

Queensland



# **AGRICULTURAL STANDARDS ACT 1994**

**Act No. 79 of 1994**

# Queensland



## AGRICULTURAL STANDARDS ACT 1994

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Queensland



## **Agricultural Standards Act 1994**

**Act No. 79 of 1994**

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**An Act to provide for the making of agricultural standards and for other agricultural matters**

*[Assented to 1 December 1994]*

**The Parliament of Queensland enacts—**

## **PART 1—PRELIMINARY**

### *Division 1—Short title and commencement*

#### **Short title**

1. This Act may be cited as the *Agricultural Standards Act 1994*.

#### **Commencement**

2. This Act commences on a day to be fixed by proclamation.

### *Division 2—Object of Act*

#### **Main object of Act and its achievement**

3.(1) The main object of this Act is to provide for the making of standards about agriculture.

- (2) This object is to be achieved by—
  - (a) establishing an administrative framework for the making of standards about agriculture by the chief executive; and
  - (b) providing appropriate powers to ensure the standards are complied with.

### *Division 3—Interpretation*

#### **Definitions**

4. In this Act—

“**agricultural requirement**” means seed, fertiliser, lime, stock food, and

any other material, declared under the regulations to be an agricultural requirement.

**“analyst”** means an appropriately qualified person appointed by the chief executive as an analyst or someone else holding an accreditation of a kind prescribed under the regulations.

**“approved form”** means the form approved by the chief executive.

**“arrangement”** includes agreement, promise, scheme, transaction (with or without consideration), understanding and undertaking (whether express or implied).

**“condition”** includes a restriction.

**“conviction”** includes a finding of guilt, and the acceptance of a plea of guilty, by a court, whether or not a conviction is recorded.

**“entering”** a vehicle includes boarding a boat.

**“fee”** includes a charge or tax.

**“hormonal growth promotant”** means a product that—

(a) contains, as an ingredient, 1 or more hormones or anabolic substances, including, for example, the following—

- (i) 17 beta oestradiol;
- (ii) progesterone;
- (iii) oestradiol benzoate;
- (iv) testosterone propionate;
- (v) trenbolone acetate;
- (vi) zeranol; and

(b) is used for the promotion of growth of bovines or bubalines.

**“in”** a vehicle or place includes on the vehicle or place.

**“inspector”** means a person who is appointed under this Act as an inspector.

**“obstruct”** includes hinder, resist and attempt to obstruct.

**“occupier”** of a place includes a person who reasonably appears to be the occupier, or in charge, of the place.



**“owner”** of a seized thing includes the person from whom the thing was seized unless the chief executive is aware of its actual owner.

**“person in control”** includes—

- (a) for a boat—the person who has, or appears to have, command or charge of the boat; and
- (b) for another vehicle—the vehicle’s driver or the person who reasonably appears to be the vehicle’s driver.

**“place”** includes land and premises, but does not include a vehicle.

**“possess”** a thing includes—

- (a) have custody or control of the thing; and
- (b) have an ability or right to obtain custody or control of the thing.

**“public place”** means a place the public is entitled to use, is open to the public or is used by the public, whether or not on payment of money.

**“sell”** includes—

- (a) sell by wholesale, retail or auction; and
- (b) supply in trade or commerce or under an arrangement; and
- (c) agree, attempt or offer to sell; and
- (d) keep or expose for sale; and
- (e) cause or permit to be sold.

**“trade or commerce”** includes—

- (a) a business activity; and
- (b) anything else done for gain or reward.

**“vehicle”** includes an aircraft, boat, caravan and trailer.

## **PART 2—STANDARDS**

### **Chief executive may make standards**

**5.(1)** The chief executive may make standards under this Act about agriculture, including, for example, standards about the following—

- (a) protecting the genetic purity or other qualities of seed for agriculture;
- (b) regulating the ingredients of agricultural requirements;
- (c) packing and labelling of agricultural requirements;
- (d) selling or using hormonal growth promotants;
- (e) marking or non-marking of stock in relation to the use or non-use of hormonal growth promotants.

*Examples of standards about labelling—*

- the way a label must be attached
- the legibility of a label
- the information to be contained on a label
- the durability of a label.

**(2)** A standard may also make provision about the following—

- (a) approvals or licences about agriculture, including, for example, provision about their grant, refusal, renewal, amendment, suspension and cancellation;
- (b) things that are prohibited materials or harmful ingredients in agricultural requirements.

**(3)** A standard may also create offences and prescribe penalties of not more than 20 penalty units for each offence.

### **Standard is subordinate legislation**

**6.** A standard is subordinate legislation.

**Advisory committees**

**7.(1)** The chief executive may establish committees made up of persons the chief executive considers appropriate to advise the chief executive about standards.

*Example—*

The chief executive may establish a seed certification committee to advise the chief executive about standards to protect the genetic purity and other qualities of certain seed.

**(2)** The chief executive may decide—

- (a) the functions or terms of reference of a committee; and
- (b) the membership of a committee; and
- (c) conditions on which a person is appointed a member of a committee; and
- (d) how a committee is to operate.

