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1979, No. 27

An Act to make better provision for the control of toxic and other harmful substances, and to consolidate and amend the Poisons Act 1960 and its amendments

[19 October 1979]

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 Toxic Substances 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—(1) In this Act, unless the context otherwise requires,—

“Aircraft” has the same meaning as in the Civil Aviation Act 1964:

“Advertisement” means any words whether written, printed, or spoken, and any pictorial representation, design, or device used to explain the use or notify the availability or promote the sale of any substance or preparation; and includes any trade circular, any label, and any advertisement in any trade journal:

“Analyst” means a person appointed to be an analyst under section 9 of this Act:

“Animal” includes a bird, a fish, and a reptile:

“Application” means an application for a licence; and
“applicant” means the natural person or body corporate who or that will be the licensee if the application is granted:

“Carrier” includes every person engaged in carrying goods for hire or reward by any mode of transport, whether by land, water, or air:

“Collector of Customs” has the same meaning as in the Customs Act 1966:

“Commercial user” means a person who—

(a) Regularly uses land—

(i) For the purpose of any agricultural, horticultural, pastoral, or recreational undertaking carried on for profit; or

(ii) For the keeping for profit of animals or bees—

and requires a poison in connection with such use; or

(b) Requires a poison for use in any scientific, educational, or commercial laboratory; or

(c) Requires a poison for use in any process of manufacture or in any trade or business; or

(d) Requires a poison for use in any public reserve, within the meaning of the Reserves Act 1977, or in any public recreational area, that he is responsible for maintaining; or

(e) Requires a poison for use in his work as an approved operator under Part V of the Pesticides Act 1979:

- “Container” includes anything in or by which toxic substances may be cased, covered, enclosed, contained, or packed; and, in the case of goods sold or carried or intended for sale or carriage in more than one container, includes every such container:
- “Dangerous poison” means a substance declared under section 7 of this Act to be a dangerous poison:
- “Deadly poison” means a substance declared under section 7 of this Act to be a deadly poison:
- “Decision” includes requirement:
- “Director” means the person for the time being holding, or acting in, the office of Director of the Division of Public Health in the Department of Health:
- “Harmful substance” means a substance declared under section 7 of this Act to be a harmful substance:
- “Hovercraft” has the same meaning as in the Hovercraft Act 1971:
- “Label”, in relation to a container of a toxic substance, means any written, pictorial, or other descriptive matter marked on or affixed to the container; and “to label”, “labelled”, and “labelling” have corresponding meanings:
- “Licence” means a licence issued under this Act; and “licensee” has a corresponding meaning:
- “Licensee corporation” means a corporation holding a licence under this Act:
- “Medical Officer of Health” means the Medical Officer of Health appointed under the Health Act 1956 for a health district; and includes any Deputy Medical Officer of Health; and also includes any other officer acting under the direction of the Medical Officer of Health for any of the purposes of this Act:
- “Minister” means the Minister of Health:
- “Natural person” means any person, including a corporation sole, but not including a body corporate:
- “Officer” includes—
- (a) A medical practitioner employed in the Department of Health:
 - (b) An Inspector of Health within the meaning of the Health Act 1956:
 - (c) A person appointed to be an officer under section 9 of this Act:
- “Officer of Customs” means a person employed in the service of the Customs:

“Pack” means to enclose in a container for the purpose of storage or sale:

“Pharmacist” means a person for the time being registered as a pharmacist under the Pharmacy Act 1970:

“Poison” means a deadly poison, a dangerous poison, and a standard poison:

“Prepare”, in relation to a toxic substance, means to dilute, or to convert chemically to another substance, preparation, mixture, or compound at any time before the toxic substance is packed for sale:

“Proper authority”, in relation to a New Zealand port, means the Superintendent of Mercantile Marine appointed in respect of that port under the Shipping and Seamen Act 1952, or any person appointed by him to perform any of the functions of the Superintendent under this Act:

“Responsible person”, in relation to a licensee corporation, means an agent or employee of that corporation who is a pharmacist or a person approved by the Medical Officer of Health as a responsible person for the purposes of the licence:

“Sell” includes barter; and also includes offering or attempting to sell or having in possession for sale, or exposing 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:

“Sell by retail” means sell for purposes other than resale; and “sale by retail” has a corresponding meaning:

“Standard poison” means a substance declared under section 7 of this Act to be a standard poison:

“Substance” means any natural or artificial substance, whether in solid or liquid form or in the form of a gas or vapour:

“Toxic substance” includes—

(a) Any poison or harmful substance:

(b) Any acaricide, insecticide, fungicide, larvicide, nematocide, pesticide, or herbicide:

(c) Any tobacco prepared for smoking, chewing, or snuffing:

(d) Any other substance (not being—

- (i) A food within the meaning of the Food and Drug Act 1969; or
- (ii) Except in Part V of this Act, a restricted drug within the meaning of the Restricted Drugs Act 1960, or a radioactive material within the meaning of the Radiation Protection Act 1965, or a controlled drug within the meaning of the Misuse of Drugs Act 1975)—

that, when swallowed, inhaled, or injected into or otherwise absorbed by the human body, is likely, by reason of its toxic properties, to destroy life or to be injurious to health:

(e) Any other substance that, by reason of its chemical or biochemical properties, may directly or indirectly adversely affect the environment:

“Veterinary surgeon” means a person for the time being registered as a veterinary surgeon under the Veterinary Surgeons Act 1956; and includes a person who uses the title or description of a “veterinary practitioner” under the authority of that Act.

(2) Every reference to a poison or harmful substance or other toxic substance in this Act, or in any regulations made under this Act, shall be deemed to include a reference to any substance, preparation, mixture, compound, or article containing, otherwise than in a toxicologically insignificant quantity, the poison, harmful substance, or other toxic substance.

(3) Notwithstanding the definition of the term “toxic substance” in subsection (1) of this section, nothing in this Act shall apply to tobacco, except as provided in Part VIII of this Act.

(4) For the purposes of this Act, goods shall be held to be under the control of the Customs while they are under that control within the meaning of the Customs Act 1966.

Cf. 1960, No. 97, s. 2 (1), (1A); 1967, No. 147, s. 124; 1969, No. 44, s. 2

PART I

APPLICATION AND ADMINISTRATION OF ACT

Application

3. Act to bind Crown—(1) Except as provided in subsection (2) of this section, this Act shall bind the Crown.

(2) This Act shall not apply to the New Zealand Naval Forces, the New Zealand Army, or the Royal New Zealand Air Force, or the members of any of those forces while they are acting in the course of their official duties.

Cf. 1960, No. 97, s. 55

4. Disposal of toxic substances by way of gift, etc.—

(1) The provisions of this Act relating to the sale of any poison or harmful substance or other toxic substance shall, unless the context otherwise requires, apply to the disposal of any poison or harmful substance or other toxic substance by way of gift, loan, prize, reward, 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.

Cf. 1960, No. 97, s. 3

5. Disposal of surplus poisons to other user or licensee—

(1) The provisions of this Act relating to the sale of any poison shall not apply to the disposal of any poisons pursuant to subsection (2) of this section.

(2) Where any commercial user (in this section referred to as the transferor) has in his possession any quantity of the poison that is surplus to his needs, he may dispose of that surplus to any other commercial user or to the holder of a licence authorised under this Act to have that poison (in this section referred to as the transferee).

(3) In any such case, the transferor may surrender the poison to an officer for delivery to the transferee.

6. Principals and agents—(1) For the purposes of this Act, but subject to subsection (2) of this section, every person shall be deemed to sell, pack, prepare, or label any toxic substance 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 by or under this Act to sell, pack, prepare, or label a toxic substance 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 sold, packed, prepared, or labelled that substance.

(3) For the purposes of this Act, while a person who is authorised by or under this Act to sell, pack, prepare, or label a toxic substance has that substance in his custody

or under his control, as the agent or employee of another person who is not so authorised, that other person shall not be held to be in possession of that substance.

(4) For the purposes of this Act, any natural person who sells, packs, prepares, or labels a toxic substance while working under the supervision and control of a responsible person or of another natural person authorised by or under this Act, otherwise than by section 24 of this Act, to sell, pack, prepare, or label that toxic substance, shall be deemed to be the agent or employee of the responsible person or the person so authorised, and in any such case the responsible person or person so authorised shall be deemed to be the principal or employer of the first-mentioned person, without prejudice to the liability of any other person under section 63 of this Act.

Cf. 1960, No. 97, s. 2 (2)–(5)

7. Power to declare substances to be poisons, etc.—

(1) Without limiting section 82 of this Act (except as provided in subsection (11) of this section), 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 Toxic Substances Board, declare any toxic substance to be a deadly poison, a dangerous poison, a standard poison, or a harmful substance.

(2) In determining whether or not it should recommend the making of any such order in respect of any particular substance, the Toxic Substances Board shall have regard to the degree of need that exists, bearing in mind the toxicity and other chemical or biochemical properties of the substance and all other relevant matters, for controls to be imposed, in accordance with this Act, in respect of that substance on the basis that—

- (a) Those substances most in need of such controls shall be declared to be deadly poisons:
- (b) Those substances next (after deadly poisons) in need of such controls shall be declared to be dangerous poisons:
- (c) Those substances next (after dangerous poisons) in need of such controls shall be declared to be standard poisons:
- (d) Those substances next (after standard poisons) in need of such controls shall be declared to be harmful substances.

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

(4) Any such substance or class of substances 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.

(5) Any such order may specify the circumstances in which any substance is or is not to be a deadly poison, or a dangerous poison, or a standard poison, or a harmful substance.

