

PEST DESTROYERS.

3 GEO. VI.
No. 8.
THE
PEST
DESTROYERS
ACT OF
1939.

An Act to Consolidate and Amend the Law relating to the Regulation of the Sale of Insecticides, Fungicides, Vermin Destroyers, Lures, Weed Destroyers, and Sterilisers or Cleansers; and for other purposes.

[ASSENTED TO 12TH OCTOBER, 1939.]

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same, as follows:—

Short title
and
commence-
ment.

1. This Act may be cited as "*The Pest Destroyers Act of 1939*," and shall, subject as otherwise provided, commence and take effect on and from the first day of January, one thousand nine hundred and forty, which date is hereinafter referred to as the commencement of this Act.

Repeal of
the Act
14 Geo. V.
No. 3.

2. *"*The Pest Destroyers Act of 1923*" is repealed.

The said Act is herein referred to as the "repealed Act":

Provided that, but without limiting the operation of †"*The Acts Shortening Acts*"—

(a) All Proclamations and notifications made and published, all appointments made, all regulations and forms made and promulgated, any authority, direction, notice, or order made or given under the repealed Act, and all things done or purporting to be done under the repealed Act, and generally all acts of authority originated under the said repealed Act and in force or subsisting at the commencement of this Act, shall continue in full force and effect and shall so far as is consistent with this Act be deemed to have been made, published, promulgated, given, done, and originated under and for the purposes of this Act;

* 14 Geo. V. No. 3, *supra*, page 10743.

† 31 Vic. No. 6 and amending Acts, *supra*, pages 15 *et seq.*

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(b) All matters and proceedings commenced under the said repealed Act and pending or in progress at the commencement of this Act may be continued, completed, and enforced under this Act.

3. In this Act, unless the context otherwise indicates or requires, the following terms have the meanings respectively assigned to them, that is to say:—

“Active constituent”—With reference to any pest destroyer, shall be any constituent or active portion thereof, which is, or is claimed to be, the active principle of such pest destroyer. It shall be expressed in such terms as may be prescribed, and as can be determined by recognised methods of analysis; Active constituent.

“Affix” (with its derivatives)—Legibly, securely, and durably affix or brand or print or stamp; Affix.

“Analyst”—The Chemist of the Department of Agriculture and Stock or an analyst appointed under this Act; Analyst.

“As”—When used preceded by words indicating an active constituent and succeeded by words indicating the form or forms in which such active constituent occurs, shall mean that such active constituent is present in the pest destroyer in the form or forms indicated and in the proportion or amount indicated; As.

“Board”—The Pest Destroyers Board constituted under this Act; Board.

“Brand”—A trade mark, or sign, or word, or statement in writing used as a distinguishing mark for pest destroyers, whether or not containing any pictorial or other descriptive matter and associated with and intended for identifying pest destroyers; Brand.

“Dealer”—Any person who carries on business or trade as a seller of or dealer in any pest destroyer, whether such person is the manufacturer of such pest destroyer or not, and whether such person carries on any other business or trade or not: this term shall include a primary dealer; Dealer.

- Fungicide.** “Fungicide”—Any substance used or intended to be used for the purpose of destroying or preventing the attacks of fungi or other parasitic plants or bacteria affecting or which may affect seeds, fruit, vegetables, plants, or other produce of the soil or any stock food, or any substance declared by regulation to be a fungicide ;
- Insecticide.** “Insecticide”—Any substance used or intended to be used for the purpose of destroying insects or other pests which infest or attack seeds, fruit, vegetables, plants, or other produce of the soil or any stock food or which infest or attack animals, or for preventing such insects or pests from infesting or attacking the same, or any substance declared by regulation to be an insecticide ;
- Inspector.** “Inspector”—An inspector appointed under this Act: the term includes any officer for the time being performing the functions of an inspector ;
- Label.** “Label”—A label, tag, brand, or stamp having unless otherwise prescribed, indelibly printed with printers ink by a printing press thereon the figures, words, or marks prescribed, which label, tag, brand, or stamp is or is prescribed to be affixed to every package containing the substance referred to ;
- Lure.** “Lure”—Any material used or intended to be used to lure or attract any insect or pest or vermin for purposes of destruction ;
- Minister.** “Minister”—The Secretary for Agriculture and Stock or other Minister of the Crown charged for the time being with the administration of this Act ;
- Officer.** “Officer”—An inspector or analyst or any other officer appointed under this Act: the term includes any person either generally or specifically authorised by the Minister in writing ;
- Package.** “Package”— Anything in or by which a pest destroyer is cased, covered, closed, contained, or packed ;

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- “ Person ”—Includes company, partnership, or firm ^{Person.}
and any body or association of persons
corporate or unincorporate ;
- “ Pest destroyer ”—Includes any prepared or ^{Pest}
natural substance sold as a fungicide, ^{destroyer.}
insecticide, vermin destroyer, weed destroyer,
lure, or steriliser or cleanser ;
- “ Place ”—Includes any house, building, ship, ^{Place.}
barge, boat, vehicle, car, aeroplane, station,
wharf, shed, land, or premises ;
- “ Prescribed ”—Prescribed by this Act : ^{Prescribed.}
- “ Primary dealer ”—Any person who, whether as ^{Primary}
manufacturer, importer, or wholesale and/or ^{dealer.}
retail seller, is primarily responsible for putting
on the market in Queensland any pest
destroyer ;
- “ Registrar ”—The Registrar of Pest Destroyers ^{Registrar.}
appointed under this Act : the term includes
the Deputy Registrar of Pest Destroyers
appointed under this Act ;
- “ Regulations ”—Regulations made under this ^{Regula-}
Act ; ^{tions.}
- “ Sell ”—Includes barter or exchange, and also ^{Sell.}
includes dealing in, agreeing to sell or offering
or exposing for sale, or having in possession
for sale, or sending, forwarding, or delivering
for sale or on sale, or causing, suffering,
or attempting any such acts or things :
and the derivatives of “ sell ” have a
corresponding inclusive meaning ;
- “ Special mixture ”—With respect to a pest ^{Special}
destroyer shall mean any mixture of two or ^{mixture.}
more ingredients specially made up to the
written order of the buyer : it shall not apply
to any mixture regularly sold ;
- “ Steriliser ” or “ cleanser ”—Any substance used, ^{Steriliser}
or intended to be used, or advocated for use, ^{or}
for the purpose of sterilising or cleansing ^{cleanser.}
dairy utensils, equipment, or machinery, or
used or intended to be used for any other
sterilising or cleansing purpose relating to
agriculture or stock : Provided that soaps
and soap powders that do not contain any
constituent useful or claimed to be useful
for sterilising shall not be included ;

