

FERTILISERS.

19° GEO. V., No. X.

No. 10 of 1928.

AN ACT to make better provision for regulating the Sale of Fertilisers.

[Assented to 15th November, 1928.]

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

Short title and commencement.

1. (1.) This Act may be cited as the *Fertilisers Act*, 1928, and shall come into operation upon a day to be fixed by proclamation.

Repeal of Act 1904, No. 33.

(2.) The Acts mentioned in the First Schedule are hereby repealed in so far as they relate to fertilisers.

Interpretation.

2. In this Act, unless the context otherwise indicates or requires—

Acid soluble phosphoric acid.

“Acid soluble phosphoric acid” means the phosphoric acid determined by the method to be prescribed for the determination of acid soluble phosphoric acid, but it shall not include any water soluble or citrate soluble phosphoric acid.

Analyst.

“Analyst” means an analyst licensed in accordance with the provisions of this Act.

Bone dust or bone meal.

“Bone dust” or “bone meal” shall mean disintegrated bones, whether steamed or unsteamed, without admixture of any other substance of either animal or mineral origin.

Bone fertiliser or bone manure.

“Bone fertiliser” or “bone manure” is any fertiliser which contains any material derived from bones admixed with other substances other than phosphate fertiliser.

- “Brand” means a trade mark, or sign, or word, which shall be registered by the manufacturer, importer, or dealer, to be used as a distinguishing mark for his fertilisers, and to be associated with and intended for the identification thereof. **Brand.**
- “Citrate soluble phosphoric acid” means the phosphoric acid determined by the method to be prescribed for the determination of citrate soluble phosphoric acid, but it shall not include any water soluble phosphoric acid. **Citrate soluble phosphoric acid.**
- “Dealer” means any person who carries on business as a manufacturer, importer, indentor, or vendor of or dealer in fertilisers for the purpose of trade, and whether such person carries on any other business or trade or not. **Dealer.**
- “Fertiliser” includes every substance containing in appreciable quantity nitrogen, phosphoric acid, potash, or lime and lime compounds, sold, manufactured, produced, or prepared for applying to the soil, except farmyard or stable manure, crude night-soil, crude offal, seaweed, or such other material as may be proclaimed not to be a fertiliser for the purposes of the Act. **Fertiliser.**
- “Fine material” means particles smaller than the prescribed size. **Fine material.**
- “Grade formula” means the expression in integral figures of the percentages of nitrogen, phosphoric acid and potash, in the order given, and guaranteed to be present by the dealer in a compound fertiliser. **Grade formula.**
- “Gypsum” means hydrated sulphate of calcium, and includes, in the case of gypsum used as a fertiliser, any calcium carbonate that may be present not exceeding such amount as has (in accordance with the regulations) been stated to be associated with the gypsum in such fertiliser. **Gypsum.**
- “Inspector” means an inspector of fertilisers appointed under this Act, and includes an assistant inspector. **Inspector.**
- “Lime” includes the following:— **Lime:**
- (1) “Caustic lime” or burnt lime or quicklime in the form of calcium oxide (CaO).

(2) "Agricultural lime," containing lime in the form of carbonate of lime (CaCO_3) obtained by the crushing or pulverising of limestone, marble, coral, or shells, or containing hydrate of lime (Ca(OH)_2) obtained by the slaking of caustic lime, or containing a mixture of both.

