

FERTILIZERS (AMENDMENT) ACT.

New South Wales



ANNO SEXTO DECIMO

ELIZABETHÆ II REGINÆ

Act No. 8, 1967.

An Act to make further provisions with respect to the sale of fertilizers and certain other substances used in agriculture; to extend the powers of inspectors appointed under the Fertilizers Act, 1934, as amended by subsequent Acts; for these and other purposes to amend that Act, as so amended; and for purposes connected therewith. [Assented to, 21st March, 1967.]

BE

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BE it enacted by the Queen'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 :—

Short title
and
citation.

1. (1) This Act may be cited as the "Fertilizers (Amendment) Act, 1967".

(2) The Fertilizers Act, 1934, as amended by subsequent Acts and by this Act, may be cited as the Fertilizers Act, 1934-1967.

(3) The several provisions of this Act shall commence upon such day or days as may be appointed by the Governor in respect thereof and notified by proclamation published in the Gazette.

Amendment
of Act No.
51, 1934.

2. The Fertilizers Act, 1934, as amended by subsequent Acts, is amended—

Sec. 3.
(Interpre-
tation.)

(a) (i) by inserting in section three next before the definition of "Analyst" the following new definition :—

"Active substance" means any substance used in agriculture declared to be an active substance by a proclamation in force under subsection two of this section.

(ii) by inserting in the same section next after the definition of "Brand" the following new definition :—

"Controlled substance" means biuret and any other substance declared to be a controlled substance by a proclamation in force under subsection two of this section.

(iii) by inserting in the same section in the definition of "Dealer" after the word "vendor" the word "of";

(iv)

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- (iv) by inserting in the same section next No. 8, 1967 after the same definition the following new definition :—

“Dolomite” means an artificially prepared or naturally occurring mixture of carbonates, oxides or hydroxides of calcium and magnesium.

- (v) by omitting from the same section the definition of “Fertilizer” and by inserting in lieu thereof the following new definition :—

“Fertilizer” means a substance containing nitrogen, phosphorus, potassium or any compounds thereof manufactured, produced or prepared in any manner for the purpose of fertilizing the soil or supplying nutriment to plants and any other substance declared to be a fertilizer by a proclamation in force under subsection two of this section, but does not include farm-yard or stable manure, crude nightsoil, crude offal or other unmanufactured refuse.

- (vi) by inserting in the same section next after the same definition the following new definitions :—

“Fungicide” means a substance capable of destroying or preventing attacks on plants or on any produce of the soil, by fungi or other parasitic plants or by bacteria which affect or which may affect such plants or produce, and any substance declared to be a fungicide by a proclamation in force under subsection two of this section.

“Gypsum” means the sulphate salt of calcium in either hydrated or anhydrous form.

“Herbicide”

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“Herbicide” means any substance capable of destroying, or preventing the spread of, any plants, and any substance declared to be a herbicide by a proclamation in force under subsection two of this section.

- (vii) by inserting in the same section next after the definition of “Inspector” the following new definitions :—

“Lime” means an oxide, hydroxide or carbonate compound of calcium.

“Lure” means a substance capable of luring or attracting for the purposes of destruction any insect, pest or vermin affecting agriculture and any substance declared to be a lure by a proclamation in force under subsection two of this section.

“Magnesite” means an oxide, hydroxide or carbonate compound of magnesium.

- (viii) by omitting from the same section the definitions of “Person”, “Phosphate fertilizer”, “Phosphoric acid” and “Potash” and by inserting in lieu thereof the following definitions :—

“Person” includes any body of persons corporate or unincorporate.

“Pesticide” includes fungicide, herbicide, insecticide or lure and any substance declared to be a pesticide by a proclamation in force under subsection two of this section.

- (ix) by inserting in the same section next after the definition of “Sell” the following new definition :—

“Sulphur” means brimstone or other elemental form of sulphur.

(x)

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- (x) by omitting from the same section the definition of "Superphosphate"; No. 8, 1967
- (xi) by inserting at the end of the same section the following new subsections :—
- (2) The Governor may by proclamation published in the Gazette declare—
- (a) any substance that is capable of injuring any plant or animal to be a controlled substance; or
- (b) any substance to be an active substance, a fertilizer, fungicide, herbicide, lure or pesticide,
- for the purposes of this Act.
- (3) The Governor may in like manner revoke any such proclamation.
- (b) (i) by inserting in paragraph (a) of section four Sec. 4. after the words "fertilizer compounds" the (Exemp-
tions.) words ", active substances, controlled substances, pesticides, special substances";
- (ii) by inserting next after the same paragraph the following new paragraph :—
- (ai) to the sale of bulk lots of active substances, controlled substances or pesticides to a person engaged in the retail sale thereof; or
- (iii) by omitting from the same section the word "section" and by inserting in lieu thereof the words, figure and symbol "sections 5B and";
- (c) by omitting from paragraph (d) of subsection one Sec. 5. of section five the words "ingredients, namely : nitrogen, phosphoric acid and potash" and by (Vendor to
give invoice
certificate
to pur-
chaser.) inserting in lieu thereof the words "elements, namely : nitrogen, phosphorus and potassium";

(d)

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New secs.
5A, 5B.Parcels of
active sub-
stances to be
labelled.