**(3)** If a committee makes a recommendation to the chief executive, the chief executive must give proper consideration to the recommendation.

**Procedure to make standard**

**8.(1)** Before making a standard, the chief executive must prepare a draft standard and take reasonable steps to engage in consultation about the draft standard.

**(2)** A regulation may prescribe—

- (a) the way a draft standard must be published; and
- (b) the information that must be contained in a standard.

**Compensation not payable on making, amendment or repeal**

**9.(1)** Compensation is not payable if a standard is made, amended or repealed, or anything previously permitted is prohibited or regulated under a standard.

**(2)** However, subsection (1) does not prevent a regulation or standard providing for payment of compensation.

**Regulation prevails over standard**

**10.** If there is an inconsistency between a regulation and a standard (whether made before or after the regulation), the regulation prevails to the extent of the inconsistency.

**PART 3—OFFENCES ABOUT AGRICULTURE****Offences about packing and labelling of agricultural requirements**

**11.(1)** This section applies to an agricultural requirement if a standard requires it to be packed or labelled in a particular way.

**(2)** A person must not sell the agricultural requirement unless it is packed or labelled in the required way.

Maximum penalty—50 penalty units.

**False or misleading representations about agricultural requirements**

**12.(1)** A person must not, in trade or commerce, in connection with the supply or possible supply of an agricultural requirement or the promotion of the supply or use of an agricultural requirement—

- (a) make a representation the person knows is false or misleading in a material particular; or
- (b) omit from a statement attached to an agricultural requirement, or a container containing the agricultural requirement, anything without which the statement is, to the person's knowledge, misleading in a material particular.

*Example of false representation about an agricultural requirement—*

A representation that a substance is laying mash if the substance does not contain the required level of calcium.

Maximum penalty—50 penalty units.

**(2)** It is enough for a complaint against a person for an offence against subsection (1)(a) or (b) to state that the representation or statement was false or misleading to the person's knowledge.

**Offence about prohibited materials, harmful ingredients etc.**

**13.(1)** A standard may prescribe—

- (a) the things that are prohibited materials or harmful ingredients; or
- (b) the maximum amount of a harmful ingredient that may be contained in an agricultural requirement.

**(2)** A person must not, in trade or commerce in connection with the supply or possible supply of an agricultural requirement, possess an agricultural requirement containing—

- (a) a prohibited material; or
- (b) too much of a harmful ingredient.

Maximum penalty—50 penalty units.

**Offence about false or misleading representations about the use or non-use of hormonal growth promotants**

**14.(1)** A person must not, in trade or commerce, make a false or misleading representation, whether by the marking or non-marking of an animal or otherwise, about the use or non-use of a hormonal growth promotant that the person knows is false or misleading in a material particular.

Maximum penalty—50 penalty units.

**(2)** It is not a defence to a prosecution for an offence against subsection (1) that the person did not know the animal had been treated with a hormonal growth promotant if the person did not make reasonable inquiries.

## **PART 4—ENFORCEMENT OF ACT**

### *Division 1—Inspectors*

#### **Appointment**

**15.(1)** The chief executive may appoint any of the following persons as inspectors—

- (a) officers and employees of the public service;
- (b) other persons prescribed under the regulations.

**(2)** The chief executive may appoint a person as an inspector only if—

- (a) in the chief executive's opinion, the person has the necessary expertise or experience to be an inspector; or
- (b) the person has satisfactorily finished training approved by the chief executive.

#### **Limitation on inspector's powers**

**16.** The powers of an inspector may be limited—

- (a) under a regulation; or
- (b) under a condition of appointment; or
- (c) by written notice given by the chief executive to the inspector.

#### **Inspector's appointment conditions**

**17.(1)** An inspector holds office on the conditions stated in the instrument of appointment.

**(2)** An inspector—

- (a) if the appointment provides for a term of appointment—ceases holding office at the end of the term; and
- (b) may resign by signed notice of resignation given to the chief executive; and

- (c) if the conditions of appointment provide—ceases holding office as an inspector on ceasing to hold another office stated in the appointment conditions.

### **Inspector's identity card**

**18.(1)** The chief executive must give each inspector an identity card.

**(2)** The identity card must—

- (a) contain a recent photograph of the inspector; and
- (b) be signed by the inspector; and
- (c) identify the person as an inspector for this Act.

**(3)** A person who ceases to be an inspector must return the person's identity card to the chief executive as soon as practicable (but within 21 days) after the person ceases to be an inspector, unless the person has a reasonable excuse.

Maximum penalty—10 penalty units.

**(4)** This section does not prevent the giving of a single identity card to a person under this section and for other provisions, Acts or purposes.

### **Production or display of inspector's identity card**

**19.(1)** An inspector may exercise a power in relation to someone else only if the inspector—

- (a) first produces his or her identity card for the person's inspection;  
or
- (b) has the identity card displayed so it is clearly visible to the person.

**(2)** However, if for any reason it is not practicable to comply with subsection (1), the inspector must produce the identity card for inspection by the person at the first reasonable opportunity.

