

Western Australia

Fertilizers Act 1977

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Fertilizers Act 1977

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Western Australia

Fertilizers Act 1977

An Act to control and regulate the production, marketing and sale of fertilizers and for incidental and other purposes.

Part I — Introductory

1. Citation

This Act may be cited as the *Fertilizers Act 1977*¹.

2. Commencement

The provisions of this Act shall come into operation on such day or days as is or are, respectively, fixed by proclamation¹.

[3. *Omitted under the Reprints Act 1984 s. 7(4)(e) and (f).]*

[4. *Repealed by No. 10 of 1998 s. 76.*]

5. Interpretation

In this Act unless the contrary intention appears —

“**advertisement**” in relation to any fertilizer means any method of advertising or conveying information or making a claim with respect to that fertilizer whether orally or pictorially or otherwise, and includes any notice, circular, catalogue, label, packaging, invoice or other document, and any public announcement made orally or by writing or by any means of producing or transmitting light or sound;

“**analysis**” means an examination, or any other test or determination relative to standard, of the quality or composition or of any other particular with respect to any fertilizer or substance to which this Act applies required to be ascertained for the purposes of this Act;

“**analyst**” means a person appointed as an analyst under the provisions of section 30;

“**container**” includes any package, sack, bag, barrel, case, basket, wrapper, bottle, can, drum or receptacle of any kind including a bulk container, railway truck or motor truck or any means of bulk transport, in or by means of which fertilizer is or is intended to be contained, covered, enclosed or packed;

“fertilizer” means a substance containing nitrogen, phosphorus, potassium or any other element required for plant growth or any compound thereof manufactured, prepared, produced or sold for the purpose of fertilizing the soil or supplying nutriment to plants, crops or trees and any substance used for conditioning the soil for that purpose and any other substance prescribed to be a fertilizer but does not include animal or vegetable manure or other unmanufactured refuse unless mixed with a fertilizer and as so mixed, manufactured, prepared, produced or sold as a fertilizer;

“inspector” means a person appointed as an inspector under section 12;

“label” includes any tag, brand, stamp, mark or statement in writing however effected, affixed to or upon or inserted in or used or intended for use in connection with any container or packaging of any fertilizer and whether or not comprising any trade mark or pictorial or other descriptive matter distinguishing or identifying that fertilizer or substance;

“section” means a section of this Act;

“sell”, without limiting the scope of the primary meaning, includes —

- (a) placing on the market for sale;
- (b) bargaining, barter or exchange;
- (c) supply and use of any fertilizer under a contract for work and materials;
- (d) offering, exposing, receiving, supplying or possessing for the purposes of sale;
- (e) delivery for sale or on sale with or without consideration;
- (f) wholesale, bulk and retail trading;
- (g) disposal or offer for disposal under hire purchase or credit sale terms;
- (h) dealing in or agreeing to sell;

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(i) the supply of a substance as a sample for the purpose of inducing any person to purchase the fertilizer of which the sample consists or which it comprises; and

(j) causing, suffering, permitting, or attempting to sell;

“seller” includes any person acting or representing himself to be acting for a seller;

“specified ingredient” means boron, calcium, cobalt, copper, iron, magnesium, manganese, molybdenum, nitrogen, phosphorus, potassium, selenium, sulphur, zinc and any substance prescribed to be a specified ingredient;

“substance” includes a liquid or gas, and any compound or mixture.

[Section 5 amended by No. 9 of 1998 s. 12.]

Part II — Application

6. Application

- (1) Subject to subsection (2) and to any Order in Council made pursuant to section 7, this Act applies to all fertilizers produced or imported into the State and sold in the State whether by wholesale or retail, whether or not the supply or sale thereof is normally restricted to a particular class of person and whether contained in a mixture, compound or otherwise, including bulk consignments.
- (2) This Act does not apply to the sale of a fertilizer prepared in accordance with the written prescription supplied by the buyer of the fertilizer.

7. Exemptions by Order

The Governor may by Order in Council declare that this Act, or any provision of this Act specified in the Order, shall not apply to any fertilizer either generally or when sold in specified circumstances or quantities or part of the State, or which is intended to be used solely for research purposes, and may by subsequent Order in Council revoke or vary such Order in Council.