(d) by inserting next after section five the following new sections :—

5A. (1) A dealer shall not sell an active substance or a substance containing an active substance unless it is contained in a parcel or other container to which there is securely and conspicuously affixed a plainly printed label stating the prescribed particulars or on which there is printed such a label.

(2) The particulars specified in any such label shall be deemed to be a representation or warranty by the dealer to the purchaser of the truth of those particulars.

5B. Where a dealer prepares any fertilizer for sale upon an order of a purchaser and pursuant to a prescription supplied by the purchaser, the dealer shall, within fourteen days after being so required by the Minister, furnish to the Chief Chemist of the Department of Agriculture a statement specifying the date of the sale of the fertilizer and the price charged or paid therefor and shall, within fourteen days after being so required by the Chief Chemist, furnish to the Chief Chemist or produce to him for inspection a copy of the prescription.

Dealer's
obligations
where
fertilizer
prepared to
a prescrip-
tion.Sec. 6.
(Labelling
of parcels of
fertilizer.)

(e) (i) by inserting in subsection one of section six after the word "label" the words ", or print on the parcel such a label,";

(ii) by inserting at the end of the same subsection the following new proviso :—

Provided that nothing in this subsection shall apply with respect to the sale of any fertilizer which—

(a) without any alteration being made to the composition of the fertilizer, is obtained from a parcel of fertilizer to which there is securely and conspicuously affixed a plainly printed label

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label containing the particulars referred to in section five of this Act in relation to the sale of the fertilizer to the dealer, and no other particulars, or on which there is printed such a label; or

(b) is sold in a lot containing more than two hundred pounds;

(f) by inserting in section seven after the words "affix to" the words "or print on";

Sec. 7.
(Penalty.)

(g) by inserting at the end of section eight the following new subsection :—

Sec. 8.
(Certain substances not to be sold as fertilizers.)

(2) Any person who sells any fertilizer containing a controlled substance in excess of the prescribed proportion of that controlled substance shall be guilty of an offence against this Act and shall be liable to a penalty not exceeding one hundred dollars.

(h) by inserting next after section eight the following new section :—

New sec.
8A.

8A. Any dealer who sells as, or as containing, an active substance or a pesticide or dolomite, gypsum, lime, magnesite or sulphur any substance that contains less than the prescribed proportion of a substance prescribed in respect of that active substance, pesticide, dolomite, gypsum, lime, magnesite or sulphur shall be guilty of an offence against this Act and shall be liable to a penalty not exceeding one hundred dollars.

Offences relating to the sale of certain substances.

(i) by inserting at the end of section nine the following new subsection :—

Sec. 9.
(Appointment of inspectors and analysts.)

(2) In any proceedings against any person for an offence against this Act or the regulations, a certificate purporting to be signed by the Director-General of Agriculture or by a Deputy Director-General of Agriculture certifying that a person has been appointed as an inspector or analyst under subsection

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 subsection one of this section and during any period specified therein held office as an inspector or analyst shall be prima facie evidence of the facts certified therein.
- Sec. 11.**
 (Tampering with samples.)
 (j) by omitting from section eleven the word "fertilizer" and by inserting in lieu thereof the word "substance";
- Sec. 12.**
 (Analysts to divide sample.)
 (k) by omitting from section twelve the words "or jar" and by inserting in lieu thereof the words "or other container";
- Sec. 14.**
 (Certificate of analyst.)
 (l) by omitting from section fourteen the word "fertilizer" and by inserting in lieu thereof the word "substance";
- Sec. 15.**
 (Fertilizers to contain certain percentages of ingredients.)
 (m) (i) by omitting from subsection one of section fifteen the words "phosphoric acid" wherever occurring and by inserting in lieu thereof the word "phosphorus";
 (ii) by omitting from the same subsection the word "potash" wherever occurring and by inserting in lieu thereof the word "potassium";
- Subst. sec. 16, new sec. 16A.**
Powers of inspectors.
 (n) by omitting section sixteen and by inserting in lieu thereof the following sections :—
 16. (1) An inspector, upon production of written evidence of his appointment as such, may at any reasonable time and with or without assistants, for the purposes of this Act or the regulations—
 (a) enter and remain in or on any place in or on which he has reasonable ground for believing any fertilizer or any of the following substances, namely, active substances, controlled substances, pesticides, dolomite, gypsum, lime, magnesite or sulphur is stored, manufactured, prepared for sale or sold;

