

Fertilisers Act 1985 No 5

[1985-5]



New South Wales

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The provisions displayed in this version of the legislation have all commenced.

Notes—

- **Previously named**
Fertilizers Act 1985
- **See also**
[Miscellaneous Acts Amendment \(Directors' Liability\) Bill 2011](#)

Authorisation

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Fertilisers Act 1985 No 5



New South Wales

An Act to regulate the sale of fertilisers, liming materials and trace element products; to repeal the *Fertilizers Act 1934*; and for other purposes.

Part 1 Preliminary

1 Name of Act

This Act may be cited as the *Fertilisers Act 1985*.

2 Commencement

- (1) Sections 1 and 2 shall commence on the date of assent to this Act.
- (2) Except as provided by subsection (1), this Act shall commence on such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

3 Definitions

- (1) In this Act, except in so far as the context or subject-matter otherwise indicates or requires:

approved means approved for the time being by the Director-General.

certificate of identification means a certificate of identification referred to in section 24 (1).

dealer means a person who carries on the business of importing, manufacturing, selling or otherwise dealing in soil improving agents or trace element products, whether or not the person carries on any other business.

Department means the Department of Industry and Investment.

Deputy Director-General means a Deputy Director-General of the Department.

Director-General means the Director-General of the Department.

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

fertiliser has the meaning given by section 3A.

gypsum means the sulphate salt of calcium in either hydrated or anhydrous form.

inspector means a person for the time being:

- (a) appointed as an agricultural inspector under section 23 (1), or
- (b) authorised to exercise the functions of an inspector under section 23 (2).

lime means an oxide, hydroxide or carbonate compound of calcium.

liming material means a substance that:

- (a) consists of or contains dolomite, gypsum, lime or magnesite, and
- (b) is manufactured, represented, sold or used as a means for directly or indirectly affecting the nature or composition of soil or any other matter in which vegetation is grown.

magnesite means an oxide, hydroxide or carbonate compound of magnesium.

parcel includes sack, bag, barrel, case, package and any other container.

premises includes land, place, vehicle and vessel.

regulation means a regulation made under this Act.

sell includes:

- (a) auction or exchange,
- (b) offer, expose, supply or receive for sale,
- (c) send, forward or deliver for sale or on sale,
- (d) cause, permit or suffer the doing of an act referred to in paragraph (a), (b) or (c),
- (e) offer or attempt to do an act so referred to, and
- (f) have in possession for sale.

soil improving agent means:

- (a) a fertiliser, or
- (b) a liming material.

trace element means boron, cobalt, copper, iron, magnesium, manganese, molybdenum, selenium or zinc or any other prescribed element.

trace element product means a substance that:

- (a) consists of or contains a trace element, or any compound thereof, and
- (b) is manufactured, represented, sold or used as a means for directly or indirectly:
 - (i) supplying nutriment for the purpose of enhancing the development, productivity, quality or reproductive capacity of vegetation, or
 - (ii) affecting the nature or composition of soil or any other matter in which vegetation is grown,

but does not include a soil improving agent.

(2) In this Act:

- (a) a reference to a function includes a reference to a power, authority and duty, and
- (b) a reference to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.

3A Definition of “fertiliser”

(1) For the purposes of this Act, **fertiliser** means:

- (a) a substance that consists of or contains nitrogen, phosphorus or potassium (or any combination of nitrogen, phosphorus or potassium) and is manufactured, represented, sold or used as a means for directly or indirectly supplying nutriment for the purpose of enhancing the development, productivity, quality or reproductive capacity of vegetation, or
- (b) any other substance that the Minister declares, by an order published in the Gazette, to be a fertiliser for the purposes of this Act.

(2) However, **fertiliser** does not include any substance declared by the Minister, by an order published in the Gazette, not to be a fertiliser for the purposes of this Act.

(3) It is the duty of the Minister, before making an order under this section, to consult:

- (a) the Minister for the Environment, and
- (b) the Minister for Health, and
- (c) any other Minister whom the Minister considers would have responsibilities giving rise to an interest in being consulted,

but failure to consult those Ministers does not invalidate any order made.

(4) An order made by the Minister under this section must be published in at least one newspaper circulating generally throughout the State at the same time as, or as soon as practicable after, it is published in the Gazette.

- (5) Section 40 (Notice of statutory rules to be tabled) and section 41 (Disallowance of statutory rules) of the *Interpretation Act 1987* apply to an order made under this section in the same way as they apply to a statutory rule within the meaning of that Act.