8. Prohibitions

The Governor may make regulations to prohibit the sale of any fertilizer or any substance which may be used as an ingredient of a fertilizer either —

- (a) absolutely; or
- (b) except upon and subject to specified conditions, restrictions and limitations,

as the Governor considers desirable in the public interest which may be imposed without limitation as to time or for a specified period of time.

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9. Effect of other laws

The provisions of this Act are in addition to and not in derogation of the provisions of the *Health Act 1911*, or the *Poisons Act 1964* but where and to the extent that inconsistency exists between the provisions of this Act or of any regulations made under this Act, and a provision of any of those Acts or of any regulations made under those Acts, the provisions of those Acts and any regulations made thereunder prevail.

Part III — Administration

10. Administration

Subject to the Minister and to the provisions of this Act the chief executive officer shall be responsible for the administration of this Act.

[Section 10 amended by No. 9 of 1998 s. 13.]

[11. Repealed by No. 9 of 1998 s. 12.]

12. Inspectors

- (1) The chief executive officer may designate officers of the department of the Public Service principally assisting the Minister with the administration of this Act as inspectors under this Act.
- (2) The chief executive officer shall furnish each inspector with a certificate of appointment in the prescribed form and the holder shall produce the certificate whenever required so to do by a person in respect of whom he has exercised or is about to exercise any of his powers under this Act.
- (3) Production of a certificate in the prescribed form is conclusive proof in any court of the appointment of the person to whom that certificate relates and of his authority to exercise the powers conferred upon him by this Act.

[Section 12 amended by No. 9 of 1998 s. 12 and 13.]

[Part IV repealed by No. 9 of 1998 s. 10.]

Part V — Sales, labelling and warranties

[19. *Repealed by No. 9 of 1998 s. 12.*]

20. Sale of prohibited fertilizers and substances

A person who sells —

- (a) a fertilizer; or
- (b) any substance,

the sale of which is prohibited, or prohibited in relation to the conditions under which the sale took place, commits an offence against this Act.

21. Sale of sub-standard fertilizer

(1) In this section —

“**sub-standard fertilizer**” means a fertilizer —

- (a) that does not comply with a grade or standard prescribed for that fertilizer; or
- (b) that contains an ingredient that does not comply with a grade or standard prescribed for that ingredient.

(2) A person who sells a sub-standard fertilizer commits an offence against this Act.

[Section 21 inserted by No. 9 of 1998 s. 11.]

[22, 23. *Repealed by No. 9 of 1998 s. 12.*]

24. Labelling

(1) Subject to this Act, a person who sells or offers to sell a fertilizer in a container commits an offence unless there is affixed or attached to or printed on the container containing the fertilizer a label setting out in legible characters such particulars as are prescribed.

- (2) The provisions of subsection (1) do not apply —
- (a) to sales of small quantities (that is to say, sales in quantities of such amount as is prescribed in relation to that fertilizer, or of any lesser amount) if the fertilizer is taken in the presence of the purchaser from a container marked or labelled in a conspicuous manner with the particulars prescribed; or
 - (b) to the sale of fertilizer of an amount of 50 kilograms or more if the invoice issued by the vendor in relation to the sale contains or is attached to a statement setting out the particulars prescribed.

25. Use of secondhand containers

- (1) Where a container has been used for the purpose of holding or containing a fertilizer the container shall not be used to hold or contain another fertilizer unless —
- (a) it has been wholly emptied before being so used;
 - (b) any marking relating to its previous use has been so dealt with as to make it clear that that marking is no longer applicable; and
 - (c) in relation to its current use that container is marked and labelled in accordance with this Act.
- (2) Subsection (1) does not apply where the purchaser supplies the container.

26. Warranties

- (1) Notwithstanding any agreement or notice to the contrary, a statement in any advertisement for, label on, or invoice for the sale of, any fertilizer has effect as a warranty by the seller of the accuracy of the statement.
- (2) Where a fertilizer is sold under a name or description implying that it was prepared from any particular substance, or from 2 or more particular substances, and without any indication that it is mixed or compounded with any other substance there is an

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implied warranty by the seller that it is pure, that is to say, that it is prepared from that substance or those substances only.

