

[CONFIDENTIAL.]

(Rough Draft for Consideration Only.)

No. , 1924.

---



---

## A BILL

To make better provision for regulating the  
sale of Fertilizers.

---



---

**B**E it enacted by the King's Most Excellent Majesty,  
by and with the advice and consent of the Legis-  
lative Council and Legislative Assembly of New South  
Wales in Parliament assembled, and by the authority of  
the same, as follows :—

### PART I.

#### PRELIMINARY.

**1.** (1) This Act may be cited as the "Fertilizers Act, Short title  
1924," and shall come into operation upon a day to be and com-  
appointed by the Governor and notified in the Gazette. mencement.

33905

(2)

(2)

Repeal of Act  
1904 No. 33.

Interpreta-  
tion.

cf. S. A.  
No. 1,355  
(1918).

(2) The Act mentioned in the First Schedule is to the extent therein expressed hereby repealed.

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

“Acid soluble phosphate” means the phosphate determined by the method prescribed for the determination of acid soluble phosphate.

“Agricultural lime” means pulverised carbonate of calcium ( $\text{CaCO}_3$ ).

“Analyst” means an analyst licensed as an agricultural analyst in accordance with the regulations.

“Bone manure” means any fertilizer (other than bone super) which contains disintegrated bones and includes bone dust, bone meal, bone fertilizer, or any other fertilizer (other than bone super) having a name which suggests that it is derived from bones.

“Brand” means the trade name given a fertilizer by the manufacturer, importer, or dealer.

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

“Fertilizer” includes any prepared or natural substance sold as such for use in fertilizing the soil or in supplying nourishment to plants; but does not include farmyard or stable manure, seaweed, town refuse or any crude offal, night-soil or trade waste which has not been dried or otherwise treated to arrest or retard decomposition, nor any substance which the Governor may by notification published in the Gazette declare not to be a fertilizer for the purposes of this Act.

“Fine material” means—

(a) when applied to basic slag and natural rock phosphate, the material capable of passing through a sieve of one hundred meshes to the linear inch;

(b)

- (b) when applied to bone manure the material capable of passing through a sieve of fifty meshes to the linear inch;
- (c) when applied to agricultural lime, the material capable of passing through a sieve of forty meshes to the linear inch.
- “Gypsum” means natural hydrated sulphate of calcium.
- “Inspector” means an inspector of fertilizers appointed under this Act.
- “Minister” means the Minister for Agriculture or other Minister of the Crown charged for the time being with the administration of this Act.
- “Package” includes sack, bag, barrel, case, or other container.
- “Person” includes firm.
- “Phosphate fertilizer” means a fertilizer which contains a phosphate and which is neither bone manure nor superphosphate.
- “Potash” means any water soluble salt of potassium calculated as potassium monoxide ( $K_2O$ ).
- “Prescribed” means prescribed by this Act or by regulations made thereunder.
- “Regulations” means regulations made under this Act.
- “Super or superphosphate” means a fertilizer which has been treated in such a manner as to render portion of the phosphate contained therein soluble in water, and includes any fertilizer having a brand or description which includes the word super or the word superphosphate.
- “Total phosphate” means the phosphate determined by the method prescribed.
- “Water soluble phosphate” means the phosphate determined by the method prescribed for the determination of water soluble phosphate.
- The verb “to sell” in whatever person, number, tense, mood, or voice it is used includes—
- (i) to barter or exchange;
- (ii) S.A.  
9 Geo. V,  
No. 1,355,  
s. 3.  
Tas.  
10 Geo. V,  
No. 44, s. 2.

- (ii) to agree to sell, barter, or exchange ;
- (iii) to offer, expose, store, have in possession, send or deliver for, or on sale ;
- (iv) to receive for sale ;
- (v) to cause or suffer to be sold, bartered, or exchanged, or to be agreed to be sold, bartered, or exchanged ;
- (vi) to cause or suffer to be offered, exposed, stored, had in possession, sent, or delivered for, or on sale :
- (vii) to cause or suffer to be received for sale ; and
- (viii) to attempt to do any of such acts or things ;

and all participles of the verb "to sell" and the noun "sale" have corresponding connotations.

The verb "to buy," in whatever person, number, tense, mood, or voice it is used includes to receive or accept under a sale or agreement to sell and to offer to receive, or accept, or cause or suffer to be received or accepted under a sale or agreement to sell ; and all participles of the verb "to buy" have corresponding connotations.

