

TABLE OF PROVISIONS

Section

1. Short title
 2. Commencement
 3. Definitions
 4. Construction of Ordinance
 5. Appointment of Senior Seed Testing Officer and Inspectors
 6. Delegation
 7. Sale of seeds
 8. Where seeds do not comply with the requirements of the Ordinance
 9. Invoice to be given by vendor
 10. Statements to constitute a warranty
 11. Right to submit sample of seeds for examination
 12. Samples sent for examination with a view to taking legal proceedings
 13. General powers of Inspectors
 14. Duties of Inspector when seeds are detained or seized
 15. Administrator may take action to prevent further contravention
 16. Review of Administrator's decision
 17. Requirement for compliance with direction
 18. Power to demand, select and take samples
 19. Manner in which sample is to be taken
 20. Inspector may take reasonable samples
 21. Contravention with regard to sample deemed a contravention with regard to whole
 22. Imported seeds not to be sold in the Territory without compliance with Ordinance
 23. Seed certification schemes
 24. Restriction on use of "approved", "certified", "certification" or "verified"
 25. Restriction on use of "disease free", "disease resistant", "disease immune", &c.
 26. Power to demand information
 27. Statement of Senior Seed Testing Officer
 28. Agent who is actual offender liable in like manner as vendor
 29. Exemption of vendor from penalty on conviction of actual offender
 30. Simplification of proof in certain cases
 31. Forfeiture
 32. Expenses of examination to be paid for by offender
 33. Purchase of sample deemed a purchase of seeds
 34. Saving
 35. Offences and penalties
 36. Prosecutions
 37. Service of notices, &c.
 38. Regulations
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SEEDS ORDINANCE 1976

903

No. 60 of 1976

An Ordinance to regulate the sale of seeds, to provide for the inspection and grading of seeds, and for other related purposes

[Assented to 26 November 1976]

BE it ordained by the Legislative Assembly for the Northern Territory of Australia as follows:

1. This Ordinance may be cited as the *Seeds Ordinance 1976*. Short title
2. This Ordinance shall come into operation on a date to be fixed by the Administrator by notice in the *Gazette*.* Commencement
3. In this Ordinance, unless the contrary intention appears— Definitions
 - “accepted seed certification scheme” means a seed certification scheme, whether in operation in Australia or elsewhere, which has not been declared by the Administrator by notice in the *Gazette* as one unsatisfactory for the purposes of this Ordinance;
 - “approved” means approved in writing by the Senior Seed Testing Officer;
 - “denature” means to alter seeds in such a manner as to render them incapable of life and growth;
 - “examination” includes an analysis or test or any combination of these;
 - “foreign ingredients”, in relation to any kind of seeds, means weed seeds, inert matter, other crop seeds and any other things prescribed as foreign ingredients;
 - “germination” means germination of pure seed;
 - “hybrid” means a hybrid as prescribed;
 - “injurious weed seeds” means bulbs, corms, seeds or tubers prescribed as injurious weed seeds;
 - “Inspector” means a person appointed under section 5(2);
 - “label” includes a tag or sticker;
 - “packaging” means, in respect of seeds, the enclosure of the seeds in the parcel in which they are to be sold;

* Date not fixed at 1 January 1978.

“parcel” includes barrel, case, package, packet, sack or any other container;

“pure seed” means pure seed as prescribed;

“seed mixture” means a mixture of 2 or more kinds of seeds, but does not include a mixture where the seeds are mixed, after sale, to a purchaser’s requirements;

“seeds” includes seeds to which, or to clusters of which, any fruit or part of a fruit normally adheres, seeds in pods or burrs normally used in agricultural practice and any seeds artificially encased;

“seed testing laboratory” includes a person or body carrying out the testing of seeds, whether in Australia or elsewhere, but does not include a person or body declared by the Senior Seed Testing Officer, by notice in the *Gazette*, as not being a seed testing laboratory for the purposes of this Ordinance;

“sell” includes—

- (a) selling by wholesale or retail;
- (b) bartering or exchanging;
- (c) selling by auction;
- (d) agreeing to sell;
- (e) offering or exposing for sale;
- (f) keeping or having in possession for sale;
- (g) sending, forwarding or receiving for or on sale; and
- (h) authorizing, directing, causing, suffering or permitting any of the acts mentioned above;

“Senior Seed Testing Officer” means the person appointed under section 5(1) as Senior Seed Testing Officer, and includes a person appointed to act in that office.

Construction
of Ordinance

4.(1) In this Ordinance, unless otherwise expressly provided, a reference to seeds shall be read and construed as a reference to seeds sold or intended for sale for the purpose of sowing.

(2) The provisions of this Ordinance apply to a case where seeds are supplied to a grower within the terms of a written agreement for the growing of a crop which is to be purchased in whole or in part by the supplier of the seeds, and, for the purposes of this Ordinance, the supplier and the grower of the seeds, in such a case, are the vendor and the purchaser respectively.

