

FERTILIZERS ACT.

Act No. 51, 1934.

An Act to regulate the sale and prevent the adulteration of fertilizers; to provide for the inspection and analysis and for the registration of brands of fertilizers; to repeal the Fertilizers Act, 1904; and for purposes connected therewith. [Assented to, 27th December, 1934.] George V,
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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 New South Wales in Parliament assembled, and by the authority of the same, as follows:—

1. This Act may be cited as the "Fertilizers Act, 1934" and shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette. Short title
and com-
mencement.
2. The Fertilizers Act, 1904, is hereby repealed. Repeal of Act
No. 33, 1904.
3. In this Act, unless inconsistent with the context or subject-matter,—
 - "Analyst" means an analyst appointed in accordance with this Act. W.A. No.
10, 1928,
s. 2.
 - "Bone dust" or "bone meal" means disintegrated bones, whether steamed or unsteamed without admixture of any other substance whatsoever. cf. *Ibid.*
 - "Bone fertilizer" or "bone manure" means any fertilizer which contains any material derived from bones admixed with other substances other than phosphate fertilizer. *Ibid.*

"Brand"

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“ Brand ” means a trade-mark or sign or word registered under this Act by a dealer to be used in connection with any fertilizer sold by him.

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s. 2.

“ Dealer ” means any person who carries on business as a manufacturer, importer or vendor or of a dealer in fertilizers for the purpose of trade and whether such person carries on any other business or trade or not.

cf. *Ibid.*

“ Fertilizer ” means any substance containing nitrogen, phosphoric acid, or potash, manufactured, produced, or prepared in any manner for the purpose of fertilizing the soil or supplying nutriment to plants and any other substance which may be proclaimed to be a fertilizer for the purposes of this Act but does not include farm-yard or stable manure, crude nightsoil, crude offal or other unmanufactured refuse.

“ Inspector ” means an inspector of fertilizers appointed under this Act.

“ Parcel ” includes sack, bag, barrel, case, package, or other container.

“ Person ” includes firm.

Ibid.

“ Phosphate fertilizer ” means any fertilizer which contains a phosphate and which is neither bone dust, bone meal, bone fertilizer, bone manure, nor superphosphate.

cf. Vict. Act,
No. 3680
(1928), s. 3.

“ Phosphoric acid ” means phosphorus pentoxide (P_2O_5).

Ibid.

“ Potash ” means potassium monoxide (K₂O).

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

“ Purchase ” includes receipt by an agent or factor from his principal.

“ Purchaser ” includes any agent or factor receiving any fertilizer from his principal for sale.

“ Regulations ” means regulations made under this Act.

“ Sell ” includes sell whether by wholesale or retail and barter or exchange; also dealing in, agreeing to sell or offering or exposing for sale or keeping or having in possession for sale or sending

sending, forwarding, delivering or receiving for sale or on sale or authorising, directing, causing, suffering, permitting, or attempting any of such acts or things; and the derivatives of "sell" (which for the purposes of this Act include "vendor") have a corresponding interpretation.

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"Superphosphate" means any fertilizer 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 fertilizer having any description or name which includes the word "super" or the word "superphosphate."

W.A. No. 10, 1928, s. 2.

4. This Act shall not apply—

- (a) to the sale of bulk lots of fertilizer compounds to a manufacturer of fertilizer; or
- (b) to any sale of any fertilizer where the quantity sold is less than half a hundredweight:

Exemptions. *Ibid.* s. 3.

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

5. (1) Upon the sale of any fertilizer, whether paid for at the time of sale or not, the dealer shall, at or before delivery of the same or any part thereof, deliver to the purchaser an invoice certificate in the prescribed form signed by the dealer or his agent and stating—

Vendor to give invoice certificate to purchaser. *cf. Viet. Act No. 3,680 (1928), s. 5.*

- (a) the full name and place of business of the vendor;
- (b) the brand of the fertilizer;
- (c) the quantity of fertilizer comprised in the sale;
- (d) the proportion per centum in which such fertilizer contains the following ingredients, namely: nitrogen, phosphoric acid and potash, and the forms in which they respectively occur as provided in the regulations; and
- (e) such other particulars as may be prescribed.

cf. Ibid. s. 7 (2).

