

This PUBLIC BILL originated in the LEGISLATIVE ASSEMBLY, and, having this day passed, is now ready for presentation to the LEGISLATIVE COUNCIL for its concurrence.

Clerk of the Legislative Assembly.

*Legislative Assembly Chamber,
Sydney, March, 1978.*

New South Wales



ANNO VICESIMO SEPTIMO

ELIZABETHÆ II REGINÆ

Act No. , 1978.

An Act to control the sale, supply, use and possession of pesticides; to provide for the prevention of certain food-stuffs containing prohibited residues from becoming available for consumption; to repeal the Pest Destroyers Act, 1945, and to amend the Consumer Protection Act, 1969.

Pesticides.

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

PART I.

PRELIMINARY.

1. This Act may be cited as the "Pesticides Act, 1978". Short title.

2. (1) This section and section 1 shall commence on the date of assent to this Act. **Commence-
ment.**

10 (2) Except as provided in subsections (1), (3) and (4), this Act shall commence on such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

15 (3) Sections 4, 25, 29, 36, 38, 40 and 78 shall commence on such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette, being a day that is not earlier than 6 months after the day appointed and notified under subsection (2).

20 (4) Sections 30–32 shall commence on such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette, being a day that is not earlier than 12 months after the day appointed and notified under subsection (2).

25 3. This Act is divided as follows :—

**Division
of Act.**

PART I.—PRELIMINARY—ss. 1–6.

PART II.—ADMINISTRATION—s. 7.

Pesticides.

PART III.—REGISTRATION AND APPROVALS—ss. 8–22.

PART IV.—PERMITS—ss. 23–25.

PART V.—PESTICIDE ORDERS—ss. 26–28.

5 PART VI.—CONTROL OF PESTICIDES—ss. 29–49.

DIVISION 1.—*Control Generally*—ss. 29–40.

DIVISION 2.—*Date-controlled Pesticides*—ss. 41–44.

DIVISION 3.—*Restricted Pesticides*—ss. 45–49.

10 PART VII.—PROHIBITED RESIDUES IN FOODSTUFFS—ss. 50–52.

PART VIII.—SUPPLEMENTARY—ss. 53–78.

DIVISION 1.—*Inspectors' Powers, etc.*—ss. 53–56.

DIVISION 2.—*Appeals against Orders, etc.*—ss. 57, 58.

15 DIVISION 3.—*Prosecutions*—ss. 59–63.

DIVISION 4.—*Miscellaneous*—ss. 64–78.

4. The Pest Destroyers Act, 1945, is repealed.

Repeal of
Act No. 10,
1945.

5. (1) In this Act, except in so far as the context or Interpretation.
subject-matter otherwise indicates or requires—

20 “analyst” means an analyst appointed or employed under
section 7;

“animal” includes a bird;

Pesticides.

“approved container”, in relation to a pesticide, means a container that complies with a specification approved by the Registrar under section 13 for a class of containers for that pesticide;

5 “certificate of competency” means a certificate under section 47;

“container” includes any receptacle and any covering;

“court of petty sessions” means a court of petty sessions constituted by a stipendiary magistrate;

10 “date-controlled pesticide” means a pesticide prescribed as a date-controlled pesticide for the purposes of this Act;

15 “date of manufacture”, in relation to a pesticide, means the date on which manufacture of the pesticide is completed;

“director” has the meaning ascribed thereto by section 5 of the Companies Act, 1961;

20 “distinctive name”, in relation to a registered pesticide, means a distinctive name contained in the statement accompanying an application for registration of the pesticide pursuant to section 9 (b) or, where any such distinctive name has, before registration of the pesticide, been amended by the Registrar with the consent of the applicant, a distinctive name as so
25 amended;

“inspector” means an inspector appointed or employed under section 7 or, except in section 50, the Registrar;

30 “instruction” includes direction, caution and recommendation;

Pesticides.

"label" includes a tag;

"metabolite" in relation to a pesticide, includes any substance resulting from the breakdown, conversion or reaction of the pesticide;

5 "permit" means a permit under section 23;

"pest" includes any vermin or other troublesome or destructive form of animal life;

10 "pesticide" means any substance or organism that is manufactured, represented, sold or used as a means for directly or indirectly—

(a) destroying, stupefying, repelling, inhibiting the feeding of, or preventing infestation by or attacks of, any pest;

15 (b) attracting any pest for the purpose of its destruction;

(c) destroying vegetation or altering its natural development, productivity, quality or reproductive capacity; or

20 (d) destroying or rendering ineffective, or regulating the effect of, a fungus or any other parasitic vegetation, bacteria or a virus on or in—

(i) any substance other than a manufactured food or beverage; or

25 (ii) any form of life except where it is in livestock or on or in man,

30 and any substance or organism specified or described and declared to be a pesticide in an order published under subsection (7), but does not include—

(e) a substance or organism that is represented as being for use and is used for internal administration to animals; or

Pesticides.

(f) (notwithstanding paragraph (c)) a substance that is represented as being for use and is used—

(i) solely as a fertilizer; or

(ii) as a means for remedying or assisting to remedy any imbalance in soil or any other matter in which vegetation is grown;

“pesticide residue”, in relation to a prescribed foodstuff, means any substance or organism (including a pesticide or any metabolite of a pesticide) that is present in or on the foodstuff as a result of use of a pesticide or contact between a pesticide and the foodstuff or any part thereof;

“prescribed foodstuff” means—

(a) any—

(i) vegetation; or

(ii) prescribed produce,

of a prescribed class of vegetation; or

(b) prescribed produce of any living animal of a prescribed class of animals,

that is, or may become, capable of being used as food for any form of life, but does not include any prescribed produce of a prescribed class of vegetation that is the result of a manufacturing process;

“registered label”, in relation to a container, means a label registered under section 13 for the class of containers to which the container belongs;

“registered pesticide” means a pesticide registered under section 13;

Pesticides.

“Registrar” means the person appointed under section 7 to hold office as Registrar of Pesticides or any person acting in that office for the time being;

“regulations” means regulations under this Act;

5 “restricted pesticide” means a pesticide prescribed as a restricted pesticide for the purposes of this Act;

“sell” includes—

- (a) auction or exchange;
- (b) offer, expose, supply or receive for sale;
- 10 (c) send, forward or deliver for sale or on sale;
- (d) dispose of under a hire-purchase agreement;
- (e) cause, permit or suffer the doing of an act referred to in paragraph (a), (b), (c) or (d);
- 15 (f) offer or attempt to do an act so referred to; or
- (g) have in possession for sale;

“substance” includes any gas, any liquid, any gas mixture and any liquid mixture;

20 “vegetation” means anything that is a form or part of a form of vegetable life.

(2) For the purposes of this Act, words written upon a container shall be deemed to have been written upon a label affixed to the container and a reference to affixing a label to a
25 container includes a reference to writing upon the container.

Pesticides.

(3) For the purposes of this Act, a prescribed foodstuff contains a prohibited residue when—

5 (a) a concentration of a prescribed substance in excess of the maximum permissible concentration of that substance—

(i) prescribed in respect of the foodstuff is present in or on the foodstuff; or

10 (ii) prescribed in respect of a prescribed part of the foodstuff is present in or on that prescribed part of the foodstuff; or

15 (b) any concentration of a pesticide residue is present in or on the whole or any part of the foodstuff and a maximum permissible concentration for that pesticide residue has not been prescribed in respect of the whole or any part of the foodstuff.

(4) If the regulations prescribe the method by which the concentration of any prescribed substance or pesticide residue shall be ascertained, the concentration of the prescribed substance or pesticide residue shall, for the purposes
20 of this Act, be the concentration ascertained by the use of that method.

(5) For the purposes of this Act, where the quantity of a foodstuff is to be specified, described or prescribed, it may be specified, described or prescribed by reference to its
25 weight or volume, any container in which it is situated or the area of the place where it is situated

(6) For the purposes of section 27 (I) of the Interpretation Act, 1897, a notice served by post on a person under this Act is properly addressed if it is addressed to the
30 last address of the person known to the Registrar.

Pesticides.

(7) The Minister may, by an order made under his hand and published in the Gazette, declare a substance or organism specified or described in the order in such circumstances, if any, as are specified in the order to be, or not to be, a pesticide within the meaning of this Act.

6. (1) Except as provided by subsection (2), where, by or under any other Act, any provision is made relating to pesticides, the provision so made shall be observed in addition to the provisions of this Act and the regulations, but no person is, by virtue of this subsection, liable to be punished twice for the same offence.

Relation-
ship to
other laws.

(2) Where, by or under any other Act, any provision is made relating to pesticides that is inconsistent with a provision of this Act or a regulation, the provision of this Act or the regulation shall prevail.

PART II.

ADMINISTRATION.

7. (1) For the purposes of this Act—

Appoint-
ments.

- (a) a Registrar of Pesticides;
- 20 (b) inspectors of pesticides;
- (c) analysts of pesticides; and
- (d) such other officers and employees as may be necessary for the administration of this Act,

may be appointed and employed under and subject to the Public Service Act, 1902.

Pesticides.

- (2) The Minister may—
- (a) appoint and employ analysts of pesticides; and
 - (b) determine the remuneration of an analyst so appointed and employed.
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PART III.

REGISTRATION AND APPROVALS.

8. (1) Subject to subsection (2) and sections 9 to 11, **Applica-**
a person may apply to the Registrar—**tions**
generally.

- (a) for the registration of—
- 10 (i) a pesticide; or
- (ii) a label for a class of containers for a
 pesticide; or
- (b) for approval of a specification for a class of
containers for a pesticide.

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(2) An application made under this section shall—

- (a) be in or to the effect of the form prescribed in
respect of the application;
- (b) be accompanied by the fee prescribed in respect
of the application; and
- 20 (c) be lodged at the office of the Registrar.

(3) The Registrar may, with the consent of the
applicant, amend an application that has been lodged under
subsection (2) (c).

Pesticides.

(4) A person shall not, in connection with an application under this section—

(a) make a statement; or

(b) furnish information,

5 that he knows to be false or misleading in a material particular.

Penalty for an offence against this subsection: \$500.

9. An application under section 8 (1) (a) (i) for the registration of a pesticide shall be accompanied by—

- 10 (a) the name and address of the applicant and of any manufacturer of the pesticide and of its ingredients, known to the applicant;
- (b) a statement of the distinctive name the applicant intends to use to describe the pesticide;
- 15 (c) where the pesticide is a substance—the formulation of the substance and particulars of the purity of its ingredients;
- (d) where the pesticide is an organism—particulars of the organism;
- 20 (e) full particulars, including results, of any tests or other evaluations of the pesticide that have been conducted by, or are available to, the applicant;
- (f) details of any other application that is being, or has been, made to register the pesticide in New South Wales or any other State; and
- 25 (g) such other particulars as are required by the regulations to accompany the application.

10. An application under section 8 (1) (a) (ii) for the registration of a label shall be accompanied by—

- 30 (a) the name and address of the applicant;

Application for registration of a pesticide.

Application for registration of a label.

Pesticides.

- (b) particulars of the class of containers for which the applicant desires the label to be registered;
- 5 (c) particulars of the pesticide to which the matter on the label predominantly relates, including the distinctive name the applicant intends to be used, or uses, to describe the pesticide;
- (d) the prescribed number of samples of the label in such form or forms as the Registrar may reasonably require;
- 10 (e) particulars of the method or methods by which the label is to be borne by the containers referred to in paragraph (b) and, if required by the Registrar, a sample of any adhesive or other substance or any device intended to be used in connection with the method or methods; and
- 15 (f) such other particulars as are required by the regulations to accompany the application.

11. An application under section 8 (1) (b) for the approval of a specification for a class of containers for a pesticide shall be accompanied by— Application for approval of a container.

- (a) the name and address of the applicant;
- (b) a description of the pesticide including the distinctive name the applicant intends to be used, or uses, to describe the pesticide;
- 25 (c) a copy of the specification, unless the specification is described in the application wholly by reference to a prescribed specification and the Registrar is satisfied that the application contains a sufficient description of the specification;
- 30 (d) if the Registrar so requires in any particular case or class of cases, a number of samples (specified by the Registrar) of containers of the class to which the specification relates;

Pesticides.

- (e) particulars of the label the applicant intends to be registered for containers of the class to which the specification relates; and
- (f) such other particulars as are required by the regulations to accompany the application.

12. (1) If, in the opinion of the Registrar, information supplied in connection with an application under section 8 is inadequate for him to decide whether he should register a pesticide or a label, or approve a specification, he may, by notice in writing served by post on the applicant, require the applicant to furnish him with—

- (a) information relating to the pesticide, label or specification of a nature described in the notice; or
- (b) in the case of an application for the registration of a pesticide or for the approval of a specification, a reasonable quantity of the pesticide as a sample for testing purposes,

by a date specified in the notice.

(2) If an applicant fails to comply with the requirements of a notice served on him under subsection (1) or in purported compliance with a notice so served provides information that, in the opinion of the Registrar, is inadequate, the Registrar may refuse to grant his application.

13. (1) Subject to subsection (8) and section 14, the Registrar, after receipt of an application for registration of a pesticide under section 8 (1) (a) (i), may register the pesticide.

Registration
and
approvals.

(2) The Registrar registers a pesticide by—

- (a) filing particulars of the formulation or a description of the pesticide; and
- (b) allocating the pesticide a registered number.

Pesticides.

(3) If an application is lodged under section 8 (1) (a) (i) for the registration of a pesticide that is a registered pesticide at the time the application is lodged, the Registrar may allocate the registered pesticide a further registered number.

(4) Subject to subsection (8) and section 15, the Registrar, after receipt of an application for registration of a label for a class of containers under section 8 (1) (a) (ii), may register the label.

10 (5) The Registrar registers a label by allocating the label a registered number.

(6) Subject to subsection (8) and section 16, the Registrar, after receipt of an application for approval of a specification for a class of containers for a pesticide under 15 section 8 (1) (b), may approve the specification.

(7) The Registrar approves a specification by—

(a) filing a description of the specification and the pesticide in respect of which the specification is approved; and

20 (b) allocating his approval a distinguishing number.

(8) The Registrar shall not—

(a) register a pesticide unless he also approves a specification for a class of containers for the pesticide;

25 (b) approve a specification for a class of containers for a pesticide unless he also registers a label for containers of the class to which the specification relates; or

30 (c) where a person applies for registration of a label for a class of containers for a pesticide—register the label unless that person has at some time lodged

Pesticides.

an application for registration of that pesticide in accordance with section 8 (2) and, in response to that application, a registered number has been allocated to the pesticide under section 13.

5 **14.** The Registrar shall not register a pesticide in response to an application under section 8 if—

Registration
of certain
pesticides
prohibited.

- 10 (a) the pesticide or any constituent of the pesticide does not conform to any standard or other requirement prescribed in respect of the pesticide or constituent, as the case may be;
- 15 (b) registration of the pesticide is prohibited by the regulations;
- (c) in the opinion of the Registrar, use of the pesticide would be ineffective for the purpose for which the applicant intends it to be used;
- (d) the applicant has not, to the satisfaction of the Registrar, shown that there are adequate analytical procedures available—
- 20 (i) for analysing the constituents of the pesticide; or
- (ii) for detecting residues of the constituents of the pesticide or any of its metabolites;
- (e) in the opinion of the Registrar, the pesticide is not sufficiently stable to be registered; or
- 25 (f) the applicant has not, to the satisfaction of the Registrar, shown that the pesticide is, with the exercise of no more than reasonable care by a person keeping, using or disposing of it, capable of being kept, used or disposed of without unintended

Pesticides.

harm being caused, either at the time at which it is being kept, used or disposed of or at a later time, by the pesticide, residues of its constituents or any of its metabolites.

5 **15.** The Registrar shall not register a label for a class of containers if—

Registration
of certain
labels
prohibited.

(a) any matter on the label—

(i) is not in the prescribed form or does not appear in the prescribed sequence; or

10 (ii) is, in the opinion of the Registrar, inadequate, false, misleading or confusing;

15 (b) the label does not bear matter of a nature required to be borne by it by the regulations or does not comply with any other requirement of the regulations;

20 (c) the label bears anything that, if it were borne by a label on a container of the pesticide to which the matter on the label predominantly relates, would result in a contravention of this Act or the regulations;

(d) the label does not bear the distinctive name contained in the particulars accompanying the application for registration of the label pursuant to section 10 (c); or

25 (e) the distinctive name required to be borne by the label by reason of paragraph (d)—

30 (i) is not, in the opinion of the Registrar, sufficiently different from any other name that appears on a registered label for an approved container for another registered pesticide;

Pesticides.

- (ii) does not describe the usage for which the pesticide is intended;
- (iii) is, in the opinion of the Minister, offensive; or
- 5 (iv) is not displayed in a manner that, in the opinion of the Registrar, permits rapid identification of the pesticide to which the matter on the label predominantly relates

16. The Registrar shall not approve a specification for a class of containers for a pesticide if—

Approval
of
certain
containers
prohibited.

- 15 (a) a standard or specification has been prescribed in respect of the class of containers of which it is a member and it does not conform to the standard or specification to the extent that the regulations require;
- (b) containers complying with the specification would not comply with any other requirement of the regulations or use of the container for the pesticide is prohibited by the regulations; or
- 20 (c) he has not been satisfied by the applicant for approval of the specification that use of containers of the class to which the specification relates for the pesticide, with the exercise of no more than reasonable care, would be sufficiently safe to avoid
- 25 unintended harm that may be caused by the pesticide.

17. (1) When he allocates a pesticide a registered number in response to an application for registration of the pesticide, the Registrar shall forthwith cause to be served by post on the applicant a notice—

Notifica-
tion of
registra-
tion or
approval.

- (a) specifying the formulation of or describing the pesticide; and

Pesticides.

(b) stating—

(i) the distinctive name contained in the statement accompanying the application for registration of the pesticide pursuant to section 9 (b) or, where that name has been amended by the Registrar with the consent of the applicant, the distinctive name as so amended;

(ii) that the pesticide is registered; and

(iii) the registered number and the date on which the number was allocated.

(2) When he registers a label for a class of containers, the Registrar shall forthwith cause to be served by post on the applicant for registration of the label—

(a) a sample of the registered label, if a sample of the label has not previously been forwarded to the applicant; and

(b) a notice—

(i) specifying or describing the class of containers for which, and the pesticide in respect of which, the label was registered; and

(ii) stating the registered number of the label and the date on which the label was registered.

(3) When he approves a specification for a class of containers for a pesticide, the Registrar shall—

(a) forthwith cause to be served by post on the applicant for approval of the specification a notice—

(i) describing the specification that has been approved and the pesticide in respect of which it has been approved; and

Pesticides.

