VETERINARY PREPARATIONS AND ANIMAL FEEDING STUFFS.

No. 56 of 1976.

AN ACT to control and regulate the production, importation, treatment, preparation for sale, marketing, storage, and sale of Veterinary Preparations and Animal Feeding Stuffs, to repeal the Veterinary Medicines Act, 1953-1963, and the Feeding Stuffs Act, 1928-1951, and for incidental and other purposes.

[*Assented to 16th September, 1976.*]

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.—INTRODUCTORY PROVISIONS.

1. This Act may be cited as the *Veterinary Preparations and Animal Feeding Stuffs Act, 1976.* Short title.

Commencement.

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

Repeals and saving.

3. (1) The Acts set out in the Schedule to this Act are repealed.

(2) Without limiting the operation of the provisions of the Interpretation Act, 1918, until regulations are made under this Act, the regulations made under the Acts repealed by this Act, and in force at the time this Act comes into operation, shall apply, so far as applicable, to persons, acts, circumstances and things under this Act, as if those regulations were made under this Act.

Arrangement.

4. The arrangement of this Act is as follows—

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

"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;

"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 by any animal or offered for sale for that purpose; 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;

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

"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;

"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 of this Act 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" means a substance or compound used or intended for use for agricultural, pastoral, horticultural, domestic or industrial purposes for controlling, destroying or preventing the growth and development of any fungus, virus, insect, mite, mollusc, nematode, plant or animal;

and includes any substance, matter or thing classified as a pesticide for the purposes of this Act;

"premises" means any place in which veterinary preparations or 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;

"primary dealer" in relation to any product means any person who, whether as manufacturer, producer, importer, or distributor, as the case may require, is or will be primarily responsible for that product being placed on the market in the State;

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

"product" means a veterinary preparation 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;

"registration year" means the year firstly prescribed as such in relation to any product and every third year thereafter;

"section" means section of this Act;

"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 any animal normally domesticated or any animal kept in captivity;

"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 Advisory Committee" means the Veterinary Preparations and Animal Feeding Stuffs Advisory Committee established under section 16;

"the Director" means the Director of Agriculture;

"the Registrar" means the Registrar of Veterinary Preparations and Animal Feeding Stuffs designated under section 24;

"trade description" in relation to any veterinary preparation or animal feeding stuff, or any ingredient thereof, means any description, statement, indication, or suggestion, direct or indirect as to—

(a) the nature, number, quality, quantity, purity, classification, grade, measure, gauge, size, or weight of the product;

(b) the country or place in or at which the product was made or produced;

(c) the manufacturer or producer of the product, or the person by whom the product is selected, packed, or in any way prepared for sale;

(d) the mode of manufacturing, producing, treating, processing, selecting, packing, or otherwise preparing the product;

(e) the substances, materials or ingredients of which the product is composed, or from which it is derived;

(f) the product being the subject of an existing patent, privilege, trademark or copyright; or

(g) the efficacy of the product, or as to the effects which have followed, or may be expected to follow, the use thereof;

"veterinary preparation" means any substance, including any mixture or compound, or any biological product, including both living and dead organisms and sera, used or intended for, or offered for sale for the purpose of, administering or application to any animal by any means for—

(a) curing, alleviating, or treating an injury;

(b) preventing, curing, alleviating or treating a disease or ailment;

(c) destroying any parasite or pest affecting animals;

(d) diagnosis;

(e) improving health;

(f) increasing the capacity of stock for work, production, or reproduction of progeny;

(g) Show purposes; or

(h) influencing, inhibiting or modifying a physiological process,

and includes aphrodisiacs, anaphrodisiacs, dehorning preparations and testing reagents.

(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.

PART II.—EXEMPTIONS, PROHIBITIONS AND CONSTRUCTION.

Application.

6. (1) Subject to the provisions of subsection (2) of this section, the provisions of this Act apply—

(a) to all veterinary preparations, whether or not the supply or sale is normally restricted to any particular class of person; and

(b) 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,

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

(2) The provisions of Parts V, VI, VII, VIII and IX of this Act do not apply—

(a) to the supply or sale of any product used or prescribed in the course of his profession by a person who is a registered veterinary surgeon within the meaning of the Veterinary Surgeons Act, 1960, in relation to a particular animal for the time being under his professional care or charge; or

(b) to the supply or sale of any product which is, and is labelled as being, prescribed by a registered veterinary surgeon in relation to a particular animal and compounded in the ordinary course of his business by a person who is registered as a pharmaceutical chemist under the provisions of the Pharmacy Act, 1964, or any previous corresponding enactment,

but do apply to any product supplied, sold or compounded by any such person for general use.

Exemptions by Order.

7. 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 preparation or to any animal feeding stuff 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.

Prohibition.

8. (1) The Governor, on the recommendation of the Minister, may make regulations to prohibit the sale of any veterinary preparation or animal feeding

stuff, whether registered under this Act or not, 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 veterinary preparation or animal feeding stuff, or any kind or class of veterinary preparation or animal feeding stuff therein specified, for the purposes of sale.