[Section 26 amended by No. 9 of 1998 s. 12.]

Part VI — Miscellaneous

27. Power of inspector to enter premises, etc.

- (1) Where an inspector has reasonable grounds for believing that any land or any premises, tent, caravan or other erection on land is used for or in connection with the production, importation, treatment, storage, preparation for sale, marketing or sale of a fertilizer he may, with the consent of the occupier, enter the land or premises, tent, caravan or other erection in order to make a search to ascertain whether any fertilizer is therein or thereon.
- (2) In the exercise of his powers under this section an inspector shall conform so far as is reasonably possible to such reasonable requirements of the person occupying the land or the premises, tent, caravan or other erection as are necessary to prevent the working of the business being obstructed.
- (3) The occupier of any land or premises, tent, caravan or other erection and any person in charge of or apparently in charge therein shall furnish to an inspector all reasonable assistance and such information that he is capable of furnishing or as required by the inspector with respect to the exercise of his powers and the discharge of his duties under this Act.
- (4) Where it is shown to the satisfaction of a justice that admission to the land or premises, tent, caravan or other erection has been refused following a request by an inspector for entry thereto, or that the premises are unoccupied, the justice may, by warrant under his hand authorise the inspector and any other person named in the warrant to enter the premises, tent, caravan or other erection, and a warrant granted under this subsection continues in force until the purpose for which it was granted has been satisfied.
- (5) An inspector may at any time stop, search and inspect any vehicle, vessel, aircraft or train in order to ascertain if he has reasonable grounds for believing that any fertilizer is therein or

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thereon for the purpose of exercising any of his powers and the discharge of his duties under this Act.

- (6) A person who, being in charge of a vehicle or vessel, fails to stop the vehicle or vessel when so required by a person who makes himself known as being an inspector commits an offence.

28. Powers of sampling

- (1) An inspector who has reasonable grounds for believing that any substance is, or that any package contains a substance that is, a fertilizer, a specified ingredient, or an ingredient of a fertilizer (including any fertilizer or substance the sale of which is prohibited by regulations made under section 8) may take for analysis and examination a sample of that substance and where necessary may open the packaging to enable that power to be exercised.
- (2) Any sample taken under the provisions of subsection (1) shall if possible be taken in the presence of the seller or other person apparently in charge of the substance from which the sample was taken.
- (3) The inspector removing the sample shall give to the person in charge of that substance, or of the place where it was located (if that person is known to him), notification of such removal.
- (4) The method of taking and treatment of a sample under the provisions of this section shall, where the circumstances are relevant, be such as the Governor may from time to time prescribe.

[Section 28 amended by No. 9 of 1998 s. 12.]

29. Tampering with samples or fertilizer

A person who —

- (a) tampers or interferes with any sample or part of a sample taken or delivered under the provisions of this Act; or

- (b) tampers or interferes with any fertilizer from which a sample may be taken under the provisions of this Act in a manner likely to render the sample so taken unrepresentative of the bulk from which the sample was taken,

commits an offence.

30. Analysts

- (1) The Minister may appoint qualified persons as analysts for the purposes of this Act.
- (2) A certificate of analysis of a fertilizer issued by an analyst shall be in the prescribed form and shall contain the information required by that form.
- (3) Subject to subsection (4) in any proceedings under this Act the production of a certificate referred to in subsection (2) shall without proof of the signature of the person appearing to have signed the certificate or that he is an analyst be 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 fact that the prescribed method for carrying out the analysis has been followed by the analyst in making the analysis.
- (4) Subsection (3) does not apply in relation to any proceedings under this Act if the accused in those proceedings by written notice served on the prosecutor and the analyst who signed the certificate of analysis to be used in those proceedings not less than 3 days before the date of the hearing requires the analyst to attend at the hearing as a witness.

[Section 30 amended by No. 84 of 2004 s. 82.]