- This Act.** “This Act”—This Act and all Proclamations, Orders in Council, and regulations made under this Act ;
- Under Secretary.** “Under Secretary”—The Under Secretary of the Department of Agriculture and Stock, Brisbane: the term includes any person for the time being discharging the duties of such office ;
- Vermin destroyer.** “Vermin destroyer”—Any substance used or intended to be used for the purpose of destroying rabbits, rodents, dingoes, foxes, or other noxious animals or noxious birds, or any substance declared by regulation to be a vermin destroyer ;
- Weed destroyer.** “Weed destroyer”—Any substance used or intended to be used for the purpose of destroying or preventing the spread of weeds or noxious plants, or any substance declared by regulation to be a weed destroyer.

Any substance which is defined or declared under this Act to be an insecticide, fungicide, vermin destroyer, weed destroyer, lure, or steriliser or cleanser shall, for the purposes of this Act be considered to be each and all of them without a special inclusive definition or declaration in that behalf.

Application of Act.

4. This Act shall not apply to the sale to a manufacturer of pest destroyers of bulk lots of pest destroyers not packed ready for re-sale.

Unqualified persons prohibited from manufacturing pest destroyers.

5. (1.) No pest destroyer shall be manufactured, mixed, or prepared for sale other than by or under the supervision of a person possessing one of the following qualifications, namely :—

- (a) A certificate of fellowship or associateship of the Australian Chemical Institute ;
- (b) A master's or bachelor's degree in science, with chemistry as a major subject, obtained at a recognised university ;
- (c) A diploma in industrial chemistry or chemistry obtained at a recognised university or technical college ;
- (d) A permit in writing as prescribed by subsection two hereof ;
- (e) Such other qualification as may be approved by the Board.

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(2.) Notwithstanding anything contained in subsection one of this section, any person manufacturing, mixing, or preparing for sale any pest destroyers on the passing of this Act shall be permitted to continue to manufacture, mix, or prepare for sale such pest destroyers without complying with subsection one of this section, provided that from time to time he furnishes on demand to the satisfaction of the Board—

- (a) A sample of each such pest destroyer ;
- (b) The formula of each such pest destroyer ;
- (c) Full methods of manufacture, mixing, or preparation for sale of each such pest destroyer ;
- (d) Sources of supply of raw materials and/or ingredients of each such pest destroyer ;
- (e) Such further information as may be required by the Board :

Provided that the manufacture, mixing, or preparation for sale of each such pest destroyer is carried out to the full satisfaction of the Board and that, at any time when required by the Board so to do, he satisfies the Board as to the standard of manufacture, mixing, or preparation for sale of each such pest destroyer.

Every person referred to in this subsection shall obtain a permit in writing from the Board, which permit may be cancelled by the Board if it is satisfied that the permittee is not complying with this subsection.

(3.) Any person other than a person possessing a qualification as prescribed by subsection one of this section who—

- (a) Except under the supervision of a person possessing a qualification as so prescribed manufactures, mixes, or prepares for sale any pest destroyer ; or
- (b) Supervises the manufacture, mixing, or preparation for sale of any pest destroyer ; and any person who procures or permits a person other than a person possessing a qualification as prescribed by subsection one of this section—
- (c) To manufacture, mix, or prepare for sale any pest destroyer except under the supervision of a person possessing a qualification as so prescribed ; or

(*d*) To supervise the manufacture, mixing, or preparation for sale of any pest destroyer, shall be guilty of an offence against this Act.

Pest
Destroyers
Board.

6. (1.) For the purposes of this Act there shall be constituted a Board to be called "The Pest Destroyers Board."

Such Board shall consist of the following persons, namely:—

- (*a*) The Agricultural Chemist for the time being of the Department of Agriculture and Stock ;
- (*b*) An entomologist (plants) appointed on the nomination of the Minister ;
- (*c*) An entomologist (veterinary) appointed on the nomination of the Minister ;
- (*d*) A pathologist (plants) appointed on the nomination of the Minister ;
- (*e*) A pathologist (veterinary) appointed on the nomination of the Minister ;
- (*f*) The registrar,

each of whom shall be appointed by the Governor in Council, and all of whom may be appointed on the passing of this Act.

(2.) Subject to this Act, three members of the Board shall form a quorum at any meeting, and the Board shall meet at such times and conduct its business in such manner as may be prescribed or, in so far as not prescribed, as it may decide.

(3.) Subject to this Act, every member, other than the members mentioned in paragraphs (*a*) and (*f*) of subsection one hereof, shall hold office for the term for which he is appointed or reappointed, but no such appointment or reappointment shall be for a term exceeding two years.

(4.) The Minister shall appoint one of such members to be chairman of the Board, and in the absence of the chairman a temporary chairman may be appointed by the Board. The person presiding at any meeting of the Board (and whether the chairman or the temporary chairman) shall have a casting as well as a deliberative vote.

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(5.) If the office of a member becomes vacant before the completion of the term of his appointment, the Governor in Council may appoint another person who is qualified as prescribed to be a member for such term not exceeding two years as he shall think fit.

(6.) In the case of prolonged absence from any meetings of the Board of any member for any cause whatsoever the Minister may appoint a person to act as his deputy while he is so absent, and the person so appointed shall while he so acts have the powers and authorities of the member whose deputy he is.

(7.) The Board shall have and exercise the powers and authorities under this Act and such further powers and authorities as may be prescribed.

7. The officer in charge of the Seeds, Fertilisers, Registrar of Pest Destroyers. Veterinary Medicines, Pest Destroyers and Stock Foods Investigation Branch of the Department of Agriculture and Stock shall also be "The Registrar of Pest Destroyers" and may be appointed to such position on the passing of this Act on the direction of the Minister by a notice published in the *Gazette*. Such notice shall be judicially noticed and shall be conclusive evidence of the power and authority of the officer named therein to register pest destroyers under this Act.