Act to be construed subject to certain laws.

9. The provisions of this Act are in addition to and not in derogation of the provisions of the Health Act, 1911, the Poisons Act, 1964, and section 94C of the Police Act, 1892, 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, the Poisons Act, 1964, or section 94C of the Police Act, 1892, or of any regulations made under those Acts, the provisions of those Acts and any regulations made thereunder prevail.

Administration.

10. Subject to the Minister and to the provisions of this Act the Director shall be responsible for the administration of this Act.

PART III.—CONTROL OF PRODUCTION AND SALES.

Prohibitions as to unregistered products and premises.

11. A person who at any time after the expiration of a period of six months following the coming into operation of this Act—

(a) sells any veterinary preparation or animal feeding stuff, unless that product is registered under this Act at the time of such sale;

(b) holds or stores veterinary preparations or animal feeding stuff for the purposes of sale in a manner that is unsanitary or is otherwise not in accordance with the regulations; or

(c) produces veterinary preparations or animal feeding stuff for the purposes of sale in premises required to be registered under this Act, unless those premises are so registered,

commits an offence against this Act.

Sales by persons who are not primary dealers.

12. Where a product has been registered under this Act in the name of a primary dealer, then while that product remains so registered any other person may sell and continue to sell that product without making application for its registration under this Act in his own name.

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

13. (1) A person who sells any veterinary preparation or 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 veterinary preparation or animal feeding stuff in premises the registration of which has been refused or the use of which has been prohibited under this Act commits an offence against this Act.

Penalty: Two thousand dollars or imprisonment for twelve months.

Prohibition on sale of products that are sub-standard.

14. A person who sells or offers to sell under the name of a veterinary preparation or animal feeding stuff registered under this Act any substance which does not conform in every respect—

(a) with the trade description registered in relation to that name; and

(b) with any formula, grade, description or composition prescribed in relation to that substance, or any ingredient thereof,

commits an offence against this Act.

Sale on false description.

15. (1) A person who sells any veterinary medicine or animal feeding stuff—

(a) to which a false trade description is applied; or

(b) bearing a description which, or the advertised description of which, is misleading, or if relied on might cause injury or danger to health,

commits an offence against this Act.

(2) A trade description is deemed to be applied to any product if it is—

(a) applied to the product itself; or

(b) applied to any container, label or thing used in connection with the product; or

(c) applied to any product by way of advertisement.

(3) A person who sells a veterinary preparation or animal feeding stuff which is so packed, stacked or arranged that any part of it is not of similar composition to every other part of it or is not a true indication of the average quality of that product commits an offence against this Act.

(4) Where any product is in a liquid or paste form which need not be homogenous as a concentrate, but is required to be homogenous in the form in which it is to be used, a person shall not

be deemed to have committed an offence under subsection (3) of this section if full directions to render such product homogenous are set out on the label in respect of that product or are otherwise given at the time of such sale.

Penalty: Two hundred dollars.

PART IV.—THE ADVISORY COMMITTEE.

Advisory Committee.

16. (1) For the purposes of this Act, there shall be established a body by the name of the Veterinary Preparations and Animal Feeding Stuffs Advisory Committee.

(2) A member of the Advisory Committee who is directly or indirectly interested in a contract made or proposed to be made which relates to any product that is before the Committee for consideration shall, as soon as possible after the relevant facts have come to his knowledge, disclose the nature of his interest to the Advisory Committee and such disclosure shall be recorded in the records of the Committee.

(3) A member who has disclosed his interest in any matter may take part in the consideration or discussion, but shall not vote.

(4) The Minister may grant leave of absence to a member upon such terms and conditions as the Minister determines.

(5) The quorum to constitute a meeting of the Advisory Committee shall be such as the Committee may from time to time determine but shall not be less than five persons of whom two shall be representative members.

(6) The Advisory Committee has power, subject to the approval of the Director and on such terms and conditions as the Director may determine, to

invite any person to act in an advisory capacity to the Advisory Committee in relation to any or all aspects of its functions.

(7) The Minister, the Director or the Chairman may at any time convene a meeting of the Committee, and a meeting shall be convened by the Chairman within seven days of the receipt by him of a written request signed by two or more members of the Committee specifying the business in respect of which the meeting is to be convened.

(8) Where the Chairman of the Advisory Committee is absent from any meeting of the Advisory Committee his deputy may preside at the meeting, but if both of those persons are absent from a meeting of the Advisory Committee the members present at the meeting shall elect a member to preside at that meeting and while so presiding the member has all the powers and duties of the Chairman.

(9) If at any meeting of the Advisory Committee the votes are equally divided on any question, the question shall be deemed to have been resolved in the negative.

(10) Minutes shall be kept of the proceedings of the Advisory Committee in such manner as the Minister may direct or approve, and any such minutes shall, if signed by a person purporting to have acted as Chairman of the meeting to which the minutes relate, or of a meeting at which they were read, be evidence of the proceedings at the first mentioned meeting, and the meeting to which such minutes relate shall, unless the contrary is proved, be deemed to have been regularly convened and constituted.

