

NORTHERN TERRITORY OF AUSTRALIA

STOCK (CONTROL OF HORMONAL GROWTH PROMOTANTS) ACT

As in force at 1 January 2002

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NORTHERN TERRITORY OF AUSTRALIA

As in force at 1 January 2002

STOCK (CONTROL OF HORMONAL GROWTH PROMOTANTS) ACT

An Act to provide for the control and regulation of the sale and use of certain substances that promote growth in stock, to control the sale of stock treated with those substances, to amend the *Stock Diseases Act*, and for related purposes

Part 1 Preliminary

1 Short title

This Act may be cited as the *Stock (Control of Hormonal Growth Promotants) Act*.

2 Commencement

The provisions of this Act shall come into operation on such day or days as is or are, respectively, fixed by the Administrator by notice in the *Gazette*.

3 Object

The object of this Act is to facilitate the control and regulation of the sale of stock treated with prescribed substances and the carcasses of such stock.

4 Definitions

In this Act, unless the contrary intention appears:

analyst means a person appointed under section 14.

carcass, in relation to stock, includes a portion of the carcass, its skin, hair, wool, offal and viscera.

Chief Inspector means the Chief Inspector of Stock appointed under the *Stock Diseases Act*.

inspector means an inspector appointed under the *Stock Diseases Act*.

prescribed substance means a substance used to promote growth in stock that is prescribed for the purposes of this Act.

sell includes barter, exchange, offer for sale or store for the purposes of sale, whether by way of wholesale or retail, and any other kind of disposal.

stock includes cattle, buffalo and any other animal that is prescribed for the purposes of this Act.

this Act includes the Regulations.

treat means to administer a prescribed substance.

5 Relationship to other laws

- (1) This Act is in addition to and not in derogation of the *Public Health Act*, the *Poisons and Dangerous Drugs Act* and the *Misuse of Drugs Act*, but where and to the extent that an inconsistency exists between this Act and those Acts or the regulations made under those Acts, those Acts and regulations prevail.
- (2) A person does not commit an offence against the *Brands Act* by reason of marking stock for the purposes of this Act.
- (3) Nothing in this Act affects a requirement imposed under the *Stock Diseases Act* or the *Stock Routes and Travelling Stock Act*.

6 Administration

- (1) Subject to subsection (2), this Act shall be administered by the Chief Inspector.
- (2) The Minister may give directions in writing to the Chief Inspector relating to the administration of this Act and the Chief Inspector shall comply with such directions.
- (3) In administering this Act, it is to be presumed that stock or a carcass has been treated unless a declaration has been made under this Act that the stock or carcass has not been so treated.

Part 2 Powers of inspectors

7 Power of entry

- (1) An inspector may, for the purposes of this Act, at any time:
 - (a) enter and search any land or building which the inspector has reasonable grounds for believing is used for, or in connection

with, the production, importation, treatment, storage, preparation for sale, marketing or sale of a prescribed substance, stock or carcass; and

- (b) stop, enter, search and detain a vehicle, ship, aircraft or other conveyance which the inspector has reasonable grounds for believing is used for, or in connection with, the transportation of a prescribed substance, stock or carcass.
- (2) In exercising a power under this section, an inspector shall conform, so far as is practicable, to such reasonable requirements of the person who owns or is using the land or building or the vehicle, ship, aircraft or conveyance as are necessary to prevent the working of a business at the land or building, or the use of the vehicle, ship, aircraft or conveyance, being obstructed.
 - (3) An inspector may take with him or her such other persons as may be necessary in the proper exercise of his or her powers under this section, and on leaving unoccupied land or a building which he or she has entered shall leave it as effectively secured as he or she found it.
 - (4) If a Justice of the Peace is satisfied, on oath by an inspector, that:
 - (a) entry in exercise of the power conferred by subsection (1) has been refused; or
 - (b) there are reasonable grounds for believing that an offence against this Act has been or is being committed in or in connection with any land or building,

the Justice may, by warrant under his or her hand, authorise a person named in the warrant, together with any member of the Police Force, to enter and search the land or building, by force, if necessary.

- (5) A person who enters a factory or working place in pursuance of this section shall not disclose to another person any information obtained by the person in the factory or working place with regard to a manufacturing process or trade secret, unless the disclosure is made in the performance of the person's duty under this Act.

Penalty: \$2,000 or imprisonment for 12 months.