(6) Without limiting subsections (3) and (4) of this section, any order made under this section may declare a substance to be a deadly poison, a dangerous poison, a standard poison, or a harmful substance, notwithstanding that it is, by virtue of a subsisting order, a deadly poison, a dangerous poison, a standard poison, or a harmful substance.

(7) Any such order may substitute a declaration that any substance is a deadly poison, or a dangerous poison, or a standard poison, or a harmful substance, for any previous declaration relating to that substance, or otherwise amend any such declaration.

(8) Notwithstanding anything in the foregoing provisions of this section, any regulations made under this Act may empower the Minister, on the recommendation of the Toxic Substances Board, to declare, by notice in the *Gazette*, any substance to be, or not to be, a deadly poison, a dangerous poison, a standard poison, or a harmful substance, and, in like manner, to revoke any such notice.

(9) Subject to subsection (8) of this section every such notice, unless sooner revoked by the Minister, on the recommendation of the Toxic Substances Board, shall remain in force for a period of 6 months and shall then cease to have effect.

(10) The provisions of subsections (3) to (7) of this section shall apply to every such notice as if it were an order made for the purposes of this section.

(11) Every order made or notice given for the purposes of this section shall come into force in respect of every poison and harmful substance to which it relates on the date speci-

fied 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*.

Cf. 1960, No. 97, s. 4

Administration

8. Advisory and technical committees—(1) The Minister may from time to time appoint such advisory or technical committees as he thinks fit to advise him for any of the purposes of this Act, and may from time to time determine the functions of any such committee.

(2) There may be paid out of money appropriated by Parliament for the purpose to the members of any committee appointed under this section 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 the committee were a statutory Board within the meaning of that Act.

(3) Subject to the provisions of this Act and of any regulations made under this Act, every such committee may regulate its own procedure.

9. Appointment of analysts and officers—(1) There may from time to time be appointed under the State Services Act 1962 such analysts and officers as are required for the purposes of this Act.

(2) The Minister may from time to time appoint any person, not being a member of the Public Service, as an analyst or officer for the purposes of this Act.

(3) Any appointment under subsection (2) of this section may be made either generally for the purposes of this Act or for any specified purpose, or for the exercise of any specified power or function of an analyst or officer under this Act, or for any specified period; and may be made in respect of New Zealand generally or in respect of any specified district or districts.

(4) There may be paid out of money appropriated by Parliament for the purpose to any person appointed under subsection (2) of this section such remuneration as may be fixed by the Minister with the concurrence of the Minister of Finance.

(5) No person appointed under subsection (2) of this section shall be deemed by reason of that appointment to be employed in the service of Her Majesty for the purposes of the State Services Act 1962 or the Government Superannuation Fund Act 1956.

Cf. 1960, No. 97, s. 7; 1969, No. 7, s. 19

10. Exercise of powers of Director and other officers—The Director, every Medical Officer of Health, and every other officer of the Department of Health, shall exercise the powers and functions conferred on him by this Act subject to the direction and control of the Director-General of Health and of every other officer of the Department of Health to whom he is subordinate.

PART II

THE TOXIC SUBSTANCES BOARD

11. Constitution of Board—(1) For the purposes of this Act there shall be a Board, to be called the Toxic Substances Board.

(2) The Board shall consist of—

(a) One person to be nominated by the Minister of Health as Chairman:

(b) One person to be nominated by the Minister of Science:

(c) One person to be nominated by the Minister of Labour:

(d) One person to be nominated by the Minister of Trade and Industry:

(e) One person to be nominated by the Minister of Transport:

(f) One person to be nominated by the Minister for the Environment:

(g) One person to be nominated by the New Zealand Medical Association:

(h) One person to be nominated by the Consumer Council:

(i) One person to be nominated by the Manufacturers' Federation of New Zealand:

(j) One person to be nominated by the New Zealand Federation of Labour:

(k) One person to be nominated by the New Zealand Fire Service Commission.

(3) The members of the Board shall be appointed by the Governor-General on the recommendation of the Minister.

Cf. 1960, No. 97, s. 5

12. Function of Board—(1) The function of the Board shall be to advise the Minister or the Director-General of Health on all such matters as the Minister or Director-General may from time to time refer to the Board (including any matter suggested to the Minister or Director-General by the Board itself) relating to—

- (a) The manufacture, importation, exportation, sale, supply, storage, use, disposal, carriage, packaging, labelling, advertising, destruction, or accidental spillage of any particular toxic substance or class of toxic substances or toxic substances generally;
- (b) The protection of human health from any harmful effects of any particular toxic substance or class of toxic substances or toxic substances generally;
- (c) The protection of the environment from any such harmful effects.

(2) In addition to the matters referred to in subsection (1) of this section, the Board may from time to time, at the request or with the consent of the Minister or the Director-General of Health,—

- (a) Promote research or investigative work into any toxic substance;
- (b) Publish reports, information, advice, or warnings in relation to any toxic substance.

(3) Notwithstanding anything in subsection (1) of this section, the Board shall not be competent to advise the Minister or the Director-General on any matter that is within the jurisdiction of the Animal Remedies Board constituted under the Animal Remedies Act 1967 or the Pesticides Board constituted under the Pesticides Act 1979.

(4) Every member of the Board shall treat as confidential—

- (a) All information supplied to the Board, or to him as a member of the Board, for the purpose of enabling the Board to perform any of its functions under subsection (1) or subsection (2) of this section; and
 - (b) All advice tendered to the Minister or the Director-General of Health on any matter referred to the Board under either of those subsections,—
- and shall not disclose the information or advice to any other person, except another member of the Board.

(5) Every person commits an offence against this Act who discloses any information or advice in contravention of subsection (4) of this section.

13. Terms of office of members—(1) Subject to the succeeding provisions of this section, every member of the Board shall hold office for a term of 3 years, but may from time to time be reappointed.

(2) 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.

(3) 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.

(4) Unless he sooner vacates his office under subsection (2) of this section, a member shall continue in office until his successor comes into office.

(5) The powers of the Board shall not be affected by any vacancy in its membership.

14. Deputies of members—(1) In any case where the Minister is satisfied that any member of the Board 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 nominating the incapacitated member.

(3) 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 shall have all the powers of the Chairman.

(4) 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.

15. 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 6 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.

16. 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 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.

17. Board may appoint committees—(1) The Board may from time to time appoint such 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.

(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.

(5) The provisions of subsections (4) and (5) of section 12 of this Act shall apply, with the necessary modifications, to every member of a committee appointed under this section, whether or not he is a member of the Board.

18. 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

SALE, PACKING, AND CUSTODY OF POISONS

19. Restrictions on sales of deadly poisons and dangerous poisons—(1) No person shall sell any deadly poison or any dangerous poison except to a person who is—

- (a) Authorised by or under this Act to sell that poison; or
- (b) The employer of a person who is authorised by or under this Act to sell that poison and who takes delivery of the poison; or
- (c) A commercial user; or
- (d) A person who requires the poison for administration to an animal, where the poison is sold by a veterinary surgeon or pursuant to a prescription of a veterinary surgeon; or
- (e) An officer or employee of the Crown acting in the course of his official duties; or
- (f) A person employed in any scientific, educational, or commercial laboratory who requires the poison for the purposes of teaching, research, or investigation:

(g) A person who is authorised by any regulations made under this Act to use or otherwise to be in possession of that poison.

(2) It is a defence to a charge brought under subsection (1) of this section if the defendant proves that he took all reasonable steps to ascertain whether the person to whom he sold the poison was a person to whom the poison could lawfully be sold and that he believed on reasonable grounds that the poison could lawfully be sold to that person.

(3) Every person who commits an offence against subsection (1) of this section is liable to imprisonment for a term not exceeding 6 months or a fine not exceeding \$5,000.

Cf. 1960, No. 97, s. 12 (2) (c); S.R. 1960/131; S.R. 1964/64, reg. 10

20. Sale and packing of poisons—(1) Except as provided in section 5 and sections 21 to 24 of this Act, or as may be permitted by or under any regulations made under this Act, no person shall—

- (a) Sell any deadly poison or any dangerous poison, unless he is for the time being licensed to sell that poison; or
- (b) Pack, prepare, or label any poison for the purpose of sale, unless he is for the time being licensed to pack that poison.

(2) No licensee shall sell any deadly poison or any dangerous poison, or pack, prepare, or label any poison for the purpose of sale, other than a poison specified or described in his licence, or otherwise than in accordance with the terms and conditions of or attaching to the licence.

(3) Except as may be permitted in any licence, or by or under any regulations made under this Act, no licensee shall sell any deadly poison or any dangerous poison, or pack, prepare, or label any poison for the purpose of sale, elsewhere than in the premises specified or described in the licence.

(4) Every person who contravenes any of the provisions of this section commits an offence and is liable to imprisonment for a term not exceeding 6 months or a fine not exceeding \$5,000.

Cf. 1960, No. 97, ss. 8, 12 (1), (2) (a), (b), 13 (1), (5), 14

21. Exemptions for pharmacists—(1) Subject to subsection (2) of this section, and to sections 19, 25, and 33 of this Act, a pharmacist may sell any deadly poison or any dangerous poison, or pack, prepare, or label any poison.

(2) The authority conferred by subsection (1) of this section shall extend only to the sale of deadly poisons and dangerous poisons, and the packing, preparing, and labelling of poisons, in premises registered as a pharmacy under the Pharmacy Act 1970.

Cf. 1960, No. 97, ss. 13 (1) (a), (2), 14 (1) (a)

22. Exemptions for veterinary surgeons—Subject to sections 25 and 33 of this Act, a veterinary surgeon may sell any deadly poison or any dangerous poison, in the course of the practice of his profession, for the treatment of an animal under his care, and may pack, prepare, and label any poison for that purpose.