(11) The provisions of this section, except in so far as the Advisory Committee may otherwise determine, shall have effect in relation to sub-committees of the Advisory Committee.

(12) Subject to the provisions of this section and any direction of the Minister the Advisory Committee shall determine its own procedure.

Membership of the Advisory Committee.

17. (1) The membership of the Advisory Committee consists of persons appointed by the Minister as representative members nominated to represent interests affected by this Act, together with five *ex officio* members.

(2) A person shall be appointed by the Minister to be the Chairman of the Advisory Committee from amongst the officers of the Department of Agriculture who are *ex officio* members of the Advisory Committee.

(3) Each of the Associations following, that is to say—

(a) the Australian Veterinary Association;

(b) the Stock Food Manufacturers' Association; and

(c) the Agricultural and Veterinary Chemicals Association,

shall have one representative member on the Advisory Committee who shall be appointed by the Minister to represent the interests of that Association from the persons nominated by that Association to the Minister.

(4) The Minister may from time to time appoint to the Advisory Committee persons to serve as representative members in relation to other interests which appear to the Minister to be substantially affected, or likely to be substantially affected, by the operation of this Act.

(5) The Minister may, as the occasion requires, by notice in writing to the registrar or secretary of any body having the right to nominate a representative member in accordance with subsection (3) of this section, require that body to submit a panel of not less than three names within

a period of thirty days after receipt by the registrar or secretary of that notice, or such further period as the Minister may think fit, and if upon the expiration of that time the Minister has not received the required panel of names, the Minister may appoint such person to be a representative member of the Advisory Committee as, having regard to the category in respect of which a person was required to be nominated, he thinks fit.

(6) The *ex officio* members of the Advisory Committee shall be—

(a) the person designated as the Director of the Government Chemical Laboratories, or a person nominated by him for the purpose;

(b) the person holding or acting in the office of Commissioner of Public Health, or a person nominated by him for the purpose;

(c) two persons nominated by the Director, both of whom shall be officers of the Department of Agriculture, one being a veterinary officer and the other being a person having relevant expertise; and

(d) the Registrar, who shall be Secretary of the Advisory Committee.

(7) If at any time, in respect of an office referred to in subsection (6) of this section, there is not an office of that name, the person for the time being occupying the office substituted for that referred to in that subsection is by virtue of this subsection the person who by that subsection is constituted a member of the Advisory Committee.

(8) Acceptance of or acting in the office of member of the Advisory Committee by any person does not of itself render the provisions of the Public Service Act, 1904, or any other Act applying to persons as officers of the Public Service of the State, applicable to that member, or affect or prejudice the application to him of those provisions if they applied to him at the time of the acceptance of or acting in that office.

(9) All communications required by this Act to be made by or to the Advisory Committee may be made by or to the Registrar.

Disqualification.

18. If a member of the Advisory Committee—

(a) is an undischarged bankrupt or a person whose property is subject to an order or arrangement under the laws relating to bankruptcy;

(b) becomes permanently incapable of performing his duties as a member;

(c) absents himself, except on leave duly granted by the Minister, from three consecutive meetings of the Committee;

(d) is convicted of an indictable offence; or

(e) has his appointment terminated by the Governor for inability, inefficiency or misbehaviour,

his office shall become vacant and he shall not be eligible for re-appointment.

Tenure of office.

19. (1) Each member of the Advisory Committee other than an *ex officio* member shall hold office for a term of two years, but may resign his office by a written notice given under his hand to, and accepted by, the Minister, and a representative member of the Advisory Committee who ceases to hold office shall, unless otherwise disqualified, be eligible for re-appointment.

(2) The term of tenure of an *ex officio* member continues until the member ceases to occupy the office by virtue of which he is an *ex officio* member, or until his nomination as a member is withdrawn.

Deputies.

20. (1) The Minister may, in respect of each member of the Advisory Committee, appoint a person representative of the same interest as that member to be his deputy.

(2) While taking the place of a member a deputy has all the powers and entitlements of, and all the protection given to, the member under this Act.

(3) Any reference in this Act to a member shall be construed as including a reference to a deputy taking the place of that member.

Allowances and remuneration.

21. A representative member of the Advisory Committee is entitled to such allowances and remuneration for his services as the Governor determines.

Validity of proceedings.

22. (1) All acts done at any meeting of the Advisory Committee shall, notwithstanding that it is afterwards discovered that there was some defect in the appointment or qualification of a person purporting to be a member, be as valid as if that defect had not existed.

(2) The Advisory Committee shall have power to act notwithstanding any vacancy among the members.

Functions of Advisory Committee.

23. The functions of the Advisory Committee are—

(a) to advise the Director on any proposals or questions that may be referred to it with regard to veterinary preparations or animal feeding stuffs;

(b) to make recommendations to the Director in respect of the administration of this Act, the making, amending or revoking of regulations made under this Act, and the control of veterinary preparations and feeding stuffs generally; and

(c) such other functions as are entrusted to the Advisory Committee by the Minister in the administration of this Act.

