

Pesticides Act 1979 026

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- 1 FIRST SCHEDULE:
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An Act to make better provision for the regulation and control of the sale and use of pesticides, and to consolidate and amend the Agricultural Chemicals Act 1959 and its amendments

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:

1. Short Title and commencement---(1) This Act may be cited as the Pesticides Act 1979.

(2) This Act shall come into force on a date to be appointed by the Governor-General by Order in Council, and different dates may be so appointed in respect of different provisions of this Act.

2. Interpretation---In this Act, unless the context otherwise requires,---

``Analyst" means an Analyst appointed under section 11 of this Act:

``Board" means the Pesticides Board constituted under section 12 of this Act:

``Container" includes anything in or by which pesticides may be cased, covered, enclosed, contained, or packed before application; and, in the case of pesticides sold or carried or intended for sale or carriage in more than one container, includes every such container:

``Department" means the Ministry of Agriculture and Fisheries:

``Director-General" means the Director-General of Agriculture and Fisheries:

``Environmental effects", in relation to a pesticide, includes the likely effects that the use or continued use of that pesticide may have on the land, sea, or air, or on any lake, river, waterway, or watercourse, or on man or any other living organism (other than the pest or pests against which the pesticide is intended to be used), or on the inter-relationship between any such organisms:

``Fertiliser" means any substance (including lime) that is in a state suitable for application to land or plants for the purpose of increasing the growth or productivity of beneficial plants and that contains, in the aggregate, not less than 3 percent of fertilising elements as defined in section 2 of the Fertilisers Act 1960; and includes any animal manure, and any animal or vegetable matter, that has been treated for the purpose of being applied to the land for its enrichment:

``Inspector" means an Inspector appointed under section 11 of this Act:

``Label", in relation to a container of a pesticide, means any written, pictorial, or other descriptive matter marked on or affixed to the container; and ``to label" and ``labelling" have corresponding meanings:

``Licence" means a licence issued under Part V of this Act; and ``licensee" has a corresponding meaning:

``Livestock" means cattle, sheep, horses, swine, goats, deer, poultry, bees, fish, and other animals kept for commercial or domestic purposes:

``Manufacturer", in relation to a pesticide, means the person who, as owner, packs the pesticide, or causes it to be packed, for sale; and ``to manufacture" has a corresponding meaning:

``Minister" means the Minister of Agriculture:

``Pack", in relation to a pesticide, means case, cover, enclose, contain, or pack that pesticide in or by means of a container:

``Pest" means---

(a) Any unwanted mammal, bird, reptile, amphibian, fish, insect, arthropod, mollusc, nematode or other worm, plant, or fungus, not being an organism living on or in man or any livestock; and

(b) Any bacterium or virus affecting plants;---and includes any other organism from time to time declared under section 6 of this Act to be a pest for the purposes of this Act:

``Pesticide" means any substance or mixture of substances represented by the proprietor as suitable for the eradication or control of any pest, whether by way of modification of behaviour or development or otherwise; and includes any substance or mixture of substances represented by the proprietor as suitable for use as a plant growth regulator, or a defoliant, or a desiccant; and also includes any substance or organism from time to time declared under section 7 of this Act to be a pesticide for the purposes of this Act; but does not include a fertiliser, or an animal remedy within the meaning of the Animal Remedies Act 1967:

``Proprietor", in relation to a pesticide manufactured in New Zealand, means the manufacturer of the pesticide, and, in relation to a pesticide manufactured elsewhere, means the importer of the pesticide:

``Registrar" means the Registrar of the Board appointed under section 12 of this Act:

``Registration" means registration under this Act; and ``to register" has a corresponding meaning:

``Registered chemical applicator" means a person who is for the time being recognised by the Board as a registered chemical applicator in accordance with any scheme of registration conducted or approved by the Board pursuant to section 13 (3) (c) of this Act:

``Sell" includes barter; and also includes offering, exposing, or attempting to sell, or having in possession for sale, or sending or delivering for sale, or causing or allowing to be sold, offered, or exposed

for sale; and also includes any disposal to which section 4 of this Act applies; and "sale" has a corresponding meaning:

"Special mixture" means a mixture of pesticides (each of which is registered or exempted from registration under this Act) that is prepared in accordance with the requirements of the intending user. Cf. 1959, No. 51, s. 2; 1967, No. 144, s. 2; 1972, No. 3, s. 3 (a), (c)

PART I APPLICATION AND ADMINISTRATION OF ACT

Application

3. Act to bind Crown---This Act binds the Crown.

4. Disposal of pesticides by way of gifts, samples, etc.---(1) The provisions of this Act relating to the sale of any pesticide shall, unless the context otherwise requires, apply to the disposal of any pesticide by way of gift, loan, or otherwise.

(2) For the purposes of this section, the term "gift" includes the giving or distribution, in the course of business, as a sample or otherwise without charge.

5. Principals and agents---(1) For the purposes of this Act, but subject to subsection (2) of this section, every person shall be deemed to manufacture, supply, sell, label, apply, or acquire any pesticide whether he does so on his own account or as the agent or employee of any other person.

(2) For the purposes of this Act, if a person who is authorised under this Act to manufacture, supply, sell, label, apply, or acquire a pesticide does so, in accordance with that authority, as the agent or employee of another person who is not so authorised, that other person shall not be held to have manufactured, supplied, sold, labelled, applied, or acquired that pesticide.

6. Power to declare organisms to be pests---(1) Without limiting section 76 of this Act, the Governor-General may from time to time, by Order in Council, declare any organism to be a pest for the purposes of this Act.

(2) Any such order may relate to any organism specified by its common name or its scientific name, or to an assemblage of related organisms specified by their common name.

(3) Any such organism or class of organisms may be identified in the order by reference to the disease or other harm or damage that it causes or is suspected of causing, or by the class or classes of premises in which it is found or is to be a pest for the purposes of this Act.

(4) Any such order may specify the circumstances and geographical districts in which any organism is or is not to be a pest for the purposes of this Act.

(5) Notwithstanding anything in the foregoing provisions of this section, any regulations made under this Act may empower the Minister to declare, by notice in the Gazette, any organism to be a pest for the purposes of the Act, and, in like manner, to revoke any such notice.

(6) To the extent that any such notice is inconsistent with any order made for the purposes of this section, whether before or after the date of the notice, the provisions of that order shall prevail.

(7) Subject to subsection (6) of this section, every such notice, unless sooner revoked by the Minister, shall remain in force for a period of 6 months and shall then cease to have effect.

(8) The provisions of subsections (2) to (4) of this section shall apply to every such notice as if it were an order made for the purposes of this section.

(9) Every order made or notice given for the purposes of this section shall come into force in respect of every organism to which it relates on the date specified in the order or notice, or, if no date is so specified, on the date on which the order is notified in the Gazette or, as the case may require, the notice is published in the Gazette.

(10) Notwithstanding any of the foregoing provisions of this section, no such order or notice shall be made in respect of any organism living in or on man or any livestock.

(11) Notwithstanding any of the foregoing provisions of this section,---

(a) No such order shall be made otherwise than on the advice of the Minister tendered on the recommendation of the Board:

(b) No such notice shall be given otherwise than on the recommendation of the Board.

7. Power to declare substances to be pesticides---(1) Without limiting section 76 of this Act, the Governor-General may from time to time, by Order in Council, declare any substance or mixture of substances to be a pesticide for the purposes of this Act.

(2) Any such order may relate to any substance or mixture specified by its common name, chemical name, or trade name, or to any class of substances or mixtures identified by a description of that class.

(3) Any such substance or mixture or class of substances or mixtures may be identified in the order by reference to---

(a) Its registration under any enactment; or

(b) Its toxicological action; or

(c) Its use, or the purpose for which it is intended to be used.

(4) Notwithstanding anything in the foregoing provisions of this section, any regulations made under this Act may empower the Minister to declare, by notice in the Gazette, any substance or mixture of substances to be a pesticide for the purposes of this Act, and, in like manner, to revoke any such notice.

(5) The provisions of subsections (6) to (9) and subsection (11) of section 6 of this Act, so far as they are applicable and with the necessary modifications, shall apply to every order and every notice made or given for the purposes of this section.

8. Minister may grant exemptions from application of Act---The Minister may from time to time, on the recommendation of the Board, by notice in the Gazette, exempt any pesticide from such of the provisions of this Act as are specified in the notice, and may, in like manner, revoke any such exemption.
Cf. 1959, No. 51, s. 3 (1) (a); 1970, No. 46, s. 2

Administration

9. Act to be administered by Ministry of Agriculture and Fisheries---The Schedule to the Ministry of Agriculture and Fisheries Act 1953 (as substituted by section 4 (1) of the Ministry of Agriculture and Fisheries Amendment Act 1972) is hereby amended by omitting the item "The Agricultural Chemicals Act 1959"; and by inserting, in its appropriate alphabetical order, the item "The Pesticides Act 1979".
Cf. 1959, No. 51, s. 32; 1972, No. 3, s. 4 (2) (b)

10. Expenses of administration---All fees and other money paid under this Act shall be paid into the Public Account; and all expenses incurred in respect of the administration of this Act shall be paid out of money from time to time appropriated by Parliament for the purpose.
Cf. 1959, No. 51, s. 28

11. Appointment of Analysts and Inspectors---(1) There may from time to time be appointed under the State Services Act 1962 such number of Analysts and Inspectors as are required for the purposes of this Act.