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31. Limits of variation

- (1) Subject to subsection (2), where on an analysis of one sample of a fertilizer taken from one container a deficiency is found in —
- (a) a specified or other ingredient;
 - (b) the neutralizing value; or
 - (c) the percentage of fine material,

of that fertilizer by reference to any standard prescribed for it, but the deficiency so found does not exceed such percentage as is prescribed for the purpose of such sampling, no action shall be brought under this Act in relation to the deficiency unless on an analysis of not less than 5 samples of the fertilizer taken on one or several occasions (and whether treated individually and the analyses then averaged or whether bulked together and mixed and the analysis then taken) the deficiency so found exceeds such lower percentage as is prescribed for the purpose of such multiple sampling.

- (2) Where the specified or other ingredient set out in any prescribed standard for a fertilizer has a content of less than 1% of the fertilizer by weight the allowable deficiency as regards that ingredient shall be doubled.
- (3) Where phosphorus is an ingredient, the phosphorus shall comply with any requirement of the regulations as to the kind and proportion of compounds allowable in relation to that fertilizer.

[Section 31 amended by No. 9 of 1998 s. 12.]

32. Offence as to sample deemed offence as to whole lot

When in any proceedings with respect to an offence against this Act a contravention of this Act is proved with respect to a sample of fertilizer delivered for analysis the contravention is deemed also to have been proved with respect to the bulk from which the sample was taken and it is no defence that the sample though deficient or not conforming to prescribed standards in

one or more respects contained alternative ingredients intended to have the like effect.

33. Publication of analysis

- (1) Where a sample of a fertilizer has been taken pursuant to the provisions of this Act the chief executive officer may, whether or not the fertilizer has been the subject of any proceedings taken under this Act, cause the result of an analysis of the fertilizer to be published in such manner as he may direct.
- (2) A publication of the result of an analysis pursuant to subsection (1) may include —
 - (a) the name and address of the person from whom the sample was taken or of the person in occupation or apparent occupation of the premises at which the sample was taken;
 - [(b) deleted]*
 - (c) the explanations and comments of the analyst in relation to the result of the analysis; and
 - (d) a statement of the result of the analysis,

and no action lies in respect of that publication.

[(3) repealed]

- (4) Any proprietor or manager of a newspaper or public print may republish any report which has been published by the chief executive officer in accordance with the provisions of subsection (1), and no action shall lie against such proprietor or manager in respect of the republication.

[Section 33 amended by No. 9 of 1998 s. 12 and 13; No. 74 of 2003 s. 54.]

34. Saving of other rights and remedies

Except as is expressly provided in this Act, nothing in this Act shall have the effect of limiting, restricting or otherwise

affecting any right or remedy a person would have had had this Act not been enacted.

35. Right of buyer to refuse delivery

A person is not bound to accept delivery on sale of any fertilizer unless the relevant provisions of section 24 have been complied with in respect to that sale.

36. Obstruction

- (1) A person who wilfully obstructs any person acting in the execution of this Act commits an offence against this Act.
- (2) A person who fails to give to any person acting in the execution of this Act any assistance which that person may reasonably request him to give, or any information which that person is expressly authorised by this Act to call for or may reasonably require, or who, when required to give such information, knowingly makes any false or misleading statement in relation thereto, shall be treated as having wilfully obstructed that person.

37. Protection of officers

No act, matter or thing done or omitted to be done in good faith by the Minister, or by the chief executive officer, or by any inspector or analyst, in the execution or intended execution of this Act, or in the exercise or performance of any of his powers, functions or duties under this Act, subjects that person to any liability.

[Section 37 amended by No. 9 of 1998 s. 12 and 13.]

38. Provisions relating to proceedings

- (1) Notwithstanding anything in the *Criminal Procedure Act 2004*, where a sample of a fertilizer has been taken for the purposes of a prosecution for an offence against a provision of this Act a prosecution may be brought in respect of the offence after the expiration of a period of 6 months commencing on the date on

which the sample was taken if the justice or other person before whom the complaint is laid, on being satisfied on oath that having regard to the circumstances of the case it was not practicable to institute such proceedings at an earlier date, gives a certificate to that effect.

- (2) In any proceedings for an offence relating to a fertilizer in respect of which a sample was taken pursuant to this Act —
- (a) the summons shall not be made returnable less than 14 days from the date of the issue thereof; and
 - (b) a copy of any certificate of analysis obtained on behalf of the prosecutor, and, where the prosecution is brought after a period of 6 months commencing from the date of the taking of the sample, a copy of the certificate given pursuant to subsection (1), shall be served with the summons.