8 Power to require information

- (1) An inspector may, for the purpose of this Act, at any time, require:
- (a) a person in possession of, or the purchaser of, a prescribed substance, stock or carcass:
 - (i) to provide to the inspector the person's name and address and the name and address of the person from whom that person obtained the prescribed substance, stock or carcass;
 - (ii) to supply satisfactory evidence of an alleged purchase; and/or
 - (iii) to produce for inspection any invoice, receipt, correspondence or other document, label or advertisement relating to the purchase;
 - (b) a person who has sold a prescribed substance, stock or carcass:
 - (i) to provide to the inspector the name and address of the purchaser of the prescribed substance, stock or carcass; and/or
 - (ii) to supply further information relative to the matter;
 - (c) a person to produce to the inspector any accounts, books, invoices, advertisements or other documents relating to the sale of a prescribed substance, stock or carcass; and/or
 - (d) a person in possession of a prescribed substance, anything which the inspector reasonably believes to be an ingredient intended for use in a prescribed substance, treated stock or a treated carcass, to provide to the inspector the person's name and address.

9 Power to seize and detain

- (1) An inspector may seize and detain a prescribed substance, stock or carcass, or an ingredient or packaging or related matter, or any other substance, for the purpose of ensuring that this Act is being complied with.
- (2) A matter or thing seized under subsection (1) may be removed, or left in place, clearly marked and sufficiently secured against unauthorised removal, and may be held until the expiration of 6 months or until the final determination of any proceedings under this Act relating to the matter or thing that are instituted within that

period, whichever is the later.

- (3) A person aggrieved by the seizure and detention of a matter or thing under this section may, within 6 months after the seizure and detention, appeal to the Local Court which may make such order in the matter as it thinks fit.
- (4) Where a matter or thing seized and detained under this section is the subject of proceedings or an appeal instituted within 6 months after the date of the seizure and detention, it shall be disposed of in such manner as the court hearing those proceedings or the appeal orders.

Part 3 Samples and analysis, &c.

10 Power to take samples, &c.

- (1) An inspector may take, for analysis and examination, a sample of a substance or carcass, or any tissue of stock, for the purposes of enabling the powers conferred by this Act to be exercised.
- (2) A sample or tissue taken under subsection (1) shall, if practicable, be taken in the presence of the owner, seller or person apparently in charge of the substance, carcass or stock.
- (3) An inspector may, for the purposes of taking tissue of stock under this section, give such directions (including to muster the stock) to the owner, seller or person apparently in charge of the stock as the inspector considers necessary to enable the inspector to take the tissue.
- (4) A person to whom a direction under subsection (3) is given shall not contravene or fail to comply with the direction.

11 Duty to provide samples

A person who sells or intends to sell a prescribed substance, carcass or stock shall, if required by the Chief Inspector, provide, without payment, a sample containing a sufficient quantity of the substance, carcass or tissue of the stock for the purpose of analysis and deliver the sample or tissue, as directed by the Chief Inspector, to an inspector or analyst for analysis.

12 Tampering with samples

- (1) A person shall not:
 - (a) tamper with a prescribed substance, carcass or stock so as to procure that a sample or tissue taken or delivered under this Act does not correctly represent the bulk, carcass or stock from which the sample or tissue was taken; or
 - (b) except as permitted by this Act, tamper or interfere with a sample or part of a sample or tissue taken under this Act.

13 Analysts

- (1) The Minister may appoint a person to be an analyst for the purposes of this Act.
- (2) Subject to section 14(3), a person who is not an analyst and who performs or purports to perform the duties of an analyst under this Act is guilty of an offence.

Penalty: \$2,000.

14 Analysis

- (1) On receiving a sample or tissue for analysis for the purposes of this Act, the analyst shall, as soon as practicable, analyse the sample or tissue and shall furnish a certificate of the results of the analysis to the Chief Inspector.
- (2) A copy of the certificate furnished under subsection (1) shall be given by the Chief Inspector to the person from whom the sample or tissue analysed was obtained.
- (3) A certificate of the results of an analysis carried out under this section shall be signed by the analyst, but the analysis may be made by a person acting under the direction of the analyst.

15 Evidence of analysis and relation of sample to bulk

- (1) At the hearing of proceedings with respect to a substance, carcass or stock analysed under this Act, the production of a document purporting to be a certificate of an analysis carried out under section 15 and to be signed by an analyst is sufficient evidence:
 - (a) of the identity of the substance, carcass or stock analysed;
 - (b) of the result of the analysis;

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- (c) of the matters relevant to such proceedings stated in the certificate; and
 - (d) of the prescribed method of analysis (if any) having been followed by the analyst in making the analysis,

unless the defendant, by not less than 3 days' notice in writing delivered to the complainant or prosecutor and the analyst (opportunity to deliver such notices shall be afforded the defendant), requires the analyst to attend as a witness.

- (2) Where, in proceedings under this Act, a contravention of this Act is proved with respect to a sample or tissue delivered for analysis, the contravention shall be deemed to have been proved with respect to the bulk, carcass or stock from which the sample or tissue was taken.

