



ANNO SECUNDO

## GEORGI VI REGIS.

A.D. 1938.

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No. 2398.

An Act to regulate the sale of agricultural seeds, and for other purposes.

[Assented to 27th October, 1938.]

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 "Agricultural Seeds Act, 1938". Short title.
2. This Act shall come into operation on a date to be fixed by proclamation. Commencement of Act.
3. (1) In this Act, unless some other meaning is clearly intended— Interpretation.
  - "agricultural seeds" means any farm or garden or vegetable seeds, except flower seeds and seeds of plants used solely for ornamental purposes :
  - "analysis" includes the testing of seeds for germination or for any other purpose :
  - "analyst" means an analyst appointed under this Act :
  - "chief inspector" means chief inspector of seeds appointed under this Act :
  - "foreign seeds" as regards any particular kind or kinds of agricultural seeds, means all seeds of any other kind :
  - "impurities" includes ergot, smuts, dirt, stems, leaves, and portions of stalks, and diseased, broken, or insect injured seeds :

## Agricultural Seeds Act, 1938.

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“ inspector ” means the chief inspector and any inspector of seeds appointed under this Act :

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

“ noxious seeds ” means the seeds of any plant declared by regulation to be a noxious plant for the purposes of this Act :

“ parcel ” includes sack, bag, barrel, case, packet, package, or other container :

“ seeds ” includes agricultural seeds, noxious seeds, and foreign seeds.

(2) In the case of any seeds to which or to clusters of which, any fruit or part thereof normally adheres, any fruit or part thereof so adhering shall, for the purposes of this Act, be deemed to form part of the seeds.

**Non-application of Act to certain seeds.**  
Cf. N.S.W. 15, 1921, s. 7.

4. (1) This Act shall not apply to—

(a) seeds (other than seeds capable of the germination of plants which are noxious weeds for the whole State under the Noxious Weeds Act, 1931-1938) sold solely for the purposes of food for man, bird, or beast ; or

(b) wheat, barley, oats, field pea, maize, and rye corn seeds grown in this State.

(2) If—

(a) seeds are sold to be cleaned and tested before being again sold ; or

(b) seeds grown in this State are sold by the grower to a seed merchant,

this Act shall not apply to that sale.

**Sale of agricultural seeds.**  
Cf. N.S.W. 15, 1921, s. 4.

5. (1) Every person who sells any agricultural seeds shall, on any such sale, prior to delivery thereof, mark on every parcel containing any of the said seeds or on a label attached to the parcel or in an invoice given by the seller to the buyer, a statement specifying—

(a) the name and address of the seller : Provided that if the seller is a company registered under The Companies Act, 1934-1935, or a firm or person having its or his name registered under the Registration of Business Names Act, 1928-1932, the address of the company, firm, or person may be omitted ;

- (b) the name of the agricultural seeds contained in the parcel, describing the seeds by the prescribed common name (if any), and if the seeds are cereal, rape, or other prescribed agricultural seeds, what the seller believes to be the name of the variety of the seeds ;
- (c) in every case where the germinable proportion of the agricultural seeds is less than the proportion prescribed for seeds of that particular kind, the proportion of the agricultural seeds of the kind or kinds specified on the parcel which is germinable, and, if the seeds are clover or lucerne seeds, the proportion thereof of hard seeds (as defined as hard seeds by regulation) ; and
- (d) if two or more kinds of agricultural seeds are contained in the parcel, the proportions in which they are mixed.

(2) If on any sale of agricultural seeds the name and address of the seller is not marked on the parcel containing the agricultural seeds but is marked on a label or invoice as provided by subsection (1), the person who sells the agricultural seeds shall, in addition, mark on every parcel containing any of the seeds the name and address of the seller: Provided that if the seller is a company registered under The Companies Act, 1934-1935, or a firm or person having its or his name registered under the Registration of Business Names Act, 1928-1932, the address of the company, firm, or person may be omitted.

(3) Any such statement shall, notwithstanding any agreement to the contrary, constitute a warranty that the contents of the parcel are in accordance with this Act and the statement.

(4) No person shall be bound to accept delivery on sale of any agricultural seeds unless the provisions of subsections (1) and (2) are complied with as to the seeds.

6. If any person, whether knowingly or not, sells any agricultural seeds contained in any parcel in respect of which—

Sale of seeds  
in parcels not  
complying  
with Act.

