

Seeds Act 1982

As at 1 June 2005

Note:

The Act is to be repealed on the commencement of sec 4 of the *Noxious Weeds Amendment Act 2005 No 29* .

Reprint history:

Reprint No x 13 November 1991

Long Title

An Act to regulate the sale of seeds; to prohibit the sale of certain seeds and plants; to repeal the *Agricultural Seeds Act 1921* ; and for other purposes.

Part 1 - Preliminary

1 Name of Act

This Act may be cited as the *Seeds Act 1982* .

2 Commencement

- (1) This section and section 1 shall commence on the date of assent to this Act.
- (2) Except as provided in subsection (1), 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3 (Repealed)

4 Definitions

In this Act, except in so far as the context or subject-matter otherwise indicates or requires:

Director-General means the person holding office or acting as Director-General of the Department of Agriculture.

inspector means a person appointed as an inspector under section 21 (1) or authorised under section 21 (2).

parcel includes sack, bag, barrel, case, package and any other container, whether enclosed or not.

Principal Analyst means the person holding office or acting as Principal Analyst, Seeds Laboratory, Department of Agriculture.

prohibited matter means fungal matter which is prescribed as prohibited matter.

prohibited seed means a seed which is prescribed as a prohibited seed.

regulations means regulations made under 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) cause, permit or suffer the doing of an act referred to in paragraph (a), (b) or (c),
- (e) offer or attempt to do an act so referred to, and
- (f) have in possession for sale.

Part 2 - Restrictions in relation to seed parcels

5 Parcel of seeds to be labelled

(1) Subject to subsection (2), a person shall not sell a parcel of seeds unless there is legibly and durably written on, or on a label securely attached to, the parcel a statement specifying in such manner and form as may be prescribed:

(a) the botanical name or, as the case may require, the botanical names of the seeds, and

(b) such other particulars as may be required by the regulations.

Maximum penalty: 20 penalty units.

(2) Where there is a common name for seeds, being a common name specified:

(a) in the regulations, or

(b) in a list of common names for seeds appearing in a publication referred to in the regulations,

that common name may be used in the statement referred to in subsection (1) instead of the botanical name of the seeds.

6 Certain defences available to prosecution for offence under section 5

It is a sufficient defence to a prosecution for an offence against this Act arising under section 5 in relation to a sale of a parcel of seeds if the defendant satisfies the court:

(a) that the seeds were not sold for the purpose of being planted,

(b) that the seeds were sold for the purpose of being graded, cleaned or otherwise treated,

(c) that, at the time of the sale, the sale was prescribed as an exempt sale for the purposes of this section, or

(d) that:

(i) the defendant took all reasonable precautions and exercised all due diligence to avoid the commission of the offence in respect of the parcel of seeds to which the proceedings relate,

(ii) the defendant obtained the seeds from another person in the same parcel as they were in when the sale the subject of the proceedings took place, and

(iii) the same particulars as were written on, or on a label attached to, the parcel at the time at which the defendant obtained the seeds from the other person were written on, or on a label attached to, the parcel at the time of the sale.

7 Claims inconsistent with labels etc

A person shall not, in respect of a parcel of seeds, make any claim that is inconsistent with any particular relating to those seeds which is written on, or on a label attached to, the parcel or which is written on an invoice or other document relating to those seeds.

Maximum penalty: 20 penalty units.

Part 3 - Prohibited seeds and matter

8 Prohibited seeds etc not to be sold

(1) A person shall not sell:

(a) a parcel of seeds containing prohibited seeds, or

(b) a plant which is the produce of a prohibited seed.

(2) A person shall not sell a parcel of seeds containing prohibited matter of any class or kind unless:

(a) a maximum proportion has been prescribed in respect of prohibited matter of

that class or kind, and

(b) the proportion of prohibited matter of that class or kind to seeds in the parcel does not exceed that maximum proportion.

Maximum penalty: 20 penalty units.