(2) Every person who was appointed as an Analyst or as an Inspector pursuant to section 29 of the Agricultural Chemicals Act 1959 and whose appointment is subsisting at the commencement of this section shall be deemed to have been so appointed pursuant to this section.
Cf. 1959, No. 51, s. 29

THE PESTICIDES BOARD

12. Constitution of Board---(1) For the purposes of this Act there shall be a board, to be called the Pesticides Board.

(2) The Board shall consist of---

- (a) One person to be nominated by the Minister of Agriculture as Chairman:
- (b) One person to be nominated by the Minister of Science:
- (c) One person to be nominated by the Minister of Health:
- (d) One person to be nominated by the Minister for the Environment:
- (e) One person to be nominated by the Agricultural Chemical and Animal Remedies

Manufacturers' Federation of New Zealand:

- (f) One person to be nominated by the New Zealand Fruitgrowers' Federation Limited:
- (g) One person to be nominated by the New Zealand Vegetable and Produce Growers'

Federation Incorporated:

- (h) One person to be nominated by the National Bee-keepers' Association of New Zealand

Incorporated:

- (i) One person to be nominated by the New Zealand Agricultural Merchants' Federation:
- (j) One person to be nominated by the Wine Institute of New Zealand Incorporated:
- (k) One person to be nominated by Federated Farmers of New Zealand Incorporated:
- (l) The Registrar, who shall be an officer of the Department appointed by the Director-General.

(3) Subject to subsection (2) (1) of this section, the members of the Board shall be appointed by the Governor-General on the recommendation of the Minister.

Cf. 1959, No. 51, s. 4 13. Functions and powers of Board---(1) The principal functions of the Board shall be---

- (a) Generally to promote the prudent, effective, and safe use of pesticides in New Zealand:
- (b) To consider and determine applications under this Act for the registration of pesticides, and for the grant of licences under Part V of this Act.

(2) The Board shall have all such powers, rights, authorities, and privileges (including the right to delegate any of its powers to any person) as may be reasonably necessary or expedient to enable it to carry out its functions.

(3) Without limiting subsection (2) of this section, the Board may from time to time---

(a) Promote the undertaking of any research or experimental work designed to test or improve the efficacy of any pesticides:

(b) Promote and organise, by such means as the Board thinks fit, the dissemination of information relating to the safe and efficient use of pesticides:

(c) To promote and encourage the training of persons who apply pesticides, and, for that purpose, to conduct or approve courses of instruction for such persons, and schemes for the voluntary registration of persons qualified to apply pesticides:

(d) Make such recommendations to the Minister with respect to such matters and questions relating to the registration, testing, or use of pesticides as it thinks fit, or as may be submitted to it for the purpose by the Minister.

(4) In the exercise of its functions and powers under this Act, the Board shall at all times have regard to the environmental effects of the use of pesticides.

Cf. 1959, No. 51, s. 11; 1967, No. 144, s. 4

14. Terms of office of members---(1) The Registrar shall hold office during the pleasure of the Director-General.

(2) Subject to the succeeding provisions of this section, every other member of the Board shall hold office for a term of 3 years, but may from time to time be reappointed.

(3) Any member of the Board may at any time be removed from office by the Governor-General for disability, bankruptcy, neglect of duty, or misconduct proved to the satisfaction of the Governor-General, or may resign his office by writing addressed to the Minister.

(4) If any member dies, resigns, or is removed from office, the vacancy so created shall be filled in the manner in which the appointment to the vacant office was originally made, and every person so appointed under this subsection shall hold office for the remainder of the term for which his predecessor was appointed.

(5) Unless he sooner vacates his office under subsection (3) of this section, a member shall continue in office until his successor comes into office.

(6) The powers of the Board shall not be affected by any vacancy in its membership.
Cf. 1959, No. 51, s. 5

15. Deputies of members---(1) In any case where the Minister is satisfied that any member of the Board, other than the Registrar, is incapacitated by illness or absence or other sufficient cause from performing the duties of his office, the Minister may appoint a deputy to act for that member during his incapacity.

(2) Every deputy appointed under subsection (1) of this section shall be nominated by the person or body who nominated the incapacitated member.

(3) In the case of the incapacity of the Registrar, any officer of the Department may be appointed by the Director-General to act as deputy for the Registrar during his incapacity.

(4) Every deputy appointed under this section shall, while he acts as such, be deemed to be a member of the Board, and any deputy acting for the Chairman or the Registrar shall have all the powers of the Chairman or the Registrar, as the case may be.

(5) No appointment of a deputy and no acts done by him as such, and no acts done by the Board while any deputy is acting as such, shall be questioned in any proceedings on the ground that the occasion for his appointment had not arisen or had ceased.

Cf. 1959, No. 51, s. 6; 1972, No. 3, s. 3 (6) (b)

16. Meetings of Board---(1) The first meeting of the Board shall be held on a day to be appointed by the Minister,

(2) Subsequent meetings of the Board shall be held at such times and places as the Board from time to time determines.

(3) The Chairman, or any 2 members, may at any time call a special meeting of the Board.

(4) At every meeting of the Board the quorum necessary for the transaction of business shall be 7 members.

(5) The Chairman shall preside at every meeting of the Board at which he is present.

(6) In the absence from any meeting of the Chairman or his deputy, the members present shall appoint one of their number to preside at that meeting.

(7) Every question before the Board shall be determined by a majority of the votes cast by the members present at the meeting.

(8) The Chairman or other person presiding at the meeting shall have a deliberative vote, and, in the case of an equality of votes, shall also have a casting vote.

(9) Except as expressly provided in this Act, or in any regulations for the time being in force under this Act, the Board may determine its own procedure.
Cf. 1959, No. 51, s. 7

17. Temporary members of Board---(1) The Board may from time to time appoint temporary members, to hold office for such period as may be specified in each case, for the purpose of assisting it in the exercise of any of its functions under this Act.

(2) Any appointment under this section may at any time be revoked by the Board.

(3) Subject to subsection (4) of this section, every temporary member shall, during the currency of his appointment, be deemed to be a member of the Board.

(4) No temporary member shall be entitled to vote on any question before the Board.
Cf. 1959, No. 51, s. 8

18. Board may appoint advisory and technical committees---(1) The Board may from time to time appoint such advisory or technical committees as it thinks fit to advise the Board on such matters relating to the exercise of its functions as are referred to them by the Board, and may from time to time delegate to any such committee any of its functions, powers, or duties.

(2) Any person may be appointed under this section to be a member of a committee notwithstanding that he is not a member of the Board.

(3) Every committee appointed under this section shall be subject in all things to the control of the Board and may at any time be discharged, altered, or reconstituted by the Board.

(4) Any delegation under this section may at any time be revoked by the Board.
Cf. 1959, No. 51, s. 9

19. Board to submit annual report---(1) The Board shall, not later than the 31st day of August in each year, prepare and submit to the Minister a report of its proceedings and operations for the year ending with the preceding 30th day of June.

(2) The Minister shall lay a copy of the report before Parliament within 28 days after he has received it if Parliament is then in session, or, if Parliament is not then in session, within 28 days after the commencement of the next ensuing session.
Cf. 1959, No. 51, s. 11A; 1967, No. 144, s. 5

20. Fees and allowances---(1) The Board is hereby declared to be a statutory Board within the meaning of the Fees and Travelling Allowances Act 1951.

(2) There may be paid to members of the Board, including temporary members, and of any committee appointed by the Board, remuneration by way of fees, salary, or allowances and travelling allowances and expenses in accordance with the Fees and Travelling Allowances Act 1951, and the provisions of that Act shall apply accordingly, as if, in the case of every such committee, that committee were a statutory Board within the meaning of that Act.

PART III
REGISTRATION OF PESTICIDES

21. Pesticides not to be sold unless registered---(1) No proprietor of any pesticide shall sell, or apply for reward, the pesticide unless it is registered in accordance with this Part of this Act or the sale or application of that pesticide by him is authorised by an experimental use permit issued by the Board under section 25 of this Act.

(2) Every proprietor of a pesticide who sells or applies that pesticide in contravention of subsection (1) of this section commits an offence against this Act.

Cf. 1959, No. 51, s. 12 (1)

22. Application for registration---(1) Every application for the registration of a pesticide shall be made by the proprietor on a form provided for the purpose by the Board, and shall be addressed to the Registrar.

(2) Every application shall be accompanied by---

(a) The prescribed fee; and

(b) Such number as the Board may specify of every label that it is intended to use in respect of the pesticide; and

(c) If required by the Board, a statutory declaration by the applicant verifying any information contained in or relating to the application.