- (ii) stating the distinguishing number of the approval and the date on which the specification was approved; and
- 5 (b) if the applicant has paid the expense relating thereto, forward a sample of the containers to which the specification relates to the applicant.

(4) A specification may be described by reference to a prescribed specification relating to a class of containers in a notice served under subsection (3) (a).

10 **18.** (1) If he registers a pesticide, the Registrar shall Duties
of
Registrar.
cause a record of—

- (a) the registered number or, if there is more than one, the registered numbers of the pesticide;
- 15 (b) the distinctive name or, if there is more than one, the distinctive names for the pesticide;
- (c) the formulation or a description of the pesticide;
- (d) the distinguishing numbers of the approvals of any specifications approved under section 13 for classes of containers for the pesticide; and
- 20 (e) the registered numbers of registered labels for the classes of containers referred to in paragraph (d),
to be kept at his office while the pesticide remains registered.

(2) If he registers a label for a class of containers, the Registrar shall—

- 25 (a) cause—
- (i) a sample of the label identified by its registered number; and

Pesticides.

- (ii) a record of the distinguishing number of the approval of the specification for the class of containers in respect of which the label was registered,
- 5 to be kept at his office while the label remains registered; and
- (b) permit any person to inspect the sample referred to in paragraph (a) (i) or a copy thereof.
- (3) If he approves a specification for a class of containers, the Registrar shall—
- 10 (a) cause a record—
- (i) describing the specification by reference to a prescribed specification or otherwise; and
- (ii) identified by the distinguishing number of the approval of the specification,
- 15 to be kept at his office while the specification remains an approved specification; and
- (b) permit any person to inspect the record referred to in paragraph (a) (i).
- 20 **19. When—**
- (a) information about a pesticide comes to the knowledge of a person who—
- 25 (i) is an applicant for registration of the pesticide or for a permit in respect of the pesticide; or
- (ii) has been served with a notice under section 17 (1) in relation to the pesticide or has been issued with a permit in respect of the pesticide,

Applicants
to supply
certain
later in-
formation.

Pesticides.

not being information that has come to his knowledge after the application has been refused or withdrawn, registration of the pesticide has been cancelled or the permit has ceased to be in force; and

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(b) the information contradicts or modifies any information supplied by him in connection with an application made by him to the Registrar for—

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(i) registration of the pesticide or registration of a label for a class of containers for the pesticide;

(ii) approval of a specification for a class of containers for the pesticide; or

(iii) the issue of the permit,

15 he shall forthwith supply the Registrar with particulars of the firstmentioned information.

Penalty: \$500 or, for an offence by a corporation, \$2,000.

20 **20.** (1) When information about a registered pesticide, a registered label or an approved container for a pesticide comes to the knowledge of the Registrar and he is of the opinion that, if the information had been received at the time when an application for registration of the pesticide or label or for approval of the specification for the class of containers of which the approved container is a member, as the case may be, was made, he would have refused the application, he shall 25 cancel the registration of the pesticide or label or his approval of the specification, as the case may require.

Cancellation of registration or approval.

(2) The Registrar cancels—

(a) registration of—

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(i) a pesticide; or

(ii) a label for approved containers for a pesticide; or

Pesticides.

- (b) approval of a specification for a class of containers for a pesticide,

by entering a note to the effect that registration of the pesticide or label or approval of the specification is cancelled in the records required to be kept by him in relation to the pesticide, label or specification under section 18.

(3) When the Registrar cancels—

- 10 (a) the registration of a pesticide, he shall cancel the registration of any registered label for approved containers for the pesticide and his approval of any specification approved for a class of containers for the pesticide;
- 15 (b) the registration of the only registered label for approved containers for a pesticide, he shall cancel his approval of any specification for a class of containers that has been approved for the pesticide; or
- 20 (c) his approval of the only specification approved for containers for a pesticide, he shall cancel registration of the pesticide.

(4) When the Registrar cancels—

- (a) registration of a pesticide—the pesticide ceases to be a registered pesticide;
- 25 (b) registration of a label for approved containers for a pesticide—the label ceases to be a registered label for those containers; or
- (c) approval of a specification for a class of containers of a pesticide—the containers cease to be approved containers for the pesticide.

Pesticides.

(5) Forthwith after he has cancelled—

- (a) registration of a pesticide or of a label for approved containers for a pesticide; or
- (b) approval of a specification for a class of containers for a pesticide,

the Registrar shall serve notice of the cancellation on—

- (c) any person who was an applicant for registration of the pesticide or label or for approval of the specification; and
- (d) any other person who, in the opinion of the Registrar, should be given notice of the cancellation.

21. (1) When the Registrar cancels registration of a pesticide under section 20, he shall forthwith cause to be published in the Gazette and on at least 3 consecutive days in each of 2 consecutive weeks in at least 3 prescribed newspapers a notification—

- (a) describing the pesticide;
- (b) stating that the pesticide is no longer a registered pesticide; and
- (c) containing—
 - (i) instructions for disposal of the pesticide that have been approved by the Minister;
 - (ii) a warning of the effect of a person's failure to comply with those instructions; and
 - (iii) any other warnings in relation to the pesticide that the Registrar may think fit.

Pesticides.

(2) Where a notification is published under subsection (1) and a person disposes of the pesticide to which the notification relates in the manner specified in the notification, he shall be deemed to have been issued with a permit
5 under section 23 to dispose of the pesticide in accordance with those instructions.

(3) Where a person who has a pesticide in his possession or custody has notice of a notification published under subsection (1) that relates to the pesticide, he shall
10 not dispose of the pesticide otherwise than in accordance with the instructions contained in the notification unless he satisfies the court that the pesticide was a registered pesticide at the time when he disposed of it because of its having been registered again after its registration had been cancelled.

15 Penalty: \$500 or, for an offence by a corporation, \$2,000.

(4) Where the Registrar publishes a notification under subsection (1), he shall—

(a) forthwith cause a copy of the notification to be served by post on any person who, according to
20 his records, was an applicant for registration of a label for an approved container for the pesticide to which the notification relates; and

(b) whenever he thinks fit, cause a copy of the notification to be served by post on any person who, in the
25 opinion of the Registrar, should be given notice of the cancellation of registration of the pesticide and the instructions and warning referred to in the notification.

22. (1) In respect of a registered pesticide there shall
30 be paid to the Registrar before the expiration of the prescribed period (being not less than 3 years) commencing on the prescribed day and again paid before the expiration of each consecutive succeeding prescribed period a fee of \$100.

Fee to
be paid.

Pesticides.

(2) A person shall not sell a pesticide if he has notice that the fee payable under subsection (1) in respect of the pesticide has not been paid.

Penalty : \$500 or, for an offence by a corporation, \$2,000.

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PART IV.

PERMITS.

23. (1) Subject to subsections (2) and (3), the Registrar may issue a permit to do or omit to do any one or more things the doing of which or the omission to do which would, but for the issue of the permit and the operation of section 25, constitute an offence under section 29, 30, 31, 32, 33, 34, 35, 38, 39, 42 or 43. Issue of permits.

(2) The Registrar shall not issue a permit under this section unless—

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(a) it specifies or describes—

(i) the person to whom it is issued;

(ii) the pesticide or class of pesticides in respect of which it is issued; and

(iii) the purpose for which it is issued; and

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(b) the fee (if any) prescribed in respect of the permit has been paid.

(3) The Registrar shall issue a permit to sell a pesticide that is not a registered pesticide only if the applicant for the permit satisfies the Registrar that there are reasonable grounds for the pesticide not being registered.

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Pesticides.

24. (1) The Registrar may, from time to time, upon ^{Permits} payment of the prescribed fee (if any) renew or transfer a ^{generally.} permit.

(2) The Registrar shall refuse to issue, renew or
5 transfer a permit in any case in which he thinks that—

(a) the interest of public safety or the safety of any individual; or

(b) the protection of the environment from unintended harm that might be caused by the pesticide,

10 so requires.

(3) A permit is subject to—

(a) any term or condition prescribed for all permits or for a class of permits to which it belongs; and

15 (b) any term or condition that the Registrar thinks fit to impose and that is specified in the permit.

(4) Unless it is sooner cancelled by the Registrar under section 70 (3) or (4), a permit is in force for the period or periods specified in the permit or, where the permit has been renewed, in the current notice of renewal, being a
20 period or periods expiring not later than one year after the date of issue of the permit or, where the permit has been renewed, not later than one year after the date of issue of the current notice of renewal.

25. While a permit issued under section 23 is in force— ^{Effect of} permit.

25 (a) the person to whom the permit was issued or, where the permit has been transferred, the person to whom it was last transferred;

(b) any employee of that person acting in the course of his employment by that person; and

Pesticides.

- (c) if that person is a corporation—any person acting in his capacity as a director of the corporation, are each authorised, subject to compliance with the terms and conditions to which the permit is subject—
- 5 (d) to do or omit to do any thing in relation to a pesticide or class of pesticides that the permit specifies may be done or omitted to be done in relation to that pesticide or class of pesticides; and
- 10 (e) to have the pesticide in his possession or custody except—
- (i) to the extent (if any) to which the terms and conditions of the permit otherwise provide; or
- 15 (ii) where the only purpose of the permit is to authorise the making of a claim referred to in section 35.

PART V.

PESTICIDE ORDERS.

26. In this Part, "pesticide order" means an order made ^{Interpre-}
20 under section 27 (1). ^{tation.}

27. (1) Subject to subsections (2) and (3), the Registrar may, with the consent of the Minister, make an order ^{Pesticide}
authorising (subject to the conditions, if any, specified in ^{orders.}
the order) all persons or members of a class of persons speci-
25 fied in the order to do or omit to do, during the period
specified in the order, any one or more of the things for the

Pesticides.

doing of which, or the omission to do which, a permit may be issued under section 23 except to sell a pesticide otherwise than in accordance with section 29 (2) (b).

(2) The Registrar shall not make a pesticide order in respect of an unregistered pesticide unless he is satisfied that failure to make the order would result in substantial detriment being caused to—

(a) the public or a section of the public by damage to the environment or primary produce; or

10 (b) the health of the public or a section of the public.

(3) A pesticide order is in force for the period specified in it under subsection (1) unless it is sooner revoked by a further order made by the Registrar with the consent of the Minister which further order the Registrar is hereby authorised
15 to make.

(4) When the Registrar makes an order under this section he shall forthwith cause the order to be published in the Gazette and in such newspapers and other publications as he thinks fit.

20 **28.** When a pesticide order is in force and a person does or omits to do (in accordance with the conditions, if any, specified in the order) anything he is authorised by the order to do or omit to do, he shall be deemed to have been issued with a permit under section 23 to do or omit to do that thing. Effect of orders.

Pesticides.

PART VI.

CONTROL OF PESTICIDES.

DIVISION 1.—*Control Generally.*

29. (1) A person shall not sell an unregistered pesticide Sale of pesticides.
5 unless the sale is, pursuant to a permit, authorised by section 25.

Penalty: \$500 or, for an offence by a corporation, \$2,000.

(2) A person shall not sell a pesticide in a container—

- 10 (a) that is not an approved container for the pesticide;
(b) that does not bear a label; or
(c) that does not bear a label that is identical to a registered label for an approved container for the pesticide,

15 unless the sale is, pursuant to a permit, authorised by section 25.

Penalty: \$500 or, for an offence by a corporation, \$2,000.

(3) A person shall not be convicted of an offence under this section and section 30 (1) in respect of any one
20 transaction involving the sale and supply of a pesticide.

30. (1) A person shall not supply an unregistered pesticide unless— Supply and possession of pesticides.

- (a) the supply was, pursuant to a permit, authorised by section 25; or
25 (b) the pesticide supplied was prepared from a registered pesticide otherwise than in contravention of section 32.

Pesticides.

(2) A person shall not have in his possession or custody a pesticide to which a notification under section 21 relates if he has notice of the notification unless—

- 5 (a) having regard to the terms of the notification, the possession or custody is reasonably necessary in order to dispose of the pesticide in accordance with the notification; or
- (b) the possession or custody is, pursuant to a permit, authorised by section 25.

10 (3) A person shall not have an unregistered pesticide (not being a pesticide referred to in subsection (2)) in his possession or custody unless—

- (a) the possession or custody is, pursuant to a permit, authorised by section 25; or
- 15 (b) the pesticide was prepared from a registered pesticide otherwise than in contravention of section 32.

Penalty: \$500 or, for an offence by a corporation, \$2,000.

31. Except to the extent that, pursuant to a permit, he is otherwise authorised by section 25, a person shall not— Use, etc., of unregistered pesticide.

- (a) prepare an unregistered pesticide for use;
- (b) use an unregistered pesticide unless it is a pesticide prepared from a registered pesticide otherwise than in contravention of section 32; or
- 25 (c) dispose of a pesticide otherwise than as required or authorised by this Act.

Penalty: \$500 or, for an offence by a corporation, \$2,000.

Pesticides.

32. A person shall not, before preparing for use, using, Preparation, use, etc., of certain pesticides. keeping or disposing of—

(a) a registered pesticide; or

(b) a pesticide that contains a registered pesticide,

5 fail to read, or to have read to him, the instructions contained on any label that is identical to a registered label for an approved container for the pesticide and was, at the time he acquired the pesticide, affixed to its container.

Penalty : \$500 or, for an offence by a corporation, \$2,000.

10 33. (1) Except to the extent that he is otherwise Disregard of instructions. required by an order made under section 21 or, pursuant to a permit, he is otherwise authorised by section 25, a person shall not, in preparing for use, using, keeping or disposing of—

15 (a) a registered pesticide; or

(b) a pesticide that contains a registered pesticide,

willfully or carelessly disregard any instruction on any label affixed to a container in which—

(c) the pesticide is situated;

20 (d) he acquired the pesticide; or

(e) he knows or has reasonable cause to suspect the pesticide to have been,

if there is a registered label for an approved container for the pesticide that contains that instruction.

25 Penalty : \$500 or, for an offence by a corporation, \$2,000.

(2) It is a defence to a prosecution for a contravention of subsection (1) if the court is satisfied that the instruction disregarded was not directed to the avoidance of harm to the health or property of any person.

Pesticides.

34. Except to the extent that, pursuant to a permit, he is otherwise authorised by section 25, a person shall not, in respect of—

Claims inconsistent with labels.

(a) a registered pesticide; or

5 (b) a pesticide that contains a registered pesticide, make any claim that is inconsistent with any of the instructions for preparation, use or disposal on any registered label for an approved container for the registered pesticide.

Penalty : \$500 or, for an offence by a corporation, \$2,000.

10 35. (1) Except to the extent that, pursuant to a permit, he is otherwise authorised by section 25, a person shall not, in respect of a pesticide, make any claim that is inconsistent with any matter required to be borne by a container of the pesticide by or under section 42 (1) (b).

Modification of warning prohibited.

15 Penalty : \$500 or, for an offence by a corporation, \$2,000.

(2) In this section and section 34, "claim" does not include a claim made in a notification published under section 21 or an order under section 27.

20 36. Where a container of a pesticide bears any matter identical to any matter contained on a registered label—

Labels not to be detached, etc.

(a) for an approved container for the pesticide; or

(b) for an approved container for a registered pesticide contained in the firstmentioned pesticide,

a person shall not—

25 (c) detach the firstmentioned matter;

(d) alter, deface, obliterate or destroy the firstmentioned matter; or

Pesticides.

(e) affix to the firstmentioned container any label or endorse anything upon the container that in either case has the effect of negating or varying the matter so borne,

5 except where he alters, defaces, obliterates or destroys the matter, as the case may be, when he destroys or (otherwise than by sale or supply) disposes of the pesticide without contravening this Act (paragraph (d) excepted) or the regulations.

10 Penalty : \$500 or, for an offence by a corporation, \$2,000.

37. A person shall not wilfully and without reasonable cause do anything likely to cause— Offence to cause risk.

(a) a risk of injury by a pesticide, to himself or another;
or

15 (b) damage by a pesticide, to the property of another.

Penalty : \$500 or, for an offence by a corporation, \$2,000.

38. Except to the extent that, pursuant to a permit, he is otherwise authorised by section 25, a person shall not sell— Pesticide to conform to standard.

(a) a pesticide; or

20 (b) a pesticide containing a constituent,

that is prescribed for the purposes of this section unless the pesticide or constituent, as the case may be, conforms to any standard prescribed in respect of it.

Penalty : \$500 or, for an offence by a corporation, \$2,000.

Pesticides.

39. (1) A person shall not—Certain
statements
prohibited.

(a) disseminate any false or misleading information about a pesticide;

5 (b) by reference to this Act or the regulations, or in any other manner, comment upon or explain any matter in a registered label for an approved container for a pesticide if that matter is thereby expressly or impliedly contradicted or qualified; or

(c) expressly or impliedly claim—

10 (i) that a pesticide is approved or (except in giving or relying on a guarantee under section 40) guaranteed under this Act or the regulations;

15 (ii) that a pesticide is approved or recommended by the Government, a Department of the Government, a governmental authority or an officer or employee of such a Department or authority;

20 (iii) without any qualification, or with a qualification that is, in the opinion of the Registrar, unjustified, that a pesticide is safe, harmless, non-toxic, non-poisonous or non-injurious; or

25 (iv) that a pesticide has qualities prescribed for the purposes of this subparagraph.

Penalty: \$500 or, for an offence by a corporation, \$2,000.

(2) Subsection (1) (c) (ii) does not apply—

30 (a) to an officer or employee of the Crown or of a governmental authority when, in the course of his employment by the Crown or authority; or

(b) to a prescribed person or a person of a prescribed class when, in prescribed circumstances,

he expressly or impliedly claims that a pesticide is recommended.

Pesticides.

40. (1) Subject to this section, an information for a contravention of section 29, 30 (1) or (3), 31 (a) or (b) or 38 shall be dismissed if it is proved that the defendant received a prescribed guarantee in respect of the pesticide to which the information relates from the person from whom he obtained the pesticide and it is also proved—

Guarantee
to be a
defence
in
certain
circum-
stances.
cf. Act No.
31, 1908,
s. 47.

10 (a) in the case of a contravention of section 29 (1), 30 (1) or (3) or 31 (a) or (b)—that the defendant had no reason to believe that, at the time of the contravention, the pesticide was an unregistered pesticide;

(b) in the case of a contravention of section 29 (2)—

15 (i) that, at the time of the contravention, the defendant had no reason to believe that the container in which he obtained the pesticide from the guarantor was not an approved container for the pesticide and no reason to believe that the container was not bearing a label identical to the registered label for that container;

20 (ii) that the pesticide was sold by the defendant in the container in which he obtained the pesticide from the guarantor; and

25 (iii) that the container in which the pesticide was sold by the defendant bore the same label as when he obtained the pesticide from the guarantor; or

30 (c) in the case of a contravention of section 38—that the defendant had no reason to believe that, at the time of the contravention, the pesticide and its constituents did not conform to all standards prescribed in respect of them for the purposes of that section.