[Section 38 amended by No. 59 of 2004 s. 141; No. 84 of 2004 s. 78 and 80.]

39. Costs of analysis

In any proceedings under this Act —

- (a) where evidence is given of an analysis made for the purposes of this Act the court may, in addition to any penalty or other order as to costs, and without regard to the outcome of the proceedings generally, make an order as to the costs of and incidental to the obtaining of the analysis and the giving of evidence as to the analysis;
- (b) the production of a certificate signed or purporting to be signed by an analyst that the costs set out in the certificate (including any charges and expenses) have been incurred in relation to the obtaining of the analysis under this Act shall be *prima facie* evidence that the costs were duly incurred and that the amounts set out in the certificate are the correct amount of such costs.

40. Vicarious liability

- (1) Where an offence under this Act which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer, of the body corporate, or any person who was purporting to act in any such capacity, he as well as the body corporate may be deemed to have committed that offence and is liable to be proceeded against and punished accordingly.
- (2) For the purposes of this Act any person on whose behalf a sale is made is deemed to be the person who sells, and every servant or agent of such person is liable to the like penalties as the person on whose behalf he makes any sale.

41. Recovery of penalty and costs

Where in any proceedings for an offence under this Act the court records a finding to the effect that the accused has satisfied the court that —

- (a) being an agent or a servant, he had acted without knowledge, and could not be reasonably expected to have known, that any provision of this Act had been contravened or had not been complied with; or
- (b) being a principal or employer, he had used due diligence to enforce the execution of this Act and that without his connivance or consent and in contravention of his orders the provisions of this Act were contravened or not complied with by his agent or servant,

and whether or not any other person has been convicted or punished in relation to the same matter, the accused may recover in any court of competent jurisdiction from any person directly responsible for that contravention of, or failure to comply with, those provisions, the amount of any pecuniary penalty imposed on his conviction and paid or payable by him, together with the costs, fees, charges, and other expenses ordered to be paid upon

his conviction and paid or payable by him in or in relation to his defence to the prosecution and as the court may, if it thinks fit, suspend the operation of the conviction for any period not exceeding 3 months to enable the accused to effect recovery as provided in this section.

[Section 41 amended by No. 84 of 2004 s. 82.]

42. Certificate of chief executive officer to be evidence

In any proceedings under this Act, a certificate purporting to be signed by the chief executive officer —

- (a) that this Act applies in relation to any substance or thing; and

[(b), (c), (d) deleted]

- (e) specifying any date or period in relation to any matter stated in the certificate,

is sufficient *prima facie* evidence of the relevant facts stated therein until the contrary is proved.

[Section 42 amended by No. 9 of 1998 s. 12 and 13.]

43. Penalty

A person who fails to comply with or who contravenes any of the provisions of this Act commits an offence and is liable to a penalty not exceeding \$1 000 for a first offence and to a penalty not exceeding \$2 000 for a second or subsequent offence.

[Section 43 amended by No. 20 of 1989 s. 3.]

44. Regulations

- (1) The Governor may make regulations in regard to any matter or for any purpose for which regulations are prescribed or contemplated by this Act and may make all such other regulations as may in his opinion be required or permitted by this Act for giving effect to the provisions of, and for the full execution and due administration of, this Act.

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- (2) Without limiting the generality of the powers conferred by subsection (1), the Governor may make regulations for or with respect to —

[(a), (b), (c) deleted]

- (d) the forms to be used for the purposes of this Act, and the manner of, and time for, their completion including a requirement that information supplied be verified by statutory declaration;

[(e), (f) deleted]

- (g) controlling all matters with respect to the nature, content and use of labels in relation to a specified fertilizer, and the identification of bulk consignments;
- (h) the investigation as to the efficacy of fertilizers or ingredients;
- (i) the taking of samples by inspectors and purchasers;
- (j) the conduct and methods of analysis;
- (k) the definition of terms for the purposes of this Act including the use of chemical and physical expressions;
- (l) any other purpose that the Governor deems necessary for safeguarding the public and the public interest in relation to fertilizers; and
- (m) such transitional, incidental and supplementary provisions as the Governor deems necessary or expedient for the purpose of this Act.