(3) The provisions of this Ordinance do not apply to seeds to be used for such experimental or breeding purposes as are authorized by the Senior Seed Testing Officer.

(4) The burden of proving that seeds are seeds to which the provisions of this Ordinance do not apply lies on the vendor.

5.(1) The Administrator in Council may appoint a person to be Senior Seed Testing Officer.

Appointment
of Senior Seed
Testing Officer
and Inspectors

(2) The Administrator in Council may appoint such Inspectors as he considers necessary for the purposes of this Ordinance.

(3) Where—

- (a) there is a vacancy in the office of Senior Seed Testing Officer;
or
- (b) the Senior Seed Testing Officer is, or is expected to be, absent or is unable, for any reason, to exercise the powers or perform the functions of Senior Seed Testing Officer, the Administrator may, by instrument in writing, appoint a person to act in the office of Senior Seed Testing Officer during the absence or incapacity or until the filling of the vacancy.

(4) While the appointment of a person to act in the office of Senior Seed Testing Officer remains in force, he has all the powers and functions under this Ordinance of that Senior Seed Testing Officer.

6.(1) The Senior Seed Testing Officer may, by instrument in writing, delegate to a person or authority all, or any, of his powers, functions and authorities under this Ordinance (except this power of delegation) in relation to a matter or class of matters or to a district or part of the Territory so that the delegated powers, functions and authorities may be exercised by the delegate with respect to a matter or class of matters or the district or part of the Territory specified in the instrument of delegation.

Delegation

(2) A delegation under sub-section (1) is revocable in writing at will and does not prevent the exercise of a power, function or authority by the Senior Seed Testing Officer.

7.(1) A person shall not sell seeds unless—

Sale of seeds

- (a) the seeds are contained in a parcel bearing on it, or on a label securely attached to it, a clearly written statement setting out the particulars required by sub-section (3);
- (b) the seeds are of the kind or kinds stated on the parcel or label;
- (c) in the case where the seeds are harvested or treated in the Territory, the seeds have been sampled by the method referred to in section 19 and the sample—
 - (i) has been marked so as to be clearly identifiable with the lot of seeds from which it was taken; and

- (ii) has been submitted for examination by a seed testing laboratory,
and a statement of the results of the examination has been received from that laboratory;
- (d) in the case of seeds harvested, cleaned or treated outside the Territory—
 - (i) there is a certificate in the possession of the person who imported the seeds into the Territory which complies with sub-section (5); or
 - (ii) the seeds have been sampled, the sample has been marked and submitted in the manner required by paragraph (c) for seeds harvested or treated in the Territory and a statement of the results has been received from seed testing laboratory;
- (e) the seeds contain—
 - (i) no greater number of injurious weed seeds than the number prescribed; and
 - (ii) no greater number of seeds affected by a prescribed disease than the number prescribed in respect of that disease;
- (f) the seeds have a germination percentage not less than that stated on the parcel or label;
- (g) in the case of a seed mixture, the percentage of each kind of seed is that stated on the parcel or label; and
- (h) the seeds comply with such other standards as are prescribed.

(2) Sub-section (1) does not apply to the case where seeds are sold in parcels the mass of which is less than the prescribed mass.

(3) Where sub-section (1) applies, on every parcel of seeds or label attached to it, there shall be set out—

- (a) subject to sub-section (6), the name of each kind of seed contained in the parcel;
- (b) the reference, brand, code or mark relating to the source of the seeds;
- (c) in the case of—
 - (i) hybrid varieties, the name of the particular hybrid variety; or
 - (ii) a parcel containing a seed mixture, a notification that it is a seed mixture and a statement of the percentage of each kind of seed in the mixture expressed by mass or number;

- (d) in a case where seeds are sold in parcels the contents of which are less than the mass prescribed, the month and year in which germination examination of the seeds is due;
 - (e) in the case where seeds, described as horticultural seeds, are sold in parcels the contents of which are greater than the prescribed mass, the pure seed content of the seeds, the month and year of the last germination examination on a sample of the seeds carried out before packaging and the germination of the seeds as shown by the statement of the results of the test;
 - (f) in all other cases, a statement of the pure seed content and germination of the seeds; and
 - (g) such other particulars as may be prescribed.
- (4) Subject to sub-section (7), a person who sells seeds shall, for a period of not less than 2 years from the date of sale, keep—
- (a) records of—
 - (i) transactions relating to the seeds;
 - (ii) treatment applied to the seeds while they were in his possession; and
 - (iii) the results of examinations of samples of the seeds; and
 - (b) statements, certificates and invoices, or true copies of them, received or given in connexion with the sale of seeds.
- (5) The certificate referred to in sub-section (1)(d)(i) shall be one—
- (a) issued by a seed testing laboratory outside the Territory; and
 - (b) which is clearly identifiable with the lot of seeds from which the relevant seeds have been taken.
- (6) The provisions of sub-section (3)(a) do not apply to a parcel of seeds containing seeds mixed after sale to a purchaser's requirements but, in such a case, the parcel or label attached to it shall have endorsed on it a statement to the effect that the seeds the parcel contains have been mixed after sale to the purchaser's requirements.
- (7) Sub-section (4) does not apply to a sale of seeds where the mass or value of the seeds sold does not exceed the mass or value (whichever is applicable) prescribed.