4 Act binds Crown

This Act binds the Crown, not only in right of New South Wales but also, so far as the legislative power of Parliament permits, the Crown in all its other capacities.

4A Object of this Act

The object of this Act is to regulate the sale of soil improving agents and trace element products so as:

- (a) to protect human health by ensuring that unsafe levels of heavy metals and other contaminants that may occur in soil improving agents or trace element products do not make their way into the human food chain, and
- (b) to facilitate international trade by ensuring that agricultural products destined for export markets comply with requirements of international trading partners in relation to the presence of heavy metals and other contaminants, and
- (c) to protect the environment by better informing purchasers of the composition of soil improving agents and trace element products and by restricting the proportion of certain substances that soil improving agents and trace element products may contain.

Part 2

5-14 (Repealed)

Part 3 Regulation of sales by dealers

Division 1 Soil improving agents

15 (Repealed)

16 Soil improving agents to be sold in marked parcels

- (1) The Minister may, by order published in the Gazette, declare that particulars specified in the order must be marked on a parcel that contains a soil improving agent or a soil improving agent of a specified class.
- (2) Without limiting the generality of subsection (1), those particulars may comprise any or all of the following:
 - (a) details of the quantity of soil improving agent contained in the parcel,

- (b) in the case of a soil improving agent that is a fertiliser, the respective proportion in which nitrogen, phosphorus or potassium or any other element (or any form of nitrogen, phosphorus or potassium or any other element) occurs in the fertiliser,
- (c) in the case of a soil improving agent that is a liming material, the respective proportion in which calcium, magnesium or sulphur or any other element (or any form of calcium, magnesium or sulphur or any other element) occurs in the liming material,
- (d) warning labels.

- (3) A dealer must not sell a soil improving agent unless the soil improving agent is contained in a parcel that is marked with the particulars (if any) required by an order made under this section that is in force.

Maximum penalty: 20 penalty units.

- (4) However, it is not an offence to sell a soil improving agent that has not been marked with those particulars:
- (a) if the soil improving agent is sold to a dealer, or
 - (b) if, in the case where the soil improving agent comprised in the sale consists of a bulk lot of 90 kilograms or more, at or before the delivery of that bulk lot the person to whom the soil improving agent is sold is provided with an invoice or any other document containing the same particulars as would otherwise be required to be marked on the parcel, or
 - (c) if, in the case where the soil improving agent has been formulated to the prescription of the person to whom it is sold, at or before the delivery the person to whom the soil improving agent is sold is provided with an invoice or any other document containing the same particulars as would otherwise be required to be marked on the parcel.
- (5) An order made by the Minister under this section must be published in at least one newspaper circulating generally throughout the State at the same time as, or as soon as practicable after, it is published in the Gazette.
- (6) Section 40 (Notice of statutory rules to be tabled) and section 41 (Disallowance of statutory rules) of the [Interpretation Act 1987](#) apply to an order made under this section in the same way as they apply to a statutory rule within the meaning of that Act.

17 Soil improving agents to conform to marked particulars

- (1) This section applies to any soil improving agent in relation to which an order is in force under section 16 (declaring that particulars specified in the order must be marked on a parcel that contains the soil improving agent or a soil improving agent of its class).

- (2) A dealer must not sell a soil improving agent to which this section applies unless the soil improving agent conforms to the particulars required to be marked on the parcel (or permitted to be marked on an invoice or other document) that are in fact so marked.

Maximum penalty: 50 penalty units.

- (3) For the purposes of this section, any particular that takes the form of a warning label, or instructions for use, is to be disregarded.

18 Soil improving agents to comply with composition standards

- (1) The Minister may, by order published in the Gazette, declare that a soil improving agent, or a soil improving agent of a class specified in the order, must not contain more than a specified maximum concentration or proportion of any specified component (a **composition standard**).

- (2) A dealer must not sell a soil improving agent unless the soil improving agent complies with the composition standards (if any) that apply to it as a result of an order made under this section that is in force.

Maximum penalty: 50 penalty units.

- (3) However, it is not an offence to sell a soil improving agent that does not comply with the composition standards applying to it if the soil improving agent is sold to a dealer.

- (4) It is the duty of the Minister, before making an order under this section, to consult:

- (a) the Minister for the Environment, and
- (b) the Minister for Health, and
- (c) any other Minister whom the Minister considers would have responsibilities giving rise to an interest in being consulted,

but failure to consult those Ministers does not invalidate any order made.