Cf. 1960, No. 97, ss. 13 (1) (d), (4), 14 (1) (d)

23. Exemptions for officers—Subject to sections 19, 25, and 33 of this Act, any officer acting in the course of his official duties may sell any deadly poison or any dangerous poison.

Cf. 1960, No. 97, ss. 12 (1) (b), 13 (1) (e)

24. Exemptions for agents and employees—(1) Subject to sections 19, 25, and 33 of this Act, an agent or employee of a licensee or pharmacist may sell any deadly poison or any dangerous poison if—

(a) The sale could lawfully be made by the licensee or pharmacist; and

(b) In the case of a sale by retail,—

(i) Except as may be permitted by or under any regulations made under this Act, the poison is sold under the direct personal supervision of the licensee or pharmacist, or, if the licensee is a body corporate, by or under the direct supervision of a responsible person; and

(ii) The poison is one that that agent or employee (not being a responsible person) is authorised by regulations made under this Act to sell.

(2) An agent or employee of a licensee or pharmacist may pack, prepare, or label any poison if—

- (a) The licensee or pharmacist could lawfully pack, prepare, or label the poison; and
- (b) The poison is packed, prepared, and labelled under the direct personal supervision of the licensee or pharmacist, or, if the licensee is a body corporate, by or under the direct supervision of a responsible person.

(3) Nothing in subsection (1) or subsection (2) of this section shall authorise any person to sell a deadly poison or a dangerous poison, or to pack, prepare, or label a poison, at any place, if his principal or employer is not authorised by or under this Act to sell, or to pack, prepare, or label (as the case may require) that poison at that place, or otherwise than in accordance with every condition imposed by or under this Act to which his principal or employer is subject.

(4) Nothing in this section shall limit or affect any of the provisions of sections 21 to 23 of this Act.

Cf. 1960, No. 97 ss. 13 (1) (a), (f), (6), 14 (1) (a);
1962, No. 93, s. 2

25. Further restrictions on sale of poisons—(1) Except as may be permitted by or under any regulations made under this Act, no person shall sell any poison or harmful substance by means of an automatic vending machine.

(2) Except pursuant to, and in accordance with any conditions or restrictions contained in, a licence under this Act, or as otherwise permitted by or under any regulations made under this Act, no person shall sell or hawk any poison—

(a) From house to house; or

(b) In any public place within the meaning of section 2 or section 40 of the Police Offences Act 1927; or

(c) In any premises other than his regular business premises.

(3) Except as may be permitted by regulations made under this Act, no person shall sell any poison or harmful substance to any other person otherwise than pursuant to an order given or a request made by that other person.

(4) Nothing in this section shall prevent—

(a) A licensee or a pharmacist from selling any poison or harmful substance to a customer in the ordinary course of business in accordance with the customer's needs as expressed by him; or

(b) A veterinary surgeon from selling any poison or harmful substance in the practice of his profession and for the treatment of an animal under his care.

(5) Every person commits an offence against this Act who contravenes any of the provisions of this section.

Cf. 1960, No. 97, ss. 9, 10 (1), (2) (b), 11 (1), (2), (b), (c)

26. Containers—(1) Except as may be permitted by or under any regulations made under this Act, no person shall, in the course of any business, pack, store, sell, or cause to be transported any poison or harmful substance unless it is in a container that—

- (a) Is impervious to the poison or harmful substance; and
- (b) Is so constructed that it can be readily and effectively resealed after any portion of the contents has been used; and
- (c) Is of the prescribed design or type; and
- (d) Is labelled in the prescribed manner.

(2) Notwithstanding anything in paragraph (b) of subsection (1) of this section, where the container bears a label with directions to the effect that the whole of the contents must be used immediately on opening, and the quantity and nature of the contents are such that it is unlikely that less than the whole of the contents will be used on any one occasion, the container need not comply with the requirements of that paragraph.

(3) For the purposes of paragraph (b) of subsection (1) of this section, a container can be readily and effectively resealed if, but only if, it is provided with a cap, lid, stopper, or other means of closure that, without the use of any other material, except a wad, liner, or washer provided with the container, will close the container so as to prevent any leakage of its contents.

(4) In any case where a requirement in respect of the packing or labelling of any toxic substance that is neither a poison nor a harmful substance is prescribed by a regulation made under this Act, no person shall, in the course of any business, pack, store, sell, or cause to be transported that toxic substance unless it is in a container of the prescribed design or type, and is labelled in the prescribed manner.

(5) Every person who contravenes subsection (1) or subsection (4) of this section commits an offence and is liable to a fine not exceeding \$2,000.

(6) Without limiting subsection (5) of this section, but subject to section 5 of the Accident Compensation Act 1972,

where damage is caused by any contravention of this section, the person committing that contravention shall be liable for the damage, except where the damage—

- (a) Is due wholly to the fault of the person who suffers it;
- or
- (b) Is suffered by a person who voluntarily accepts the risk thereof.

(7) For the purposes of this section, a carrier does not store goods that he has in his possession only for carriage in the course of his business as a carrier, or cause to be transported goods that he transports, or delivers to another carrier for transport, in the course of such business.

Cf. 1960, No. 97, s. 22; 1969, No. 44, s. 5

27. Records of sales—(1) Except as may be permitted by or under any regulations made under this Act, every person who sells any deadly poison or dangerous poison shall keep, in some place of security at his place of business, such records as may be prescribed; and shall keep every such record for a period of not less than 3 years from the date of the making of the record, or, in the case of a book containing more than one such record, from the date of the last entry in that book.

(2) Every person who sells any deadly poison or dangerous poison shall at all times permit any officer, or any member of the Police, to inspect and make copies of any such record, and shall at all times, on demand, afford to any officer or to any member of the Police all further information in his possession with respect to any dealings by him relating to any such poisons.

(3) Every person commits an offence against this Act who contravenes or fails to comply in any respect with any of the provisions of this section, or who obstructs or hinders any such inspection.

Cf. 1960, No. 97, s. 23

28. Custody of poisons and harmful substances—(1) Every person commits an offence against this Act who has any poison or harmful substance in his possession or charge (whether for the purposes of sale or otherwise) otherwise than in a container conforming to the relevant requirements of this Act and of any regulations made under this Act.

(2) It is a defence to a charge brought under this section if the defendant proves that at the time of the alleged offence—

- (a) The poison or harmful substance was in the container in which he acquired it, and the container bore the label borne on it when he acquired it; or
- (b) The poison or harmful substance had been necessarily removed from its container for the effective and lawful use of that poison or harmful substance.

Cf. 1960, No. 97, s. 24

29. Storage of poisons and harmful substances—(1) No person in possession or charge of any poison or harmful substance shall keep it—

- (a) On or above any shelf on which any food, drink, or medicine is stored or displayed; or
- (b) In any cupboard, box, or other place in which articles of food, drink, or medicine are stored or kept ready for use.

(2) No person in possession or charge of any standard poison or harmful substance shall keep it in any place to which children have ready access, except where it is displayed for retail sale and—

- (a) It is in containers of a capacity not less than 5 litres or weighing (together with the contents) not less than 5 kilograms; or
- (b) It is kept not less than 1.5 metres above the floor.

(3) Subject to subsection (4) of this section, no person in possession or charge of any deadly poison or dangerous poison shall keep that poison elsewhere than in a locked room, locked compartment, locked cupboard, locked cage, or securely fenced and locked outdoor compound.

(4) In respect of containers of any deadly poison or dangerous poison of a capacity not less than 5 litres or weighing (together with the contents) not less than 5 kilograms and displayed for retail sale, it shall be sufficient compliance with subsection (3) of this section if the containers are kept out of the reach of unauthorised persons.

(5) For the purposes of subsection (4) of this section, every person is an unauthorised person in relation to any deadly poison or dangerous poison unless he is—

- (a) Under the direct supervision of the licensee or his agent; or
- (b) The purchaser of the poison from the licensee or his agent under a completed purchase; or
- (c) An officer acting in the course of his official duties.

(6) Except as may be permitted by or under any regulations made under this Act, no person in possession of a deadly poison that is kept for the time being within any building, ship, aircraft, hovercraft, or vehicle, shall leave that building, ship, aircraft, hovercraft, or vehicle unattended, unless he has taken all reasonable steps to ensure that that building, ship, aircraft, hovercraft, or vehicle, or the part of it in which the deadly poison is kept, is secured against unlawful entry.

(7) Every person commits an offence against this Act who contravenes any of the provisions of this section.

Cf. 1960, No. 97, s. 25; 1969, No. 44, s. 6

30. Packing of poisons and harmful substances—(1) No person shall pack any poison or harmful substance, or prepare it for use, in any dwellinghouse, or in any room, or on any table or bench, that is used for the purpose of packing, preparing, or consuming any food or drink.

(2) Every person commits an offence against this Act who contravenes the provisions of this section.

31. Restriction on possession and use of deadly poisons and dangerous poisons—(1) No person shall, without reasonable excuse, procure, receive, store, use, or otherwise have in his possession any deadly poison or dangerous poison.

(2) Without limiting the meaning of the expression "reasonable excuse", a person has a reasonable excuse for the purposes of subsection (1) of this section if the possession or act that might otherwise constitute a contravention of that subsection is that of—

- (a) A person licensed or otherwise authorised under this Act or any regulations made under this Act to sell the poison or to use or otherwise to be in possession of it, and is necessary for the business, calling or purpose for which the person is so licensed or otherwise authorised; or
- (b) Any other person to whom the poison may lawfully be sold, and, in any case where the poison is sold to that person pursuant to any of paragraphs (c) to (e) of subsection (1) of section 19 of this Act, is necessary for the purpose warranting the sale of that poison to him; or
- (c) A carrier or an employee of a carrier, and is necessary for the business of that carrier; or

(d) A person in the service of the Crown, and is necessary for the performance of that person's official duties.