9 Certain defences available to prosecution for offence under section 8

It is a sufficient defence to a prosecution for an offence against this Act arising under section 8 if:

(a) in relation to a sale of a parcel of seeds:

(i) the defendant satisfies the court that the seeds were not sold for the purpose of being planted, or

(ii) the defendant satisfies the court that the parcel of seeds was sold for the purpose of having prohibited seeds or prohibited matter contained in the parcel removed, or

(b) in relation to a sale of a parcel of seeds or a plant, the defendant satisfies the court that, at the time of the sale, the sale was prescribed as an exempt sale for the purposes of this section.

Part 3A - Orders for destruction or treatment of seeds etc

10 Director-General may order destruction or treatment of seeds etc

Where the Director-General believes on reasonable grounds that a person who is the owner of, or person in charge of, a parcel of seeds or a plant is guilty of an offence against this Act arising under section 5 or 8, by reason of selling the parcel of seeds or plant, the Director-General may, by notice served on the person, order the person:

(a) to retain possession or control of the seeds or plant for such period not exceeding 21 days as may be specified in the notice,

(b) to treat the seeds or plant in such manner as may be specified in the notice, or

(c) in the case of an offence arising under section 8, to destroy the seeds or plant.

11 Appeal to Minister against order

(1) A person who is served with a notice referred to in section 10 may appeal to the Minister against the order specified in the notice within the period of 7 days immediately after the person was so served.

(2) An appeal referred to in subsection (1) shall be in writing and shall set out the grounds upon which the appeal is based.

(3) Where an appeal is made in accordance with this section against an order referred to in section 10, the Minister may, by notice served on the person who appealed against the order, revoke, confirm or vary the order.

12 Failure to comply with order an offence

(1) A person who is, by a notice referred to in section 10, ordered to retain possession or control of seeds or a plant shall:

(a) comply with the order specified in the notice while it remains unrevoked or unvaried by the Minister pursuant to section 11 (3), and

(b) where the order is varied by the Minister pursuant to section 11 (3), comply with the order as so varied.

(2) A person who is, by a notice referred to in section 10, ordered to treat or destroy seeds or a plant shall:

(a) where the person makes no appeal in accordance with section 11 to the Minister against the order specified in the notice, comply with the order within the period of 14 days immediately after the person is served with the notice, or

(b) where the person makes such an appeal:

(i) if the order is confirmed by the Minister, comply with the order, or

(ii) if the order is varied by the Minister, comply with the order as so varied,

within the period of 14 days immediately after the person is served with a notice informing the person that the Minister has confirmed or has so varied the order.

Maximum penalty: 20 penalty units.

13 Treatment or destruction of seeds etc in accordance with order

(1) Where a person has contravened section 12 (2) in relation to an order to treat or destroy seeds or a plant, an inspector may cause the seeds or plant to be treated or destroyed in accordance with the order or the order as varied by the Minister, as the case may be.

(2) Any expense incurred by an inspector in the treatment or destruction of seeds or a plant pursuant to subsection (1) may be recovered in any court of competent jurisdiction as a debt due to the Crown by the person who was ordered to treat or destroy the seeds or plant.

Part 4 - Varietal verification schemes

14 Definitions

(1) In this Part:

approved varietal verification scheme means a varietal verification scheme established under section 15 (1) or a varietal verification scheme approved by the Minister under section 18.

varietal verification scheme means a scheme to control and regulate the quality of seeds.

(2) A reference in this Part to seeds which comply with a varietal verification scheme is a reference to seeds which satisfy all of the requirements of that scheme in relation to those seeds.

15 New South Wales Seed Varietal Verification Schemes

(1) The Minister may cause to be established a varietal verification scheme for seeds which are:

- (a) of any specified variety, and
- (b) grown in New South Wales.

