed where the seed lot sold has a mass less than the mass prescribed in respect of each crop seed contained in the seed lot.

(2) This Part does not apply in relation to the sale of a seed lot—

- (a) if the seller has obtained a written declaration from the person to whom the seed lot is sold to the effect that the seed lot is not intended to be used for sowing and that the person to whom the seed lot is sold is aware that the sale is not subject to this Part; or
- (b) where no agreement for sale has yet been entered into, if measures were taken sufficient to ensure that every prospective purchaser knew that the seed lot was not suitable to be used for sowing.

Seed lot
to be
homo-
geneous.

6. A person shall not sell a seed lot unless it is thoroughly mixed so that it is as close to being homogeneous as is reasonably practicable.

Penalty: \$200.

7. (1) A person shall not sell any seed lot containing 2% or more, by mass, of a particular crop seed unless at all times during which it is being sold—

Statement
with crop
seed sold.

- (a) if the seed lot is sold in a package, the package bears a label containing a statement in accordance with subsection (2);
- (b) if the seed lot is not sold in a package, the seed lot is accompanied by a document clearly identifying the seed lot to which it relates and containing a statement in accordance with subsection (2).

Penalty: \$1 000.

(2) The statement required by this section shall be printed legibly and indelibly in Roman or bold type of a size not less than 8 point and shall include—

- (a) a designation or code or other information sufficient to identify the seed lot;
- (b) the name of any prescribed chemical additive contained in the seed lot and a description of the purpose for which it is added;
- (c) the aggregate mass of the seed lot sold;
- (d) in respect of each crop seed contained in the seed lot in a proportion of 2% or more, by mass,—
 - (i) the name of that crop seed;
 - (ii) the proportion, by mass, in which that crop seed is contained in the seed lot; and
 - (iii) the minimum proportion, by mass, of that crop seed that is germinable;
- (e) in respect of each weed seed contained in the seed lot—
 - (i) the name of that weed seed;
and

- (ii) the maximum proportion in which that weed seed is contained in the seed lot expressed as a number of seeds per mass of the seed lot; and
- (f) the maximum proportion, by mass, in which all seed not named under paragraph (d) of this subsection is contained in the seed lot.

(3) A person shall not sell any seed lot in a package bearing a label, or accompanied by a document relating to that seed lot, which label or document specifies any particular crop seed as being contained in the seed lot unless the proportion, by mass, in which that crop seed is contained in the seed lot is stated in the label or document.

Penalty: \$200.

(4) A statement required by this section that contains an inaccuracy as to the contents of the seed lot to which it relates is, notwithstanding that inaccuracy, deemed to be in accordance with this section if the inaccuracy is within such tolerance as may be prescribed for that purpose.

Falsifying
statement.

8. A person shall not falsify or render illegible all or any part of a statement made for the purposes of section 7.

Penalty: \$1 000.

Claim as
to quality.

9. (1) Where a seed lot contains a particular crop seed—

- (a) in a proportion, by mass, not less than that prescribed for the purpose; and
- (b) of which the proportion, by mass, that is germinable seed is not less than that prescribed for the purpose,

and the seed lot does not contain seed, other than that particular crop seed, in a proportion, by mass, greater than that prescribed for the purpose, the

label or document required by section 7 may, in addition to the statement required by that section, contain a claim that the crop seed is of "select quality".

(2) A person shall not sell any seed lot in a package bearing a label, or accompanied by a document relating to that seed lot, which label or document contains the words "select quality" except in accordance with subsection (1).

Penalty: \$500.

(3) A person shall not sell any seed lot in a package bearing a label, or accompanied by a document relating to that seed lot, which label or document contains words, other than "select quality", purporting to favourably describe the quality of the seed lot.

Penalty: \$200.