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| Minister. | "Minister" means the Minister for Agriculture or other Minister of the Crown charged for the time being with the administration of this Act. |
| Name of fertiliser. | "Name of fertiliser" means the trade name, which, in the case of compound fertilisers, may include or consist of the "grade formula." |
| Package. | "Package" includes sack, bag, barrel, case, or other container. |
| Person. | "Person" includes firm and an incorporated company. |
| Phosphate fertiliser. | "Phosphate fertiliser" means any fertiliser which contains a phosphate, and which is neither bone dust, bone meal, bone fertiliser, bone manure, nor superphosphate. |
| Potash. | "Potash" means any water soluble salt of potassium calculated as potassium oxide (K_2O). |
| Super or super-phosphate. | "Superphosphate" means any fertiliser which has been treated in such a manner as to render all or the major portion of the phosphoric acid therein soluble in water, and includes any fertiliser having any description or name which includes the word "super" or the word "superphosphate." |
| Buy. | The verb "to buy" in whatever person, number, tense, mood, or voice it is used includes to receive or accept under a sale or agreement to sell and to offer to receive, or accept, or cause or suffer to be received or accepted under a sale or agreement to sell; and all derivatives of the word "buy" have corresponding connotations. |
| Sell. | The verb "to sell" in whatever person, number, tense, mood, or voice it is used includes— <ul style="list-style-type: none"> (i) to barter or exchange; (ii) to agree to sell, barter, or exchange; (iii) to offer, expose, store, have in possession, send or deliver for, or on sale; (iv) to receive for sale; |

- (v) to cause or suffer to be sold, bartered, or exchanged, or to be agreed to be sold, bartered, or exchanged;
- (vi) to cause or suffer to be offered, exposed, stored, had in possession, sent, or delivered for, or on sale;
- (vii) to cause or suffer to be received for sale; and
- (viii) to attempt to do any of such acts or things and all derivatives of the word "sell," including the noun "sale," have corresponding connotations.

"Total phosphoric acid" means the phosphoric acid determined by the method prescribed for the determination of total phosphoric acid.

Total phosphoric acid.

"Water soluble phosphoric acid" means the phosphoric acid determined by the method prescribed for the determination of water soluble phosphoric acid.

Water soluble phosphoric acid.

3. This Act does not apply—

Exemptions.

- (a) to the sale of bulk lots of fertilising compounds to a fertilising manufacturer;
- (b) to the sale of a fertiliser in a less quantity than one hundredweight.

Provided that section nine shall apply to such a sale as is mentioned in paragraph (b) hereof.

4. (1.) The Minister shall cause to be compiled and kept, in such form as may be prescribed, a register of fertilisers; provided that any original application for registration may be embodied in the register.

Register:

No. 2652, Vict., s. 18.

(2) The register shall be open to the inspection of the public at all convenient times on payment of the prescribed fee.

(3.) Certified copies of entries in the register shall be given to any person applying for them on payment of the prescribed fee.

5. The Director of Agriculture may cause the register to be amended or altered by—

Amendment of register.

No. 2652, Vict., s. 20.

- (a) making any entry wrongly omitted to be made in the register;
- (b) expunging any entry wrongly made in or remaining on the register;
- (c) correcting any error in the register;
- (d) altering the name or address of any person whose name or address appears on the register if he has changed his name or address;

- (e) amending in the prescribed manner, at the request of the dealer and on payment by him of the prescribed fee, the statement of the minimum percentages of nitrogen, phosphoric acid, and potash and lime contained in the fertiliser and of the forms in which they are respectively present therein.

Registration of
fertilisers.

6. (1.) Every dealer who desires to have any fertiliser registered shall, on or before the first day of November in the year for which he desires the registration to take effect, make application in writing (in the prescribed form) to the Director of Agriculture for the registration of such fertiliser and pay the prescribed fee: Provided that in respect of the year current at the commencement of this Act, or with the permission of the Director in respect of any other year, any such application may be made after the first day of November.

(2.) Every registration shall have effect for the year, or the balance of the year, in respect of which the application is made and no longer, and a fresh application shall be necessary in respect of each year.

(3.) Every such registration shall include the brand, name, and composition of the fertiliser, and such other information as is comprised in the application; but no brand shall be registered if in the opinion of the Minister—

- (a) it is substantially identical with any other brand registered, or which any other person is entitled to have registered; or
- (b) it so nearly resembles any other brand registered, or which any other person is entitled to have registered as to be likely to deceive; or
- (c) a different brand has been already registered, and continues registered, in the name of the applicant in respect of any fertiliser; or
- (d) it is likely to mislead a purchaser as to the composition of the fertiliser.

(4.) Every registration under section four of the Fertilisers and Feeding Stuffs Act, 1904, shall become inoperative on a day to be fixed by proclamation; but until such date shall continue in operation as if effected under this Act.