(2) A scheme established under subsection (1) may include provisions which apply generally in respect of seeds or in respect of 1 or more varieties of seeds and which relate to any 1 or more of the following matters:

- (a) application for participation in the scheme,
- (b) the conditions of eligibility of persons for participation in the scheme,
- (c) the standard of paddocks on which the seeds may be grown,
- (d) the standard of seeds and plants from which the seeds may be obtained,
- (e) the standard of the seeds,
- (f) the rules of management of the scheme,
- (g) the functions of persons engaged in the administration or supervision of the scheme,
- (h) the determination and payment of fees relating to the administration and supervision of the scheme,
- (i) certification in relation to the seeds.

(3) The Governor may make regulations for or with respect to:

- (a) any matter referred to in subsection (2), and
- (b) any other matter included in or relating to a scheme established under subsection (1).

(4) The Minister may alter or terminate any scheme established under subsection (1).

16 Director-General may exclude persons from participation in scheme

Where the Director-General is of the opinion that a person who has been a participant in a scheme established under section 15 (1) in relation to a crop of a variety of seeds has not complied with a provision of this Act, the regulations or the scheme, the Director-General may exclude the person from participating in the scheme in relation to all or any further crops of that variety of seeds or in relation to all or any further crops of any seeds.

17 False or misleading statement in application etc

A person shall not make a false or misleading statement:

- (a) in an application for participation in a scheme established under section 15 (1), or
- (b) to a person engaged in the administration or supervision of such a scheme in the exercise of his or her functions under the scheme.

Maximum penalty: 20 penalty units.

18 Approval of other schemes

The Minister may, by notification published in the Gazette, approve a varietal verification scheme referred to in the notification, being a scheme for seeds grown outside New South Wales, and may by a like notification vary or revoke a previous notification.

19 Restricted representations and descriptions

(1) A person shall not, whether for the purpose of sale or otherwise represent or describe any seeds as complying with any or any particular approved varietal verification scheme unless:

- (a) the seeds comply with such a scheme, and
- (b) the scheme with which the seeds comply is identified in that representation or description.

Maximum penalty: 20 penalty units.

(2) For the purposes of subsection (1) but without prejudice to its generality, seeds shall be deemed to be represented or described as complying with an approved varietal verification scheme if they are represented or described:

- (a) by means of the word "approved", "certified", "registered" or "verified" or any other word or words of like import (whether appearing alone or with other words), or
- (b) by means of any prescribed word or words or any prescribed matter.

20 Defence to prosecution for offence under section 19

It is a sufficient defence to a prosecution for an offence against this Act arising under section 19 if the defendant satisfies the court:

- (a) that the defendant took all reasonable precautions and exercised all due diligence to avoid the commission of the offence in respect of the seeds to which the proceedings relate,
- (b) that the defendant obtained those seeds from another person in the same state as they were in when the representation or description relating to those seeds and the subject of the proceedings was made or given, and
- (c) that the person from whom the defendant obtained those seeds made the same representation or gave the same description relating to those seeds as that representation or description.

Part 5 - Appointment and powers of inspectors

21 Inspectors

(1) Inspectors may be appointed for the purposes of this Act under and in accordance with the *Public Service Act 1979*.

(2) The Minister may authorise in writing any person to perform the duties and functions and exercise the powers and authorities of an inspector, subject to such restrictions, if any, as may be specified in the authority.

(3) The Minister may amend or revoke an authority referred to in subsection (2).

22 Power to inspect etc and take samples

For the purpose of ascertaining whether the provisions of this Act or the regulations are being complied with, an inspector may:

- (a) enter and inspect at any reasonable time any wharf, boat, premises or land upon which or building or vehicle within which the inspector believes on reasonable grounds that seeds

- are sold or that a plant which is the produce of a prohibited seed is sold,
- (b) examine any seeds or any parcel containing seeds or any plant,
- (c) subject to section 25, take a sample of seeds for examination, and
- (d) require any invoice or other document relating to seeds to be produced to the inspector for examination.

23 Inspector may require purchaser to state name of vendor

An inspector may require a person who has purchased any seeds or who has purchased any plant which is the produce of a prohibited seed to state the name and address of the person from whom he or she purchased those seeds or that plant and produce for inspection or retention by the inspector any invoice or other document received in relation to that purchase, any parcel that contained those seeds or that plant or any label attached to such a parcel or attached to those seeds or that plant when purchased.