PART V.—REGISTRATION AND APPEAL PROVISIONS.

The Registrar.

24. The Director shall designate an officer of the Department of Agriculture to be the Registrar of Veterinary Preparations and Animal Feeding Stuffs for the purposes of this Act, and the Registrar shall, in accordance with any instructions given by the Director,—

(a) administer the scheme of registration of veterinary preparations and animal feeding stuffs created by or under this Act;

(b) to the extent that the registration of premises is required by or under this Act, administer the scheme of registration of those premises;

(c) cause to be kept a register or registers in the prescribed form showing in respect of each registration required to be effected under this Act the information required to be furnished by or under this Act;

(d) furnish a report on the operation of this Act to the Director not later than six months after the thirtieth day of each June; and

(e) carry out such other duties as may be required under or in furtherance of the provisions of this Act.

Premises may be required to be registered.

25. Regulations made under this Act may provide that any premises or class of premises specified therein and used for the production of veterinary preparations or animal feeding stuffs for the purposes of sale shall be required to be registered under this Act, and any such registration may be made subject to conditions as to the standards required in the construction and use of those premises.

Products to be registered.

26. (1) Before any veterinary preparation or animal feeding stuff is offered for sale a person who is, or intends to be, a primary dealer in that product shall make application in the prescribed form to the Registrar for the registration of that product in his name for the purposes of this Act.

(2) Notwithstanding the provisions of subsection (1) of this section, where a person—

(a) is already a primary dealer at the date of coming into operation of this Act; and

(b) makes application for the requisite registration in respect of any product within three months after the coming into operation of this Act,

that product is deemed to have been registered under this Act in the name of the applicant primary dealer for the period up to and including the thirtieth day of June next ensuing after the coming into operation of this section unless and until the Registrar notifies the applicant primary dealer that the application for registration in respect of that product for the purposes of this Act has been refused.

Registration of products.

27. (1) Subject to this Act, the Registrar upon being satisfied that the provisions of this Act relating to—

(a) the application;

(b) the payment of fees and other moneys due;

(c) the primary dealer specified in the application; and

(d) the product specified in the application,

have been complied with, and that there are no grounds upon which the application ought to be refused, shall cause that product to be registered under this Act and shall notify the applicant primary dealer of the registration of that product under this Act.

(2) A notification of registration under this Act shall be in such form as is prescribed.

Refusal of registration of a product.

28. (1) The Registrar, upon being satisfied that a veterinary preparation or animal feeding stuff is a product that in the public interest should not be marketed, or should not be marketed in the manner proposed, shall refuse to register that product.

(2) The Registrar shall refuse to register, or to renew the registration of, any product—

(a) which does not comply in every respect with any standard prescribed for that product or of which any ingredient does not comply in every respect with any standard prescribed for that ingredient;

(b) unless and until the Registrar is satisfied that in relation to the product in respect of which registration is sought the premises to be used and the procedures to be adopted are properly and hygienically adapted for that purpose and comply with any relevant regulations made under this Act.

(3) Where the Registrar refuses an application for registration, or renewal of registration, as the case may be, he shall forthwith notify the applicant primary dealer and the notification shall be accompanied by a statement in writing of the grounds upon which the refusal was made.

Change of registered particulars of a product.

29. Where any veterinary preparation or animal feeding stuff is in any way altered in relation to—

(a) the trade description of the product;

(b) the registered name;

(c) any other registered particular; or

(d) any matter with respect to that product that may be prescribed for the purposes of this section,

the registration of that product shall be deemed to be no longer in force and the primary dealer shall before commencing to sell the product so altered make with respect to it a fresh application in the prescribed form to the Registrar.

Period of registration and renewals.

30. (1) Subject to this Act, the registration of any product or premises continues in force from the date of issue of notification of the registration until and including the thirtieth day of June in the registration year then next ensuing.

(2) Subject to this Act, a renewal of the registration of any product or premises on or before the date of expiry continues that registration in force for a further period of three years from that date of expiry, and so on accordingly.

(3) An application for the renewal of a registration shall be made in the prescribed form.

(4) Regulations may provide for the issue of temporary permits having effect for a period of not more than three months, and during the currency of any such permit the product or premises to which it relates shall be deemed to be registered under this Act.

Power to require additional information and conduct investigations.

31. (1) The Registrar may, in writing, at any time after the receipt of an application for registration or for the amendment of a registration in respect of any product or premises require the applicant, within such time as the Registrar may specify, to furnish him with additional information, statements, matters or things concerning that application or the product or premises, or to substitute for any matters or things comprised in that application any other matters or things.

(2) Without limiting the provisions of subsection (1) of this section the Registrar may require the applicant to furnish experimental proof of claims made with respect to the efficacy of any product and

if experimental proof of claims so made is not furnished within the time specified it shall be assumed for the purposes of this Act that such experimental proof does not exist.