- (5) An order made by the Minister under this section must be published in at least one newspaper circulating generally throughout the State at the same time as, or as soon as practicable after, it is published in the Gazette.

- (6) Section 40 (Notice of statutory rules to be tabled) and section 41 (Disallowance of statutory rules) of the [Interpretation Act 1987](#) apply to an order made under this section in the same way as they apply to a statutory rule within the meaning of that Act.

19 Substances not to be falsely represented as soil improving agents

A dealer shall not falsely represent a substance to be a soil improving agent.

Maximum penalty: 50 penalty units.

20 (Repealed)

Division 2 Trace element products

21 Trace element products to be sold in marked parcels

- (1) The Minister may, by order published in the Gazette, declare that particulars specified in the order must be marked on a parcel that contains a specified trace element product or a trace element product of a specified class.
- (2) Without limiting the generality of subsection (1), those particulars may comprise any or all of the following:
 - (a) details of the quantity of trace element product contained in the parcel,
 - (b) the respective proportion in which each trace element or any other element (or any form of each trace element or any other element) occurs in the trace element product,
 - (c) warning labels.
- (3) A dealer must not sell a trace element product unless the trace element product is contained in a parcel that is marked with the particulars (if any) required by an order made under this section that is in force.

Maximum penalty: 20 penalty units.

- (4) However, it is not an offence to sell a trace element product that has not been marked with those particulars:
 - (a) if the trace element product is sold to a dealer, or
 - (b) if, in the case where the trace element product comprised in the sale consists of a bulk lot of 90 kilograms or more, at or before the delivery of that bulk lot the person to whom the trace element product is sold is provided with an invoice or any other document containing the same particulars as would otherwise be required to be marked on the parcel,
 - (c) if, in the case where the trace element product has been formulated to the prescription of the person to whom it is sold, at or before the delivery the person to whom the trace element product is sold is provided with an invoice or any other document containing the same particulars as would otherwise be required to be marked on the parcel.
- (5) An order made by the Minister under this section must be published in at least one newspaper circulating generally throughout the State at the same time as, or as soon as practicable after, it is published in the Gazette.

- (6) Section 40 (Notice of statutory rules to be tabled) and section 41 (Disallowance of statutory rules) of the *Interpretation Act 1987* apply to an order made under this section in the same way as they apply to a statutory rule within the meaning of that Act.

22 Substances not to be falsely represented as trace element products

A dealer shall not falsely represent a substance to be a trace element product.

Maximum penalty: 50 penalty units.

22A Trace element products to conform to marked particulars

- (1) This section applies to any trace element product in relation to which an order is in force under section 21 (declaring that particulars specified in the order must be marked on a parcel that contains the trace element product or a trace element product of its class).
- (2) A dealer must not sell a trace element product to which this section applies unless the trace element product conforms to the particulars required to be marked on the parcel (or permitted to be marked on an invoice or other document) that are in fact so marked.

Maximum penalty: 50 penalty units.

- (3) For the purposes of this section, any particular that takes the form of a warning label, or instructions for use, is to be disregarded.

22B Trace element products to comply with composition standards

- (1) The Minister may, by order published in the Gazette, declare that a trace element product, or a trace element product of a class specified in the order, must not contain more than a specified maximum concentration or proportion of any specified component (a **composition standard**).
- (2) A dealer must not sell a trace element product unless the trace element product complies with the composition standards (if any) that apply to it as a result of an order made under this section that is in force.

Maximum penalty: 50 penalty units.

- (3) However, it is not an offence to sell a trace element product that does not comply with the composition standards applying to it if the trace element product is sold to a dealer.
- (4) It is the duty of the Minister, before making an order under this section, to consult:
- (a) the Minister for the Environment, and

(b) the Minister for Health, and

(c) any other Minister whom the Minister considers would have responsibilities giving rise to an interest in being consulted,

but failure to consult those Ministers does not invalidate any order made.

(5) An order made by the Minister under this section must be published in at least one newspaper circulating generally throughout the State at the same time as, or as soon as practicable after, it is published in the Gazette.

(6) Section 40 (Notice of statutory rules to be tabled) and section 41 (Disallowance of statutory rules) of the *Interpretation Act 1987* apply to an order made under this section in the same way as they apply to a statutory rule within the meaning of that Act.

Part 4 Inspectors

23 Appointment of inspectors

(1) Agricultural inspectors may be appointed for the purposes of this Act under and in accordance with the Part 2 of the *Public Sector Management Act 1988*.