Pesticides.

(2) For the purposes of subsection (1), a guarantee is a prescribed guarantee in respect of a pesticide if—

(a) the guarantee is in writing;

(b) the matters guaranteed are—

5 (i) that the pesticide is a registered pesticide;

(ii) that the container in which the pesticide is supplied by the guarantor is an approved container for the pesticide;

10 (iii) that the label affixed to the container so supplied is identical to a registered label for the container; and

15 (iv) that, when the guarantee is supplied to the defendant, the pesticide and each of its constituents comply with any standard prescribed for the pesticide or constituent;

(c) the guarantor is—

(i) a person resident in the State;

(ii) a company incorporated under the Companies Act, 1961; or

20 (iii) within the meaning of the Companies Act, 1961, a recognised company or a foreign company, being such a company that has a place of business within the State or carries on business in the State;

25 (d) the guarantee specifies the name of the guarantor and—

(i) in the case of a guarantor who is resident within the State—the address of the guarantor and of his place of business;

Pesticides.

- (ii) in the case of a guarantor that is a company incorporated under the Companies Act, 1961—the address of the registered office of the guarantor;
- 5 (iii) in the case of a guarantor that is a recognised company—the address of the principal office of the guarantor referred to in section 343c of the Companies Act, 1961; or
- 10 (iv) in the case of a guarantor that is a foreign company—the address of the registered office of the guarantor in the State;
- (e) the guarantee applies—

 - 15 (i) generally to the pesticide to which the prosecution relates or to pesticides of a class that includes the pesticide to which the prosecution relates; or
 - (ii) to the specific pesticide to which the prosecution relates,
- 20 and, in the latter case, refers to a sale note, bill of sale, invoice, bill of lading or other document describing the goods sold or supplied and the weight, measure or number thereof; and
- 25 (f) the guarantee complies with any regulations applicable to it.
- (3) Subsection (1) does not apply unless the defendant has, not later than 7 days after service on him of the summons issued in response to the information—
- 30 (a) given notice in writing to the informant and the guarantor that he intends to rely on the guarantee specifying, in the notice to the informant, the name

Pesticides.

of the guarantor, any name under which he trades and the address referred to in subsection (2) (d) in relation to the guarantor; and

(b) given the informant a copy of the guarantee.

5 (4) A guarantor given notice under subsection (3) is entitled to offer evidence at the hearing of the information to which the notice relates and the court may, if it thinks fit, adjourn the hearing to enable the guarantor to do so.

10 30 (5) Where an offence is proved under section 29, (1) or (3), 31 (a) or (b) or 38 but the information is dismissed under this section, the guarantor is, without prejudice to his liability to be prosecuted under subsection (6), liable to the same penalty as could have been imposed if the offence to which the information relates had been committed
15 by the guarantor, unless he proves that, when he gave the guarantee, he had reasonable grounds for believing that the statements and descriptions contained in the guarantee were true.

20 (6) A person shall not, in a guarantee referred to in subsection (2), make or give a false statement or description in relation to a pesticide but shall not be found guilty of an offence under this subsection if he proves that, when he gave the guarantee, he had reasonable grounds for believing that the statements and descriptions contained in the guarantee
25 were true.

Penalty: \$500 or, for an offence by a corporation, \$2,000.

(7) Notwithstanding anything in any Act, proceedings for an offence under subsection (6) may be commenced at any time after the giving of the guarantee to which the
30 proceedings relate.

Pesticides.

DIVISION 2.—Date-controlled Pesticides.

41. A person who manufactures a date-controlled pesticide shall—

Manu-
facture
of date-
controlled
pesticide.

5 (a) forthwith make a record in or to the effect of the prescribed form and in the prescribed manner containing the date of manufacture of the pesticide and such other particulars as are required by the regulations to be inserted in the record; and

10 (b) keep that record for not less than the period prescribed for keeping it.

Penalty: \$500 or, for an offence by a corporation, \$2,000.

42. (1) Except to the extent that, pursuant to a permit, he is otherwise authorised under section 25, a person shall not sell a date-controlled pesticide in a container that does not bear in the prescribed manner and form—

Sale, use,
etc., of
date-
controlled
pesticide.

(a) matter approved by the Registrar as sufficient to enable the Registrar to identify the date of manufacture of the pesticide; and

20 (b) the words "IT IS UNLAWFUL TO USE THE CONTENTS AFTER" followed by the date required by the regulations to be borne by the container for the purposes of this paragraph.

(2) If the container of a date-controlled pesticide bears the words "IT IS UNLAWFUL TO USE THE CON-
25 TENTS AFTER" followed by a date, a person shall not, after that date, sell, supply or use the pesticide that is in the container unless—

(a) pursuant to a permit, he is authorised by section 25 so to do; or

Pesticides.

- (b) he does so on a date that, notwithstanding the date on the container, is earlier than the date that is required by the regulations to be borne by the container for the purposes of subsection (1) (b).

5 Penalty : \$500 or, for an offence by a corporation, \$2,000.

43. Where a person knows, or has reasonable cause to suspect, that a pesticide that is or contains a date-controlled pesticide has been in a container bearing the words "IT IS UNLAWFUL TO USE THE CONTENTS AFTER" followed by a date he shall not, after that date, sell, supply or use the pesticide unless—

Sale, etc., of date-controlled pesticide after removal from container.

- (a) pursuant to a permit, he is authorised by section 25 so to do; or

15 (b) he does so on a date that, notwithstanding the date on the container, is not later than the date that is required by the regulations to be borne by the container for the purposes of section 42 (1) (b).

Penalty : \$500 or, for an offence by a corporation, \$2,000.

44. (1) A person shall not, without reasonable cause—

Abuse of warning prohibited.

20 (a) affix a label bearing the words "IT IS UNLAWFUL TO USE THE CONTENTS AFTER" followed by a date to a container of a pesticide or to anything that he knows, or has reasonable cause to suspect, is or is intended to be a container for a pesticide; or

25 (b) write the words "IT IS UNLAWFUL TO USE THE CONTENTS AFTER" followed by a date upon anything that he knows, or has reasonable cause to suspect, is or is intended to be a label for a container of a pesticide.

Pesticides.

(2) Where a container of a pesticide bears any matter that is, or has been, required to be borne by the container by or under section 42 (1), a person shall not—

- (a) detach the matter;
- 5 (b) alter, deface, obliterate or destroy the matter; or
- (c) affix to the container any label or endorse anything upon the container that in either case has the effect of negating or varying the matter so borne,

except where he alters, defaces, obliterates or destroys the
 10 matter, as the case may be, when he destroys or (otherwise than by sale or supply) disposes of the pesticide without contravening this Act (paragraph (b) excepted) or the regulations.

Penalty : \$500 or, for an offence by a corporation, \$2,000.

15 DIVISION 3.—*Restricted Pesticides.*

45. In this Division, “certificate” means a certificate of Interpretation.
 competency issued under section 47 (1).

46. (1) A person may apply to the Registrar for a Application
 certificate to authorise him to prepare for use and use a for
 20 restricted pesticide. certificate.

(2) An application under subsection (1) shall—

- (a) be made in the prescribed manner and be in or to the effect of the prescribed form; and
- 25 (b) be accompanied by the fee prescribed in respect of the application.

Pesticides.

47. (1) Subject to subsection (2), the Registrar, on receipt of an application made under section 46, may issue the applicant with a certificate of competency and may impose terms and conditions in relation to the preparation for use or use of the pesticide in respect of which it is issued.

Issue of
certificate.

(2) The Registrar shall not issue a certificate under subsection (1) unless—

(a) the certificate specifies—

- (i) the person to whom it is issued;
- 10 (ii) the restricted pesticide in respect of which it is issued;
- (iii) the period of time for which it is issued; and
- (iv) any terms or conditions to which it is subject;
- 15 (b) the Registrar is satisfied that the applicant for the certificate is competent to prepare for use and use the pesticide in respect of which it is issued without unintended harm being caused by the pesticide; and
- 20 (c) the prescribed fee has been paid.

(3) A certificate is in force for the period specified in the certificate under subsection (2) (a) (iii) unless it is sooner cancelled by the Registrar under section 70 (3) or (4).

(4) The regulations may make provision for or with respect to—

- (a) tests for applicants for certificates;
- (b) the keeping of records and the making of returns by persons to whom certificates are issued; and

Pesticides.

- (c) fees payable for and in connection with certificates and the tests referred to in paragraph (a).

48. For the purposes of section 49, while a certificate is in force, the person to whom it was issued is authorised to prepare the restricted pesticide specified in the certificate for use and to use the pesticide but only when he does so in accordance with the terms and conditions, if any, to which the certificate is subject.

Effect of certificate.

49. A person shall not—

10 (a) prepare a restricted pesticide for use; or

(b) use a restricted pesticide,

unless he is authorised to do so by section 48.

Penalty : \$500 or, for an offence by a corporation, \$2,000.

Offence of unauthorised preparation or use.

PART VII.

15 **PROHIBITED RESIDUES IN FOODSTUFFS.**

50. (1) When an inspector believes on reasonable grounds that a quantity of a prescribed foodstuff contains a prohibited residue he may, with the consent of the Registrar, serve a notice in or to the effect of the prescribed form on—

Prohibited residue notices.

20 (a) the owner of the foodstuff;

(b) the occupier of the place where the foodstuff is situated; or

Pesticides.

- (c) the person who appears to the inspector to be the person in charge of any vehicle, aircraft or vessel in or on which the foodstuff is situated.

(2) A notice served under this section in relation to a quantity of a prescribed foodstuff—

(a) shall—

- (i) state the name of the foodstuff;
- (ii) describe where the foodstuff is situated at the time of service of the notice;
- 10 (iii) specify or describe the quantity of the foodstuff; and
- (iv) specify the expiry date of the notice, being a date occurring not more than 14 days after the date of service of the notice; and

15 (b) may contain provisions requiring any person on whom it is to be served and who has possession or control of the foodstuff—

- (i) not to part with possession or control of the foodstuff;

20 (ii) to retain the foodstuff in the place where it is situated at the time the notice is served or in a place that is under the control of that person, or another person specified in the notice, where the foodstuff will, in the opinion of the inspector, least endanger the health of the public or of any person; or

25 (iii) to deal with the foodstuff or to perform acts in relation to the foodstuff (other than acts requiring the destruction of the foodstuff)

30 in accordance with directions set out in the notice being directions that are reasonably necessary for the preservation of the health of the public or of any person.

Pesticides.

(3) The Registrar or any inspector may cancel a notice served under this section by giving notice of its cancellation to the person on whom it was served.

(4) A notice issued under this section in relation to a quantity of a prescribed foodstuff is in force from the time of service of the notice until the expiry date specified in the notice unless it is sooner cancelled—

- (a) by service of an order made by the Minister under section 51 in relation to the whole or any part of the quantity of foodstuff; or
- (b) by the Registrar or an inspector under subsection (3).

(5) While a notice under this section is in force, the person on whom it was served shall not fail to comply with any requirement of the notice that is applicable to him.

Penalty for an offence against this subsection: \$500 or, for an offence by a corporation, \$2,000.

51. (1) The Minister may make an order under this section in respect of the whole or part of a quantity of prescribed foodstuff that is specified or described in a notice that has been served under section 50 and may cause the order to be served as provided by subsection (4) (a).

Prohibited
residue
orders.

(2) An order made and served under this section in relation to a quantity of a prescribed foodstuff—

- (a) shall—
 - (i) state the name of the foodstuff;

Pesticides.

- (ii) describe where the foodstuff was situated at the time of service of the notice under section 50 in respect of which the order is made;
- 5 (iii) specify or describe the quantity of the foodstuff;
- (iv) specify the date on which the order is made; and
- 10 (v) specify the expiry date of the order, being a date occurring not more than 6 months after the date on which the order is made; and
- (b) may contain provisions requiring any person on whom it is to be served and who has possession or control of the foodstuff—

15

 - (i) not to part with possession or control of the foodstuff;
 - 20 (ii) to retain the foodstuff in a place specified in the order that is under the control of that person;
 - 25 (iii) to deal with the foodstuff or to perform acts in relation to the foodstuff in accordance with directions set out in the order being directions that are reasonably necessary for the preservation of the health of the public or of any person; or
 - 30 (iv) subject to subsection (3), within a time specified in the order, to destroy the foodstuff in a manner described in the order or in accordance with the directions of an inspector.

Pesticides.

(3) The Minister shall not cause to be served under subsection (4) an order made under this section that requires the destruction of a quantity of a prescribed foodstuff unless—

5 (a) at the time he made the order, he was satisfied that—

(i) at least one sample of the foodstuff from each prescribed portion of the quantity contains a prohibited residue; or

10 (ii) where the quantity is less than or equal to the portion prescribed in relation to the foodstuff, at least one sample of the foodstuff contains a prohibited residue;

15 (b) the requirement to destroy the foodstuff does not take effect before 90 days after the date of service of the order; and

20 (c) he believes on reasonable grounds that there is no reasonable likelihood of the foodstuff ceasing to contain a prohibited residue within the period of 3 years following the date on which he made the order.

(4) An order made under this section—

25 (a) may be served on the owner of the prescribed foodstuff in relation to which it was made or on the occupier of any place in which the foodstuff is situated at the time of service of the order;

(b) where it is so served, is in force from the time it is served until the expiry date specified in the order unless it is sooner revoked by the Minister; and

Pesticides.

- (c) where it is so served, cancels any notice issued under section 50 that is then in force in respect of which it was made.

(5) Where an order under this section is in force, the person on whom it was served shall not fail to comply with any requirement of the order that is applicable to him.

Penalty : \$500 or, for an offence by a corporation, \$2,000.

(6) Subject to subsection (7), in subsection (3) “prescribed portion”, in relation to a quantity of a prescribed foodstuff, means—

- (a) where the quantity is specified or described in the order by reference to its weight—50 tonnes;
- (b) where the quantity is specified or described in the order by reference to its volume—
- 15 (i) if the foodstuff is not in liquid form—100 cubic metres; or
- (ii) if the foodstuff is in liquid form—5 000 litres; or
- 20 (c) where the quantity is specified or described in the order by reference to the area of the place where it is situated—150 hectares.

(7) Where, for the purposes of subsection (3), the regulations prescribe, in relation to any foodstuff, a smaller portion than that prescribed by subsection (6), “prescribed portion”, in relation to that foodstuff, means the portion prescribed by the regulations.

Pesticides.

52. (1) If a person fails to comply with a requirement of an order under section 51 to destroy a quantity of a prescribed foodstuff, the Minister may authorise an inspector to destroy the foodstuff and an inspector so authorised may—

Destruction
in default.

- 5 (a) comply with that requirement as if he were the person to whom the requirement relates; and
- (b) for the purpose of complying with that requirement, enter any place where the quantity of prescribed foodstuff to which the requirement relates is
10 situated.

(2) Any expenses incurred by an inspector in complying with a requirement with the authority of the Minister under subsection (1) may be recovered in a court of competent jurisdiction as a debt that is due to the Crown
15 by any person bound to comply with the requirement.

PART VIII.

SUPPLEMENTARY.

DIVISION 1.—*Inspectors' Powers, etc.*

53. (1) An inspector may at any time—

Powers of
inspectors.

- 20 (a) subject to subsection (2), enter and examine any place, vehicle, aircraft or vessel, or examine any fixture or fitting in or on which he suspects on reasonable grounds that a pesticide or a prescribed foodstuff containing a prohibited residue may be
25 found;

Pesticides.

- 5 (b) subject to subsection (3), take without payment, for the purpose of examination or testing, samples of any substance or article that he suspects on reasonable grounds to be a pesticide or a prescribed foodstuff containing a prohibited residue and, in exercising his powers under this paragraph, open any container or cause any container to be opened;
- 10 (c) subject to subsection (3), seize and remove any substance or article that he suspects on reasonable grounds to be a pesticide or a prescribed foodstuff containing a prohibited residue and any container in which the substance or article is being kept or conveyed, if he suspects on reasonable grounds that there has been a contravention of this Act or
- 15 the regulations in respect of the substance or article;
- (d) detain a vehicle, vessel or aircraft for such time as is reasonably necessary for him to exercise the powers conferred on him by paragraphs (a), (b) and (c);
- 20 (e) for the purposes of paragraph (c), direct the occupier of any place where the substance or article is seized, or the owner of the substance or article, to retain it in that place, or in a place under the control of the occupier or owner that will, in the
- 25 opinion of the inspector, least endanger the health of the public or of any person;
- (f) give directions for or with respect to the detention of any substance, article or container, that has been removed under paragraph (c);
- 30 (g) with the consent of the Minister, and at the expense of the owner of the pesticide, destroy or render harmless or give directions for the destruction or rendering harmless of, any pesticide if—
- 35 (i) he believes on reasonable grounds that it is necessary in the interest of the health of the public or of any person so to do; or

Pesticides.

- (ii) the owner of the pesticide authorises him in writing so to do;
- (h) exercise the power conferred on him by paragraph (g) without the consent of the Minister where imminent danger to the health of the public or of any person exists;
- (i) make inquiries relating to the observance of this Act and the regulations;
- (j) where the loss of life, injury to a person, damage to any property or danger to the public occurs involving a pesticide or a prescribed foodstuff containing a prohibited residue, make any inquiry he thinks necessary and for that purpose enter any place; and
- (k) require the production of any permit or certificate of competency or any book, record or writing required by this Act or the regulations to be held or kept, or otherwise held or kept by a manufacturer of a pesticide, and inspect, examine and take copies of or extracts from it.

(2) Unless an inspector believes on reasonable grounds that imminent danger to the health of the public or of any person exists, he shall not enter a dwelling-house pursuant to the power granted him under subsection (1) (a) except under the authority of a search warrant issued under section 72.

(3) An inspector is not empowered—

- (a) under subsection (1) (b)—to take samples of substances or articles; or

Pesticides.

- (b) under subsection (1) (c)—to remove any substances, articles or containers,

that appear to the inspector to be in the custody of a person unless the inspector makes out and tenders to the person a receipt in or to the effect of the prescribed form.

(4) Any expense incurred under subsection (1) (g) may be recovered in a court of competent jurisdiction as a debt that is due to the Crown by the owner of the pesticide destroyed or rendered harmless.

(5) Where a person answers a question asked by an inspector under subsection (1) (i) or (j) and the answer tends to incriminate that person, neither the question nor the answer may be used in any proceedings against that person except proceedings under section 54 in respect of a wilfully false or misleading answer to the question.