(3) In any proceedings under this section in which it is proved that the defendant procured, received, stored, used, or otherwise had in his possession any deadly poison or dangerous poison, the onus of proving that he had a reasonable excuse (whether by reason of the fact that one or more of the provisions of paragraphs (a) to (d) of subsection (2) of this section apply to the case or otherwise) shall lie on the defendant.

(4) For the purpose of any such proceeding, the fact that the defendant did not know that the substance that is the subject of the prosecution was a deadly poison or a dangerous poison, as the case may require, shall not by itself be a reasonable excuse.

(5) Every person who contravenes subsection (1) of this section commits an offence and is liable to a fine not exceeding \$2,000.

Cf. 1960, No. 97, s. 26; 1969, No. 44, s. 7

32. Information to be furnished concerning substances—

(1) Except as may be permitted by or under any regulations made under this Act, every person who intends to import or manufacture or prepare or pack any toxic substance that he has not previously imported into or manufactured or prepared or packed in New Zealand, otherwise than pursuant to subsection (7) of this section, or to import or manufacture or prepare or pack any toxic substance bearing a common name, chemical name, or trade name under which he has not previously distributed the toxic substance in New Zealand, shall, before so importing or manufacturing or preparing or packing the toxic substance, notify the Director of his intention.

(2) In addition to any such notification, that person shall furnish to the Director the following particulars, namely:

- (a) Details of the composition of the substance:
- (b) The purpose for which the substance is intended to be used:
- (c) The method of use:
- (d) Such other particulars as the Director may require.

(3) It shall not be necessary to comply with subsection (1) or subsection (2) of this section in respect of any toxic substance while—

- (a) It is registered as a pesticide under the Pesticides Act 1979 or its use is authorised by an experimental use permit under that Act; or
- (b) A licence or provisional licence to import or manufacture the substance is held under the Animal Remedies Act 1967; or
- (c) An application for such registration or for such a permit or licence is pending under the relevant Act.

(4) Without limiting any of the foregoing provisions of this section, the Director may from time to time require any importer, proprietor, manufacturer, seller, preparer, or packer of toxic substances to furnish any of the particulars specified in subsection (2) of this section in respect of all or any of the toxic substances imported, owned, manufactured, sold, prepared, or packed by him.

(5) Without limiting any of the foregoing provisions of this section, the Director may from time to time require any importer, proprietor, manufacturer, seller, preparer, or packer of any toxic substance, or of anything that the Director suspects to be a toxic substance, to furnish, in respect of that substance or thing, any of the particulars specified in subsection (2) of this section, together with such information as the importer, proprietor, manufacturer, seller, preparer, or packer has in his possession as to the date of any sale of that substance or thing within the preceding 3 years, the quantity so sold, and the names and addresses of the persons to whom it has been sold.

(6) All information given pursuant to this section shall, if the person giving it so requests, be treated by the Director as confidential, and shall not be disclosed by him or by any other person except for the purposes of the administration of this Act or for the purposes of any investigation or proceedings in respect of any alleged offence, or any other purposes approved by the Minister.

(7) All information required under this section shall be supplied to the Director in English.

(8) Nothing in subsection (1) or subsection (2) of this section shall apply in respect of any toxic substance, imported, manufactured, or prepared, or packed only for the purposes of teaching, research, or investigation in any laboratory in New Zealand.

(9) Every person commits an offence against this Act who fails to comply with subsection (1) or subsection (2), or with any requirement under subsection (4) or subsection (5), of this section.

Cf. 1960, No. 97, s. 27; 1967, No. 108, s. 3; 1969, No. 44, s. 8; S.R. 1964/64, reg. 9 (3)

33. Powers of Minister to prohibit import, etc., of toxic substances—(1) The Minister may from time to time, by notice in the *Gazette*, given on the recommendation of the Board, prohibit the importation, manufacture, sale, possession, or use of any toxic substance, or any article containing or impregnated with any toxic substance, specified by reference to its common name, chemical name or trade name, either absolutely or subject to such conditions as he thinks fit, for any specified period not exceeding 1 year.

(2) Notwithstanding anything in subsection (1) of this section, the powers conferred on the Minister by that subsection shall not be exercisable by him in respect of any substance that is an animal remedy or a pesticide except on the recommendation of both the Toxic Substances Board and either the Animal Remedies Board constituted under the Animal Remedies Act 1967 or, as the case may require, the Pesticides Board constituted under the Pesticides Act 1979.

(3) The power conferred on the Minister by subsection (1) of this section shall not be exercised more than once in respect of any particular substance.

(4) Every person commits an offence against this Act who contravenes any notice given under subsection (1) of this section.

Cf. 1960, No. 97, s. 28; 1967, No. 108, s. 3; 1969, No. 44, s. 9

34. Control of advertisements—Every person commits an offence against this Act who, being the seller of any toxic substance, or being the agent or employee of the seller, publishes or causes or permits to be published any advertisement relating, or calculated or likely to cause any other person to believe that it relates, to that toxic substance, if the advertisement—

(a) Fails to make any statement required by regulations made under this Act to be made in any advertisement in respect of that substance; or

- (b) Makes any statement prohibited by any such regulations; or
- (c) Directly or by implication qualifies, or is contrary to, any statement or other particulars required by any such regulations to be included in any advertisement, or to be included in any label borne on the substance; or
- (d) Directly or by implication states or suggests that the substance is not poisonous or is harmless; or
- (e) Is of a size that contravenes or does not comply with the requirements of any such regulations; or
- (f) Includes any lettering that is of a size that contravenes or does not comply with the requirements of any such regulations; or
- (g) Is published in a medium that is prohibited in respect of such advertisements by any such regulations.

Cf. 1960, No. 97, s. 29

PART IV

PROVISIONS RELATING TO LICENCES

35. Applications for licences—(1) Every application for a licence shall be made in the prescribed form to the Medical Officer of Health for the health district in which the premises that the applicant proposes to use are situated.

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

(3) Subject to subsections (4) to (6) of this section, an application may be made either by a natural person on his own behalf or by an appropriate officer of a body corporate on behalf of the body corporate.

(4) No application shall be made on his own behalf by a person who is under 20 years of age.

(5) No application shall be made by 2 or more persons jointly.

(6) No application shall be made by an unincorporated body of persons, except that, where an unincorporated body of persons is representative of a body corporate, an application may be made by such unincorporated body, or an officer of such unincorporated body, on behalf of the body corporate.

(7) Every application made by a person who is not a licensee at the date of the application, and is not a body corporate, shall also be accompanied by a certificate

signed within the period of 1 month immediately preceding the date of the application by a Justice, or by some other person approved by the Medical Officer of Health, that the applicant is well known to the person giving the certificate and is of good character, and is considered by him to be a fit and proper person to be licensed to sell deadly poisons or dangerous poisons, or to pack poisons, as the case may require.

(8) Every application made on behalf of a body corporate shall set out the name and relevant qualifications (if any) of every person who is proposed to be a responsible person for the purposes of the licence, and shall, if the applicant is not a licensee at the date of the application, or, if no certificate required by this subsection has previously been provided in respect of any person so named, be supported in respect of every person so named by a certificate in the form required by subsection (7) of this section with such modifications as may be necessary.

Cf. 1960, No. 97, s. 15; 1970, No. 137, s. 6; S.R. 1961/39, reg. 9

36. Grant of licences—(1) On receiving an application, the Medical Officer of Health shall issue a licence to the applicant if he is satisfied in respect of all the following matters:

- (a) That the requirements of section 35 of this Act have been complied with:
- (b) That, in the case of an application made by a natural person on his own behalf, the applicant is a fit and proper person to hold the licence applied for, or, in the case of an application made on behalf of a body corporate, the applicant (body corporate) is of good repute:
- (c) That the applicant is not subject to any disqualification under section 64 of this Act:
- (d) That, in the case of an application made by a natural person on his own behalf, the applicant, or, in the case of an application made on behalf of a body corporate, every person proposed to be a responsible person for the purposes of the licence applied for, has a sufficient knowledge of the obligations of a licensee and of the hazards associated with the poisons in which it is proposed to deal:

(e) That the premises and equipment that the applicant proposes to use are suitable and adequate for the purposes for which the licence is sought.

(2) The Medical Officer of Health shall not decline an application for a licence under subsection (1) of this section without first giving the applicant a reasonable opportunity to be heard, except on the ground that the applicant lacks any qualification for the licence required by regulations made under this Act.

(3) A licence shall be in the prescribed form and shall be subject to such conditions (if any), as may be imposed, on the issue of the licence or at any time thereafter, by or pursuant to regulations made under this Act.

(4) A licence to sell a poison may be combined with a licence to pack that poison or any standard poison.

(5) If in any case the Medical Officer of Health is satisfied that the holder of a licence has failed or is failing to comply with any conditions attaching to the licence, he may—

(a) Suspend the licence for such reasonable period as may be required to enable the Medical Officer of Health to consider the case; or

(b) After giving the licensee a reasonable opportunity to be heard and considering any evidence adduced or submission made by the licensee, cancel the licence.

(6) If the Medical Officer of Health refuses to issue a licence, or attaches conditions to the licence, or cancels a licence, and the applicant for the licence or the licensee requests him to give his reasons for such refusal, or for the attachment of such conditions, or for the cancellation of the licence, the Medical Officer of Health shall state his reasons in writing to that person accordingly.