10. (1) Where the seed lot to which a statement ^{Warranties.} appearing to have been made under section 7 relates—

- (a) is not a seed lot in relation to which the statement is properly made in accordance with that section; or
- (b) contains any prohibited seed, declared pest, or anything infected with a declared disease,

the person selling the seed lot, or each of them if there be more than one, shall be taken to have warranted to the purchaser of the seed lot that it is a seed lot such that the statement could be properly made in relation to it in accordance with section 7, and that it does not contain any prohibited seed, any declared pest, or anything infected with a declared disease.

(2) Where a statement appearing to have been made under section 7 in relation to a seed lot contains a claim that the seed lot is of "select

quality", the person selling the seed lot, or each of them if there be more than one, shall be taken to have warranted to the purchaser of the seed lot that it is of the quality required by section 7 for a seed lot in respect of which such a claim may be made.

(3) The provisions of this section apply notwithstanding any agreement, express or implied, to the contrary.

(4) Nothing in this section affects the liability of a person to whom this section applies to be proceeded against and punished for an offence against this Act.

Seed lot
unlawfully
sold.

11. Without limiting section 10, where a seed lot is sold contrary to any provision of this Act, the person to whom it is delivered may reject it or, having accepted delivery of it, may return it to the seller and recover from the seller, as a debt due—

- (a) any money paid by him to the seller on account of the price of the seed lot; or
- (b) any money reasonably paid by him to any other person in respect of the sale or delivery of, or otherwise in connection with, the seed lot.

PART III—UNSALEABLE SEED.

Prohibited
seeds, and
declared
diseases and
pests.

12. (1) The Minister may—

- (a) declare seed to be prohibited seed;
- (b) declare diseases to be declared diseases; or
- (c) declare pests to be declared pests,

for the purposes of this Act.

(2) A declaration under subsection (1) shall be published in the *Government Gazette*.

Sale of
certain seed
an offence.

13. A person shall not sell a seed lot containing—

- (a) any prohibited seed;

- (b) any declared pest; or
- (c) anything infected with a declared disease.

Penalty: For a first offence, \$500; for any subsequent offence, \$1 000.

PART IV—ADMINISTRATION.

14. (1) The Minister may appoint persons who are officers to be inspectors or seed analysts for the purposes of this Act. Inspectors
and seed
analysts.

(2) Every person appointed under subsection (1) shall be furnished with a certificate of his appointment, signed by either the Minister or an officer authorized by the Minister to sign the certificate on his behalf, and shall, if requested to do so, produce that certificate to any person in relation to whom he is about to exercise any of his powers under this Act.

15. An inspector—

Powers of
inspectors.

- (a) shall have reasonable access at any time to any place at which the inspector has reason to suspect that there is any seed lot that is, has been, or is intended to be, made the subject of a sale to which this Act applies;
- (b) may inspect any seed lot that is being conveyed by railway or any other means of transport, where the inspector has reason to suspect that the seed lot is the subject of a sale to which this Act applies;
- (c) may examine any package containing a seed lot, and take samples of any seed lot, where the inspector has reason to suspect that the seed lot is or has been the subject of a sale to which this Act applies;
- (d) may, for the purposes of analysis, remove any sample taken under this section without paying for it;

- (e) may demand from the person to whom a seed lot is sold or from any other person having possession of a seed lot the name of the person by whom the seed lot was sold, and the production for inspection of any invoices or other documents connected with the sale;
- (f) may, where the inspector has reason to suspect that there has been a contravention of this Act in respect of a seed lot, seize and remove the seed lot, together with any package containing it, and keep the seed lot, together with any package containing it, under seizure until the determination of any prosecution under this Act in respect of the suspected contravention or until the time for bringing such a prosecution has expired;
- (g) may, where the inspector has reason to suspect that there has been a contravention of this Act in respect of a seed lot and it is not reasonably practicable for him to forthwith exercise the powers conferred by paragraph (f) of this section in respect of the seed lot, order the person having possession of the seed lot or, where the seed lot is in transit, the person to whom the seed lot is to be delivered, to keep the seed lot at a place specified in the order and to refrain from dealing with the seed lot until—
 - (i) the order is revoked by an inspector;
 - (ii) the seed lot is seized and removed under paragraph (f) of this section;or
 - (iii) any prosecution under this Act in respect of the suspected contravention has been determined or, where no such prosecution has been brought, the time for bringing such a prosecution has expired,

whichever occurs first;

- (h) may weigh, count, measure, gauge, or mark any seed lot or the package containing it, and fasten, secure, and seal the package; and
- (j) may do anything required or permitted by the regulations to be done in connection with, or for the purposes of, the exercise of any power conferred by this section or the analysis of any sample taken under this section.