8.(1) In this section, "owner" means—

- (a) the person who has submitted a seed sample for testing by a seed testing laboratory; or
- (b) the person in whose possession were the seeds from which a sample was taken.

Where seeds do not comply with the requirements of the Ordinance

Seeds

(2) Where it comes to the knowledge of the Senior Seed Testing Officer that the results of an examination of seed carried out pursuant to this Ordinance show that the seeds do not comply with the requirements of this Ordinance, he shall send to the owner a written statement of the results, containing a statement—

- (a) of the reason why the lot of seeds represented by that sample does not comply with the requirements of this Ordinance; and
- (b) that compliance with the provision of this section is necessary.

(3) Where the statement of the Senior Seed Testing Officer shows that the lot of seeds does not comply with the requirements of this Ordinance because of the presence of an excess of seeds affected by a prescribed disease for which it is further prescribed that no further testing of the seeds is permitted, the owner—

- (a) shall, within 28 days of receipt of the statement—
 - (i) destroy or denature all seeds from which the sample was taken;
 - (ii) forthwith, after such destruction or denaturing, make a statutory declaration declaring that the seeds have been so destroyed or denatured (as the case may be), and stating in the declaration the place where, and the method by which, the destruction or denaturing was carried out; and
 - (iii) send the statutory declaration to the Senior Seed Testing Officer to reach him not later than 10 days after the destruction or denaturing; or

- (b) shall, within 30 days of the receipt of the statement—
 - (i) inform the Senior Seed Testing Officer in writing that he intends to dispose of all the seeds from which the sample was taken in a specified manner, being a manner which does not contravene the provisions of this Ordinance; and
 - (ii) state in the information whether or not the seeds are to be disposed of in the Territory.

(4) Where the statement of the Senior Seed Testing Officer shows that the sample of seeds does not comply with the requirements of this Ordinance for a reason other than that stated in sub-section (3), the owner—

- (a) may further treat the seeds, from which the sample was taken and, after treatment, may submit another sample of the seeds to a seed testing laboratory in the manner referred to in section 7 (1) (c), together with a statement that the sample is that of seeds which have been further treated; or

(b) shall deal with the seeds in either of the ways set out in sub-section (3).

(5) Where the owner intends further to treat the seeds pursuant to sub-section (4) (a), but is not able to do so within 28 days of the receipt of the statement of the Senior Seed Testing Officer, he shall—

- (a) forthwith notify the Senior Seed Testing Officer, in writing of his intention further to clean or treat the seeds; and
- (b) state the reason for him being unable to treat the seeds within the stipulated time.

(6) The Senior Seed Testing Officer, if he is not satisfied with the reasons set out by the owner for being unable to treat the seeds within the time stipulated in sub-section (5), shall within 7 days inform the owner in writing of his decision.

(7) Subject to this Ordinance, the owner shall, on the date of receipt by him on the written notification under sub-section (6), or as soon as possible after that date, destroy or denature the seeds.

(8) When an owner has complied with sub-section (7), he shall, within 28 days, comply with the requirements of sub-paragraphs (ii) and (iii) of sub-section (3) (a).

9.(1) Subject to sub-section (2), upon the sale, other than an exempted sale, of seeds, the vendor shall, at the time of the sale, or within 7 days after the delivery of the seeds (whether the seeds are paid for at the time of the sale or not), give or send to the purchaser an invoice readily identifiable with the lot of seeds sold and containing the statements required by this Ordinance.

Invoice to be given by vendor

(2) Sub-section (1) does not apply in the case of seeds prescribed as horticultural seeds where—

- (a) the invoice is not delivered to the purchaser with the seeds; and
- (b) there is not shown, on the parcel or label attached to the parcel—
 - (i) the date of the most recent germination examination carried out on a sample of the seeds; and
 - (ii) the result of that examination or, in the case of seeds provided for in section 7(1)(d)(i), the date and result of the examination referred to in the certificate required by that section,

if the vendor delivers with the seeds to the purchaser a docket containing the statements required by this Ordinance.