Cf. 1960, No. 97, s. 16

37. Effect of licences—(1) Subject to sections 19, 24, 25, and 33 of this Act,—

(a) A licence to sell a poison shall authorise the licensee to sell that poison, whether by wholesale or retail, either in person or by his agent or employee, in accordance with the terms and conditions of the licence, except that a licence may be limited to sale by wholesale only or to sale by retail only:

(b) A licence to pack a poison shall authorise the licensee to pack, prepare, and label that poison, either in person or by his agent or employee, in accordance with the terms and conditions of the licence.

(2) If a licence confers or contains an authority to sell or hawk poisons elsewhere than in premises specified or described in the licence, the licence shall authorise the licensee to sell poisons at the place or places, or within the area or areas, specified or described in the licence, or, if no place or area is so specified or described, anywhere in New Zealand, in accordance with the terms and conditions of the licence.

Cf. 1960, No. 97. s. 17

38. Duration of licences—(1) Subject to subsections (2) and (3) of this section, every licence shall, unless sooner cancelled under section 36 (5) or section 64 of this Act, continue in force for the period of 1 year, and shall then expire.

(2) Any licence issued within the period of 2 months preceding the date of expiration of an existing licence that it is intended to supersede shall continue in force for a period of 1 year beginning on that date.

(3) If a licensee applies for a new licence not more than 3 months and not less than 1 month before the date of expiration of an existing licence that the new licence is intended to supersede, and the application is not disposed of before that date, the existing licence shall continue in force until the application is disposed of.

Cf. 1960, No. 97, s. 18

39. Display of licences—(1) Every licensee shall cause his current licence to be permanently exhibited in some conspicuous place where it can be readily seen by all persons having access to the premises to which the licence relates.

(2) Every licensee who is authorised by his licence to sell poisons elsewhere than in his regular business premises shall produce his licence for inspection whenever required by an officer to do so, or, if he is unable to do so, shall produce it at the office of the Medical Officer of Health for the health district in which the licence was issued within 24 hours thereafter.

(3) Every person commits an offence against this Act who contravenes subsection (1), or fails to produce his licence as required by subsection (2), of this section.

Cf. 1960, No. 97, s. 19

40. Registers—(1) Every Medical Officer of Health shall keep at his office a register of the licences issued by him under this Act, and such other registers and records as may be prescribed.

(2) The contents of any such register may be evidenced in any proceedings by a certificate purporting to be signed by the Medical Officer of Health by whom it is kept.

(3) Every such certificate shall, without proof of the signature of the Medical Officer of Health, be sufficient evidence, until the contrary is proved, of the matters stated in the certificate.

(4) A certificate purporting to be signed by a Medical Officer of Health that on a date specified in the certificate the name of any person did not appear as a licensee in the register of licences kept by that Medical Officer of Health, or did not appear in relation to a licence to sell deadly poisons or to sell dangerous poisons or a licence to pack poisons, as the case may require, or that on the specified date any particulars stated in the certificate did not appear in that register, shall, without proof of the signature of the Medical Officer of Health, be sufficient evidence, until the contrary is proved, of the facts stated in the certificate.

(5) Any person may have access to any register of licences for the purposes of inspection 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.

Cf. 1960, No. 97, s. 20

PART V

IMPORTATION AND CARRIAGE OF TOXIC SUBSTANCES

41. Interpretation—In this Part of this Act, unless the context otherwise requires,—

“Toxic substance” includes any restricted drug within the meaning of the Restricted Drugs Act 1960, and any radioactive material within the meaning of the Radiation Protection Act 1965, and any controlled drug within the meaning of the Misuse of Drugs Act 1975:

“Warehouse owner” includes every person owning, managing, or controlling any warehouse, store, wharf, maritime container area, quay, aerodrome, or other place or premises in or on which goods are deposited.

Cf. 1960, No. 97, s. 34

42. Packing of imported toxic substances—(1) Every toxic substance imported into New Zealand shall be strongly and securely packed in the manner prescribed by or under regulations made under this Act.

(2) The obligation to comply with the requirements of this section shall lie on the person importing the toxic substance or causing it to be imported.

(3) Every person referred to in subsection (2) of this section who fails to comply with the requirements of this section commits an offence against this Act.

Cf. 1960, No. 97, s. 35

43. Notice to be given of imported toxic substances—

(1) Where any toxic substance to which this section applies is to be brought into New Zealand by sea, the owner or master of the vessel shall, at least 48 hours before the goods are due to be landed or (if this is not practicable) as soon as practicable thereafter, give written notice to the proper authority at the New Zealand port in which the toxic substance is to be landed of—

(a) The identity of every such substance:

(b) The quantity of each such substance being imported:

(c) The vessel on which the substance is to be carried to New Zealand:

(d) The seaport at which the vessel is to arrive:

(e) The estimated time and date of arrival of the vessel.

(2) Every proper authority at a New Zealand port who receives a notice under subsection (1) of this section shall, as soon as practicable thereafter, inform the Medical Officer of Health of the contents of the notice.

(3) The requirements of subsection (1) of this section are in addition to those of section 32 of this Act.

(4) Every person referred to in subsection (1) of this section who fails to comply with that subsection commits an offence against this Act.

(5) This section applies only to toxic substances for the time being specified—

(a) For the purpose in any regulations made under this Act; or

(b) In any published code or other published document designated for the purpose in any such regulations.

44. Special provisions in cases of leakage—(1) When any vessel or aircraft arrives in New Zealand having on board

any container of any toxic substance that is found or suspected to have leaked or to be leaking, the following provisions shall apply:

- (a) The master of the vessel or the pilot in command or other person in charge of the unloading of the aircraft shall notify the Medical Officer of Health and, in the case of a vessel, the proper authority at the port as soon as practicable of the particulars of the case, and in no such case shall the master or the pilot or other person allow any such container to be unloaded without the permission of the Medical Officer of Health:
 - (b) Subject to section 49 of this Act, if an officer, acting pursuant to any of paragraphs (c) to (e) of subsection (6) of section 47 of this Act, marks, seals, or otherwise secures, any toxic substance, or any foodstuff, stock food, or other article suspected to have become mixed with or contaminated or injuriously affected by any such toxic substance, that is on board the vessel or aircraft, the toxic substance, foodstuff, stock food, or article shall not be landed without the permission of the Medical Officer of Health, who may—
 - (i) Refuse such permission; or
 - (ii) Permit the toxic substance, foodstuff, stock food, or article to be landed only for the purpose of being reshipped; or
 - (iii) Deal with the toxic substance, foodstuff, stock food, or article in accordance with subsection (7) of the said section 47; or
 - (iv) Permit the toxic substance, foodstuff, stock food, or article to be landed, either unconditionally or subject to such conditions as he may impose:
 - (c) For the purposes of this section every officer of Customs shall have and may exercise all such powers and authorities as he might exercise under the provisions of the Customs Act 1966 in respect of goods imported into New Zealand.
- (2) Section 47 (9) of this Act shall not apply in respect of the destruction or other disposal of any goods that are dealt with pursuant to subsection (1) (b) (iii) of this section.
- (3) Every person commits an offence against this Act who contravenes or causes or permits the contravention of any of the provisions of subsection (1) of this section or any con-

dition that he knows has been imposed by the Medical Officer of Health pursuant to subparagraph (ii) or subparagraph (iv) of paragraph (b) of that subsection.

Cf. 1960, No. 97, s. 36

45. Valuation of goods not allowed to be landed—(1) The Minister may direct such steps as he thinks fit to be taken for the valuation of any goods that, under section 44 of this Act, are not allowed to be landed or are allowed to be landed only for the purpose of being reshipped, destroyed, or otherwise disposed of; and the value so ascertained, together with all costs and expenses of the valuation, including the cost of the assistance of any skilled person, shall be recoverable as a debt jointly and severally due to the Crown by the master and owners of the vessel or the owners of the aircraft.

(2) The value of such goods, if and when ascertained and recovered in accordance with subsection (1) of this section, shall be paid to the owner of the goods or other person lawfully entitled to the goods out of money appropriated by Parliament for the purpose.

Cf. 1960, No. 97, s. 37

46. Sending, carrying, or importing toxic substance under false description—Every person commits an offence and is liable to imprisonment for a term not exceeding 6 months or a fine not exceeding \$2,000 who—

- (a) Sends or attempts to send by, or carries or attempts to carry in, any vessel, aircraft, hovercraft, or vehicle, or sends or delivers to any warehouse owner or any carrier, or imports, any toxic substance under a description that he knows to be false; or
- (b) Describes the sender or carrier or consignee of any such substance in terms that he knows to be false.

Cf. 1960, No. 97, s. 38

PART VI

ENFORCEMENT

47. Power of entry, inspection, and segregation—(1) In this section, and in section 48 of this Act, the term “officer” includes any member of the Police; and, in respect of any toxic substance imported, or suspected to have been imported,

into New Zealand in contravention of any of the provisions of the Customs Act 1966 or any other Act (including this Act), also includes an officer of Customs.

(2) Subject, in the case of a dwellinghouse, to the provisions of subsection (11) of this section, any officer may at all reasonable times enter into and inspect any premises, land, vessel, aircraft, hovercraft, vehicle, or place where he has reasonable ground for believing that there is any substance that is a toxic substance.

(3) Where any officer enters any premises, land, vessel, aircraft, hovercraft, vehicle, or place pursuant to subsection (2) of this section, he may therein photograph any article or thing that he believes on reasonable grounds to be, or to contain, or to be impregnated with, any toxic substance, or to be evidence of any offence against this Act or any regulations made under this Act.

(4) Notwithstanding anything in subsection (2) of this section, but subject to Part IV of the Health Act 1956, no officer shall, except in an emergency and at the request of an officer of Customs, enter into or inspect any vessel or aircraft on its arrival in New Zealand from overseas until the inward report (as required by section 45 of the Customs Act 1966) has been received by an officer of Customs.

