

PEST DESTROYERS ACT, 1919-1935.

BEING

PEST DESTROYERS ACT, 1919, No. 1377 OF 1919 [ASSENTED TO
20TH NOVEMBER, 1919.]

AS AMENDED BY

PEST DESTROYERS ACT, 1934, No. 2175 OF 1934 [ASSENTED TO
22ND NOVEMBER, 1934.]

AND

STATUTE LAW REVISION ACT, 1935, No. 2246 OF 1935
[ASSENTED TO 19TH DECEMBER, 1935.]

**An Act to make better provision for regulating the sale
of insecticides and fungicides, and for other purposes.**

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

1. This Act may be cited as the "Pest Destroyers Act,
1919-1935."
2. The Insecticides Act, 1910, is hereby repealed.
3. (1) In this Act, unless inconsistent with the context or
subject matter—
 - "active constituent" means any constituent of any pest
destroyer which is effective for the destruction or
the prevention of any fungi, parasitic plants,
bacteria, insects, pests which attack plants or fruit
or animals, rabbits, vermin, rodents, other noxious
animals or noxious birds:
 - "analyst" means the Government Analyst, or an analyst
appointed under this Act, or any analyst appointed
under the Fertilisers Act, 1918:
 - "chief inspector" means the Chief Inspector of Pest
Destroyers:
 - "dealer" means any person who carries on business as
a vendor of, or dealer in, any pest destroyer for the
purposes of trade, and whether such person carries
on any other business or trade or not:

Short title.
Amended by
2175, 1934,
s. 2.
Repeal of
Act 1013 of
1910.

Interpreta-
tion.
Of. 1013,
1910, s. 2.

Amended by
2175, 1934,
s. 3.

“fungicide” means any substance used for the purpose of destroying or preventing the attacks of fungi, or other parasitic plants, or bacteria:

“insecticide” means any substance used for the purpose of—

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

(b) preventing such insects or pests from infesting or attacking plants or fruit, or animals:

“inspector” means inspector appointed under this Act, and includes the chief inspector:

“Minister” means the Minister of Agriculture:

“package” means any receptacle used for containing any pest destroyer:

“pest destroyer” means any fungicide, insecticide, or vermin destroyer:

“vermin destroyer” means any substance used for the purpose of destroying rabbits, vermin, rodents, or other noxious animals or noxious birds:

“wholesale dealer” means any person who, whether a manufacturer, importer, or wholesale seller, is primarily responsible for placing any pest destroyer on the market in South Australia:

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

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

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

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

(2) The Governor may by proclamation declare any substance to be a fungicide, insecticide, or vermin destroyer, and may by proclamation revoke or vary any such proclamation. Any such substance so proclaimed shall, without limiting the definition of the said terms, during such time as the proclamation remains in force, be deemed to be a fungicide, insecticide, or vermin destroyer, as the case may be.

Subsecs. (2)
and (3)
inserted by
2175, 1934,
s. 3.

(3) The Governor may by proclamation declare that this Act shall not apply to any substance either generally or when sold in any specified circumstances or quantities or part of the State, and may by proclamation revoke or vary any such proclamation. During the time any such proclamation remains in operation any such substance shall to the extent provided for in the proclamation be deemed not to be a pest destroyer.

4. (1) Every wholesale dealer shall, within thirty days after the passing of the Pest Destroyers Act, 1934, or within thirty days after the date of his commencing in business or trade as a wholesale dealer (whichever is the later date), and thereafter in each year on or before the thirtieth day of June of that year, give notice in writing in the prescribed form to the chief inspector at the office of the Minister of Agriculture, in Adelaide, of—

Notice by
dealers.
Of. U.K.
8 Edw. 7
c. 55, s. 2.
Substituted
by 2175,
1934, s. 4.

- (a) his name and place of business; and
- (b) the distinctive name of every pest destroyer which he then sells and of every pest destroyer which he proposes to sell during the current year; and
- (c) the places where the same can be purchased or acquired from him.

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

If during the currency of a year a wholesale dealer alters any active constituent of any pest destroyer already registered under this section he shall, before commencing to sell or deal in any such pest destroyer as so altered, give, with respect to the same, the like notice as hereinbefore provided.

(2) Subject to subsection (3) of section 5, every notice given under subsection (1) of this section shall be accompanied by a fee of five shillings in respect of each pest destroyer mentioned in the notice, for the registration of each of them, and each of them shall be registered accordingly by the chief inspector: Provided that with respect to a pest destroyer already registered for the current year, the active constituents whereof have been altered as above mentioned, the fee payable shall be two shillings and sixpence and no more: Provided also that the total sum payable by any wholesale dealer by way of fees under this subsection shall not exceed two pounds in and for any year.