The Inspector and Examiner of the Seeds, Fertilisers, Veterinary Medicines, Pest Destroyers and Stock Foods Investigation Branch of the Department of Agriculture and Stock shall also be "The Deputy Registrar of Pest Destroyers," and may be appointed to such position on the passing of this Act on the direction of the Minister by a notice published in the *Gazette*.

The deputy registrar shall in the absence of the registrar have and exercise the powers and duties of the registrar.

8. (1.) Before any pest destroyer shall be registered under this Act the Board shall report to the registrar upon the claims made respecting the efficacy of such pest destroyer, and for the purpose of enabling the Board to so report the registrar shall submit to it the statutory declaration constituting the application for registration and such of the matters and things accompanying same as the Board may require. Pest destroyer to be reported upon by Board before registration.

When
registration
to be
refused.

(2.) (a) If the Board refuses to approve of the claims respecting the efficacy of a pest destroyer, the registrar shall refuse to register such pest destroyer.

(b) In the event of the refusal by the Board to approve of the claims respecting the efficacy of a pest destroyer, the primary dealer shall have the right of appeal to the Minister, whose decision in the matter shall be final.

(c) All expenses that are incurred in making any investigation relative to an appeal against the Board's decision shall be paid by the primary dealer making such appeal and, if not paid, shall be a debt due and owing by him to the Crown.

(d) The primary dealer shall on lodgment of notice of appeal deposit with the Under Secretary on demand by him such sum of money not exceeding one hundred pounds as the registrar considers sufficient to meet the expenses of such investigation.

Additional
duties of
the registrar.

9. The registrar shall be a member and secretary of the Board and, in addition to his other duties, shall—

(a) Keep and record minutes of all meetings of the Board; and

(b) Keep a register which shall contain the brand, name, number, and date of registration of and name and address of the primary dealer in every pest destroyer registered under this Act.

Duties of
dealer.

10. (1.) Every dealer shall, within thirty days after the passing of this Act or within thirty days after the date of his commencing in business or trade as a dealer (whichever is the later date) and thereafter, in each calendar year, on or before the thirty-first day of January of that year, give notice in writing in the prescribed form or to the like effect to the Registrar of Pest Destroyers of—

- (i.) His name and place of business; and
- (ii.) The distinctive name and brand of every pest destroyer which he then sells and of every pest destroyer which he proposes to sell during the current year; and
- (iii.) The name and address from whom purchased;
- (iv.) The places where the same can be purchased or acquired from him.

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(2.) If during the currency of any calendar year a dealer proposes to sell or deal in any pest destroyer in addition to those of which he has given notice as hereinbefore prescribed, he shall, before commencing to sell or deal in any such additional pest destroyer, give with respect to the same the like notice as hereinbefore prescribed.

(3.) Any person who fails to comply with any provision of this section shall be guilty of an offence.

11. Every primary dealer shall during the month of January, one thousand nine hundred and forty, or if the applicant desires to become a primary dealer in any pest destroyer after that date then before he sells or deals in such pest destroyer and thereafter during the month of January next succeeding each and every period of three years commencing with the first day of January, one thousand nine hundred and forty, make application for the registration of every pest destroyer which he sells or in which he deals. When pest destroyer to be registered.

12. (1.) Application for registration of each pest destroyer which he sells or in which he deals shall be made by or on behalf of a primary dealer by forwarding to the Registrar of Pest Destroyers at the Department of Agriculture and Stock, Brisbane, a statutory declaration in the prescribed form or to the like effect and setting out the following particulars, namely:— Application for registration of pest destroyer.

- (a) The distinctive name and brand of the pest destroyer ;
- (b) The name and address of the manufacturer of the pest destroyer ;
- (c) The names of each of the constituents of the pest destroyer and the respective percentages thereof ;
- (d) The names of each of the active constituents of the pest destroyer and the respective percentages thereof: each such name and percentage shall be expressed in the prescribed terms (if any) ;
- (e) The net weight or volume content which shall be contained in each respective package thereof when sold ;

- (f) A statement to the effect that the specimen labels, leaflets, and directions for use forwarded with the statutory declaration to the registrar are true and correct specimens of the labels, leaflets, and directions for use that will be affixed to every package, or issued in connection with the sale, of the pest destroyer ;
- (g) A statement to the effect that the sample of the pest destroyer forwarded to the Registrar of Pest Destroyers at the same time as the statutory declaration is a fair average sample of the pest destroyer it represents, and is not substantially different from the pest destroyer which will be supplied throughout the current registration period under its distinctive name and brand.

(2.) The prescribed statutory declaration constituting the application by or on behalf of a primary dealer for registration of a pest destroyer may be made either by such primary dealer or by the manufacturer of such pest destroyer, but if it is made by the manufacturer such prescribed statutory declaration shall be supported by a further statutory declaration made by the primary dealer concerned in the prescribed form or to the like effect and setting out the following particulars, namely :—

- (a) A statement to the effect that the name of each of the constituents and the respective percentage thereof and the name of each of the active constituents and the respective percentage thereof of each pest destroyer named in such declaration and which he sells or in which he deals are as set out in the respective statutory declarations made by the manufacturer or manufacturers and lodged with the registrar during the current registration period ;
- (b) The distinctive name and/or brand of each pest destroyer with respect to which he is a primary dealer ;
- (c) The name or names and address or addresses of the manufacturer or manufacturers of the various pest destroyers named in such declaration.

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(3.) Where the statutory declaration mentioned in subsection one hereof is required to be supported by the statutory declaration mentioned in subsection two hereof, then, but without prejudice to any other requirement of this section, the application for registration shall be constituted by both such declarations and shall not be deemed to be made unless and until both such declarations are delivered to the registrar.

(4.) The primary dealer shall accompany the statutory declaration or declarations constituting the application for registration of a pest destroyer by—

Matters to accompany application for registration.