***Division 2—Inspector’s entry to places and vehicles*****Entry to places**

- 20.** An inspector may enter a place under this Part only if—
- (a) it is a public place and the entry is made when the place is open to the public; or
  - (b) the purpose of the entry is to gain the occupier’s consent; or
  - (c) its occupier consents to the entry; or
  - (d) the entry is permitted by a warrant.

**Consent to entry**

**21.(1)** This section applies if an inspector intends to seek the consent of an occupier of a place to an inspector entering the place under this Part.

- (2)** Before seeking the consent, the inspector must inform the occupier—
- (a) of the purpose of the entry; and
  - (b) that anything found and seized may be used in evidence in court; and
  - (c) that the occupier is not required to consent.

**(3)** If the consent is given, the inspector may ask the occupier to sign an acknowledgment of the consent.

- (4)** The acknowledgment must state—
- (a) the occupier was informed—
    - (i) of the purpose of the entry; and
    - (ii) that anything found and seized may be used in evidence in court; and
    - (iii) that the occupier was not required to consent; and
  - (b) the occupier gave the inspector consent under this Part to enter the place and to exercise powers under this Part; and
  - (c) the time and date the consent was given.



(5) If the occupier signs an acknowledgment of consent, the inspector must immediately give a copy to the occupier.

(6) Unless the contrary is proven, a court must presume an occupier of a place did not consent to an inspector entering the place if—

- (a) a question arises, in a proceeding before the court, whether the occupier consented to the inspector entering; and
- (b) an acknowledgment of the consent is not produced in evidence.

### **Warrants for entry**

**22.(1)** An inspector may apply to a Magistrate for a warrant to enter a place.

(2) The application must be sworn and state the grounds on which the warrant is sought.

(3) The Magistrate may refuse to consider the application until the inspector gives the Magistrate all the information the Magistrate requires about the application in the way the Magistrate requires.

*Example—*

The Magistrate may require additional information supporting the application to be given by statutory declaration.

(4) The Magistrate may issue a warrant only if satisfied the inspector has reasonable grounds for suspecting—

- (a) there is a particular thing or activity (the “**evidence**”) that may provide evidence of an offence against this Act; and
- (b) the evidence is, or may be within the next 7 days, at the place.

(5) The warrant must state—

- (a) that the inspector may, with necessary and reasonable assistance and force, enter the place and exercise the inspector’s powers under this Act; and
- (b) the evidence for which the warrant is issued; and
- (c) the hours of the day when entry may be made; and
- (d) the day, within 14 days after the warrant’s issue, the warrant

ends.

(6) The Magistrate must record the reasons for issuing the warrant.

### **Warrants—applications made other than in person**

**23.(1)** An inspector may apply for a warrant by phone, fax, radio or another form of communication if the inspector considers it necessary because of urgent circumstances or other special circumstances, including, for example, the inspector's remote location.

(2) Before applying for the warrant, the inspector must prepare an application stating the grounds on which the warrant is sought.

(3) The inspector may apply for the warrant before the application is sworn.

(4) After issuing the warrant, the Magistrate must immediately fax a copy to the inspector if it is reasonably practicable to fax the copy.

(5) If it is not reasonably practicable to fax a copy of the warrant to the inspector—

(a) the Magistrate must—

(i) record on the warrant the reasons for issuing the warrant; and

(ii) tell the inspector the date and time the warrant was signed; and

(iii) tell the inspector the warrant's terms; and

(b) the inspector must write on a form of warrant ("**warrant form**")—

(i) the Magistrate's name; and

(ii) the date and time the Magistrate signed the warrant; and

(iii) the warrant's terms.

(6) The facsimile warrant, or the warrant form properly completed by the inspector, authorises the entry and the exercise of the powers mentioned in the warrant issued by the Magistrate.

(7) The inspector must, at the first reasonable opportunity, send the

Magistrate—

- (a) the sworn application; and
- (b) if a warrant form was required to be completed by the inspector—the completed warrant form.

(8) On receiving the documents, the Magistrate must attach them to the warrant.

(9) Unless the contrary is proven, a court must presume that a power exercised by an inspector was not authorised by a warrant issued under this section if—

- (a) a question arises, in a proceeding before the court, whether the exercise of power was authorised by a warrant; and
- (b) the warrant is not produced in evidence.

### **Entry to vehicles**

**24.(1)** An inspector may enter a vehicle if the inspector suspects—

- (a) the vehicle is being, or has been, used to commit an offence against this Act; and
- (b) the vehicle, or a thing in a vehicle, may provide evidence of an offence against this Act.

(2) Before entering an unattended vehicle, the inspector must take reasonable steps to advise its owner, or the person in control of it, of the intention to enter.

(3) To enable a vehicle to be entered, an inspector may—

- (a) if the vehicle is about to move—require the person in control of the vehicle not to move the vehicle; and
- (b) if the vehicle is moving—require the person in control of the vehicle to stop the vehicle; and
- (c) require the person in control of the vehicle to give reasonable assistance to the inspector; and
- (d) act with necessary and reasonable assistance and force.

(4) The inspector may show a requirement under subsection (3)(a) or (b)

by a sign or hand signal.

(5) A person must comply with an inspector's requirement under subsection (3)(a), (b) or (c), unless the person has a reasonable excuse.