(3) On every invoice or docket produced in compliance with sub-sections (1) and (2), there shall be clearly written a statement specifically and correctly setting out—

- (a) the name and address of the vendor;
- (b) the name of each kind of seed included in the sale;
- (c) the reference, brand, code or mark appearing on each parcel containing the seeds;
- (d) in the case of—
 - (i) hybrid varieties, the name of the particular hybrid variety; or
 - (ii) a parcel containing a seed mixture, a notification that it is a seed mixture;
- (e) in the case of seeds prescribed for the purpose of this paragraph, the date of the most recent germination examination carried out on a sample of the seeds, and the result of that examination or, where there is a certificate as required by section 7(1)(d)(i), the date and result of the examination referred to in the certificate, unless that information is shown on the parcel containing the seeds or a label attached to it; and
- (f) such other particulars as are prescribed.

(4) In the case of seeds other than seeds prescribed for the purpose of sub-section (3)(e), if particulars as required by that sub-section of the date and result of the most recent germination examination are not shown on the parcel or label or on the invoice or docket, then, in addition to any other statements required by this Ordinance to be set out in the invoice or docket, there shall appear prominently on the invoice or docket a statement that, on the request of the purchaser, the date and result of the most recent germination examination will be given or sent without delay by the vendor to the purchaser.

(5) When the requirements of sub-section (4) have been complied with, then, on the request of the purchaser, the vendor shall, without delay, give or send to the purchaser the date and result of the most recent germination examination.

(6) In a proceeding brought against a vendor for failing, neglecting or refusing—

- (a) to give or send to the purchaser an invoice or docket as required by this Ordinance; or
 - (b) to comply with sub-section (5),
- the burden of proving that—
- (c) upon the sale an invoice or docket complying with this Ordinance was given or sent; or

- (d) the information required by sub-section (5) was given or sent without delay,

lies on the defendant.

(7) If, in the case of an exempted sale of seeds, an invoice or docket is given or sent by the vendor to the purchaser, then the statements in the invoice or docket shall comply with the provisions of this Ordinance.

10.(1) A statement on a parcel, label, invoice or docket or in an agreement, circular or advertisement, relating to seeds shall, notwithstanding any agreement to the contrary, constitute a warranty by the vendor that all particulars contained in it are true and correct.

Statements to constitute a warranty

(2) A statement referred to in sub-section (1) is true and correct if the results of a further examination of the seeds to which the statement relates does not differ from those contained in the statement by more than the prescribed tolerance.

(3) A statement appearing on a parcel, label, invoice or docket, or in an agreement, circular or advertisement, relating to seeds, which purports to exclude, limit or modify the operation of sub-sections (1) and (2), or to preclude any right of action or any defence based on, or arising out of, any warranty or statement relied upon by virtue of those sub-sections, is void.

11.(1) A person in possession of seeds is, upon payment of the prescribed fee, entitled to have a sample of the seeds examined by the Senior Seed Testing Officer and to receive from him a statement of the results of the examination.

Right to submit sample of seeds for examination

(2) Where a sample—

(a) is taken in such manner as may be prescribed for a particular kind of seed or, failing any prescribed manner, in the manner referred to in section 19; and

(b) is marked so as to be clearly identifiable with the lot of seeds from which it is taken,

the results set out in a statement given under sub-section (1) may be used for trade or advertising purposes, but the statement itself, or a copy of it, shall not be used in an advertisement.

(3) Where the sample is not taken or marked as mentioned in sub-section (2), a person shall not use the statement, a copy of it or the results set out in the statement for trade purposes or as an advertisement.

(4) In this section “seeds” includes seeds whether or not they are sold or intended for sale for the purposes of sowing.

Samples sent
for examination
with a view to
taking legal
proceedings

12.(1) A purchaser intending to submit a sample of seeds for examination by the Senior Seed Testing Officer shall, if the examination is sought with a view to taking legal proceedings, apply to the Senior Seed Testing Officer in writing, within 60 days after the delivery to him of the seeds, requesting that an officer take a sample of the seeds.

(2) The purchaser shall forthwith send a copy of the application to the vendor or to his agent.

(3) In the application to the Senior Seeds Testing Officer, the purchaser shall state the address to which the copy has been sent pursuant to sub-section (2).

(4) An Inspector shall—

- (a) within 14 days after the application has been received by the Senior Seed Testing Officer and the prescribed fee paid by the purchaser, take a sample as requested; and
- (b) at least 3 days before taking the sample, notify the vendor and the purchaser of the date and the approximate time when the sample will be taken.