(6) Subsection (5) applies whether the person objects to answering the question or not.

54. A person shall not—

Obstruction
of inspector,
etc.

- (a) refuse or fail to admit—

- (i) an inspector exercising his authority under section 53; or
(ii) an inspector or a member of the police force exercising his authority under a search warrant issued under section 72;

- (b) wilfully obstruct or delay an inspector exercising any of his powers under section 53;

Pesticides.

- (c) fail to comply with any reasonable direction or requirement of an inspector under section 53;
- (d) prevent, or attempt to prevent, a person from appearing before, or complying with a direction or requirement of, an inspector under section 53; or
- (e) give an answer he knows to be false or misleading to a question asked by an inspector under section 53 (1) (i) or (j).

Penalty: \$500 or, for an offence by a corporation, \$2,000.

- 10 **55.** (1) An inspector who finds a person committing an offence against this Act or the regulations or who finds a person whom he suspects on reasonable grounds of having committed or attempted to commit such an offence may demand from that person his name and place of abode.

- 15 (2) A person, upon demand made of him under subsection (1), shall not—

- (a) fail or refuse to state his name or place of abode; or
- (b) give a false name or place of abode.

20 Penalty: \$200.

- 56.** A person shall not—

- (a) forge or counterfeit any written evidence of appointment of an inspector;
- (b) make use of any forged, counterfeited or false written evidence of such an appointment;

Persona-
tion of
inspector.

Pesticides.

(c) personate an inspector named in any written evidence of appointment; or

(d) falsely pretend to be an inspector.

Penalty: \$1,000.

5 **DIVISION 2.—*Appeals against Orders, etc.***

57. In this Division—

“appeal” means an appeal under section 58 (1);

Interpre-
tation.

“Judge” means a Judge of the District Court.

58. (1) A person who is aggrieved by—

Appeals to
District
Court.

10 (a) a decision or an order of the Minister;

(b) a decision of the Registrar (other than a decision relating to cancellation of the registration of a pesticide); or

(c) a direction or requirement of an inspector,

15 made or given under this Act, may appeal against the decision or order to the District Court.

(2) An appeal against an order of the Minister may be made only within 30 days of the date on which the order was served.

20 (3) Subject to subsection (2), an appeal shall be made in accordance with the rules of the District Court.

(4) When an appeal is being heard the Judge hearing the appeal is not bound by the rules or practice as to evidence and may inform himself of any matter in such
25 manner as he thinks fit.

(5) A Judge in determining an appeal shall have regard to the provisions of this Act, the regulations, the circumstances of the case and the public interest.

Pesticides.

(6) A Judge in determining an appeal may decide—

- (a) to dismiss the appeal;
- (b) to allow the appeal wholly or partly; or
- 5 (c) that a permit or certificate of competency be issued subject to such terms and conditions being specified in the permit or certificate as could have been imposed by the Registrar and as the Judge thinks fit.

(7) The decision of a Judge on an appeal under this section—

- 10 (a) is final and binding on the person against whose decision or order the appeal is brought and the appellant; and
- (b) shall be carried into effect.

(8) An appeal brought under this section does not
15 affect any decision or order in respect of which it has been brought unless and until a Judge makes a decision under subsection (6) (b) or (c).

DIVISION 3.—Prosecutions.

59. (1) Proceedings for an offence against this Act or
20 the regulations shall— Proceed-
ings for
offences.

- (a) be taken and prosecuted only by a person acting with the authority of the Minister; and
- (b) be disposed of summarily before a court of petty sessions.

25 (2) In proceedings for any such offence, an authority to prosecute, purporting to have been signed by the Minister, shall be evidence of the authority of the Minister without proof of the Minister's signature.

Pesticides.

(3) Any such proceedings may be commenced by information laid within 12 months after the time when the offence is alleged to have been committed.

60. In proceedings for an offence against this Act or the Evidence.
5 regulations—

(a) a certificate purporting to be signed by a prescribed officer and to certify—

- 10 (i) that a pesticide specified or described in the certificate was, or was not, a registered pesticide on any date, or during any period, specified in the certificate;
- 15 (ii) that a container described in the certificate was, or was not, an approved container or an approved container for a pesticide specified or described in the certificate on any date, or during any period, specified in the certificate;
- 20 (iii) that a label described in the certificate was, or was not, a registered label or a registered label for an approved container described in the certificate on any date, or during any period, specified in the certificate;
- 25 (iv) that a permit or certificate of competency was in force on any date, or during any period, specified in the certificate;
- 30 (v) that the matter appearing on a registered label, permit or certificate of competency described in the certificate is identical to matter set out in, or in an instrument appended to, the certificate;
- (vi) that a permit or certificate of competency was suspended during a specified period or was cancelled on a specified date; or

Pesticides.

(vii) that a person specified in the certificate was an inspector on any date, or during any period, specified in the certificate,

is evidence of the facts so certified;

- 5 (b) a printed document that is or purports to be a standard, rule, code or specification of a body referred to in section 73 (2) (c) (i) and that has been or purports to have been published or issued by or on behalf of that body is admissible as
10 evidence in those proceedings and is evidence of that standard, rule, code or specification;
- (c) evidence that a sealed container bore any matter at any time in a manner prescribed or required by this Act or the regulations in relation to a pesticide or class of pesticides is also evidence that the
15 pesticide or a pesticide of that class was in the container at that time, unless the contrary is proved; and
- (d) a certificate purporting to be signed by an analyst and setting out the results of an analysis is evidence that the substance or article specified or described in the certificate was the substance or article that was analysed, of the result of the analysis and that the analysis was carried out in such manner as may
20 be specified in the certificate.
25

61. (1) Where a person is convicted of an offence *Forfeiture.* against this Act or the regulations, the court may order forfeiture to the Crown of—

- 30 (a) all or any part of the pesticide or prescribed food-stuff in respect of which the offence was committed; or

Pesticides.

(b) any container of that pesticide or prescribed foodstuff,

if the court finds it to be the property of the person so convicted and, upon the making of the order, the pesticide, 5 prescribed foodstuff or container becomes the property of the Crown.

(2) Subject to section 67, on application by or on behalf of the Minister in the prescribed manner, a court of petty sessions may order forfeiture to the Crown of any 10 substance, article or container that has been seized by an inspector under section 53 (1) (c) and, upon the making of the order, the substance, article or container becomes the property of the Crown.

62. (1) Where any person, as the employee of another 15 person, which other person is in this section referred to as ^{Liability} "the employer", contravenes any provision of this Act or ^{of} the regulations, the employer shall be deemed to have ^{employers.} contravened the same provision unless he satisfies the court that—

20 (a) he—

(i) did not authorise or permit the contravention by the employee; and

(ii) used all due diligence to prevent the contravention; or

25 (b) the employee would not have been found guilty of the offence by reason of his being able to establish a defence available to him under this Act or the regulations.

(2) The employer may be proceeded against and 30 convicted under a provision pursuant to subsection (1) whether or not the employee has been proceeded against or been convicted under that provision.

Pesticides.

(3) Nothing in subsection (1) prejudices or affects any liability imposed by a provision of this Act or the regulations on any person by whom an offence against that provision is actually committed.

- 5 **63.** (1) Where a corporation contravenes any provision of this Act or the regulations, each director of the corporation, and each officer concerned with the management of the corporation, shall be deemed to have contravened the same provision unless he satisfies the court that—
- 10 (a) the corporation contravened the provision without his knowledge;
- (b) he was not in a position to influence the conduct of the corporation in relation to its contravention of the provision;
- 15 (c) he, being in such a position, used all due diligence to prevent the contravention of the provision by the corporation; or
- (d) the corporation would not have been found guilty of the offence by reason of its being able to
- 20 establish a defence available to it under this Act or the regulations.

(2) A person may be proceeded against and convicted under a provision pursuant to subsection (1) whether or not the corporation has been proceeded against or been convicted under that provision.

(3) Nothing in subsection (1) prejudices or affects any liability imposed by a provision of this Act or the regulations on any corporation by which an offence against that provision is actually committed.

Pesticides.

DIVISION 4.—*Miscellaneous.*

64. (1) In this section, "function" includes power, authority and duty. Delegation.

(2) With the consent of the Minister, the Registrar may, by instrument in writing, delegate to any person engaged in the administration of this Act the exercise or performance of such of the functions of the Registrar as are specified in the instrument.

(3) A function the exercise or performance of which has been delegated under this section may, while the delegation remains unrevoked, be exercised or performed from time to time in accordance with the terms of the delegation.

(4) A delegation under this section may be made subject to such conditions or limitations as to the exercise or performance of any function delegated or as to time or circumstances as may be specified in the instrument of delegation.

(5) Notwithstanding any delegation under this section, the Registrar may continue to exercise or perform any function delegated.

(6) An act or thing done or suffered by a delegate acting in the exercise of a delegation under this section has the same force and effect as it would have if it had been done or suffered by the Registrar and shall be deemed to have been done or suffered by the Registrar.

(7) An instrument purporting to have been signed by a delegate of the Registrar in his capacity as such a delegate shall in all courts and before all persons acting judicially be received in evidence as if it were an instrument duly executed by the Registrar and shall, until the contrary is proved, be deemed to be an instrument signed by a delegate of the Registrar.

Pesticides.

65. (1) When the Registrar refuses to grant any application under this Act he shall forthwith cause a notice in writing to be served on the applicant by post.

Notice of refusal of application.

(2) A notice referred to in subsection (1) shall—

- 5 (a) describe the application that has been refused; and
- (b) state—
 - (i) that the application has been refused;
 - (ii) the date on which the application was refused; and
 - 10 (iii) the reason or reasons for refusal of the application.

66. (1) In this section, “prescribed time”, in relation to an application, means—

Delay in granting or refusing application.

- 15 (a) the period of 6 months that next succeeds the lodging of the application with the Registrar under section 8 (2) (c); or
- (b) where a longer period is agreed upon by the Registrar and the applicant—that longer period.

(2) Where application is made to the Registrar for—

- (a) registration of a pesticide or label;
- (b) approval of a specification for a class of containers;
- (c) the issue of a permit; or
- (d) the issue of a certificate of competency,
- 25 and the Registrar does not grant or refuse to grant the application within the prescribed time, the Registrar shall, for the purposes of section 58, be deemed to have refused to grant the application.

Pesticides.

67. (1) In this section, "prescribed period", in relation to any substance, article or container seized under section 53 (1) (c), means the period of 6 months commencing from the time of seizure of the substance, article or container or any other period fixed by a court of petty sessions in relation to the substance, article or container upon application by or on behalf of the Minister in the prescribed manner.

Retention
and disposal
of seized
property.

(2) During the prescribed period any substance, article or container seized under section 53 (1) (c)—

10 (a) may be retained; or

(b) unless during that period the substance, article or container has been forfeited to the Crown under section 61, may be returned to the person from whom it was seized.

15 (3) A substance, article or container seized under section 53 (1) (c) shall, at the expiration of the prescribed period, be returned to the person from whom it was seized, or to the person who appears to the Registrar to be its owner, unless—

20 (a) it was, during that period, forfeited to the Crown under section 61; or

(b) the Registrar causes a notice to be advertised in the prescribed manner before the expiration of the prescribed period to the effect that application will be made on a specified day that occurs after the expiration of the prescribed period for forfeiture to the Crown of the substance, article or container.

25 (4) Where a notice is advertised under subsection (3), the substance, article or container to which the advertisement relates shall forthwith after the day specified in the advertisement be returned to the person from whom it was seized, or to the person who appears to the Registrar to be the owner, unless the substance, article or container is forfeited to the Crown.

Pesticides.

68. (1) Any substance, article or container forfeited to the Crown shall be disposed of as the Minister directs. Disposal of
forfeited
property.

(2) Where any substance, article or container is disposed of under subsection (1) by way of sale, the proceeds shall be paid into the Treasury and be carried to the Consolidated Revenue Fund.

69. (1) An inspector may submit any sample taken under section 53 (1) (b) to an analyst for analysis.

(2) Where an analysis has been made by an analyst or under his personal supervision in respect of any sample submitted for analysis under subsection (1), the analyst may issue to the Registrar a certificate setting out the results of that analysis.

(3) The Registrar shall, upon payment of the prescribed fee, issue a copy of a certificate issued to him under subsection (2) to a person who appears to the Registrar to be—

- (a) the owner of the substance or article from which the sample analysed was taken or the person in whose possession or custody, or under whose control, the substance or article was at the time of the taking of the sample;
- (b) an applicant for registration of that substance or article under this Act; or
- (c) the guarantor under a guarantee given pursuant to section 40 in respect of that substance or article.

(4) A person shall not, for trade purposes or for advertisement, use a certificate issued under subsection (2) or any matter contained therein.

Penalty for an offence against this subsection : \$500 or, for an offence by a corporation, \$2,000.

Pesticides.

70. (1) Where the holder of a permit or certificate of competency is proceeded against for an offence against this Act or the regulations, or has failed to comply with a lawful direction or requirement of an inspector, the Registrar may, by notice in writing served on the holder personally or by post, suspend the permit or certificate, as the case may be, until the proceeding has been disposed of or, as the case may be, until the direction or requirement has been complied with.

Suspension and cancellation of permits and certificates.

(2) A permit or certificate of competency shall be deemed not to be in force during any period of its suspension.

(3) The Registrar may, by notice in writing served on the holder of a permit or certificate of competency, cancel the permit or certificate if the holder—

- (a) has been convicted of an offence against this Act or the regulations;
- (b) breaches a condition of the permit or certificate; or
- (c) surrenders the permit or certificate to the Registrar.

(4) Where information about the holder of a permit or certificate of competency comes to the knowledge of the Registrar and he is of the opinion that, if he had been in possession of the information before he issued the permit or certificate he would have refused to issue the permit or certificate he may, by notice in writing served on the holder personally or by post, cancel the permit or certificate.

71. (1) A person shall not in, or in connection with, an application for the issue, renewal or transfer of a permit or the issue of a certificate of competency—

Offences relating to permits and certificates.

- (a) make a statement; or
 - (b) furnish information,
- that he knows to be false or misleading in a material particular.

Pesticides.

(2) A person shall not have a permit or certificate of competency in his possession without reasonable excuse.

(3) A person shall not forge or alter a permit or certificate of competency with intent to deceive.

5 (4) The person to whom—

(a) a permit has been issued or transferred; or

(b) a certificate of competency has been issued,

shall not lend the permit or certificate, as the case may be, or allow it to be used by any other person for any purpose for
10 which it was issued or transferred.

Penalty : \$500 or, for an offence by a corporation, \$2,000.

72. Upon a complaint made on oath by an inspector that the inspector suspects on reasonable grounds that a provision of this Act or the regulations has been or is being contravened
15 within any dwelling-house, a stipendiary magistrate may issue a search warrant authorising an inspector named in the warrant together with a member of the police force at any time or times within 14 days from the date of issue of the warrant to enter, if need be by the use of reasonable force,
20 the dwelling-house named in the warrant, and to search the dwelling-house and any fixtures or fittings therein for evidence of such a contravention. **Search warrant.**

73. (1) The Governor may make regulations, not Regulations. inconsistent with this Act, for or with respect to any matter
25 that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) A regulation may—

(a) apply differently according to such factors as are specified in the regulation;

30

Pesticides.

(b) authorise any matter or thing to be from time to time determined, applied or regulated by a specified person;

(c) adopt wholly, partly or by reference—

5 (i) any of the standards, rules, codes or specifications specified in the regulation that have been recommended or adopted by the British Standards Institution or the Standards Association of Australia
10 (whether published before or after the commencement of this section); or

(ii) any standards, rules, codes or specifications approved by the Minister and published in the Gazette (whether published before or
15 after the commencement of this section),

relating to the matter with which the regulation deals together with any additions or amendments thereto (whether made or published before or after the commencement of this section) that are so
20 specified;

(d) exempt persons, or persons of a prescribed class, either absolutely or subject to conditions, from any provision of the regulations;

25 (e) require an application under this Act to be verified by a statutory declaration; and

(f) impose a penalty not exceeding \$500 for any contravention of a regulation and in addition, where the contravention continues, a penalty not exceeding \$50 for every day the contravention continues.

30 (3) A regulation that prescribes a pesticide may describe the pesticide by reference to—

(a) a class or classes of substances or organisms;

(b) a quantity of a substance or an organism; or

35 (c) circumstances in which, or other than in which, a substance or an organism is a prescribed pesticide.

Pesticides.

(4) A regulation may provide that a person shall not use a pesticide, or cause a pesticide to be used, in prescribed circumstances unless he has given, in a prescribed manner, a prescribed notice to other prescribed persons not 5 later than a prescribed period before he uses the pesticide or causes it to be used.

74. The Minister may, in prescribed circumstances, wholly or partly— Minister
may waive
or remit
fees.

- 10 (a) waive a requirement for a person to lodge any fees under this Act; or
- (b) remit any fees paid under this Act.

75. (1) Subject to subsection (3), a person shall not disclose any information relating to any manufacturing or commercial secrets or working processes and obtained by him 15 in connection with the administration or execution of this Act or the regulations, unless the disclosure of information is— Disclosure
of infor-
mation.

- (a) made in connection with the administration or execution of this Act or the regulations;
- 20 (b) made with the prior permission of the Minister; or
- (c) ordered by a court, or by any other body or person authorised by law to examine witnesses, in the course of, and for the purpose of, the hearing and determination by that court, body or person of any 25 matter or thing.

Penalty: \$500.

(2) The Minister may grant the permission referred to in subsection (1) (b) only if he is satisfied that to do so would be in the public interest.

Pesticides.

(3) The Registrar may communicate any matter which comes to his knowledge in the exercise or performance of his powers, authorities, duties or functions under this Act or the regulations—

- 5 (a) to an officer or authority engaged in administering or executing a law of the Commonwealth or of another State or a Territory relating to pesticides; or
- 10 (b) to any person, when communication of the matter to that person is reasonably related to the prevention of harm that may be, or the amelioration of harm that has been, caused by a pesticide to the public or to any person or property.

15 **76.** No proceedings lie against the Minister or a person appointed or employed under section 7 for or on account of any act, matter or thing done or ordered or directed to be done by the Minister or person, and purporting to be done for the purposes of carrying out the provisions of this Act, if the Minister or person, as the case may be, has acted in
20 good faith and with reasonable care. Certain proceedings prohibited.

77. For the purposes of this Act, a person may be given notice— Giving of notice.

- 25 (a) of a notification under section 21—by the Registrar causing a copy of the notification to be served on that person personally or by post; or
- (b) of any other matter or thing—by the Registrar serving written notice of that matter or thing on that person personally or by post.

Pesticides.

