



SALE OF HAZARDOUS GOODS

—————
No. 69 of 1977
 —————

ANALYSIS

- | | |
|---|--|
| <ol style="list-style-type: none"> 1. Short title. 2. Interpretation. 3. The Products Safety Committee. 4. Officers of the Committee. 5. Functions of the Committee. 6. Notice by wholesalers of hazardous products. 7. Notices to prevent sale of hazardous products pending investigation. | <ol style="list-style-type: none"> 8. Orders prohibiting or restricting sale of hazardous goods. 9. Appeals against orders. 10. Offences for contraventions of orders. 11. Investigations of processes, &c. 12. Maintenance of secrecy by members and officers. 13. Regulations. |
|---|--|

AN ACT to prohibit or regulate the sale of products likely to give rise to danger.

[21 September 1977]

BE it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:—

1 This Act may be cited as the *Sale of Hazardous Goods Act* Short title. 1977.

Interpretation.

2—(1) In this Act, unless the contrary intention appears—

“ Committee ” means the Products Safety Committee established under this Act;

“ products ” include any article, materials, or other goods;

“ sell ” includes offering or exposing for sale, and having in possession for the purpose of sale.

(2) For the purposes of this Act a product shall be deemed to be a source of danger if its possession, use, or handling gives rise to substantial risk of injury to, or danger to the health of, any person.

The Products Safety Committee.

3—(1) There shall be established a committee to be known as the Products Safety Committee.

(2) The Committee shall consist of three members, of whom—

(a) one shall be the secretary of the Consumer Affairs Council;

(b) one shall be the Director of Public Health; and

(c) one shall be a person appointed by the Minister.

(3) The member of the Committee appointed by the Minister shall hold office under the terms of his instrument of appointment but may resign his office by notice in writing to the Minister.

(4) The secretary of the Consumer Affairs Council and the Director of Public Health may each authorize some other person to act in his stead as a member of the Committee, and anything done in pursuance of that authority has the like effect as if it were done by the person by whom the authority was given.

(5) The secretary of the Consumer Affairs Council shall be chairman of the Committee.

(6) The chairman of the Committee, or the person acting in his stead under subsection (4), shall preside at meetings of the Committee, except that if at any meeting neither is present, such one of the other members present as they choose shall preside at the meeting.

(7) Two members of the Committee shall constitute a quorum at any meeting of the Committee, and a decision agreed upon at a meeting of the Committee by any two members thereof shall be taken as a decision of the Committee.

(8) Subject to this Act, the Committee may regulate its own proceedings.

(9) The Minister may pay to members of the Committee, or persons acting as members of the Committee, such remuneration and allowances as the Governor may approve, but an officer of the Public Service shall not be paid any remuneration or allowances under this section, except allowances in respect of travelling in the carrying out of his functions as a member of the Committee.

4 The secretary of the Consumer Affairs Council may make arrangements for providing the Committee with such assistance and accommodation as it may require. Officers of the Committee.

5—(1) Where—

Functions of the Committee.

- (a) the Minister advises the Committee that he is of the opinion that; or
- (b) it appears to the Committee that, any product that is being sold, or is likely to be available for sale, may be a source of danger, it is the duty of the Committee—
- (c) to carry out, or cause to be carried out, such investigations, testing, or other action as it considers desirable to establish whether the danger exists or is likely to arise and if so, its nature; and
- (d) to advise the Minister of any action that it considers should be taken (whether under this Act or otherwise) in connection with the product.

(2) Without limiting the generality of subsection (1), the Committee, in carrying out its duty under that subsection in respect of any product, may have regard to all or any of the following matters:—

- (a) The inherent character of the product;
- (b) The components making up that product;
- (c) The manner of construction of the product; and
- (d) Any use for which the product was designed or to which it can reasonably be put.

6—(1) Where, for the purpose of its sale by wholesale, a person has in his possession a product that is likely to be a source of danger, he shall as soon as practicable give notice to the Committee of the fact that he has the product in his possession. Notice by wholesalers of hazardous products.

Penalty: \$2 000.

(2) It is a defence to proceedings for an offence under subsection (1) for the defendant to show that, at the time the offence is alleged to have been committed, he was not aware, and could not reasonably be expected to be aware, that the product was likely to be a source of danger.

(3) Where in respect of any product a notice has been given under subsection (1) the person by whom the notice is given shall not, within the period of 28 days beginning on the day on which the notice is given, sell the product without the approval of the Committee.

Penalty: \$2 000.