16 Omissions not to prejudice proceedings

In a prosecution for an offence against this Act proof of non-compliance, or failure to prove compliance, on the part of a prosecution witness with any of the provisions of this Act which ought to have been complied with by the witness, shall not entitle the defendant to have the complaint dismissed or prevent the defendant being found guilty unless the defendant shows that the non-compliance has in fact prejudiced the defendant.

Part 4 Miscellaneous

17 Seller to be registered

A person shall not sell a prescribed substance unless the person is registered for that purpose in accordance with this Act.

Penalty: \$10,000 or imprisonment for 12 months.

18 Liability of principal for agent

- (1) Notwithstanding any other law in force in the Territory, where a person (***the agent***) acting otherwise than as an employee, for or on behalf of another person (***the principal***):
 - (a) sells a prescribed substance, stock or carcass; or
 - (b) treats stock,

and commits an offence against this Act by so doing, the principal is guilty of the offence in the same manner as the agent and may be proceeded against and found guilty unless the principal proves that

he or she had no knowledge of the commission of the offence and that he or she took all reasonable precautions and used all due diligence to avoid the commission of the offence.

- (2) The principal may be proceeded against under subsection (1) and may be found guilty of an offence notwithstanding that the agent has not been proceeded against or has not been found guilty of an offence against this Act.
- (3) Nothing in subsection (1) prejudices or affects a liability imposed by this Act on a person by whom an offence against this Act is actually committed.

19 Liability of employer for offence by employee

- (1) Notwithstanding any other law in force in the Territory, where a person, as the employee of another person (***the employer***):
 - (a) sells a prescribed substance, stock or carcass; or
 - (b) treats stock,

and commits an offence against this Act by so doing, the employer is guilty of the offence in the same manner as the employee (whether or not the offence was committed without the employer's authority or contrary to the employer's orders or instructions) and may be proceeded against and found guilty unless the employer proves that he or she had no knowledge of the commission of the offence and could not, by the exercise of due diligence, have prevented the commission of the offence.

- (2) The employer may be proceeded against under subsection (1) and may be found guilty of an offence notwithstanding that the employee has not been proceeded against or has not been found guilty of an offence against this Act.
- (3) Nothing in subsection (1) prejudices or affects a liability imposed by this Act on a person by whom an offence against this Act is actually committed.

20 Offences by corporations

- (1) Where a corporation is found guilty of an offence against this Act, every person who, at the time of the commission of the offence, was a director or member of the governing authority of the corporation, or an officer concerned in the management of the corporation and who authorised or permitted the commission of the offence, is guilty of the same offence.

- (2) A person referred to in subsection (1) may, on the request of the complainant, be found guilty on the proceedings on which the corporation is found guilty if the court is satisfied that the person had reasonable notice that the complainant intended to make the request.

21 Certain agreements void

- (1) An agreement, whether made in the Territory or elsewhere, relating to the sale of stock in the Territory that contains a provision to the effect that the stock are not treated is void unless the requirements imposed by this Act or any declaration system devised or approved by the Chief Inspector under this Act in relation to a sale of the kind are complied with.
- (2) An agreement, whether made in the Territory or elsewhere, relating to the sale of stock in the Territory that purports to exclude the application of this Act is void.
- (3) A person who agrees or purports to agree to sell stock under an agreement that is void by virtue of this section is guilty of an offence.
- (4) Notwithstanding any other law in force in the Territory, a purchaser under an agreement that is void by virtue of this section:
- (a) is not prevented from making a claim with respect to damages suffered by the purchaser; and
 - (b) may recover any moneys paid under the agreement.

22 False statements

A person shall not in a declaration or return made or given for the purposes of:

- (a) this Act; or
- (b) a declaration or return system devised or approved by the Chief Inspector under this Act,

make a statement that is false in a material particular.

Penalty: \$5,000 or imprisonment for 12 months.

23 General penalty

A person who contravenes or fails to comply with a provision of this Act is guilty of an offence and, on being found guilty, is liable, where no other penalty other than by this section is prescribed, to a penalty not exceeding \$5,000.

23A Infringement offences and notices

- (1) An inspector may serve an infringement notice on a person if it appears to the inspector that the person has committed an offence against this Act or the Regulations, being an offence prescribed as an infringement offence.
- (2) An infringement notice is a notice to the effect that:
 - (a) an offence is alleged to have been committed against this Act or the Regulations;
 - (b) if the penalty amount indicated is paid within the time and at the place specified – the alleged offence is expiated and no person is liable for any further proceedings in the matter; and
 - (c) the person served with the infringement notice can elect to have the matter dealt with by a court by serving written notice in accordance with the directions given on the infringement notice.
- (3) If the person served with an infringement notice pays the prescribed penalty for the alleged offence, the person is not liable to any further proceedings for the alleged offence.
- (4) Payment under this section is not to be regarded as an admission of liability for the purposes of, nor in any way to affect or prejudice, any civil claim, action or proceeding arising out of the same occurrence.
- (5) The *Fines and Penalties (Recovery) Act* applies to an infringement notice issued under this section if the amount payable under the infringement notice is not paid within the specified time.