General powers
of Inspectors

13.(1) An Inspector may—

- (a) at a reasonable time, enter and inspect a place which he believes is kept or used for the sale, storage, delivery, treatment, packaging or other preparation for sale of seeds and he may inspect the seeds;
- (b) require any person at such a place and who is apparently in charge of any records relating to the seeds to produce the records for his inspection, and may inspect and take copies of, or extracts from, any of those records;
- (c) inspect seeds being conveyed by any means of transit apparently for the purpose of sale;
- (d) require a person, apparently in charge for the time being of seeds, to produce for the Inspector's inspection any parcel in which those seeds are contained, and to permit him to take a sample from the seeds;
- (e) examine and open a parcel containing seeds in any place, or when being conveyed as referred to in paragraph (c);
- (f) take samples of seeds for examination by the Senior Seed Testing Officer;
- (g) detain or seize seeds which do not comply, or which he reasonably suspects do not comply, with the provisions of this Ordinance, and he may detain or seize a parcel containing these seeds;

- (h) detain or seize any parcel containing seeds, where the parcel, or a label attached to the parcel, is not marked in accordance with section 7 (3); and
- (j) attached a warning tag to, or mark, a parcel of seeds which has been detained or seized.

(2) Where an Inspector has attached a warning tag to or marked a parcel of seeds in accordance with section 13 (1) (j), a person shall not remove the seeds, tamper or interfere with the parcel or do any thing in relation to the seeds or parcel contrary to the instructions written on the tag or marked on the parcel.

14. (1) Where, for the purpose of an inspection, an Inspector opens a parcel containing seeds, he shall, at the completion of his inspection, to the best of his ability fasten, secure or seal it.

Duties of
Inspector when
seeds are
detained or
seized

(2) When an Inspector detains or seizes seeds which do not comply, or which he reasonably suspects do not comply, with the provisions of this Ordinance, he shall forthwith—

- (a) give notice in writing of the detention or seizure—
 - (i) to the owner or consignor, if the name and address of the owner or consignor appear on the parcel enclosing seeds or any label attached to it, and the address is an address in the Territory; or
 - (ii) to the person in whose possession the seeds were found, if the name and address of the owner or consignor do not appear on the parcel enclosing the seeds or any label attached to it, or if the name and address appear but the address is not one in the Territory; and
- (b) take and send to the Senior Seed Testing Officer for examination a sample of the seeds.

(3) In the notice referred to in sub-section (2), the Inspector shall state the reasons why it is alleged that the seeds do not comply with the provisions of this Ordinance.

(4) Where the results of the examination of the sample sent to the Senior Seeds Testing Officer show that the seeds comply with the requirements of this Ordinance, the Inspector shall immediately release or return the seeds to the owner or consignor or the person in whose possession the seeds were found (as the case may be).

(5) Where the results of the examination of a sample sent to the Senior Seed Testing Officer show that the seeds do not comply with the requirements of this Ordinance, an Inspector shall—

- (a) in writing, inform the owner or consignor or person in whose possession the seeds were found (as the case may be) of that fact;

- (b) if the seeds are not already the subject of a detention or seizure notice, detain or seize the seeds but, in doing so, he is not obliged again to comply with the provision of sub-section (2) (b); and
- (c) after consultation with the owner, consignor or person, submit a report and recommendation to the Senior Seed Testing Officer, within 30 days of the date of the statement of the results of the examination of the sample, as to the action which the owner, consignor or person should take in relation to the seeds.

(6) Where an officer detains or seizes a parcel containing seeds and the parcel or label attached to the parcel is not marked as required by section 7(3), he shall, in writing, direct the owner or consignor of the seeds or the person in whose possession the seeds were found (as the case may be) to make the parcel or label attached to the parcel (as the case may be) comply with that section, and he shall not release the parcel until such direction has been complied with.

(7) Nothing in this section shall be construed so as to limit an Inspector's right to institute legal proceedings in respect of any lot of seeds found not to comply with this Ordinance.

Administrator
may take
action to
prevent further
contravention

15. The Senior Seed Testing Officer may forward a copy of the report and recommendation of an Inspector made pursuant to section 14(5)(c) to the Administrator who may, in writing, direct the owner, consignor or person to whom the report and recommendation relates, to take such action as the Administrator decides necessary to prevent a further contravention of this Ordinance.

Review of
Administrator's
decision

16.(1) A person aggrieved by a direction of the Administrator made pursuant to section 15 may, within 7 days of the receipt of the Administrator's direction, appeal against it to a Stipendiary Magistrate, appointed under the Justices Ordinance.

(2) An appeal under sub-section (1) shall be by application in writing and be subject to such directions as the Magistrate may determine.

(3) The appellant shall annex to the application referred to in sub-section (2) a statement of the grounds of his appeal.

(4) Notice of the application under sub-section (2) shall be served on the Senior Seed Testing Officer or such other person as the Magistrate may determine.

(5) The Magistrate may, after the filing of an application under sub-section (2), on the application of the appellant order the suspension of the direction appealed against pending determination of the appeal.