(3) Every dealer (not being a wholesale dealer) shall, within thirty days after the passing of the Pest Destroyers Act, 1934, or within thirty days after the date of his commencing in business or trade as a dealer (whichever is the later date) and thereafter in each year on or before the thirtieth day of June of that year, give notice in writing in the prescribed form to the chief inspector at the office of the Minister of Agriculture, in Adelaide, of his name and place of business.

Requirements
of notice.
Substituted
by 2175,
1934, s. 4.

5. (1) Save as hereinafter provided, every notice given under subsection (1) of section 4 shall be accompanied by—

- (a) the fees prescribed;
- (b) the name and address of the person primarily responsible for placing the pest destroyer on the market in South Australia;
- (c) a statutory declaration made by the wholesale dealer, or in the case of a corporate body, by the manager thereof, stating—
 - (i.) the distinctive name of each pest destroyer; and
 - (ii.) the constituents of each pest destroyer which are claimed to be active constituents; and
 - (iii.) the percentage in which each such active constituent is contained therein and what

percentage of each such active constituent is contained in that part of the pest destroyer which is soluble in cold water; and

(iv.) when the pest destroyer consists of dry powder prepared for application in dust form, the degree of fineness of the particles stated in terms of the meshes to the lineal inch through which it will pass; and

(d) a specimen copy of the label which will be affixed to every package of pest destroyer to which it has reference; and

(e) such other matters as may be prescribed.

(2) Every such label as aforesaid shall set forth—

(a) the distinctive name of the pest destroyer;

(b) the net weight or measure which will be contained in the package to which it is to be affixed;

(c) a statement of the active constituents of the pest destroyer, or a statement that the active constituents of the pest destroyer are those stated in the declaration supplied pursuant to this section;

(d) all directions, if any, for the use of the pest destroyer; and

(e) such other matters as may be prescribed.

(3) If a wholesale dealer in any pest destroyer has complied with all the foregoing provisions of this section and of section 4 relating to the registration of the same, and the pest destroyer has been duly registered, any other wholesale dealer or dealer may sell the pest destroyer without payment of any fee and without complying with the requirements of subsection (1) of this section, but he shall nevertheless be bound to comply with all other provisions of this Act relating to the sale of pest destroyers.

(4) If the wholesale dealer in any pest destroyer is not resident in the State, the requirements of this section may be complied with by a duly authorised agent of the wholesale dealer who is resident in the State, and the agent shall, for the purposes of this Act, be deemed to be the wholesale dealer.

Duty of
wholesale
dealers upon
a sale.

Substituted
by 2175,
1934, s. 5.

6. (1) Every wholesale dealer who sells any pest destroyer shall, in manner prescribed, on or before delivery thereof to the buyer, affix to or upon every package containing any of the pest destroyer, a label, which shall conform in all respects with the specimen label supplied pursuant to section 5 relating to the pest destroyer.

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

(2) Every other dealer who purchases any pest destroyer from any wholesale dealer and who sells any such pest destroyer in the package in which he bought the same, shall be bound to see that on delivery thereof to the buyer the label as hereinbefore mentioned (whether the original label or one provided by himself) is affixed thereto or thereupon.

Every other dealer who purchases any pest destroyer from any wholesale dealer, and who sells any such pest destroyer in any package other than a package so labelled as aforesaid by the wholesale dealer, shall, before delivery thereof to the buyer, durably affix thereto or thereupon the said label.

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

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

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

Amended by
S.L.R. Act,
1935.

(4) Any dealer or wholesale dealer who fails to comply with the requirements of this section shall be guilty of an offence against this Act.

Effect of
label as
warranty.
Substituted
by 2175,
1934, s. 5.

7. The label affixed to or on any package containing any pest destroyer shall, notwithstanding any agreement to the contrary, be deemed to be a warranty by the dealer or wholesale dealer by whom it is sold:—

(a) that the active constituents of the pest destroyer so sold accurately correspond with the active constituents stated in the statutory declaration forwarded to the chief inspector as hereinbefore provided with respect to the pest destroyer of the same name; and

- (b) that the percentage in which each active constituent is contained in the pest destroyer is not less than the percentage stated in the said declaration; and
- (c) that the percentage of each such active constituent which is soluble in cold water is not less than the percentage stated in the said declaration; and
- (d) that the degree of fineness of the pest destroyer (if for application in dust form) is of the degree of fineness stated in the said declaration or is of a greater degree of fineness.

8. (1) Any dealer and any wholesale dealer who sells any pest destroyer shall be guilty of an offence against this Act if he—

Offences by seller.
Cf. 1013, 1910, s. 8.

- (a) sells any pest destroyer which fails, or any constituent of which fails, to conform to the standard, if any, prescribed for the pest destroyer or the constituent:

Amended by 2175, 1934, ss. 6 and 13, and by S.L.R. Act, 1935.