(3) Every applicant shall file with the Board, in addition to the matters referred to in subsection (2) of this section, a written statement of---

(a) The name and percentage of each active ingredient, together with full details of the formulation of the pesticide:

(b) The method or methods of analysis to be used---

(i) In the chemical examination of the pesticide; and

(ii) In the detection of residues (if any) in plant or animal tissue arising from the use of the pesticide:

(c) Such other information relating to---

(i) The chemical and physical properties of the pesticide, including its toxicity and efficacy; and

(ii) Any residues likely to be deposited in plant or animal tissue by the use of the pesticide; and

(iii) Its effect on the environment generally, including its effect on wildlife; and

(iv) The safe disposal of used containers of the pesticide,---

as may be required by regulations made under this Act, or by the Board in any particular case.

Cf. 1959, No. 51, s. 13; 1967, No. 144, s. 6

23. Board to consider and determine application---(1) As soon as practicable after receiving an application for the registration of a pesticide, the Board shall consider it, and either grant it or refuse to grant it.

(2) When the Board has determined the application, it shall give written notice to the applicant of its decision, and, where it refuses to grant the application, of its reasons for its decision.

(3) Without limiting anything in section 24 of this Act, on granting any application the Board may impose such terms, conditions, and requirements as it thinks fit.

Cf. 1959, No. 51, s. 14 (1)

24. Registration subject to restricted use---(1) For the purposes of this section the term "restricted use" in relation to a pesticide, means that the pesticide is to be used only---

(a) By a registered chemical applicator, or by any other person approved for the purpose by the Board:

(b) Subject to such other terms, conditions, and requirements as may be specified by the Board on granting the application for the registration of the pesticide.

(2) On granting any application for the registration of a pesticide, the Board may register it for such restricted use as it thinks fit, having regard to the provisions of subsection (3) of this section.

(3) In determining whether or not it should impose any such terms, conditions, and requirements in respect of the use of any pesticide, the Board shall have regard to---

(a) The relative toxicity of the pesticide; and

(b) The environmental effects of the pesticide; and

(c) Such other matters as the Board thinks fit to take into account, having regard to the intended use of the pesticide.

Cf. 1959, No. 51, s. 14 (4); 1967, No. 144, s. 7

25. Experimental use permits---(1) An experimental use permit may be granted by the Board in cases where, in its opinion, it is desirable that an unregistered pesticide be used to a limited extent for trial or experimental purposes, or that a registered pesticide be so used to evaluate its possible use for any purpose other than one presently specified in the label approved by the Board in respect of that pesticide.

(2) Any permit issued under this section may be subject to such terms and conditions (whether as to the sale or use of that pesticide or otherwise) as may be prescribed by the Board.

(3) Subject to the provisions of subsections (4) and (5) of this section and of section 28 of this Act, an experimental use permit shall remain in force for a period of 3 years from the date of issue, or for such extended period as may be specified by the Board.

(4) If, during the currency of any such permit, the Board grants an application for the registration of the pesticide to which the permit relates, the Board may cancel the permit.

(5) The Board may at any time cancel an experimental use permit if it is satisfied that the terms and conditions on and subject to which it was issued are being or have been violated, or that the continued use of that pesticide is likely to have substantial adverse environmental effects.

(6) The provisions of sections 28 and 29 of this Act, so far as they are applicable and with the necessary modifications, shall apply with respect to the grant of experimental use permits in the same manner as they apply to registration under this Act.

Cf. 1959, No. 51, s. 17

26. Certificate of registration---(1) Subject to subsection (2) of this section, on granting an application for the registration of a pesticide, the Board shall issue to the applicant a numbered certificate of registration.

(2) No certificate of registration shall be issued in respect of any pesticide unless the label intended to be used in respect of the pesticide has been accepted by the Board in accordance with section 38 of this Act.

Cf. 1959, No. 51, s. 14 (2), (3)

27. Refusal of registration---The Board may refuse to grant an application for the registration of any pesticide if, in its opinion,---

(a) The use of the pesticide, in the circumstances in which it is intended to be used or is likely to be used,---

(i) Is likely to be materially prejudicial to the health or safety of human beings or any livestock or protected wildlife; or

(ii) Is likely, because of the nature or quantity of any ingredients of the pesticide, to have a detrimental effect on meat, dairy produce, or other produce intended for human consumption that has been exposed to the pesticide, or is likely to prejudice the sale of any such meat or produce in New Zealand or elsewhere; or

(iii) Is likely, in the opinion of the Board, to have substantial adverse environmental effects; or

- (b) Having regard to the composition of the pesticide and the purpose for which it is intended to be used, the pesticide is of insufficient value as a pesticide; or
 - (c) The pesticide does not comply with any appropriate standard prescribed by regulations made under this Act; or
 - (d) There is insufficient evidence of the efficacy of the pesticide for the use in respect of which registration is sought.
- Cf. 1959, No. 51, s. 18

28. Board may review registration---(1) If the Board believes, in respect of any registered pesticide,---

- (a) That the pesticide is not being prepared in accordance with the particulars registered in respect of the pesticide; or
- (b) That the pesticide no longer conforms to standards prescribed by regulations made under this Act; or
- (c) That, having regard to experience gained or discoveries made since the date of registration, it is desirable that the Board should review the registration of the pesticide; or
- (d) That the pesticide is not being manufactured or imported and is no longer available for purchase in New Zealand; or
- (e) That there may be reason to revoke the registration under section 29 of this Act,--- it may, by notice in writing addressed to the proprietor, require the proprietor, within such time as may be specified in the notice, to appear before the Board to show cause why the registration of the pesticide should not be revoked.

(2) If, in any such case, the proprietor fails to appear before the Board within the specified time, or within such further period as the Board may in any case allow, the registration of the pesticide shall, as from a date to be determined by the Board, be deemed to be revoked.

(3) In any other case, the Board shall consider any representations or submissions made to it by or on behalf of the proprietor, and may, if it is satisfied of any of the matters referred to in subsection (1) of this section,---

- (a) Revoke the registration of the pesticide as from a date to be specified by the Board; or
- (b) Allow the registration to continue, subject to such terms and conditions as the Board may specify.

(4) In every case where the registration of a pesticide is deemed to be revoked under subsection (2) of this section, or where the Board exercises any of its powers under subsection (3) of this section, the Board shall notify the proprietor in writing accordingly.

(5) Nothing in this section shall limit or affect the powers of the Board under section 29 of this Act to revoke the registration of any pesticide.
Cf. 1959, No. 51, s. 19; 1967, No. 144, s. 10 (2)

29. Revocation of registration---(1) If the Board is satisfied that the use of any registered pesticide, in the circumstances in which it is normally used or is likely to be used,---

- (a) Is likely to be materially prejudicial to the health or safety of human beings or any livestock or protected wildlife; or
- (b) Is likely, because of the nature or quantity of any ingredients of the pesticide, to have a detrimental effect on meat, dairy produce, or other produce intended for human consumption that has been exposed to the pesticide, or is likely to prejudice the sale of any such meat or produce in New Zealand or elsewhere; or
- (c) Is likely, in the opinion of the Board, to have substantial adverse environmental effects,--- the Board may, by notice in writing addressed to the proprietor, revoke the registration of that pesticide.

(2) The Board may at any time, at the request of the proprietor of any pesticide registered under this Act, revoke that registration.

(3) Where any registration is revoked under subsection (1) or subsection (2) of this section, the Board shall fix a date, not later than 12 months after the date of the determination of the Board to revoke the registration, from which the revocation shall have effect.

(4) The Board shall publish in the Gazette a notice of the revocation of the registration of any pesticide, the grounds of the revocation, and the date from which the revocation has effect.
Cf. 1959, No. 51, s. 20; 1963, No. 73, s. 3; 1967, No. 144, s. 10 (1)

30. Board may require surrender of stocks where registration revoked---(1) The Board may, in its discretion, by notice in writing addressed to the proprietor of any pesticide of which the registration under this Act is or is deemed to be revoked, require the proprietor to deliver and surrender all stocks of that pesticide in that proprietor's possession or under his control to such person, at such place, and at such time, as the Board may specify in the notice.

(2) Every proprietor who, without reasonable excuse, fails to comply with any requirement of the Board under subsection (1) of this section commits an offence and is liable to a fine not exceeding \$500.

31. Minister may prohibit use of pesticide in certain cases---(1) In any case where the Board is considering revoking the registration of any pesticide under section 28 or section 29 of this Act, it may recommend to the Minister that he issue a notice in respect of that pesticide under subsection (2) of this section.

(2) In any such case, the Minister may, in accordance with the Board's recommendation, by notice in the Gazette, prohibit, either generally or in any specified area or areas, the sale, use, or application of the pesticide for such period not exceeding 6 months as may be specified in the notice.

(3) In every such notice, the Minister shall state his reasons for the prohibition, and the date from which the prohibition shall have effect.

(4) Every person who contravenes any notice given under subsection (2) of this section commits an offence and is liable to a fine not exceeding \$500, and, if the offence is a continuing one, to a further fine not exceeding \$50 for every day or part of a day during which the offence has continued.
Cf. 1959, No. 51, s. 3 (1) (b), (2); 1970, No. 46, s. 2

32. Transfer of rights of proprietor---(1) Where, during the period of registration of a pesticide, the proprietor ceases to be the manufacturer or, as the case may be, the importer of the pesticide, he shall notify the Registrar in writing to that effect.