(2) (a) When the fertilizer is bone dust, bone meal, bone fertilizer, bone manure, or other fertilizer to which this subsection is applied by the regulations—

- (i) the percentage of fine material shall be at least fifty per centum; and

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(ii) the percentages of coarse material and fine material shall be stated on the invoice certificate in addition to any other particulars required to be stated by this section.

(b) For the purpose of this subsection fine material shall be that portion of the fertilizer which passes through a sieve of thirty meshes to the linear inch, measured according to a prescribed standard, and coarse materials shall be the portion retained on the mesh of the sieve.

(3) Where a fertilizer mentioned in subsection two of this section is mixed with any other materials, the invoice certificate shall, in addition to any other requirements of this section, give a correct general statement of the nature and amount of such other materials in the composition of such fertilizer.

(4) Every such invoice certificate shall be deemed a representation or warranty by the dealer to the purchaser of the truth of the matters referred to therein.

Invoice certificate to be warranty.
Viet. Act No. 3680 (1928), s. 6.

Labelling of parcels of fertilizer.
cf. Ibid. s. 7.

6. (1) Every dealer who sells any fertilizer shall securely and conspicuously affix to each parcel thereof a plainly printed label stating the particulars required by section five to be stated on the invoice certificate.

Label to be warranty.
Ibid.

(2) Every such label shall be deemed a representation or warranty by the dealer to the purchaser of the truth of the matters referred to therein.

Penalty.
Ibid.

7. Every dealer who fails to deliver to the purchaser an invoice certificate as provided by section five of this Act or to affix to each parcel of fertilizer a label as provided by section six of this Act shall be liable for the first offence to a penalty of not more than twenty pounds, and for any subsequent offence to a penalty of not more than fifty pounds.

Certain substances not to be sold as fertilizers.

8. Any person who sells any substance as a fertilizer or uses the word "fertilizer" (either alone or in conjunction with any other word or words) in connection with any substance, or who uses any device or means calculated to induce any person purchasing such substance to believe that the same is a fertilizer or sells or in any manner passes off or attempts to pass off such substance

substance as a fertilizer shall, unless such substance is a fertilizer within the meaning of this Act be guilty of an offence against this Act and shall be liable upon summary conviction for a first offence to a penalty not exceeding fifty pounds, and for any subsequent offence to a penalty not exceeding one hundred pounds.

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9. The Governor may appoint analysts and, subject to the provisions of the Public Service Act, 1902, may appoint inspectors under this Act.

Appointment of inspectors and analysts

10. The purchaser of any fertilizer shall, on payment of the prescribed fee and on complying with the regulations, be entitled to submit a sample of such fertilizer to an analyst for analysis and to receive from him a certificate of the result of the analysis.

Purchaser may submit sample for analysis.

W.A. No. 10, 1928, s. 26.

Where the analyst is an officer of the public service, the prescribed fee shall be paid to the Consolidated Revenue Fund. Where the analyst is not an officer of the public service, he shall be entitled to retain the prescribed fee for his own use.

11. Every person who knowingly and fraudulently tampers with any parcel of any fertilizer so as to procure that any sample of it taken in pursuance of this Act does not correctly represent the contents of the parcel shall be guilty of an offence against this Act.

Tampering with samples.

Vict. No. 3680 (1928), s. 12.

12. Upon receiving for analysis any sample of any fertilizer from any purchaser, the analyst shall divide the same into two parts and shall place in a glass bottle or jar one of such parts and seal and fasten up the same, and shall retain the same for production in case proceedings are afterwards taken in the matter.

Analysts to divide sample.

Ibid. s. 13.

13. If an analyst does not reside within two miles of the residence of the person requiring a sample of the fertilizer to be analysed under the provisions of this Act, such sample may be forwarded to such analyst through the post as a registered parcel.

Samples through post.

Ibid. s. 14.

14. The certificate of analysis by an analyst shall be in the prescribed form and, where any method of analysis, chemical or physical, has been prescribed for the analysis of any fertilizer the analyst shall in his certificate declare that he has followed the prescribed method in his analysis.

Certificate of analyst.

Ibid. s. 15.

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Fertilizers
to contain
certain
percentages
of
ingredients.Viet. No.
3680 (1928),
s. 16.