24 Obstruction of inspector

A person shall not wilfully delay or obstruct an inspector, or fail to comply with a requirement made by an inspector, in the exercise of the inspector's powers under this Act or the regulations.

Maximum penalty: 20 penalty units.

Part 6 - Taking and analysis of samples

25 Procedure with respect to samples

- (1) In taking a sample of seeds under section 22, an inspector:
 - (a) shall, before or as soon as practicable after taking the sample, inform the owner of the seeds comprised in the sample or, if the owner is not present or available, the person in charge of those seeds of the inspector's intention to have them examined,
 - (b) shall pay or tender payment of the current market price, or an amount calculated according to the prescribed rate for payment, for the sample to the person from whom the sample is taken,
 - (c) shall take not less than such quantity of seeds as is in the inspector's opinion reasonably sufficient to represent the seeds from which the sample is taken, and
 - (d) is entitled to take less than the whole of the contents of a parcel of seeds only where:
 - (i) the contents of the parcel weigh more than 500 grams, or
 - (ii) the parcel is unsealed.
- (2) Where an inspector has taken a sample of seeds under section 22, the inspector shall:
 - (a) thoroughly mix all seeds taken as a sample from any 1 parcel or from any quantity of seeds represented as being, or as being part of, 1 lot,
 - (b) divide the sample of seeds so mixed into 3 parts and fasten or seal each part in such manner as its nature will permit,
 - (c) attach to each part a label which:
 - (i) contains the prescribed particulars, and
 - (ii) is signed by the inspector,
 - (d) leave 1 part with the owner of the seeds from which, or the person from whom, the sample was obtained,
 - (e) retain 1 of the remaining parts for examination, and
 - (f) retain the other remaining part for future comparison.

26 Submission of sample for examination

- (1) An inspector who has retained a part of a sample of seeds in accordance with section 25
- (2) shall, unless the inspector no longer considers that the part ought to be examined, submit it as soon as practicable to the Principal Analyst for examination.
- (2) A document purporting to be a certificate of the Principal Analyst that, on receipt by him or her of a part of a sample submitted by an inspector, the seal securing the part was

unbroken shall be admissible in any proceedings for an offence against this Act or the regulations and shall be evidence:

- (a) that the part was part of the same sample as the sample obtained by the inspector, and
- (b) that the part had not been tampered with before it was received by the Principal Analyst.

27 Certificate of Principal Analyst

(1) A document purporting to be a certificate of the Principal Analyst and containing a statement of the result of the examination of any seeds referred to in the certificate shall be admissible in any proceedings for an offence against this Act or the regulations and shall be evidence of its contents.

(2) Where a copy of a document referred to in subsection (1) has been served on a person who has been charged with the commission of an offence against this Act or the regulations, the person charged shall not be entitled to dispute the accuracy of any statement contained in the document unless, within the period of 14 days immediately after the person was served with the copy of the document, the person notifies the Director-General that the person intends to dispute the accuracy of the statement at the hearing of the charge.

28 Evidence of part to be evidence of whole

In any proceedings for an offence against this Act or the regulations, any evidence as to the nature of a part of a sample of seeds taken by an inspector from a parcel or from a quantity of seeds represented as being, or as being part of, a lot and retained by the inspector for examination shall be evidence as to the nature of the whole of the contents of the parcel or quantity so represented.

Part 7 - General

29 Proceedings for offences

Proceedings for an offence against this Act or the regulations may be taken before a Local Court constituted by a Magistrate sitting alone.

30 Notices

Where under this Act or the regulations a notice is required to be, or may be, served on a person, the notice shall be in writing and may be served on the person personally or by post.

31 Regulations

(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 and, in particular, for or with respect to prohibiting or regulating the use of specified words or statements to represent or describe seeds.