Maximum penalty—40 penalty units.

(6) It is a reasonable excuse for the person not to comply with a requirement if—

- (a) the person believes that to immediately comply with the requirement would endanger the person or another person; and
- (b) the person complies with the requirement at the first reasonable opportunity.

### *Division 3—Inspector's power to seize*

#### **Power to seize**

**25.(1)** An inspector who enters a vehicle under this Part may seize a thing in the vehicle if the inspector believes, on reasonable grounds, the thing is evidence of an offence against this Act.

(2) An inspector who enters a place under this Part with a warrant may seize the evidence for which the warrant was issued.

(3) An inspector who enters a place under this Part with the occupier's consent may seize the particular thing for which the entry was made, if the inspector believes, on reasonable grounds, the thing is evidence of an offence against this Act.

(4) The inspector may also seize another thing if the inspector believes, on reasonable grounds—

- (a) the thing is evidence of an offence against this Act; and
- (b) the seizure is necessary to prevent the thing being—
  - (i) concealed, lost or destroyed; or
  - (ii) used to commit, continue or repeat the offence.

(5) Having seized a thing, an inspector may—

- (a) move the thing from the place where it was seized (the “**place of**

**seizure**”) to another place; or

- (b) leave the thing at the place of seizure but restrict access to the thing.

*Example of subsection (5)(b)—*

An inspector may—

- (a) seal a thing and mark it to show it has been seized; or
- (b) seal the entrance to a room where the seized thing is situated and mark it to show it contains a thing that has been seized.

(6) If an inspector restricts access to a seized thing, a person must not tamper with it without the approval of the inspector or chief executive.

Maximum penalty—40 penalty units.

### **Powers in support of seizure**

**26.(1)** To enable a thing to be seized, an inspector may, by written notice given to the person in control of the thing, require the person—

- (a) to take it to a stated reasonable place by a stated reasonable time; and
- (b) if necessary, to remain in control of it at the place for a reasonable time.

(2) If, for any reason, it is not practicable to make the requirement by written notice, the requirement may be made orally and confirmed by written notice as soon as practicable.

(3) A person must comply with a requirement under this section, unless the person has a reasonable excuse for not complying with it.

Maximum penalty—40 penalty units.

### **Receipt for seized things**

**27.(1)** As soon as practicable after an inspector seizes a thing, the inspector must give a receipt for it to the person from whom it was seized.

(2) However, if for any reason it is not practicable to comply with subsection (1), the inspector must leave the receipt at the place of seizure, in a reasonably secure way and in a conspicuous position.

**(3)** Subsection (1) does not apply if—

- (a) the thing is unattended when seized; and
- (b) the thing's owner is unknown; and
- (c) the owner cannot be found after reasonable inquiries (given the thing's value) have been made.

### **Access to seized things**

**28.** Until a seized thing is forfeited, returned, or otherwise finally dealt with, an inspector must allow its owner—

- (a) to inspect it; or
- (b) if it is a document—to make copies of it.

### **Return of seized things**

**29.(1)** This section does not apply to a thing forfeited to the State.

**(2)** The inspector must return a seized thing to its owner at the end of—

- (a) 6 months; or
- (b) if a prosecution for an offence involving it is started within 6 months—the prosecution and any appeal from the prosecution.

**(3)** Despite subsection (2), the inspector must return the seized thing to its owner immediately the inspector stops being satisfied its retention as evidence is necessary.

### **Forfeiture of seized thing if not changed to comply with Act**

**30.(1)** If an inspector believes a seized thing can be changed to make it comply with this Act, the inspector may require the thing's owner to do what is reasonable within a stated reasonable time to make it comply.

*Example of a thing mentioned in subsection (1)—*

A bag of seed containing prohibited material that can be separated and removed from the seed.

**(2)** If the person does not comply with the requirement, the seized thing is forfeited to, and becomes the property of, the State.

**Forfeiture of seized thing if cannot be changed to comply with Act**

**31.** If an inspector believes, on reasonable grounds—

- (a) a seized thing cannot be changed to make it comply with this Act; and
- (b) it is necessary to retain it to prevent its use in committing an offence;

the seized thing is forfeited to, and becomes the property of, the State.

*Example—*

Stock food containing too much of a harmful ingredient that cannot be separated and removed from the stock food.

**Forfeiture of unclaimed seized things**

**32.** A seized thing is forfeited to, and becomes the property of, the State if the chief executive—

- (a) cannot find its owner after reasonable inquiries (given the thing's value) have been made; or
- (b) is unable, after making reasonable efforts, to return it to its owner.

***Division 4—Inspector's general powers*****General powers after entering places or vehicles**

**33.(1)** An inspector who enters a place or vehicle under this Part may—

- (a) search any part of the place or vehicle; or
- (b) inspect, test, photograph or film anything in the place or vehicle; or
- (c) copy a document found in the place or vehicle; or
- (d) take samples of anything in the place or vehicle; or
- (e) take into or onto the place or vehicle the persons, equipment and materials the inspector reasonably requires for exercising a power under this Part; or

- (f) require the occupier of the place or a person in the place, or the person in control of the vehicle or a person in the vehicle, to give the inspector reasonable assistance to exercise the inspector's powers.