15. (1) When a dealer sells a fertilizer which, upon analysis under this Act, is found to contain a smaller percentage of nitrogen, phosphoric acid or potash than the proportions respectively stated in the invoice certificate or on the label affixed to the parcel containing such fertilizer then, if the deficiency as to the total nitrogen or total phosphoric acid or total potash stated to be present in such fertilizer or as to any of the several forms of nitrogen, phosphoric acid, or potash stated to be present in such fertilizer respectively exceeds the percentage of the whole sample specified in the second or third column of the Schedule to this Act as the maximum deficiency allowable in respect of the proportion per centum specified in the first column of the said schedule, the dealer shall be guilty of an offence against this Act.

(2) Every dealer who sells any fertilizer mentioned in subsection two of section five of this Act which does not contain the percentage of fine material stated in the invoice certificate delivered in respect of that fertilizer or stated on the label affixed to the parcel containing such fertilizer shall, if such deficiency is greater than five per centum of fine material, be guilty of an offence against this Act.

Power to
enter and
take
samples.W.A. No.
10, 1928,
s. 22.

16. (1) An inspector may at any reasonable time enter upon any land or premises where he believes there is any fertilizer kept for sale or sold and may—

- (a) examine and take without payment a quantity not exceeding two pounds in weight of any fertilizer there found as a sample for analysis;
- (b) do any act or thing prescribed 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 fertilizer to state the name and address of the dealer from whom he purchased such fertilizer and to produce for inspection any invoice delivered to him by the dealer pursuant to this Act.

(2) An inspector may at any time whatsoever take a sample of any fertilizer from any vehicle in which the same may be in course of transit to any purchaser.

17.

17. When an inspector takes a sample for analysis under section sixteen, he shall—

- (a) thoroughly mix such sample and divide it into three approximately equal parts;
- (b) place each such part in a glass vessel and seal or fasten each such vessel;
- (c) place on each such vessel a label stating the brand of the fertilizer, 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 of the vehicle and the time and place of taking;
- (d) sign each such label and submit it for signature of the person in charge or apparently in charge of the premises or vehicle;
- (e) deliver one of such parts to the person in charge or apparently in charge of the premises or vehicle, retain one of such parts for future comparison and submit the other of such parts to an analyst for analysis.

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Procedure
on taking
sample.

W.A. No.
10, 1928,
s. 24.

18. (1) The Minister shall cause to be compiled and kept in a register book in such form as may be prescribed a register of brands registered under this Act.

Register of
brands to
be kept.

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

Viet. No.
3,680
(1928),
s. 18.

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

19. No brand shall be registered if, in the opinion of the Minister, it is likely to mislead the purchaser as to the composition of the fertilizer or it is substantially identical with any other brand registered or proposed to be registered or so nearly resembles it as to be likely to deceive.

Registration
of brands.
Ibid. s. 13.

20. (1) The Minister may cause the register to be amended or altered by—

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

Alterations
and amend-
ments in
register.
Ibid. s. 20.

(b)

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- (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) adding to the list any brand registered pursuant to this Act during the currency of any annual list of brands.

Cancellation of brand.

(2) The Minister may cancel and remove from the register any brand registered by a dealer who is convicted of an offence against section fifteen of this Act in respect of such fertilizer.

Application for registration.

Vict. No. 3680 (1928), s. 21.

21. (1) Any dealer who desires to have a brand registered in respect of any fertilizer shall on or before the first day of November in each year, in such form as may be prescribed, make application in writing to the Minister for the registration of such brand.

(2) Every such application shall be accompanied by the amount of the prescribed fee.

(3) Every such application shall be verified by a statutory declaration of the applicant in or to the effect of the prescribed form.

Publication of brands. *Ibid.* s. 23.

22. A list of all registered brands under this Act shall be published annually in the Gazette as part of the annual list of fertilizers provided for in section twenty-six.

Fertilizers to be sold only under registered brand. *Ibid.* s. 24.

23. (1) No fertilizer shall be sold except in parcels. Every such parcel and every invoice certificate used in connection with such fertilizer shall be marked with a registered brand in such manner as is prescribed.

(2) Where information with regard to any matter required to be set forth in any application for registration of a brand for any fertilizer is also required by section five of this Act to be stated in respect of such fertilizer in any invoice certificate, such information shall be so stated in the same terms as in the application for registration.

