

Authorised Version No. 030
Stock (Seller Liability and Declarations) Act
1993

No. 113 of 1993

Authorised Version incorporating amendments as at
21 April 2016

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Stock (Seller Liability and Declarations) Act
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No. 113 of 1993

Authorised Version incorporating amendments as at
21 April 2016

The Parliament of Victoria enacts as follows:

Part 1—Preliminary

1 Purpose

The purpose of this Act is—

- (a) to require that certain species of stock be free of particular diseases and not be in particular conditions when sold; and
- (b) to establish a system that will enable sellers of certain species of stock or livestock products to declare that particular stock or livestock products sold by them meet a specified description and that will enable buyers of stock or livestock products to have confidence in those declarations; and
- (c) to protect and ensure the quality of livestock and livestock products for national and international markets.

S. 1(b)
amended by
No. 80/1996
s. 4.

2 Commencement

- (1) Section 1 and this section come into operation on the day on which this Act receives the Royal Assent.
- (2) Subject to subsection (3), the remaining provisions of this Act come into operation on a day to be proclaimed.

- (3) If a provision referred to subsection (2) does not come into operation before 1 July 1994, it comes into operation on that day.

3 Definitions

- (1) In this Act—

S. 3(1) def. of *exempt agreement* inserted by No. 80/1996 s. 5(a).

exempt agreement means an agreement for the sale of stock or livestock products that is exempted by the regulations from the provisions of Part 2;

S. 3(1) def. of *livestock product* inserted by No. 80/1996 s. 5(a).

livestock product means—

- (a) milk, wool or honey; or
- (b) any other produce of stock that is declared to be a livestock product for the purposes of this Act by an Order of the Governor in Council made under section 4;

meat inspector means a person appointed as an inspector under the **Meat Industry Act 1993** or who is an authorized officer under the Meat Inspection Act 1983 of the Commonwealth;

one-off declaration means a declaration to which section 12(2) applies;

ongoing declaration means a declaration to which section 11(2) applies;

S. 3(1) def. of *police officer* inserted by No. 37/2014 s. 10(Sch. item 159).

police officer has the same meaning as in the **Victoria Police Act 2013**;

prescribed means prescribed by the regulations;

relevant condition means any condition that is prescribed by the regulations as a condition that, for the purposes of Part 2, all stock, or any class of stock, of a particular species, or any particular livestock products, are not to be in at the time they are sold;

S. 3(1) def. of ***relevant condition*** amended by No. 80/1996 s. 5(b)(i)(ii).

relevant disease means any disease that is prescribed by the regulations as a disease that, for the purposes of Part 2, all stock, or any class of stock, of a particular species, or any particular livestock products, are to be free of at the time they are sold;

S. 3(1) def. of ***relevant disease*** amended by No. 80/1996 s. 5(c)(i)(ii).

Secretary and ***Secretary of the Department*** mean Secretary to the Department of Environment and Primary Industries;

S. 3(1) def. of ***Secretary*** inserted by No. 80/1996 s. 5(a), amended by Nos 56/2003 s. 11(Sch. item 18), 70/2013 s. 4(Sch. 2 item 48).

stock means any stock that is a member of—

- (a) a species that is used for food or produces food products or fibre; or
- (b) a species that is declared to be a species to which this Act applies by an Order of the Governor in Council made under section 4;

stock inspector means a person appointed as an inspector under section 25 or as inspector of livestock under the **Livestock Disease Control Act 1994**;

S. 3(1) def. of ***stock inspector*** amended by No. 115/1994 s. 142(Sch. 2 item 7).

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S. 3 def. of
veterinarian
substituted by
No. 58/1997
s. 96(Sch.
item 8).

veterinarian means a veterinary practitioner
registered under the **Veterinary Practice
Act 1997**;

- (2) A reference to the condition of stock includes a
state in which the body of the stock contains an
object or a substance.

S. 4
substituted by
No. 80/1996
s. 6.

4 Governor in Council may make orders

The Governor in Council, by Order published in
the Government Gazette—

- (a) may declare any species of stock to be a
species to which this Act applies;
- (b) may declare any produce of stock to be a
livestock product for the purposes of this
Act.

Part 2—Conditions of sale of stock or livestock products

Pt 2 (Heading)
amended by
No. 80/1996
s. 7.

5 Stock sold must meet minimum requirements

(1) It is a special condition of every agreement (other than an exempt agreement) for the sale of prescribed stock or a prescribed livestock product that the stock or product is free from every relevant disease and is not in any relevant condition.

S. 5(1)
amended by
No. 80/1996
s. 8(1)(a)
(i)–(iii).

(2) Any term of an agreement that purports to exclude or vary this special condition is void.

(3) Despite subsection (2) and anything else to the contrary in or under this Act, an agreement that contains a written acknowledgement signed by the buyer that stock or a livestock product—

S. 5(3)
amended by
No. 80/1996
s. 8(1)(b).

(a) has a relevant disease or is in a relevant condition that is specified in the acknowledgement; or

(b) may have a relevant disease or may be in a relevant condition that is specified in the acknowledgement—

may exclude this special condition with respect to that disease or condition.

6 Consequences of breaching a section 5 condition

(1) This section applies if stock or a livestock product is bought and, within the time specified by the regulations with respect to a relevant disease or condition—

S. 6(1)
amended by
No. 80/1996
s. 8(2)(a)(c).

(a) the buyer of the stock or product obtains a certificate from a stock inspector, meat inspector, veterinarian or prescribed analyst that states that the stock or product has that disease or condition; or

S. 6(1)(a)
amended by
No. 80/1996
s. 8(2)(b).

(b) the stock is slaughtered and a meat inspector totally condemns the carcass of the stock and issues a certificate that states that the condemnation resulted from the inspector's opinion that the stock had that disease or was in that condition at the time it was slaughtered; or

(c) the stock dies and the buyer obtains a certificate from a stock inspector, meat inspector, veterinarian or prescribed analyst that states that the stock had that disease or was in that condition at the time it died—

and the buyer gives a copy of the certificate to the seller of the stock or product attached to a notice stating that the buyer is invoking this section.