24 Regulations

- (1) The Administrator may make regulations not inconsistent with this Act, prescribing all matters:
 - (a) required or permitted by this Act to be prescribed; or
 - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

- (2) Without limiting the generality of subsection (1), the Regulations may provide for:
- (a) the registration of persons who sell prescribed substances and for the renewal, suspension and cancellation of such registration;
 - (b) the conditions under which persons who sell prescribed substances may be registered;
 - (c) the considerations to be taken into account by the Chief Inspector in relation to the registration of persons who sell prescribed substances;
 - (d) the duties and obligations of persons who sell prescribed substances and the agents of such persons;
 - (e) the fees to be paid in relation to registration and renewal of registration;
 - (f) returns to be made and registers to be kept in relation to the sale of prescribed substances and the duties and obligations of persons in relation thereto;
 - (g) the treatment of stock with prescribed substances;
 - (h) the qualifications of persons who sell prescribed substances;
 - (j) the duties of persons who own, hold, sell or purchase stock, whether treated or untreated, and the agents of such persons;
 - (k) the duties of persons who slaughter stock or who hold carcasses or sell or purchase or otherwise deal with carcasses;
 - (m) the declarations to be made by persons who sell stock that the stock have not been treated;
 - (n) the labelling or marking of stock or carcasses to indicate whether they are or are not treated, and of containers and packages used for the purposes of carcasses of treated or untreated stock;
 - (p) the identification and marking of treated and untreated stock;
 - (q) the verification by statutory declaration of declarations, statements and returns;
 - (r) the duties and obligations of persons who convey stock, whether treated or untreated;

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- (s) the devising or approving by the Chief Inspector of declarations and return systems and providing for a person who complies with such systems to be deemed to have complied with the relevant provisions of the Regulations; and
 - (t) prescribing penalties, not exceeding \$5,000, for offences against the Regulations.
- (3) Regulations may be made:
- (a) to apply to stock from a State or another Territory of the Commonwealth or from specified parts of a State or another Territory of the Commonwealth;
 - (b) to require a matter affected by them to be:
 - (i) in accordance with a specified standard or specified requirement; or
 - (ii) as approved by, or to the satisfaction of, a specified person or body or a person or body of a specified class;
 - (c) to confer on a specified person or body or a person or body of a specified class a discretionary authority; and/or
 - (d) to provide that, in specified cases or a specified class of cases, whether on specified conditions or unconditionally, persons or things or a class or classes of persons or things may be exempted from the Regulations, either wholly or to such extent as is specified.

25 Amendment of *Stock Diseases Act*

Section 41A of the *Stock Diseases Act* is amended by adding at the end the following:

- " (2) A person shall not contravene or fail to comply with a notice under subsection (1).

Penalty: \$10,000."

ENDNOTES

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KEY

Key to abbreviations

amd = amended
app = appendix
bl = by-law
ch = Chapter
cl = clause
div = Division
exp = expires/expired
f = forms
Gaz = Gazette
hdg = heading
ins = inserted
lt = long title
nc = not commenced

od = order
om = omitted
pt = Part
r = regulation/rule
rem = remainder
renum = renumbered
rep = repealed
s = section
sch = Schedule
sdiv = Subdivision
SL = Subordinate Legislation
sub = substituted

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LIST OF LEGISLATION

Stock (Control of Hormonal Growth Promotants) Act 1993 (Act No. 2, 1993)

Assent date 4 March 1993
Commenced s 17: 15 April 1993; rem: 1 April 1993 (*Gaz* S34, 1 April 1993)

Sentencing (Consequential Amendments) Act 1996 (Act No. 17, 1996)

Assent date 19 April 1996
Commenced s 7: 19 April 1996; rem: 1 July 1996 (s 2, s 2 *Sentencing Act 1995* (Act No. 39, 1995) and *Gaz* S15, 13 June 1996)

Stock (Control of Hormonal Growth Promotants) Amendment Act 1996 (Act No. 52, 1996)

Assent date 31 October 1996
Commenced 11 December 1996 (*Gaz* G50, 11 December 1996, p 2)

Fines and Penalties (Recovery) (Consequential Amendments) Act 2001 (Act No. 60, 2001)

Assent date 11 December 2001
Commenced 1 January 2002 (s 2, s 2 *Fines and Penalties (Recovery) Act 2001* (Act No. 59, 2001) and *Gaz* G50, 19 December 2001, p 3)

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LIST OF AMENDMENTS

s 16 amd No. 17, 1996, s 6
ss 18 – 20 amd No. 17, 1996, s 6
s 23 amd No. 17, 1996, s 6
s 23A ins No. 52, 1996, s 3
amd No. 60, 2001, s 16