- (3) Any regulations made under this Act may —

- (a) be of general or limited application, according to time, place or circumstance;
- (b) prescribe the charges that shall be made for any matter under this Act, the persons liable to pay the charges and the method of recovering amounts not duly paid;

- (c) impose upon any person or class of person a discretionary authority;
 - (d) provide penalties not exceeding \$2 000 for offences against the regulations, and daily penalties not exceeding \$200 for every day that an offence continues after the offender is convicted.
- (4) Regulations may be made under this section —
- (a) so as to apply —
 - (i) generally or in a particular class of case or in particular classes of cases;
 - (ii) at all times or at a specified time or times; and
 - (iii) throughout the State or in a specified part or parts of the State;
 - (b) so as to require a matter affected by them to be —
 - (i) in accordance with a specified standard or specified requirement; or
 - (ii) as approved by, or to the satisfaction of, a specified person or body or a specified class of person or body.
- (5) In subsection (4) “**specified**” means specified in the regulations.
- [Section 44 amended by No. 20 of 1989 s. 3; No. 9 of 1998 s. 12.]*

Notes

¹ This is a compilation of the *Fertilizers Act 1977* and includes the amendments made by the other written laws referred to in the following table. The table also contains information about any reprint.

Compilation table

Short title	Number and year	Assent	Commencement
<i>Fertilizers Act 1977</i>	11 of 1977	30 Sep 1977	15 Sep 1978 (see s. 2 and <i>Gazette</i> 15 Sep 1978 p. 3401)
<i>Agricultural Legislation (Penalties) Amendment Act 1989 s. 3</i>	20 of 1989	1 Dec 1989	15 Dec 1989 (see s. 2 and <i>Gazette</i> 15 Dec 1989 p. 4513)
<i>Agricultural Legislation Amendment and Repeal Act 1998 Pt. 5</i> ²	9 of 1998	30 Apr 1998	1 Nov 1998 (see s. 2 and <i>Gazette</i> 30 Oct 1998 p. 5993)
<i>Statutes (Repeals and Minor Amendments) Act (No. 2) 1998 s. 76</i>	10 of 1998	30 Apr 1998	30 Apr 1998 (see s. 2(1))
Reprint 1: The Fertilizers Act 1977 as at 2 May 2003 (includes amendments listed above)			
<i>Statutes (Repeals and Minor Amendments) Act 2003 s. 54</i>	74 of 2003	15 Dec 2003	15 Dec 2003 (see s. 2)
<i>Courts Legislation Amendment and Repeal Act 2004 s. 141</i>	59 of 2004	23 Nov 2004	1 May 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7128)
<i>Criminal Procedure and Appeals (Consequential and Other Provisions) Act 2004 s. 78, 80 and 82</i> ³	84 of 2004	16 Dec 2004	2 May 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7129 (correction in <i>Gazette</i> 7 Jan 2005 p. 53))

² The *Agricultural Legislation Amendment and Repeal Act 1998* s. 14 and s. 15 read as follows:

“

14. Refund of registration fees

- (1) If immediately before the commencement of this Act a fertilizer is registered in the name of a person under Part IV of the principal Act, the chief executive officer of the department of the Public Service principally assisting the Minister administering the

principal Act shall refund to the person some or all of the fee paid for the registration.

- (2) The refund shall be calculated as follows:

$$\text{Refund} = F \times \frac{P}{RP}$$

where:

- F = The fee paid for the registration.
P = The period (to the nearest whole month) beginning on the commencement of this Act and ending when the registration was due to expire.
RP = The period for which the registration was valid or in force under section 17 of the principal Act (to the nearest whole month).

15. Transitional provision

On the commencement of this Act, the chief executive officer of the department of the Public Service principally assisting the Minister administering the principal Act is to take delivery of the Register referred to in section 11 of the principal Act and retain possession of it for 3 years after the commencement of this Act.

”

³ The amendment in the *Criminal Procedure and Appeals (Consequential and Other Provisions) Act 2004* s. 82 to amend s. 38(1) is not included because the subsection it sought to amend had been amended by the *Courts Legislation Amendment and Repeal Act 2004* s. 141.