(2) The Board, pursuant to an application by any person who has acquired such rights in respect of the pesticide as would entitle him to apply for registration of it, may cause the register to be amended so as to show the name of the present proprietor, subject to such conditions as to the alteration of any label relating to the pesticide as the Board thinks fit.

(3) On the amendment of the register under this section, the person shown in the register as the proprietor of a pesticide shall, from the date of the amendment, be deemed in all respects to be the proprietor of the pesticide for the purposes of this Act.

(4) Every person who fails to comply with subsection (1) of this section commits an offence and is liable to a fine not exceeding \$100.
Cf. 1959, No. 51, s. 25

33. Board to keep register---(1) The Board shall cause to be set up and maintained a register of applications granted under this Part of this Act, containing in respect of each such application the prescribed particulars.

(2) Any person may, on application to the Registrar, search, inspect, and obtain particulars of any entry in the register during the hours and upon the days appointed by regulations made under this Act or, if no such times are so appointed, at all reasonable times.

34. Board members to maintain confidentiality---(1) Every member of the Board considering an application under this Part of this Act, and every member of any committee to whom the Board refers any matter relating to any such application, shall treat all information submitted by the applicant as confidential, and shall not (without the applicant's consent) disclose it to any other person, except another member of the Board or committee.

(2) Every person commits an offence against this Act who discloses any information in contravention of subsection (1) of this section.

35. Transitional provisions---(1) The provisions of this section shall apply notwithstanding any of the other provisions of this Act.

(2) In this section the term ``commencement date" means the date of the commencement of section 21 of this Act.

(3) Where, immediately before the commencement date, any substance was registered as an agricultural chemical under section 14 of the Agricultural Chemicals Act 1959, that substance shall be deemed to be registered as a pesticide under this Act; and every condition imposed or requirement made by the Agricultural Chemicals Board under that Act in respect of the registration of that substance (including requirements as to labelling) shall be deemed to have been imposed or made by the Pesticides Board under this Act.

(4) Where, immediately before the commencement date, any substance was provisionally registered as an agricultural chemical under section 17 of the Agricultural Chemicals Act 1959, an experimental use permit shall be deemed to have been issued and to be in force under section 25 of this Act in respect of that substance; and every condition imposed or requirement made by the Agricultural Chemicals Board under the Agricultural Chemicals Act 1959 in respect of the provisional registration of that substance (including requirements as to labelling) shall be deemed to have been imposed or made by the Pesticides Board under this Act in respect of such a permit.

(5) Subject to subsection (6) of this section, where, immediately before the commencement date, any proprietor was lawfully selling any substance that was not an agricultural chemical for the purposes of the Agricultural Chemicals Act 1959 but is a pesticide for the purposes of this Act, he may continue to sell that substance (without complying with the provisions of this Act) during the period of 2 years commencing with the commencement date.

(6) The Board may, at any time, by notice in writing addressed to any proprietor referred to in subsection (5) of this section, revoke the exemption conferred on him by that subsection, in which case that exemption shall cease to have effect on the expiration of the period of 6 months commencing with the date on which the proprietor receives the notice from the Board.

Cf. 1959, No. 51, s. 26

PART IV DEALINGS IN PESTICIDES

36. Special mixtures---(1) No person shall sell any special mixture otherwise than pursuant to and in accordance with a permit issued by the Board under this section.

(2) An application for a permit to sell a special mixture under this section shall be accompanied by the prescribed fee, and shall be made in writing signed by the applicant and addressed to the Registrar.

(3) The Board may, in its discretion,---

(a) Refuse any such application; or

(b) Grant the application either unconditionally or subject to such terms and conditions as the Board thinks fit.

(4) When the Board has determined an application for a special mixtures permit under this section, it shall notify the applicant in writing of its decision, and, where it refuses to grant the application, of the reasons for its decision.

(5) The Board may from time to time, by notice in writing to the holder of any permit issued under this section, revoke or vary the permit.

(6) No person shall sell any special mixture to any purchaser other than the person at whose request the mixture was prepared or the authorised agent of that person.

(7) Every package containing a special mixture shall have attached to it a label containing such information as may be specified in that behalf by the Board.

(8) Nothing in section 21 or section 38 of this Act shall apply with respect to any special mixture; but the proprietor of a special mixture may at any time apply under section 22 of this Act for the registration of the mixture as a pesticide, and, if the mixture is so registered, the provisions of this section shall thereupon cease to apply to the mixture, and any permit issued hereunder shall be deemed to be revoked.

(9) Every person who sells a special mixture shall record the quantity and composition of the mixture comprised in the sale, the name and address of the purchaser, and the date of delivery.

(10) The seller shall retain the record in his possession for a period of 3 years after the date of the sale, and shall permit an Inspector to examine the record at any time during which it is retained by the seller.

(11) Every person who sells any special mixture in contravention of subsection (1) of this section commits an offence against this Act.

(12) Every person who fails to comply with subsection (9) or subsection (10) of this section commits an offence and is liable to a fine not exceeding \$100.

(13) Every permit issued in respect of a special mixture pursuant to section 16A of the Agricultural Chemicals Act 1959 and in force at the date of the commencement of this section shall be deemed for the purposes of this Act to have been issued pursuant to this section.
Cf. 1959, No. 51, s. 16A; 1967, No. 144, s. 9

37. Sale of pesticides in bulk--(1) Notwithstanding the provisions of section 38 of this Act, the Board may permit the sale of any registered pesticide otherwise than in containers if it is satisfied that the pesticide may be more conveniently, economically, and safely sold and delivered in bulk, and that the pesticide will not be reformulated before application.

(2) Every permit under this section shall be in writing signed by the Registrar and addressed to the applicant for the permit, and may be granted subject to such terms and conditions as the Board thinks fit.

(3) When the Board has determined an application for a permit under this section, it shall notify the applicant in writing of its decision, and, where it refuses to grant the application, of the reasons for its decision.

(4) Every person who sells (otherwise than in a package) any pesticide in respect of which a permit has been given under this section shall deliver to the purchaser, with each lot sold, an invoice certificate in duplicate, signed by the seller, stating that a permit has been given under this section, and setting out the particulars required to be shown on the label accepted by the Board in respect of the registration of the pesticide.

(5) Any permit under this section may at any time be revoked or varied by the Board.

(6) Where any certificate is delivered with any pesticide under this section, the certificate shall, for the purposes of this Act, be deemed to be the label of the pesticide.
Cf. 1959, No. 51, s. 16

38. Labelling---(1) No person shall sell any pesticide registered under this Act, or in respect of which a permit is in force under section 25 of this Act, otherwise than in a container to which is attached a label that has been accepted by the Board and that shows clearly and distinctly the following particulars:

- (a) The name and address of the proprietor, and the name or proprietary brand of the pesticide:
- (b) The registered number of the certificate of registration or (as the case may require) the registered number of the permit relating to the pesticide:
- (c) Such particulars of the chemical composition of the pesticide as may be required by the Board:
- (d) The preventive or remedial properties claimed in respect of the pesticide, and advice for its use:
- (e) Such mandatory directions as to the use or application of the pesticide as may be required by the Board:
- (f) Such precautionary advice as may be required by the Director-General of Health for the purpose of safeguarding the health of human beings:
- (g) Such precautionary advice as may be required by the Board for the purpose of safeguarding the health of livestock and beneficial animals (including birds, fish, beneficial insects, and soil organisms):
- (h) Such precautionary advice as may be required by the Board for the purpose of avoiding damage to beneficial plants, or to the environment generally:
- (i) Such other particulars as the Board may direct in any particular case.

(2) Notwithstanding the provisions of subsection (1) of this section, the Board may, in any particular case, direct that the label required by that subsection to be attached to a package shall be printed or branded or otherwise fixed to the package in such a manner as not to be removable from it.

(3) If the Board is of the opinion that any label submitted with an application for the registration of a pesticide is misleading, inaccurate, inadequate, or otherwise not in conformity with the provisions of this Act or any regulations made under this Act, it may require the proprietor to amend or modify the label.

(4) When the Board is satisfied that the label is in conformity with the provisions of this Act and any regulations made under this Act, and that any requirement that may have been made under subsection (3) of this section has been complied with, it shall notify the proprietor in writing that the label has been accepted.

(5) Notwithstanding anything in subsection (4) of this section, the Board may at any time give notice in writing to the proprietor of a pesticide of its intention to withdraw acceptance of the label, and may require the proprietor to amend or modify the label in any respect specified in that behalf by the Board; and, on being satisfied that the requirement has been complied with, the Board shall inform the proprietor in writing that the label has been accepted.

(6) No person shall, during the period of registration of any pesticide, alter or omit any lettering or symbols required by or under this Act or the Toxic Substances Act 1979 to be included in the label accepted under this section in respect of the pesticide, unless the alteration or omission has been required, or notified to and accepted, by the Board.

(7) No person shall, during the period of registration of any pesticide, remove or deface any label accepted by the Board and attached to any container of the pesticide, otherwise than in accordance with any directions of the Board.