Application  
of Act.  
cf. Can. 12 &  
13 Geo. V,  
c. 5, ss. 7, 8.

**3. (1) This Act does not apply—**

- (a) to the sale of a constituent component of a fertilizer to a manufacturer of fertilizers ; or
- (b) to the sale of a fertilizer which is manufactured from a prescription received by the manufacturer directly from a purchaser, who in writing states that the fertilizer is not intended for sale, unless such fertilizer is actually again sold ;
- (c) to the sale of a fertilizer in a less quantity than one half hundredweight.

(Vict. No.  
2,652 (1915),  
s. 4.)

(2) Sections ten or twelve of this Act do not apply to the sale of the following fertilizing substances when they are sold in their commercially pure state, unadulterated and not mixed with any other material, and

and contain the plant food substances set opposite their names, and possess fineness not less than the percentages stated hereunder, namely:—

- Nitrate of soda—Fifteen per centum nitrogen.
- Sulphate of ammonia—Twenty per centum nitrogen.
- Superphosphate—Sixteen per centum water soluble phosphate.
- Basic slag (Thomas' phosphate)—Ten per centum total phosphate and eighty per centum fineness.
- Natural rock phosphate of stated origin—Twenty-five per centum total phosphate and eighty per centum fineness.
- Sulphate of potash—Forty-eight per centum potash.
- Nitrate of potash—Forty-eight per centum potash.

4. This Act is divided into Parts, as follows:—

- PART I.—PRELIMINARY—ss. 1-4.
- PART II.—DEALERS AND BRANDS—ss.
- PART III.—REGISTRATION OF BRANDS—ss.
- PART IV.—SALE OF FERTILIZERS—ss.
- PART V.—INSPECTION AND ANALYSIS—ss.
- PART VI.—GENERAL AND SUPPLEMENTAL—ss.

PART II.

DEALERS AND BRANDS.

5. (1) Every dealer shall within thirty days after <sup>Dealers.</sup> the coming into operation of this Act, or otherwise <sup>s. 4.</sup> within thirty days after the date of his commencing <sup>9 Geo. V,</sup> business as a dealer, give notice in writing to the <sup>No. 1,355,</sup> Minister stating—

- (i) his name and place of business;
- (ii) the distinctive name or brand of each fertilizer dealt with by him;
- (iii) the place of manufacture of the fertilizer; and
- (iv) the place where the fertilizer can be obtained;

and shall forward with such notice two separate copies of each brand. (2)

*Fertilizers.*

(2) Any person who fails to comply with the provisions of the last preceding subsection shall be liable to a penalty not exceeding *one* pound for each day during which he so fails to comply therewith.

PART III.

REGISTRATION OF BRANDS.

Register  
book.  
No. 2,652  
Vict., s. 18.

**6.** (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 under this Act.

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

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

Registration  
of brands.  
*Ibid.* s. 19.

**7.** No brand shall be registered if in the opinion of the Minister—

(a) it is substantially identical with any other brand registered or proposed to be registered; or

(b) so nearly resembles it as to be likely to deceive; or

(Can. 12 & 13  
Geo. V, c. 5,  
s. 3 (5).)

(c) the brand would tend to deceive or mislead a purchaser with respect to the analysis or the materials from which the fertilizer is made; or

(d) the analysis and the materials from which the fertilizer is made are approximately the same as those of another brand of fertilizer registered by the same dealer.

Amendment  
of register.  
*Ibid.* s. 20.

**8.** The Minister may cause the register to be amended or altered by—

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

(b) expunging any entry wrongly made in or remaining on the register;

(c)

*Fertilizers.*

7

- (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.

**9.** Every 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 : Provided that in respect of the first list of registered brands the Minister may substitute for the said first day of November such other date as he thinks fit.

Application  
for registra-  
tion.  
No. 2,652  
Vict., s. 21.

**10.** (1) Every such application shall be accompanied by the amount of the prescribed fee for registration, and by a certificate in the prescribed form setting forth—

Particulars on  
application.  
*Ibid.*, s. 22.