S. 6(1A)
inserted by
No. 80/1996
s. 8(3).

(1A) A certificate referred to in subsection (1) must contain the prescribed information.

S. 6(2)
amended by
No. 80/1996
s. 8(4).

(2) The buyer is not liable to pay the seller any money that is still owing in respect of the sale of the stock or livestock product.

S. 6(3)
amended by
No. 80/1996
s. 8(4).

(3) The seller must, within 24 hours of receiving the notice, refund any money that has been paid to the seller by, or on behalf of, the buyer in respect of the sale of the stock or livestock product.

Penalty: 20 penalty units for a first offence;

50 penalty units for a second or subsequent offence.

(4) For the purposes of subsection (1)(c), it is not necessary for the certificate to state that the death of the stock was caused, or contributed to, by the relevant disease or condition.

S. 6(5)
inserted by
No. 80/1996
s. 8(5).

(5) This section does not apply in the case of a sale of stock or livestock products under an exempt agreement.

7 Who owns stock that has been sold with a relevant disease or condition?

- | | |
|---|---|
| (1) The seller may retake possession of any stock or livestock product that is the subject of a notice under section 6(1) within 7 days of receiving the notice if— | S. 7(1)
amended by
No. 80/1996
s. 8(6). |
| (a) the stock or livestock product is still in the possession or under the control of the buyer;
and | S. 7(1)(a)
amended by
No. 80/1996
s. 8(6). |
| (b) the seller has refunded all the money paid by the buyer in respect of the stock or livestock product. | S. 7(1)(b)
amended by
No. 80/1996
s. 8(6). |
| (2) If the seller does this, the ownership of the stock or livestock product reverts to the seller (if the stock or livestock product is not still owned by the seller) once the seller retakes possession of the stock or livestock product. | S. 7(2)
amended by
No. 80/1996
s. 8(6). |
| (3) If the seller does not do this, the ownership of the stock or livestock product remains with the buyer, or passes to the buyer at the end of the 7th day after the seller receives the notice (as the case may be). | S. 7(3)
amended by
No. 80/1996
s. 8(6). |
| (4) However, if a seller's failure to retake possession is caused by any action taken, or not taken, by the buyer that impedes any action taken by the seller to refund any money owed to the buyer or to retake possession of the stock or livestock product, subsection (3) does not apply and the ownership of the stock or livestock product reverts to the seller (if the stock or livestock product is not still owned by the seller) at the end of the 7th day after the seller receives the notice. | S. 7(4)
amended by
No. 80/1996
s. 8(6). |
| (5) In this section a reference to stock is a reference to the carcass of the stock, and any product derived from the carcass of the stock, if the stock is dead. | |

8 Buyer may renounce ownership of stock

S. 8(1)
amended by
No. 80/1996
s. 8(7).

(1) A buyer may renounce the ownership of any stock, livestock product or carcass that is the subject of a notice under section 6(1) by making a statement to that effect in the notice.

S. 8(2)
amended by
No. 80/1996
s. 8(7).

(2) If the buyer does this, the ownership of the stock, livestock product or carcass reverts to the seller on the seller receiving the notice.

(3) Section 7(3) has no effect if a buyer renounces ownership under this section.

9 Consequences of breaching a section 5 condition if carcass of stock partially condemned

(1) This section applies if—

(a) a meat inspector—

(i) partially condemns the carcass; or

(ii) downgrades the carcass; or

(iii) wholly or partially condemns or downgrades any product derived from the carcass—

of any stock that has been slaughtered within the time specified by the regulations with respect to the relevant disease or condition that caused the condemnation or downgrading; and

(b) the inspector issues a certificate that states that the condemnation or downgrading resulted from the inspector's opinion that the stock had a relevant disease or was in a relevant condition at the time it was slaughtered; and

(c) the buyer of the stock gives a copy of the certificate to the seller of the stock attached to a notice stating that the buyer is invoking this section.

- (2) On receiving the notice the seller is liable to pay the buyer the amount set out in the regulations as the damages to be paid in respect of carcasses or products with the relevant disease or condition.
- (3) The buyer may offset any amount the buyer is entitled to under subsection (2) against any amount the buyer owes the seller in respect of the purchase of any stock or carcass.
- (4) If the seller is still liable to pay the buyer an amount under this section once all possible offsets have been taken into account, the seller must pay the amount to the buyer within 24 hours of receiving a written demand that specifies the amount owing and how it was calculated.

Penalty for breaching this subsection: 20 penalty units for a first offence;

50 penalty units for a second or subsequent offence.
- (5) This section does not apply in the case of a sale of stock under an exempt agreement.

S. 9(5)
inserted by
No. 80/1996
s. 8(8).

10 Limitation of effect of section 5 special condition

Subject to any rights conferred on a buyer by any law other than this Act, the rights given to a buyer by sections 6, 7, 8 and 9 are the only rights the buyer may exercise in relation to a failure by a seller to comply with the special condition set out in section 5.

Pt 3 (Heading)
amended by
No. 80/1996
s. 9.

Part 3—Declarations by sellers as to quality of stock or livestock products

11 Seller may make an ongoing declaration as to quality

(1) This section applies if—

S. 11(1)(a)
amended by
No. 80/1996
s. 10(1)(a)(i)(ii).

(a) a person who intends to sell stock of a particular species or particular livestock products declares that all stock of that species or all those products sold by the person during the period set out in the declaration that are marked in a way described in the declaration—

(i) will be, or will not be, in a certain condition described in the regulations for the purposes of this Part; or

S. 11(1)(a)(ii)
amended by
No. 22/2004
s. 14(a).

(ii) will have, or will not have, certain characteristics described in the regulations for the purposes of this Part; or

S. 11(1)(a)(iii)
inserted by
No. 22/2004
s. 14(b).

(iii) will be, or will not be, free of certain diseases described in the regulations for the purposes of this Part; and

S. 11(1)(b)
amended by
No. 80/1996
s. 10(1)(b).

(b) the person makes the declaration in writing in the prescribed form and containing the prescribed information and signs it; and

(c) the person registers the declaration with the Secretary of the Department.