- (b) causes or permits any invoice, statement, or description with respect to or of such pest destroyer to be false in any material particular.

Para. (c) of subsec. (b) (1) and subsec. (2) repealed by 2175, 1934, s. 3.

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9. No person shall be bound to accept delivery on sale of any pest destroyer unless all the provisions of section 6 have been complied with as to such pest destroyer.

Buyer need not accept delivery unless Act complied with.

1013, 1910, s. 9.

Amended by 2175, 1934, s. 13, and by S.L.R. Act, 1935.

10. The Governor may, for the purposes of this Act, appoint a Chief Inspector of Pest Destroyers, and such other inspectors and other officers as may be necessary, and persons having competent chemical knowledge to be analysts.

Inspectors and analysts.
Cf. 1013, 1910, s. 10.

Amended by 2175, 1934, s. 13.

The person holding the office of Chief Inspector of Insecticides and Fungicides at the time of the passing of the Pest Destroyers Act, 1934, shall, without any further appointment be the Chief Inspector of Pest Destroyers under this Act.

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

Obstructing inspector.
Cf. 1013, 1910, s. 11.

Powers of
inspector.
1013, 1910,
s. 12.

Amended by
2175, 1934,
s. 13.

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

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

Procedure on
taking
sample.

Cf. 1013,
1910, s. 13.

Amended by
2175, 1934,
s. 13.

13. (1) When an inspector takes a sample for analysis under section 12 he shall—

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

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

S. 14
repealed by
2175, 1934,
s. 7.

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Right of
buyer to
analysis.

Cf. 1855,
1918, s. 21.

Amended by
2175, 1934,
s. 13.

15. (1) Any person who has bought any pest destroyer shall, subject to this section and to section 17, be entitled to have a sample of the pest destroyer so bought analysed by an analyst, and to receive the analyst's certificate of the result of the analysis.

(2) Every buyer intending to submit a sample for analysis under this section shall, within three months after delivery of such pest destroyer to him or receipt by him of the invoice therefor, give notice in writing by post to the seller or his agent of his intention, and of the day (not being earlier than fourteen days from the date of the posting of such notice) and time when such sample will be taken.

(3) The buyer shall on the day and at the time mentioned in the notice—

(a) take a sample of such pest destroyer in the presence of a justice of the peace or member of the police force, and of the seller or the agent or other representative of the seller, if the seller or his agent or representative desires to be present, and

(b) thoroughly mix the sample and divide it into three approximately equal parts, as prescribed in section 13, to be then and there separated, and each part to be marked and sealed, or fastened up in such a manner as its nature will permit, and

(c) if required to do so, deliver one of such parts to the seller or his agent or representative.

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

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

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

16. The result of the analysis by an analyst of any sample or part of a sample of any pest destroyer, together with the name and address or place of business of the dealer or wholesale dealer from whom the pest destroyer was bought, or of the person in the occupation or apparent occupation of the premises where the sample was taken, and the declaration furnished under section 5, and also any explanations of and comments upon the result of the analysis may be published in the *Journal of the Department of Agriculture of South Australia*, and in any newspaper, and in such other manner as the Minister directs or is prescribed.

Publication of
result of
analysis.

Cf. 1013,
1910, s. 15.

Amended by
2175, 1934,
ss. 8 and 13,
and by
S.L.R. Act,
1935.

Costs of
analysis.
Of. 1355,
1918, s. 25.
Amended by
2175, 1934,
s. 13.

17. The costs of and incidental to the obtaining of any analysis shall be paid in the first instance by the person requesting the analysis, but shall subsequently be dependent upon the results of the analysis, and if the pest destroyer does not comply with the warranty shall be recoverable from the seller of such pest destroyer as a simple contract debt, or, in the case of a conviction for an offence, shall be added to the penalty, and be recoverable in the same manner: Provided that in cases where the person requesting the analysis is engaged in rural production, and the pest destroyer complies with the warranty, such costs shall be paid by the Treasurer out of moneys voted by Parliament for the purpose.

Who may
prosecute.
1355, 1918,
s. 31.
Amended by
2175, 1934,
s. 13.

18. A prosecution for an offence against this Act may be instituted either by the person aggrieved, by the chief inspector, or by any person authorised in that behalf by the Minister.

Offence as to
sample
deemed
offence as to
whole lot.
1013, 1910,
s. 18.
Amended by
2175, 1934,
s. 13.

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

Certificate of
analyst.
1013, 1910,
s. 19.
Amended by
2175, 1934,
s. 13.