(5) Any officer may inspect any container if he has reasonable ground for believing that it contains a toxic substance, and for that purpose, if any such container is contained in any other case or covering of any kind, he may open the case or covering or require it to be opened.

(6) Any officer may mark, seal, or otherwise secure, or impound—

- (a) Any substance that he reasonably believes to be a deadly poison or a dangerous poison kept for sale, or a poison kept for packing for the purposes of sale, on any premises in respect of which no licence for the sale or packing (as the case may require) of that poison is in force:
- (b) Any toxic substance the packing or labelling of which does not in his opinion, or in the opinion of another officer superior to him, conform to the requirements of this Act or of any other enactment:
- (c) Any toxic substance the container of which is damaged, if in his opinion, or in the opinion of another officer superior to him, there is a risk of leakage of the contents of the container:

(d) Any foodstuff or stock food, if he has reason to suspect that it may have become mixed with, or that it is or may be contaminated or injuriously affected by, any toxic substance:

(e) Any other article, if he has reason to suspect that it is or may be contaminated by any toxic substance.

(7) Subject to subsection (8) of this section, and to section 44 (1) (b) of this Act, where any thing is marked, sealed, secured, or impounded by any officer under this section, that officer or the Medical Officer of Health shall, as soon as practicable, take or cause to be taken all reasonable measures to have that thing removed to a place of security, or properly packed and labelled, or cleansed or decontaminated, or destroyed or otherwise disposed of, as the circumstances of the case may require.

(8) Unless, in the opinion of the officer or the Medical Officer of Health, the destruction or disposal of the thing is urgently necessary for the protection of the health of the public or of persons likely to be exposed to contamination, it shall not be destroyed or disposed of until—

(a) The time for making an application to a Magistrate's Court under section 49 of this Act has expired and no application has been made; or

(b) Where such an application has been made, the Court has made an order for the destruction or disposal of the thing.

(9) Subject to section 44 (2) of this Act, and to any order made by a Magistrate's Court under section 49 of this Act, the reasonable costs and expenses incurred in the packing, labelling, cleansing, decontamination, destruction, or other disposal of any thing under subsection (7) of this section shall be recoverable from the owner of the thing 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.

(10) Subject to any such order made under section 49 of this Act, every person commits an offence against this Act who, without the authority of any officer or of the Director or the Medical Officer of Health, removes or interferes with any thing that has been marked, sealed, secured, or impounded under this section.

(11) Unless he has reasonable ground for believing that imminent danger to the public or to any person exists, an officer shall not enter any dwellinghouse under the powers conferred by subsection (2) of this section.

(12) Where any thing is marked, sealed, secured, or impounded by any officer under this section, that officer or the Medical Officer of Health shall forthwith give notice in writing of the action that has been taken to the owner, or to the consignor or consignee, or to the agent of the owner, of the thing in question if his name and address are attached thereto or are otherwise known to, or can be readily ascertained by, the officer or Medical Officer of Health and the address is that of a place in New Zealand.

(13) Nothing in this section shall limit or affect the application of section 198 of the Summary Proceedings Act 1957.

Cf. 1960, No. 97, ss. 30, 36 (2) (c), (d)

48. Powers in respect of contaminated premises, etc.—

(1) Any officer may mark, seal, or otherwise secure any land or premises, or any vessel, aircraft, hovercraft, or vehicle, or any part of any premises, vessel, aircraft, hovercraft, or vehicle, if he has reason to suspect that it may have been contaminated by any toxic substance.

(2) In any such case, that officer or the Medical Officer of Health shall, as soon as practicable, take or cause to be taken all reasonable steps to have the land, premises, vessel, aircraft, hovercraft, or vehicle, or part, decontaminated or cleansed, as the circumstances of the case may require.

(3) Subject to any order made by a Magistrate's Court under section 49 of this Act, the reasonable costs and expenses incurred in such decontamination or cleansing shall be recoverable from the owner of the land, premises, vessel, aircraft, hovercraft, or vehicle 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.

(4) Subject to any such order, and to subsection (5) of this section, every person commits an offence against this Act who, without the authority of any such officer or of the Director or the Medical Officer of Health, enters into or upon any land, premises, vessel, aircraft, hovercraft, vehicle, or part thereof, or moves any vessel, aircraft, hovercraft or vehicle, that has been marked, sealed, or secured under this section.

(5) It is a defence to a charge brought under this section if the defendant proves that the entry or movement was urgently necessary by reason of an emergency.

(6) Where any land, premises, vessel, aircraft, hovercraft, or vehicle, or any part of any premises, vessel, aircraft, hovercraft, or vehicle is marked, sealed, or secured by any officer under this section, the officer or the Medical Officer of Health shall forthwith give notice in writing of the action that has been taken to the owner of the land, premises, vessel, aircraft, hovercraft, or vehicle if his name and address or that of his agent are known to, or can be readily ascertained by, the officer or the Medical Officer of Health and the address is that of a place in New Zealand.

Cf. 1960, No. 97, s. 31

49. Magistrate's Court may order return of property or compensation—(1) Any person claiming any estate or interest in any real or personal property marked, sealed, secured, or impounded under section 47 or section 48 of this Act may, within 7 days thereafter, apply to a Magistrate's Court for an order—

- (a) That the property 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 the cleansing, decontamination, or destruction of the property, 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 property, shall be relieved from liability for the payment of the whole or any part of any costs and expenses for which he would otherwise be liable under either of the said sections.

(2) On any such application, the Court may, subject to subsection (3) of this section, 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) No order for the payment of compensation under this section in respect of any such loss or damage shall be made in any case where the Court is satisfied that the cleansing, decontamination, or destruction from which the loss or damage resulted was necessary for the protection of the health of the public or of persons likely to be exposed to contamination.

(4) 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.

(5) Every application to the Court under this section shall be made and dealt with by way of originating application, of which notice shall be served on the respondent by the applicant within 3 days after the date on which the application is filed in the Court.

(6) Except as modified by subsection (5) of this section, the rules of procedure for the time being in force under the Magistrates' Courts Act 1947 shall apply with respect to every application to the Court under this section.

(7) Every order made by the Court under this section shall be final and binding on all parties.

(8) Nothing in this section shall limit or affect the Customs Act 1966 or any other enactment.

Cf. 1960, No. 97, s. 32

50. Powers of Medical Officer of Health to require information—(1) If, in the opinion of any Medical Officer of Health, there is reasonable ground for suspecting that any person is in possession of any toxic substance in breach of this Act or of any regulations made under this Act, the Medical Officer of Health may require that person to produce for his inspection, or to produce to any officer specially authorised by him for the purpose, any books, documents, or other records dealing with the reception, manufacture, possession, purchase, sale, or delivery of any such toxic substance or preparation.

(2) The Medical Officer of Health may make or cause to be made copies of or extracts from any such books, documents, or other records, and the copies or extracts, certified as such by him or by any specially authorised officer, shall be deemed to be true and correct copies or extracts, unless the contrary is proved.

(3) Every person commits an offence against this Act who refuses or fails to comply with any requisition made pursuant to this section.

(4) Every officer commits an offence against this Act who fails to maintain the secrecy of all matters that come to his knowledge in the performance of his official duties under this section, or who communicates any such matter to any person, except for the purpose of carrying into effect the provisions of this Act.

(5) For the purposes of this section any goods that have been seized or impounded, whether pursuant to this Act or any other enactment, shall be deemed to be still in the possession of the person who had them in his possession when they were seized or impounded.

Cf. 1960, No. 97, s. 40

51. Power to require name and address of seller—(1) Any officer acting in the exercise of any of his powers under this Act may require any person who is in possession of any substance appearing to the officer to be a poison or harmful substance for sale, or for delivery upon sale, to state correctly his name and address and, so far as he is aware of them, the name and address of the person from whom he obtained the substance.

(2) Every person commits an offence against this Act who fails, without reasonable excuse, to comply with any requirement of an officer under subsection (1) of this section.

Cf. 1969, No. 7, s. 28

52. Source of information or reports need not be disclosed—No prosecutor or witness in any prosecution under this Act shall be compelled to disclose the fact that he received any information, or the nature of such information, or the name of any person who gave such information; and no officer appearing as a prosecutor or witness shall be compelled to produce any confidential reports or documents made or received by him in his official capacity, or to make any statement in relation thereto.

Cf. 1969, No. 7, s. 37

53. Procuring of samples for analysis—(1) For the purposes of analysis, an officer may demand and select and take or obtain samples of any toxic substance, or of any substance reasonably believed by him to be a toxic substance, in accordance with this section.

(2) When an officer intends to procure a sample of a toxic substance 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 54 of this Act.

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

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

(5) Nothing in this section or in section 54 of this Act shall apply to the procuring of a sample of a toxic substance from a vending machine if the officer obtains the sample by properly making payment for it and no person present admits to being in charge of the machine.

(6) Notwithstanding anything in this section or in section 54 of this Act,—

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

(b) An officer 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.

(7) Every person commits an offence against this Act who refuses or fails to comply with any demand or requisition made by an officer pursuant to this section.

(8) For the purposes of this section, every person who is in possession of any toxic substance that, in the opinion of the officer, 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.

Cf. 1960, No. 97, s. 33 (1)–(5); 1969, No. 7, s. 23

54. How samples to be dealt with—(1) When an officer has procured a sample pursuant to section 53 of this Act, he shall—

(a) Divide the sample into 3 parts; and

(b) Mark and seal or fasten up each part in such manner as its nature will permit; and

(c) Leave 1 part with the owner of the substance from which the sample was taken or the person from whom the sample was procured.