78. The Consumer Protection Act, 1969, is amended by ^{Amendment of Act No. 28, 1969.} omitting from section 4 (2) the words "Pest Destroyers Act, 1945" and by inserting instead the words "Pesticides Act, 1978".

BY AUTHORITY

D. WEST, GOVERNMENT PRINTER, NEW SOUTH WALES—1978

Pesticides

78. The Commission on Pesticides, created by Act No. 1278, is authorized to conduct a study of the use of pesticides in the State of Louisiana, and to report to the Governor and the Legislature on or before January 1, 1960, the results of its study. The Commission is also authorized to conduct such other studies and investigations as it may deem necessary and proper for the purpose of this Act.

1978

BY AUTHORITY
OF THE GOVERNMENT PRINTING OFFICE

PESTICIDES ACT, 1978, No. 57

New South Wales



ANNO VICESIMO SEPTIMO

ELIZABETHÆ II REGINÆ

Act No. 57, 1978.

An Act to control the sale, supply, use and possession of pesticides; to provide for the prevention of certain food-stuffs containing prohibited residues from becoming available for consumption; to repeal the Pest Destroyers Act, 1945, and to amend the Consumer Protection Act, 1969. [Assented to, 3rd April, 1978.]

Pesticides.

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

PART I.

PRELIMINARY.

Short title. 1. This Act may be cited as the "Pesticides Act, 1978".

Commence-
ment. 2. (1) This section and section 1 shall commence on the date of assent to this Act.

(2) Except as provided in subsections (1), (3) and (4), this Act shall commence on such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

(3) Sections 4, 25, 29, 36, 38, 40 and 78 shall commence on such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette, being a day that is not earlier than 6 months after the day appointed and notified under subsection (2).

(4) Sections 30–32 shall commence on such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette, being a day that is not earlier than 12 months after the day appointed and notified under subsection (2).

Division
of Act.

3. This Act is divided as follows :—

PART I.—PRELIMINARY—ss. 1–6.

PART II.—ADMINISTRATION—s. 7.

Pesticides.

PART III.—REGISTRATION AND APPROVALS—ss. 8–22.

PART IV.—PERMITS—ss. 23–25.

PART V.—PESTICIDE ORDERS—ss. 26–28.

PART VI.—CONTROL OF PESTICIDES—ss. 29–49.

DIVISION 1.—*Control Generally*—ss. 29–40.

DIVISION 2.—*Date-controlled Pesticides*—ss. 41–44.

DIVISION 3.—*Restricted Pesticides*—ss. 45–49.

PART VII.—PROHIBITED RESIDUES IN FOODSTUFFS—ss. 50–52.

PART VIII.—SUPPLEMENTARY—ss. 53–78.

DIVISION 1.—*Inspectors' Powers, etc.*—ss. 53–56.

DIVISION 2.—*Appeals against Orders, etc.*—ss. 57, 58.

DIVISION 3.—*Prosecutions*—ss. 59–63.

DIVISION 4.—*Miscellaneous*—ss. 64–78.

4. The Pest Destroyers Act, 1945, is repealed.

Repeal of
Act No. 10,
1945.

5. (1) In this Act, except in so far as the context or subject-matter otherwise indicates or requires—

Interpreta-
tion.

“analyst” means an analyst appointed or employed under section 7;

“animal” includes a bird;

Pesticides.

“approved container”, in relation to a pesticide, means a container that complies with a specification approved by the Registrar under section 13 for a class of containers for that pesticide;

“certificate of competency” means a certificate under section 47;

“container” includes any receptacle and any covering;

“court of petty sessions” means a court of petty sessions constituted by a stipendiary magistrate;

“date-controlled pesticide” means a pesticide prescribed as a date-controlled pesticide for the purposes of this Act;

“date of manufacture”, in relation to a pesticide, means the date on which manufacture of the pesticide is completed;

“director” has the meaning ascribed thereto by section 5 of the Companies Act, 1961;

“distinctive name”, in relation to a registered pesticide, means a distinctive name contained in the statement accompanying an application for registration of the pesticide pursuant to section 9 (b) or, where any such distinctive name has, before registration of the pesticide, been amended by the Registrar with the consent of the applicant, a distinctive name as so amended;

“inspector” means an inspector appointed or employed under section 7 or, except in section 50, the Registrar;

“instruction” includes direction, caution and recommendation;

Pesticides

"label" includes a tag; (1)

"metabolite" in relation to a pesticide, includes any substance resulting from the breakdown, conversion or reaction of the pesticide;

"permit" means a permit under section 23;

"pest" includes any vermin or other troublesome or destructive form of animal life;

"pesticide" means any substance or organism that is manufactured, represented, sold or used as a means for directly or indirectly—

- (a) destroying, stupefying, repelling, inhibiting the feeding of, or preventing infestation by or attacks of, any pest;
- (b) attracting any pest for the purpose of its destruction;
- (c) destroying vegetation or altering its natural development, productivity, quality or reproductive capacity; or
- (d) destroying or rendering ineffective, or regulating the effect of, a fungus or any other parasitic vegetation, bacteria or a virus on or in—

- (i) any substance other than a manufactured food or beverage; or

- (ii) any form of life except where it is in livestock or on or in man,

and any substance or organism specified or described and declared to be a pesticide in an order published under subsection (7), but does not include—

- (e) a substance or organism that is represented as being for use and is used for internal administration to animals; or

Pesticides.

(f) (notwithstanding paragraph (c)) a substance that is represented as being for use and is used—

(i) solely as a fertilizer; or

(ii) as a means for remedying or assisting to remedy any imbalance in soil or any other matter in which vegetation is grown;

“pesticide residue”, in relation to a prescribed foodstuff, means any substance or organism (including a pesticide or any metabolite of a pesticide) that is present in or on the foodstuff as a result of use of a pesticide or contact between a pesticide and the foodstuff or any part thereof;

“prescribed foodstuff” means—

(a) any—

(i) vegetation; or

(ii) prescribed produce,

of a prescribed class of vegetation; or

(b) prescribed produce of any living animal of a prescribed class of animals,

that is, or may become, capable of being used as food for any form of life, but does not include any prescribed produce of a prescribed class of vegetation that is the result of a manufacturing process;

“registered label”, in relation to a container, means a label registered under section 13 for the class of containers to which the container belongs;

“registered pesticide” means a pesticide registered under section 13;

Pesticides.

“Registrar” means the person appointed under section 7 to hold office as Registrar of Pesticides or any person acting in that office for the time being;

“regulations” means regulations under this Act;

“restricted pesticide” means a pesticide prescribed as a restricted pesticide for the purposes of this Act;

“sell” includes—

- (a) auction or exchange;
- (b) offer, expose, supply or receive for sale;
- (c) send, forward or deliver for sale or on sale;
- (d) dispose of under a hire-purchase agreement;
- (e) cause, permit or suffer the doing of an act referred to in paragraph (a), (b), (c) or (d);
- (f) offer or attempt to do an act so referred to; or
- (g) have in possession for sale;

“substance” includes any gas, any liquid, any gas mixture and any liquid mixture;

“vegetation” means anything that is a form or part of a form of vegetable life.

(2) For the purposes of this Act, words written upon a container shall be deemed to have been written upon a label affixed to the container and a reference to affixing a label to a container includes a reference to writing upon the container.

Pesticides.

(3) For the purposes of this Act, a prescribed foodstuff contains a prohibited residue when—

(a) a concentration of a prescribed substance in excess of the maximum permissible concentration of that substance—

(i) prescribed in respect of the foodstuff is present in or on the foodstuff; or

(ii) prescribed in respect of a prescribed part of the foodstuff is present in or on that prescribed part of the foodstuff; or

(b) any concentration of a pesticide residue is present in or on the whole or any part of the foodstuff and a maximum permissible concentration for that pesticide residue has not been prescribed in respect of the whole or any part of the foodstuff.

(4) If the regulations prescribe the method by which the concentration of any prescribed substance or pesticide residue shall be ascertained, the concentration of the prescribed substance or pesticide residue shall, for the purposes of this Act, be the concentration ascertained by the use of that method.

(5) For the purposes of this Act, where the quantity of a foodstuff is to be specified, described or prescribed, it may be specified, described or prescribed by reference to its weight or volume, any container in which it is situated or the area of the place where it is situated.

(6) For the purposes of section 27 (I) of the Interpretation Act, 1897, a notice served by post on a person under this Act is properly addressed if it is addressed to the last address of the person known to the Registrar.

Pesticides.

(7) The Minister may, by an order made under his hand and published in the Gazette, declare a substance or organism specified or described in the order in such circumstances, if any, as are specified in the order to be, or not to be, a pesticide within the meaning of this Act.

6. (1) Except as provided by subsection (2), where, by or under any other Act, any provision is made relating to pesticides, the provision so made shall be observed in addition to the provisions of this Act and the regulations, but no person is, by virtue of this subsection, liable to be punished twice for the same offence. Relationship to other laws.

(2) Where, by or under any other Act, any provision is made relating to pesticides that is inconsistent with a provision of this Act or a regulation, the provision of this Act or the regulation shall prevail.

PART II.

ADMINISTRATION.

7. (1) For the purposes of this Act—

- (a) a Registrar of Pesticides;
- (b) inspectors of pesticides;
- (c) analysts of pesticides; and
- (d) such other officers and employees as may be necessary for the administration of this Act,

Appoint-
ments.

may be appointed and employed under and subject to the Public Service Act, 1902.

Pesticides.

- (2) The Minister may—
- (a) appoint and employ analysts of pesticides; and
 - (b) determine the remuneration of an analyst so appointed and employed.
-

PART III.

REGISTRATION AND APPROVALS.

Applica-
tions
generally.

8. (1) Subject to subsection (2) and sections 9 to 11, a person may apply to the Registrar—

- (a) for the registration of—
 - (i) a pesticide; or
 - (ii) a label for a class of containers for a pesticide; or
- (b) for approval of a specification for a class of containers for a pesticide.

(2) An application made under this section shall—

- (a) be in or to the effect of the form prescribed in respect of the application;
- (b) be accompanied by the fee prescribed in respect of the application; and
- (c) be lodged at the office of the Registrar.

(3) The Registrar may, with the consent of the applicant, amend an application that has been lodged under subsection (2) (c).

Pesticides.

(4) A person shall not, in connection with an application under this section—

(a) make a statement; or

(b) furnish information,

that he knows to be false or misleading in a material particular.

Penalty for an offence against this subsection: \$500.

9. An application under section 8 (1) (a) (i) for the registration of a pesticide shall be accompanied by—

Application for registration of a pesticide.

(a) the name and address of the applicant and of any manufacturer of the pesticide and of its ingredients, known to the applicant;

(b) a statement of the distinctive name the applicant intends to use to describe the pesticide;

(c) where the pesticide is a substance—the formulation of the substance and particulars of the purity of its ingredients;

(d) where the pesticide is an organism—particulars of the organism;

(e) full particulars, including results, of any tests or other evaluations of the pesticide that have been conducted by, or are available to, the applicant;

(f) details of any other application that is being, or has been, made to register the pesticide in New South Wales or any other State; and

(g) such other particulars as are required by the regulations to accompany the application.

10. An application under section 8 (1) (a) (ii) for the registration of a label shall be accompanied by—

Application for registration of a label.

(a) the name and address of the applicant;

Pesticides.

- (b) particulars of the class of containers for which the applicant desires the label to be registered;
- (c) particulars of the pesticide to which the matter on the label predominantly relates, including the distinctive name the applicant intends to be used, or uses, to describe the pesticide;
- (d) the prescribed number of samples of the label in such form or forms as the Registrar may reasonably require;
- (e) particulars of the method or methods by which the label is to be borne by the containers referred to in paragraph (b) and, if required by the Registrar, a sample of any adhesive or other substance or any device intended to be used in connection with the method or methods; and
- (f) such other particulars as are required by the regulations to accompany the application.

Applica-
tion for
approval
of a
container.

11. An application under section 8 (1) (b) for the approval of a specification for a class of containers for a pesticide shall be accompanied by—

- (a) the name and address of the applicant;
- (b) a description of the pesticide including the distinctive name the applicant intends to be used, or uses, to describe the pesticide;
- (c) a copy of the specification, unless the specification is described in the application wholly by reference to a prescribed specification and the Registrar is satisfied that the application contains a sufficient description of the specification;
- (d) if the Registrar so requires in any particular case or class of cases, a number of samples (specified by the Registrar) of containers of the class to which the specification relates;

Pesticides.

- (e) particulars of the label the applicant intends to be registered for containers of the class to which the specification relates; and
- (f) such other particulars as are required by the regulations to accompany the application.

12. (1) If, in the opinion of the Registrar, information supplied in connection with an application under section 8 is ^{Further information.} inadequate for him to decide whether he should register a pesticide or a label, or approve a specification, he may, by notice in writing served by post on the applicant, require the applicant to furnish him with—

- (a) information relating to the pesticide, label or specification of a nature described in the notice; or
- (b) in the case of an application for the registration of a pesticide or for the approval of a specification, a reasonable quantity of the pesticide as a sample for testing purposes,

by a date specified in the notice.

(2) If an applicant fails to comply with the requirements of a notice served on him under subsection (1) or in purported compliance with a notice so served provides information that, in the opinion of the Registrar, is inadequate, the Registrar may refuse to grant his application.

13. (1) Subject to subsection (8) and section 14, the Registrar, after receipt of an application for registration of a pesticide under section 8 (1) (a) (i), may register the ^{Registration and approvals.} pesticide.

(2) The Registrar registers a pesticide by—

- (a) filing particulars of the formulation or a description of the pesticide; and
- (b) allocating the pesticide a registered number.

Pesticides.

(3) If an application is lodged under section 8 (1) (a) (i) for the registration of a pesticide that is a registered pesticide at the time the application is lodged, the Registrar may allocate the registered pesticide a further registered number.

(4) Subject to subsection (8) and section 15, the Registrar, after receipt of an application for registration of a label for a class of containers under section 8 (1) (a) (ii), may register the label.

(5) The Registrar registers a label by allocating the label a registered number.

(6) Subject to subsection (8) and section 16, the Registrar, after receipt of an application for approval of a specification for a class of containers for a pesticide under section 8 (1) (b), may approve the specification.

(7) The Registrar approves a specification by—

- (a) filing a description of the specification and the pesticide in respect of which the specification is approved; and
- (b) allocating his approval a distinguishing number.

(8) The Registrar shall not—

- (a) register a pesticide unless he also approves a specification for a class of containers for the pesticide;
- (b) approve a specification for a class of containers for a pesticide unless he also registers a label for containers of the class to which the specification relates; or
- (c) where a person applies for registration of a label for a class of containers for a pesticide—register the label unless that person has at some time lodged

Pesticides.

an application for registration of that pesticide in accordance with section 8 (2) and, in response to that application, a registered number has been allocated to the pesticide under section 13.

14. The Registrar shall not register a pesticide in response to an application under section 8 if—

Registration
of certain
pesticides
prohibited.

- (a) the pesticide or any constituent of the pesticide does not conform to any standard or other requirement prescribed in respect of the pesticide or constituent, as the case may be;
- (b) registration of the pesticide is prohibited by the regulations;
- (c) in the opinion of the Registrar, use of the pesticide would be ineffective for the purpose for which the applicant intends it to be used;
- (d) the applicant has not, to the satisfaction of the Registrar, shown that there are adequate analytical procedures available—
 - (i) for analysing the constituents of the pesticide; or
 - (ii) for detecting residues of the constituents of the pesticide or any of its metabolites;
- (e) in the opinion of the Registrar, the pesticide is not sufficiently stable to be registered; or
- (f) the applicant has not, to the satisfaction of the Registrar, shown that the pesticide is, with the exercise of no more than reasonable care by a person keeping, using or disposing of it, capable of being kept, used or disposed of without unintended

Pesticides.

harm being caused, either at the time at which it is being kept, used or disposed of or at a later time, by the pesticide, residues of its constituents or any of its metabolites.

Registration
of certain
labels
prohibited.

15. The Registrar shall not register a label for a class of containers if—

- (a) any matter on the label—
 - (i) is not in the prescribed form or does not appear in the prescribed sequence; or
 - (ii) is, in the opinion of the Registrar, inadequate, false, misleading or confusing;
- (b) the label does not bear matter of a nature required to be borne by it by the regulations or does not comply with any other requirement of the regulations;
- (c) the label bears anything that, if it were borne by a label on a container of the pesticide to which the matter on the label predominantly relates, would result in a contravention of this Act or the regulations;
- (d) the label does not bear the distinctive name contained in the particulars accompanying the application for registration of the label pursuant to section 10 (c); or
- (e) the distinctive name required to be borne by the label by reason of paragraph (d)—
 - (i) is not, in the opinion of the Registrar, sufficiently different from any other name that appears on a registered label for an approved container for another registered pesticide;

Pesticides.

- (ii) does not describe the usage for which the pesticide is intended;
- (iii) is, in the opinion of the Minister, offensive; or
- (iv) is not displayed in a manner that, in the opinion of the Registrar, permits rapid identification of the pesticide to which the matter on the label predominantly relates

16. The Registrar shall not approve a specification for a class of containers for a pesticide if—

Approval
of
certain
containers
prohibited.

- (a) a standard or specification has been prescribed in respect of the class of containers of which it is a member and it does not conform to the standard or specification to the extent that the regulations require;
- (b) containers complying with the specification would not comply with any other requirement of the regulations or use of the container for the pesticide is prohibited by the regulations; or
- (c) he has not been satisfied by the applicant for approval of the specification that use of containers of the class to which the specification relates for the pesticide, with the exercise of no more than reasonable care, would be sufficiently safe to avoid unintended harm that may be caused by the pesticide.

17. (1) When he allocates a pesticide a registered number in response to an application for registration of the pesticide, the Registrar shall forthwith cause to be served by post on the applicant a notice—

Notifica-
tion of
registra-
tion or
approval.

- (a) specifying the formulation of or describing the pesticide; and

Pesticides.

(b) stating—

- (i) the distinctive name contained in the statement accompanying the application for registration of the pesticide pursuant to section 9 (b) or, where that name has been amended by the Registrar with the consent of the applicant, the distinctive name as so amended;
- (ii) that the pesticide is registered; and
- (iii) the registered number and the date on which the number was allocated.

(2) When he registers a label for a class of containers, the Registrar shall forthwith cause to be served by post on the applicant for registration of the label—

- (a) a sample of the registered label, if a sample of the label has not previously been forwarded to the applicant; and

(b) a notice—

- (i) specifying or describing the class of containers for which, and the pesticide in respect of which, the label was registered; and
- (ii) stating the registered number of the label and the date on which the label was registered.