- (a) the full name and place of business of the applicant ;
- (b) the name, figure, trade-mark, or other sign (in this Act referred to as the "brand"), to be attached to or associated with the fertilizer for the purpose of identification, which the applicant desires to have registered ;
- (c) the name and address of the manufacturer or importer of the fertilizer ;
- (d) the place of manufacture ;
- (e) the raw materials from which the fertilizer is manufactured or prepared, and if the fertilizer contains any organic material such as leather, hoof, horn, hair, wool-waste, peat, garbage, tankage, or similar material, the percentage by weight thereof, and a statement as to what treatment or process (if any) the organic material has been subjected to ;
- (f) a statement in the prescribed form of the minimum percentages (such percentages not being expressed as a variable quantity) of nitrogen, nitrogen as nitrates, potash, total phosphate, water soluble phosphate, and acid soluble phosphate contained in the fertilizer ;

(g)

- (g) where the fertilizer is lime, agricultural lime or gypsum, the minimum calcium content of the fertilizer expressed as calcium oxide. In the case of gypsum the calcium oxide shall also be expressed as calcium sulphate ( $\text{CaSO}_4$ );
- (h) where the fertilizer is basic slag, natural rock phosphate, bone manure phosphate fertilizer, agricultural lime or gypsum, or a mixture of any such fertilizers, the percentage of fine material;
- (i) such other matters as may be prescribed.

(2) Every such application shall be verified by a statutory declaration by the applicant in such form as may be prescribed.

Amendment  
of certificate.

**11.** The certificate mentioned in the last preceding section may be amended by giving one week's notice in writing to the Minister and on payment of a further fee of ten shillings for the registration of the alteration.

Publication  
of list.  
No. 2,652  
Vict., s. 23.

**12.** A list of dealers who have registered brands, and all brands registered, together with a synopsis of the information supplied in accordance with section ten of this Act, shall be published in the Gazette as soon as practicable after the commencement of this Act, and thereafter as soon as practicable after the first day of January in each year.

Marking of  
parcel sold.  
*Ibid.* s. 24.

**13.** (1) After the date of the publication in the Gazette, as required by this Act, of the first list of registered brands, or after the first day of July, one thousand nine hundred and twenty-five, whichever may first occur, a fertilizer shall not be sold except under a registered brand. Every package and every invoice referring thereto shall be marked with the brand registered in respect of the fertilizer in the manner prescribed.

(2) Where the current license fee in respect of a fertilizer has been paid by a dealer it shall be lawful for any other person to sell such fertilizer without payment of any further fee.

Interim  
registration.  
*Ibid.* s. 25.

**14.** (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)



*Fertilizers.*

9

(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 may be necessary, apply to the registration of brands under this section, and such brands 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.

**15.** 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.  
No. 2,652  
Vict., s. 26.

**16.** A dealer in fertilizers shall, when required to do so by the Minister, forward for analysis to the chemist of the Department of Agriculture without payment samples not exceeding two pounds in weight of any fertilizer in his possession.

Sample of fertilizers to be supplied for analysis.  
*Ibid.* s. 28.

**17.** A dealer who fails to observe any provision of this Part shall be guilty of an offence against this Act.

Offences.

## PART IV.

## SALE OF FERTILIZERS.

**18.** (1) Upon the sale of any fertilizer, whether paid for at the time of sale or not, the dealer shall at the time of sale or before delivery of the same or any part thereof give to the purchaser an invoice in or to the effect of the prescribed form signed by the dealer or his agent.

of. S.A.  
9 Geo. V,  
No. 1,355,  
s. 7.

(2) There shall be stated in the invoice—

- (a) the names in full and the place or places of business of the manufacturer and vendor of the fertilizer, if manufactured within New South Wales; and if imported, or if the fertilizer is not a manufactured article, then the name and place of business of the vendor;

(b)

- (b) the figure, word, trade mark, or trade description which is to be branded, stamped, or marked upon every package containing any of the fertilizer sold at that time to the purchaser;
- (c) the minimum percentages of nitrogen, nitrogen as nitrates, potash, total phosphate, water soluble phosphate, and acid soluble phosphate, stated in the certificate furnished under section ten to be contained in a fertilizer of the same name or brand;
- (d) if the fertilizer is bone manure, phosphate fertilizer, agricultural lime, or gypsum, the percentage of fine material stated in the certificate furnished under section ten to be contained in bone manure, phosphate fertilizer, agricultural lime, or gypsum of the same name or brand;
- (e) if the fertilizer is lime, or agricultural lime or gypsum, a statement of the description of the fertilizer and of the calcium contained therein expressed as calcium oxide, as stated in the certificate furnished under section ten to be contained in bone manure or agricultural lime or gypsum of the same name or brand. In the case of gypsum the calcium oxide shall also be expressed as calcium sulphate ( $\text{CaSO}_4$ ).

(3) Such invoice shall, notwithstanding any agreement to the contrary, have effect as a warranty by the seller of the accuracy of all the matters stated therein.