(5.) In this section the word "year" means the period of twelve months commencing on the first day of November and ending on the thirty-first day of October.

7. (1.) Every such application shall be accompanied by the amount of the prescribed fee for registration, and by a certificate in the prescribed form setting forth—

- (a) the full name and place of business of the applicant;

Particulars on
application.

Ibid. s. 22.

- (b) the brand to be attached to or associated with the fertiliser for the purpose of identification, which the applicant desires to have registered;
 - (c) the name of the fertiliser and the name and address of the manufacturer or importer of the fertiliser;
 - (d) the place of manufacture;
 - (e) the raw materials from which the fertiliser is manufactured or prepared, and if the fertiliser contains any organic material such as leather, hoof, horn, hair, wool-waste, peat, garbage, tankage, or similar material, the percentage by weight thereof, and a statement as to what treatment or process (if any) the organic material has been subjected to;
 - (f) a statement in the prescribed form of the minimum percentages of nitrogen, phosphoric acid, and potash, showing in accordance with the regulations the respective forms in which they are respectively present in the fertiliser;
 - (g) a statement of the price per ton of the fertiliser, free on rail at works and at Perth, at the date of registration;
 - (h) where the fertiliser is lime, agricultural lime, or gypsum, the minimum calcium content of the fertiliser expressed as calcium oxide. In the case of gypsum the calcium oxide in combination with sulphuric anhydride shall also be expressed as crystallised calcium sulphate ($\text{CaSO}_4 \cdot 2\text{H}_2\text{O}$); any lime or lime compound present as a constituent of any manufactured fertiliser shall not be separately declared;
 - (i) a statement of the percentage of fine material where the fertiliser is one in respect of which such a statement is declared by the regulations to be necessary;
 - (j) such other matters as may be prescribed;
- (2.) Every such application shall be verified by a statutory declaration by the applicant in such form as may be prescribed, and may be published in the *Gazette* and in such other manner as the Minister may direct.

8. A list of dealers who have registered fertilisers, and all fertilisers registered, together with a synopsis of the information supplied in accordance with section seven of this Act, may be published in the *Gazette* or the *Journal of the Depart-*

ment of Agriculture, or in such other manner as the Minister may direct, as soon as practicable after the commencement of this Act, and thereafter as soon as practicable after the first day of November in each year.

Offences relating to the sale of unregistered fertilisers or the use of unregistered brands or names or of unbranded packages.

9. It shall be unlawful for any person—

- (a) to sell any unregistered fertiliser;
- (b) to sell any fertiliser except under a registered brand or name;
- (c) to apply, advertise, or in any way make use of any unregistered brand or name to or in connection with any fertiliser;
- (d) to sell any fertiliser unless the same is contained in a package on which is conspicuously marked a copy of the registered brand and name of the fertiliser.

Paragraph (c) of this section shall apply only to the author of the advertisement, and shall not apply to the printer, publisher or exhibitor thereof in any newspaper or other printed matter.

Section 9 to apply to importers.

10. Every importer or indenter, whether as principal or agent, of any fertiliser, who distributes, parts with, or disposes of such fertiliser or any part thereof shall be liable to the provisions of section nine as if he had sold such fertiliser.

Sample of fertilisers to be supplied for analysis.

ibid. s. 28.

11. A dealer in fertiliser shall, when required to do so by the Minister, forward for analysis to the chemist of the Department of Agriculture without payment samples not exceeding two pounds and not less than one pound in weight of any fertiliser in his possession.

Invoice to be given on sale of fertiliser. cf. S.A., 9 Geo. V., No. 1355, s. 7.

12. (1.) Upon the sale of any fertiliser, whether paid for at the time of sale or not, the dealer shall at or before the time of delivery of the same or any part thereof, give to the purchaser an invoice in or to the effect of the prescribed form signed by the dealer or his agent.