(3) When he approves a specification for a class of containers for a pesticide, the Registrar shall—

- (a) forthwith cause to be served by post on the applicant for approval of the specification a notice—
 - (i) describing the specification that has been approved and the pesticide in respect of which it has been approved; and

Pesticides.

- (ii) stating the distinguishing number of the approval and the date on which the specification was approved; and
 - (b) if the applicant has paid the expense relating thereto, forward a sample of the containers to which the specification relates to the applicant.
- (4) A specification may be described by reference to a prescribed specification relating to a class of containers in a notice served under subsection (3) (a).

18. (1) If he registers a pesticide, the Registrar shall ^{Duties} _{of} ^{Registrar.} cause a record of—

- (a) the registered number or, if there is more than one, the registered numbers of the pesticide;
 - (b) the distinctive name or, if there is more than one, the distinctive names for the pesticide;
 - (c) the formulation or a description of the pesticide;
 - (d) the distinguishing numbers of the approvals of any specifications approved under section 13 for classes of containers for the pesticide; and
 - (e) the registered numbers of registered labels for the classes of containers referred to in paragraph (d),
- to be kept at his office while the pesticide remains registered.

(2) If he registers a label for a class of containers, the Registrar shall—

- (a) cause—
 - (i) a sample of the label identified by its registered number; and

Pesticides.

- (ii) a record of the distinguishing number of the approval of the specification for the class of containers in respect of which the label was registered,

to be kept at his office while the label remains registered; and

- (b) permit any person to inspect the sample referred to in paragraph (a) (i) or a copy thereof.

(3) If he approves a specification for a class of containers, the Registrar shall—

- (a) cause a record—

- (i) describing the specification by reference to a prescribed specification or otherwise; and

- (ii) identified by the distinguishing number of the approval of the specification,

to be kept at his office while the specification remains an approved specification; and

- (b) permit any person to inspect the record referred to in paragraph (a) (i).

Applicants
to supply
certain
later in-
formation.

19. When—

- (a) information about a pesticide comes to the knowledge of a person who—

- (i) is an applicant for registration of the pesticide or for a permit in respect of the pesticide; or

- (ii) has been served with a notice under section 17 (1) in relation to the pesticide or has been issued with a permit in respect of the pesticide,

Pesticides.

not being information that has come to his knowledge after the application has been refused or withdrawn, registration of the pesticide has been cancelled or the permit has ceased to be in force; and

- (b) the information contradicts or modifies any information supplied by him in connection with an application made by him to the Registrar for—
 - (i) registration of the pesticide or registration of a label for a class of containers for the pesticide;
 - (ii) approval of a specification for a class of containers for the pesticide; or
 - (iii) the issue of the permit,

he shall forthwith supply the Registrar with particulars of the firstmentioned information.

Penalty: \$500 or, for an offence by a corporation, \$2,000.

20. (1) When information about a registered pesticide, a registered label or an approved container for a pesticide comes to the knowledge of the Registrar and he is of the opinion that, if the information had been received at the time when an application for registration of the pesticide or label or for approval of the specification for the class of containers of which the approved container is a member, as the case may be, was made, he would have refused the application, he shall cancel the registration of the pesticide or label or his approval of the specification, as the case may require.

Cancellation of registration or approval.

(2) The Registrar cancels—

- (a) registration of—
 - (i) a pesticide; or
 - (ii) a label for approved containers for a pesticide; or

Pesticides.

- (b) approval of a specification for a class of containers for a pesticide,

by entering a note to the effect that registration of the pesticide or label or approval of the specification is cancelled in the records required to be kept by him in relation to the pesticide, label or specification under section 18.

(3) When the Registrar cancels—

- (a) the registration of a pesticide, he shall cancel the registration of any registered label for approved containers for the pesticide and his approval of any specification approved for a class of containers for the pesticide;
- (b) the registration of the only registered label for approved containers for a pesticide, he shall cancel his approval of any specification for a class of containers that has been approved for the pesticide; or
- (c) his approval of the only specification approved for containers for a pesticide, he shall cancel registration of the pesticide.

(4) When the Registrar cancels—

- (a) registration of a pesticide—the pesticide ceases to be a registered pesticide;
- (b) registration of a label for approved containers for a pesticide—the label ceases to be a registered label for those containers; or
- (c) approval of a specification for a class of containers of a pesticide—the containers cease to be approved containers for the pesticide.

Pesticides.

(5) Forthwith after he has cancelled—

- (a) registration of a pesticide or of a label for approved containers for a pesticide; or
- (b) approval of a specification for a class of containers for a pesticide,

the Registrar shall serve notice of the cancellation on—

- (c) any person who was an applicant for registration of the pesticide or label or for approval of the specification; and
- (d) any other person who, in the opinion of the Registrar, should be given notice of the cancellation.

21. (1) When the Registrar cancels registration of a pesticide under section 20, he shall forthwith cause to be published in the Gazette and on at least 3 consecutive days in each of 2 consecutive weeks in at least 3 prescribed newspapers a notification—

Notices of
cancellation.

- (a) describing the pesticide;
- (b) stating that the pesticide is no longer a registered pesticide; and
- (c) containing—
 - (i) instructions for disposal of the pesticide that have been approved by the Minister;
 - (ii) a warning of the effect of a person's failure to comply with those instructions; and
 - (iii) any other warnings in relation to the pesticide that the Registrar may think fit.

Pesticides.

(2) Where a notification is published under subsection (1) and a person disposes of the pesticide to which the notification relates in the manner specified in the notification, he shall be deemed to have been issued with a permit under section 23 to dispose of the pesticide in accordance with those instructions.

(3) Where a person who has a pesticide in his possession or custody has notice of a notification published under subsection (1) that relates to the pesticide, he shall not dispose of the pesticide otherwise than in accordance with the instructions contained in the notification unless he satisfies the court that the pesticide was a registered pesticide at the time when he disposed of it because of its having been registered again after its registration had been cancelled.

Penalty: \$500 or, for an offence by a corporation, \$2,000.

(4) Where the Registrar publishes a notification under subsection (1), he shall—

- (a) forthwith cause a copy of the notification to be served by post on any person who, according to his records, was an applicant for registration of a label for an approved container for the pesticide to which the notification relates; and
- (b) whenever he thinks fit, cause a copy of the notification to be served by post on any person who, in the opinion of the Registrar, should be given notice of the cancellation of registration of the pesticide and the instructions and warning referred to in the notification.

Fee to
be paid.

22. (1) In respect of a registered pesticide there shall be paid to the Registrar before the expiration of the prescribed period (being not less than 3 years) commencing on the prescribed day and again paid before the expiration of each consecutive succeeding prescribed period a fee of \$100.

Pesticides.

(2) A person shall not sell a pesticide if he has notice that the fee payable under subsection (1) in respect of the pesticide has not been paid.

Penalty : \$500 or, for an offence by a corporation, \$2,000.

PART IV.

PERMITS.

23. (1) Subject to subsections (2) and (3), the Registrar may issue a permit to do or omit to do any one or more things the doing of which or the omission to do which would, but for the issue of the permit and the operation of section 25, constitute an offence under section 29, 30, 31, 32, 33, 34, 35, 38, 39, 42 or 43. ^{Issue of permits.}

(2) The Registrar shall not issue a permit under this section unless—

(a) it specifies or describes—

- (i) the person to whom it is issued;
- (ii) the pesticide or class of pesticides in respect of which it is issued; and
- (iii) the purpose for which it is issued; and

(b) the fee (if any) prescribed in respect of the permit has been paid.

(3) The Registrar shall issue a permit to sell a pesticide that is not a registered pesticide only if the applicant for the permit satisfies the Registrar that there are reasonable grounds for the pesticide not being registered.

Pesticides.

Permits
generally.

24. (1) The Registrar may, from time to time, upon payment of the prescribed fee (if any) renew or transfer a permit.

(2) The Registrar shall refuse to issue, renew or transfer a permit in any case in which he thinks that—

- (a) the interest of public safety or the safety of any individual; or
- (b) the protection of the environment from unintended harm that might be caused by the pesticide,

so requires.

(3) A permit is subject to—

- (a) any term or condition prescribed for all permits or for a class of permits to which it belongs; and
- (b) any term or condition that the Registrar thinks fit to impose and that is specified in the permit.

(4) Unless it is sooner cancelled by the Registrar under section 70 (3) or (4), a permit is in force for the period or periods specified in the permit or, where the permit has been renewed, in the current notice of renewal, being a period or periods expiring not later than one year after the date of issue of the permit or, where the permit has been renewed, not later than one year after the date of issue of the current notice of renewal.

Effect of
permit.

25. While a permit issued under section 23 is in force—

- (a) the person to whom the permit was issued or, where the permit has been transferred, the person to whom it was last transferred;
- (b) any employee of that person acting in the course of his employment by that person; and

Pesticides.

- (c) if that person is a corporation—any person acting in his capacity as a director of the corporation,
- are each authorised, subject to compliance with the terms and conditions to which the permit is subject—
- (d) to do or omit to do any thing in relation to a pesticide or class of pesticides that the permit specifies may be done or omitted to be done in relation to that pesticide or class of pesticides; and
- (e) to have the pesticide in his possession or custody except—
- (i) to the extent (if any) to which the terms and conditions of the permit otherwise provide; or
 - (ii) where the only purpose of the permit is to authorise the making of a claim referred to in section 35.

PART V.

PESTICIDE ORDERS.

26. In this Part, “pesticide order” means an order made under section 27 (1). Interpre-
tation.

27. (1) Subject to subsections (2) and (3), the Registrar may, with the consent of the Minister, make an order authorising (subject to the conditions, if any, specified in the order) all persons or members of a class of persons specified in the order to do or omit to do, during the period specified in the order, any one or more of the things for the Pesticide
orders.

Pesticides.

doing of which, or the omission to do which, a permit may be issued under section 23 except to sell a pesticide otherwise than in accordance with section 29 (2) (b).

(2) The Registrar shall not make a pesticide order in respect of an unregistered pesticide unless he is satisfied that failure to make the order would result in substantial detriment being caused to—

- (a) the public or a section of the public by damage to the environment or primary produce; or
- (b) the health of the public or a section of the public.

(3) A pesticide order is in force for the period specified in it under subsection (1) unless it is sooner revoked by a further order made by the Registrar with the consent of the Minister which further order the Registrar is hereby authorised to make.

(4) When the Registrar makes an order under this section he shall forthwith cause the order to be published in the Gazette and in such newspapers and other publications as he thinks fit.

Effect of
orders.

28. When a pesticide order is in force and a person does or omits to do (in accordance with the conditions, if any, specified in the order) anything he is authorised by the order to do or omit to do, he shall be deemed to have been issued with a permit under section 23 to do or omit to do that thing.

Pesticides.

PART VI.

CONTROL OF PESTICIDES.

DIVISION 1.—*Control Generally.*

29. (1) A person shall not sell an unregistered pesticide unless the sale is, pursuant to a permit, authorised by section 25. Sale of pesticides

Penalty: \$500 or, for an offence by a corporation, \$2,000.

(2) A person shall not sell a pesticide in a container—

- (a) that is not an approved container for the pesticide;
- (b) that does not bear a label; or
- (c) that does not bear a label that is identical to a registered label for an approved container for the pesticide,

unless the sale is, pursuant to a permit, authorised by section 25.

Penalty: \$500 or, for an offence by a corporation, \$2,000.

(3) A person shall not be convicted of an offence under this section and section 30 (1) in respect of any one transaction involving the sale and supply of a pesticide.

30. (1) A person shall not supply an unregistered pesticide unless— Supply and possession of pesticides.

- (a) the supply was, pursuant to a permit, authorised by section 25; or
- (b) the pesticide supplied was prepared from a registered pesticide otherwise than in contravention of section 32.

Pesticides.

(2) A person shall not have in his possession or custody a pesticide to which a notification under section 21 relates if he has notice of the notification unless—

- (a) having regard to the terms of the notification, the possession or custody is reasonably necessary in order to dispose of the pesticide in accordance with the notification; or
- (b) the possession or custody is, pursuant to a permit, authorised by section 25.

(3) A person shall not have an unregistered pesticide (not being a pesticide referred to in subsection (2)) in his possession or custody unless—

- (a) the possession or custody is, pursuant to a permit, authorised by section 25; or
- (b) the pesticide was prepared from a registered pesticide otherwise than in contravention of section 32.

Penalty: \$500 or, for an offence by a corporation, \$2,000.

Use, etc., of
unregistered
pesticide.

31. Except to the extent that, pursuant to a permit, he is otherwise authorised by section 25, a person shall not—

- (a) prepare an unregistered pesticide for use;
- (b) use an unregistered pesticide unless it is a pesticide prepared from a registered pesticide otherwise than in contravention of section 32; or
- (c) dispose of a pesticide otherwise than as required or authorised by this Act.

Penalty: \$500 or, for an offence by a corporation, \$2,000.

Pesticides.

32. A person shall not, before preparing for use, using, keeping or disposing of—

Preparation,
use, etc.,
of certain
pesticides.

(a) a registered pesticide; or

(b) a pesticide that contains a registered pesticide,

fail to read, or to have read to him, the instructions contained on any label that is identical to a registered label for an approved container for the pesticide and was, at the time he acquired the pesticide, affixed to its container.

Penalty : \$500 or, for an offence by a corporation, \$2,000.

33. (1) Except to the extent that he is otherwise required by an order made under section 21 or, pursuant to a permit, he is otherwise authorised by section 25, a person shall not, in preparing for use, using, keeping or disposing of—

Disregard of
instructions.

(a) a registered pesticide; or

(b) a pesticide that contains a registered pesticide,

wilfully or carelessly disregard any instruction on any label affixed to a container in which—

(c) the pesticide is situated;

(d) he acquired the pesticide; or

(e) he knows or has reasonable cause to suspect the pesticide to have been,

if there is a registered label for an approved container for the pesticide that contains that instruction.

Penalty : \$500 or, for an offence by a corporation, \$2,000.

(2) It is a defence to a prosecution for a contravention of subsection (1) if the court is satisfied that the instruction disregarded was not directed to the avoidance of harm to the health or property of any person.

Pesticides.

Claims
inconsistent
with
labels.

34. Except to the extent that, pursuant to a permit, he is otherwise authorised by section 25, a person shall not, in respect of—

(a) a registered pesticide; or

(b) a pesticide that contains a registered pesticide,

make any claim that is inconsistent with any of the instructions for preparation, use or disposal on any registered label for an approved container for the registered pesticide.

Penalty : \$500 or, for an offence by a corporation, \$2,000.

Modification
of warning
prohibited.

35. (1) Except to the extent that, pursuant to a permit, he is otherwise authorised by section 25, a person shall not, in respect of a pesticide, make any claim that is inconsistent with any matter required to be borne by a container of the pesticide by or under section 42 (1) (b).

Penalty : \$500 or, for an offence by a corporation, \$2,000.

(2) In this section and section 34, “claim” does not include a claim made in a notification published under section 21 or an order under section 27.

Labels not
to be
detached,
etc.

36. Where a container of a pesticide bears any matter identical to any matter contained on a registered label—

(a) for an approved container for the pesticide; or

(b) for an approved container for a registered pesticide contained in the firstmentioned pesticide,

a person shall not—

(c) detach the firstmentioned matter;

(d) alter, deface, obliterate or destroy the firstmentioned matter; or

Pesticides.

- (e) affix to the firstmentioned container any label or endorse anything upon the container that in either case has the effect of negating or varying the matter so borne,

except where he alters, defaces, obliterates or destroys the matter, as the case may be, when he destroys or (otherwise than by sale or supply) disposes of the pesticide without contravening this Act (paragraph (d) excepted) or the regulations.

Penalty : \$500 or, for an offence by a corporation, \$2,000.

37. A person shall not wilfully and without reasonable cause do anything likely to cause— Offence to cause risk.

- (a) a risk of injury by a pesticide, to himself or another; or
- (b) damage by a pesticide, to the property of another.

Penalty : \$500 or, for an offence by a corporation, \$2,000.

38. Except to the extent that, pursuant to a permit, he is otherwise authorised by section 25, a person shall not sell— Pesticide to conform to standard.

- (a) a pesticide; or
- (b) a pesticide containing a constituent,

that is prescribed for the purposes of this section unless the pesticide or constituent, as the case may be, conforms to any standard prescribed in respect of it.

Penalty : \$500 or, for an offence by a corporation, \$2,000.

Pesticides.

Certain
statements
prohibited.

39. (1) A person shall not—

- (a) disseminate any false or misleading information about a pesticide;
- (b) by reference to this Act or the regulations, or in any other manner, comment upon or explain any matter in a registered label for an approved container for a pesticide if that matter is thereby expressly or impliedly contradicted or qualified; or
- (c) expressly or impliedly claim—
 - (i) that a pesticide is approved or (except in giving or relying on a guarantee under section 40) guaranteed under this Act or the regulations;
 - (ii) that a pesticide is approved or recommended by the Government, a Department of the Government, a governmental authority or an officer or employee of such a Department or authority;
 - (iii) without any qualification, or with a qualification that is, in the opinion of the Registrar, unjustified, that a pesticide is safe, harmless, non-toxic, non-poisonous or non-injurious; or
 - (iv) that a pesticide has qualities prescribed for the purposes of this subparagraph.

Penalty: \$500 or, for an offence by a corporation, \$2,000.

(2) Subsection (1) (c) (ii) does not apply—

- (a) to an officer or employee of the Crown or of a governmental authority when, in the course of his employment by the Crown or authority; or
- (b) to a prescribed person or a person of a prescribed class when, in prescribed circumstances,

he expressly or impliedly claims that a pesticide is recommended.

Pesticides.

40. (1) Subject to this section, an information for a contravention of section 29, 30 (1) or (3), 31 (a) or (b) or 38 shall be dismissed if it is proved that the defendant received a prescribed guarantee in respect of the pesticide to which the information relates from the person from whom he obtained the pesticide and it is also proved—

Guarantee to be a defence in certain circumstances. cf. Act No. 31, 1908, s. 47.

- (a) in the case of a contravention of section 29 (1), 30 (1) or (3) or 31 (a) or (b)—that the defendant had no reason to believe that, at the time of the contravention, the pesticide was an unregistered pesticide;
- (b) in the case of a contravention of section 29 (2)—
 - (i) that, at the time of the contravention, the defendant had no reason to believe that the container in which he obtained the pesticide from the guarantor was not an approved container for the pesticide and no reason to believe that the container was not bearing a label identical to the registered label for that container;
 - (ii) that the pesticide was sold by the defendant in the container in which he obtained the pesticide from the guarantor; and
 - (iii) that the container in which the pesticide was sold by the defendant bore the same label as when he obtained the pesticide from the guarantor; or
- (c) in the case of a contravention of section 38—that the defendant had no reason to believe that, at the time of the contravention, the pesticide and its constituents did not conform to all standards prescribed in respect of them for the purposes of that section.

