



ANNO PRIMO

GEORGII V REGIS.

A.D. 1910.

No. 1013.

An Act to regulate the Sale of Insecticides and Fungicides, and for other purposes.

[*Assented to, November 30th, 1910.*]

BE it Enacted by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

1. This Act may be cited as "The Insecticides Act, 1910." Short title.

2. In this Act, unless inconsistent with the context or subject Interpretation.
matter—

"Analyst" means the Government Analyst, or an analyst appointed under this Act, or an agricultural analyst appointed under "The Fertilisers Act, 1900," or any Act 747 of 1900. amending or substituted for that Act:

"Fungicide" means and includes any substance used for the purpose of destroying or preventing the attacks of fungi, or other parasitic plants, or bacteria, which substance the Governor, by Proclamation published in the *Government Gazette*, declares to be a fungicide for the purposes of this Act:

"Insecticide" means and includes any substance used for the purpose of—

(a) Destroying insects or other pests which affect or attack plants or fruit, or animals; or

(b) Preventing such insects or pests from infesting or attacking plants or fruit, or animals; or

(c) Destroying

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(c) Destroying rabbits, vermin, rodents, or other noxious animals,

which substance the Governor, by Proclamation published in the *Government Gazette*, declares to be an insecticide for the purposes of this Act :

“Inspector” means an inspector appointed under this Act :

“Justice” means a Justice of the Peace for the said State :

“Minister” means the Minister of the Crown to whom the administration for the time being of this Act is committed by the Governor :

“Package” means any receptacle used for containing any insecticide or fungicide :

“Regulation” means regulation made under this Act :

“This Act” includes regulations made under this Act :

Cf. Vict. Act, 2059,
1906, s. 2.

The verb to sell, in whatever person, number, tense, mood, or voice it is used, includes—

- I. To barter or exchange ;
- II. To agree to sell, barter, or exchange ;
- III. To offer, expose, store, have in possession, send, or deliver for or on sale ;
- IV. To receive for sale ;
- V. To cause or suffer to be sold, bartered, or exchanged, or to be agreed to be sold, bartered, or exchanged ;
- VI. To cause or suffer to be offered, exposed, stored, had in possession, sent, or delivered for or on sale ;
- VII. To cause to suffer to be received for sale ; and
- VIII. To attempt to do any of such acts or things :

and all participles of the verb to sell, and the noun “sale,” have corresponding connotations :

The verb to buy, in whatever person, number, tense, mood, or voice it is used, includes to receive or accept under a sale or agreement to sell, and to offer to receive or accept or cause or suffer to be received or accepted under a sale or agreement to sell ; and all participles of the verb to buy have corresponding connotations.

Standards may be
fixed as to con-
stituents.

3. (1) The Governor may, by Proclamation published in the *Government Gazette*, prescribe a standard for any insecticide or fungicide, fixing—

- I. The constituents that may or shall be contained therein ; and
 - II. The quantities or proportions of such constituents ; and
 - III. The chemical or physical conditions of such constituents ; or
 - IV. Any of such matters.
- (2) Such

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(2) Such standard may fix a maximum and a minimum or a maximum or a minimum only of any constituent, or may prohibit entirely any substance from being a constituent of the insecticide or fungicide.

(3) The Governor may from time to time, by Proclamation published as aforesaid, abolish or alter any standard so prescribed or proclaim another standard in lieu thereof.

4. When a standard for any insecticide or fungicide has been fixed as mentioned in section 3, no person shall sell any of such insecticide or fungicide which is not in accordance with the standard so fixed and for the time being in force.

Sale of article not in accordance with standard.

5. The Governor may, by the Proclamation whereby a standard is prescribed for an insecticide or fungicide or by another Proclamation published in the *Government Gazette*, require that a specified constituent or specified constituents of such insecticide or fungicide, with the percentage or percentages thereof, shall be stated upon the sale of such insecticide or fungicide.

Constituents to be stated upon sale.

6. (1) When any person sells any insecticide or fungicide, as to which there is in force a Proclamation under section 5, he shall sign and give to the purchaser an invoice or statement, on which shall be stated—

Invoice to be given on sale of insecticide. Cf. Fertilisers Act, 1900, s. 7.

(a) The figure, word, trade mark, or trade description which is to be branded or stamped upon or affixed to every package containing any of the insecticide or fungicide sold at that time to such purchaser; and

(b) The percentages contained in the insecticide or fungicide so sold of all such constituents as are by such Proclamation required to be stated upon the sale thereof.

(2) Such invoice or statement shall, notwithstanding any agreement to the contrary, have effect as a warranty by the seller of the accuracy of all the matters stated therein.