- (a) A fair average sample of the pest destroyer concerned; and
- (b) Specimens of the various labels which will be affixed to or upon the respective packages of such pest destroyer; and
- (c) Specimens of any directions for use which are or will be issued with respect to such pest destroyer; and
- (d) Specimens of any leaflets which are or will be issued on or in connection with the sale of such pest destroyer; and
- (e) The prescribed registration fee; and
- (f) Such other matters or things as may be prescribed.

(5.) (a) The fair average sample of a pest destroyer which shall accompany the statutory declaration or declarations constituting the application for registration of such pest destroyer shall be in the original package or in a closed airtight container to which is affixed a label showing the name and/or brand of the pest destroyer and the name of the primary dealer, and, except in a prescribed case, be of not less weight than half-a-pound avoirdupois.

Provisions respecting fair average sample, &c.

(b) Every specimen of a label, or directions for use, or leaflet which shall accompany the statutory declaration or declarations constituting the application for registration of a pest destroyer shall be a true and correct specimen of the prescribed label which will be affixed to or upon the package of pest destroyer to which it has reference or of the directions for use or leaflet issued in connection with the sale of the pest destroyer to which it has reference.

Amount
and due
date of
payment of
annual
registration
fees.

(6.) (a) The primary dealer who made or supported the application for registration under this Act of a pest destroyer shall pay for each calendar year or part thereof during which such pest destroyer is registered under this Act an annual registration fee of five shillings :

Provided that the total annual registration fees payable by any one primary dealer in any one year shall not exceed the sum of twenty shillings.

(b) The annual registration fee payable in respect of a pest destroyer shall be payable as follows, namely :—

- (i.) For every year in which application is made for registration of a pest destroyer, it shall accompany such application ; and
- (ii.) For any other year, it shall be paid on or before the last day of January of such year, and shall accompany the annual notice prescribed to be given under section ten hereof.

(7.) Any registration of a pest destroyer under this Act shall be cancelled by non-payment of the prescribed annual fee by the due date : Provided that should such fee, together with any penalty imposed, be paid during the year for which same is payable the registration may be restored.

(8.) When the annual fee payable in respect of the registration of any pest destroyer is not paid by the due date, or the prescribed application for registration of any pest destroyer, accompanied by the prescribed matters and things, is not made on or before the due date, a penalty of five shillings per five registrations or portion thereof per calendar month by which the fees or applications for registration are overdue is hereby imposed : Provided that the total penalty payable by any one primary dealer for any month or portion thereof shall not exceed the sum of twenty shillings.

(9.) The amount of any annual registration fee or fees and of any penalty thereon not duly paid shall constitute a debt due and owing by the primary dealer concerned to His Majesty and may be recovered as such by action in any court of competent jurisdiction, which action may be brought by the Minister or by any person authorised by him.

This subsection shall neither prejudice nor be prejudiced by any other provision of this Act.

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(10.) Where the primary dealer or manufacturer is a body corporate, any statutory declaration required for the purposes of this section may be made on its behalf by its manager, managing director, or other governing officer, by whatever name called, or by its secretary, chemist, or public officer, or by some other officer or employee authorised by it in that behalf, and such declaration shall be deemed to have been made by such body corporate.

13. (1.) When the provisions of this Act relating to the application for registration of a pest destroyer (including the matters and things to accompany such application) have been complied with to his satisfaction, and the Board has approved of the claims respecting the efficacy of the pest destroyer, the registrar shall register such pest destroyer and shall notify the primary dealer concerned of such registration.

When
pest
destroyer
to be
registered.

(2.) Subject to payment as prescribed of the prescribed annual registration fee, a pest destroyer registered at any time during the period of three years commencing on the first day of January, one thousand nine hundred and forty, or any succeeding period of three years thereafter, shall continue to be registered under this Act until the last day of the month of January next succeeding the triennial period during which such pest destroyer was registered.

(3.) If any constituent, material, or ingredient, or the proportion of the constituent, material, or ingredient, included in any pest destroyer and/or any label relating to any pest destroyer registered under this Act is altered such pest destroyer shall forthwith be and be deemed to be no longer registered under this Act:

Provided that a pest destroyer in respect of which any such alteration has been made may be the subject-matter of a further application for registration as a pest destroyer under this Act.

14. If the primary dealer in any pest destroyer is not resident in the State of Queensland the requirements of this Act with respect to the registration thereof shall be complied with by a duly authorised agent of such dealer who is resident in Queensland, and such agent shall for the purposes of this Act be deemed to be the primary dealer:

Provision
where
primary
dealer
resides
outside
State.

Provided always, that when a primary dealer in any pest destroyer has complied with all the provisions of this Act relating to the registration of the

same and such pest destroyer has been duly registered, it shall be lawful for any other dealer to sell such pest destroyer without complying with the registration requirements of this Act, but he shall nevertheless be bound to comply with all the other provisions of this Act relating to the sale of pest destroyers.

Offences relating to the sale of pest destroyers.

15. (1.) No person shall in any manner whatsoever make any claim with respect to the efficacy of a pest destroyer unless such claim has been approved by the Board.

Any person who contravenes this subsection shall be guilty of an offence.

Offence by dealer where pest destroyer falsely named, &c.

(2.) Any person who sells any pest destroyer which fails to comply with the prescribed standard or which is falsely named, branded, or labelled shall be guilty of an offence.

For the purposes of this subsection, and in addition to the ordinary meaning of the word "false," a pest destroyer shall be and be deemed to be falsely named or branded or labelled if it does not comply in full (and whether because it contains too little or too much of any required active constituent, constituent, material, or ingredient, or because it or any material or ingredient contained therein is not of the required degree of fineness, or because, where any maximum proportion or quantity of any active constituent, constituent, material, or ingredient is prescribed, it contains a proportion or quantity of such active constituent, constituent, material, or ingredient greater than such maximum) with the pest destroyer in respect of which its name, brand, or label, as the case may be, has been registered under this Act.

Offence by sale of substance not a pest destroyer.

(3.) (a) Any person who sells any substance as a pest destroyer or uses the words "pest destroyer" (either alone or in conjunction with any other word or words) in connection with any substance, or who uses any device or means calculated to induce any person purchasing any substance to believe that the same is a pest destroyer, or sells or in any manner passes off, or attempts to sell or in any manner pass off, any substance as a pest destroyer shall, unless such substance is registered as a pest destroyer under this Act, be guilty of an offence.