(2) When any substance is contained in a package in such quantity that its division into 3 parts would, in the opinion of the officer, furnish parts insufficient for accurate analysis, additional containers that purport to contain a similar substance under the same brand or label may be taken or obtained, and the contents of 2 or more containers may be mixed together and the mixture divided and submitted for analysis as provided in this section.

(3) If the officer who has procured the sample considers that it should be analysed, he shall submit 1 part of the sample to an analyst for this purpose and shall retain the third part.

(4) Notwithstanding any of the foregoing provisions, but subject to subsection (5) of this section, if the officer reasonably believes that the substance of which he seeks to procure a sample is of such a nature or so packed that there is a risk of its quality being affected in the course and by reason of the procedure prescribed in subsection (1) of this section, or that it would be unduly hazardous to follow that procedure, the officer may submit the whole sample to the analyst instead of dividing it into 3 parts.

(5) In any case to which subsection (4) of this section applies, if the owner of the substance or the person from whom the sample was procured so requires, the officer shall select, mark, and seal another package that purports to contain a similar substance under the same brand or label, as the case may require, and leave it with that owner or person.

Cf. 1969, No. 7, s. 24

55. Analysis of sample and certificate of analyst—(1) The certificate of the analyst shall be in the prescribed form.

(2) Where any method of analysis for the analysis of any toxic substance 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 officer under this Act and submitted for analysis, the person from whom

the sample was procured may, on payment of a fee not exceeding 50 cents, 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 officer under this Act.

(6) Every person commits an offence against this Act 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.

Cf. 1969, No. 7, s. 25

56. 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.

Cf. 1969, No. 7, s. 36

57. Special provisions where samples taken of imported consignments—(1) Where, in any seaport or airport, any officer takes any sample pursuant to section 53 of this Act from any imported consignment of any substance, the following provisions shall apply:

(a) The officer shall forthwith notify the owner, importer, or consignee that he has taken the sample:

(b) Subject to the provisions of paragraph (c) of this subsection, the remainder of the consignment shall be detained in the seaport or airport under the control of the Customs until the analysis or examination has been completed:

(c) Any such consignment may, with the approval of the officer, be removed from the seaport or airport to a specified place if the owner, importer, or consignee undertakes in writing, in a form approved by the officer, that he will not sell or otherwise dispose of, or grant any right or charge in or over, any part of the consignment until the analysis or examination has been completed:

(d) If, as a result of the analysis or examination, the officer believes on reasonable grounds that the consignment does not comply with any of the provisions of this Act or any regulations made under this Act applicable thereto, he may—

(i) Order the goods impounded; or

(ii) Permit the goods to be released subject to such conditions as he may specify, including a condition that a new label be substituted for any label on any container comprising part of the assignment; but nothing in this subparagraph shall limit or affect the Customs Act 1966 or any other enactment.

(2) Where the officer orders any goods to be impounded, he shall serve notice of his action on the importer of the goods. He shall also serve a copy of the notice on the Collector of Customs who shall ensure that the goods are not delivered from the control of the Customs without the written consent of the officer.

(3) If, within 28 days after a notice is served on the importer under subsection (2) of this section, the importer does not satisfy the officer that the importation of the goods by the importer complies in all respects with this Act, the goods shall be forfeited to the Crown, and shall be disposed of as the Minister directs.

58. 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.

Cf. 1960, No. 97, s. 50A; 1969, No. 44, s. 12

59. 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 pursuant to this Act.

Cf. 1960, No. 97, s. 45

60. Penalty for false statement—(1) Every person commits an offence against this Act who, for the purpose of obtaining, whether for himself or any other person, the grant of any licence under this Act, or for any other purposes 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.

(2) Every person who commits an offence against this section is liable to imprisonment for a term not exceeding 6 months or a fine not exceeding \$1,000.

Cf. 1960, No. 97, s. 47; 1969, No. 44, s. 10

61. 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 3 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 14 days from the day on which it is served.

(4) There shall be served with the summons in any such proceedings a copy of the analyst's certificate (if any) relating to the prosecution.

Cf. 1960, No. 97, s. 50

62. 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 \$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. 1960, No. 97, s. 49; 1969, No. 44, s. 11

63. Liability of principal for acts of agents, etc.—(1) Where an offence is committed against this Act or against any regulation 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 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.

Cf. 1960, No. 97, s. 51

64. Cancellation of licence—(1) In any case where a licensee is convicted of an offence against this Act, or against any regulations made under this Act, the Court may, in addition to or instead of imposing any other penalty,—

- (a) Cancel the licence, either forthwith or with effect from such future date as may be specified by the Court:
- (b) Disqualify the licensee from obtaining any new licence for such period as the Court may specify:
- (c) Cause particulars of the conviction, and of any order made under paragraph (a) or paragraph (b) of this subsection to be endorsed on the licence.

(2) When a Court cancels a licence pursuant to subsection (1) of this section, the licence shall cease to have effect either forthwith or on the date specified by the Court, as the case may require.

(3) When a Court pursuant to subsection (1) of this section disqualifies a person from obtaining a new licence, no licence shall be issued to that person during the period specified by the Court.

(4) Any licence cancelled or required by the Court for endorsement under this section shall be produced by the licensee in such manner and within such time as the Court directs.

(5) Every person commits an offence against this Act who, without reasonable excuse, fails to produce any licence in accordance with subsection (4) of this section.

(6) For the purposes of Part IV of the Summary Proceedings Act 1957, the cancellation or endorsement of a licence, or a disqualification, under this section shall be deemed to be a sentence or part of a sentence, as the case may be.

(7) The particulars of any cancellation, disqualification, or endorsement under this section, and the particulars of the conviction relating thereto, shall be notified in writing to the Medical Officer of Health by the Registrar of the Court.

Cf. 1960, No. 97, s. 21

65. 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 toxic 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.

Cf. 1969, No. 7, s. 41

66. 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, and any similar articles found on the premises of the defendant or in his possession at the time of the commission of the offence, shall be forfeited to the Crown.

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

Cf. 1969, No. 7, s. 40

PART VII

APPEALS

67. Right of appeal to Supreme Court—(1) Subject to subsections (2) and (3) of this section,—

- (a) Any applicant who is aggrieved by a decision of the Medical Officer of Health refusing to grant the licence applied for or imposing any condition on the licence; and
 - (b) Any applicant or licensee who is aggrieved by a decision of the Medical Officer of Health refusing to approve a person as a responsible person; and
 - (c) Any licensee who is aggrieved by a decision of the Medical Officer of Health cancelling his licence,—
- 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 Medical Officer of Health, in reaching his decision, acted unreasonably.

(3) Every appeal under subsection (1) of this section shall be commenced 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.

Cf. 1960, No. 97, s. 42

68. Proceedings before Court—(1) At the hearing of an appeal under section 67 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 the Medical Officer of Health, as the case may require, 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 of the Medical Officer of Health, or substituting a new decision, the Court shall have all the powers and discretions that the Medical Officer of Health 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.

69. Further provisions relating to appeals—(1) Subject to any order made by the Court pursuant to paragraph (a) of subsection (5) of section 67 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 67 of this Act merely because 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 a decision of the Medical Officer of Health, or substitutes a new decision, the Medical Officer of Health shall take all necessary steps to implement the decision of the Court.

70. Court may state case for Court of Appeal—The Judge of the Court may, on the application of any party to an appeal under section 67 of this Act, or of his own motion, state a case for the opinion of the Court of Appeal on any question of law arising in the proceedings.

71. Appeal to Court of Appeal in certain cases—(1) Any party to any appeal before the Supreme Court under section 67 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 Act, the Court of Appeal shall have the same powers and discretions as are conferred on the Supreme Court by sections 67 and 68 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 paragraph (b) of subsection (6) of this section, the Court may make such order with regard to the application of the decision to which the appeal under section 67 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 69 of this Act shall apply accordingly.

PART VIII

PROVISIONS RELATING TO TOBACCO

72. Application of Act to tobacco—Sections 3, 4, 6, 8 to 18, 26 (4), (5), 34, 47 (1), (5), (6) (b), (7) to (10), (12), (13), 49 to 66, 76 to 81, and 82 of this Act apply to tobacco.

73. Regulations—Without limiting section 82 of this Act, the Governor-General may from time to time, by Order in Council, make regulations prescribing methods of testing tobacco to ascertain its composition, and prescribing the maximum amount of specified toxic substances that may be present in any tobacco, or any class of tobacco.

74. Food and Drug Act 1969 consequentially amended—Section 2 (1) of the Food and Drug Act 1969 is hereby amended by repealing paragraph (g) of the definition of the term “drug”.

PART IX

MISCELLANEOUS PROVISIONS

75. Minister to consult in respect of animal remedies and pesticides—Notwithstanding anything in section 7 or section 82 of this Act, before advising the making of an order, or giving any notice, under either of those provisions in respect of any substance that is an animal remedy or a pesticide, the Minister shall consult with the Animal Remedies Board constituted under the Animal Remedies Act 1967 or, as the case may require, the Pesticides Board constituted under the Pesticides Act 1979.

76. Notification of poisoning—(1) If any person, upon admission to a hospital under the control of a Hospital Board, is found to be suffering from poisoning, the Medical

Superintendent or other medical officer for the time being in charge of the hospital shall forthwith give notice of the fact that that person has been so found to the Medical Officer of Health.

(2) Every Registrar of Births and Deaths who, in his official capacity, becomes aware that any deceased person was affected by poisoning shall forthwith notify the Medical Officer of Health of the death and of the fact that the person was so affected.

Cf. 1960, No. 97, s. 39

77. Statement by Director-General as to toxic substances—

(1) The Director-General of Health may, for the purpose of protecting the public, publish statements relating to any toxic substance, or to any matter contained or implied in advertisements, either generally or in any particular advertisement or class or classes of advertisements, relating to any toxic substance.