- (2) The person must ensure that all stock or products marked in a way described in the declaration that the person sells during the period set out in the declaration comply with the declaration.

S. 11(2)
amended by
No. 80/1996
s. 10(2)(a)–(d).

Penalty: 60 penalty units for a first offence;
120 penalty units for a second or
subsequent offence.

12 Seller may make a one-off declaration as to quality

- (1) This section applies if—

- (a) a person who intends to sell particular stock or particular livestock products declares that all that stock or those products—
- (i) are, or are not, in a certain condition described in the regulations for the purposes of this Part; or
- (ii) have, or do not have, certain characteristics described in the regulations for the purposes of this Part; or
- (iii) will be, or will not be, free of certain diseases described in the regulations for the purposes of this Part; and
- (b) the person makes the declaration in writing in the prescribed form and containing the prescribed information and signs it; and
- (c) the person sells the stock or products; and
- (d) the declaration is delivered to the buyer of the stock or products or to the buyer's agent (either before or after the sale).

S. 12(1)(a)
amended by
No. 80/1996
s. 10(3)(a)(i)(ii).

S. 12(1)(a)(ii)
amended by
No. 22/2004
s. 15(a).

S. 12(1)(a)(iii)
inserted by
No. 22/2004
s. 15(b).

S. 12(1)(b)
amended by
No. 80/1996
s. 10(3)(b).

S. 12(1)(c)
amended by
No. 80/1996
s. 10(3)(c).

S. 12(1)(d)
amended by
No. 80/1996
s. 10(3)(d).

S. 12(2)
amended by
No. 80/1996
s. 10(4)(a)–(d).

- (2) The person must ensure that all stock or products in respect of which the declaration is made that is sold to the buyer comply with the declaration.

Penalty: 60 penalty units for a first offence;
120 penalty units for a second or subsequent offence.

13 Consequences of breaching a declaration

- (1) This section applies if a buyer—

S. 13(1)(a)
amended by
No. 80/1996
s. 10(5)(a)(i).

- (a) buys stock or a livestock product which is the subject of an ongoing or one-off declaration; and

S. 13(1)(b)
amended by
No. 80/1996
s. 10(5)(a)(ii).

- (b) obtains, within the time specified by the regulations with respect to a condition or characteristic, a certificate from a stock inspector, meat inspector, veterinarian or prescribed analyst that states that the stock or product is in a state that is not in accord with the declaration (or was in such a state at the time it died or was slaughtered); and

S. 13(1)(c)
amended by
No. 80/1996
s. 10(5)(a)(ii).

- (c) gives a copy of the certificate to the seller of the stock or product attached to a notice stating that the buyer is invoking this section.

S. 13(2)
amended by
No. 80/1996
s. 10(5)(b).

- (2) On receiving the notice the seller is liable to pay the buyer the amount set out in the regulations as the damages to be paid in respect of stock or livestock products in the state detailed in the certificate.

S. 13(3)
amended by
No. 80/1996
s. 10(5)(c).

- (3) The buyer may offset any amount the buyer is entitled to under subsection (2) against any amount the buyer owes the seller in respect of the purchase of any stock, livestock product or carcass.

- (4) If the seller is still liable to pay the buyer an amount under this section once all possible offsets have been taken into account, the seller must pay the amount to the buyer within 24 hours of receiving a written demand that specifies the amount owing and how it was calculated.

Penalty for breaching this subsection: 20 penalty units for a first offence;

50 penalty units for a second or subsequent offence.

14 Withdrawal of an ongoing declaration

- (1) A person who has made an ongoing declaration that has been registered by the Secretary may withdraw the declaration at any time by filing a notice of withdrawal with the Secretary of the Department.
- (2) A notice of withdrawal must be in the form required by the regulations and must be signed by the person who made the declaration.
- (3) The Secretary may refuse to accept for filing a notice of withdrawal if the request for filing is not accompanied by the required fee.
- (4) A declaration ceases to have effect 90 days after the date a notice of withdrawal made in respect of the declaration is accepted for filing by the Secretary.
- (5) Sections 11(2) and 13 do not apply in respect of any stock or livestock products sold after a declaration ceases to have effect.
- (6) If negotiations concerning the sale of stock or livestock products were begun with a prospective buyer of the stock or livestock products before a declaration ceased to have effect as the result of the operation of subsection (4) and the prospective buyer in fact buys the stock or livestock products,

S. 14(1)
amended by
No. 22/2004
s. 16.

S. 14(5)
amended by
No. 80/1996
s. 11.

S. 14(6)
amended by
No. 80/1996
s. 11.

sections 11(2) and 13 continue to apply to the sale even though the sale occurred after the declaration ceased to have effect.

S. 14(7)
amended by
No. 80/1996
s. 11.

- (7) Subsection (6) does not apply if the seller of the stock or livestock products gave the buyer a copy of the notice of withdrawal before the sale was made.

15 Register of ongoing declarations

- (1) The Secretary of the Department must ensure that a register is kept of all ongoing declarations registered by the Secretary.
- (2) The register must show—
- (a) the name and address of the person making the declaration; and
 - (b) the date the declaration was registered; and
 - (c) the date the declaration will expire; and
 - (d) the contents of the declaration; and
 - (e) whether a notice of withdrawal of the declaration has been filed; and
 - (f) if a notice of withdrawal of the declaration has been filed, the date the declaration is to cease to have effect.

S. 16
substituted by
No. 22/2004
s. 17.

16 Registration of ongoing declarations

- (1) The Secretary may register an ongoing declaration if—
- (a) requested in writing to do so by the person who made the declaration; and
 - (b) the request for registration is accompanied by the required fee (if any).