(2) The Minister may authorise in writing any person to exercise the functions of an inspector, subject to such restrictions (if any) as are specified in the authority.

(3) The Minister may amend or revoke an authority referred to in subsection (2).

(4) An inspector shall have, and may exercise, such functions as are conferred or imposed on the inspector by or under this Act.

24 Identification certificates

(1) The Director-General shall cause each inspector to be issued with a certificate of identification.

(2) A certificate of identification shall be in the approved form.

25 Powers of inspectors in relation to premises

(1) For the purpose of ascertaining whether an offence against this Act or the regulations has been committed, an inspector may do any one or more of the following things:

(a) the inspector may enter and remain in or on any premises in which the inspector believes, on reasonable grounds, that soil improving agents or trace element products are sold,

(b) the inspector may search and inspect any such premises for the presence of:

(i) any soil improving agent or trace element product,

- (ii) any parcel used for containing a soil improving agent or trace element product, or
 - (iii) any document relating to the sale of a soil improving agent or trace element product,
- (c) the inspector may examine any soil improving agent, trace element product, parcel or document found in or on any such premises,
- (d) the inspector may take, without payment, a quantity not exceeding 3 kilograms of any soil improving agent or trace element product found in or on any such premises,
- (e) the inspector may take copies of, or extracts or notes from, any document found in or on any such premises,
- (f) the inspector may require any person found in or on any such premises to produce any soil improving agent, trace element product, parcel or document which is in the possession or under the control of that person and which the inspector believes, on reasonable grounds, to relate to the sale of a soil improving agent or trace element product.
- (2) In exercising in or on any premises any power conferred by subsection (1), an inspector shall, if required to do so by a person apparently for the time being in charge of those premises, produce to that person the inspector's certificate of identification.
- (3) Subsection (1) does not authorise an inspector to exercise any power conferred by that subsection in any part of premises used for residential purposes or in relation to any person in or on any such part of premises.
- (4) The powers conferred by subsection (1) (a) and (b) may be exercised by an inspector between the hours of 7.00 am and 7.00 pm only.
- (5) A person shall not fail to comply with a requirement made by an inspector under subsection (1) (f).

Maximum penalty (subsection (5)): 50 penalty units.

26 Inspectors may demand name and address

- (1) An inspector who finds a person:
- (a) who is committing an offence against this Act or the regulations, or
 - (b) whom the inspector suspects, on reasonable grounds, of having committed or attempted to commit such an offence,
- may require that person to inform the inspector forthwith of that person's name and place of abode.

- (2) A person shall not fail to comply with a requirement made by an inspector under subsection (1).

Maximum penalty (subsection (2)): 20 penalty units.

27 Obstruction of inspectors etc

A person shall not assault, delay, obstruct, hinder or impede an inspector in the exercise of the inspector's functions under this Act.

Maximum penalty: 50 penalty units.

28 Impersonation of inspectors etc

A person shall not:

- (a) forge or counterfeit any certificate of identification,
- (b) make use of any forged or counterfeited certificate of identification, or
- (c) personate, or falsely pretend to be, an inspector.

Maximum penalty: 50 penalty units.

29-32 (Repealed)

Part 5 Supplementary

33 False or misleading information

A person shall not, in or in relation to any application under this Act or in purported compliance with any requirement under this Act, make any statement or furnish any information which is false or misleading in a material particular.

Maximum penalty: 50 penalty units.

34 Disclosure of information

A person shall not disclose any information obtained in connection with the administration or execution of this Act unless the disclosure is made:

- (a) with the consent of the person from whom the information was obtained,
- (b) in connection with the administration or execution of this Act,
- (c) for the purposes of any legal proceedings arising out of this Act or of any report of any such proceedings,
- (d) in accordance with a requirement imposed under the *Ombudsman Act 1974*, or
- (e) with other lawful excuse.

Maximum penalty: 50 penalty units.

35 Proceedings for offences

Proceedings for an offence against this Act or the regulations may be taken before the Local Court.