*Example of subsection (1)(f)—*

The inspector may require a person in a vehicle—

- (a) to unload the vehicle; or
- (b) to move the vehicle to a stated place; or
- (c) to remain in control of the vehicle at the place for a reasonable time.

(2) The person must comply with a requirement under subsection (1)(f), unless the person has a reasonable excuse.

Maximum penalty—40 penalty units.

(3) If the requirement is to be complied with by a person—

- (a) giving information; or
- (b) producing a document (other than a document required to be kept by the person under this Act);

it is a reasonable excuse for the person to fail to comply with the requirement if complying might incriminate the person.

### **Power to require name and address**

**34.(1)** An inspector may require a person to state the person's name and address if the inspector—

- (a) finds the person committing an offence against this Act; or
- (b) finds the person in circumstances that lead, or has information that leads, the inspector to suspect, on reasonable grounds, the person has just committed an offence against this Act.

(2) When making the requirement, the inspector must warn the person it is an offence to fail to state the person's name and address, unless the person has a reasonable excuse.

(3) The inspector may require the person to give evidence of the correctness of the person's stated name or address if the inspector suspects, on reasonable grounds, that the stated name or address is false.



(4) The person must comply with a requirement under subsection (1) or (3), unless the person has a reasonable excuse for not complying with it.

Maximum penalty—40 penalty units.

(5) The person does not commit an offence against this section if—

- (a) the inspector required the person to state the person's name and address on suspicion of the person having committed an offence against this Act; and
- (b) the person is not proved to have committed the offence.

### **Power to require production of documents**

**35.(1)** An inspector may require a person to produce a document required to be held or kept by the person under this Act to the inspector for inspection.

(2) The person must comply with the requirement, unless the person has a reasonable excuse for not complying with it.

Maximum penalty—50 penalty units.

(3) The inspector may keep the document to take an extract from, or make a copy of, the document.

(4) If the inspector makes a copy of the document, or an entry in the document, the inspector may require the person responsible for keeping the document to certify the copy as a true copy of the document or entry.

(5) The person responsible for keeping the document must comply with a requirement made under subsection (4), unless the person has a reasonable excuse for not complying with it.

Maximum penalty—50 penalty units.

(6) The inspector must return the document to the person as soon as practicable after taking the extract or making the copy.

***Division 5—Other enforcement matters*****Destruction of agricultural requirement that is a serious risk to health**

**36.(1)** If an inspector enters a place under this Part and finds in the place an agricultural requirement the inspector believes, on reasonable grounds, is a serious risk of substantial harm to a person's or animal's health, trade or commerce, or the environment, the inspector may destroy the agricultural requirement or require the occupier of the place to make the agricultural requirement harmless.

**(2)** A person must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—80 penalty units.

**Analysis of samples**

**37.(1)** The chief executive may have a sample taken by an inspector analysed.

**(2)** A person must not knowingly or fraudulently—

- (a)** tamper with a thing so a sample of the thing taken by an inspector when analysed does not correctly represent the thing or its qualities; or
- (b)** tamper with a sample taken by an inspector for analysis.

Maximum penalty—40 penalty units.

**(3)** If a particular method of analysis has been prescribed under a standard or under the regulations, the analyst must follow the method.

**(4)** The chief executive must obtain from the analyst a certificate or report stating the analysis result.

**(5)** If the analysis result shows the thing does not comply with this Act, the chief executive must give the person from whom the analysed thing was obtained a copy of the certificate or report.

**Publication of analysis results**

**38.** The chief executive may publish a document containing—

- (a) the analysis results; or
- (b) the name and address of the person from whom the analysed thing was obtained; or
- (c) the name and address of the person who manufactured, packed, distributed or sold the analysed thing; or
- (d) the name and address of the person in charge of the analysed thing; or
- (e) an explanation of, and comment on, the analysis results.

**False or misleading information**

**39.(1)** A person must not—

- (a) state anything to an inspector the person knows is false or misleading in a material particular; or
- (b) omit from a statement made to an inspector anything without which the statement is, to the person's knowledge, misleading in a material particular.

Maximum penalty—40 penalty units.

**(2)** It is enough for a complaint against a person for an offence against subsection (1)(a) or (b) to state that the statement made was false or misleading to the person's knowledge.

**False, misleading or incomplete documents**

**40.(1)** A person must not give the chief executive or an inspector a document containing information the person knows is false, misleading or incomplete in a material particular.

Maximum penalty—40 penalty units.

**(2)** Subsection (1) does not apply to a person who, when giving the document—

- (a) informs the chief executive or inspector, to the best of the

- person's ability, how it is false, misleading or incomplete; and
- (b) if the person has, or can reasonably obtain, the correct information—gives the correct information to the chief executive or inspector.

### **Compensation**

**41.(1)** A person may claim compensation from the State if the person incurs loss or expense because of the exercise or purported exercise of a power under this Act, including, for example, in complying with a requirement made of the person under this Part.