- (a) the statement required by section 5 is not clearly and legibly marked on the parcel, label, or invoice, as the case may be, before the parcel is delivered to the buyer ; or
- (b) any statement required by section 5 is marked but is false in any particular as applied to the agricultural seeds contained in the parcel,

## Agricultural Seeds Act, 1938.

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he shall be guilty of an offence and liable to a penalty not exceeding five pounds for a first offence and not exceeding ten pounds for any subsequent offence.

**Sale of seeds  
which do not  
comply with  
regulations.  
Of. N.S.W. 15,  
1921, s. 5.**

**7. Any person who sells any agricultural seeds—**

- (a) with which are mixed seeds of plants which are noxious weeds for the whole of the State under the Noxious Weeds Act, 1931-1938 ; or
- (b) with which are mixed noxious seeds, foreign seeds, or impurities in excess of the proportion permitted by regulation, unless the proportion of noxious seeds, foreign seeds, or impurities, as the case may be, is clearly and legibly marked on the outside of the parcel containing the seeds, or on a label attached to the parcel, or is stated in an invoice given by the vendor to the purchaser ; or
- (c) with which are mixed noxious seeds, foreign seeds, or impurities which are of a kind not permitted by regulation to be mixed, unless the nature of the noxious weeds, foreign seeds, or impurities is clearly and legibly marked on the outside of the parcel containing the seeds, or on a label attached to the parcel, or is stated in an invoice given by the seller to the buyer ; or
- (d) of which the proportion of germinable seeds is lower than the proportion prescribed by regulation unless the proportion of germinable seeds is clearly and legibly marked on the outside of the packet containing the seeds, or on a label attached to the parcel, or is stated in an invoice given by the vendor to the purchaser ; or
- (e) which, if the seeds are of different kinds, are not mixed in the proportions marked on the outside of the packet containing the seeds, or on a label attached to the parcel, or as stated in an invoice given by the vendor to the purchaser,

shall be guilty of an offence and liable to a penalty not exceeding five pounds for a first offence and not exceeding ten pounds for any subsequent offence.

**Imported  
agricultural  
seeds.  
Of. N.S.W. 15,  
1921, s. 6.**

**8. (1) Agricultural seeds imported into this State shall, before being sold, be treated in the prescribed manner.**

(2) Any person who sells any agricultural seeds imported into this State which have not been treated in the prescribed manner shall be guilty of an offence and liable to a penalty not exceeding twenty pounds.

(3) Agricultural seeds brought into this State from another State within the Commonwealth of Australia where similar legislation is in force shall be exempt from the provisions of this section providing a certificate signed by an officer of the Department of Agriculture of the State of origin certifying that the seeds are free from noxious seeds, foreign seeds, and impurities accompanies every consignment of such seeds.

9. The Governor may, for the purposes of this Act, appoint— Inspectors and analysts.

- (a) a chief inspector of seeds :
- (b) such other inspectors of seeds and other officers as may be necessary :
- (c) persons having competent botanical knowledge to be analysts under this Act.

10. Any inspector may—

Powers of inspectors.

- (a) during the time any place is open for business enter and inspect any such place where any agricultural seeds are, or may reasonably be supposed to be, sold or kept for sale ;
- (b) inspect any agricultural seeds which are being conveyed by railway or any other means of transit, apparently for the purpose of sale or delivery ;
- (c) examine and open any parcel containing agricultural seeds in any such place, or conveyed as aforesaid ;
- (d) examine, and on payment or tender of the ordinary market price therefor (if demanded), take a sample of any agricultural seeds for analysis ; and
- (e) 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.

11. (1) When an inspector takes a sample for analysis under section 10 he shall—

Procedure on taking sample.

- (a) thoroughly mix the sample and divide it into three approximately equal parts ;
- (b) place each such part in a separate package and seal or fasten each such package ;
- (c) place on each such packet a label stating the name, so far as known to him, of the occupier of the premises where, or of the person apparently having possession, custody, or control of the lot from which the sample was taken, and the time and place of taking ;
- (d) deliver one of the parts to the person in charge, or apparently in charge, of the premises ; and

(e) retain one of the parts for future comparison.

The other of the parts may be utilised for analysis.

(2) When the seeds are sold in parcels containing in net weight four ounces avoirdupois or less the inspector shall take three or more unopened parcels of the seeds and mix the seeds contained therein and then deal with the seeds so mixed in manner provided by subsection (1).

Right of buyer  
to analysis.

**12.** (1) Any person who has bought any agricultural seeds shall, subject to this Act, be entitled to have a sample of the seeds analysed by an analyst, and to receive the analyst's certificate of the result of the analysis.