(3) The Registrar is not bound to accept as proof of any claim made with respect to the efficacy of any product for any purpose any information, matter, or thing furnished under this section.

Primary dealer to be resident in Western Australia.

32. (1) A primary dealer in whose name any veterinary preparation or animal feeding stuff is registered under this Act shall have, and while that product remains so registered continue to have, a place of business in Western Australia and, if a natural person, shall be resident in the State, and while that product remains so registered continue to be resident in the State.

(2) If a primary dealer in any product is not resident in Western Australia then the product may be registered under this Act by and in the name of a duly authorized agent of that primary dealer who is resident in the State and the agent shall, for the purposes of this Act thereupon be deemed to be a primary dealer in relation to that product.

(3) Where a primary dealer in, or the person who produces, imports, treats or prepares for sale any product is a body corporate any document for the purpose of or in connection with the registration or renewal or amendment of the registration of that product under this Act shall be completed and signed or sworn or declared to or sealed, signed and delivered on behalf of that body corporate by a natural person resident in Western Australia being its director, manager, secretary or other governing officer of that body corporate, or its chemist, or other officer or employee duly authorized by it in that behalf, or its duly authorized agent, and every such document is for the purposes of this Act deemed to have been made by such body corporate.

Cancellation of registration of a product.

33. (1) If a primary dealer in whose name any veterinary preparation or animal feeding stuff is registered under this Act—

(a) sells under the name or registered name of that product any substance that does not conform in every respect with the particulars registered in relation to that product;

(b) makes, or causes or permits to be made, any claim as to the efficacy of that product for any purpose other than a purpose specified in the particulars registered in relation to that product;

(c) makes, or causes or permits to be made any claim with respect to that product which in the opinion of the Registrar is misleading or untrue or cannot be substantiated in any particular; or

(d) otherwise in the opinion of the Registrar has failed to comply with the provisions of this Act or the reasonable requirements of the Registrar made pursuant to those provisions,

the Registrar may cancel the registration of that product either as regards that primary dealer or generally, and shall thereupon notify each primary dealer in whose name that product is registered of that cancellation.

(2) If any product registered under this Act is found not to be efficacious for use for any purpose in relation to which it is registered the Registrar may amend or cancel that registration, as the case may require, and shall thereupon notify each primary dealer in whose name that product was registered of that cancellation or amendment.

(3) A notification given under the provisions of this section shall be accompanied by a statement of the grounds upon which the decision was based.

Cancellation on dealer's notice.

34. If any primary dealer in whose name any veterinary preparation or animal feeding stuff is registered—

(a) withdraws or intends to withdraw that product from sale;

(b) ceases or intends to cease to trade as a primary dealer in that product; or

(c) wishes to obtain the cancellation of the registration of that product in relation to his name,

he shall give written notice of that fact to the Registrar, including in that notification where known to him the name and address of any person proposing to carry on as a primary dealer in that product, and on receipt of that notice the registration of that product as regards the primary dealer who gave the notice shall be cancelled—

(d) if the notice is intended and expressed to take effect on a future date, on that date; and

(e) in any other case, forthwith.

Appeals.

35. A person aggrieved by the refusal of the Registrar to grant, amend or renew the registration of any veterinary preparation or animal feeding stuff or premises under this Act, or by a decision of the Registrar amending or cancelling any registration, or by any requirement of the Registrar, may within six months after notice of that refusal, decision or requirement appeal against it to the Minister who may give such directions in the matter as he thinks just, and his decision is final and conclusive.

Contents of register and particulars to be furnished.

36. (1) The registers which the Registrar is required to cause to be kept under this Act shall contain such information as the Governor may prescribe.

(2) Without prejudice to the generality of the foregoing, the Registrar may require an applicant for registration to furnish in respect of any veterinary preparation or animal feeding stuff particulars of—

(a) the name and the address of the primary dealer in the State;

(b) the name under which the primary dealer carries on or intends to carry on the business of placing that product on the market in the State;

(c) the location of any premises on which that product is to be manufactured, produced, processed, treated or otherwise prepared for sale;

(d) the name under which the product is sold or intended to be sold;

(e) the trade description of the product;

(f) the circumstances and manner in which that product is used or is intended to be used;

(g) any investigations carried out by or to the knowledge of the applicant, for the purpose of determining whether and to what extent the product, or any veterinary preparation or animal feeding stuff containing the product, when the product is used as recommended, is injurious to, or in any other way affects, animal health;

(h) any investigations or enquiries carried out by or to the knowledge of the applicant for the purpose of determining the cumulative effect on the health of an animal consuming the product in accordance with the manner of use recommended; and

(i) any investigations or enquiries carried out by or to the knowledge of the applicant for the purpose of determining the effect on the health of a person consuming in

ordinary quantities any portion of the carcass of an animal on which that product has been so used.