- (2) The Secretary may refuse to register the declaration if—
- (a) the person making the declaration has been convicted of an offence against section 11 or 12 within the 3 years immediately before the date the registration is requested; or
 - (b) the Secretary has reasonable grounds for believing that the person making the declaration will be unable to comply with any part of the declaration.
- (3) In deciding whether to refuse registration on the ground set out in subsection (2)(a), the Secretary must have regard to the seriousness of the offence.
- (4) The Secretary must, within 14 days of making a decision under subsection (1) or (2), give the person—
- (a) written notice of the decision, including the date of the decision; and
 - (b) if the Secretary refuses the registration, a written statement setting out the reasons for refusing the registration which must accompany the notice.

17 Secretary may suspend registration of ongoing declaration on certain grounds

S. 17
substituted by
No. 22/2004
s. 18.

- (1) The Secretary may suspend the registration of an ongoing declaration for a period not exceeding 3 years if the Secretary is satisfied that any of the following grounds exist—
- (a) the person who made the declaration will be unable to comply with any part of the declaration;
 - (b) the person who made the declaration has not complied with any part of the declaration;

- (c) the continued existence of the declaration on the register may cause damage to the Victorian or Australian livestock industry or any segment of that industry.
- (2) The Secretary must give written notice to a person whose declaration has been suspended of the decision to suspend the registration (including the date of the decision) accompanied by a written statement setting out the reasons for suspending the registration.
- (3) A suspension of the registration of an ongoing declaration takes effect on—
 - (a) the 28th day after the person who made the declaration received the notice of the suspension under subsection (2); or
 - (b) if the person requests a statement of reasons for the decision under the **Victorian Civil and Administrative Tribunal Act 1998**, the 28th day after the day on which the statement is given to the person or the person is informed under section 46(5) of that Act that a statement of reasons will not be given; or
 - (c) if the person applies to the Victorian Civil and Administrative Tribunal for a review of the decision, the day that the Tribunal affirms the decision of the Secretary to suspend the registration.

S. 17A
inserted by
No. 22/2004
s. 18.

17A Secretary may cancel registration of suspended declaration if grounds remain

- (1) The Secretary may cancel the registration of an ongoing declaration that has been suspended under section 17.

- (2) The Secretary may cancel the registration if—
- (a) more than half the period of the suspension has expired; and
 - (b) the Secretary is satisfied that any of the grounds upon which the suspension was based still exist.
- (3) If the Secretary cancels the registration of an ongoing declaration, he or she must, within 14 days of the decision to cancel the registration, give to the person whose registration is cancelled a written notice setting out the following—
- (a) that the Secretary has decided to cancel the registration;
 - (b) the date of the decision;
 - (c) the reasons why the Secretary is satisfied that the ground or grounds for suspension still exist;
 - (d) that the person may apply for a review of the decision under section 22A.
- (4) The cancellation of the registration of an ongoing declaration takes effect on—
- (a) the 28th day after the day that the person who made the declaration received notice of the cancellation under subsection (3); or
 - (b) if the person requests a statement of reasons for the decision under the **Victorian Civil and Administrative Tribunal Act 1998**, the 28th day after the day on which the statement is given to the person or the person is informed under section 46(5) of that Act that a statement of reasons will not be given; or

- (c) if the person applies to the Victorian Civil and Administrative Tribunal for a review of the decision, the date that the Tribunal affirms the decision of the Secretary to cancel the registration.

(5) If—

- (a) the Secretary cancels the registration of an ongoing declaration; and
- (b) gives notice of the cancellation within the period of suspension; and
- (c) the period of suspension of the registration expires before the cancellation takes effect under subsection (4)—

the suspension is to be treated as continuing to have effect until the day the cancellation takes effect.

18 Register may be inspected

The Secretary of the Department must permit any person who has paid the required inspection fee (if any) to inspect the register of ongoing declarations and to make copies of anything on the register.

S. 18A
inserted by
No. 80/1996
s. 12.

18A Other declarations as to quality of stock

- (1) This section applies to a declaration—
 - (a) that may be made by, or on behalf of, a seller of stock; and
 - (b) that relates to the—
 - (i) treatment of that stock; or
 - (ii) feed of that stock; or
 - (iii) husbandry of that stock; or
 - (iv) pasturing of that stock; or

S. 18A(1)(b)
substituted by
No. 22/2004
s. 20.

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- (v) health status of that stock, including whether or not it is free from disease; or
 - (vi) testing of that stock for the presence of disease; and
 - (c) that is in, or is to the like effect of, a form specified by the Secretary, by notice published in the Government Gazette, to be a declaration to which this section applies.
- (2) A notice referred to in subsection (1)(c)—
- (a) may require a person who makes a declaration to retain a copy of it for a specified period; and
 - (b) may require a person who receives a declaration to retain it for a specified period.
- (3) A person must not make a declaration to which this section applies that the person knows to be false.
- Penalty: 60 penalty units for a first offence;
120 penalty units for a second or subsequent offence.
- (4) A person who is required by a notice under subsection (2) to retain a declaration, or a copy of it, must do so for the period specified in the notice.
- Penalty: 5 penalty units.

Part 4—Disputes

19 Seller must presume certificates valid

- (1) A seller who has been given a copy of a certificate under section 6(1), 9(1) or 13(1) must presume for the purposes of sections 6, 9 and 13 respectively—
- (a) that any statement made in the certificate concerning the state of any stock, livestock product or carcass is accurate; and
 - (b) that the person who issued the certificate is the person, and has the qualifications, claimed on the certificate.
- (2) It is not a defence to a charge under section 6(3), 9(4) or 13(4)—
- (a) that the seller believed, or could show, that the certificate on which a notice under that section was based was inaccurate; or
 - (b) that the seller had made an application under section 20.