(8) Every label shall contain a statement that the pesticide to which it relates has been registered or, as the case may require, that an experimental use permit has been issued in respect of the pesticide under this Act, and the registered number of the certificate of registration or permit; but no label shall contain any other reference to such registration or permit, or to the acceptance of the label by the Board.

(9) In addition to the requirements of subsection (1) of this section, every label attached to a package shall state, in a manner approved by the Board, the net weight or the net quantity of the pesticide contained in the package.

(10) Every person who sells any pesticide otherwise than in compliance with subsection (1) of this section commits an offence against this Act.

(11) Every person who---

(a) Applies or otherwise uses any pesticide in contravention of, or otherwise than in accordance with, any mandatory direction of the Board shown on the label in accordance with subsection (1) (e) of this section; or

(b) Alters any label in contravention of subsection (6) of this section; or

(c) Removes or defaces any label in contravention of subsection (7) of this section--- commits an offence and is liable to a fine not exceeding \$500.

Cf. 1959, No. 51, s. 15; 1963, No. 73, s. 2; 1967, No. 144, s. 8

39. Warranties---(1) In every sale or contract for the sale of any pesticide there shall be implied a warranty by the proprietor (whether or not he is otherwise a party to the sale or contract) to the purchaser that at the time of the sale the composition of the pesticide is in accordance with the particulars set forth in the label relating to the pesticide.

(2) In every sale or contract of sale of any pesticide prescribed in that behalf by the Board by notice in the Gazette there shall be implied a warranty by the proprietor (whether or not he is otherwise a party to the sale or contract) to the purchaser that at the time of the sale the ingredients of which the pesticide is composed are evenly distributed throughout the product.

(3) The fact that a pesticide is registered, or that a label has been accepted by the Board, in accordance with this Act shall not be deemed to imply a warranty by the Government or by the Board that the pesticide is reasonably fit for the purpose for which it is sold or that any statement contained in any such label is correct.

Cf. 1959, No. 51, s. 22

40. Advertisements---(1) Subject to subsection (2) of this section, no reference shall be made in any advertisement of a pesticide to the registration of the pesticide, except a statement that it has been registered under this Act.

(2) Where the pesticide has been registered for restricted uses, every advertisement of the pesticide shall contain a statement to that effect, and such other statement as the Board may direct.

(3) No advertisement shall be made for a pesticide the use of which is for the time being subject to an experimental use permit.

(4) Where the Board is satisfied that any advertisement in respect of any pesticide contains any inaccurate or misleading statement, it may direct any proprietor or vendor responsible for the advertisement to omit or modify the statement in such manner as the Board may direct.

(5) Every proprietor or vendor of a pesticide who publishes an advertisement that does not comply with subsection (1) or subsection (2), or that contravenes subsection (3), of this section, or who fails, without reasonable excuse, to omit or modify any statement in an advertisement in contravention of a direction of the Board under subsection (4) of this section, commits an offence and is liable to a fine not exceeding \$500.

Cf. 1959, No. 51, s. 23; 1967, No. 144, s. 12

41. Returns---(1) Every proprietor of a pesticide shall, as and when required to do so by notice in writing given to him by the Director-General on the recommendation of the Board, furnish a return giving particulars of the amount of the pesticide sold or held in stock by him during such period as may be specified in the notice, and containing such other information to enable the Director-General to determine the extent of the use in New Zealand of pesticides as the Director-General may specify in the notice.

(2) The Director-General may from time to time publish, in such manner as he thinks fit, statistical information obtained from the returns furnished under this section.

(3) No action shall lie against the Director-General or any other person in respect of the publication of any matter pursuant to this section.

(4) Every proprietor of a pesticide who fails to comply with subsection (1) of this section commits an offence and is liable to a fine not exceeding \$100.

Cf. 1959, No. 51, s. 27A; 1967, No. 144, s. 15

PART V CONTROLLED PESTICIDES

42. Interpretation---In this Part of this Act, unless the context otherwise requires,---

“Approved operator”,---

(a) In relation to a specified controlled pesticide, means a person who is licensed under this Part of this Act to use that controlled pesticide:

(b) In relation to any controlled pesticide that is applied from an aircraft, means a pilot who holds a Chemical Rating pursuant to the Civil Aviation Regulations 1953:

“Controlled pesticide” means a pesticide for the time being specified in the First Schedule to this Act:

“Licensing year” means a period of 12 consecutive months commencing with the 1st day of April in any year and ending with the 31st day of March in the next succeeding year.

43. Power to declare pesticides to be controlled pesticides---(1) Without limiting section 76 of this Act, the Governor-General may from time to time, by Order in Council made on the advice of the Minister tendered on the recommendation of the Board, amend the First Schedule to this Act---

(a) By omitting the name of any pesticide; or

(b) By adding the name of any other pesticide that the Board considers should be made subject to this Part of this Act, having regard to the toxicity and other chemical and biochemical properties and all other relevant matters.

(2) Any such order may provide that the provisions of this Part of this Act and any regulations made under this Part shall not apply to any specified controlled pesticide when used for any particular purpose or in any particular circumstances.

(3) Notwithstanding anything in subsection (1) of this section, any regulations made under this Act may empower the Minister, on the recommendation of the Board, to declare, by notice in the Gazette, any pesticide that the Board considers should be made subject to this Part of this Act, having regard to the toxicity and other chemical and biochemical properties and all other relevant matters, to be a controlled pesticide for the purposes of this Part of this Act, and, in like manner, to revoke any such notice.

(4) The provisions of subsections (2), (3), and (5) of section 7 of this Act, so far as they are applicable and with the necessary modifications, shall apply to every order and every notice made or given for the purposes of this section.

44. Restrictions on use of controlled pesticides---(1) No person shall apply or in any other way use any controlled pesticide unless---

(a) He is an approved operator in respect of that pesticide; or
(b) In doing so, he acts under the supervision and control of a person who is an approved operator in respect of the pesticide; or
(c) He does so with the prior approval of the Board, and subject to such conditions as the Board may prescribe.

(2) No approved operator shall---
(a) Apply or in any other way use any controlled pesticide; or
(b) Permit any person under his supervision or control to apply or in any other way use any controlled pesticide---
otherwise than in accordance with the terms and conditions of the approved operator's licence.

(3) Every person who acts in contravention of subsection (1) or subsection (2) of this section commits an offence against this Act.

45. Qualifications for licensees---No person may obtain a licence as an approved operator unless---

(a) He has attained the age of 18 years; and
(b) He satisfies the Board that---
(i) He has completed such course of studies and passed such examinations (whether oral or written) as may be prescribed by or under regulations made under this Part of this Act; and
(ii) He has had sufficient practical instruction to apply or otherwise use safely every controlled pesticide for which the licence is sought; and
(iii) He is in all other respects a fit and proper person to be entrusted to apply or otherwise use safely every such controlled pesticide.

46. Applications for licences---(1) Every application for a licence shall be made in the prescribed form, and shall be addressed to the Registrar.

(2) Every such application shall contain the prescribed particulars and information, and shall be accompanied by the prescribed fee.

47. Grant of licences---(1) On receiving an application, the Board shall direct the issue of a licence to the applicant if it is satisfied in respect of all the following matters:

(a) That the applicant satisfies the requirements of section 45 of this Act;
(b) That the requirements of section 46 of this Act have been complied with;
(c) That the applicant is not subject to any disqualification under section 52 of this Act.

(2) The Board, in granting a licence, shall specify each controlled pesticide to which the licence is to relate.

(3) Where the Board directs the issue of a licence to any person under this section, the Registrar shall forthwith issue to that person a licence in the prescribed form.

(4) Every licence shall be subject to such conditions (if any) as may be imposed by or under regulations made for the purposes of this Part of this Act.

(5) If the Board refuses to direct the issue of a licence, or attaches conditions to the licence, and the applicant for the licence requests the Board to give its reasons for such refusal, or for the attachment of such conditions, the Board shall state its reasons in writing to that person accordingly.

48. Effect of licences---Every licence shall authorise the holder to apply or otherwise use every controlled pesticide specified in the licence, subject to the conditions (if any) attaching to the licence, either generally or in respect of any particular controlled pesticide.

49. Duration of licences---Every licence shall, unless sooner cancelled or surrendered under this Act, remain in force until the expiry of the period specified in that behalf by regulations made under this Act, or, if no

such period is so specified, then indefinitely. Where a date is so specified in any regulations made under this Act, the regulations shall also specify the period for which, the terms on which, and the conditions subject to which, any such licence may be renewed.

50. Variation of terms and conditions of licences---(1) The holder of a licence may, at any time during the currency of his licence, apply to the Board for a variation of any of the terms of the licence or of any condition attaching to the licence.

(2) Without limiting subsection (1) of this section, an application may be made under that subsection for the omission from or the addition to the licence of the name of any controlled pesticide.

(3) Every application under this section shall be accompanied by the prescribed fee.

(4) Every such application shall be dealt with by the Board in accordance with the provisions of this Part of this Act as if it were an application for a new licence.

51. Board to keep register---(1) The Board shall cause to be set up and maintained a register of all licences granted under this Part of this Act, and containing in respect of each such licence the prescribed particulars.