Registration of brands during currency of annual list. *Ibid.* s. 25.

24. (1) No brand shall, save with the express sanction in writing of the Minister, be registered in the period between the publication of the list of brands for any year and of the list of brands for the following year.

(2)

(2) The provisions of this Act with regard to the annual registration of brands shall, so far as they are applicable and with such modifications as are necessary, apply to the registration of brands under this section, and such brand shall, after registration, be published in the Gazette, together with a statement containing with respect to the fertilizer the like information as is contained in the annual list of fertilizers published under this Act.

25. The registration of a brand shall continue in force until the publication in the Gazette of the list of registered brands for the following year and no longer.

Period of registration.
Vict. No. 3,680
(1928), s. 26.

26. (1) The Chief Chemist of the Department of Agriculture—

Compilation and publication of annual lists of fertilizers.
Ibid. s. 27.

(a) from the results of the analyses of fertilizers set forth in the applications for the annual registration of brands and taking into account the constituents which have a commercial value and the value thereof in the simple fertilizers in which they occur shall calculate the average unit values of such constituents; and

(b) shall then compile a complete list of all the fertilizers in respect of which brands are so registered showing—

- (i) the prices asked for the same;
- (ii) the average unit values as so calculated;
- (iii) the several brands registered in respect of such fertilizers; and
- (iv) such other matters as may be prescribed.

(2) Such list (in this Act referred to as the “annual list of fertilizers”) shall be published in the Gazette as soon as practicable after the first day of December in every year.

(3) Such average unit values shall constitute the basis for calculating the values of all fertilizers for the period during which the registered brands continue in force.

Average unit values of fertilizers.

27. Every dealer shall when required to do so by the Minister forward for analysis to the Chief Chemist of the Department of Agriculture without payment samples not exceeding two pounds in weight of any fertilizers in respect of which a brand is registered.

Samples of fertilizers to be supplied for analysis.
Ibid. s. 28.

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Obstructing
inspectors.

28. 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.

Offences.

W.A. No.
10, 1928,
s. 9.

29. Any person who—

- (a) sells any fertilizer except under a registered brand or name and registered under this Act;
- (b) applies, advertises or in any way whatsoever makes use of any unregistered brand or name to or in connection with any fertilizer;
- (c) sells any fertilizer unless the same is contained in a parcel on which is conspicuously marked the registered brand and name of the fertilizer;

shall be guilty of an offence against this Act.

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

General
penalty.
Vict. No.
3,680
(1928),
s. 32.

30. (1) Every dealer or other person guilty of an offence against this Act or who fails to comply with any of the provisions of this Act, or who improperly breaks any seal of or tampers with any parcel containing any sample or part of a sample shall, where no other penalty is expressly provided therefor, be liable to a penalty not exceeding one hundred pounds.

(2) Penalties imposed by this Act or by any regulation made thereunder shall, where no other penalty is expressly provided, be recovered in a summary manner before a stipendiary or police magistrate or any two justices in a court of petty sessions.

Certificate
of analyst.
Ibid. s. 33.

31. In any proceedings against any person for an offence against this Act the production of a document purporting to be the certificate of an analyst shall be sufficient evidence of the facts therein stated, unless the defendant requires that the analyst be called as a witness and that the parts of the sample retained respectively by the analyst and the purchaser as hereinbefore mentioned be produced, or unless it is proved that such document is not the certificate of such analyst.

32.

32. (1) At the hearing of any information for an offence against this Act the Court shall upon the request of either the informant or defendant cause any part of the sample or fertilizer to be sent to the Minister, who shall thereupon direct an analyst nominated by the Minister to make an analysis thereof and give a certificate to such Court as the result of such analysis, and the expense of such analysis shall be paid by the informant or defendant as the Court may direct.

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Reference to Agricultural Department chemist. Viet. No. 3680 (1928), s. 34.

(2) In any proceedings against any person for an offence against this Act the production of a document purporting to be the certificate of the said analyst shall be sufficient evidence of the facts therein stated unless it is proved that such document is not the certificate of the said analyst.

33. 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. *Ibid.* s. 35.

34. In any action brought by any person for misrepresentation or for a breach of warranty on the sale of any fertilizer 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. 36.