S. 19(1)(a)
amended by
No. 80/1996
s. 13(a).

20 Procedure if a seller wishes to dispute the accuracy of a certificate

- (1) If a seller who has received a notice under section 6, 9 or 13 disputes the accuracy of the certificate on which the notice is based, the seller may apply to the Magistrates' Court for a declaration under this section.
- (2) A magistrate may declare that a certificate is defective if—
- (a) both the seller and buyer have been given a chance to be heard; and

- (b) the magistrate is satisfied that the certificate—
- (i) contains a material inaccuracy that casts substantial doubt on whether the stock, livestock product or carcass to which the certificate relates is, or was, in the state detailed in the certificate; or
 - (ii) was based on the results of a test that was not properly conducted, or that was not conducted in accordance with any relevant regulations; or
 - (iii) was issued by a person who was not at the time the certificate was issued a stock inspector, meat inspector, veterinarian or prescribed analyst.
- (3) If a seller who has obtained a declaration under this section serves a copy of the order containing the declaration on the buyer, the buyer must refund to the seller any money that the seller paid to the buyer under section 6, 9 or 13 (as the case may be) in respect of any stock or livestock products to which the certificate relates within 24 hours of receiving the copy of the order.
- Penalty: 20 penalty units for a first offence;
50 penalty units for a second or subsequent offence.
- (4) On the buyer refunding the money, the ownership of the stock, livestock product or carcass remains with, or reverts to, (as the case may be) the person who would have been the owner of the stock, livestock product or carcass under the sale agreement if no action had been taken under section 6, 9 or 13.

S. 20(2)(b)(i)
amended by
No. 80/1996
s. 13(a).

S. 20(3)
amended by
No. 80/1996
s. 13(b).

S. 20(4)
amended by
No. 80/1996
s. 13(c).

21 Procedure if seller disputes the amount claimed by buyer

- (1) If a seller who has received a written demand under section 9(4) or 13(4) disputes the amount claimed, the seller may apply to the Magistrates' Court for a declaration under this section.
- (2) After giving both the seller and buyer a chance to be heard, if a magistrate is satisfied that the amount claimed is excessive, he or she may make a declaration stating that fact and may determine the amount that should have been claimed.
- (3) If the seller still owes the buyer an amount of money under this Act once a determination has been made, the seller must pay the buyer that amount within 24 hours of the determination being made by the magistrate.

Penalty: 20 penalty units for a first offence;
50 penalty units for a second or subsequent offence.

22 Defence to claim by buyer if amount claimed excessive

It is a defence to a charge under section 9(4) or 13(4) if, within 24 hours of the seller receiving a written demand under that section, the seller gives the buyer—

- (a) a written notice stating that the seller disputes the amount claimed and setting out the amount the seller believes should have been claimed and how that amount was calculated; and
- (b) the amount (if any) that on the seller's calculation is still owed to the buyer by the seller.¹

Part 4A—Review by Victorian Civil and Administrative Tribunal

Pt 4A
(Heading and
s. 22A)
inserted by
No. 22/2004
s. 19.

22A Review by VCAT

S. 22A
inserted by
No. 22/2004
s. 19.

- (1) A person whose interests are affected by the relevant decision may apply to the Victorian Civil and Administrative Tribunal established under the **Victorian Civil and Administrative Tribunal Act 1998** for review of—
 - (a) a decision to refuse to register an ongoing declaration; or
 - (b) a decision to suspend the registration of an ongoing declaration; or
 - (c) a decision to cancel the registration of an ongoing declaration.
- (2) An application for review under subsection (1) must be made within 28 days—
 - (a) of the day on which the Secretary gives notice of the decision to the person; or
 - (b) if, under the **Victorian Civil and Administrative Tribunal Act 1998**, the person requests a statement of reasons for the decision, of the day on which the statement of reasons is given to the person or the person is informed under section 46(5) of that Act that a statement of reasons will not be given.

Part 5—Administrative and enforcement provisions

23 Secretary may delegate powers and functions

S. 23(1)
amended by
No. 46/1998
s. 7(Sch. 1).

(1) The Secretary of the Department may delegate any of the functions or powers given to him or her by this Act (except this power of delegation) to any employee of the Department.

S. 23(2)
amended by
No. 46/1998
s. 7(Sch. 1).

(2) A delegation must be made in writing and may identify the employee by name or by office.

24 Secretary may set fees

(1) The Secretary of the Department may, by notice published in the Government Gazette, set the fees that are to be paid for—

- (a) the registration and withdrawal of ongoing declarations;
- (b) the inspection of the register of ongoing declarations;
- (c) the issue of certificates concerning the contents of the register.

(2) In setting registration fees, the Secretary may impose annual fees, or different fees having regard to the period a declaration is to apply for or the conditions or characteristics in respect of which the declaration is made.

25 Appointment of inspectors

(1) Inspectors may be appointed from time to time for the purposes of this Act.

S. 25(2)
amended by
No. 115/1994
s. 142(Sch. 2
item 7).

(2) The Secretary of the Department must provide every inspector under this Act who is not a meat inspector or an inspector of livestock appointed

under the **Livestock Disease Control Act 1994**
with a certificate of identification.

26 Power of inspectors to enter property to enforce this Act

- (1) A magistrate may issue a warrant to a stock inspector in respect of a property that is, or has been, used for the production or holding of stock or livestock products intended for sale. **S. 26(1) amended by No. 80/1996 s. 13(d)(i).**
- (2) A magistrate may only issue the warrant if he or she is satisfied that it is reasonable for the stock inspector applying for the warrant to have access to the property to check—
- (a) whether the practices carried out on the property in the production or holding of stock or livestock products are consistent with any ongoing or one-off declaration made by the owner of the stock or livestock products or the occupier of the property; or **S. 26(2)(a) amended by No. 80/1996 s. 13(d)(ii).**
 - (b) whether stock or livestock products on the property that are marked, or that are to be marked, in a way set out in an ongoing declaration are in a condition that is consistent with that declaration; or **S. 26(2)(b) amended by No. 80/1996 s. 13(d)(ii).**
 - (c) whether there are things on the property that are relevant to determining whether any undertaking made in an ongoing or one-off declaration has been complied with;
 - (d) whether the requirements of the regulations have been complied with.
- (3) A warrant authorises the stock inspector to whom it has been issued to enter the property in respect of which it is issued and to use any assistance and force that may be reasonably necessary for that purpose.