(4) Subsection (3) shall not be construed as preventing a person retaining possession of any products that he had at the time the notice was served so long as they are not removed without the approval of the Committee from the place in which they are being kept.

(5) Subsection (3) ceases to apply to a product when a notice in respect of that product is published or served under section 7 or an order is made in respect of the product under section 8.

(6) A notice under this section may be given by sending it by post addressed to the Committee, or its chairman or secretary, or by delivering it so addressed to some person apparently employed at the offices of the Committee.

(7) The Minister may, by order, exempt any class of persons or class of products from the operation of this section.

Notices to prevent sale of hazardous products pending investigation.

7—(1) Where it appears to the Minister that a product that is being sold, or is likely to be available for sale, may be a source of danger and that the risk of that danger is so substantial that the product should not be sold until an investigation is carried out under section 5, he may—

- (a) by notice published in a local newspaper circulating in the State, prohibit the sale of that product or place restrictions or conditions on its sale; or
- (b) by notice served on any person, prohibit that person from selling that product or require him to comply with specified restrictions or conditions in relation to its sale.

(2) A notice published under subsection (1) (a) may be rescinded or varied by a notice published in a local newspaper circulating in the State, and a notice served on any person under subsection (1) (b) may be rescinded or varied by a subsequent notice served on him.

(3) A notice required to be served on any person under this section may be so served—

- (a) by delivering it to him personally;
- (b) by leaving it addressed to him at his usual or last-known place of abode or business with a person apparently not less than 18 years' old who apparently is residing or employed at that place; or
- (c) by sending it by certified mail addressed to him at his usual or last-known place of abode or business.

(4) Any person who—

- (a) contravenes a notice published under this section; or
 - (b) contravenes a notice served on him under this section,
- is guilty of an offence and liable to a penalty of \$2 000.

8—(1) Where the Committee is satisfied that a product is a source of danger it may as it considers it necessary or desirable in all the circumstances by order—

Orders prohibiting or restricting sale of hazardous goods.

- (a) prohibit the sale of a product; or
- (b) place restrictions or conditions on its sale.

(2) The Committee may at any time vary or revoke an order made under this section.

(3) The Minister may by order declare that any order made by the Committee under this section is to be of no further effect and that order shall be of no further effect accordingly.

(4) The *Rules Publication Act* 1953 applies to orders made under this section.

9—(1) A person who carries on business as a manufacturer or seller of any product affected by an order under section 8 may, within one month after the publication of notice in the *Gazette* that the order has been made, appeal to a magistrate.

Appeals against orders.

(2) Subject to this Act, an appeal under this section shall be instituted, heard, and determined as prescribed.

(3) On the hearing of an appeal under this section, the magistrate (unless he dismisses the appeal) may quash the order, but, if he does so, he may authorize the Committee to make a further order under this Act in such terms as the magistrate specifies.

(4) A magistrate shall cause a copy of any determination made by him under subsection (3) to be served on the chairman of the Committee.

(5) Where a magistrate quashes an order under this section, he may specify the day that order shall cease to have effect, and in such a case the order does not cease to have effect until the date so specified unless it sooner ceases to have effect by virtue of any action taken under section 8.

(6) The Committee may make an order in accordance with an authority given under subsection (3) and no appeal lies under this section in respect of the order, but, subject to the foregoing provisions of this subsection, section 8 applies to an order made under this subsection.

Offences for
contraventions
of orders.

10 A person who contravenes an order under section 8 or section 9 is guilty of an offence and liable to a penalty of \$2 000.

Investigations
of processes,
&c.

11—(1) Where the Minister, upon the advice of the chairman of the Committee, is satisfied that for the purpose of facilitating the carrying out of an investigation into any product under this Act, it is necessary or desirable so to do, the Minister may, by an authority in writing under his hand, authorize a person to enter upon any premises specified in the authority and inspect or view any process or activity so specified that is carried on on those premises and to impound or retain the product described in the authority.

(2) An authority under subsection (1) shall specify the product in respect of the investigation of which the authority is issued.

(3) An occupier of any premises specified in an authority granted under subsection (1), and any person for the time being apparently in charge of those premises or the process or activity so specified, who fails to take all such steps as are reasonably open to him to facilitate the exercise of the authority is guilty of an offence and liable to a penalty of \$200.

12 Except in the course of his duties under this Act, no person shall disclose any information obtained by him in the exercise of any powers conferred on him by, or by virtue of, his office or employment under, or for the purposes of, this Act. Maintenance of secrecy by members and officers.

Penalty: \$500.

13 The Governor may make regulations for the purposes of this Act. Regulations.