(2) If a buyer of any agricultural seeds intends to submit a sample for analysis the following provisions shall apply:—

- I. If the seeds are received by the buyer or his agent at the premises of the seller, the buyer or his agent shall then and there notify the seller of his intention to submit a sample for analysis :
- II. If the seeds are received by the buyer or his agent other than at the premises of the seller, the buyer or his agent shall within two days of the time of receipt of the seeds, give notice in writing by post to the seller or his agent of his intention to submit a sample for analysis :
- III. In either case the buyer or his agent shall fix a day and time when the sample will be taken. The time so fixed shall be not less than fourteen nor more than twenty-one days from the giving of the notice unless the buyer and seller mutually agree upon an earlier day.

For the purposes of this subsection, seeds shall not be deemed to be received by an agent of the buyer, if the seeds are received by a carrier for delivery to the buyer.

(3) The buyer shall on the day and at the time mentioned in the notice or on the day mutually agreed upon as aforesaid—

- (a) take a sample of the seeds in the presence of a justice or member of the police force, or of the seller or the agent or other representative of the seller ; and
- (b) thoroughly mix the sample and divide it into three approximately equal parts, as provided by section 11, to be then and there separated, and each part to be marked and sealed, or fastened up in such a manner as its nature will permit ; and
- (c) if required to do so, deliver one of the parts to the seller or his agent or representative.

(4) The justice or member of the police force shall—

(a) make such inquiries as to him appears necessary to show that the seeds are the seeds bought from the seller ; and

(b) mark each of the parts sealed as aforesaid with a certificate that he is satisfied that the seeds are a sample of the seeds bought by the buyer from the seller.

(5) The buyer shall send or deliver two of the said parts to the chief inspector.

(6) The chief inspector shall retain one of the said parts for future comparison, and shall send or deliver the other part to an analyst, who shall with all convenient speed analyse the same and give or send, by post or otherwise, a certificate in duplicate to the chief inspector wherein he shall specify the result of the analysis.

(7) The chief inspector shall forward the certificate to the buyer and shall file the duplicate in his office.

(8) This section shall, notwithstanding the provisions of section 4, apply to any agricultural seeds grown in this state and sold by a grower to a seed merchant.

(9) If, at the request of the buyer, two or more kinds of agricultural seeds are mixed by the seller to form one parcel of agricultural seeds, this section shall not apply to that parcel of seeds.

**13.** The costs of obtaining any analysis 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 contents of the parcel are not in accordance with this Act and the regulations, shall be recoverable from the seller of the seeds 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.

Costs of analysis.

**14.** Any sample which is taken pursuant to any provision of this Act shall be drawn from at least ten per centum of the parcels containing the total quantity of the seeds from which it is drawn, and at once be thoroughly mixed and divided.

Unit for sampling.

**15.** When, in any proceeding in respect of an offence against this Act, a contravention of any of the provisions of this Act is proved in respect of any sample of agricultural seeds, the contravention shall be deemed to have been proved in respect of the whole lot from which the sample was taken, or all the seeds bought at the same time as the sample.

Offence as to sample.

Right of dealer  
to analysis.

**16.** Any dealer in agricultural seeds may, on payment of the prescribed fee, have any agricultural seeds analysed by an analyst and shall be entitled to receive the analyst's certificate of the result of the analysis.

Obstructing or  
interfering  
with inspectors.

**17.** Any person who—

- (a) in any way obstructs or interferes with any inspector or analyst in the discharge of any of his duties or the exercise of any of his powers under this Act ; or
- (b) assaults or intimidates, or gives, procures, offers, or promises any bribe, recompense, inducement, or reward to influence any officer in the discharge of any of his duties or the exercise of any of his powers under this Act ; or
- (c) refuses to allow to be taken any sample sought to be taken by an inspector in accordance with this Act ; or
- (d) retakes any seeds seized or taken under this Act, or resists or prevents such seizure or taking ; or
- (e) without authority (the proof of which authority shall be upon him) alters, erases, or removes any mark, or opens, breaks, or removes any fastening or seal, placed by any inspector in pursuance of this Act upon any seeds or parcel of seeds,

shall be guilty of an offence and liable for a first offence to a penalty not exceeding twenty pounds, and for every subsequent offence to a penalty not exceeding fifty pounds.

Tampering  
with samples.