- (4) A warrant has no force unless it is signed by the magistrate who issued it and there is stated on it—
- (a) the address of the property in respect of which it has been issued; and
 - (b) the name of the person to whom it has been issued and the purpose for which it was issued; and
 - (c) the times of the day or night during which it may be executed; and
 - (d) the days of the week on which it may be executed; and
 - (e) the date on which it expires.
- (5) The expiry date fixed by the magistrate must be a date that is within 30 days of the date the warrant was issued.

27 Powers of person holding a warrant

- (1) A stock inspector who enters a property under the authority of a warrant issued under this Act may—
- (a) inspect the property and all stock, livestock products, plant and facilities on the property; and
 - (b) require any person found on the premises to state in full his or her name and the address of his or her place of residence and, if it is reasonably suspected that the name or address stated is not correct, to produce any document the person is carrying that contains his or her name or address; and
 - (c) require the immediate production of articles used in the production or holding of stock or livestock products; and

S. 27(1)(a)
amended by
No. 80/1996
s. 13(e)(i).

S. 27(1)(c)
amended by
No. 80/1996
s. 13(e)(ii).

- (d) break open any locked container or room that the person in charge of the premises will not open.
- (2) Before exercising a power under this section or section 26(3), the stock inspector must produce the warrant for inspection if asked to do so by any person on the property.
- (3) Before requiring a person to state his or her name and address, the stock inspector must—
 - (a) produce identification and permit it to be inspected by the person; and
 - (b) inform the person that the requirement is being made under this section; and
 - (c) state the reason why the requirement is being made.
- (4) In exercising his or her powers under this section and section 26, a stock inspector may use the assistance of a police officer.

28 Offences concerning the execution of warrants

- (1) A person must not obstruct or hinder another person who is lawfully exercising a power given to the person by section 26(3) or 27(1)(a) or (d).
Penalty: 20 penalty units.
- (2) A person must comply with any requirement lawfully made under section 27(1)(b) or (c).
Penalty: 5 penalty units.

29 Infringement notice

- (1) A stock inspector may serve an infringement notice on any person that the inspector has reason to believe has committed an offence listed in the Schedule.

S. 29(2)
substituted by
No. 32/2006
s. 94(Sch.
item 45(1)).

(2) An offence referred to in subsection (1) for which an infringement notice may be served is an infringement offence within the meaning of the **Infringements Act 2006** and the penalty for that offence is the applicable penalty set out in the Schedule.

S. 29(3)
inserted by
No. 32/2006
s. 94(Sch.
item 45(1)).

(3) For the purposes of subsection (1), an infringement notice must be in the form required by the **Infringements Act 2006** and may contain any additional information approved by the Minister.

Ss 30, 31
repealed by
No. 32/2006
s. 94(Sch.
item 45(2)).

* * * * *

32 Only stock inspectors may bring prosecutions under this Act

S. 32(2)
amended by
Nos 18/2005
s. 18(Sch. 1
item 102),
17/2014
s. 160(Sch. 2
item 92).

- (1) A prosecution for an offence under this Act may only be brought by a stock inspector.
- (2) A prosecution for an offence under this Act may only be conducted by a stock inspector or by an Australian lawyer briefed by a stock inspector to conduct the prosecution.
- (3) Proceedings started by a stock inspector may be taken over and continued at any time by any other stock inspector.

Part 6—Miscellaneous provisions

33 Certificates as to contents of register are evidence

- (1) A certificate certifying any matter relating to the contents of the register of ongoing declarations and purporting to be signed by the Secretary of the Department or the person responsible for the keeping of the register is admissible in any proceedings as evidence of the matters appearing in the certificate.
- (2) All courts and people authorised by law or the consent of parties to receive evidence must take judicial notice of—
 - (a) the signature of a person who is, or was, the Secretary or the person in charge of the register of ongoing declarations; and
 - (b) the fact that that person is, or was, the Secretary or person in charge.

S. 33(1)
amended by
No. 46/1998
s. 7(Sch. 1).

S. 33(2)(a)
amended by
No. 46/1998
s. 7(Sch. 1).

S. 33(2)(b)
amended by
No. 46/1998
s. 7(Sch. 1).

34 How presence of disease or condition may be established

Proof that stock or livestock products, or a sample taken from stock or livestock products or the carcass of any stock, has reacted in a prescribed way in the course of a prescribed test for a disease or condition is, in the absence of evidence to the contrary, proof of the existence of the disease or condition in the stock, livestock products or carcass for the purposes of this Act.

S. 34
amended by
No. 80/1996
s. 13(f)(i)(ii).

35 How cost of stock sold as part of a lot to be determined

If 2 or more head of stock are sold as a lot in a way that makes it impossible to determine the sale price of each head of stock, for the purposes of this Act the sale price of each head of stock in the sale is the total price of the lot divided by the number of stock in the lot.

36 Recovery of amounts owed

Any amount that is owed to a person under this Act may be recovered as a debt due and payable to the person entitled to it in any court of competent jurisdiction.

S. 37
amended by
No. 80/1996
s. 13(g).

37 Rights conferred by this Act additional to other rights

The rights conferred on a buyer by Parts 2 and 3 are in addition to any other rights the buyer may have in respect of an agreement for the sale of stock or livestock products.