7. When any person sells any insecticide or fungicide, as to which there is in force a Proclamation under section 5, he shall brand or stamp upon or durably affix to, or cause to be branded or stamped upon or durably affixed to, every package containing any of such insecticide or fungicide—

Packages to be branded to correspond with invoice.

Ibid., s. 8.

(a) A figure, word, trade mark, or trade description corresponding to the figure, word, trade mark, or trade description stated on the invoice or statement given by the seller to the purchaser upon the sale of such insecticide or fungicide; and

(b) A statement of the percentages contained in such insecticide or fungicide of all such constituents as are by such Proclamation required to be stated upon the sale thereof.

8. (1) It

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Offences by seller.
Ibid., s. 9.

8. (1) It shall be an offence against this Act if any person who sells any insecticide or fungicide, as to which there is in force a Proclamation under section 5—

- (a) Fails without reasonable excuse to give, on or before, or as soon as possible after the delivery of such insecticide or fungicide, or any of it, the invoice or statement required by section 6; or
- (b) Causes or permits any invoice, statement, or description with respect to or of such insecticide or fungicide to be false in any material particular; or
- (c) Fails to brand or stamp upon or durably affix to any package containing any of such insecticide or fungicide, before delivery thereof, the figure, mark, trade mark, or trade description, or the statement, required by section 7.

Vict. Act, 2183, 1909,
s. 8 (2).

(2) In any proceeding for either of the offences described in subdivisions (a) and (c) of subsection (1) of this section, the burden of proof that section 6 or 7, according to the nature of the case, has been complied with shall lie on the defendant.

Buyer need not
accept delivery unless
Act complied with.
New.

9. No person shall be bound to accept delivery on sale of any insecticide or fungicide unless all the provisions of sections 6 and 7 have been complied with as to such insecticide or fungicide.

Inspectors and
analysts.

10. The Governor may appoint any persons to be inspectors under this Act, and any persons to be analysts under this Act.

Obstructing inspector.

11. Any person who in any way obstructs or interferes with any inspector in the discharge of any of his duties or the exercise of any of his powers under this Act shall be guilty of an offence against this Act.

Powers of inspector.

12. Any inspector may, at any time during the day time, enter upon any land or into any warehouse, store, shop, building, or other premises where any insecticide or fungicide is or may reasonably be supposed to be kept for sale or sold, and may—

- (a) Examine and, on payment of the ordinary market price therefor (if demanded), take a quantity of any insecticide or fungicide there found as a sample for analysis;
- (b) Do any act or thing required or permitted by regulation to be done in connection with or for the purposes of anything authorised by this section or the analysis of samples taken under this section.

Procedure on taking
sample.

Vict. Act, 2183, 1909,
s. 10 (3), and Ferti-
lisers Act, 1900, s. 14.

13. (1) When an inspector takes a sample for analysis under section 11 he shall—

- I. Divide such sample into three approximately equal parts;
- II. Place each such part in a separate package and seal or fasten each such package;
- III. Place

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- iii. Place on each such package a label stating the name, so far as known to him, of the occupier of the premises or of the person apparently having possession, custody, or control of the lot from which such sample was taken, and the time and place of taking ;
- iv. Deliver one of such parts to the person in charge, or apparently in charge, of the premises ; and
- v. Retain one of such parts for future comparison.

The other of such parts may be utilised for analysis.

(2) When the insecticide or fungicide is sold in packages containing not more than two pounds avoirdupois net weight thereof, subdivision i. of subsection (1) hereof shall be deemed to be complied with if the inspector takes three unopened packages of the insecticide or fungicide and deals with such packages as if they were the three parts into which the sample is to be divided.

14. Any person who has bought any insecticide or fungicide shall, on complying with the regulations in that behalf, be entitled to have a sample of the insecticide or fungicide so bought analysed by an analyst, and to receive from him a certificate of the result of the analysis.

Right of buyer to analysis.

Fertilisers Act, 1900, s. 17.

15. The result of the analysis by an analyst of any sample or part of a sample of any insecticide or fungicide, together with the name and address or place of business of the person from whom the insecticide or fungicide was bought, or of the person in the occupation or apparent occupation of the premises where the sample was taken, may be published in the *The Journal of the Department of Agriculture*, and in such other manner as the Minister directs or is prescribed by regulation.

Publication of result of analysis.

Ibid., s. 16 (part)

16. No inspector, analyst, or other officer shall be liable, except in respect of wilful misconduct or neglect, to any legal proceedings for anything done or omitted in the exercise or execution of any of his powers or duties under this Act.

Protection to officers acting under the Act.

17. (1) The Governor may make regulations not inconsistent with this Act, prescribing all things which by this Act are required, contemplated, or permitted to be prescribed, or which may be necessary or convenient to be prescribed for giving effect to this Act, and, amongst others, the following things—

Regulations.