**18.** Any person who knowingly and fraudulently—

- (a) tampers with any parcel of agricultural seeds so as to procure that any sample of it taken under this Act does not correctly represent the contents of the parcel ; or
- (b) tampers with any sample taken under this Act,

shall be guilty of an offence and liable to a penalty not exceeding fifty pounds, or to imprisonment for any term not exceeding six months.

Treatment of  
certain  
agricultural  
seeds.  
Cf. N.S.W 15  
1921, s. 11.

**19.** (1) The Minister may order any agricultural seeds which are found to contain seeds of plants which are noxious weeds for the whole State under the Noxious Weeds Act, 1931-1938, or to contain noxious seeds, foreign seeds, or impurities to a greater extent than is permitted by the regulations or is marked on the parcel, to be treated or cleaned by the owner or his agent in manner directed by the Minister and within a specified time. If the order is not complied with within the specified time, the



person to whom the order was directed shall be guilty of an offence and liable to a penalty not exceeding twenty pounds.

(2) If any such order is not complied with to the satisfaction of the Minister within the specified time, the Minister may, notwithstanding the imposition of any penalty under subsection (1) order the seeds to be treated, cleaned, or destroyed, and the seeds may be treated, cleaned, or destroyed accordingly, and the cost of so doing may be recovered by the Minister from the owner or his agent in any court of competent jurisdiction as a debt due to him by the owner or agent.

20. (1) A prosecution for an offence against this Act may be instituted either by the chief inspector, or by any person authorised in that behalf by the Minister. Proceedings for offences.

(2) No prosecution for an offence against this Act shall be instituted without the approval in writing of the Minister.

(3) Unless proof to the contrary is given, any document purporting to be signed by the Minister and to be an authority by or approval of the Minister under subsection (1) or subsection (2), shall, without any further proof or proof of the signature of the Minister, be sufficient proof before any court of the giving of the authority or approval.

(4) All proceedings in respect of offences against this Act shall be disposed of summarily.

(5) There shall be served with the summons a copy of the analyst's certificate (if any) obtained on behalf of the prosecution.

(6) When any seeds have been taken or obtained for analysis, no prosecution under this Act for any offence in connection with the seeds or the lot from which they were taken or obtained shall be instituted after the expiration of two months from the time when they were so taken or obtained.

21. (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 the sample was taken, or with regard to the contents of any parcel of seeds 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— Certificate of analyst.

- (a) of the identity of the thing analysed ;
- (b) of the result of the analysis ;
- (c) of the matters 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 at least three clear days' (exclusive of Sundays and public holidays) notice in writing delivered to the plaintiff or complainant, and by a like three clear days' (exclusive as aforesaid) notice delivered, with a witness fee of one guinea, to the analyst, requires that the 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 may, in addition to any other order which may be made as to costs, make such order as the court deems proper as to the witness fee paid to the analyst and as to the expenses of and remuneration to be paid for the analysis.

**Admissibility  
of analysis.**

**22.** 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 the sample was taken, or with regard to the contents of any parcel of agricultural seeds which have been so analysed, no evidence of the result of any analysis, whether made by an analyst or not, shall be admitted unless it is first proved that in making the analysis the analyst followed the method (if any) prescribed under this Act for the analysis of the said seeds.

**Evidence.**

**23.** In any proceedings, civil or criminal, with respect to any agricultural seeds analysed under this Act, parol evidence that any person is an analyst or an inspector or other officer under this Act shall be deemed sufficient, unless the defendant proves to the contrary.

**Exemption of  
certain sellers  
from penalty.**

**24.** (1) Where at the time of the discovery of an offence it is made to appear to the satisfaction of any person authorised by or pursuant to this Act to prosecute under this Act—

- (a) that the seller used all due diligence to secure the observance of this Act; and
- (b) by what person the offence was committed; and
- (c) that the offence was committed without the knowledge, consent, or connivance of the seller, and in contravention of his orders,

the said authorised person shall proceed against the person whom he believes to be the actual offender without first proceeding against the said seller.

(2) When any seller is charged with an offence against any of the provisions of this Act, he shall be entitled upon complaint duly laid by him, to have any other person whom

he charges as the actual offender brought before the court at the hearing of the charge, and if after the commission of the offence has been proved the person in the first instance complained against proves to the satisfaction of the court—

- (a) that he had used due diligence to secure the observance of this Act ; and
- (b) that the said other person had committed the offence in question without his knowledge, consent, or connivance,

the said other person shall be summarily convicted of the offence, and the said seller shall be exempt from any penalty. The person so convicted shall, in the discretion of the court, be also liable to pay any costs incidental to the proceedings.