38 Regulations

(1) The Governor in Council may make regulations for or with respect to—

S. 38(1)(a)
amended by
No. 80/1996
s. 14(1)(a)
(i)–(iii).

(a) prescribing diseases for the purposes of Part 2 that all stock, or any class of stock, of a particular species, or any particular livestock products, that are sold must be free of, and prescribing that species or class or those products;

S. 38(1)(b)
amended by
No. 80/1996
s. 14(1)(b)
(i)–(iii).

(b) prescribing conditions for the purposes of Part 2 that all stock, or any class of stock, of a particular species, or any particular livestock products, that are sold are not to be in, and prescribing that species or class or those products;

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(c) prescribing for each relevant disease or condition the period after sale in which the obtaining and service of an appropriate certificate will enable a buyer to invoke section 6;

(ca) prescribing information to be included in certificates for the purposes of section 6;

S. 38(1)(ca)
inserted by
No. 80/1996
s. 14(1)(c).

(d) prescribing for each relevant disease or condition the period after sale in which the slaughtering of any stock will enable a buyer to invoke section 9;

(e) prescribing the damages to be paid by a seller to a buyer under section 9 with respect to each relevant disease or condition that results in the downgrading or partial condemnation of a carcass or in the total or partial condemnation or downgrading of a product derived from a carcass;

S. 38(1)(e)
amended by
No. 80/1996
s. 14(1)(d).

(f) prescribing, for the purposes of Part 2, that if stock was sold as part of a lot and any of that stock, or any of the carcasses or products derived from the carcasses of that stock, is found to have a relevant disease or to be in a relevant condition, all the other stock in the lot (or their carcasses or products, as the case may be) are to be regarded as having that disease and as being in that condition;

(fa) exempting agreements, or classes of agreements, for the sale of stock or livestock products from the provisions of Part 2;

S. 38(1)(fa)
inserted by
No. 80/1996
s. 14(1)(e).

(g) prescribing conditions, diseases and other characteristics for the purposes of Part 3 that may be made the subject of ongoing and one-off declarations under that Part and

S. 38(1)(g)
amended by
No. 22/2004
s. 21(a).

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- regulating who may make declarations under that Part;
- S. 38(1)(ga)**
inserted by
No. 80/1996
s. 14(1)(f).
- (ga) prescribing information to be included in ongoing and one-off declarations;
- S. 38(1)(h)**
amended by
No. 80/1996
s. 14(1)(g).
- (h) requiring any person who makes an ongoing or one-off declaration to mark or identify stock or livestock products to which the declaration applies in a particular way;
- S. 38(1)(i)**
amended by
Nos 80/1996
s. 14(1)(h),
22/2004
s. 21(b).
- (i) regulating the use of any objects or markings used to identify stock or livestock products as stock or livestock products being in, or not being in, a condition or as stock or livestock products having, or not having, a disease or other characteristic prescribed under paragraph (g); and
- S. 38(1)(j)**
amended by
No. 22/2004
s. 21(c).
- (j) prescribing for each condition, disease or other characteristic prescribed under paragraph (g) the period after sale in which the obtaining and service of an appropriate certificate will enable a buyer to invoke section 13; and
- S. 38(1)(k)**
amended by
No. 80/1996
s. 14(1)(i).
- (k) prescribing the damages to be paid by a seller to a buyer under section 13 with respect to each condition or characteristic prescribed under paragraph (g); and
- (l) prescribing, for the purposes of section 13, that if stock was sold as part of a lot and any of that stock, or any of the carcasses or products derived from the carcasses of that stock, is found to be in a state that is not in accord with the ongoing or one-off declaration that applies to that stock, all the other stock in the lot (or their carcasses or products, as the case may be) are to be regarded as being in that state;

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- (m) prescribing which analysts or classes of analyst may produce certificates for the purposes of this Act; and
- (n) prescribing what tests may be used to determine whether any stock, livestock product or carcass has a particular disease or is in a particular condition and how the results of those tests are to be interpreted; and
- (o) prescribing how tests to determine the presence or absence of anything relevant to this Act are to be conducted; and
- (p) prescribing fees for the purposes of this Act; and
- (q) prescribing forms for the purposes of this Act;
- (r) generally prescribing any other matter or thing required or permitted by this Act to be prescribed or necessary to be prescribed to give effect to this Act.
- (2) Damages prescribed under subsection (1)(e) or (k)—
- * * * * *
- (b) may be expressed as a percentage of the sale price of the stock or livestock products, as a fixed amount or as a combination of percentages and fixed amounts.
- (3) The regulations may create offences and may impose a penalty of up to 10 penalty units for any offence created.

S. 38(1)(n)
amended by
No. 80/1996
s. 14(1)(j).

S. 38(2)(a)
repealed by
No. 80/1996
s. 14(2)(a)(i).

S. 38(2)(b)
amended by
No. 80/1996
s. 14(2)(a)(ii).

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- (4) The regulations—
- (a) may be of limited or general application; and
 - (b) may differ according to differences in time, place, species or circumstance.

S. 38(5)(6)
repealed by
No. 80/1996
s. 14(2)(b).

* * * * *

Stock (Seller Liability and Declarations) Act 1993
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Schedule

Schedule
**Offences for which infringement
notices may be issued**

Sch.
amended by
No. 10/2004
s. 15(Sch. 1
item 29).

<i>Offence</i>	<i>Penalty</i>
1. An offence under section 6(3)	3 penalty units
2. An offence under section 9(4)	3 penalty units
3. An offence under section 11(2)	3 penalty units
4. An offence under section 12(2)	3 penalty units
5. An offence under section 13(4)	3 penalty units
6. An offence under section 20(3)	3 penalty units
7. An offence under section 21(3)	3 penalty units
8. An offence under the regulations	3 penalty units

Endnotes

1 General information

See www.legislation.vic.gov.au for Victorian Bills, Acts and current authorised versions of legislation and up-to-date legislative information.

Minister's second reading speech—

Legislative Assembly: 21 October 1993

Legislative Council: 16 November 1993

The long title for the Bill for this Act was "A Bill to impose certain minimum conditions on the sale of stock and to establish a system of seller declarations as to the state of stock to be sold and for other purposes."

The **Stock (Seller Liability and Declarations) Act 1993** was assented to on 7 December 1993 and came into operation as follows:

Sections 1, 2 on 7 December 1993: section 2(1); rest of Act on 26 May 1994: Government Gazette 26 May 1994 page 1264.

INTERPRETATION OF LEGISLATION ACT 1984 (ILA)

Style changes

Section 54A of the ILA authorises the making of the style changes set out in Schedule 1 to that Act.

References to ILA s. 39B

Sidenotes which cite ILA s. 39B refer to section 39B of the ILA which provides that where an undivided section or clause of a Schedule is amended by the insertion of one or more subsections or subclauses, the original section or clause becomes subsection or subclause (1) and is amended by the insertion of the expression "(1)" at the beginning of the original section or clause.