- (a) that the fertilizer 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 has been convicted; and
- (b) that he purchased or received such fertilizer not knowing it to be otherwise, and afterwards sold it in the same state in which he purchased or received it.

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

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Forgery of a certificate.
 Vict. No. 3,680 (1928), s. 37.

35. Every person who forges or utters knowing it to be forged, any certificate as provided for under this Act shall be guilty of a misdemeanour and shall be liable to imprisonment with or without hard labour for a term of not more than five years.

Costs and expenses of proceedings.
Ibid. s. 39.

36. Every person guilty of an offence against this Act shall, in addition to the penalty imposed, be liable to pay such amount as the court awards for the costs and expenses incurred in the taking of proceedings against such guilty person, including the expenses incurred by the prosecution in obtaining the analysis.

Penalty on person actually committing offence.
Ibid. s. 40.

37. (1) Where an offence for which a dealer is liable under this Act to a penalty has, in fact, been committed by some agent, servant, workman or other person, such agent, servant, workman or other person shall be liable to the like penalty as if he was the dealer.

(2) When an offence against this Act is committed by a body corporate and is proved to have been committed with the consent or approval of or to have been facilitated by any act on the part of any director, manager, secretary, or other officer whatsoever of the body corporate he, as well as the body corporate, shall be deemed guilty of the offence and shall be liable to be proceeded against and punished accordingly.

Exemption of dealer from penalty on conviction of actual offender.

38. Where a dealer is charged with an offence against any of the provisions of this Act he shall be entitled upon information 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.

39. In any proceedings brought against any person for failing to deliver to the purchaser of any fertilizer an invoice certificate in accordance with this Act, the burden of proof that an invoice certificate was delivered by the vendor to the purchaser shall lie on the defendant.

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Burden of proof.
Vict. No. 3,680 (1928), s. 42.

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 of any of his powers or duties under this Act.

Protection of officers.
Ibid. s. 43.

41. (1) The Governor may make regulations not inconsistent with this Act prescribing all matters which by this Act are required or permitted to be prescribed or which are necessary or convenient to be prescribed for carrying out or giving effect to this Act; and in particular and without limiting the generality of the foregoing power the Governor may make regulations in respect of the following matters:—

Power to make regulations.

- (a) the method to be adopted by the purchaser of any fertilizer in taking a sample of any fertilizer to be submitted by him for analysis under this Act;
- (b) the method of analysis, chemical and physical, to be applied in the analysis of any fertilizer for the purposes of this Act;
- (c) the size, form and quality of the printed labels required to be affixed to parcels of fertilizer, the information to be set forth thereon and the manner of printing thereof;
- (d) the manner of marking brands upon labels, invoice certificates or parcels of fertilizer;
- (e) fees payable under this Act;
- (f) forms to be used in carrying into effect the provisions of this Act.

(2) The regulations may prescribe a penalty not exceeding fifty pounds for any breach thereof.

(3) The regulations shall—

- (a) be published in the Gazette;
 - (b) take effect from the date of publication, or from a later date to be specified in such regulations;
- and

(c)

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(c) be laid before both Houses of Parliament within fourteen sitting days after publication if Parliament is in session and, if not, then within fourteen sitting days after the commencement of the next session.

If either House of Parliament passes a resolution of which notice has been given within fifteen sitting days after any regulation has been laid before such House, disallowing such regulation or part thereof, such regulation or part shall thereupon cease to have effect.

SCHEDULE.

Percentage of total nitrogen or total phosphoric acid or total potash or of any of the several forms of nitrogen, phosphoric acid or potash stated to be present in the fertilizer.	Maximum allowable deficiency as to total nitrogen or total potash or as to any of the several forms of nitrogen or potash.	Maximum allowable deficiency as to total phosphoric acid or as to any of the several forms of phosphoric acid.
Not exceeding 5 per centum.	·25 per centum	·35 per centum.
Exceeding 5 per centum and not exceeding 7·5 per centum.	·30 per centum	·45 per centum.
Exceeding 7·5 per centum and not exceeding 10 per centum.	·45 per centum	·60 per centum.
Exceeding 10 per centum and not exceeding 12·5 per centum.	·60 per centum	·70 per centum.
Exceeding 12·5 per centum and not exceeding 15 per centum.	·70 per centum	·75 per centum.
Exceeding 15 per centum.	·75 per centum	·75 per centum.