(b)

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- (b) search and inspect any such place and examine any fertilizer or substance found therein or thereon as well as any parcels, labels, advertising matter, accounts, records, books, documents, or machinery used for or in connection with the storage, manufacture, preparation for sale or sale of any such fertilizer or substance; No. 8, 1967
- (c) take without payment a quantity not exceeding two pounds of any fertilizer or such other substance there found as a sample for analysis;
- (d) 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;
- (e) take copies of, or extracts or notes from, any such labels, advertising matter, accounts, records, books or documents;
- (f) seize and detain any fertilizer or other substance referred to in paragraph (a) of this subsection, or any parcel, label or advertising matter, found therein or thereon which is being or which in his opinion is being or is about to be dealt with in a manner contrary to any provision of this Act or the regulations, or in relation to which or any part of which he is of opinion that any provision of this Act or the regulations has not been complied with;
- (g) remove or cause to be removed any fertilizer, substance or other thing seized by him in pursuance of paragraph (f) of this subsection or allow it or any part of it to remain at the place of seizure and in that case fasten, secure or seal any container in which the fertilizer, substance or other thing so seized by him is contained or placed and
label

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label that container or fasten, secure or seal any doors or aperture affording access to any fertilizer, substance or other thing so seized;

(h) request any person found in or on any such place to—

(i) produce any label, advertising matter, accounts, records, books, documents or any other things whatsoever—

(a) which relate to or which the inspector informs that person that he suspects, on reasonable grounds, relate to the storage, manufacture, preparation for sale or sale of any fertilizer or substance referred to in paragraph (a) of this subsection; and

(b) which at the time of the request are in the possession or under the control of that person; and

(ii) answer any question with respect to—

(a) any such label, advertising matter, accounts, records, books, documents or other things whatsoever; or

(b) any fertilizer or substance referred to in paragraph (a) of this subsection found in or on such place or the storage, manufacture, preparation for sale, sale or use of any such fertilizer or substance.

(2)

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(2) Any person who—

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- (a) prevents or attempts to prevent any inspector from exercising any power conferred upon him by or under this Act;
- (b) hinders or obstructs any inspector or assistant of an inspector in the exercise of any such power;
- (c) breaks open or removes any container fastened, secured or sealed pursuant to paragraph (g) of subsection one of this section or breaks open any door or aperture so fastened, secured or sealed;
- (d) fails to comply with any request of an inspector under paragraph (h) of subsection one of this section; or
- (e) furnishes to an inspector any information which is false or misleading in any material particular.

shall be guilty of an offence against this Act.

(3) Any fertilizer, substance or other thing seized by an inspector in pursuance of paragraph (f) of subsection one of this section shall, within twenty-eight days after its seizure, be—

- (a) returned to the owner or other person from whom it was so seized;
- (b) destroyed; or
- (c) otherwise dealt with,

as the Minister directs.

16A. (1) An inspector who—

- (a) finds a person committing or attempting to commit an offence against this Act or the regulations;
- (b) suspects, on reasonable grounds, a person of having committed or attempted to commit any such offence; or

Demanding
name and
place of
abode.

(c)

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- (c) finds a person in or upon any place entered in pursuance of the provisions of section sixteen of this Act;

may demand from that person his name and place of abode.

(2) Any person who upon demand made as aforesaid and upon production of written evidence of the appointment of the inspector—

- (a) fails or refuses to state his name or place of abode; or
 (b) states a false name or place of abode,

shall be guilty of an offence against this Act.

Sec. 17.
 (Procedure
 on taking
 sample.)

- (o) (i) by omitting from paragraph (b) of section seventeen the word "glass" and by inserting in lieu thereof the word "suitable";
 (ii) by inserting in paragraph (c) of the same section after the word "vessel" the words ", in the case where the sample was taken from a parcel of fertilizer marked with a brand,";
 (iii) by omitting from the same paragraph the words "the name, so far as is known to him" and by inserting in lieu thereof the words "and in every case, a label stating any description of the substance comprised in the sample as stated to the inspector by any person in charge or apparently in charge of the place from which the sample was taken and the name, so far as is known to the inspector";

Sec. 23.
 (Fertilizers
 to be sold
 under
 registered
 brand.)