(2) Any person may, on application to the Registrar, search, inspect, and obtain particulars of any entry in the register during the hours and upon the days appointed by regulations made under this Act or, if no such times are so appointed, at all reasonable times.

52. Cancellation of licences---(1) Where the Board believes on reasonable grounds that a licensee---

(a) Is or has been responsible for the improper application or other use of a controlled pesticide, or the improper disposal of a controlled pesticide or of a container containing a controlled pesticide (whether, in any such case, by himself or any person acting under his supervision or control); or

(b) Has contravened or failed to comply with a condition of his licence; or

(c) Has committed an offence against this Part of this Act or against any regulations made under this Part,---

the Board may serve a notice in writing in accordance with subsection (3) of this section on the licensee.

(2) The Board may also exercise its powers under this section in any case where any Court recommends, pursuant to section 67 of this Act, that a licence be cancelled.

(3) Every notice referred to in subsection (1) of this section shall---

(a) Specify the allegation against the licensee in sufficient detail to allow him reasonably to prepare any explanation that he may have; and

(b) Specify a time and place (not being less than 14 days after the notice is served on the licensee) at which the licensee may appear before the Board and be heard in respect of the allegation.

(4) At the time and place appointed in the notice, the Board shall consider the allegation against the licensee and shall allow the licensee the opportunity to appear and be heard, either personally or by his representative, on the allegation.

(5) A licensee may, if he so wishes, make written submissions on the allegation to the Board by the time specified in the notice instead of appearing personally before the Board.

(6) The Board may from time to time adjourn the proceedings as it thinks fit.

(7) After inquiry into the allegation in accordance with this section, the Board may, if it is satisfied that the allegation is true, cancel his licence.

(8) A cancellation of a licence under this section shall take effect as soon as it is made by the Board.

(9) Where the Board serves a notice in writing on a licensee that it has cancelled his licence, he shall, within 7 days, surrender his licence to the Registrar.

(10) At any time after the Board has decided to serve a notice under subsection (1) of this section on a licensee, it may suspend his licence pending the determination of the allegation against him.

(11) As soon as reasonably practicable after suspending a licensee under this clause, the Board shall serve a notice in writing on the licensee that it has done so; but the suspension of the licence shall nevertheless take effect as soon as it is decided by the Board, whether or not such notice has been given.

(12) A licence that is suspended under this section shall have no effect.

53. Regulations---(1) Without limiting section 76 of this Act, the Governor-General may from time to time, by Order in Council made on the advice of the Minister tendered on the recommendation of the Board, make regulations for all or any of the following purposes:

(a) Prescribing the form, manner, and period in which any application is to be made under this Part of this Act:

(b) Prescribing the fees payable in respect of any such application, and providing for the exemption in whole or in part from the payment of any such fee in any specified case or class of cases:

(c) Prescribing courses of studies, oral and written examinations, and practical training to be undertaken by persons seeking the grant or renewal of licences under this Part of this Act; prescribing the standard to be attained by successful candidates; and prescribing entrance fees in respect of any such courses, examinations, or training:

(d) Prescribing the form in which licences are to be issued under this Part of this Act:

(e) Prescribing the form in which any register is to be kept under this Part of this Act, and prescribing the hours during which, the days on which, and the conditions subject to which member of the public may have access to any such register:

(f) Specifying the class or classes of persons who may, or who may not, sell or otherwise supply, or purchase or otherwise acquire, controlled pesticides, either generally or in any specified circumstances or subject to any specified conditions (whether as to the consent or permission of any other person or otherwise):

(g) Prohibiting or regulating the application or other use of controlled pesticides in any specified locality, place, or premises, or within specified distances of any locality, place, or premises, or in or within any class or classes of localities, places, or premises, or by means of aircraft or any other specified means, either generally or in any specified circumstances or subject to any specified conditions (whether as to the consent or permission of any other person or otherwise):

(h) Prescribing terms and conditions relating to the packing, storing, labelling, and numbering of containers of controlled pesticides:

(i) Prescribing measures to be taken to counteract any hazard existing or likely to exist because of the application or use of controlled pesticides: and, in respect of such cases, empowering any Inspector or other person to require any person to leave any locality, place, or premises, or to refrain from entering therein, until any such hazard has been avoided or counteracted:

(j) Prescribing the form, manner, and period within which any permission or consent is to be sought or granted under any regulations made under this section, the matters that are to be taken into account in considering whether to grant any such permission or consent, and the conditions that may be attached to the grant of any such permission or consent:

(k) Requiring the giving of notice before any controlled pesticide is applied or otherwise used under this Part of this Act, or of any hazard existing or likely to exist because of the accidental dropping or spillage of any controlled pesticide, and prescribing the form and content required in respect of any such notice:

(l) Restricting the preparation, application, or other use of bait containing any controlled pesticide:

(m) Prescribing offences in respect of the contravention of or non-compliance with any regulations made for the purposes of this Part of this Act, and the amounts of fines that may be imposed in respect of any such offences, which fines shall be an amount not exceeding \$2,000 and, where the offence is

a continuing one, a further amount not exceeding \$200 for every day or part of a day during which the offence has continued:

(n) Providing for such other matters as are contemplated by or necessary for giving full effect to the provisions of this Part of this Act and for its due administration.

(2) Any such regulations may apply to controlled pesticides generally or to any specified controlled pesticide or class of controlled pesticides only.

54. Transitional provisions---Every licence issued under regulation 11 of the Agricultural Chemicals (Vertebrate Pest Control) Regulations 1977 and in force immediately before the date of the commencement of section 44 of this Act shall be deemed for the purposes of this Part of this Act to have been issued under section 47 of this Act.

PART VI ENFORCEMENT

55. Powers of Inspectors with respect to certain substances---(1) In this section the term "Inspector" includes any member of the Police; and the term "pesticide" includes the container in which a pesticide is enclosed.

(2) Any Inspector may at all reasonable times enter and inspect any land, vehicle, aircraft, ship, vessel, factory, commercial premises, store, or shed where he has reasonable grounds for believing that there is any pesticide.

(3) Notwithstanding subsection (2) of this section, no Inspector shall enter any dwellinghouse or the enclosed garden or curtilage of any dwellinghouse, unless he is authorised by a warrant under the hand of a Magistrate, who shall not grant such a warrant unless he is satisfied that the Inspector has reasonable grounds for requiring entry into the dwellinghouse, garden, or curtilage.

(4) Every Inspector exercising any power conferred by this section shall identify himself and produce evidence that he is an Inspector to any person on or in the land, vehicle, aircraft, ship, vessel, factory, commercial premises, store, or shed, or claiming an interest in the substance on or in or in respect of which the power is exercised, who questions the right of the Inspector to exercise that power.

(5) Any Inspector may mark, seal, or otherwise secure, or impound any substance that he has reasonable grounds for believing is a pesticide that---

(a) Is not for the time being registered; or

(b) Is contained in a package that does not bear a label accepted by the Board in respect of that pesticide in accordance with this Act; or

(c) Has been or is being sold or used contrary to the provisions of this Act or any regulations made under this Act.

(6) Where any substance is marked, sealed, secured, or impounded by an Inspector under this section, he shall, as soon as practicable, take or cause to be taken all reasonable measures to have the substance removed to a place of safety.

(7) Where any substance is removed under subsection (6) of this section, the Inspector shall give notice of the removal to the owner of the substance and to any other person who, so far as is known to the Inspector, is qualified to make application under section 56 of this Act in respect of the substance.

(8) Subject to any order under section 56 of this Act, the reasonable costs of marking, sealing, securing, impounding, or removing any substance under this section shall be recoverable from the owner of the substance as a debt due to the Crown, but nothing in this subsection shall affect any right of action that the owner may have against any other person.

Cf. 1959, No. 51, s. 24A; 1967, No. 144, s. 13

56. Magistrate's Court may order return of property---(1) Any person claiming any right or interest in any substance marked, sealed, secured, or impounded under section 55 of this Act may, within 14 days thereafter, apply to a Magistrate's Court for an order---

(a) That the substance shall be returned or otherwise made available to him, or that he shall have access to it for any purpose:

(b) Where he has suffered any loss or damage as a result of an order of the Court under this section, that he shall be paid, in accordance with this section, such sum by way of compensation for that loss or damage as the Court thinks fit:

(c) That the applicant, being the owner of the substance, shall be relieved from liability for the payment of the whole or any part of any costs and expenses otherwise payable by him under section 55 (8) of this Act.

(2) On any such application, the Court may make such order as it thinks fit, and any such order may be made upon and subject to such terms and conditions as the Court thinks fit.

(3) On any such application, the Court may also make an order that the substance be forfeited to the Crown or destroyed, or that it be sold and the proceeds of the sale paid to the Crown or disposed of in such other manner as the Court directs.

(4) Where an application is not made under subsection (1) of this section within the said period of 14 days, an Inspector may destroy or sell the substance, and, if he sells it, the proceeds of sale shall be paid to the Crown.

(5) Where the Court makes an order for the payment of any sum by way of compensation to any person under this section, the sum so awarded shall be recoverable by that person as a debt due from the Crown.