**(2)** Payment of compensation may be claimed and ordered in a proceeding for—

- (a) compensation brought in a court of competent jurisdiction; or
- (b) an offence against this Act brought against the person making the claim for compensation.

**(3)** A court may order the payment of compensation for the loss or expense only if it is satisfied it is just to make the order in the circumstances of the particular case.

**(4)** A regulation may prescribe matters that may, or must, be taken into account by the court when considering whether it is just to make the order.

### **Forfeiture on conviction**

**42.(1)** On the conviction of a person for an offence against this Act, the court may order the forfeiture to the State of the thing the subject of the offence.

**(2)** The court may make an order under subsection (1) in relation to a thing—

- (a) whether or not the thing has been seized under this Act; and
- (b) if the thing has been seized—whether or not the thing has been returned to its owner.

**(3)** The court may make any order to enforce the forfeiture that it considers appropriate.

(4) This section does not limit the court's powers under the *Penalties and Sentences Act 1992* or another law.

### **Dealing with forfeited things**

**43.(1)** On the forfeiture of a thing, the thing becomes the State's property and may be dealt with by the chief executive as the chief executive considers appropriate.

(2) Without limiting subsection (1), the chief executive may—

- (a) sell it to its previous owner or a person who had a legal or beneficial interest in it; or
- (b) sell it to anyone else; or
- (c) destroy it or give it away.

### **Inspector to give notice of damage**

**44.(1)** This section applies if an inspector damages anything when exercising or purporting to exercise a power under this Act.

(2) The inspector must immediately give written notice of the particulars of the damage to the person who appears to be the thing's owner.

(3) If, for any reason, it is not practicable to comply with subsection (2), the inspector must leave the notice, in a reasonably secure way and in a conspicuous position, at the place where the damage happened.

(4) This section does not apply to damage the inspector believes, on reasonable grounds, is trivial.

(5) In this section—

“**owner**” of a thing includes the person in possession or control of the thing.

### **Obstructing inspectors**

**45.** A person must not obstruct an inspector exercising a power under this Act, unless the person has a reasonable excuse.

Maximum penalty—60 penalty units.

**Impersonating inspectors**

46. A person must not pretend to be an inspector.

Maximum penalty—60 penalty units.

**PART 5—REVIEW OF DECISIONS****Who may apply for review etc.**

47.(1) A person whose interests are adversely affected by a decision of the chief executive under this Act, other than a decision under this Part, Part 2 (Standards) or Part 4 (Enforcement of Act) may apply to the chief executive for a review of the decision.

(2) A person whose interests are adversely affected by an inspector's decision under section 36 (Destruction of agricultural requirement that is a serious risk to health) may apply to the chief executive for a review of the decision.

(3) A person who may seek a review of a decision is entitled to receive a statement of reasons for the decision.

**Applying for review**

48.(1) An application by a person for review of a decision must be made within 28 days after notice of the decision is given to the person.

(2) However, if—

- (a) the notice did not state reasons for the decision; and
- (b) the person asked for a statement of reasons for the decision within the period mentioned in subsection (1);

the person may make the application within 28 days after the person is given the statement of reasons.

(3) In addition, the chief executive may extend the period for making an application for review.

(4) An application for review must be written and state in detail the grounds on which the applicant seeks review of the decision.

### **Chief executive's decision on review**

**49.(1)** The chief executive must make a decision on an application for review within 28 days after the application is made.

(2) If the decision is not made within the 28 day period, the chief executive is taken to have made a decision at the end of the period confirming the original decision.

### **Stay of operation of original decision etc.**

**50.(1)** If an application is made under this Part for review of a decision, the applicant may immediately apply to the Magistrates Court for a stay of the decision.

(2) The Magistrates Court may stay the decision to secure the effectiveness of the review and any later appeal to the Court.

(3) A stay—

- (a) may be given on conditions the Magistrates Court considers appropriate; and
- (b) operates for the period fixed by the Court; and
- (c) may be revoked or amended by the Court.

(4) The period of a stay under this section must not extend past the time when the chief executive reviews the decision and any later period the Magistrates Court allows the applicant to enable the applicant to appeal against the chief executive's decision.

(5) The making of an application under this Part for review of a decision affects the decision, or the carrying out of the decision, only if the decision is stayed.

## **PART 6—APPEALS**

### **Who may appeal**

**51.(1)** A person who is dissatisfied with a decision of the chief executive or an inspector may appeal to the Magistrates Court only if the person has sought a review of the decision by the chief executive.

**(2)** The decision against which the person may appeal is the decision on review and not the original decision.

### **How to start appeal**

**52.(1)** An appeal is started by—

- (a) filing a written notice of appeal with the Magistrates Court; and
- (b) complying with rules of court applicable to the appeal.

**(2)** A copy of the notice must be served on the chief executive.

**(3)** An appeal may be made to the Magistrates Court nearest the place where the applicant resides or carries on business.

### **Stay of operation of decisions**

**53.(1)** The Magistrates Court may grant a stay of a decision appealed against to secure the effectiveness of the appeal.

**(2)** A stay—

- (a) may be given on the conditions the Magistrates Court considers appropriate; and
- (b) operates for the period fixed by the Court; and
- (c) may be revoked or amended by the Court.