Interpretation

As from 1 January 2001, amendments to section 36 of the ILA have the following effects:

- **Headings**

All headings included in an Act which is passed on or after 1 January 2001 form part of that Act. Any heading inserted in an Act which was passed before 1 January 2001, by an Act passed on or after 1 January 2001, forms part of that Act. This includes headings to Parts, Divisions or Subdivisions in a Schedule; sections; clauses; items; tables; columns; examples; diagrams; notes or forms. See section 36(1A)(2A).

- **Examples, diagrams or notes**

All examples, diagrams or notes included in an Act which is passed on or after 1 January 2001 form part of that Act. Any examples, diagrams or notes inserted in an Act which was passed before 1 January 2001, by an Act passed on or after 1 January 2001, form part of that Act. See section 36(3A).

- **Punctuation**

All punctuation included in an Act which is passed on or after 1 January 2001 forms part of that Act. Any punctuation inserted in an Act which was passed before 1 January 2001, by an Act passed on or after 1 January 2001, forms part of that Act. See section 36(3B).

- **Provision numbers**

All provision numbers included in an Act form part of that Act, whether inserted in the Act before, on or after 1 January 2001. Provision numbers include section numbers, subsection numbers, paragraphs and subparagraphs. See section 36(3C).

- **Location of "legislative items"**

A "legislative item" is a penalty, an example or a note. As from 13 October 2004, a legislative item relating to a provision of an Act is taken to be at the foot of that provision even if it is preceded or followed by another legislative item that relates to that provision. For example, if a penalty at the foot of a provision is followed by a note, both of these legislative items will be regarded as being at the foot of that provision. See section 36B.

- **Other material**

Any explanatory memorandum, table of provisions, endnotes, index and other material printed after the Endnotes does not form part of an Act. See section 36(3)(3D)(3E).

2 Table of Amendments

This publication incorporates amendments made to the **Stock (Seller Liability and Declarations) Act 1993** by Acts and subordinate instruments.

Livestock Disease Control Act 1994, No. 115/1994

Assent Date: 20.12.94
Commencement Date: S. 142(Sch. 2 item 7) on 20.12.95: s. 2(3)
Current State: This information relates only to the provision/s amending the **Stock (Seller Liability and Declarations) Act 1993**

Stock (Seller Liability and Declarations) (Amendment) Act 1996, No. 80/1996

Assent Date: 17.12.96
Commencement Date: 17.12.96: s. 2
Current State: All of Act in operation

Veterinary Practice Act 1997, No. 58/1997

Assent Date: 28.10.97
Commencement Date: S. 96(Sch. item 8) on 17.3.98: Government Gazette 12.3.98 p. 520
Current State: This information relates only to the provision/s amending the **Stock (Seller Liability and Declarations) Act 1993**

Public Sector Reform (Miscellaneous Amendments) Act 1998, No. 46/1998

Assent Date: 26.5.98
Commencement Date: S. 7(Sch. 1) on 1.7.98: s. 2(2)
Current State: This information relates only to the provision/s amending the **Stock (Seller Liability and Declarations) Act 1993**

Fisheries (Amendment) Act 2003, No. 56/2003

Assent Date: 16.6.03
Commencement Date: S. 11(Sch. item 18) on 17.6.03: s. 2
Current State: This information relates only to the provision/s amending the **Stock (Seller Liability and Declarations) Act 1993**

Monetary Units Act 2004, No. 10/2004

Assent Date: 11.5.04
Commencement Date: S. 15(Sch. 1 item 29) on 1.7.04: s. 2(2)
Current State: This information relates only to the provision/s amending the **Stock (Seller Liability and Declarations) Act 1993**

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**Primary Industries Legislation (Miscellaneous Amendments) Act 2004,
No. 22/2004**

Assent Date: 18.5.04
Commencement Date: Ss 14-21 on 19.5.04: s. 2(1)
Current State: This information relates only to the provision/s
amending the **Stock (Seller Liability and
Declarations) Act 1993**

Legal Profession (Consequential Amendments) Act 2005, No. 18/2005

Assent Date: 24.5.05
Commencement Date: S. 18(Sch. 1 item 102) on 12.12.05: Government
Gazette 1.12.05 p. 2781
Current State: This information relates only to the provision/s
amending the **Stock (Seller Liability and
Declarations) Act 1993**

Infringements (Consequential and Other Amendments) Act 2006, No. 32/2006

Assent Date: 13.6.06
Commencement Date: S. 94(Sch. item 45) on 1.7.06: Government Gazette
29.6.06 p. 1315
Current State: This information relates only to the provision/s
amending the **Stock (Seller Liability and
Declarations) Act 1993**

Statute Law Revision Act 2013, No. 70/2013

Assent Date: 19.11.13
Commencement Date: S. 4(Sch. 2 item 48) on 1.12.13: s. 2(1)
Current State: This information relates only to the provision/s
amending the **Stock (Seller Liability and
Declarations) Act 1993**

Legal Profession Uniform Law Application Act 2014, No. 17/2014

Assent Date: 25.3.14
Commencement Date: S. 160(Sch. 2 item 92) on 1.7.15: Special Gazette
(No. 151) 16.6.15 p. 1
Current State: This information relates only to the provision/s
amending the **Stock (Seller Liability and
Declarations) Act 1993**

**Victoria Police Amendment (Consequential and Other Matters) Act 2014,
No. 37/2014**

Assent Date: 3.6.14
Commencement Date: S. 10(Sch. item 159) on 1.7.14: Special Gazette
(No. 200) 24.6.14 p. 2
Current State: This information relates only to the provision/s
amending the **Stock (Seller Liability and
Declarations) Act 1993**

3 Amendments Not in Operation

There are no amendments which were Not in Operation at the date of this publication.

4 Explanatory details

¹ S. 22: If this defence is used, it is still open to a buyer to bring an action under section 9(2) or 13(2) for any amount the buyer believes the seller still owes—see section 36.