1. The procedure to be adopted by the purchaser of an insecticide or fungicide in order that he may obtain an analyst's analysis :
- ii. The fees to be paid for obtaining an analyst's analysis :
- iii. Fees to be paid for any thing done under this Act, either in addition to or in substitution of any fees fixed by this Act :

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iv. Forms to be used in connection with any thing done under this Act:

v. The manner in which the powers and duties of inspectors and analysts are to be exercised and discharged, and generally such things as may be necessary or convenient for enabling inspectors and analysts to exercise and discharge such powers and duties, and to carry out the objects of this Act:

vi. Penalties for offences against regulations, not exceeding in any case the sum of Twenty Pounds.

Publication and effect.

(2) All such regulations shall—

(a) Be published in the *Government Gazette* ;

(b) Take effect from the date of such publication, or from a later date, to be specified therein ; and

(c) Be laid before both Houses of Parliament within fourteen days after publication, if Parliament is in Session, and if not, then within fourteen days after the commencement of the next Session.

Disapproval by Parliament.

(3) Notwithstanding any publication thereof, no regulation shall continue to have any force or effect if the same is disapproved by resolution of either House of Parliament within thirty sitting days after such regulation has been laid before Parliament, if Parliament is so long in Session: Provided that if Parliament is not in Session for thirty sitting days after such regulation has been laid before it, then such regulation shall not continue to have any force or effect if disapproved by either House of Parliament within thirty sitting days after the commencement of the next Session of Parliament.

Offence as to sample deemed offence as to whole lot.

Vict. Act, 2193, 1909, s. 13 (2).

18. When, in any proceeding in respect of an offence against this Act, a contravention of any of the provisions of this Act is proved with regard to any sample of insecticide or fungicide, such contravention shall be deemed to have been proved with regard to the whole lot from which the sample was taken, or all the insecticide or fungicide bought at the same time as such sample.

Certificate of analyst. Cf. *ibid.*, s. 17.

19. (1) At the hearing of any civil or criminal proceedings with regard to any sample or part thereof which has been analysed by an analyst, or the lot from which such sample was taken, or with regard to the contents of any package of insecticide or fungicide which have been so analysed, the production of a certificate purporting to be signed by an analyst shall, without proof of the signature of the person appearing to have signed the same or that he is an analyst, be sufficient evidence—

I. Of the identity of the thing analysed ;

II. Of the result of the analysis ; and

III. Of the matters stated in such certificate,

unless

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unless the defendant, by at least three clear days' (exclusive of Sundays and public holidays) notice in writing delivered to the informant and by a like three clear days' (exclusive as aforesaid) notice delivered, with a witness fee of One Guinea, to the analyst, requires that such analyst shall attend as a witness.

(2) In any case where the attendance of an analyst is required as mentioned in this section, the Court or Special Magistrate or Justices may, in addition to any other order which may be made as to costs, make such order as it, he, or they deem proper as to the witness fee paid to the analyst and as to the expenses of and remuneration to be paid for the analysis.

20. In any proceedings, civil or criminal, under this Act parol evidence that any person is an inspector or an analyst shall be deemed sufficient, unless the contrary is proved.

Evidence of office of inspector or analyst. Fertilisers Act, 1900, s. 27.

21. (1) Any contravention of or failure to observe any provision of this Act, whether by act or omission, shall be an offence against this Act.

General penalty.

(2) Any person guilty of an offence against this Act, for which no penalty is specified, shall be liable to a penalty for a first offence of not more than Twenty Pounds, and for any subsequent offence of not less than Five Pounds nor more than Fifty Pounds.

22. All proceedings in respect of offences against this Act shall be by information, and shall be heard and determined in a summary way by a Special Magistrate or two Justices, and shall be regulated by the Ordinance No. 6 of 1850, and any Acts amending the same, or by any other Act or Acts for the time being in force relating to summary proceedings.

Summary proceedings.

23. (1) There shall be an appeal to the Local Court of Adelaide in its Full Jurisdiction from any order or conviction by a Magistrate or Justices under this Act, or from any order by a Magistrate or Justices dismissing any information for any offence against this Act.

Appeals.

(2) Such appeal shall be regulated by the said Ordinance No. 6 of 1850, "The Justices Procedure Amendment Act, 1883-4," and any Act for the time being in force regulating appeals to Local Courts: Provided that the Court may make any order as to costs although such costs exceed Ten Pounds.

(3) Such Local Court may state a special case for the opinion of the Supreme Court.

In the name and on behalf of His Majesty, I hereby assent to this Bill.

DAY H. BOSANQUET, Governor.