(6) Every application to the Court under this section shall be made and dealt with by way of originating application, on notice, under the rules of procedure for the time being in force under the Magistrates' Courts Act 1947, and the provisions of those rules shall apply accordingly.

(7) Every order made by the Court under this section shall be final and binding on all parties. Cf. 1959, No. 51, s. 24B; 1967, No. 144, s. 14

57. Procuring of samples---(1) For the purposes of analysis, an Inspector may demand and select and take or obtain samples of any pesticide, or of any substance reasonably believed by him to be a pesticide, in accordance with this section.

(2) When an Inspector intends to procure a sample of a pesticide for the purposes of analysis, he shall---

(a) Pay or tender the current market value of the sample to the owner thereof or the person from whom the sample is to be obtained:

(b) Before or forthwith after obtaining the sample, inform the owner of the sample or the person from whom the sample is obtained of his intention to submit a sample to an analyst:

(c) Thereafter deal with the sample in the manner set out in section 58 of this Act.

(3) For the purposes of subsection (2) of this section, an Inspector may require the person in possession of a pesticide, or his employee or agent, to show and permit the inspection of any container containing the pesticide and to take therefrom the substance demanded.

(4) Where any such substance is kept for retail sale in an unopened container, no person shall be required by any Inspector to sell less than the whole of the contents of the container.

(5) Notwithstanding anything in this section or in section 58 of this Act,---

(a) An Inspector shall not be obliged to submit to an analyst any sample that he has obtained:

(b) An Inspector may inspect, select, and take or purchase any sample for the purposes of analysis without complying with those sections, but in that event no regard shall be had to the results of any such analysis in any proceedings before any Court in respect of an offence against this Act or against any regulations made under this Act.

(6) Every person commits an offence against this Act who refuses or fails to comply with any demand or requisition made by an Inspector pursuant to this section, unless he proves that he had no knowledge or reason to believe that the sample demanded was required for the purposes of this Act.

(7) For the purposes of this section, every person who is in possession of any such substance that, in the opinion of the Inspector, is intended for sale shall, until the contrary is proved, be deemed to be the seller of the substance or, as the case may be, the agent or employee of the seller.

58. How samples to be taken---(1) Every sample taken by an Inspector under section 57 of this Act shall be taken and dealt with by him in accordance with the succeeding provisions of this section.

(2) The Inspector shall, in the presence of the person in whose possession the substance is or, if he is not available, in the presence of some other witness, take two identical samples of the substance.

(3) Each sample taken shall be sufficient for the purpose of having it analysed and shall, unless otherwise directed by the Board, be not less than the minimum size, weight, or volume as offered for sale to the public.

(4) In any case where the Inspector takes a substance packed in a container, that container shall be taken unopened.

(5) Where the substance sampled is for the time being held in a bulk storage tank or the like, the Inspector shall place each of the two samples in a clean dry receptacle.

(6) After taking the samples the Inspector shall---

(a) Issue to the person in whose possession the substance is a receipt, which shall identify the samples and the batch (if any) from which the samples were taken; and

(b) Seal each of the samples with an official seal supplied by the Board; and

(c) Affix to each of the samples a label in the prescribed form; and

(d) Deliver one sample to the person in whose possession the substance is.

59. Analysis of samples---(1) The certificate of the Analyst shall be in the prescribed form.

(2) Where any method of analysis for the analysis of any pesticide is prescribed, any Analyst shall, in his certificate of analysis, declare that the prescribed method has been followed in the analysis.

(3) Any certificate of the result of an analysis given by an Analyst in pursuance of this section shall be signed by the Analyst, but the analysis may be made by any person acting under the direction of the Analyst.

(4) When any sample is procured by an Inspector under this Act and submitted for analysis, the person from whom the sample was procured may obtain a copy of the Analyst's certificate, or if there is no such certificate, a copy of the report made by the Analyst in respect of the sample.

(5) Except as provided in subsection (4) of this section, no person shall be entitled to obtain a copy of any Analyst's certificate or report given in respect of any sample procured and submitted for analysis by an Inspector under this Act.

(6) Every person commits an offence and is liable to a fine not exceeding \$200 who causes or permits any copy of an Analyst's certificate or report furnished for the purposes of this Act to be used in any advertisement.

60. Evidence of analysis---(1) Subject to subsection (2) of this section, in any proceedings for an offence against this Act a certificate purporting to be signed by an Analyst in the prescribed form shall, in the absence of evidence to the contrary, be sufficient evidence of the authority of the person who signed the certificate and of the facts stated in the certificate.

(2) A certificate referred to in subsection (1) of this section shall be admissible in evidence only if---

(a) At least 10 clear days before the hearing at which the certificate is tendered, a copy of that certificate is served, by or on behalf of the prosecutor, on the defendant, and the defendant is, at the same time, informed in writing that the prosecutor does not propose to call the Analyst as a witness at the hearing; and

(b) The defendant does not, by notice in writing given to the prosecutor at least 7 clear days before the hearing, require the Analyst to be called by the prosecutor as a witness at the hearing.

(3) No certificate of an Analyst and no other evidence of an analysis under this Act shall be ruled inadmissible or disregarded by reason only of the fact that any of the provisions of this Act or of any regulations made under this Act relating to the taking or analysing of samples have not been strictly complied with, if there has been reasonable compliance with those provisions.

61. Presumption that contents conform with label---In any prosecution for an offence against this Act or against any regulation made under this Act, it shall be presumed, until the contrary is proved, that the contents of a container conform with any purported description of the contents shown on any label attached to the container.

62. Obstruction of officers---Every person commits an offence against this Act who wilfully obstructs, hinders, resists, or deceives any other person in the execution of any powers conferred on that other person by or under this Act.

63. Penalty for false statement---Every person commits an offence against this Act who, for the purpose of obtaining, whether for himself or any other person, the registration of any pesticide or the grant of any licence, permit, or consent under this Act, or for any other purpose in relation to this Act,---

(a) Makes any declaration or statement that he knows is false in any particular; or

(b) Utters, produces, or makes use of any such declaration or statement, or any document containing the same; or

(c) Utters, produces, or makes use of any document that he knows is not genuine.

64. Jurisdiction of Magistrates' Courts---(1) Every offence against this Act or against any regulations made under this Act shall be punishable on summary conviction.

(2) Notwithstanding anything in section 14 of the Summary Proceedings Act 1957, any information in respect of any offence against this Act or against any regulations made under this Act may be laid at any time within 2 years after the time when the matter of the information arose.

(3) The summons in any such proceedings shall not be made returnable in less than 28 days from the day on which it is served.

65. General penalty---Every person who commits any offence against this Act for which no penalty is provided elsewhere than in this section is liable to imprisonment for a term not exceeding 3 months or a fine not exceeding \$2,000, and, if the offence is a continuing one, to a further fine not exceeding \$200 for every day or part of a day during which the offence has continued.

66. Liability of principal for acts of agent, etc.---(1) Where an offence is committed against this Act or against any regulations made under this Act by any person acting as the agent or employee of another person, that other person shall, without prejudice to the liability of the first-mentioned person, be liable under this Act in the same manner and to the same extent as if he had personally committed the offence.

(2) Notwithstanding anything in subsection (1) of this section, where any proceedings are brought by virtue of that subsection, it shall be a good defence to the charge if the defendant proves that the offence was committed without his knowledge and that he took all reasonable steps to prevent the commission of the offence.

(3) Where any body corporate is convicted of an offence against this Act or against any regulation made under this Act, every director and every person concerned in the management of the body corporate shall be guilty of a like offence if it is proved that the act or omission that constituted the offence took place with his authority, permission, or consent, or that he knew the offence was to be or was being committed and failed to take all reasonable steps to prevent or stop it.

67. Convicting Court may recommend cancellation of licence---Where the holder of a licence issued under Part V of this Act is convicted of an offence against any of the provisions of that Part or of any regulations made under that Part, the Court by which he is convicted may, in addition to or instead of imposing any sentence, recommend to the Board that the licence be cancelled.

68. Payment of expenses of analysis on conviction---(1) Where any person is convicted of an offence against this Act or any regulations made under this Act, the Court may order that all fees and other expenses incidental to any analysis of the substance in respect of which the conviction is entered shall be paid by the defendant.

(2) All such fees and expenses shall be deemed to be part of the costs attending the conviction, and shall be recoverable accordingly.

69. Forfeiture on conviction---(1) Where any person is convicted of an offence against this Act or any regulations made under this Act, the Court may order that all articles (if any) in respect of which the offence was committed and in the possession of that person shall be forfeited to the Crown.

(2) Every article so forfeited to the Crown shall be disposed of as the Minister directs.