**25.** (1) When any person is convicted of any offence against section 6, 7, or 8, the court may, in addition to making any other order in respect of the offence, adjudge that any seeds or parcels of seeds to which the conviction relates be confiscated to the Crown, whereupon the same shall be absolutely confiscated to and become the property of the Crown.

Forfeiture of seeds.

(2) All seeds and parcels of seeds confiscated under this Act shall be disposed of as the Minister directs.

**26.** (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 to be prescribed for giving effect to the provisions and objects of this Act, and amongst others, the following things :—

Regulations.  
Cf. N.S.W. 15,  
1921, s. 15.

- (a) declaring plants to be noxious plants for the purposes of this Act :
- (b) prescribing the common names to be used on parcels to describe the agricultural seeds contained therein :
- (c) prescribing the maximum proportion of noxious seeds, or foreign seeds, or impurities that may be mixed with any agricultural seeds, unless the proportion of the noxious seeds, foreign seeds, or impurities contained in the seeds is clearly and legibly marked on the outside of the parcel containing the seeds, or on a label attached to the parcel, or is stated in an invoice given by the vendor to the purchaser :
- (d) prescribing the kinds of noxious seeds, foreign seeds, or impurities that may or may not be mixed with any agricultural seeds, unless the nature of the noxious seeds, foreign seeds, or impurities contained

in the seeds is clearly and legibly marked on the outside of the parcel containing the seeds, or on a label attached to the parcel, or is stated in an invoice given by the vendor to the purchaser :

- (e) prescribing the minimum proportion of any agricultural seeds which are sold that shall be germinable unless a lower proportion is clearly and legibly marked on the outside of the parcel containing the seeds, or on a label attached to the parcel, or is stated in an invoice given by the vendor to the purchaser :
- (f) prescribing the method of testing agricultural seeds for germination or for any other thing :
- (g) prohibiting, regulating, or controlling the importation into the State of any seeds or any other thing which may be likely to introduce into the State any diseased, insect-infested, or noxious seeds, or any noxious plant :
- (h) prescribing a period of incubation in respect of agricultural seeds of any kind and declaring to be hard seeds agricultural seeds which are capable of germination only after the period of incubation prescribed for that kind of agricultural seeds :
- (i) prescribing the treatment of imported agricultural seeds :
- (j) prescribing the method to be adopted by the buyer of any parcel of agricultural seeds in taking a sample of the contents of the parcel in order that he may obtain an analyst's analysis thereof :
- (k) prescribing the methods of analysis to be adopted by analysts in analysing samples of seeds submitted for analysis under this Act :
- (l) prescribing the fees to be paid for obtaining an analyst's analysis :
- (m) prescribing the forms to be used under this Act :
- (n) prescribing the manner in which the powers and duties of analysts and inspectors under this Act are to be exercised and discharged, and generally such things as may be necessary or convenient for enabling analysts and inspectors to exercise and discharge any such powers and duties, and to carry out the provisions and objects of this Act :

(o) prescribing the method and manner of marking for the purposes of this Act of parcels of agricultural seeds, or labels attached thereto, and of invoices given on the delivery thereof :

(p) authorising the Minister to prepare schemes for the purpose of testing and certifying the strain of any kind of agricultural seeds and the disease-resistant properties of agricultural seeds ; and for prohibiting the use of any of the words "certified", "certificated", "disease resistant", "disease immune", "wilt resistant", "wilt immune" or any word or words of the like import in any label, invoice, circular, or advertisement in relation to any agricultural seeds unless the agricultural seeds have been tested and certified pursuant to any such scheme or (subject to any conditions prescribed) by a Government department of any other part of His Majesty's Dominions under a seed certification scheme which is prescribed as satisfactory for the purposes of this Act :

(q) prescribing penalties for offences against any regulation, not exceeding in any case the sum of five pounds.

(2) Any regulation prescribing a proportion may prescribe the proportion by reference to weight, number, or volume, or by reference to any other matter, and any such proportion may be prescribed so as to vary according to the kind of seeds, the size of the parcel, the quantity or kind of impurities, or according to any other matter.

27. No analyst, inspector, or other officer shall be liable, except in respect of wilful misconduct or wilful 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.

28. Nothing contained in this Act, and no proceedings in respect of any offence against this Act against any person, shall in any way affect any right or remedy by civil process which any person aggrieved might have had if this Act had not been passed.

Saving of civil rights.

29. This Act shall be 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 provision hereof would but for this section be 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.

Construction.

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

W. DUGAN, Governor.