(2.) There shall be correctly, accurately, and clearly stated in or shown on the invoice—

- (a) the name and place of business of the vendor, and if the fertiliser is manufactured in the State the name and place of business of the manufacturer;
- (b) a copy of the registered brand and name of the fertiliser;

- (c) the minimum percentages of nitrogen, phosphoric acid, and potash, and a statement in accordance with the regulations of the respective forms in which they are respectively present in the fertiliser;
- (d) if the fertiliser is lime, or agricultural lime, or gypsum, a statement of the description of the fertiliser and of the calcium contained therein expressed as calcium oxide, as stated in the certificate furnished under section seven to be contained in lime, or agricultural lime, or gypsum of the same name or brand. In the case of gypsum the calcium oxide in combination with sulphuric anhydride shall also be expressed as crystallised calcium sulphate ($\text{CaSO}_4 \cdot 2\text{H}_2\text{O}$). Any lime or lime compound present as a constituent of any manufactured fertiliser shall not be separately declared;
- (e) if the fertiliser is one to which this paragraph is declared by the regulations to apply, the percentage of fine material stated in the certificate furnished under section seven to be contained in that kind and brand of fertiliser.

(3) Such invoice shall, notwithstanding any agreement to the contrary, have effect as a warranty by the seller of the accuracy of all the matters stated therein.

13. In any case where any package containing any fertiliser which has been marked or labelled as required by section nine is wholly or partly emptied, no person shall place in such package any fertiliser other than fertiliser of the same name or brand as that originally contained in such package, and to which the brand and name appearing upon such package refer.

Putting into brand-
ed bags fertiliser
other than that to
which brands refer,
an offence.

S. A. 9 Geo. V.,
No. 1355, s. 9.

14. No person shall be bound to accept delivery on sale of any fertiliser unless all the provisions of sections nine and twelve have, so far as applicable, been complied with in respect thereof.

Buyer need not
accept delivery
unless Act com-
plied with.

S. A. 9 Geo. V.,
No. 1355, s. 11.

15. Any dealer who sells a fertiliser which, upon analysis under this Act, is found to contain a smaller percentage of nitrogen, phosphoric acid, potash, or lime than the propor-

Limits of variation,
cf. 5 Geo. V., No.
8 (Qtd.), s. 9.

tions thereof respectively stated in the register to be present in such fertiliser, and such deficiency exceeds—

- (a) as to nitrogen, one-half per centum; or
- (b) as to total phosphoric acid, one and one-half per centum, or as to water soluble phosphoric acid, citrate soluble phosphoric acid, or acid soluble phosphoric acid, one-half per centum, provided that an excess of water soluble or citrate soluble may be set off against a deficiency of acid soluble, and an excess of one of the water soluble or citrate soluble forms may be set off against a deficiency of the other; or
- (c) as to potash, one-half per centum; or
- (d) as to lime, seven per centum of the total lime appearing from the register to be present in such fertiliser,

shall be guilty of an offence against this Act.

Provided that in the case of bone dust or bone meal natural variations whereby the percentage of phosphoric acid is increased in proportion as the percentage of nitrogen is decreased or *vice versa* may be set off against each other.

Limit of variation regarding fine material.

16. Every dealer who sells any fertiliser to which this section is declared by the regulations to apply, which does not contain the percentage of fine material stated in the certificate furnished under section seven to be contained in that kind and brand of fertiliser, shall, if the deficiency is greater than five per centum of fine material, be guilty of an offence against this Act.

Sale of fertiliser incorrectly described as "bone manure" an offence. S.A. 9 Geo. V., No. 1,355, s. 13.

17. Every dealer who sells any phosphate fertiliser under any brand, designation, or description which suggests the presence in the fertiliser of bone manure, or sells as bone fertiliser or bone manure any fertiliser which contains rock or mineral phosphate, superphosphate, gypsum, or other mineral substance, shall be guilty of an offence against this Act.

Sale of fertiliser different from that demanded.

18. If any person shall sell any fertiliser which is not of the nature, substance, and quality demanded by the buyer, he shall be guilty of an offence against this Act.

Sale of fertiliser not in conformity with standard.