**(3)** The period of a stay under this section must not extend past the time when the Magistrates Court decides the appeal.

**(4)** An appeal against a decision affects the decision, or carrying out of the decision, only if the decision is stayed.



**Powers of Magistrates Court on appeal**

**54.(1)** In deciding an appeal, the Magistrates Court—

- (a) has the same powers as the decision maker; and
- (b) is not bound by the rules of evidence; and
- (c) must comply with natural justice; and
- (d) may hear the appeal in court or in chambers.

**(2)** An appeal is by way of rehearing.

**(3)** The Magistrates Court may—

- (a) confirm the decision; or
- (b) set aside the decision and substitute another decision; or
- (c) set aside the decision and return the issue to the decision maker with the directions the Court considers appropriate.

**Effect of Magistrates Court's decision on appeal**

**55.** If the Magistrates Court substitutes another decision, the substituted decision is, for this Act (other than this Part), taken to be the chief executive's decision.

**Procedure of court**

**56.(1)** The Court's power to make rules of court under the *Magistrates Courts Act 1921* includes power to make rules of court for appeals to the Court under this Part.

**(2)** The procedure for appeal to the Court under this Part is, in the absence of relevant rules, as directed by a Magistrate.

**Appeals**

**57.** An appeal to a District Court from a decision of a Magistrates Court may be made only on a question of law.

## PART 7—LEGAL PROCEEDINGS

### Offences are summary offences

**58.** An offence against this Act is a summary offence for which a proceeding is to be brought under the *Justices Act 1886*.

### Attempts to commit offences

**59.(1)** A person who attempts to commit an offence commits an offence. Maximum penalty— $\frac{1}{2}$  the maximum penalty for committing the attempted offence.

**(2)** Section 4 (Attempts to commit offences) of the Criminal Code applies to the attempt.

### Limitation on time for starting proceedings

**60.** A proceeding for an offence may be started within—

- (a) 1 year after the offence is committed; or
- (b) 1 year after the offence comes to the complainant's knowledge, but within 2 years after the offence is committed.

### Evidence

**61.(1)** This section applies to a proceeding under this Act only if a party to the proceeding does not challenge the matter mentioned in this section under section 62 (Evidence of certain matters—notice of challenge required).

**(2)** The appointment of the chief executive or an inspector, or the authority of the chief executive or an inspector to do anything under this Act, must be presumed.

**(3)** A signature purporting to be the signature of the chief executive or an inspector is evidence of the signature it purports to be.

**(4)** A certificate purporting to be signed by the chief executive or an inspector is evidence of the following matters stated in the certificate—

- (a) a stated document is—
  - (i) an approval or licence or copy of an approval or licence; or
  - (ii) a direction, requirement or decision, or a copy of a direction, requirement or decision, given or made under this Act; or
  - (iii) a document, a copy of a document or an extract from a document kept under this Act;
- (b) on a stated day, or during a stated period, a stated person was or was not the holder of a stated approval or licence;
- (c) a stated approval or licence was or was not in force on a stated day or during a stated period;
- (d) on a stated day, a stated approval or licence was suspended for a stated period or was cancelled;
- (e) on a stated day, a stated person was given a stated direction or requirement under this Act;
- (f) a stated fee is payable under this Act by a stated person and has not been paid.

(5) A certificate or report purporting to be signed by an analyst is evidence of the following matters stated in the certificate or report—

- (a) the analyst received from a stated person the sample mentioned in the certificate or report;
- (b) the analyst analysed the sample on a stated day and at a stated place;
- (c) the results of the analysis.

### **Evidence of certain matters—notice of challenge required**

**62.(1)** This section applies if a summons has been served on a person for, or a person has been charged with, an offence under this Act.

(2) A notice in the approved form (the “**notice**”) must be served on the person when the person is served with the summons or charged with the offence.

(3) The notice may be served on the person in the same way as a summons may be served under section 56 (Service of summons) of the

*Justices Act 1886.*

(4) The notice must inform the person that, if the person intends challenging any of the following matters, the person must give the chief executive written notice of the intention at least 14 days before the day fixed for the hearing—

- (a) the appointment of the chief executive or an inspector;
- (b) the authority of the chief executive or an inspector to do anything under this Act;
- (c) a signature purporting to be the signature of the chief executive or an inspector;
- (d) matters mentioned in section 61(4) and stated in a certificate purporting to be signed by the chief executive or an inspector;
- (e) matters mentioned in section 61(5) and stated in a certificate or report purporting to be signed by an analyst;
- (f) an allegation or averment in a complaint about the following matters—
  - (i) an agricultural requirement was sold or prepared for sale;
  - (ii) a package containing an agricultural requirement was not labelled or marked as prescribed;
  - (iii) a material is an agricultural requirement or was sold, used, or intended for sale or use as an agricultural requirement.

(5) If a summons is served on the person, a statement in a deposition made for section 56(3)(b) of the *Justices Act 1886* that the notice was served as required by subsection (2) is evidence of the fact.

(6) Section 56(5) of the *Justices Act 1886* applies to the deposition.