16. A person shall not—

Tampering
with sample.

- (a) tamper with any package containing a seed lot so as to procure that any sample taken under this Act does not correctly represent the contents of the package;
- (b) tamper with any sample taken under this Act.

Penalty: \$1 000.

17. A person shall not—

Obstructing,
interfering
with, or
personating
inspector.

- (a) in any way obstruct or interfere with an inspector in the discharge of any of his duties or the exercise of any of his powers under this Act;
- (b) assault or intimidate, or give, procure, offer, or promise any bribe, recompense, inducement or reward to influence an officer in the discharge of any of his duties or the exercise of any of his powers under this Act;
- (c) refuse to allow an inspector to take any sample sought to be taken in accordance with this Act;
- (d) retake any seed lot or seed seized or taken under this Act, resist or prevent such seizure or taking, or, except in accordance with the written authority of an inspector, move or otherwise deal with any seed lot the subject of an order under section 15 (g); or

- (e) except in accordance with the written authority of an inspector, alter, erase, or remove any mark or open, break, or remove any fastening or seal, placed by an inspector in pursuance of this Act upon any seed lot or package.

Penalty: For a first offence \$1 000; for any subsequent offence \$2 000.

PART V—PROCEEDINGS.

Institution
of prosecu-
tions.

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

(2) There shall be served with the summons issued upon complaint of an offence a copy of any seed analyst's report intended to be used by the prosecution in the proceedings in respect of the offence, and service of a copy of the report may be proved in the same manner as is service of the summons.

Evidence of
person being
an inspector
or seed
analyst.

19. In any civil or criminal proceedings brought under this Act or otherwise with respect to any seed or seed lot that has been, or any sample of which has been, analysed under this Act, parol evidence that any person is a seed analyst or an inspector or other officer upon whom authority is conferred under this Act shall be sufficient.

Sample to
represent
whole.

20. Where in any civil or criminal proceedings brought under this Act or otherwise proof is given of the contents of any sample analysed under this Act and that the sample was taken in the prescribed manner, the sample shall be taken to be representative of the material sampled.

Seed
analyst's
report.

21. (1) In any civil or criminal proceedings brought under this Act or otherwise a report purporting to be signed by a seed analyst stating the

result of the analysis of a sample is, without proof of the signature of the person purporting to have signed the report or that that person is a seed analyst, sufficient evidence—

- (a) that the contents of the sample are as set out in the report; and
- (b) that the sample was analysed in the prescribed manner,

and, where the report contains a statement that the sample was taken under this Act by an inspector, sufficient evidence—

- (c) that the sample was taken in the prescribed manner; and
- (d) that the sample was taken from the material identified in the report as the material sampled.

(2) Where in any civil or criminal proceedings other than proceedings for an offence against this Act a person intends to use a seed analyst's report, he may serve on any other person who is a party to the proceedings, not less than 10 days before the hearing of the proceedings, a copy of the report, and a person on whom a copy of the report is so served shall not adduce evidence in rebuttal of a seed analyst's report in relation to any matter of which the report is, pursuant to subsection (1), sufficient evidence unless, not less than 4 days before the hearing of the proceedings, he gives notice in writing to—

- (a) the person intending to use the seed analyst's report; and
- (b) the seed analyst who made the report,

to the effect that he intends to adduce evidence in rebuttal of the report in relation to that matter.