36 Offences by corporations

- (1) Where a corporation contravenes, whether by act or omission, any provision of this Act or the regulations, each director of the corporation shall be deemed to have contravened the same provision unless the director satisfies the court before which proceedings are being taken in respect of the contravention that:
 - (a) the corporation contravened the provision without the knowledge of the director,
 - (b) the director was not in a position to influence the conduct of the corporation in relation to its contravention of the provision, or
 - (c) the director, being in such a position, used all due diligence to prevent the contravention of the provision by the corporation.
- (2) A director of a corporation may be proceeded against and convicted pursuant to subsection (1) whether or not the corporation has been proceeded against or been convicted.
- (3) Nothing in subsection (1) prejudices or affects any liability imposed by this Act or the regulations on any corporation by which an offence is actually committed.
- (4) In this section, a reference to a director of a corporation includes a reference:
 - (a) to any person occupying or acting in the position of director of the corporation, by whatever name called and whether or not validly appointed or duly authorised to act in that position, and
 - (b) to any person in accordance with whose directions or instructions the directors of the corporation are accustomed to act.

37 Evidentiary certificates

In any legal proceedings, a certificate that purports to have been signed by the Director-General or a Deputy Director-General and that states that, on a date, or during a period, specified in the certificate, a specified person was or was not an inspector is, without proof of the signature of the person by whom the certificate purports to have been signed, evidence (unless evidence is adduced to the contrary) of the fact so stated.

38 Evidence of part to be evidence of whole

In any legal proceedings, evidence as to the nature of the whole or part of a sample of a

substance:

- (a) taken from a parcel of the substance, or
- (b) taken from a quantity of the substance that was, at the time the sample was so taken, represented as being, or as being part of, a bulk lot of the substance,

is evidence as to the nature of the whole of the contents of the parcel or bulk lot, as the case may be.

39 Defences

A dealer is not guilty of an offence arising under this Act or the regulations in respect of the sale of a substance if, at the time the sale took place, the dealer did not know, and did not have reason to believe, that the nature or composition of the substance was such that its sale would constitute such an offence.

39A Delegation

The Director-General may delegate the exercise of any function of the Director-General under this Act (other than this power of delegation) to any member of staff of the Department.

40 Liability

A person is not personally liable for any act or omission done or omitted to be done by the person in the bona fide exercise of the functions conferred or imposed on the person by or under this Act.

41 Service of notices

A notice that the Director-General is required or permitted, by or under this Act, to cause to be served on a person may be served personally or by means of a letter addressed to the person at the person's address last known to the Director-General.

42 Regulations

(1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act and, in particular, for or with respect to:

- (a) the functions of inspectors,
- (b)-(i) (Repealed)
- (j) the regulation or prohibition of the sale by dealers of substances (including soil improving agents and trace element products) which are manufactured, represented, sold or used as a means for directly or indirectly:

- (i) supplying nutriment for the purpose of enhancing the development, productivity, quality or reproductive capacity of vegetation, or
 - (ii) affecting the nature or composition of soil or any other matter in which vegetation is grown,
 - (k) the forms to be used for the purposes of this Act, and
 - (l) the imposition of fees and charges.
- (2) A provision of a regulation may:
- (a) apply generally or be limited in its application by reference to specified exceptions or factors,
 - (b) apply differently according to different factors of a specified kind, or
 - (c) authorise any matter or thing to be from time to time determined, applied or regulated by any specified person,
 - (d) (Repealed)
- or may do any combination of those things.
- (3) A provision of a regulation may impose a penalty not exceeding 20 penalty units for any contravention of the provision.

43 Repeals etc

- (1) Each Act specified in Schedule 1 is, to the extent indicated therein, repealed.
- (2) Schedule 2 has effect.

Schedule 1 Repeals

(Section 43 (1))

Fertilizers Act 1934 No 51—the whole Act.

Fertilizers (Amendment) Act 1967 No 8—the whole Act.

Metric Conversion Act 1978 No 67—so much of Schedule 1 as amends Act No 51, 1934.

Schedule 2 Savings and transitional provisions

(Section 43 (2))

Part 1 Provisions consequent on the enactment of this Act

1 Definitions

In this Part:

appointed day means the day appointed and notified under section 2 (2).

the repealed Act means the *Fertilizers Act 1934*.

2 Inspectors

A person who, immediately before the appointed day, was an inspector under the repealed Act shall be deemed to be an inspector appointed under section 23 (1).

3-6 (Repealed)

7 Seized substances, articles and documents

A substance, article or document which was seized before the appointed day pursuant to the repealed Act, being a substance, article or document which was not returned, destroyed or otherwise dealt with immediately before that day pursuant to that Act, shall be returned, destroyed or otherwise dealt with in accordance with that Act as if that Act had not been repealed by this Act.

Part 2

8 (Repealed)