- (6) On hearing an appeal under this section, the Magistrate may—
- (a) uphold the Administrator's direction;
 - (b) order that it be amended;
 - (c) order that the appellant comply with the direction as amended; and
 - (d) set aside the decision.

17.(1) Subject to section 16, a person who receives a direction pursuant to section 15 shall comply with the direction within 30 days, and, within 7 days of compliance, shall send a statutory declaration to the Senior Seed Testing Officer stating that he has complied as required. Requirement for compliance with direction

(2) Where an order has been made under section 16(5) and the decision of the Magistrate upholds the direction of the Administrator, the person to whom the direction refers shall comply with that direction within—

- (a) 30 days of the date of the Magistrate's decision; or
- (b) such time as the Magistrate may direct,

and shall within 7 days of compliance furnish the statutory declaration referred to in sub-section (1).

(3) The provisions of sub-section (2) apply to a case where the Magistrate, on hearing an appeal under section 16, orders that the Administrator's direction be amended and the appellant is ordered to comply with that direction as amended.

(4) The seeds that have been detained or seized shall not be released until the statutory declaration required by sub-sections (1) and (2) has been received by the Senior Seed Testing Officer.

18. Where seeds are kept for sale by retail in parcels the contents of which are less than the mass or value prescribed, an Inspector, on payment or offer of the current market value of the seeds to a person— Power to demand, select and take samples

- (a) selling any of the seeds;
- (b) apparently acting as the agent or in the employ of a person referred to in paragraph (a); or
- (c) apparently in charge of the seeds,

may demand and select, and may take or obtain, parcels of the seeds for the purpose of taking samples pursuant to this Ordinance.

19.(1) Subject to this Ordinance, every sample of seeds shall be taken as provided in this section. Manner in which sample is to be taken

(2) The sample shall be taken from the parcel or parcels in which the lot of seeds is contained and, wherever possible, in the presence of the vendor or his agent, or the owner, consignor or person apparently in charge of the seeds.

(3) A sample taken for the purpose of this Ordinance shall be of a quantity not less than that prescribed for—

- (a) seeds of the kind taken; or
- (b) the amount of seeds involved.

(4) Portions of seed shall be taken from the parcel or parcels in which the lot of seeds is contained, and these portions shall be mixed thoroughly and divided into 3 samples.

(5) Notwithstanding sub-section (4), when the quantity of seeds contained in the parcel is less than the quantity prescribed in accordance with sub-section (3), additional parcels which purport to contain similar seeds may be taken or obtained, and the contents of 2 or more of these parcels may be mixed together and the mixture divided into 3 samples.

(6) Each sample shall be fastened up and sealed in such manner as its nature permits, and shall be marked in such a manner as to enable it to be clearly identified with the lot of seeds from which it was taken.

(7) The person taking the samples shall—

- (a) sign his name on each sample;
- (b) write on each sample the date and time when, and the place where, the samples were taken; and
- (c) write on each sample the name of the vendor or his agent, or the owner, consignor or person apparently in charge of the seeds when the samples were taken.

(8) Upon complying with sub-section (7), the person taking the sample shall—

- (a) send or deliver one sample to the vendor or his agent, or the owner, consignor or person apparently in charge of the seeds when the sample was taken;
- (b) send or deliver one sample to the Senior Seed Testing Officer for examination; and
- (c) retain one sample.

(9) Notwithstanding sub-section (8) where, pursuant to section 11, an Inspector takes samples on behalf of a purchaser—

- (a) one sample shall be retained by the purchaser;
- (b) one sample shall be sent or delivered to the vendor; and
- (c) one sample shall be sent or delivered to the Senior Seed Testing Officer for examination.

(10) On receipt of a sample of seeds, the Senior Seed Testing Officer shall examine the sample and give a statement of the results of his examination—

- (a) to the person from whom the seeds were purchased or obtained;
- (b) to the person who took the sample; and
- (c) where the samples were taken on behalf of the purchaser, to the purchaser.

(11) Sub-sections (1) to (10) (inclusive) do not apply to a sample of seeds taken and sent to the Senior Seed Testing Officer for examination by virtue of sections 7, 11 or 20, where the seeds are not taken and sent with a view to taking legal proceedings.

(12) Unless expressly permitted by this Ordinance—

- (a) a statement given under this section or a copy of it; and
- (b) the results set out in the statement,

shall not be used for trade purposes or as an advertisement.

20.(1) An Inspector may, in the course of his duties, take a reasonable sample of seeds in the manner prescribed for seeds of the kind taken for examination by the Senior Seed Testing Officer without detaining or seizing, or (except where the seeds are in a parcel referred to in section 18) purchasing or offering to purchase the seeds.

Inspector may take reasonable samples

(2) The results of the examination of a sample taken pursuant to sub-section (1) shall not be used in any legal proceedings.