PART VII APPEALS

70. Right of Appeal to Supreme Court---(1) Subject to subsections (2) and (3) of this section, every person---

(a) Whose application to the Board for the registration of a pesticide is refused under section 23 of this Act; or

(b) Whose application to the Board for the registration of a pesticide is granted subject to any condition imposed under section 24 of this Act; or

(c) Whose application to the Board for an experimental use permit is refused, or whose experimental use permit is revoked, by the Board under section 25 of this Act; or

(d) Who is the proprietor of any pesticide of which the registration is revoked by the Board under section 28 or section 29 of this Act; or

(e) Whose application for a special mixtures permit is refused, or whose special mixtures permit is revoked, by the Board under section 36 of this Act; or

(f) Whose application for a permit to sell any pesticide in bulk is refused, or whose permit to do so is revoked, by the Board under section 37 of this Act; or

(g) Who is aggrieved by any decision given by the Board in respect of any label under section 38 of this Act, or in respect of any advertisement under section 40 of this Act; or

(h) Whose application for a licence is refused by the Board under section 47 of this Act; or

(i) Whose application for the renewal of a licence is refused by the Board under regulations made for the purposes of section 49 of this Act; or

(j) Whose application for the variation of the terms of a licence is refused by the Board under section 50 of, this Act; or

(k) Whose licence is cancelled by the Board under section 52 of this Act; or

(1) Who, being a person entitled to appeal under any of the foregoing provisions of this subsection, is dissatisfied with any condition attached to the grant of any application or permission,--- may appeal to the Supreme Court.

(2) The grounds on which an appeal may be brought under subsection (1) of this section are---

(a) That any relevant requirement of this Act or of any regulations made under this Act has not been complied with:

(b) That the Board, in reaching its decision, acted unreasonably.

(3) Every appeal under subsection (1) of this section shall be filed within 28 days after the date on which notice of the decision that is the subject of the appeal has been given to the person seeking to bring the appeal, or within such extended time as the Court may allow.

(4) Every appeal under subsection (1) of this section shall be heard and determined by the Administrative Division of the Supreme Court.

(5) Subject to subsection (6) of this section, on any appeal under subsection (1) of this section, the Court may---

(a) By interim order, suspend the operation of the decision to which the appeal relates until the final determination of the proceedings:

(b) Dismiss the appeal, or make such modifications in the decision to which the appeal relates as it thinks fit, or quash the decision with or without substituting a new decision in its place.

(6) The Court shall not quash or modify the decision to which the appeal relates on any ground other than a ground specified in subsection (2) of this section.

71. Proceedings before Court---(1) At the hearing of an appeal under section 70 of this Act, the Court shall hear all evidence tendered and representations made by or on behalf of the appellant, or by or on behalf of any other person interested in the appeal, as the case may require, being evidence that the Court considers relevant to the subject-matter of the appeal.

(2) The Court may, at any such hearing, receive as evidence any statement, document, information, or matter that may, in its opinion, assist it to deal effectually with the matters before it, whether or not it would be otherwise admissible in a Court of law.

(3) For the purpose of modifying any decision appealed against, or substituting a new decision, the Court shall have all the powers and discretions that the person whose decision is the subject of the appeal had in respect of the same matter.

(4) The Court in its discretion may, having regard to the interests of all parties concerned and to the public interest, order that the hearing or any part of it shall be held in private.

(5) Subject to the provisions of this Act, the procedure in respect of any appeal under this section shall be in accordance with rules of Court.

72. Further provisions relating to appeals---(1) Subject to any order made by the Court pursuant to section 70 (5) (a) of this Act, every decision referred to in subsection (1) of that section shall take effect according to its terms, notwithstanding that the time for appealing has not expired or that an appeal has not been determined.

(2) No person shall be deprived of the right of appeal conferred by section 70 of this Act by reason of the fact that he has accepted a licence or complied with any requirement or condition imposed under this Act.

(3) Where the Supreme Court or the Court of Appeal modifies the decision appealed against, or substitutes a new decision, the Board or other person concerned shall take all necessary steps to implement the decision of the Court.

73. Court may state case for Court of Appeal---The Court may, on the application of any party to an appeal under section 70 of this Act, or of its own motion, state a case for the opinion of the Court of Appeal on any question of law arising in the proceedings.

74. Appeal to Court of Appeal in certain cases---(1) Any party to any appeal before the Supreme Court under section 70 of this Act, who is dissatisfied with any determination of the Court may, with the leave of the Court or of the Court of Appeal, appeal to the Court of Appeal.

(2) In determining whether to grant leave to appeal under this section, the Court to which the application for leave is made shall have regard to the following matters:

- (a) Whether any question of law or general principle is involved:
- (b) The importance of the issues to the parties:
- (c) Such other matters as in the particular circumstances the Court thinks fit.

(3) The Court granting leave under this section may in its discretion impose such conditions as it thinks fit, whether as to costs or otherwise.

(4) For the purpose of determining any appeal under this section, the Court of Appeal shall have the same powers and discretions as are conferred on the Supreme Court by sections 70 and 71 of this Act.

(5) The decision of the Court of Appeal on any appeal under this Act shall be final.

(6) Notwithstanding the preceding provisions of this section, the decision of the Supreme Court shall have effect according to its terms, pending the determination of any appeal under this section, unless---

- (a) Leave to appeal is given by the Court whose decision is the subject of the appeal; and
- (b) That Court, when giving such leave, directs that that decision shall not take effect pending the determination of the appeal.

(7) Where the Court gives any direction under subsection (6) (b) of this section, the Court may make such order with regard to the application of the decision to which the appeal under section 69 of this Act related, pending the determination of an appeal under this section, as seems to it to be just, and subsection (3) of section 72 of this Act shall apply accordingly.

PART VIII MISCELLANEOUS PROVISIONS

75. Other Acts not affected---Nothing in this Act shall be construed to limit the provisions of the Restricted Drugs Act 1960, or of the Food and Drug Act 1969, or of the Health Act 1956, or of the Patents Act 1953, or of the Trade Marks Act 1953, or of the Designs Act 1953, or of any other Act.
Cf. 1959, No. 51, s. 31

76. Regulations---(1) The Governor-General may from time to time, by Order in Council, make regulations for all or any of the following purposes:

- (a) Prescribing fees payable under this Act:
- (b) Prescribing forms to be used for any of the purposes of this Act:
- (c) Prescribing the powers and duties of Analysts and Inspectors:
- (d) Prescribing particulars to be furnished with applications for registration of pesticides and for the acceptance of labels:
- (e) Prescribing limits of error allowable in setting out, in applications for registration and in labels, the proportions of ingredients or components in any pesticides:

- (f) Prescribing standards of quality, purity, strength, weight, or quantity of any pesticides or of any ingredient or component of any pesticides:
- (g) Prescribing methods of taking samples and of conducting analyses in respect of pesticides:
- (h) Providing for the colouring and stenching of prescribed pesticides:
- (i) Prescribing the manner in which labels shall be attached or deemed to be attached to packages:
- (j) Making provision for the safe use of pesticides where seeds or other materials are treated with pesticides:
- (k) Prescribing the form and nature of precautionary advice to be contained in labels for pesticides:
- (l) Regulating, prohibiting, or restricting the method, place, and time of application of any specified pesticide, or its preparation, or its concentration in any area or on any particular crop:
- (m) Regulating, prohibiting, or restricting the sale, distribution, custody, carriage, packaging, handling, or use of any pesticide or of any class of pesticides:
- (n) Regulating, prohibiting, or restricting the harvesting of crops or the grazing of livestock in any area to which any pesticide has been applied or on which any pesticide has been deposited:
- (o) Prescribing offences in respect of the contravention of or non-compliance with any regulations made for the purposes of this Act, and the amounts of fines that may be imposed in respect of any such offences, which fines shall be an amount not exceeding \$2,000 and, where the offence is a continuing one, a further fine not exceeding \$200 for every day or part of a day during which the offence has continued:
- (p) Providing for such other matters as are contemplated by or necessary for giving full effect to the provisions of this Act and for its due administration.

(2) Any regulations under this section may confer on the Minister or on the Director-General power to issue, in such manner as may be prescribed, instructions, orders, requirements, permits, authorities, or notices for the purpose of ensuring the safe or efficient use of any pesticide or class of pesticide and, where the regulations so provide, any such instruction, order, requirement, permit, authority, or notice shall have effect according to its tenor and be complied with by all persons affected thereby.

77. Repeals---The enactments specified in the Second Schedule to this Act are hereby consequentially repealed.

SCHEDULES

FIRST SCHEDULE

Sections 42, 43

PART I

1. Sodium fluoroacetate (also known as 1080).
2. Methyl naphthyl fluoroacetamide.

PART II

1. Arsenic trioxide.
2. Phosphorus.
3. Strychnine.
4. Sodium cyanide }
5. Potassium cyanide } Also known as ``cyanide".
6. Calcium cyanide }

PART III

1. 3-chloro-p-toluidine hydrochloride (also known as DRC 1339).
2. Alphachloralose (as an avicide), except when used as a bait immediately available for use, where the concentration of active ingredient does not exceed 25 g/kg (2.5%) of bait.
3. 4-aminopyridine (also known as Avitrol).

SECOND SCHEDULE

Section 77

ENACTMENTS REPEALED

- 1959, No. 51---The Agricultural Chemicals Act 1959.
1963, No. 73---The Agricultural Chemicals Amendment Act 1963.
1967, No. 144---The Agricultural Chemicals Amendment Act 1967.
1968, No. 64---The Agricultural Chemicals Amendment Act 1968.
1970, No. 46---The Agricultural Chemicals Amendment Act 1970.