Pesticides.

(2) For the purposes of subsection (1), a guarantee is a prescribed guarantee in respect of a pesticide if—

- (a) the guarantee is in writing;
- (b) the matters guaranteed are—
 - (i) that the pesticide is a registered pesticide;
 - (ii) that the container in which the pesticide is supplied by the guarantor is an approved container for the pesticide;
 - (iii) that the label affixed to the container so supplied is identical to a registered label for the container; and
 - (iv) that, when the guarantee is supplied to the defendant, the pesticide and each of its constituents comply with any standard prescribed for the pesticide or constituent;
- (c) the guarantor is—
 - (i) a person resident in the State;
 - (ii) a company incorporated under the Companies Act, 1961; or
 - (iii) within the meaning of the Companies Act, 1961, a recognised company or a foreign company, being such a company that has a place of business within the State or carries on business in the State;
- (d) the guarantee specifies the name of the guarantor and—
 - (i) in the case of a guarantor who is resident within the State—the address of the guarantor and of his place of business;

Pesticides.

- (ii) in the case of a guarantor that is a company incorporated under the Companies Act, 1961—the address of the registered office of the guarantor;
 - (iii) in the case of a guarantor that is a recognised company—the address of the principal office of the guarantor referred to in section 343C of the Companies Act, 1961; or
 - (iv) in the case of a guarantor that is a foreign company—the address of the registered office of the guarantor in the State;
- (e) the guarantee applies—
- (i) generally to the pesticide to which the prosecution relates or to pesticides of a class that includes the pesticide to which the prosecution relates; or
 - (ii) to the specific pesticide to which the prosecution relates,
- and, in the latter case, refers to a sale note, bill of sale, invoice, bill of lading or other document describing the goods sold or supplied and the weight, measure or number thereof; and
- (f) the guarantee complies with any regulations applicable to it.

(3) Subsection (1) does not apply unless the defendant has, not later than 7 days after service on him of the summons issued in response to the information—

- (a) given notice in writing to the informant and the guarantor that he intends to rely on the guarantee specifying, in the notice to the informant, the name

Pesticides.

of the guarantor, any name under which he trades and the address referred to in subsection (2) (d) in relation to the guarantor; and

(b) given the informant a copy of the guarantee.

(4) A guarantor given notice under subsection (3) is entitled to offer evidence at the hearing of the information to which the notice relates and the court may, if it thinks fit, adjourn the hearing to enable the guarantor to do so.

(5) Where an offence is proved under section 29, 30 (1) or (3), 31 (a) or (b) or 38 but the information is dismissed under this section, the guarantor is, without prejudice to his liability to be prosecuted under subsection (6), liable to the same penalty as could have been imposed if the offence to which the information relates had been committed by the guarantor, unless he proves that, when he gave the guarantee, he had reasonable grounds for believing that the statements and descriptions contained in the guarantee were true.

(6) A person shall not, in a guarantee referred to in subsection (2), make or give a false statement or description in relation to a pesticide but shall not be found guilty of an offence under this subsection if he proves that, when he gave the guarantee, he had reasonable grounds for believing that the statements and descriptions contained in the guarantee were true.

Penalty: \$500 or, for an offence by a corporation, \$2,000.

(7) Notwithstanding anything in any Act, proceedings for an offence under subsection (6) may be commenced at any time after the giving of the guarantee to which the proceedings relate.

Pesticides.

DIVISION 2.—Date-controlled Pesticides.

41. A person who manufactures a date-controlled pesticide shall—

Manu-
facture
of date-
controlled
pesticide.

- (a) forthwith make a record in or to the effect of the prescribed form and in the prescribed manner containing the date of manufacture of the pesticide and such other particulars as are required by the regulations to be inserted in the record; and
- (b) keep that record for not less than the period prescribed for keeping it.

Penalty: \$500 or, for an offence by a corporation, \$2,000.

42. (1) Except to the extent that, pursuant to a permit, he is otherwise authorised under section 25, a person shall not sell a date-controlled pesticide in a container that does not bear in the prescribed manner and form—

Sale, use,
etc., of
date-
controlled
pesticide.

- (a) matter approved by the Registrar as sufficient to enable the Registrar to identify the date of manufacture of the pesticide; and
- (b) the words "IT IS UNLAWFUL TO USE THE CONTENTS AFTER" followed by the date required by the regulations to be borne by the container for the purposes of this paragraph.

(2) If the container of a date-controlled pesticide bears the words "IT IS UNLAWFUL TO USE THE CONTENTS AFTER" followed by a date, a person shall not, after that date, sell, supply or use the pesticide that is in the container unless—

- (a) pursuant to a permit, he is authorised by section 25 so to do; or

Pesticides.

- (b) he does so on a date that, notwithstanding the date on the container, is earlier than the date that is required by the regulations to be borne by the container for the purposes of subsection (1) (b).

Penalty : \$500 or, for an offence by a corporation, \$2,000.

Sale, etc.,
of date-
controlled
pesticide
after
removal
from
container.

43. Where a person knows, or has reasonable cause to suspect, that a pesticide that is or contains a date-controlled pesticide has been in a container bearing the words "IT IS UNLAWFUL TO USE THE CONTENTS AFTER" followed by a date he shall not, after that date, sell, supply or use the pesticide unless—

- (a) pursuant to a permit, he is authorised by section 25 so to do; or
- (b) he does so on a date that, notwithstanding the date on the container, is not later than the date that is required by the regulations to be borne by the container for the purposes of section 42 (1) (b).

Penalty : \$500 or, for an offence by a corporation, \$2,000.

Abuse of
warning
prohibited.

44. (1) A person shall not, without reasonable cause—

- (a) affix a label bearing the words "IT IS UNLAWFUL TO USE THE CONTENTS AFTER" followed by a date to a container of a pesticide or to anything that he knows, or has reasonable cause to suspect, is or is intended to be a container for a pesticide; or
- (b) write the words "IT IS UNLAWFUL TO USE THE CONTENTS AFTER" followed by a date upon anything that he knows, or has reasonable cause to suspect, is or is intended to be a label for a container of a pesticide.

Pesticides.

(2) Where a container of a pesticide bears any matter that is, or has been, required to be borne by the container by or under section 42 (1), a person shall not—

- (a) detach the matter;
- (b) alter, deface, obliterate or destroy the matter; or
- (c) affix to the container any label or endorse anything upon the container that in either case has the effect of negating or varying the matter so borne,

except where he alters, defaces, obliterates or destroys the matter, as the case may be, when he destroys or (otherwise than by sale or supply) disposes of the pesticide without contravening this Act (paragraph (b) excepted) or the regulations.

Penalty : \$500 or, for an offence by a corporation, \$2,000.

DIVISION 3.—Restricted Pesticides.

45. In this Division, “certificate” means a certificate of Interpretation.
competency issued under section 47 (1).

46. (1) A person may apply to the Registrar for a Application
certificate to authorise him to prepare for use and use a for
restricted pesticide. certificate.

(2) An application under subsection (1) shall—

- (a) be made in the prescribed manner and be in or to the effect of the prescribed form; and
- (b) be accompanied by the fee prescribed in respect of the application.

Pesticides.

Issue of
certificate.

47. (1) Subject to subsection (2), the Registrar, on receipt of an application made under section 46, may issue the applicant with a certificate of competency and may impose terms and conditions in relation to the preparation for use or use of the pesticide in respect of which it is issued.

(2) The Registrar shall not issue a certificate under subsection (1) unless—

(a) the certificate specifies—

- (i) the person to whom it is issued;
- (ii) the restricted pesticide in respect of which it is issued;
- (iii) the period of time for which it is issued; and
- (iv) any terms or conditions to which it is subject;

(b) the Registrar is satisfied that the applicant for the certificate is competent to prepare for use and use the pesticide in respect of which it is issued without unintended harm being caused by the pesticide; and

(c) the prescribed fee has been paid.

(3) A certificate is in force for the period specified in the certificate under subsection (2) (a) (iii) unless it is sooner cancelled by the Registrar under section 70 (3) or (4).

(4) The regulations may make provision for or with respect to—

- (a) tests for applicants for certificates;
- (b) the keeping of records and the making of returns by persons to whom certificates are issued; and

Pesticides.

- (c) fees payable for and in connection with certificates and the tests referred to in paragraph (a).

48. For the purposes of section 49, while a certificate is in force, the person to whom it was issued is authorised to prepare the restricted pesticide specified in the certificate for use and to use the pesticide but only when he does so in accordance with the terms and conditions, if any, to which the certificate is subject. Effect of certificate.

49. A person shall not—

- (a) prepare a restricted pesticide for use; or
(b) use a restricted pesticide,

Offence of unauthorised preparation or use.

unless he is authorised to do so by section 48.

Penalty : \$500 or, for an offence by a corporation, \$2,000.

PART VII.

PROHIBITED RESIDUES IN FOODSTUFFS.

50. (1) When an inspector believes on reasonable grounds that a quantity of a prescribed foodstuff contains a prohibited residue he may, with the consent of the Registrar, serve a notice in or to the effect of the prescribed form on— Prohibited residue notices.

- (a) the owner of the foodstuff;
(b) the occupier of the place where the foodstuff is situated; or

Pesticides.

- (c) the person who appears to the inspector to be the person in charge of any vehicle, aircraft or vessel in or on which the foodstuff is situated.

(2) A notice served under this section in relation to a quantity of a prescribed foodstuff—

(a) shall—

- (i) state the name of the foodstuff;
- (ii) describe where the foodstuff is situated at the time of service of the notice;
- (iii) specify or describe the quantity of the foodstuff; and
- (iv) specify the expiry date of the notice, being a date occurring not more than 14 days after the date of service of the notice; and

(b) may contain provisions requiring any person on whom it is to be served and who has possession or control of the foodstuff—

- (i) not to part with possession or control of the foodstuff;
- (ii) to retain the foodstuff in the place where it is situated at the time the notice is served or in a place that is under the control of that person, or another person specified in the notice, where the foodstuff will, in the opinion of the inspector, least endanger the health of the public or of any person; or
- (iii) to deal with the foodstuff or to perform acts in relation to the foodstuff (other than acts requiring the destruction of the foodstuff) in accordance with directions set out in the notice being directions that are reasonably necessary for the preservation of the health of the public or of any person.

Pesticides.

(3) The Registrar or any inspector may cancel a notice served under this section by giving notice of its cancellation to the person on whom it was served.

(4) A notice issued under this section in relation to a quantity of a prescribed foodstuff is in force from the time of service of the notice until the expiry date specified in the notice unless it is sooner cancelled—

- (a) by service of an order made by the Minister under section 51 in relation to the whole or any part of the quantity of foodstuff; or
- (b) by the Registrar or an inspector under subsection (3).

(5) While a notice under this section is in force, the person on whom it was served shall not fail to comply with any requirement of the notice that is applicable to him.

Penalty for an offence against this subsection: \$500 or, for an offence by a corporation, \$2,000.

51. (1) The Minister may make an order under this section in respect of the whole or part of a quantity of prescribed foodstuff that is specified or described in a notice that has been served under section 50 and may cause the order to be served as provided by subsection (4) (a). Prohibited
residue
orders.

(2) An order made and served under this section in relation to a quantity of a prescribed foodstuff—

- (a) shall—
 - (i) state the name of the foodstuff;

Pesticides.

- (ii) describe where the foodstuff was situated at the time of service of the notice under section 50 in respect of which the order is made;
 - (iii) specify or describe the quantity of the foodstuff;
 - (iv) specify the date on which the order is made; and
 - (v) specify the expiry date of the order, being a date occurring not more than 6 months after the date on which the order is made; and
- (b) may contain provisions requiring any person on whom it is to be served and who has possession or control of the foodstuff—
- (i) not to part with possession or control of the foodstuff;
 - (ii) to retain the foodstuff in a place specified in the order that is under the control of that person;
 - (iii) to deal with the foodstuff or to perform acts in relation to the foodstuff in accordance with directions set out in the order being directions that are reasonably necessary for the preservation of the health of the public or of any person; or
 - (iv) subject to subsection (3), within a time specified in the order, to destroy the foodstuff in a manner described in the order or in accordance with the directions of an inspector.

Pesticides.

(3) The Minister shall not cause to be served under subsection (4) an order made under this section that requires the destruction of a quantity of a prescribed foodstuff unless—

- (a) at the time he made the order, he was satisfied that—
 - (i) at least one sample of the foodstuff from each prescribed portion of the quantity contains a prohibited residue; or
 - (ii) where the quantity is less than or equal to the portion prescribed in relation to the foodstuff, at least one sample of the foodstuff contains a prohibited residue;
- (b) the requirement to destroy the foodstuff does not take effect before 90 days after the date of service of the order; and
- (c) he believes on reasonable grounds that there is no reasonable likelihood of the foodstuff ceasing to contain a prohibited residue within the period of 3 years following the date on which he made the order.

(4) An order made under this section—

- (a) may be served on the owner of the prescribed foodstuff in relation to which it was made or on the occupier of any place in which the foodstuff is situated at the time of service of the order;
- (b) where it is so served, is in force from the time it is served until the expiry date specified in the order unless it is sooner revoked by the Minister; and

Pesticides.

- (c) where it is so served, cancels any notice issued under section 50 that is then in force in respect of which it was made.

(5) Where an order under this section is in force, the person on whom it was served shall not fail to comply with any requirement of the order that is applicable to him.

Penalty : \$500 or, for an offence by a corporation, \$2,000.

(6) Subject to subsection (7), in subsection (3) "prescribed portion", in relation to a quantity of a prescribed foodstuff, means—

- (a) where the quantity is specified or described in the order by reference to its weight—50 tonnes;
- (b) where the quantity is specified or described in the order by reference to its volume—
 - (i) if the foodstuff is not in liquid form—100 cubic metres; or
 - (ii) if the foodstuff is in liquid form—5 000 litres; or
- (c) where the quantity is specified or described in the order by reference to the area of the place where it is situated—150 hectares.

(7) Where, for the purposes of subsection (3), the regulations prescribe, in relation to any foodstuff, a smaller portion than that prescribed by subsection (6), "prescribed portion", in relation to that foodstuff, means the portion prescribed by the regulations.

Pesticides.

52. (1) If a person fails to comply with a requirement of an order under section 51 to destroy a quantity of a prescribed foodstuff, the Minister may authorise an inspector to destroy the foodstuff and an inspector so authorised may—

Destruction
in default.

- (a) comply with that requirement as if he were the person to whom the requirement relates; and
- (b) for the purpose of complying with that requirement, enter any place where the quantity of prescribed foodstuff to which the requirement relates is situated.

(2) Any expenses incurred by an inspector in complying with a requirement with the authority of the Minister under subsection (1) may be recovered in a court of competent jurisdiction as a debt that is due to the Crown by any person bound to comply with the requirement.

PART VIII.

SUPPLEMENTARY.

DIVISION 1.—*Inspectors' Powers, etc.*

53. (1) An inspector may at any time—

Powers of
inspectors.

- (a) subject to subsection (2), enter and examine any place, vehicle, aircraft or vessel, or examine any fixture or fitting in or on which he suspects on reasonable grounds that a pesticide or a prescribed foodstuff containing a prohibited residue may be found;

Pesticides.

- (b) subject to subsection (3), take without payment, for the purpose of examination or testing, samples of any substance or article that he suspects on reasonable grounds to be a pesticide or a prescribed foodstuff containing a prohibited residue and, in exercising his powers under this paragraph, open any container or cause any container to be opened;
- (c) subject to subsection (3), seize and remove any substance or article that he suspects on reasonable grounds to be a pesticide or a prescribed foodstuff containing a prohibited residue and any container in which the substance or article is being kept or conveyed, if he suspects on reasonable grounds that there has been a contravention of this Act or the regulations in respect of the substance or article;
- (d) detain a vehicle, vessel or aircraft for such time as is reasonably necessary for him to exercise the powers conferred on him by paragraphs (a), (b) and (c);
- (e) for the purposes of paragraph (c), direct the occupier of any place where the substance or article is seized, or the owner of the substance or article, to retain it in that place, or in a place under the control of the occupier or owner that will, in the opinion of the inspector, least endanger the health of the public or of any person;
- (f) give directions for or with respect to the detention of any substance, article or container, that has been removed under paragraph (c);
- (g) with the consent of the Minister, and at the expense of the owner of the pesticide, destroy or render harmless or give directions for the destruction or rendering harmless of, any pesticide if—
 - (i) he believes on reasonable grounds that it is necessary in the interest of the health of the public or of any person so to do; or

Pesticides.

- (ii) the owner of the pesticide authorises him in writing so to do;
- (h) exercise the power conferred on him by paragraph (g) without the consent of the Minister where imminent danger to the health of the public or of any person exists;
- (i) make inquiries relating to the observance of this Act and the regulations;
- (j) where the loss of life, injury to a person, damage to any property or danger to the public occurs involving a pesticide or a prescribed foodstuff containing a prohibited residue, make any inquiry he thinks necessary and for that purpose enter any place; and
- (k) require the production of any permit or certificate of competency or any book, record or writing required by this Act or the regulations to be held or kept, or otherwise held or kept by a manufacturer of a pesticide, and inspect, examine and take copies of or extracts from it.

(2) Unless an inspector believes on reasonable grounds that imminent danger to the health of the public or of any person exists, he shall not enter a dwelling-house pursuant to the power granted him under subsection (1) (a) except under the authority of a search warrant issued under section 72.

(3) An inspector is not empowered—

- (a) under subsection (1) (b)—to take samples of substances or articles; or

Pesticides.

- (b) under subsection (1) (c)—to remove any substances, articles or containers,

that appear to the inspector to be in the custody of a person unless the inspector makes out and tenders to the person a receipt in or to the effect of the prescribed form.

(4) Any expense incurred under subsection (1) (g) may be recovered in a court of competent jurisdiction as a debt that is due to the Crown by the owner of the pesticide destroyed or rendered harmless.

(5) Where a person answers a question asked by an inspector under subsection (1) (i) or (j) and the answer tends to incriminate that person, neither the question nor the answer may be used in any proceedings against that person except proceedings under section 54 in respect of a wilfully false or misleading answer to the question.

(6) Subsection (5) applies whether the person objects to answering the question or not.

Obstruction
of inspector,
etc.

54. A person shall not—

(a) refuse or fail to admit—

(i) an inspector exercising his authority under section 53; or

(ii) an inspector or a member of the police force exercising his authority under a search warrant issued under section 72;

(b) wilfully obstruct or delay an inspector exercising any of his powers under section 53;

Pesticides.