(3) In proceedings for an offence against this Act the defendant shall not adduce evidence in rebuttal of a seed analyst's report in relation to any

matter of which the report is, pursuant to subsection (1), sufficient evidence unless, within 4 days after a copy of the report is served on him in accordance with section 18(2), or such further time as the court may allow, the defendant gives notice in writing to the Department to the effect that he intends to adduce evidence in rebuttal of the report in relation to that matter.

Prescribed
method of
analysis.

22. Where a method is prescribed in regulations made under this Act to be used in making an analysis of a sample of seed or material containing seed, evidence shall not be given in any civil or criminal proceedings brought under this Act or otherwise of the result of such an analysis, whether made by a seed analyst or not, unless—

(a) it is a report of a seed analyst to which section 21(1) applies; or

(b) it is first proved that in making the analysis the method so prescribed was followed.

Sale through
agent or
employee.

23. (1) For the purposes of this Act and any liability under a warranty implied by this Act, where a seed lot is sold through an agent or employee, the seed lot is sold by the principal as well as by the agent or employee except where, or to the extent that, the agent or employee acted outside his authority as an agent or outside the course of his employment, as the case may be, or acted contrary to the instructions of his principal.

(2) In proceedings for an offence against this Act the defendant, upon complaint made by him and on giving to the prosecution, not less than 4 days before the hearing of the proceedings, notice in writing of his intention to do so, may have any person to whose act or default he alleges that the contravention of the provisions in question was due brought before the court in the proceedings; and if, after the contravention has been proved,—

- (a) the original defendant proves that the contravention was due to the act or default of that other person, that other person may be convicted of the offence; and
- (b) the original defendant further proves that he has used all due diligence to secure that the provisions in question were complied with, he shall be acquitted of the offence.

(3) Where a defendant seeks to avail himself of subsection (2) the prosecution, as well as the person whom the defendant charges with the offence, may—

- (a) cross-examine the defendant, if the defendant gives evidence, and any witness called by the defendant; and
- (b) adduce evidence in rebuttal of the evidence adduced by the defendant.

(4) Where it appears to a person authorized to institute a prosecution for an offence against this Act (in this subsection referred to as “the prosecutor”) that an offence has been committed in respect of which proceedings might be taken under this Act against a person (in this subsection referred to as “the offender”), and the prosecutor is reasonably satisfied—

- (a) that the offence was due to an act or default of another person; and
- (b) that the offender could establish a defence under subsection (2),

the prosecutor may institute proceedings against that other person in respect of the offence without first proceeding against the offender, and, in proceedings so instituted, that other person may be charged with, and, on proof that the contravention was due to his act or default, be convicted of, the offence with which the offender might have been charged.

Seed involved
in commis-
sion
of an offence.

24. Where a person is convicted of an offence against this Act in relation to a seed lot the court may, in addition to any other order it may make in respect of the offence—

- (a) adjudge that the seed lot, together with the package in which it is contained, be forfeited to the Crown, whereupon it may be dealt with or disposed of as the Minister directs;
- (b) order that the seed lot be treated or cleaned as specified in the order and the order may make provision as to the payment of the cost of the treatment or cleaning; or
- (c) except where the seed lot was found to contain prohibited seeds, order that the seed lot be returned in a closed container to the property on which it was grown.

PART VI—MISCELLANEOUS.

Request to
sample.

25. Any person may submit to the Department, together with the prescribed fee, a request for the analysis of a seed sample provided by that person, and the Department may—

- (a) cause a seed analyst to analyse the sample and provide the person with a report of the result of the analysis; or
- (b) if the Department cannot comply with the request, return the sample provided and the fee paid.

Regulations.