(b) Any pest destroyer in respect of which any label, leaflet, directions for use, advertisement, or any printed or written matter states, infers, or implies that such pest

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destroyer is a particular kind of pest destroyer, or that such pest destroyer is useful for any purpose which directly or by implication infers the use of a particular kind of pest destroyer, shall comply with the standard and/or definition and bear the particulars on the label prescribed in relation to such particular kind of pest destroyer.

(4.) No person shall sell any pest destroyer which is not packed in the prescribed type or size of package, or to or upon which is affixed a label bearing print which is not of the prescribed type or size, or to or upon which is affixed a label printed with any matter or thing which it is prescribed shall not be printed on such label.

16. (1.) A list of pest destroyers registered under this Act may be published in the *Queensland Agricultural Journal* or in such other manner as the Minister directs.

Publication
of lists of
registered
or of
unregistered
pest
destroyers.

(2.) The name of any unregistered pest destroyers and the names and addresses of all persons who are primary dealers with respect to same, and such other information concerning same as he shall think requisite in the public interest, may be published at the discretion of the registrar.

17. (1.) The registrar may at any time require any primary dealer to furnish him with a sample of any specified pest destroyer, and thereupon such primary dealer shall furnish such sample to the registrar free of charge, and if he fails so to do shall be guilty of an offence.

Registrar
may require
sample of
pest
destroyer.

(2.) The registrar may cause an analysis to be made of each sample of pest destroyer sent or delivered to him under this section or which accompanied any application for registration of a pest destroyer.

(3.) In the event of an analysis of any sample received under this section being not in accordance with the particulars set out on the statutory declaration or specimen label relating to the pest destroyer concerned received by the registrar, the registration of such pest destroyer may, at the discretion of the registrar, be suspended until such action as the registrar may deem necessary is taken to correct the quality of such pest destroyer, and during such period of suspension such pest destroyer shall be and be deemed to be not registered under this Act.

Obligations
of primary
dealer or
dealer on
sale of pest
destroyer.

18. (1.) Every dealer who sells any pest destroyer shall in manner prescribed on or before delivery thereof to the buyer affix to or upon every package containing such pest destroyer or any of it a label which shall set forth the following particulars:—

- (a) The distinctive name of the pest destroyer ;
- (b)—
 - (i.) A statement of the names and respective percentages of the active constituents with the forms in which they occur or substances from which they are derived: such expressions and percentages shall be declared in the manner prescribed (if any) ;
 - (ii.) A statement of any prescribed particulars relative to standard, quality, or rate of dilution with respect to the pest destroyer concerned ;
- (c) The net weight or volume content of the package ;
- (d) All directions for use of the pest destroyer ;
- (e) The name and address of the primary dealer or manufacturer ;
- (f) Such other matters as may be prescribed.

(2.) Notwithstanding subsection one hereof, no dealer shall have in his possession for sale or expose or offer for sale any package of pest destroyer unless there is affixed to or upon such package a label which sets forth the particulars prescribed by subsection one of this section.

(3.) Labels relating to special mixtures may have the actual figures denoting the percentages of the respective active constituents inserted by ink or type-writing, and such labels shall have the name and address of the buyer for whom the special mixture is made inserted thereon, which may be inserted in like manner.

(4.) Every label shall be and be deemed to be a representation or warranty by the dealer to the buyer of the truth of all or any of the particulars set forth therein.

(5.) Every dealer who contravenes or fails to comply with any provision of this section shall be guilty of an offence against this Act.

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19. (1.) Every dealer who has purchased any pest destroyer from any other dealer and who sells any such pest destroyer—

- (a) In the package in which he bought the same, shall see that on delivery thereof to the buyer the prescribed label (whether the original label or one provided by himself) is affixed thereto or thereupon ;
- (b) In any package other than a package in which he bought the same, shall, before delivery thereof to the buyer, affix thereto or thereupon a label as prescribed.

The burden of proof that the provisions of this subsection have been complied with shall be on the dealer selling such pest destroyer.

(2.) In any case where any package containing pest destroyer which has been labelled as prescribed is wholly or partly emptied, no dealer shall place in such package any pest destroyer other than a pest destroyer of the same name and/or brand and label as that originally contained in such package, and to which the prescribed label affixed thereto or thereupon refers.

The burden of proof that the provisions of this subsection have been complied with shall be on the dealer.

(3.) No person shall sell any pest destroyer the label of which does not agree with that last accepted for registration.

(4.) Any person who contravenes or fails to comply with any provision of this section shall be guilty of an offence.

20. No person shall affix any label and/or brand to or issue or use with or in connection with any pest destroyer or the sale thereof any invoice, directions for use, or any printed, typed, or written matter, and/or advertisement which contains—

- (a) Any statement which is false or misleading in any particular concerning the substances therein referred to ;
- (b) Any comment or reference to or explanation of any statement required by this Act which directly or by implication contradicts, qualifies, or modifies any particulars required by this Act to be shown thereon ;

Re-sale of
pest
destroyer.

Fraudulent
labelling,
&c., of pest
destroyer.

- (c) Any statement, comment, or reference which expresses, suggests, or implies, or may be construed to express, suggest, or imply, that the pest destroyer has been the subject of a trial or trials or has been used or is recommended by the Department of Agriculture and Stock and which could in any way be used for purposes of furthering the sale of such pest destroyer ;
- (d) Any words or expression signifying, suggesting, or implying that the pest destroyer is approved or guaranteed under the provisions of this Act or any other Queensland law.

Any person who contravenes or fails to comply with any provision of this section shall be guilty of an offence against this Act.

When sale
of pest
destroyer
prohibited.

21. (1.) No person shall sell any pest destroyer that contains any prescribed deleterious ingredient or combination of ingredients.

(2.) No person shall sell any pest destroyer under any name, brand, or label which suggests, infers, or implies—

- (a) The presence in such pest destroyer of any material, ingredient, or active constituent which is found to be absent ; and/or
- (b) The absence from such pest destroyer of any material, ingredient, or active constituent which is found to be present.

(3.) Any person who contravenes any provision of subsection one or subsection two of this section shall be guilty of an offence.

