

FERTILISERS.

19° Geo. V., No. X.

No. 10 of 1928.¹

[As amended by Acts:

No. 18 of 1953, assented to 7th December, 1953;

No. 60 of 1955,² assented to 13th December, 1955;

and reprinted pursuant to the Amendments Incorporation Act, 1938.]

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:—

1. (1) This Act may be cited as the *Fertilisers Act, 1928-1955*, and shall come into operation upon a day to be fixed by proclamation.¹

Short title and commencement. Amended by No. 60 of 1955, s. 1.

(2) The Acts mentioned in the First Schedule are hereby repealed in so far as they relate to fertilisers.

Repeal of Acts. First Schedule.

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

Interpretation.

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

Acid soluble phosphoric anhydride. Amended by No. 60 of 1955, ss. 3, 12.

¹ Came into operation on 1st November, 1929. See *Gazette* 25/10/29, p. 2376.

² Came into operation on 1st November, 1956. See *Gazette* 13/4/56, p. 1007.

- 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, superphosphate, gypsum or other mineral substance.
- Brand.** "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.
- Citrate soluble phosphoric anhydride.** "Citrate soluble phosphoric anhydride" means the phosphoric anhydride determined by the method to be prescribed for the determination of citrate soluble phosphoric anhydride, but it shall not include any water soluble phosphoric anhydride.
- Dealer.** "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.
- Fertiliser.** "fertiliser"
 (a) means anything sold, manufactured, produced, prepared, or imported for application to the soil as a manure or fertiliser, and which is not excluded by paragraph (d) or paragraph (e) of this interpretation from the meaning of the word, "fertiliser";

- (b) includes, without derogation from the generality of paragraph (a) of this interpretation, anything which is sold, manufactured, produced, prepared, or imported, for application, as a manure or fertiliser, to the soil, and which is claimed by the person who sells, manufactures, produces, prepares or imports it, to contain any specified or other ingredient in such quantity as to constitute it of value as a manure or fertiliser when applied to soil or to contain any compound in such quantity as to constitute it of value as a neutraliser when applied to the soil;
- (c) includes anything prescribed to be a fertiliser to which this Act applies;
- (d) does not include—
 - (i) farmyard manure;
 - (ii) sheep manure;
 - (iii) poultry manure;
 - (iv) stable manure;
 - (v) humus;
 - (vi) peat;
 - (vii) seaweed;
 - (viii) town refuse;
 - (ix) crude offal;
 - (x) crude night soil; or
 - (xi) trade waste;

if not mixed with any thing containing any of the specified ingredients, or containing lime or lime compound, or if mixed with any of those things, the mixture is not for sale or sold for application to the soil as a manure or fertiliser or as a neutraliser; and

(e) does not include anything excluded by regulation from the operation of this Act.

Fine material.

“Fine material” means particles smaller than the prescribed size.

Grade formula.

“Grade formula” means the expression in integral figures of the percentages of nitrogen, phosphoric anhydride and potash, in the order given, and guaranteed to be present by the dealer in a compound fertiliser.

Gypsum.

“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.

Inspector.

“Inspector” means an inspector of fertilisers appointed under this Act, and includes an assistant inspector.

Lime.

“Lime” includes the following:—

- (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 (CaCO₃) 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.

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” means the trade name, which, in the case of compound fertilisers, may include or consist of the “grade formula.” Name of fertiliser.
- “neutraliser” means anything which neutralises acidity. Neutraliser.
- “neutralising value” means the capacity expressed as a percentage of the capacity of pure limestone (calcium carbonate), to neutralise acidity. Neutralising value.
- “organic fertiliser” means any fertiliser prepared solely from materials of organic origin other than plants. Organic fertiliser.
- “organic manure” has the same meaning as “organic fertiliser”. Organic manure.
- “Package” includes sack, bag, barrel, case, or other container. Package.
- “Person” includes firm and an incorporated company. Person.
- “Phosphate fertiliser” means any fertiliser which contains a phosphate, and which is neither bone dust, bone meal, bone fertiliser, bone manure, nor organic fertiliser. Phosphate fertiliser.
- “Potash” means any water soluble salt of potassium calculated as potassium oxide (K_2O). Potash.
- “specified ingredient” means Specified ingredient.
- (i) nitrogen (N);
 - (ii) phosphoric anhydride (P_2O_5);
 - (iii) potash (K_2O);
 - (iv) sulphur (S);
 - (v) magnesium (Mg);
 - (vi) copper (Cu);
 - (vii) zinc (Zn);

- (viii) boron (B);
- (ix) manganese (Mn);
- (x) cobalt (Co);
- (xi) molybdenum (Mo);
- (xii) calcium oxide (CaO); and
- (xiii) such other ingredients as are prescribed to be specified ingredients.

Super or
superphos-
phate.

“Superphosphate” means any fertiliser which has been treated in such a manner as to render all or the major portion of the phosphoric anhydride 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—

- (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 anhydride" means the phosphoric anhydride determined by the method prescribed for the determination of total phosphoric anhydride.