21. Where, in a prosecution or proceeding under this Ordinance, a contravention of a provision of this Ordinance is proved in regard to a sample, the contravention shall be deemed to have been proved with regard to the lot from which the sample was taken.

Contravention with regard to sample deemed a contravention with regard to whole

22. All seeds imported into the Territory shall, before being sold, in the Territory, comply with the requirements of this Ordinance.

Imported seeds not to be sold in the Territory without compliance with Ordinance

23.(1) The Administrator may approve and implement schemes for the purpose of testing and certifying—

Seed certification schemes

- (a) the strain, variety, origin or trueness to type; and
- (b) the freedom from, or resistance or immunity to, prescribed diseases,

of any kind of seeds.

(2) The approval of a scheme in accordance with this section shall be notified in the *Gazette*.

Restriction on use of "approved", "certified", "certificated" or "verified"

24.(1) A person shall not, in any invoice, agreement, circular or advertisement relating to seeds or on a parcel of seeds or a label attached to the parcel, use or cause to be used, the words "approved", "certified", "certificated", "verified" or any word of a like kind unless—

- (a) the seeds have been certified under this Ordinance; or
- (b) the seeds have been certified in a place outside the Territory under an accepted seed certification scheme; and
- (c) in the case of—
 - (i) seeds from a State of Australia, there is clearly stated in the invoice or agreement that the seeds have been certified in Australia; and
 - (ii) seeds from a country other than Australia, there is clearly stated in the circular or advertisement and on the parcel of seeds or label attached to the parcel the name of the country in which the seeds have been certified.

(2) A statement in an invoice, agreement, circular or advertisement or on a parcel or label attached to the parcel that seeds have been certified as provided in this Ordinance shall, notwithstanding any agreement to the contrary, constitute a warranty by the vendor to that effect.

(3) A person shall not sell any seeds as approved, certified, certificated or verified unless the seeds are contained in a sealed parcel.

(4) Sub-section (3) shall not apply to the sale of seeds contained in a parcel the contents of which are less than the mass prescribed.

Restriction on use of "disease free", "disease resistant", "disease immune", &c.

25.(1) A person shall not, in any invoice, agreement, circular or advertisement relating to seeds or on any parcel of seeds or on any label attached to the parcel, use or cause to be used—

- (a) the words "disease free", "disease tolerant", "disease resistant", "disease immune" or any word or words intended or apparently intended to imply that any plants grown from the seeds would be tolerant, resistant or immune to disease generally; and
- (b) a word intended or apparently intended to imply that seeds are free from a particular disease, unless the seeds have been certified as being free from that disease under this Ordinance or, in any place outside the Territory, under an accepted seed certification scheme, and the name of the disease is specifically stated.

(2) A statement in an invoice, agreement, circular or advertisement, or on a parcel or label attached to the parcel, that the seeds to which the invoice, agreement, advertisement, parcel or label relates are free

from a particular disease shall, notwithstanding any agreement to the contrary, constitute a warranty by the vendor that the seeds have been certified as required by sub-section (1) (b).

26.(1) An Inspector may require the purchaser of seeds—

Power to demand information

- (a) to state the name and address of the vendor from whom he purchased the seeds, and the price charged or paid for the seeds; and
- (b) to produce for inspection a parcel, label, invoice, docket, agreement, circular or advertisement given or sent to him by a vendor of seeds.

(2) A person who fails or refuses to comply with the requirements of an Inspector made pursuant to sub-section (1) is guilty of an offence.

27.(1) In any proceedings against a person for an offence against this Ordinance, where a copy of a statement of the results of an examination of seeds issued by the Senior Seed Testing Officer has been served with the summons, the production of the statement is sufficient evidence of the facts in it, unless the defendant, within 7 days after the service of the summons, has notified the informant that he requires—

Statement of Senior Seed Testing Officer

- (a) that the said Senior Seed Testing Officer be called as a witness; and
- (b) that the sample in the possession of—
 - (i) the Senior Seed Testing Officer;
 - (ii) the vendor or his agent;
 - (iii) the owner, consignor or person apparently in charge of the seeds or in whose possession they have been found; or
 - (iv) the person or Inspector who took or obtained the sample,

(as the case may be) be produced.

(2) Service of the copy of the statement referred to in sub-section (1) may be proved in the same manner as service of the summons.

28. Where an offence for which a vendor is liable to a penalty has in fact been committed by an agent, that agent is liable to the like penalty as if he was the vendor.

Agent who is actual offender liable in like manner as vendor

29. Where a vendor is charged with an offence against a provision of this Ordinance, he is entitled, upon information duly laid by him, to have any other person whom he charges as the actual offender brought

Exemption of vendor from penalty on conviction of actual offender

before the court at the hearing of the charge and if, after the commission of the offence has been proved, the vendor, proves to the satisfaction of the court—

- (a) that he had used due diligence to enforce the execution of this Ordinance; and
- (b) that the other person was his agent and had committed the offence in question without his knowledge, consent or connivance and in contravention of his orders,

the other person shall be summarily convicted of such offence and shall, in the discretion of the court, be also liable to pay any costs incidental to the proceedings, and the vendor is exempted from penalty.