(4.) Any person who—

- (i.) Issues a leaflet on or in connection with the sale of a pest destroyer ; or
- (ii.) Gives directions for use of a pest destroyer, of which no specimen accompanied the application for registration of such pest destroyer or which differs or differ in a material particular from the specimen which accompanied the application for the registration of such pest destroyer shall be guilty of an offence.

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22. (1.) Notwithstanding anything contained in any other Act, or law, or rule, or process of law, a contract of sale of any pest destroyer may be made in writing (either with or without seal) or by word of mouth, or partly in writing and partly by word of mouth, or may be implied from the conduct of the parties.

Contracts
for sale of
pest
destroyer.

(2.) Notwithstanding any agreement to the contrary, the sale of any substance as a pest destroyer, whether or not accompanied by an invoice or label, and whether or not such substance is a registered pest destroyer, implies that such substance is a pest destroyer of the kind mentioned in the sale and complies in every particular with the standards (if any) prescribed for the pest destroyer so mentioned, and with the prescribed particulars set out on the label (if any) prescribed to be affixed to or upon the pest destroyer so mentioned, and that the constituents and percentages of such constituents contained in such substance accurately correspond with the constituents and percentages respectively stated in the statutory declaration (if any) furnished to the registrar as hereinbefore prescribed with respect to the pest destroyer so mentioned.

(3.) Any statement in an invoice, letter, agreement, label, circular, catalogue, or advertisement issued by or on the authority of a dealer or other person relating to the sale of any pest destroyer, whether or not registered, shall, notwithstanding any agreement to the contrary, constitute a warranty by such dealer or other person that such pest destroyer is of the kind specified and complies in every particular with the standards and/or definitions (if any) prescribed for the pest destroyer of that name and with the prescribed particulars set out on the label (if any) prescribed to be affixed to or upon such pest destroyer, and shall be deemed to be and shall have effect as a warranty by such dealer or other person that the constituents of the pest destroyer so sold and the percentage in which each constituent is contained therein accurately correspond with the constituents and percentages respectively stated in the statutory declaration (if any) furnished to the registrar as hereinbefore prescribed with respect to the pest destroyer of the same name.

(4.) Any dealer or other person who sells any pest destroyer which is falsely described and/or is not of the kind specified in the contract of sale and/or

mentioned in any invoice, letter, agreement, label, circular, catalogue, or advertisement issued by or on the authority of such dealer or primary dealer relating to the sale, shall be guilty of an offence against this Act.

Inspectors,
officers, &c.

23. (1.) The Governor in Council may from time to time appoint such inspectors, analysts, and other officers as may be necessary for the purpose of giving effect to or for the convenient carrying-out of this Act.

(2.) No officer shall have any interest directly or indirectly in the manufacture or sale of any pest destroyer or in any trade or business connected therewith. Every officer who violates this provision shall be dismissed by the Governor in Council and shall be disqualified for re-appointment.

(3.) No officer shall be liable, except in respect of wilful misconduct, to any legal proceedings for anything done or omitted in the exercise or execution of any of his powers or duties under this Act.

Inspection,
sampling,
&c.

24. (1.) Any officer authorised in that behalf or inspector may—

- (i.) Enter and inspect any place which he has grounds for believing is kept or used for the making, manufacture, sale, storage, delivery, conveyance, or preparation for sale of any pest destroyer ;
- (ii.) Inspect any pest destroyer which is being conveyed through or on any street or road, or conveyed by water in any vessel or boat, or by railway or tramway, or aeroplane or other means of transit apparently for trade, sale, or delivery ;
- (iii.) Examine and open any pest destroyer or any package enclosing the same in any such place or conveyed as aforesaid ;
- (iv.) Remove for examination and/or analysis any pest destroyer or portions or samples of any such pest destroyer ;
- (v.) Seize any pest destroyer which is not registered under this Act, or which he suspects does not comply in full with the requirements of this Act, or in respect of which he suspects that all or any of the provisions of this Act have not been complied with in full ;

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Pest Destroyers Act.

(vi.) Weigh, count, measure, gauge, or mark any such pest destroyer or any package containing the same, and/or fasten, secure, or seal any pest destroyer seized as aforesaid or any door or opening giving access to the same.

(2.) In the case of any portion or sample of any pest destroyer having been removed for examination and/or analysis by any officer authorised in that behalf in accordance with this section, or by any inspector, the officer or inspector concerned—

- (i.) Shall forthwith divide the portion or sample into three parts ; and
- (ii.) Shall mark and seal or fasten up each such part in such manner as its nature permits ; and
- (iii.) Shall offer one of such parts to the person apparently in charge of the place where he obtained the same ; and
- (iv.) Shall subsequently deliver two of such parts to the registrar. Such delivery to the registrar may be effected either personally or by sending the parts by post addressed or by railway or other means of transit consigned to the registrar at the Department of Agriculture and Stock, Brisbane, or in such other manner as may be prescribed : of the parts forwarded to the registrar, one shall be for examination or analysis and the other shall be retained :

Provided that when the pest destroyer is sold or found in packages containing not more than two pounds avoirdupois net weight, this subsection shall be deemed to be complied with if the inspector takes three unopened packages of the pest destroyer and deals with such packages as if they were the three parts obtained by dividing the sample :

Provided further, that if the nature of the pest destroyer is such that it is impracticable to divide the material into three parts, the inspector may take three unopened packages and deal with such packages as if they were the three parts obtained by dividing the sample.

(3.) Any portion or sample of a pest destroyer may be removed for examination and/or analysis from any place notwithstanding that there is then present at such place no person apparently in charge. In such case

the officer or inspector removing the portion or sample shall send by post a notification of such removal to the person apparently owning such pest destroyer.

(4.) A statement of the result of any analysis and/or examination may be sent to the person from whom such pest destroyer was obtained and/or to the primary dealer.

Publication
of result of
analysis.

25. The result of the examination and/or analysis of any pest destroyer which, or a portion or sample of which, was removed for examination and/or analysis under section twenty-four of this Act, together with the name and address or place of business of the person from whom such pest destroyer, portion, or sample was obtained, or of the person in the occupation or apparent occupation of the place where such pest destroyer, portion, or sample was obtained, or of the primary dealer or manufacturer, and any other particulars relating thereto together with any explanation and comment upon the result of the analysis, may be published in such manner as the Minister directs.

