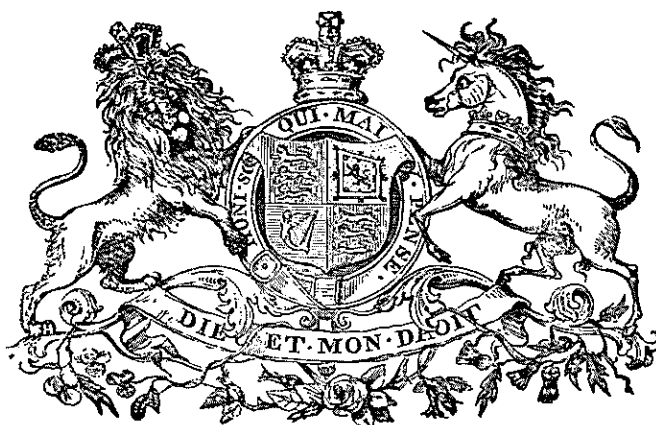


WESTERN AUSTRALIA.



ANNO TERTIO

EDWARDI SEPTIMI REGIS,

XXII.

No. 7 of 1904.

AN ACT to amend the Law relating to the
Sale of Fertilisers and Feeding Stuffs.

[Assented to 16th January, 1904.]

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:—

1. THIS Act may be cited as the *Fertilisers and Feeding Stuffs Act*, 1904, and shall come into force on the first day of July, 1904. Short title and commencement.

2. THE Fertilisers and Feeding Stuffs Act, 1895, is hereby repealed. Repeal.

3. IN this Act, unless some other meaning is clearly intended,— Interpretation.
“Acid soluble phosphate” means phosphate soluble in acids calculated as tricalcic phosphate, but other than “water soluble phosphate” and “citrate soluble phosphate,” as defined below ;

“Brand” means a distinctive name, figure, trade mark, or trade description, followed by the word “registered.”

“Cattle” includes horses, camels, asses, mules, bulls, cows, oxen, heifers, calves, sheep, goats, swine, poultry, and dogs;

“Citrate soluble phosphate” means bicalcic phosphate calculated as tricalcic phosphate;

“Dealer” means any person who sells or exhibits or offers for sale any fertiliser or food for cattle, and whether such person carries on any other business or trade or not;

“Fertiliser” includes every article for use as a fertiliser of the soil, except farmyard or stable manure, crude nightsoil, crude offal, seaweed, or other crude material;

“Inspector” means an inspector of fertilisers and food for cattle under this Act, and includes assistant inspector;

“Minister” means the Minister for Lands or other responsible Minister of the Crown charged with the administration of this Act for the time being;

“Potash” means potash calculated as monoxide of potassium;

“Prescribed” means prescribed by this Act or the regulations thereunder.

“Water soluble phosphate” means monocalcic phosphate calculated as tricalcic phosphate.

Brands of fertilisers
to be registered.

4. IT shall be unlawful to sell, exhibit, or offer for sale any fertiliser unless—

(1.) The brand of such fertiliser; and

(2.) The minimum percentages of nitrogen, nitrogen as nitrates, potash in readily soluble form, water soluble phosphate, citrate soluble phosphate, acid soluble phosphate, and moisture contained in such fertiliser

are registered in the prescribed manner at the Department of Agriculture in Perth.

Publication of
certificate.

5. THE particulars of any registered brand of fertiliser may be published in the *Government Gazette*, or in such other manner as the Minister may think fit.

Amendment of
registered per-
centages.

6. ANY person may, in the prescribed manner, amend the registered minimum percentages of nitrogen, nitrogen as nitrates, potash in readily soluble form, water soluble phosphate, citrate soluble phosphate, and acid soluble phosphate contained in any brand of fertiliser registered by him.

7. EVERY person who sells or exhibits or offers for sale any fertiliser shall brand or stamp upon or durably affix to, or cause to be branded or stamped upon or durably affixed to, every sack, barrel, case, or other package containing any portion of such fertiliser, the registered brand of the fertiliser.

Packages to be branded.

8. EVERY person who sells any fertiliser in any quantity not less than half a hundredweight—

Seller to give invoice certificate to buyer.