Total phosphoric anhydride.

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

Water soluble phosphoric anhydride.

3. This Act does not apply to the sale

Exemptions. Substituted by No. 60 of 1955, s. 4.

(a) of bulk lots of fertilising compounds to a manufacturer of fertiliser; or

(b) of a fertiliser prepared in accordance with a written prescription supplied by the buyer.

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.

(a) making any entry wrongly omitted to be made in the register;

Amended by No. 60 of 1955, s. 12. No. 2652. Vict., s. 20.

(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 anhydride, 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;
- (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

Particulars on application.

Ibid. s. 22.

Amended by No. 60 of 1955, s. 5.

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, showing the minimum percentages of any specified or other ingredients claimed by the applicant to be present in the fertiliser in such quantity as to constitute them of value as a manure or fertiliser when applied to soil, and stating in accordance with the regulations the respective forms in which those specified or other ingredients are 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 or other neutraliser, a statement of the neutralising value;
- (ha) where the fertiliser is gypsum, a statement
 - (i) of the minimum calcium content expressed as calcium oxide (CaO); and
 - (ii) of the calcium oxide in combination with sulphuric anhydride expressed as crystallised calcium sulphate (CaSO₄·2H₂O); but where lime or lime compound is present as a constituent of a manufactured fertiliser, the lime or lime compound is not required to be separately stated.
- (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 Department 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.

Publication
of list.
No. 2652,
Vict., s. 23.

8A. The Minister shall from time to time determine and prescribe by regulation the maximum quantity of moisture which may be contained in superphosphate prepared for sale.

Added by
No. 18 of
1953, s. 2.

9. It shall be an offence against this Act, except as mentioned in section three of this Act, for any person—

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

- (a) to sell any quantity of any unregistered fertiliser;
- (b) to sell any quantity of 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 quantity of any fertiliser in a package unless such package is conspicuously marked, or to which is attached a label conspicuously marked, with the registered name of the fertiliser, and a copy of the registered brand; and where the package contains less than one hundredweight of fertiliser, unless the package is also conspicuously marked, or has attached to it a label conspicuously marked,
 - (i) with particulars of the name and place of business of the manufacturer, or importer, of the fertiliser;

Amended
by No. 18 of
1953, s. 3.,
No. 60 of
1955, s. 6.

- (ii) where any of the specified or other ingredients referred to in paragraph (f) of subsection (1) of section seven of this Act are present in the fertiliser, with particulars of the minimum percentages referred to in that paragraph;
 - (iii) where the fertiliser is lime or other neutraliser, with the minimum neutralising value referred to in paragraph (h) of subsection (1) of section seven of this Act; and
 - (iv) where the fertiliser is gypsum, with the minimum calcium content, expressed as calcium oxide (CaO) and as crystallised calcium sulphate (CaSO₄·2H₂O) referred to in paragraph (ha) of section seven of this Act;
- (e) to sell any quantity of superphosphate having a moisture content in excess of that prescribed.

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.

Amended by
No. 60 of
1955, s. 7.

11. A dealer in fertiliser shall, when required to do so by the Minister, provide to an inspector or an analyst for analysis by an analyst without payment samples not exceeding two pounds and not less than one pound in weight of any fertiliser in his possession.

11A. (1) Every person carrying on business as a manufacturer of superphosphate shall provide without payment to an officer of the Department of Agriculture appointed for the purpose by the Minister a sample from such superphosphate as such officer may desire as is packed in sacks, bags, or other containers, ready for despatch to purchasers.

Sample of superphosphate to be supplied for analysts.

Added by No. 18 of 1953, s. 4.

(2) The Minister shall determine and prescribe by regulation the quantity of superphosphate to be forwarded as a sample and shall cause every sample forwarded to be analysed for the purpose of ascertaining the quantity of moisture contained in the superphosphate.

(3) Where the analysis discloses that a sample has a moisture content in excess of that prescribed, the Director of Agriculture shall report the same to the Minister.

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.

Invoice to be given on sale of fertiliser.

Amended by No. 18 of 1953, s. 5; No. 60 of 1955, s. 3.

cf. S.A., 9 Geo. V, No. 1355, s. 7.

(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; and
- (b) a copy of the registered brand and name of the fertiliser;

Provided that in the case of packages of one hundredweight and over—

- (c) where any of the specified or other ingredients referred to in paragraph (f) of subsection (1) of section seven of this Act are present in the fertiliser, particulars of the minimum percentages referred to in that paragraph;

- (d) where the fertiliser is lime or other neutraliser, the minimum neutralising value referred to in paragraph (h) of subsection (1) of section seven of this Act; and
- (e) where the fertiliser is gypsum, the minimum calcium content expressed as calcium oxide (CaO) and as crystallised calcium sulphate (CaSO₄·2H₂O) referred to in paragraph (ha) of section seven of this Act.

(3) Notwithstanding any agreement to the contrary, the invoice has effect as a warranty by the dealer to the purchaser that the fertiliser complies with such of the particulars mentioned in paragraphs (e), (f), (h), (ha), (i) and (j) of subsection (1) of section seven of this Act, as are set forth in the certificate accompanying the application for registration of the fertiliser.