- (c) fail to comply with any reasonable direction or requirement of an inspector under section 53;
- (d) prevent, or attempt to prevent, a person from appearing before, or complying with a direction or requirement of, an inspector under section 53; or
- (e) give an answer he knows to be false or misleading to a question asked by an inspector under section 53 (1) (i) or (j).

Penalty: \$500 or, for an offence by a corporation, \$2,000.

55. (1) An inspector who finds a person committing an offence against this Act or the regulations or who finds a person whom he suspects on reasonable grounds of having committed or attempted to commit such an offence may demand from that person his name and place of abode.

(2) A person, upon demand made of him under subsection (1), shall not—

- (a) fail or refuse to state his name or place of abode;
or
- (b) give a false name or place of abode.

Penalty: \$200.

56. A person shall not—

- (a) forge or counterfeit any written evidence of appointment of an inspector;
- (b) make use of any forged, counterfeited or false written evidence of such an appointment;

Personation of inspector.

Pesticides.

(c) personate an inspector named in any written evidence of appointment; or

(d) falsely pretend to be an inspector.

Penalty: \$1,000.

DIVISION 2.—*Appeals against Orders, etc.*

Interpre-
tation.

57. In this Division—

“appeal” means an appeal under section 58 (1);

“Judge” means a Judge of the District Court.

Appeals to
District
Court.

58. (1) A person who is aggrieved by—

(a) a decision or an order of the Minister;

(b) a decision of the Registrar (other than a decision relating to cancellation of the registration of a pesticide); or

(c) a direction or requirement of an inspector,

made or given under this Act, may appeal against the decision or order to the District Court.

(2) An appeal against an order of the Minister may be made only within 30 days of the date on which the order was served.

(3) Subject to subsection (2), an appeal shall be made in accordance with the rules of the District Court.

(4) When an appeal is being heard the Judge hearing the appeal is not bound by the rules or practice as to evidence and may inform himself of any matter in such manner as he thinks fit.

(5) A Judge in determining an appeal shall have regard to the provisions of this Act, the regulations, the circumstances of the case and the public interest.

Pesticides.

- (6) A Judge in determining an appeal may decide—
- (a) to dismiss the appeal;
 - (b) to allow the appeal wholly or partly; or
 - (c) that a permit or certificate of competency be issued subject to such terms and conditions being specified in the permit or certificate as could have been imposed by the Registrar and as the Judge thinks fit.
- (7) The decision of a Judge on an appeal under this section—
- (a) is final and binding on the person against whose decision or order the appeal is brought and the appellant; and
 - (b) shall be carried into effect.
- (8) An appeal brought under this section does not affect any decision or order in respect of which it has been brought unless and until a Judge makes a decision under subsection (6) (b) or (c).

DIVISION 3.—*Prosecutions.*

59. (1) Proceedings for an offence against this Act or the regulations shall—

Proceed-
ings for
offences.

- (a) be taken and prosecuted only by a person acting with the authority of the Minister; and
- (b) be disposed of summarily before a court of petty sessions.

(2) In proceedings for any such offence, an authority to prosecute, purporting to have been signed by the Minister, shall be evidence of the authority of the Minister without proof of the Minister's signature.

Pesticides.

(3) Any such proceedings may be commenced by information laid within 12 months after the time when the offence is alleged to have been committed.

Evidence.

60. In proceedings for an offence against this Act or the regulations—

(a) a certificate purporting to be signed by a prescribed officer and to certify—

- (i) that a pesticide specified or described in the certificate was, or was not, a registered pesticide on any date, or during any period, specified in the certificate;
- (ii) that a container described in the certificate was, or was not, an approved container or an approved container for a pesticide specified or described in the certificate on any date, or during any period, specified in the certificate;
- (iii) that a label described in the certificate was, or was not, a registered label or a registered label for an approved container described in the certificate on any date, or during any period, specified in the certificate;
- (iv) that a permit or certificate of competency was in force on any date, or during any period, specified in the certificate;
- (v) that the matter appearing on a registered label, permit or certificate of competency described in the certificate is identical to matter set out in, or in an instrument appended to, the certificate;
- (vi) that a permit or certificate of competency was suspended during a specified period or was cancelled on a specific date; or

Pesticides.

- (vii) that a person specified in the certificate was an inspector on any date, or during any period, specified in the certificate, is evidence of the facts so certified;
- (b) a printed document that is or purports to be a standard, rule, code or specification of a body referred to in section 73 (2) (c) (i) and that has been or purports to have been published or issued by or on behalf of that body is admissible as evidence in those proceedings and is evidence of that standard, rule, code or specification;
- (c) evidence that a sealed container bore any matter at any time in a manner prescribed or required by this Act or the regulations in relation to a pesticide or class of pesticides is also evidence that the pesticide or a pesticide of that class was in the container at that time, unless the contrary is proved; and
- (d) a certificate purporting to be signed by an analyst and setting out the results of an analysis is evidence that the substance or article specified or described in the certificate was the substance or article that was analysed, of the result of the analysis and that the analysis was carried out in such manner as may be specified in the certificate.

61. (1) Where a person is convicted of an offence *Forfeiture.* against this Act or the regulations, the court may order forfeiture to the Crown of—

- (a) all or any part of the pesticide or prescribed food-stuff in respect of which the offence was committed; or

Pesticides.

(b) any container of that pesticide or prescribed foodstuff,

if the court finds it to be the property of the person so convicted and, upon the making of the order, the pesticide, prescribed foodstuff or container becomes the property of the Crown.

(2) Subject to section 67, on application by or on behalf of the Minister in the prescribed manner, a court of petty sessions may order forfeiture to the Crown of any substance, article or container that has been seized by an inspector under section 53 (1) (c) and, upon the making of the order, the substance, article or container becomes the property of the Crown.

Liability
of
employers.

62. (1) Where any person, as the employee of another person, which other person is in this section referred to as "the employer", contravenes any provision of this Act or the regulations, the employer shall be deemed to have contravened the same provision unless he satisfies the court that—

(a) he—

(i) did not authorise or permit the contravention by the employee; and

(ii) used all due diligence to prevent the contravention; or

(b) the employee would not have been found guilty of the offence by reason of his being able to establish a defence available to him under this Act or the regulations.

(2) The employer may be proceeded against and convicted under a provision pursuant to subsection (1) whether or not the employee has been proceeded against or been convicted under that provision.

Pesticides.

(3) Nothing in subsection (1) prejudices or affects any liability imposed by a provision of this Act or the regulations on any person by whom an offence against that provision is actually committed.

63. (1) Where a corporation contravenes any provision of this Act or the regulations, each director of the corporation, and each officer concerned with the management of the corporation, shall be deemed to have contravened the same provision unless he satisfies the court that—

- (a) the corporation contravened the provision without his knowledge;
- (b) he was not in a position to influence the conduct of the corporation in relation to its contravention of the provision;
- (c) he, being in such a position, used all due diligence to prevent the contravention of the provision by the corporation; or
- (d) the corporation would not have been found guilty of the offence by reason of its being able to establish a defence available to it under this Act or the regulations.

(2) A person may be proceeded against and convicted under a provision pursuant to subsection (1) whether or not the corporation has been proceeded against or been convicted under that provision.

(3) Nothing in subsection (1) prejudices or affects any liability imposed by a provision of this Act or the regulations on any corporation by which an offence against that provision is actually committed.

Pesticides.

DIVISION 4.—*Miscellaneous.*

Delegation.

64. (1) In this section, "function" includes power, authority and duty.

(2) With the consent of the Minister, the Registrar may, by instrument in writing, delegate to any person engaged in the administration of this Act the exercise or performance of such of the functions of the Registrar as are specified in the instrument.

(3) A function the exercise or performance of which has been delegated under this section may, while the delegation remains unrevoked, be exercised or performed from time to time in accordance with the terms of the delegation.

(4) A delegation under this section may be made subject to such conditions or limitations as to the exercise or performance of any function delegated or as to time or circumstances as may be specified in the instrument of delegation.

(5) Notwithstanding any delegation under this section, the Registrar may continue to exercise or perform any function delegated.

(6) An act or thing done or suffered by a delegate acting in the exercise of a delegation under this section has the same force and effect as it would have if it had been done or suffered by the Registrar and shall be deemed to have been done or suffered by the Registrar.

(7) An instrument purporting to have been signed by a delegate of the Registrar in his capacity as such a delegate shall in all courts and before all persons acting judicially be received in evidence as if it were an instrument duly executed by the Registrar and shall, until the contrary is proved, be deemed to be an instrument signed by a delegate of the Registrar.

Pesticides.

65. (1) When the Registrar refuses to grant any application under this Act he shall forthwith cause a notice in writing to be served on the applicant by post.

Notice
of
refusal
of
applica-
tion.

(2) A notice referred to in subsection (1) shall—

- (a) describe the application that has been refused; and
- (b) state—
 - (i) that the application has been refused;
 - (ii) the date on which the application was refused; and
 - (iii) the reason or reasons for refusal of the application.

66. (1) In this section, “prescribed time”, in relation to an application, means—

Delay in
granting
or refusing
application.

- (a) the period of 6 months that next succeeds the lodging of the application with the Registrar under section 8 (2) (c); or
- (b) where a longer period is agreed upon by the Registrar and the applicant—that longer period.

(2) Where application is made to the Registrar for—

- (a) registration of a pesticide or label;
- (b) approval of a specification for a class of containers;
- (c) the issue of a permit; or
- (d) the issue of a certificate of competency,

and the Registrar does not grant or refuse to grant the application within the prescribed time, the Registrar shall, for the purposes of section 58, be deemed to have refused to grant the application.

Pesticides.

Retention
and disposal
of seized
property.

67. (1) In this section, "prescribed period", in relation to any substance, article or container seized under section 53 (1) (c), means the period of 6 months commencing from the time of seizure of the substance, article or container or any other period fixed by a court of petty sessions in relation to the substance, article or container upon application by or on behalf of the Minister in the prescribed manner.

(2) During the prescribed period any substance, article or container seized under section 53 (1) (c)—

- (a) may be retained; or
- (b) unless during that period the substance, article or container has been forfeited to the Crown under section 61, may be returned to the person from whom it was seized.

(3) A substance, article or container seized under section 53 (1) (c) shall, at the expiration of the prescribed period, be returned to the person from whom it was seized, or to the person who appears to the Registrar to be its owner, unless—

- (a) it was, during that period, forfeited to the Crown under section 61; or
- (b) the Registrar causes a notice to be advertised in the prescribed manner before the expiration of the prescribed period to the effect that application will be made on a specified day that occurs after the expiration of the prescribed period for forfeiture to the Crown of the substance, article or container.

(4) Where a notice is advertised under subsection (3), the substance, article or container to which the advertisement relates shall forthwith after the day specified in the advertisement be returned to the person from whom it was seized, or to the person who appears to the Registrar to be the owner, unless the substance, article or container is forfeited to the Crown.

Pesticides.

68. (1) Any substance, article or container forfeited to the Crown shall be disposed of as the Minister directs. Disposal of
forfeited
property.

(2) Where any substance, article or container is disposed of under subsection (1) by way of sale, the proceeds shall be paid into the Treasury and be carried to the Consolidated Revenue Fund.

69. (1) An inspector may submit any sample taken under section 53 (1) (b) to an analyst for analysis. Analysis.

(2) Where an analysis has been made by an analyst or under his personal supervision in respect of any sample submitted for analysis under subsection (1), the analyst may issue to the Registrar a certificate setting out the results of that analysis.

(3) The Registrar shall, upon payment of the prescribed fee, issue a copy of a certificate issued to him under subsection (2) to a person who appears to the Registrar to be—

- (a) the owner of the substance or article from which the sample analysed was taken or the person in whose possession or custody, or under whose control, the substance or article was at the time of the taking of the sample;
- (b) an applicant for registration of that substance or article under this Act; or
- (c) the guarantor under a guarantee given pursuant to section 40 in respect of that substance or article.

(4) A person shall not, for trade purposes or for advertisement, use a certificate issued under subsection (2) or any matter contained therein.

Penalty for an offence against this subsection : \$500 or, for an offence by a corporation, \$2,000.

Pesticides.

Suspension
and cancel-
lation of
permits and
certificates.

70. (1) Where the holder of a permit or certificate of competency is proceeded against for an offence against this Act or the regulations, or has failed to comply with a lawful direction or requirement of an inspector, the Registrar may, by notice in writing served on the holder personally or by post, suspend the permit or certificate, as the case may be, until the proceeding has been disposed of or, as the case may be, until the direction or requirement has been complied with.

(2) A permit or certificate of competency shall be deemed not to be in force during any period of its suspension.

(3) The Registrar may, by notice in writing served on the holder of a permit or certificate of competency, cancel the permit or certificate if the holder—

- (a) has been convicted of an offence against this Act or the regulations;
- (b) breaches a condition of the permit or certificate; or
- (c) surrenders the permit or certificate to the Registrar.

(4) Where information about the holder of a permit or certificate of competency comes to the knowledge of the Registrar and he is of the opinion that, if he had been in possession of the information before he issued the permit or certificate he would have refused to issue the permit or certificate he may, by notice in writing served on the holder personally or by post, cancel the permit or certificate.

Offences
relating to
permits and
certificates.

71. (1) A person shall not in, or in connection with, an application for the issue, renewal or transfer of a permit or the issue of a certificate of competency—

- (a) make a statement; or
- (b) furnish information,

that he knows to be false or misleading in a material particular.

Pesticides.

(2) A person shall not have a permit or certificate of competency in his possession without reasonable excuse.

(3) A person shall not forge or alter a permit or certificate of competency with intent to deceive.

(4) The person to whom—

(a) a permit has been issued or transferred; or

(b) a certificate of competency has been issued,

shall not lend the permit or certificate, as the case may be, or allow it to be used by any other person for any purpose for which it was issued or transferred.

Penalty : \$500 or, for an offence by a corporation, \$2,000.

72. Upon a complaint made on oath by an inspector that the inspector suspects on reasonable grounds that a provision of this Act or the regulations has been or is being contravened within any dwelling-house, a stipendiary magistrate may issue a search warrant authorising an inspector named in the warrant together with a member of the police force at any time or times within 14 days from the date of issue of the warrant to enter, if need be by the use of reasonable force, the dwelling-house named in the warrant, and to search the dwelling-house and any fixtures or fittings therein for evidence of such a contravention.

73. (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) A regulation may—

(a) apply differently according to such factors as are specified in the regulation;

Pesticides.

(b) authorise any matter or thing to be from time to time determined, applied or regulated by a specified person;

(c) adopt wholly, partly or by reference—

(i) any of the standards, rules, codes or specifications specified in the regulation that have been recommended or adopted by the British Standards Institution or the Standards Association of Australia (whether published before or after the commencement of this section); or

(ii) any standards, rules, codes or specifications approved by the Minister and published in the Gazette (whether published before or after the commencement of this section),

relating to the matter with which the regulation deals together with any additions or amendments thereto (whether made or published before or after the commencement of this section) that are so specified;

(d) exempt persons, or persons of a prescribed class, either absolutely or subject to conditions, from any provision of the regulations;

(e) require an application under this Act to be verified by a statutory declaration; and

(f) impose a penalty not exceeding \$500 for any contravention of a regulation and in addition, where the contravention continues, a penalty not exceeding \$50 for every day the contravention continues.

(3) A regulation that prescribes a pesticide may describe the pesticide by reference to—

(a) a class or classes of substances or organisms;

(b) a quantity of a substance or an organism; or

(c) circumstances in which, or other than in which, a substance or an organism is a prescribed pesticide.

Pesticides.

(4) A regulation may provide that a person shall not use a pesticide, or cause a pesticide to be used, in prescribed circumstances unless he has given, in a prescribed manner, a prescribed notice to other prescribed persons not later than a prescribed period before he uses the pesticide or causes it to be used.

74. The Minister may, in prescribed circumstances, wholly or partly—

Minister
may waive
or remit
fees.

- (a) waive a requirement for a person to lodge any fees under this Act; or
- (b) remit any fees paid under this Act.

75. (1) Subject to subsection (3), a person shall not disclose any information relating to any manufacturing or commercial secrets or working processes and obtained by him in connection with the administration or execution of this Act or the regulations, unless the disclosure of information is—

Disclosure
of infor-
mation.

- (a) made in connection with the administration or execution of this Act or the regulations;
- (b) made with the prior permission of the Minister; or
- (c) ordered by a court, or by any other body or person authorised by law to examine witnesses, in the course of, and for the purpose of, the hearing and determination by that court, body or person of any matter or thing.

Penalty: \$500.

(2) The Minister may grant the permission referred to in subsection (1) (b) only if he is satisfied that to do so would be in the public interest.

Pesticides.

(3) The Registrar may communicate any matter which comes to his knowledge in the exercise or performance of his powers, authorities, duties or functions under this Act or the regulations—

- (a) to an officer or authority engaged in administering or executing a law of the Commonwealth or of another State or a Territory relating to pesticides; or
- (b) to any person, when communication of the matter to that person is reasonably related to the prevention of harm that may be, or the amelioration of harm that has been, caused by a pesticide to the public or to any person or property.

Certain
proceed-
ings pro-
hibited.

76. No proceedings lie against the Minister or a person appointed or employed under section 7 for or on account of any act, matter or thing done or ordered or directed to be done by the Minister or person, and purporting to be done for the purposes of carrying out the provisions of this Act, if the Minister or person, as the case may be, has acted in good faith and with reasonable care.

Giving of
notice.

77. For the purposes of this Act, a person may be given notice—

- (a) of a notification under section 21—by the Registrar causing a copy of the notification to be served on that person personally or by post; or
- (b) of any other matter or thing—by the Registrar serving written notice of that matter or thing on that person personally or by post.

Pesticides.

78. The Consumer Protection Act, 1969, is amended by Amendment of Act No. 28, 1969. omitting from section 4 (2) the words "Pest Destroyers Act, 1945" and by inserting instead the words "Pesticides Act, 1978".

In the name and on behalf of Her Majesty I assent to this Act.

A. R. CUTLER,
Governor.

*Government House,
Sydney, 3rd April, 1978.*

1947

Summary

The following is a summary of the work done during the year 1947. The work was done in the field of the study of the life cycle of the mosquito, *Anopheles stephensi*, and the effect of temperature on its development.

The work was done in the laboratory of the Department of Zoology, University of California, Berkeley, California.

1. Introduction

The purpose of this study was to determine the effect of temperature on the development of the mosquito, *Anopheles stephensi*, and to determine the range of temperatures within which it can survive.

BY APPOINTMENT ONLY - NO VISITORS WITHOUT APPOINTMENT