How
inspector
may deal
with pest
destroyer
seized by
him.

26. (1.) Where any provision of this Act has been contravened or not complied with in respect of any pest destroyer which has been seized by an officer or inspector under this Act, such pest destroyer may be removed to any approved place under supervision of an inspector, who may do and execute or cause to be done and executed all such acts, matters, and things as the registrar shall deem necessary to ensure that the pest destroyer concerned shall comply in full with this Act.

(2.) An officer or inspector who has seized any pest destroyer because of the non-compliance with respect thereto of any provision of this Act may on the decision of the registrar, if all the provisions of this Act relating to such pest destroyer are complied with within the ninety days next following the date of such seizure, release same, otherwise such pest destroyer shall become and be forfeited to the Crown and shall be disposed of in such manner as the Minister may direct.

(3.) All costs of and incidental to the storage, removal, treating, and/or destroying of pest destroyers pursuant to this section shall be charged to the person in possession of same, or if same are in the possession of a carrier then to the consignor thereof, and may be recovered from him as a debt by action in the name of the Minister or any person authorised by him in any court of competent jurisdiction.

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27. (1.) An officer or inspector may at any time require the buyer of any pest destroyer to state the name and address of the dealer from whom he purchased such pest destroyer and the price charged or paid therefor, and also to produce for inspection any invoice, agreement, circular, catalogue, or advertisement relating to such pest destroyer given to him by the dealer. An officer or inspector may at any time require the dealer selling any pest destroyer to state the name and address of the purchaser of such pest destroyer.

Further
powers of
inspector.

(2.) Any person who withholds any such information or wilfully fails to produce such invoice, agreement, circular, catalogue, or advertisement, or who assaults, intimidates, or obstructs any officer or inspector in the exercise of his powers or in the discharge of his duties under this Act or attempts so to do, or who gives, procures, offers, or promises any bribe, recompense, inducement, or reward to or with intent to influence any officer or inspector in the exercise of his powers or in the discharge of his duties under this Act or attempts so to do, shall be guilty of an offence against this Act.

(3.) Any person who refuses to allow to be taken any portion or sample demanded in accordance with this Act or retakes or attempts to retake or attempts to sell or in any way dispose of any pest destroyer seized, taken, or obtained under this Act, or obstructs or prevents or attempts to obstruct or prevent any such seizure, taking, or obtaining, shall be guilty of an offence against this Act.

(4.) Any person who opens, alters, breaks, removes, or erases any mark, fastening, or seal placed by an officer or inspector in pursuance of this Act upon any pest destroyer or upon any package, place, door, or opening containing or affording access to the same shall, unless he was authorised so to do by such officer or inspector, be guilty of an offence against this Act.

28. Any person who knowingly and/or fraudulently—

Offences
relating to
sampling.

(a) Tampered with any pest destroyer or package of pest destroyer so as to procure that any portion or sample taken under this Act does not correctly represent the pest destroyer or the contents of the package; or

(b) Tamperers with any portion or sample or part of a portion or sample taken under this Act, shall be guilty of an offence against this Act.

Official test
of pest
destroyer.

29. (1.) The Minister may at any time order an official test of any pest destroyer, and for that purpose the primary dealer or dealer shall upon demand made in writing by the registrar supply the requisite material which may be selected by an officer or inspector from the bulk of the pest destroyer prepared or had in possession for sale.

(2.) The Minister may cause the result of such test, together with such comment thereon as he shall think fit, to be published in the *Queensland Agricultural Journal* or in such other manner as he directs or as may be prescribed.

(3.) Any person who fails to supply the requisite material in accordance with the requirements of this section shall be guilty of an offence against this Act.

(4.) The Minister may approve of the use of any substance for experimental purposes as a pest destroyer for a specified period.

What buyer
of pest
destroyer
may require.

30. (1.) No person shall be bound to accept delivery on sale of any pest destroyer unless all the provisions of this Act respecting the registration and labelling thereof have been complied with in full.

(2.) Every buyer of any pest destroyer shall be entitled to submit in the manner prescribed a sample of such pest destroyer to the registrar for analysis and/or examination by an analyst, and to receive a certificate of the result of the analysis and/or examination.

(3.) The costs of and incidental to the obtaining of any analysis under this section shall be paid in the first instance by the person requesting the analysis but shall subsequently be dependent upon the results of the analysis, and if the pest destroyer does not comply with the prescribed warranty shall be recoverable from the seller of such pest destroyer by such person as a simple contract debt or, in the case of a conviction for an offence, shall be added to the penalty and be recoverable in the same manner and, upon recovery, be paid to such person.

Offences
generally.

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

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(b) Any person guilty of an offence against this Act for which no specific penalty is prescribed shall be liable to a penalty not exceeding fifty pounds.

(c) A prosecution for an offence against this Act may be instituted either by the person aggrieved or by an inspector or any person authorised in that behalf by the Minister; and may be so instituted at any time within six months after the commission of the offence, or within four months after the commission of the offence comes to the knowledge of the complainant, whichever is the later period.

(2.) Any pest destroyer required by this Act to contain a minimum percentage of a constituent, material, or ingredient shall not contain or be deemed to contain such minimum percentage for any purpose of this Act if such pest destroyer contains—

- (i.) A deficiency of not less than five per cent. of such required minimum percentage; or
- (ii.) An excess of not less than twenty per cent. of such required minimum percentage.

(3.) When in any proceeding in respect of an offence against this Act a contravention of or failure to comply with any of the provisions of this Act is proved with regard to any portion or sample of pest destroyer, such contravention or failure shall be deemed to have been proved with regard to the whole lot represented by such portion or sample.

(4.) All offences against this Act shall be heard and determined in a summary way upon a complaint under **The Justices Acts, 1886 to 1932.*

(5.) When a body corporate commits an offence against this Act, the manager, managing director, or other governing officer, by whatever name called, of such body corporate shall also be deemed to commit such offence and to be liable to the penalty prescribed unless he proves that the offence concerned was committed without his knowledge, connivance, or consent.

32. (1.) (a) In any proceedings no proof shall be required— Evidence.