19. If any person sells any fertiliser of a kind or description for which a minimum chemical or physical standard is prescribed, and the fertiliser so sold is not in conformity with the prescribed standard and differs therefrom otherwise than

in the manner and to the extent allowed by the regulations, then such person shall be guilty of an offence against this Act.

20. The Governor may appoint inspectors and may license as prescribed by regulations persons having competent chemical knowledge to be agricultural analysts.

Inspectors and analysts.
cf. S.A. 9 Geo. V.,
No. 1355, s. 15.

21. Any person who in any way obstructs or interferes with any inspector or analyst in the discharge of any of his duties or the exercise of any of his powers under this Act shall be guilty of an offence against this Act.

Obstructing inspectors.
Ibid. s. 16.

22. Any inspector may, at any time required, enter upon any land or into any warehouse, store, shop, building, or other premises where any fertiliser is or may reasonably be supposed to be kept for sale or sold, and may—

Powers of inspector.
Ibid. s. 17;
cf. (Qld.) 5 Geo. V.,
c. 8, s. 10.

- (a) examine and take a quantity of any fertiliser there found as a sample for analysis; and
- (b) do any act or thing prescribed by regulation to be done in connection with or for the purposes of anything authorised by this section or the analysis of samples taken under this section;
- (c) require the purchaser of any fertiliser to state the name and address of the dealer from whom he purchased such fertiliser and to produce for inspection any invoice given to him by the dealer pursuant to this Act.

This section does not apply to premises where fertilisers are in process of manufacture, and are not kept for sale, or sold.

23. An inspector may at any time whatsoever take a sample of any fertiliser from any railway truck, cart, lorry, van, or other vehicle in which the same may be in course of transit to any purchaser.

Power to take samples from railway truck, etc.,
W.A. 1911, No.
21, s. 3.

24. When an inspector takes a sample for analysis under section twenty-two or twenty-three he shall—

Procedure on taking sample.
S.A. 9 Geo. V.,
No. 1355, s. 18.
cf. *Ibid.* s. 10 (2).

- (a) thoroughly mix such sample and divide it into three approximately equal parts;
- (b) place each such part in a separate package, and seal or fasten each such package;

- (c) place on each such package a label stating the brand of the fertiliser and also the name, so far as is known to him, of the occupier of the premises or of the person apparently having possession, custody, or control of the lot from which such sample was taken, or if taken in course of transit as aforesaid, of the vendor or an agent in Western Australia of the vendor, and the time and place of taking;
- (d) deliver one of such parts to the person in charge, or apparently in charge, of the premises, or send the same, in the case of a sample taken in course of transit, to the vendor or an agent in Western Australia of the vendor; and
- (e) retain one of such parts for future comparison.

The other of such parts may be utilised for analysis.

Publication of result of analysis.
Ibid. s. 20.

25. The result of the analysis by an analyst of any sample or part of a sample of any fertiliser, together with the name and address or place of business of the dealer from whom the fertiliser was bought or of the person in the occupation or apparent occupation of the premises where the sample was taken, and a copy of the certificate furnished under section seven, embodying any amendments made under paragraph (e) of section five, and also any explanations of and comments upon the result of the analysis, may be published in the *Gazette* and in any newspaper, and in such other manner as is prescribed, and a statement of the result of any analysis shall be sent by post to the person in the occupation or apparent occupation of the premises where the sample was taken or, if taken in course of transit, to the vendor or an agent in Western Australia of the vendor.

Purchaser may submit sample of fertiliser for analysis.

26. Every buyer of any fertiliser shall, on payment of the prescribed fee, and on complying with the regulations, be entitled to submit a sample of such fertiliser to an analyst for analysis, and to receive from him a certificate of the result of his analysis.

Analyst's certificate.
S.A. 9 Geo. V.,
No. 1356, s. 22.

27. The certificate of the analyst shall be in the form and contain the particulars prescribed by the regulations under this Act.

28. Any sample which may be taken (except one taken in course of transit) shall be drawn from at least ten per centum of the packages of the total quantity of the fertiliser from which it is drawn, and at once be thoroughly mixed and divided as by regulation prescribed.

Unit for sampling.
Ibid. s. 26.