(3) Where any claim as to efficacy for any purpose is or is intended to be made in respect of any product the Registrar may require the applicant to furnish full and complete information as to—

(a) the directions or recommendations for the use of that product for that purpose;

(b) the injury, deficiency, disease or ailment which that product is or is intended to be claimed to prevent, cure, alleviate or treat;

(c) the internal parasite or pest affecting animals which that product is or is intended to be claimed to treat or destroy or against which that product provides or is intended to be claimed to provide protection;

(d) the diagnostic purpose of that product or any ingredient;

(e) the improvement in the health of or the increase in the capacity for work, production, reproduction of progeny, or Show purposes which that product is or is intended to be claimed to effect;

(f) any other purpose for which that product is or is intended to be claimed to be efficacious; and

(g) any other matters that are prescribed.

(4) Where in relation to any product in respect of which registration is sought a primary dealer is unable to furnish to the Registrar of his own knowledge details of the name, composition, percentages, proportions, chemical formula or other matter with which the Registrar requires to be furnished then the Registrar may require the applicant to disclose—

(a) the name and address of the person who imports, manufactures, produces, mixes, treats or prepares the product for sale;

(b) the authorization or contract under which that primary dealer proposes to deal in that product; and

(c) such other information, statements, matters or things as the Registrar may require with a view to bringing that product within the ambit of this Act.

(5) No particulars furnished in accordance with this section, and no information relating to any individual business obtained by means of such particulars, shall, without the previous consent in writing of the person carrying on the business in question, be disclosed except—

(a) in accordance with directions of the Minister, so far as may be necessary for the purposes of this Act; or

(b) for the purposes of any proceedings for an offence under this Act or any report of those proceedings,

and any person who discloses any such particulars or information in contravention of this section commits an offence against this Act.

Penalty: Two thousand dollars or imprisonment for twelve months.

PART VI.—INSPECTION, SAMPLING AND ANALYSIS.

Appointment of inspectors.

37. (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: One hundred dollars.

Power to enter premises and conveyances.

38. (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, the production, importation, treatment, storage, preparation for sale, marketing, or sale of a veterinary preparation or animal feeding stuff;

(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 a veterinary preparation or animal feeding stuff in the course of trade, sale or delivery, and for that purpose may detain any such conveyance.

(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.

(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: Two thousand dollars or imprisonment for twelve 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) of this section 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.

Supply of information.

39. An inspector may at any time require—

(a) any person in possession of or the purchaser of any product to furnish him with his name and address and the name and address of the person from whom he obtained that product, 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 product to furnish him with the name and address of the purchaser of that product, 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 the sale of any product;

(d) a person found in possession of any prohibited substance or of anything which the inspector has reasonable grounds for believing to be an ingredient intended for use in a prohibited substance, to supply his name and address or place of abode.

Power to seize and detain.

40. (1) An inspector may seize and detain any prohibited substance or any product, or any ingredient or packaging or related matter, which or any part of which he has reasonable grounds for believing does not comply with all the requirements of this Act.

(2) Any matter or thing seized under the provisions of subsection (1) of this section may be removed, or left *in situ* clearly marked and sufficiently secured against unauthorized removal, and may thereafter be held for a period of six 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 six months of such seizure appeal against the same to a stipendiary magistrate sitting as a court of summary jurisdiction who may make such order in the matter as he thinks just.

(4) Where any matter or thing is detained in accordance with the provisions of this section, for a period of six months following the date of the seizure, and without any proceedings or appeal 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 appeal instituted within the period of six months of the date of the seizure then it shall be disposed of in such manner as the court hearing those proceedings or that appeal orders.

Powers of sampling.

41. (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 a veterinary preparation or 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.

(2) Any sample taken under the provisions of subsection (1) of this section shall if possible be taken in the presence of the seller or other person apparently in charge of the substance from which the sample was taken.

(3) The inspector removing the sample shall give to the person in charge of that substance, 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) of this section "specified" means specified in the regulations.

Duty of dealers to provide samples and information when required.

42. (1) A person who by way of trade or business sells or intends to sell any veterinary preparation or animal feeding stuff shall if so required by the Registrar provide without payment a sample containing a sufficient quantity of that substance for the purpose of analysis and deliver that sample to an inspector or analyst for analysis.

(2) A person who sells any veterinary preparation or animal feeding stuff by wholesale shall furnish to the Registrar, 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.

Tampering with samples.

43. A person who—

(a) tampers with any veterinary preparation, animal feeding stuff 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.

Use of samples for prosecutions.

44. (1) Where a sample has been procured under this Act, no complaint in respect of the substance sampled shall be made after the expiration of a period of four months beginning with the date on which the sample was procured unless the Justice before whom the complaint is made, on being satisfied on oath that having regard to the circumstances of the case it was not practicable to make the complaint 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) of this section, that certificate authorizes the making of a complaint 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 sampled, the summons shall not be returnable less than fourteen 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) of this section, shall be served with the summons.

Production of part retained for comparison.

45. 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.

Analysts.

46. (1) The Minister may appoint qualified persons to be analysts for the purposes of this Act.

(2) Subject to subsection (3) of section 47, a person, not being a person appointed under subsection (1) of this section, who performs or purports to perform the duties of an analyst under this Act commits an offence against this Act.