Simplification
of proof in
certain cases

30. In a prosecution or other proceedings under this Ordinance instituted by a person authorized by the Administrator, no proof shall be required—

- (a) of an order to prosecute or of the particular or general appointment of the person prosecuting; or
- (b) of the authority of a person to prosecute.

Forfeiture

31.(1) In the case of a conviction under this Ordinance, the lot or lots of seeds to which the conviction relates may, by order of the court, be forfeited to the Crown.

(2) All seeds forfeited under this Ordinance shall be disposed of as the Administrator directs.

Expenses of
examination to
be paid for by
offender

32.(1) Where a person is convicted of an offence against this Ordinance, the court may order that all fees and other expenses incidental to the examination of any seeds in respect of which the conviction is obtained be paid by the person convicted.

(2) The fees and expenses shall be part of the costs attending the conviction, and are recoverable in the same manner as costs are recoverable.

Purchase of
sample deemed
a purchase
of seeds

33. The purchase and sale of a sample of seeds under this Ordinance for the purpose of examination shall be deemed to be a purchase and sale of the seeds for sowing, unless the vendor proves that the lot of seeds from which the sample was taken was not intended for sowing.

Saving

34. Nothing contained in this Ordinance, and no proceeding taken under it against a person, shall in any way interfere with a right or remedy by civil process which a person aggrieved by a contravention of a provision of this Ordinance might have had if this Ordinance had not been passed.

35.(1) A person—

- (a) who sells any seeds—
 - (i) in contravention of this Ordinance; or
 - (ii) in a parcel which is not marked or labelled in accordance with this Ordinance;
- (b) who, being the vendor of any seeds, fails, neglects or refuses to give to the purchaser an invoice or docket as required by this Ordinance, or sells to the purchaser any seeds which are not solely of the kind specified in an invoice, docket, agreement, circular or advertisement relating to the sale of the seeds;
- (c) who, being in possession of seeds, does not submit for examination or re-examination a sample of the seeds in accordance with the provisions of this Ordinance;
- (d) who refuses to allow an Inspector to take a sample demanded in accordance with this Ordinance, or tampers with any sample taken under this Ordinance;
- (e) who assaults, intimidates or obstructs, or gives, procures, offers or promises a bribe, recompense, inducement or reward to influence, an Inspector in the exercise of his powers or in the discharge of his duties under this Ordinance, or attempts so to do;
- (f) who retakes, or attempts to retake, seeds detained, seized, taken or obtained under this Ordinance, or resists, or attempts to prevent a detention, seizure, taking or obtaining;
- (g) who, without authority (the proof of which lies upon him), opens, alters, breaks, removes or erases a label, mark, warning tag, fastening or seal placed by an Inspector, in pursuance of this Ordinance, upon seeds or upon a parcel containing seeds; or
- (h) who, contrary to the provisions of this Ordinance, uses a statement of the results of an examination of seeds issued by the Senior Seed Testing Officer or a seed laboratory, or a copy of the statement, for trade purposes or an advertisement,

is guilty of an offence and, upon conviction, liable, for a first offence, to a penalty not exceeding 500 dollars, for a second offence, to a penalty not exceeding 750 dollars and, for each subsequent offence, to a penalty not exceeding 1,000 dollars.

(2) A person who contravenes or fails to comply with this Ordinance in a manner not referred to in sub-section (1) is guilty of an offence and, upon conviction, liable to a penalty not exceeding 500 dollars.

36. A prosecution for a contravention of a provision of this Ordinance may be instituted by a person authorized by the Administrator in writing or, by a person aggrieved under this Ordinance.

Service of
notices, &c.

37.(1) A notice, direction, requirement, document or thing to be given, sent or made under this Ordinance to a person is given or made if—

- (a) it is delivered by the person by hand; or
- (b) it is sent by pre-paid post addressed to him at his address, or his latest known address.

(2) The provisions of sub-section (1) apply where, under this Ordinance, a person is obliged to inform or notify another in writing.

Regulations

38.(1) The Administrator in Council may make regulations, not inconsistent with this Ordinance, prescribing all matters and things which by this Ordinance are required or permitted to be prescribed, or which are necessary or convenient to be prescribed, for carrying out or giving effect to this Ordinance.

(2) Matters which are required or permitted or are necessary to be prescribed for the purposes of this Ordinance may be prescribed for seeds generally or for any particular kind or kinds of seeds, and different prescriptions may be made for different kinds of seeds and for different types and sizes of parcels containing seeds.