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

I. of the identity of the thing analysed;

II. of the result of the analysis; and

III. of the matters stated in such certificate,

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

(2) In any case where the attendance of an analyst is required as mentioned in this section, the court or special

magistrate or justices may, in addition to any other order which may be made as to costs, make such order as it, he, or they deem proper as to the witness fee paid to the analyst and as to the expenses of and remuneration to be paid for the analysis.

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

Evidence of
office of
inspector or
analyst.
1013, 1910,
s. 20.

22. Where in any proceedings under this Act any question arises as to whether any substance is used for the purpose of—

Evidence that
pest
destroyer
used for
particular
purpose.

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

Amended by
2175, 1934,
s. 9.

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

(c) destroying rabbits, vermin, rodents or other noxious animals or noxious birds,

or whether any substance is used for the purpose of destroying or preventing the attacks of fungi or other parasitic plants, or bacteria, and it is proved that such substance has been sold for the purpose of being so used, or that such substance has been advertised in any newspaper circulating in the State, or in any leaflet, pamphlet, or circular published or distributed in the State, to be suitable for use for any of such purposes, or that such substance is contained in a package bearing any label stating that the contents are suitable for use for any of such purposes, then such proof shall be sufficient evidence that such substance is used for the purpose for which the same was sold or for which the same was advertised to be suitable, or is indicated by the label on the package containing the same to be suitable, as the case may be.

23. (1) When any dealer or wholesale dealer is charged with an offence against any of the provisions of this Act he shall be entitled, upon complaint duly laid by him, to have any other person whom he charges as the actual offender brought before the court at the hearing of the charge, and if after the commission of the offence has been proved the person in the first instance charged proves to the satisfaction of the court—

Exemption of
employer
from penalty
on conviction
of actual
offender.

1355, 1918,
s. 35.

Amended by
2175, 1934,
s. 10, and by
S.L.R. Act,
1935.

(a) that he had used due diligence to enforce the execution of this Act, and

- (b) that the said other person had committed the offence in question without his knowledge, consent, or connivance,

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

(2) Where it is made to appear to the satisfaction of any analyst, inspector, or officer appointed under this Act, or any member of the police force, at the time of discovering an offence—

- (a) that the dealer or wholesale dealer has used all due diligence to enforce the execution of this Act; and
(b) by what person the offence has been committed; and
(c) that it has been committed without the knowledge, consent, or connivance of the said dealer or wholesale dealer, and in contravention of his orders,

the said analyst, inspector, officer, or member of the police force, shall proceed against the person whom he believes to be the actual offender without first proceeding against the said dealer or wholesale dealer.

Regulations.
Of. 1013,
1910, s. 17.

Amended by
2175, 1934,
ss. 11 and
13.

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

- i. The method to be adopted by the buyer of a pest destroyer in taking a sample of the pest destroyer in order that he may obtain an analyst's analysis thereof:
- ii. The methods of analysis to be adopted by analysts in analysing samples of pest destroyers submitted for analysis under this Act:
- iii. The fees to be paid for obtaining an analyst's analysis:
- iv. Fees to be paid for anything done under this Act, either in addition to or in substitution of any fees fixed by this Act:
- v. Forms to be used in connection with anything done under this Act:

- vi. Regulating and fixing standards for pest destroyers and constituents of pest destroyers:
- vii. Determining the extent of variation permitted in the declared or certified percentages of any constituent or constituents in any pest destroyer:
- viii. The manner in which the powers and duties of inspectors and analysts are to be exercised and discharged, and generally such things as may be necessary or convenient for enabling inspectors and analysts to exercise and discharge such powers and duties, and to carry out the provisions and objects of this Act:
- viiiA. Prescribing methods of analysis for determining the constituents of any pest destroyer or for determining the standard of fineness of any pest destroyer which is prepared for application in dust form: Inserted by 2175, 1934, s. 11.
- ix. Regulating the branding and stamping of packages; and
- x. Penalties for offences against regulations, not exceeding in any case the sum of twenty pounds.
25. Any person guilty of an offence against this Act for which no penalty is specified shall, without prejudice to any civil liability, be liable to a penalty for a first offence of not more than twenty pounds, and for any subsequent offence of not less than five pounds nor more than fifty pounds. General penalty. Cf. 1013, 1910, s. 21.
26. All proceedings in respect of offences against this Act shall be disposed of summarily. Summary proceedings.
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29. No inspector, analyst, or other officer shall be liable, except in respect of wilful misconduct or neglect, to any legal proceedings for anything done or omitted in the exercise or execution of any of his powers or duties under this Act. Ss. 27 and 28 repealed by 2175, 1934, s. 12.
Protection to officers acting under the Act. 1013, 1910, s. 16.

Regulations.

The following regulations were in force under this Act on 24th May, 1937:—

Gazette—18th October, 1934, p. 774.

31st January, 1935, p. 372.

PETITION OF RIGHT

see Supreme Court.