Penalty: Two hundred dollars.

Analysis.

47. (1) On receipt of a substance for analysis under this Act the analyst shall as soon as practicable analyse that substance 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.

Analysis may be published.

48. (1) The Registrar may publish the result of the analysis of any substance submitted for analysis under this Act, together with the name and address or place of business of the person from whom such substance was obtained, or the seller or person apparently in charge of it, or the place where it was obtained, or the primary dealer in or distributor of that substance 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 Registrar 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 Registrar in accordance with the provisions of subsection (1) of this section, and no action shall lie against such proprietor or manager in respect of the republication.

Evidence of analysis and relation of sample to bulk.

49. (1) At the hearing of any proceedings with respect to a substance 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 substance 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 by not less than three days' notice in writing delivered to the plaintiff or prosecutor and by a like three days' notice delivered to the analyst (opportunity to deliver which notices shall be afforded the defendant) 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 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.

Omissions not to prejudice proceedings.

50. In any proceedings for an offence against this Act proof of non-compliance, or failure to prove compliance, on the part of any prosecution witness with any of the provisions of this Part which ought to have been complied with by him, shall not entitle the defendant to have the complaint dismissed or prevent his conviction unless he shall show that the non-compliance has in fact prejudiced him.

PART VII.—PACKAGING, LABELLING AND STANDARDS.

Application of this Part.

51. (1) This Part of this Act applies to such veterinary preparations and animal feeding stuffs, or ingredients thereof, as the Governor may from time to time prescribe.

(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 product 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.

Regulations as to substances to which this Part applies.

52. The Governor may make regulations in respect to any veterinary preparation or animal feeding stuff to which this Part applies—

(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 registered 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;

(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 product, and the descriptions which may be applied thereto;

(c) declaring that product to be or to contain a therapeutic substance the purity or potency of which cannot be adequately tested by chemical means, and in relation thereto—

(i) prohibiting, except under a licence issued by the Minister and in accordance with any conditions subject to which the licence is issued, the manufacture, processing or preparation for sale or the importation of any such substance;

(ii) prescribing the standards of strength, quality and purity of any such substance;

(iii) prescribing the tests to be used for determining whether any prescribed standard has been attained;

(iv) prescribing units of standardisation;

(v) prescribing the conditions subject to which licences may be issued, including conditions that the manufacture or processing shall be carried on only upon the premises specified in the licence and as to manufacturing, processing and testing procedures and the provision of inspection and examination facilities;

(d) regulating and controlling grades and standards of that product, 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 product; and

(v) any other matters or things capable of denoting any properties of use in evaluating substances to which this Part applies;

(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 product; and

(h) prescribing methods of storage, holding and handling in relation to that product and regulating and controlling the use of premises therefor.

Offences relating to labelling.

53. A person who sells or offers to sell any veterinary preparation or animal feeding stuff—

(a) which is falsely named or falsely labelled in any particular;

(b) which is labelled in a manner which does not conform in every material respect with any label registered or prescribed in respect thereto;

(c) which is without a label, where any label is registered or prescribed in respect thereto;

(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 of this Act;

(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.

PART VIII.—ADVERTISEMENTS.

Advertisements.

54. (1) A person who advertises or causes or permits to be advertised any veterinary preparation or animal feeding stuff—

(a) in a manner which expresses, suggests or implies any comparison with any other product to the detriment of either;

(b) so as to convey any suggestion, implication or information which is false, exaggerated, or misleading in any particular; or

(c) in respect of which a claim as to efficacy for any purpose has been registered, in terms which are calculated to lead to the use of that product for a purpose other than a purpose so registered,

commits an offence against this Act.

(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) of this section unless—

(a) a warning has been delivered to that person under the hand of the Registrar within the three months immediately preceding the day of the publication, that in the opinion of the Registrar 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.

Prohibited statements.

55. 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 veterinary preparation or animal feeding stuff, or the sale of any product, or in any invoice or advertisement relating thereto—

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

(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.

PART IX.—INVOICES AND WARRANTIES.

Application of this Part.

56. (1) This Part of this Act shall apply to such veterinary preparations and animal feeding stuffs as the Governor may from time to time prescribe.

(2) Regulations made under this Part may be of general or limited application, according to time, place or circumstances.

Invoices.

57. (1) Every person who sells a product to which this Part applies, 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 seven days thereafter, a statement in writing, in this Part of this Act 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 product is sold; and

(c) such particulars, if any, of the nature, substance, or quality as are prescribed in relation to that product.

(2) The obligation imposed by subsection (1) of this section shall not apply—

(a) to sales of two or more products 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 product, or of any lesser amount) if the product 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.

(3) Where any product is registered under this Act as having a distinguishing mark or name, an invoice referring to the product by that mark or name is sufficient for the purposes of this section.

Warranties.