(7) If the person is charged with an offence mentioned in subsection (1), a statement in a deposition made for section 56(7) of the *Justices Act 1886* that the notice was served as required by subsection (2) is evidence of the fact.

(8) Section 56(8) of the *Justices Act 1886* applies to the deposition.

**Analyst's certificate or report produced by defendant**

**63.(1)** A certificate or report of the result of an analysis, produced by the defendant in a prosecution, that purports to be signed by a person competent to make the analysis is evidence of its contents.

(2) The defendant must send a copy of the certificate or report to the prosecutor at least 7 days before the day set down for the hearing.

**Expenses of analysis to be paid by offenders on conviction**

**64.** If a person is convicted of an offence against this Act, the court may order the person to pay all costs of, and incidental to, the analysis of the thing in relation to which the conviction is obtained.

**Protection from liability**

**65.(1)** In this section—

“official” means—

- (a) an inspector; or
- (b) a person acting under the direction of an inspector.

(2) An official is not civilly liable for an act or omission done honestly and without negligence under this Act.

(3) If subsection (2) prevents civil liability attaching to an official, the liability attaches instead to the State.

**PART 8—MISCELLANEOUS****Chief executive may delegate**

**66.(1)** The chief executive may delegate the chief executive's powers under this Act to—

- (a) a committee established by the chief executive; or
- (b) an officer or employee of the public service; or

- (c) an officer or employee of an entity prescribed by regulation; or
- (d) an officer or employee of the Commonwealth or another State.

(2) A delegation of a power to an entity prescribed by regulation may permit the subdelegation of the power.

(3) This section does not limit the chief executive's powers of delegation under other laws.

### **Regulations**

**67.(1)** The Governor in Council may make regulations under this Act.

(2) A regulation may—

- (a) impose fees; or
- (b) create offences and prescribe penalties of not more than 50 penalty units for each offence; or
- (c) provide for approvals or licences to be obtained by persons wishing to engage in agriculture; or
- (d) provide for the marking of plants or animals; or
- (e) provide for anything that may be provided for in a standard.

*Example of paragraph (d)—*

The marking or non-marking of animals in relation to the use or non-use of hormonal growth promotants.

## **PART 9—TRANSITIONAL PROVISIONS**

### **Definitions**

**68.** In this Part—

**“changeover day”** means—

- (a) the day that is 6 months after the commencement; or
- (b) if an earlier day is fixed by regulation—the earlier day.

**“commencement”** means the commencement of this Act.

**“former Act”** means the *Agricultural Standards Act 1952*.

### **Existing permissions**

**69.(1)** This section applies if, immediately before the commencement, something was permitted under the former Act.

**(2)** The permission is taken to be granted under this Act and to permit, to the greatest practicable extent, the same thing.

**(3)** However, it does not permit something that cannot be permitted under an approval granted under this Act.

**(4)** The permission is, to the greatest practicable extent, subject to the conditions that applied immediately before the commencement.

**(5)** This section expires 6 months after the commencement.

### **Inspectors**

**70.(1)** A person who immediately before the commencement was an inspector or seed certification officer under the former Act, or an inspector under the *Stock Act 1915*, is taken to be an inspector.

**(2)** This section expires 6 months after the commencement.

### **Existing orders etc.**

**71.(1)** An order, direction, requirement or other decision made under the former Act is, if its effect is not exhausted at the commencement, subject to appeal under this Act in the same way as if it were an order, direction, requirement or other decision made under this Act.

**(2)** This section expires 2 months after the commencement.

### **Existing regulations and rules**

**72.(1)** A regulation or rule in force under the former Act immediately before the commencement remains in force, subject to amendment or repeal by a regulation or standard under this Act, for this Act.

(2) The regulation or rule is to be read with the changes necessary to make it consistent with, and adapt its operation to, this Act.

(3) The regulation or rule expires 6 months after the commencement unless earlier repealed.

(4) This section expires 6 months after the commencement.

### **Transitional regulations**

**73.(1)** A regulation may make provision about a matter for which—

- (a) provision is made under the former Act; and
- (b) the Governor in Council considers no provision, or insufficient provision, is made about the matter under this Part.

(2) The regulation may be given retrospective effect to a day not earlier than the commencement.

(3) The regulation expires 6 months after the commencement unless earlier repealed.

(4) This section expires 6 months after the commencement.

### **Review of Act**

**74.(1)** The Minister must review this Act to decide whether its provisions remain appropriate.

(2) The review must be carried out as soon as practicable after the end of the period of 5 years starting on the commencement.

(3) As soon as practicable, but within 1 year after the end of the 5 year period, the Minister must table a report of the review's outcome in the Legislative Assembly.



## **PART 10—REPEALS**

### **Repeals**

**75.** The following Acts are repealed—

- Agricultural Standards Act 1952 1 Eliz 2 No. 12
- Agricultural Standards Act Amendment Act 1963 No. 40
- Agricultural Standards Act Amendment Act 1981 No. 16
- Agricultural Standards Amendment Act 1992 No. 43
- Agricultural Standards Amendment Act 1993 No. 23.