(1.) Shall, at the time of sale or delivery of the fertiliser or any part thereof to the purchaser, give to the purchaser an invoice certificate in the prescribed form signed by the seller or his agent and stating—

(a.) The name and place of business of the seller ;

(b.) The registered brand of the fertiliser ;

(c.) The quantity sold ;

(d.) The minimum percentages of nitrogen, nitrogen as nitrates, potash in readily soluble form, water soluble phosphate, citrate soluble phosphate, acid soluble phosphate, and of moisture, or of such of them as the fertiliser contains, which shall in every case be not less than the minimum percentages thereof as registered with the brand ; and

(2.) Shall, before delivery, durably mark or brand upon or durably affix to, or cause to be durably marked or branded upon or durably affixed to, every sack, barrel, case, or other package containing any portion of such fertiliser delivered in pursuance of such sale, the registered brand of the fertiliser.

And mark brand on package.

9. EVERY such invoice certificate shall be deemed a representation or warranty by the seller to the purchaser of the truth of the matters referred to therein.

Invoice certificate a warranty.

10. (1.) EVERY person who sells, for use as food for cattle, any article which has been artificially prepared, shall give to the purchaser an invoice certificate stating the name of the article, the percentages of nutritive or other ingredients contained therein, and whether it has been prepared from one substance or seed, or from more than one substance or seed, and such invoice shall have effect as a warranty by the seller of the statements contained therein.

Warranty on sale of feeding stuff.

(2.) Where any article sold for use as food for cattle is sold under a name or description implying that it is prepared from any particular substance, or from two or more particular substances, or is the product of any particular seed, or of two or more particular seeds, and without any indication that it is mixed or compounded with any other substance or seed, there shall be an implied warranty

by the seller that it is pure, that is to say, is prepared from that substance or those substances only, or is a product of that seed or those seeds only.

(3.) On the sale of any article for use as food for cattle, there shall be implied a warranty by the seller that the article is suitable for feeding purposes.

(4.) Any statement by the seller of the percentages of nutritive or other ingredients contained in any article sold for use as food for cattle, made in an invoice certificate of such article, or in any circular or advertisement descriptive of such article, shall have effect as a warranty by the seller

Deficiency in registered brands.

11. EVERY person who sells or exhibits or offers for sale any fertiliser which contains a smaller percentage of nitrogen, nitrogen as nitrates, potash in readily soluble form, water soluble phosphate, citrate soluble phosphate, or acid soluble phosphate than the percentages thereof as registered with the registered brand of the fertiliser shall, if the deficiency is greater than one-half per centum of nitrogen, or nitrogen as nitrates, one-half per centum of potash in readily soluble form, or one and one-half per centum of phosphate, whether water soluble phosphate, citrate soluble phosphate, or acid soluble phosphate, separately or total, commits an offence against this Act.

Offences by sellers.

12. ANY person who—

- (1.) Sells or describes as bonedust or bonemeal any fertiliser containing less than the prescribed percentage of tricalcic phosphate derived from bones; or
- (2.) Sells or describes as superphosphate or super any fertiliser containing less than the prescribed percentage of water soluble phosphate, and less than the prescribed total percentage of water soluble phosphate and citrate soluble phosphate; or
- (3.) Sells or describes as 'Thomas' Phosphate any fertiliser composed of basic slag containing less than the prescribed percentage of tricalcic phosphate, and so prepared that less than the prescribed percentage of the fertiliser is capable of passing through a sieve having the prescribed mesh to the square inch; or
- (4.) Sells for use as food for cattle any article which contains any ingredient deleterious to cattle, or to which has been added any ingredient worthless for feeding purposes, and not disclosed at the time of the sale,

commits an offence against this Act.

13. THE Governor shall appoint an Inspector of Fertilisers for the purposes of this Act, and may appoint one or more assistant Inspectors of Fertilisers. Inspectors.

14. ANY inspector may, at any time in the daytime, enter any manufactory, warehouse, store, shop, building, or place where any fertiliser or food for cattle is manufactured, kept, or exposed for sale, and demand and take samples thereof. Powers of inspectors.

15. THREE samples shall be taken by the inspector in each case and marked, sealed, and fastened by the inspector in the presence of the dealer or his representative, and shall be disposed of as follows:— Samples.

- (a.) One sample shall be delivered to the person in charge of or left upon the premises;
- (b.) One may be utilised for analysis by a Government analyst;
- (c.) One shall be retained by the inspector for future comparison.