Provided that the sample shall not be drawn from less than five packages, unless the total quantity from which the sample is taken is contained in less than five packages, in which case the sample shall be drawn from each package.

29. (1.) At the hearing of any civil or criminal proceedings with regard to any sample or part thereof which has been analysed by an analyst at the instance of an inspector, or the lot from which the sample was taken, or with regard to the contents of any package of fertiliser which have been so analysed, the production of a certificate in or to the effect of the prescribed form purporting to be signed by an analyst shall, without proof of the signature of the person appearing to have signed the same or that he is an analyst, be *prima facie* evidence—

Certificate of analyst to be evidence.
Ibid. s. 23.
cf Qld. Act, s. 15 (1)

- (a) of the identity of the thing analysed;
- (b) of the result of the analysis;
- (c) of the matter stated in the certificate; and
- (d) of the prescribed method of analysis (if any) having been followed by the analyst in making the analysis,

unless the defendant, by at least three clear days' (exclusive of Sundays and public holidays) notice in writing delivered to the informant and by a like three clear days' (exclusive as aforesaid) notice delivered, with a witness fee of one guinea, to the analyst, requires that such analyst shall attend as a witness.

(2.) In any case where the attendance of an analyst is required as mentioned in this section, the court may, in addition to any other order which may be made as to costs, make such order as such court shall deem proper as to the witness fee paid to the analyst, and as to the expenses of and remuneration to be paid for the analysis.

30. When in any proceedings in respect of an offence against this Act, a contravention of any of the provisions of this Act is proved with regard to any sample of fertiliser, such contravention shall be deemed to have been proved with

Offence as to sample deemed offence as to whole lot.
S.A. 9 Geo. V.,
No. 1355, s. 27.

regard to the whole lot from which the sample was taken, or all the fertiliser bought at the same time as such sample.

Tampering with samples.
Ibid. s. 28.
cf. Qld. Act, s. 13.

31. If any person knowingly and fraudulently—

(a) tampers with any package of fertiliser so as to procure that any sample of it taken under this Act does not correctly represent the contents of the package; or

(b) tampers with any sample taken under this Act, he shall be guilty of an offence against this Act.

Certain allegations no defence:
Ibid. s. 29;
Ibid. s. 14 (2).

32. In any proceedings in respect of an offence against this Act it shall be no defence to allege, or to prove, that the buyer, having bought only for analysis, was not prejudiced by the sale, or that the fertiliser in question, though deficient in one or more constituents, was not defective in other, or in all, constituents.

Offences.

33. (1.) The contravention by any person of any section or provision of this Act, whether by act or omission, shall be deemed an offence against this Act.

(2.) Any person guilty of an offence against this Act shall be liable on summary conviction to a penalty which, if he has not been previously convicted of any offence against this Act, shall not exceed twenty pounds and, if he has been previously so convicted, shall not exceed one hundred pounds.

(3.) This section does not apply to the contravention of any regulation.

Who may prosecute.
Ibid. s. 32.
Ibid. s. 14 (1).

34. A prosecution for an offence against this Act may be instituted either by the person aggrieved, by an inspector, or by any person authorised in that behalf by the Minister.

Evidence.
Ibid. s. 34.
Ibid. s. 15.

35. In any proceedings, civil or criminal, with respect to any fertiliser analysed under this Act—

(a) parol evidence that any person is an analyst or an inspector or other officer under this Act shall be deemed sufficient, unless the defendant proves the contrary;

(b) authority to do any act or take any proceeding shall be presumed until the contrary is proved; and

- (c) the allegation that any fertiliser was sold shall be sufficient evidence of the fact which constitutes a sale as herein defined, until the contrary is proved, and the onus of proof that any fertiliser was not for sale shall lie upon the defendant.

36. (1.) Where any dealer is charged with an offence against any of the provisions of this Act he shall be entitled, upon complaint duly laid by him, to have any other person whom he charges as the actual offender brought before the court at the hearing of the charge, and if after the commission of the offence has been proved the person in the first instance informed against proves to the satisfaction of the court—

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

the said other person shall be summarily convicted of such offence, and the said dealer shall be exempt from any penalty. The person so convicted shall, in the discretion of the court, be also liable to pay any costs incidental to the proceedings.