Cf. s. 7 (1)
as to
certificate.

(4) Any dealer contravening any of the provisions of this section shall be guilty of an offence against this Act, and shall be liable on summary conviction to a penalty of not more than fifty pounds.

Putting into
branded
bags fertiliser
other
than that
to which
brands refer,
an offence.

Amended
by No. 60 of
1955, s. 9.
S.A. 9 Geo.
V., No. 1355,
s. 9.

13. (1) 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, a person shall not, except in accordance with subsection (2) of this section, 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.

(2) A package referred to in subsection (1) of this section may again be used as a package for fertiliser other than that which has already been placed in it, but only if on each occasion that it is so used,

- (a) it is wholly emptied before being again so used;
- (b) marks and labels on or attached to the package are clearly and wholly cancelled before being again so used; and

- (c) the provisions of section nine of this Act to the extent to which they apply in respect of the fertiliser for which the package is again being used, and in respect of the package, are complied with.

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 complied 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 any specified or other ingredient, or a smaller neutralising value, than that stated in the register to be present in such fertiliser, and such deficiency exceeds—

Limits of variation.
Amended by No. 60 of 1955, ss. 10, 12.
cf. 5 Geo. V., No. 8 (Gld.), s. 9.

- (a) as to nitrogen, one-half per centum; or
- (b) as to total phosphoric anhydride, one and one-half per centum, or as to water soluble phosphoric anhydride, citrate soluble phosphoric anhydride, or acid soluble phosphoric anhydride, 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 others; or
- (c) as to potash, one-half per centum; or
- (d) as to lime or other neutraliser, seven per centum of the neutralising value so stated in the register;
- (e) as to gypsum, seven per centum of the calcium oxide or crystallised calcium sulphate ($\text{CaSO}_4 \cdot 2\text{H}_2\text{O}$) so stated in the register;
- (f) as to the ingredients, sulphur (S), magnesium (Mg), copper (Cu), zinc (Zn), boron (B), manganese (Mn), cobalt (Co),

molybdenum (Mo), or calcium oxide except where the ingredient is gypsum, ten per centum of the ingredient so stated in the register;

- (g) as to any ingredient other than those already mentioned in this section, ten per centum of the quantity of the ingredient so stated in the register 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 anhydride 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. 1355, s. 13.

Substituted by No. 60 of 1955, s. 11.

17. (1) Except where subsection (2) of this section provides otherwise, it is an offence

(a) to sell phosphate fertiliser under

- (i) a brand;
- (ii) a designation; or
- (iii) a description;

which suggests the presence in the fertiliser of bone fertiliser or organic fertiliser;

(b) to sell

- (i) as bone fertiliser;
- (ii) as bone manure;
- (iii) as organic fertiliser; or
- (iv) as organic manure,

a fertiliser in which there is present rock phosphate, mineral phosphate, superphosphate, gypsum, or other mineral fertiliser; or

- (c) to sell fertiliser under a brand, designation, or description which suggests that the fertiliser is prepared solely from bones or from material of animal or other organic origin, where there is present in the fertiliser rock phosphate, mineral phosphate, superphosphate, gypsum, or other mineral fertiliser.

(2) It is not an offence

- (a) to sell as a phosphate fertiliser, a fertiliser which consists of a phosphate fertiliser mixed with a bone fertiliser or an organic fertiliser; or

- (b) to sell a fertiliser in which all or any of the following, namely—
bone fertiliser, bone manure, organic fertiliser, or organic manure,
are or is mixed with all or any of the following, namely—
rock phosphate, mineral phosphate, superphosphate, gypsum, or other mineral fertiliser,

if the fertiliser sold
is registered; and

the package in which the fertiliser is sold is
correctly marked or labelled,

so as clearly to indicate that the fertiliser is a
mixture of such of those materials as is the case.

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
different
from that
demanded.

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.

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

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

Obstructing
Inspectors.
Ibid. s. 16.

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.

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

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—

- (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.

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

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

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. 1355,
s. 22.

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

Unit for
sampling.
Ibid. s. 26.

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.

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.

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

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—

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

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

31. If any person knowingly and fraudulently—

- (a) tampers with any package of fertiliser so as to procure that any sample of it

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

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.
Amended
by No. 18 of
1953, s. 6.

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) Subject to the provisions of subsection (4) of section twelve of this Act 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—

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).

- (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.

Regulations
Amended
by No. 18 of
1953, s. 7.

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

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 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;
- (aa) the quantity of superphosphate to be contained in any sample required under this Act to be forwarded by a manufacturer for analysis;
- (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;
- (ga) the maximum moisture content of superphosphate prepared for sale;
- (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.

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.

Saving.
No. 2652.
Vict., s. 35.

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—

Remedy by
a vendor
against
a prior
vendor.
Ibid. s. 35.

- (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.

Protection
to officers
acting under
the Act.

S.A. 9 Geo.
V., No. 1355,
s 37.

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.

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.