- (i.) Of any order to prosecute or of the particular or general appointment of any officer; or
- (ii.) Of the authority of any officer under this Act if such officer purported to act thereunder.

* 50 Vic. No. 17 and amending Acts, *supra*, pages 1132 *et seq.*

(b) The production of a certificate of analysis purporting to be under the hand of an analyst appointed for the purposes of this Act shall be *primâ facie* evidence of the facts stated therein, unless the defendant requires that the analyst shall be called as a witness, in which case he shall give notice thereof to the plaintiff or prosecutor.

(2.) A certificate under the hand of the Registrar of Pest Destroyers that any pest destroyer mentioned therein is or is not registered under this Act shall be sufficient evidence of the fact so certified to until the contrary is proved, and such certificate shall be admissible in evidence in any proceedings whatsoever.

All courts, judges, justices, and persons acting judicially shall take judicial notice of the signature of the registrar to any such certificate.

(3.) The averment in any complaint that any pest destroyer was dealt with or prepared or offered or received or had in possession or transit or kept or exposed or sent or forwarded or supplied or delivered or intended for sale or for purposes of sale or sold, or that any package of pest destroyer was not labelled or marked as prescribed, shall in every case be sufficient evidence of the fact so averred until the contrary is proved beyond reasonable doubt.

Saving of
civil
remedies.

33. Nothing contained in this Act and no proceedings taken under this Act against any person shall in any way interfere with any right or remedy by civil process which any person aggrieved might have had if this Act had not been passed.

Saving of
certain
Acts.

34. Nothing in this Act shall prejudice or affect—

*“*The Veterinary Medicines Acts, 1933 to 1938*”;

or

†“*The Fertilisers Act of 1935*”;

‡“*The Stock Foods Acts, 1919 to 1935*”—

or any Act amending or in substitution for such Acts or any of them.

* 24 Geo. V. No. 33 and amending Acts, *supra*, pages 14777 *et seq.*

† 26 Geo. V. No. 15, *supra*, page 15313.

‡ 10 Geo. V. No. 8 and amending Acts, *supra*, pages 9320 *et seq.*

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35. This Act shall be read and construed subject to the **Commonwealth of Australia Constitution Act* and so as not to exceed the legislative power of the State to the intent that where any enactment thereof would but for this section have been construed as being in excess of that power it shall nevertheless be a valid enactment to the extent to which it is not in excess of that power.

Constitutional construction of Act.

36. (1.) The Governor in Council may from time to time make regulations providing for all or any purposes, whether general or to meet particular cases, that may be convenient for the administration of this Act or that may be necessary or expedient to carry out the objects and purposes of this Act.

Power to make regulations.

Without limiting the generality of the foregoing provisions, the regulations may provide for all or any of the following matters:—

- (i.) Defining and declaring what are pest destroyers (of the various descriptions) under this Act.
- (ii.) Fixing and regulating standards for pest destroyers (which standards may differ in respect of different pest destroyers).
- (iii.) Prescribing the procedure to be adopted by the buyer of any pest destroyer in order that he may obtain an analyst's analysis.
- (iv.) Prescribing the quantity and nature of portions and samples and the proportion of the bulk from which portions and samples are to be taken for the purposes of this Act, which regulations may differ according to the different purposes for which portions and samples are required under this Act.
- (v.) Prescribing methods of sampling.
- (vi.) Prescribing methods of analysis and/or examination.
- (vii.) Prescribing the fees to be paid for obtaining an analyst's analysis and/or examination (which fees may differ in respect of the classes of persons who may obtain same); witness's expenses to an analyst where the defendant requires that he be called as a witness; fees to be paid for anything done under this Act either in addition to or in substitution for any fees prescribed.

* 63 and 64 Vic. c. 12, *supra*, page 4565.

- (viii.) Prescribing the labelling of packages and the manner of affixing labels thereto or thereupon ; particulars to be printed on labels and the kind and size of type to be used in the printing ; and any matters or things which are not to be printed or written on labels.
- (ix.) Requiring that prescribed pest destroyers shall be sold only in packages of such kind and size and made of such material as are prescribed.
- (x.) Prescribing what name or names may or may not be used to designate any pest destroyer.
- (xi.) Prescribing when the sale of any pest destroyer should be prohibited.
- (xii.) Prescribing what forms are to be used under this Act.
- (xiii.) Prescribing the business, proceedings, meetings, and duties of the Pest Destroyers Board, and generally such matters and things as are necessary or convenient to enable the Board to exercise and discharge its functions under this Act.
- (xiv.) Prescribing the manner in which the powers and duties of officers are to be exercised and discharged ; generally such things as are necessary or convenient for enabling officers to exercise and discharge their powers and duties and to carry out the objects of this Act.
- (xv.) Prescribing all things which by this Act are permitted or required to be prescribed or which are necessary or convenient to be prescribed for giving effect to this Act.
- (xvi.) Prescribing the penalties for offences against the regulations, not exceeding in any case the sum of fifty pounds.
- (xvii.) Prescribing what ingredients or combinations of ingredients shall be deleterious, and either generally or with respect to any prescribed pest destroyer or class of pest destroyers.

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Pest Destroyers Act.

(2.) All such regulations may be made upon the passing of this Act.

(3.) All Proclamations, Orders in Council, and regulations made or purporting to be made under this Act shall be published in the *Gazette*, and shall upon such publication be of the same effect as if they were enacted in this Act, and shall be judicially noticed, and shall not be questioned in any proceedings whatsoever.

The publication in the *Gazette* of any such Proclamation, Order in Council, or regulation shall be conclusive evidence of the power and authority to make same and of all matters contained therein.

(4.) All such regulations shall be laid before Parliament forthwith if then sitting; and, if not then sitting, within fourteen days after the commencement of the next ensuing session.

If Parliament, within the next fourteen sitting days after any regulations have been so laid before it, resolves that such regulations or any of them ought to be annulled, the same shall after the date of such resolution be of no effect, without prejudice to the validity of anything done in the meantime under such regulations or to the making of any new regulations.

For the purpose of this section the term "sitting days" shall mean days on which the House actually sits for the despatch of business.

PETROLEUM.

See MINING.

PHARMACY.

See MEDICAL.