(2.) Where it is made to appear to the satisfaction of any analyst or inspector, or of any officer appointed under this Act, at the time of discovering an offence—

- (a) that the dealer has used all due diligence to enforce the execution of this Act; and
- (b) by what person the offence has been committed; and
- (c) that it has been committed without the knowledge, consent, or connivance of the said dealer, and in contravention of his orders,

the said analyst, inspector, or officer shall proceed against the person whom he believes to be the actual offender, without first proceeding against the said dealer.

37. The Governor may make regulations not inconsistent with this Act, prescribing all things which by this Act are required, contemplated, or permitted to be prescribed, or which may be necessary or convenient to be prescribed for giving effect to and carrying out the provisions and objects

Exemption of employer from penalty on conviction of actual offender.

S.A. 9 Geo. V.,
No. 1355, s. 35.
Vict. 2652, 1915,
s. 41.

cf. Qld. Act, s. 14
(3).

Regulations:
S.A. 9 Geo. V.,
No. 1355, s. 36.

of this Act, and, without prejudice to the generality of the foregoing provision, it is hereby declared that regulations made under this Act may prescribe, provide for, or regulate—

- (a) the method to be adopted by the buyer of any fertiliser in taking a sample of the fertiliser in order that he may obtain an analyst's analysis thereof;
- (b) the methods of analysis to be adopted by analysts in analysing samples of fertiliser submitted for analysis under this Act;
- (c) the fees to be paid for obtaining an analyst's analysis;
- (d) fees to be paid for anything done under this Act;
- (e) forms to be used in connection with anything done under this Act;
- (f) the manner in which the powers and duties of analysts and inspectors are to be exercised and discharged, and generally such things as may be necessary or convenient for enabling analysts and inspectors to exercise and discharge such powers and duties, and to carry out the provisions and objects of this Act;
- (g) any minimum chemical or physical standards for fertilisers;
- (h) the branding, stamping, marking, and labelling of packages;
- (i) penalties or daily penalties for offences against regulations.

Provided that no penalty shall be prescribed which exceeds twenty pounds, and no daily penalty which exceeds two pounds.

Saving.
No. 2052, Vict.,
s. 35.

38. Nothing in this Act contained and no proceedings taken under this Act against any offender shall in any way interfere with or lessen any right or remedy by civil process which any party aggrieved by any offence against this Act might have had if this Act had not been passed.

Remedy by a
vendor against a
prior vendor.
Ibid. s. 36.

39. In any action brought by any person for misrepresentation or for a breach of warranty on the sale of any fertiliser, such person may recover alone or in addition to any other

damages recoverable by him the amount of any penalty in which he has been convicted under this Act, together with the costs paid by him upon such conviction and those incurred by him in and about his defence thereto if he proves—

- (a) that the fertiliser the subject of such conviction was consigned, forwarded, or sold to him by the defendant, and that the brand shown on the invoice and package containing such fertiliser when received by him was the same as that shown on the invoice and package given by him upon the sale in respect of which he has been convicted; and
- (b) that he purchased or received such fertiliser not knowing it to be of a different composition to that in respect of which the brand was registered.

The defendant in any such action shall, however, be at liberty to prove that the conviction was wrongful.

40. No inspector, analyst, or other officer shall be liable, except in respect of wilful misconduct or neglect, to any legal proceedings for anything done or omitted in the exercise or execution or supposed exercise or execution of any of his powers or duties under this Act.

Protection to
officers acting
under the Act.
S.A. 9 Geo. V.,
No. 1355, s. 37.

THE SCHEDULE.

Sec. 2.

| Short Title. | Year and Number. |
|--|------------------|
| The Fertilisers and Feeding Stuffs Act, 1904 | No. 7 of 1904. |
| The Fertilisers and Feeding Stuffs Amendment Act, 1905 ... | No. 10 of 1905. |
| The Fertilisers and Feeding Stuffs Amendment Act, 1911 ... | No. 21 of 1911. |