26. (1) The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed, or are necessary or convenient to be prescribed, for giving effect to the purposes of this Act and, in particular—

- (a) prescribing seed to be crop seed and, in respect of each crop seed, prescribing the mass of a seed lot containing that crop seed below which mass Part II of this Act does not apply in relation to the seed lot;

- (b) prescribing seed to be weed seed;
- (c) prescribing the methods to be used—
 - (i) in taking samples of seed for analysis; and
 - (ii) in making analyses of samples of seed,and prescribing the growth characteristics to be exhibited by crop seed that is to be taken as germinable within the meaning of this Act and the test conditions under which those growth characteristics are to be exhibited;
- (d) prescribing fees to be paid—
 - (i) for an analysis requested under section 25 and a report of the result of that analysis;
 - (ii) for an additional copy of a report mentioned in subparagraph (i) of this paragraph; and
 - (iii) for a copy of any other report under this Act;
- (e) making provision as to the exercise and discharge of the powers and duties of inspectors and seed analysts under this Act;
- (f) prescribing the manner in which packages shall be labelled for the purposes of this Act, and making provision as to the document required by this Act to accompany, and contain a statement relating to, a seed lot not sold in a package;
- (g) authorizing the Minister to prepare and conduct schemes for the purpose of testing and certifying—
 - (i) the cultivar of any kind of crop seed;
 - (ii) the resistance of any crop seed to any disease or to any other adverse factor;

- (iii) the freedom of any crop seed from disease and pests;
- (iv) the proportion of any crop seed contained in any material tested;
- (v) the proportion of any crop seed that is germinable;
- (vi) the proportion of any weed seed contained in any material tested; and
- (vii) that the material tested is of such quality that, upon its sale, it may, in accordance with section 9(1), be described as crop seed of "select quality",

and any such scheme may include provision as to the fees payable by participants in the scheme in connection with matters associated with that scheme, and to direct that any person who has committed an offence against this Act in relation to such a scheme shall be temporarily or permanently disqualified from participating in such a scheme, or may only participate in such a scheme subject to conditions or limitations specified by the Minister;

- (h) providing that an offence is committed by a person participating in a scheme prepared and conducted under paragraph (g) of this subsection who knowingly makes any statement in relation to a matter associated with the scheme that is false or misleading in any material particular;
- (j) making provision as to the registration of seed processing works at which seed may be treated and packed for certification

under a scheme prepared and conducted under paragraph (g) of this subsection, which may include provision—

- (i) for the annual renewal of any such registration;
 - (ii) as to the operation of the works;
 - (iii) for the suspension or cancellation by the Minister of the registration of any works at any time if it is not operated in accordance with the regulations; and
 - (iv) for the payment of such fees for registration, and for each renewal of registration, as are prescribed;
- (k) prohibiting the use of any of the words “certified”, “certificated”, “disease-resistant”, “disease-immune”, “wilt-resistant”, “wilt-immune”, or any other words implying the existence of genetically-carried morphological or physiological characteristics, in any label, invoice, circular, advertisement, or other document in relation to any seed lot unless—
- (i) the seed lot has been tested and certified pursuant to a scheme prepared and conducted under paragraph (g) of this subsection; or
 - (ii) the seed lot has been certified under a seed certification scheme prescribed for the purposes of this subparagraph, the words are accompanied by a statement of the name of the state or country in which the seeds were certified and the authority or body by which that seed certification scheme is conducted, and any other conditions prescribed for that purpose are complied with in relation to the sale of the seed lot;

(1) prescribing forms to be used for the purposes of this Act; and

(m) prescribing a penalty of not more than \$500 for any offence against the regulations.

(2) In prescribing a seed to be a crop seed or a weed seed under paragraph (a) or (b) of subsection (1), the seed may be described by referring, in addition to its recognized botanical name, to a name by which the seed is commonly known.

Protection
of officers.

27. Any person who is or has been a seed analyst, inspector, or other officer, shall not be personally liable in civil proceedings and the Crown in right of the State is not liable, for any act done or omission made by him for the purposes of this Act and in good faith in the course of the exercise or purported exercise of a power or duty which he had reasonable and probable cause to believe was conferred or imposed by this Act.

Repeal.

28. The Seeds Act 1950 is repealed.

Saving of
other rights
or remedies.

29. Except as is expressly provided in this Act, nothing in this Act nor any prosecution instituted under this Act shall have the effect of limiting, restricting or otherwise affecting any right or remedy a person would have had if this Act had not been enacted.