(2) A provision of a regulation may:

- (a) apply generally or be limited in its application by reference to specified exceptions or factors,
- (b) apply differently according to different factors of a specified kind,
- (c) authorise any matter or thing to be from time to time determined, applied or regulated by any specified person, or
- (d) (Repealed)
- (e) impose a penalty not exceeding 10 penalty units for any contravention of a regulation.

32 Repeals

Each Act specified in Column 1 of Schedule 1 is, to the extent specified opposite that Act in Column 2 of Schedule 1, repealed.

33 Savings provisions

- (1) A person who, immediately before the day appointed and notified under section 2 (2), was an inspector under the *Agricultural Seeds Act 1921* shall be deemed to have been appointed as an inspector under section 21 (1).
- (2) An order made by the Minister under section 11 of the *Agricultural Seeds Act 1921* :
(a) requiring agricultural seeds to be treated or cleaned, and
(b) in force immediately before the day appointed and notified under section 2 (2), shall, if the seeds to which the order relates have not been treated or destroyed immediately before that day, be deemed to be an order made by the Director-General under section 10 (b) in relation to those seeds and duly served on that day.
- (3) A reference to the *Agricultural Seeds Act 1921* in any Act (other than this Act) shall be read and construed as a reference to the *Seeds Act 1982* .

Schedule 1 Repeals

(Section 32)

Column 1 Year and number of Act	Column 2 Short title of Act	Extent of repeal
1921 No 15	<i>Agricultural Seeds Act 1921</i>	The whole Act
1937 No 35	<i>Statute Law Revision Act 1937</i>	So much of the Second Schedule as amended Act No 15, 1921
1961 No 51	<i>Agricultural Seeds (Amendment) Act 1961</i>	The whole Act
1978 No 67	<i>Metric Conversion Act 1978</i>	So much of Schedule 1 as amended Act No 15, 1921

Historical notes

Table of amending instruments

Seeds Act 1982 No 14 . Assented to 13.4.1982. Date of commencement, secs 1 and 2 excepted, 1.12.1983, sec 2 (2) and GG No 162 of 25.11.1983, p 5275. This Act has been amended as follows:

- 198 No 4 153 *Statute Law (Miscellaneous Amendments) Act 1984* . Assented to 10.12.1984.
- 198 No 6 16 *Statute Law (Miscellaneous Provisions) Act 1986* . Assented to 1.5.1986.
- 198 No 7 48 *Statute Law (Miscellaneous Provisions) Act (No 1) 1987* . Assented to 28.5.1987. Date of commencement of Sch 32, except as provided by sec 2 (13), 1.9.1987, sec 2 (12) and GG No 136 of 28.8.1987, p 4809.
- 199 No 2 112 *Statute Law (Penalties) Act 1992* . Assented to 8.12.1992. Date of commencement, assent, sec 2.
- 199 No 7 55 *Statute Law (Miscellaneous Provisions) Act 1997* . Assented to 2.7.1997. Date of commencement of Sch 3, 3 months after assent, sec 2 (3).
- 199 No 9 31 *Statute Law (Miscellaneous Provisions) Act 1999* . Assented to 7.7.1999. Date of commencement of Sch 4, assent, sec 2 (1).

Table of amendments

No reference is made to certain amendments made by Schedule 3 (amendments replacing gender-specific language) to the *Statute Law (Miscellaneous Provisions) Act 1997* .

Sec 3 Rep 1986 No 16, Sch 13.
Secs 5, 7, 8 Am 1992 No 112, Sch 1.
Part 3A, heading Ins 1986 No 16, Sch 13.
Sec 10 Am 1986 No 16, Sch 13.
Secs 12, 17, 19 Am 1992 No 112, Sch 1.
Sec 20 Am 1984 No 153, Sch 16.
Sec 24 Am 1992 No 112, Sch 1.
Sec 29 Am 1999 No 31, Sch 4.83.
Sec 31 Am 1987 No 48, Sch 32; 1992 No 112, Sch
 1.
Sec 33 Am 1984 No 153, Sch 16.