58. (1) Notwithstanding any agreement or notice to the contrary an invoice given by the seller of any product to which this Part applies shall have effect as a written warranty by the seller that—

(a) the product conforms to the trade description registered in respect of it; and

(b) the facts set out in any reference or statement with respect to the composition of the product contained on the label relating to the product or in the invoice or in any advertisement descriptive of the product are correct.

(2) Where a product is sold under a name or description implying that it was prepared from any particular substance, or from two 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 product, 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.

Breach of duty by seller to be an offence.

59. (1) A person who sells a product to which this Part applies and—

(a) fails without reasonable excuse to give to the purchaser, on or before delivery or within seven 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) of this section to prove that he took all reasonable steps to avoid committing the offence and that he acted without intent to defraud.

PART X.—MISCELLANEOUS AND GENERAL.

Persons obstructing execution of this Act.

60. (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 refuses to allow any person acting in the execution of this Act to take the quantity which he requires as a sample he 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) of this section shall be construed as requiring a person to answer any question or give any information, if to do so might incriminate him.

Vicarious liability.

61. (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 this Act any person on whose behalf the sale of a product 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.

Forfeiture.

62. (1) Where any person is convicted of an offence against this Act any veterinary preparation or animal feeding stuff, packaging or other thing to or to any part of which the conviction relates 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 substance, packaging or other thing, and to the whole of any similar substance, packaging and other related things belonging to the defendant or found on the defendant's premises or in his possession at the time of the commission of the offence.

Offences and penalties.

63. (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 five hundred dollars; or

(ii) imprisonment for three months; or

(b) if he has been previously convicted of any offence against this Act, to—

(i) a penalty of two thousand dollars; or

(ii) imprisonment for twelve months; and

(c) in the case of a continuing offence, whether of commission or of omission, to a daily penalty of one hundred dollars for every day that the offence continues after the offender is convicted.

Proceedings for offences.

64. (1) All proceedings for offences against this Act may be heard before a Court of Petty Sessions constituted by a stipendiary magistrate sitting alone.

(2) A prosecution for an offence against this Act may be instituted by the person aggrieved, by an inspector, or by any person authorized by the Minister.

Evidence of qualifications.

65. 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;

(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 registered veterinary surgeons, shall, if the name of the defendant does not appear in any of such registers or lists, be sufficient *prima facie* evidence that he is not a 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 registered 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 registered 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 subsection (1) of section 46 of this Act, by the Minister.

Onus of proof.

66. 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 preparation or an animal feeding stuff or intended as an ingredient of any such product, shall lie upon the defendant.

Protection from liability.

67. No act, matter or thing done or omitted to be done in good faith by the Minister, or by the Advisory Committee or any member thereof, or by the Registrar, or by any inspector or analyst or by any member of the Police Force, in the execution or intended execution of this Act, or in the exercise or performance or intended exercise or performance of any of his or its powers, functions or duties under this Act, subjects that person or body to any liability.

Regulations.

68. (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.

(2) Without limiting the generality of the powers conferred by subsection (1) of this section, the Governor may make regulations for or with respect to—

(a) the application for and the grant, issue, renewal, cancellation or suspension of registration, licences, permits and authorities under this Act;

(b) the conditions, restrictions and limitations to be imposed on any grant;

(c) the manner in which appeals under this Act shall be brought and the procedure to be followed in the conduct of those appeals;

(d) the form of registers to be kept under this Act and the particulars to be recorded therein;

(e) the remuneration and allowances that are to be paid to a member of the Advisory Committee for his services;

(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 Registrar to be recorded and vouched in relation to the production or sale of any product, and the manner in which such records are to be kept and vouched;

(h) the accounts and returns to be kept and furnished by primary dealers, 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 product, 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 veterinary preparations or animal feeding stuffs;

(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 veterinary preparations or animal feeding stuffs are held or stored for the purposes of sale;

(v) the use of premises for the production of veterinary preparations or 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 preparations and animal feeding stuffs; and

(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) may prescribe fees to be paid in relation to the grant, amendment or renewal of registration, the charges that shall be payable in relation to other matters under this Act, the persons liable and the method of recovery of amounts not duly paid;

(c) impose upon any person or class of person a discretionary authority;

(d) provide penalties not exceeding five hundred dollars or imprisonment for three months for offences against the regulations, and daily penalties not exceeding fifty dollars for every day that an offence continues after the offender is convicted.

SCHEDULE

ACTS REPEALED

Number of Act	Short title of Act.
15 of 1928	Feeding Stuffs Act, 1928.
20 of 1933	Feeding Stuffs Act Amendment Act, 1933.
20 of 1940	Feeding Stuffs Act Amendment Act, 1940.
2 of 1942	Feeding Stuffs Act Amendment Act, 1942.
3 of 1946	Feeding Stuffs Act Amendment Act, 1946.
64 of 1948	Feeding Stuffs Act Amendment Act, 1948 (No. 2).
11 of 1951	Feeding Stuffs Act Amendment Act, 1951.
29 of 1953	Veterinary Medicines Act, 1953.
56 of 1963	Veterinary Medicines Act Amendment Act, 1963.