(2) Every statement published under this section shall be protected by qualified privilege.

Cf. 1960, No. 97, s. 41; 1969, No. 7, s. 42

78. Power of Court to restrict publication of name of poison—(1) Where, in the course of proceedings in any Court or before a Coroner, reference is made to any toxic substance, the Court or Coroner may in its or his discretion order that the name of that toxic substance shall not be published in relation to those proceedings at any time before the expiration of a period of 5 years from the date of the final disposal of those proceedings.

(2) Notwithstanding anything in subsection (1) of this section, no order made under that subsection shall apply to the publication of that name to scientists, or to members of the legal, medical, dental, veterinary, nursing, or pharmaceutical professions, or to persons studying to become scientists or members of those professions, or in any publication of a scientific or technical character intended solely or principally for circulation among scientists or members of those professions or persons so studying.

(3) Where the publication of the name of a toxic substance is prohibited under this section in relation to any proceedings, no person shall, within the said period of 5 years, publish the name of that toxic substance or any name or particulars

likely to lead to the identification of that toxic substance as the toxic substance to which reference was made in those proceedings.

(4) Nothing in this section shall limit the provisions of any other enactment relating to the prohibition or regulation of the publication of reports or particulars relating to any judicial proceedings.

(5) Every person commits an offence against this Act who contravenes subsection (3) of this section.

Cf. 1960, No. 97, s. 43; 1964, No. 31, s. 2

79. Examination of Customs entries—For the purposes of this Act, every officer shall have the right at all times, subject to the convenience of the Collector or other responsible officer of Customs, to inspect any Customs entry relating to any goods imported or proposed to be imported into New Zealand, or to inspect any certificate or invoice relating to those goods, if and so long as any such document is in the possession or control of the Collector or other responsible officer.

Cf. 1969, No. 7, s. 43

80. Protection of persons acting under authority of Act—No person who does any act in pursuance or intended pursuance of any of the functions conferred on him by or under this Act shall be under any civil or criminal liability in respect of the Act, whether on the ground of want of jurisdiction, or mistake of law or fact, or on any other ground, unless he has acted in bad faith or without reasonable care.

Cf. 1960, No. 97, s. 44

81. Service of documents—(1) Any document required or authorised under this Act, or under any regulations made under this Act, to be served on or given to any person may be served or given by delivering it to that person, or by leaving it at his usual or last known place of residence or business, or by posting it by registered letter addressed to him at his usual or last known place of residence or business.

(2) Every such notice posted in accordance with subsection (1) of this section shall be deemed, in the absence of proof to the contrary, to have been served or given at the time when the registered letter would be delivered in the ordinary course of post.

(3) If the person is absent from New Zealand, the document may be served or given, in any manner referred to in subsection (1) of this section, on his agent in New Zealand.

(4) If the person is deceased, the document may be served or given, in any manner referred to in subsection (1) of this section, on or to his personal representative.

(5) If the person, or his place of residence or business is not known, or if he is absent from New Zealand and has no known agent in New Zealand, or is deceased and has no personal representative, the document may be served or given in such manner as may be directed by a Magistrate.

(6) Notwithstanding anything in the foregoing provisions of this section, a Magistrate may in any case make an order directing the manner in which any document is to be served or given or dispensing with the service or giving of any such document.

82. Regulations—(1) 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 Toxic Substances Board, make regulations for all or any of the following purposes:

- (a) Prescribing forms, fees, registers, particulars, notifications, and records for the purposes of this Act; and the method of keeping such registers and records; and prescribing the persons or classes of persons by whom any such records shall be kept or notifications given:
- (b) Prescribing qualifications for and conditions of licences under this Act; and providing for or regulating the custody, production, suspension, or revocation of licences:
- (c) Prohibiting, restricting, or regulating the importation, sale, distribution, storage, custody, handling, or use of any toxic substance, or any article containing or impregnated with any toxic substance; specifying poisons or harmful substances that may be sold only if registered in accordance with the regulations; and restricting the use of any poison to persons licensed in accordance with the regulations:
- (d) Regulating the loading, unloading, and carriage of toxic substances, and the routes to be taken by vehicles carrying toxic substances; and requiring all vessels, aircraft, hovercraft, and vehicles in which

any toxic substance is being carried to have on board such written information as may be specified relating to the measures to be taken in the event of an emergency:

- (e) Prohibiting, restricting, or regulating the importation, manufacture, sale, or use of any apparatus intended for use, or capable of being used, for the handling, application, or dissemination of any toxic substance:
- (f) Regulating the packing, preparing, and labelling of, and the marking of vehicles carrying, toxic substances, and prescribing requirements to be complied with in respect of such packing, preparing, labelling, and marking; prescribing the types and labelling of containers to be used for toxic substances; and prescribing methods of treatment or disposal of containers that have been used to convey, hold, or store toxic substances:
- (g) Requiring any warning or other statement or matter to be printed, embossed, impressed, branded, stamped, or otherwise marked on containers containing toxic substances:
- (h) Providing for the notification of damage to or leakage from containers of toxic substances, or of suspected contamination of goods by toxic substances, in the course of transportation by any means:
- (i) Prescribing methods to be used in the colouring of any poison or harmful substance:
- (j) Restricting and regulating advertisements for toxic substances, and statements made and persons or things depicted in any such advertisement:
- (k) Providing for the safety, health, and welfare of persons handling toxic substances, and, for that purpose, regulating the construction, ventilation, lighting, and sanitation of premises where toxic substances are used, prepared, packed, or stored, and requiring the provision of protective clothing, washing facilities, and first-aid and other facilities:
- (l) Prohibiting or restricting the employment of any specified class of persons in any manufacture or process in which any toxic substance is handled or used, or modifying or limiting the hours of employment of persons or classes of persons engaged in any such manufacture or process:

- (m) Regulating the destruction or other disposal of toxic substances:
 - (n) Providing for the publication of a code of good practice in relation to any of the matters referred to in the preceding paragraphs of this subsection, and prescribing the legal effect (if any) of any such code:
 - (o) Prescribing the circumstances in which and the conditions subject to which—
 - (i) Any poison or harmful substance may be sold in an automatic vending machine:
 - (ii) Any poison may be sold or hawked in any case to which section 25 (2) of this Act would otherwise apply:
 - (iii) Any poison or harmful substance may be sold to any person otherwise than pursuant to an order given or a request made by that person:
 - (p) Exempting or providing for the exemption, subject to such conditions (if any) as may be prescribed, of—
 - (i) Any toxic substance, either wholly or partly, from all or any of the provisions of this Act or of any regulations made under this Act:
 - (ii) Any person or class of persons, either wholly or partly, from any of the provisions of sections 20 (1), 20 (3), 24 (1) (b) (i), 25, 26 (1), 27 (1), 28 (6), and 32 (1) of this Act or of any regulations made under this Act:
 - (q) Regulating the procedure of the Toxic Substances Board or of any committee established under this Act:
 - (r) Regulating and controlling the exercise of powers by officers:
 - (s) Providing for the waiver of fees in whole or in part in particular cases or classes of cases, and for the total or partial refund of fees:
 - (t) Prescribing offences in respect of the contravention of or non-compliance with any regulations made under 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 \$500:
 - (u) 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 made under subsection (1) of this section may—

- (a) Apply to toxic substances generally or to particular classes, specified or described in the regulations, of poisons, harmful substances, or other toxic substances, and may make different provision for different classes, so specified or described, of poisons, harmful substances, or other toxic substances:
- (b) Provide for depriving persons of any rights, privileges, or exemptions, conferred on any class of person to which those persons belong, by this Act or any such regulations.

(3) Notwithstanding anything in any order made or notice given pursuant to section 7 of this Act, nor in any regulations made pursuant to this section, but subject to subsection (4) of this section, any person may, at any time within 12 months after the date of the commencement of the order, notice, or regulation, sell any toxic substance to which the order, notice, or regulation relates if—

- (a) He was authorised to sell that toxic substance in the ordinary course of his business immediately before the said date; and
- (b) The toxic substance was part of his or any other person's existing stock-in-trade in New Zealand on that date; and
- (c) Since the said date, no act has been done whereby the toxic substance fails to conform to the regulation; and
- (d) He sells that toxic substance on the same terms and subject to the same conditions as applied under the Poisons Act 1960 immediately before the said date.

(4) For the purposes of subsection (3) of this section, where, pursuant to section 7 of this Act, an order is made to the same effect as, and in substitution for, a notice given pursuant to that section in respect of any toxic substance, that order shall be deemed to have come into force on the date on which the notice came into force.

(5) For the purposes of subsection (3) of this section, any goods purchased before the said date for importation into New Zealand shall be deemed to be part of the purchaser's stock-in-trade in New Zealand.

(6) In any proceedings for an offence against any regulation in which subsection (3) of this section is pleaded in defence the burden of proving that the provisions of that subsection are applicable shall lie on the defendant.

Cf. 1960, No. 97, s. 53; 1969, No. 44, s. 13

83. Savings—(1) Without limiting the provisions of the Acts Interpretation Act 1924,—

(a) Any wholesaler's poison licence or retailer's poison licence issued under the Poisons Act 1960 before the commencement of this Act that is in force at that commencement, shall be deemed for the purposes of this Act to be a licence to sell poisons issued under this Act:

(b) Any packer's poison licence issued under the Poisons Act 1960 before the commencement of this Act that is in force at that commencement, shall be deemed for the purposes of this Act to be a licence to pack poisons issued under this Act.

(2) For the purposes of subsection (1) of this section, the periods of 1 year specified in subsection (1) and subsection (2) of section 38 of this Act shall be calculated from the commencement of the day on which the licence took effect.

This Act is administered in the Department of Health.