- (p) by omitting subsection one of section twenty-three and by inserting in lieu thereof the following subsection :—

(1) Every invoice certificate used in connection with any fertilizer and every parcel, being a sack, bag, barrel, case, package or other similar container, of fertilizer, shall be marked with a registered brand in such manner as is prescribed.

(q)

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- (q) by omitting section twenty-five and by inserting in lieu thereof the following section :—

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Subst.
sec. 25.

25. The registration of a brand shall, subject to this Act, continue in force until the thirty-first day of December next following the date of registration thereof.

Period of
registration.

- (r) by omitting from subsection two of section twenty-six the word "December" and by inserting in lieu thereof the word "January";

Sec. 26.
(Compila-
tion and
publication
of annual
lists of
fertilizers.)

- (s) by inserting in section twenty-seven after the word "registered" the words "or of any active substance, substance containing an active substance, controlled substance, pesticide, dolomite, gypsum, lime, magnesite or sulphur manufactured, imported or prepared for sale by the dealer";

Sec. 27.
(Samples of
fertilizers
to be sup-
plied for
analysis.)

- (t) (i) by omitting paragraph (a) of section twenty-nine and by inserting in lieu thereof the following paragraph :—

Sec. 29.
(Offences.)

(a) sells any fertilizer except under a brand registered under this Act in respect thereof;

- (ii) by omitting from paragraph (b) of the same section the words "or name";

- (iii) by omitting paragraph (c) of the same section and by inserting in lieu thereof the following paragraph :—

(c) sells any fertilizer in a parcel, being a sack, bag, barrel, case, package or other similar container, without there being conspicuously marked thereon the registered brand of the fertilizer;

- (iv) by inserting at the end of the same section the following new paragraph :—

Paragraphs (a) and (c) of this section do not apply to a sale of any fertilizer prepared upon the order of the purchaser and pursuant to a prescription supplied by the purchaser.

(u)

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Sec. 30.

(General
penalty.)

(u) by omitting subsection two of section thirty and by inserting in lieu thereof the following subsection :—

(2) A penalty for an offence against this Act or the regulations may be recovered before a stipendiary magistrate or any two justices in petty sessions.

Sec. 32.

(Reference
to Agricultural
Department
chemist.)

(v) by omitting from subsection one of section thirty-two the words "the sample or fertilizer" and by inserting in lieu thereof the words "a sample";

Sec. 34.

(Remedy by
a vendor
against a
prior
vendor.)

(w) (i) by inserting in section thirty-four after the word "fertilizer" where firstly occurring the words ", active substance or substance containing an active substance";

(ii) by omitting paragraphs (a) and (b) of the same section and by inserting in lieu thereof the following paragraphs :—

(a) where the conviction was in respect of the sale of a fertilizer—

(i) 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

(ii) 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; or

(b)

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- (b) where the conviction was in respect of the sale of an active substance or a substance containing an active substance—
- (i) that the active substance or substance containing an active substance was sold in the container and in the same state in which it was consigned, forwarded or sold to him by the defendant;
 - (ii) that, when he purchased or received the active substance or substance containing an active substance from the defendant, that container had affixed to or printed on it a label purporting to contain the prescribed particulars referred to in subsection one of section 5A of this Act and that he sold it without altering that label or affixing to or printing on the container any other label; and
 - (iii) that he purchased or received the active substance or substance containing an active substance not knowing it to be otherwise than as represented on that label.
- (x) by inserting next after section forty the following New sec. 40A.
new section :—
- 40A. Any analyst may publish in the Gazette, any newspaper, journal or other publication Publication of analysis. particulars of any analysis made by him of any fertilizer, any substance containing or claimed to possess any fertilizing properties, any active substance or any substance containing an active substance

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substance and may so publish in connection with any such particulars any conclusions or opinions formed by him in relation to any such analysis.

Sec. 41.
(Power to
make
regulations.)

- (y) (i) by inserting in paragraph (b) of subsection one of section forty-one after the word "fertilizer" the words "or other substance";
- (ii) by omitting from paragraph (c) of the same subsection the words "to parcels of fertilizer, the information to be set forth thereon" and by inserting in lieu thereof the words "to or printed on parcels of fertilizer or parcels or other containers of active substances, or substances containing active substances, specifying the information to be set forth thereon and prohibiting the inclusion of any other information thereon";

Schedule.

- (z) by omitting from the Schedule the words "phosphoric acid" and "potash" wherever occurring and by inserting in lieu thereof the words "phosphorus" and "potassium" respectively.
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REAL