16. THE result of the analysis of any sample of fertiliser or food for cattle taken by any inspector, together with the name and address of the dealer from whom the sample was obtained, may be published in the *Government Gazette* and in such other manner as the Minister may think fit, and a statement of the result of any analysis shall be sent by post forthwith to the dealer from whom the sample was taken. Publication of result of analysis.

17. ANY dealer who refuses—

- (1.) To permit an inspector to take samples of any fertiliser or feeding stuff; or
- (2.) To deliver to the inspector an invoice certificate in respect of any sample taken,

commits an offence against this Act.

Penalty for refusing to permit inspector to take samples.

18. EVERY buyer of any fertiliser or food for cattle shall, on complying with the regulations, be entitled to submit a sample of such fertiliser or food for cattle to a Government analyst for analysis, and to receive from him a certificate, in the prescribed form, of the result of his analysis. Right of buyer to analysis.

19. AT the hearing of any civil or criminal proceeding with respect to any article analysed in pursuance of this Act, the production of a certificate of the result of an analysis purporting to be signed by a Government analyst shall be conclusive evidence of the Certificate evidence.

facts therein stated, unless the defendant or person charged gives notice to the plaintiff or prosecutor, at least twenty-four hours previous to the day fixed for the hearing, that he requires that the analyst shall be called as a witness.

Cost of analysis.

20. THE costs of and incidental to the obtaining of any analysis, in pursuance of section eighteen of this Act, shall be a debt due from the seller to the purchaser, if the result of the analysis is against the seller.

Tampering with samples.

21. IF any person—

(a.) Tamperers with any parcel of fertiliser or food for cattle so as to procure that any sample of it taken in pursuance of this Act does not correctly represent the contents of the parcel ; or

(b.) Tamperers with any sample taken under this Act,

he shall be liable, on summary conviction, to a fine not exceeding twenty pounds, or to imprisonment for a term not exceeding six months.

Defence.

22. IN any proceeding for an offence under this Act it shall be no defence to allege that the buyer, having bought only for analysis, was not prejudiced by the sale, or that the fertiliser or food for cattle, though deficient in one or more constituents, was not defective in other constituents.

Remedy by a seller against a prior seller.

23. 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 may have 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—

(1.) That the fertiliser, the subject of such conviction, was consigned, forwarded, or sold to him by the defendant with an invoice certificate containing the like particulars to those contained in the invoice certificate given by him upon the sale in respect of which he shall have been convicted ; and

(2.) That he purchased or received such fertiliser, not knowing it to be otherwise, and afterwards sold it in the same state in which he purchased or received it ;

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

24. A PROSECUTION for an offence under this Act may be instituted either by the person aggrieved, by an inspector, or by any person authorised by the Director of Agriculture. Who may prosecute.

25. IN any proceedings under this Act the signature of every competent analyst shall be judicially noticed, and the appointment of any person as a Government analyst or as an inspector, and the authority of any person to prosecute for any offence shall be presumed, unless the defendant shall prove the contrary. Evidence.

26. EVERY person convicted of an offence against this Act for which no specific penalty is prescribed shall, for every such offence, be liable to a penalty not exceeding fifty pounds. General penalty.

27. ALL offences under this Act shall be summarily punishable upon conviction before any two or more Justices of the Peace in petty sessions. Summary procedure.

28. EVERY person convicted of an offence against this Act shall be liable, in addition to any penalty imposed, to any expenses incurred by the prosecution in obtaining an analysis as part of the costs of the proceedings. Cost of proceedings.

29. NO proceedings taken under this Act against any person shall in any way interfere with or lessen any right or remedy by civil process of any party aggrieved by any offence against this Act. Saving of civil remedy.

30. (1.) THE Governor may, from time to time, make regulations— Regulations.

(a.) Prescribing standards of chemical composition or mechanical subdivision of any specified fertilisers;

(b.) Prescribing the fees to be paid for any analysis; and

(c.) As to any matters whatsoever, not being contrary to the provisions of this Act, necessary to give effect to this Act.

(2.) All regulations shall be published in the *Government Gazette*, and shall, from the date of publication, have the force and effect of law, and shall be laid before both Houses of Parliament within fourteen days after the publication thereof, if Parliament is then sitting, and, if not, then within fourteen days from the next meeting of Parliament.