(4) Any person who fails to observe any of the provisions of this section shall be guilty of an offence against this Act.

Packages to  
be branded.  
S.A.  
9 Geo. V,  
No. 1,355,  
s. 8.

**19.** (1) Every dealer who sells any fertilizer shall, in manner prescribed, legibly and durably brand, stamp or mark upon, or cause to be branded, stamped or marked upon, every package containing any of the fertilizer—

- (a) the name of the vendor of the fertilizer, and if the fertilizer was manufactured in New South Wales, the name of the manufacturer;

(b)

- (b) a statement of the minimum percentages of nitrogen, nitrogen as nitrates, potash, total phosphate, water soluble phosphate, and acid soluble phosphate stated in the certificate furnished under section ten to be contained in a fertilizer of that name or brand, in such abbreviations as are easily intelligible or as may be prescribed;
- (c) if the fertilizer is lime or agricultural lime, a statement of the minimum percentage of calcium oxide stated in the certificate furnished under section ten to be contained in lime or agricultural lime of the same name or brand;
- (d) if the fertilizer is gypsum, a statement of the minimum percentage of calcium oxide expressed in terms of calcium sulphate ( $\text{CaSO}_4$ ) stated in the certificate furnished under section ten to be contained in gypsum of the same name or brand;
- (e) if the fertilizer is bone manure, phosphate fertilizer, agricultural lime, or gypsum, a statement of the percentage of fine material stated in the certificate furnished under section ten to be contained in bone manure, phosphate fertilizer, agricultural lime, or gypsum of the same name or brand;
- (f) the net weight of fertilizer contained in the package;
- (g) a figure, word, trade mark, or trade description corresponding to the figure, word, trade mark, or trade description stated on the invoice given by the seller to the purchaser upon the sale of the fertilizer.

(2) A dealer who fails to observe any of the provisions of this section shall be guilty of an offence against this Act.

**20.** (1) In any case where any package containing any fertilizer which has been branded, stamped, or marked as required by section nineteen is wholly or partly emptied, no person shall place in such package any fertilizer other than fertilizer of the same name or brand as that originally contained in such package, and

Putting into  
branded bags  
fertilizer  
other than  
that to which  
brands refer  
an offence.  
S.A.  
9 Geo. V,  
No. 1,355,  
s. 9.

to

to which the letters and figures, or abbreviations for letters and figures, and other marks appearing upon such package refer.

(2) Any person who contravenes the provisions of this section shall be guilty of an offence against this Act.

Offences by  
sellers.  
S.A.  
9 Geo. V,  
No. 1,355,  
s. 10.

**21.** (1) Every dealer who sells any fertilizer shall be guilty of an offence against this Act if he—

- (a) fails without reasonable excuse to give, on or before or as soon as possible after the delivery of the fertilizer, or any of it, the invoice required by section eighteen ; or
- (b) causes or permits any invoice with respect to, or any description of, the fertilizer to be false in any material particular ; or
- (c) fails to brand or stamp or mark upon any package containing any of the fertilizer, before delivery thereof, any of the particulars required by section nineteen ; or
- (d) sells any bone manure which does not conform to the standard prescribed ; or
- (e) sells as “superphosphate” or “super” any fertilizer containing less than fifteen per centum of water soluble phosphate and a less total phosphate than thirty per centum.

(2) In any proceeding for either of the offences described in subdivisions (a) and (c) of subsection one of this section, the burden of proof that section eighteen or nineteen, according to the nature of the case, has been complied with shall lie upon the defendant.

Buyer need not  
accept delivery  
unless Act  
complied with.  
*Ibid.* s. 11.

**22.** No person shall be bound to accept delivery on sale of any fertilizer unless all the provisions of sections eighteen and nineteen have been complied with as to the fertilizer.

Sale of  
fertilizer  
under  
standard.  
cf. 5 Geo. V,  
No. 8 (Qld.),  
s. 9.

**23.** (1) Any dealer who sells a fertilizer of any brand which, upon analysis under this Act, is found to contain a smaller percentage of nitrogen, potash, water soluble phosphate, or total phosphate than the proportions thereof respectively stated in the certificate furnished to the

the Minister under section ten of this Act to be present in a fertilizer of that brand, and such deficiency amounts—

- (a) as to nitrogen, to five per centum of the total nitrogen certified to be present in a fertilizer of that brand ; or
- (b) as to phosphate, to seven per centum of the total phosphate certified to be present in a fertilizer of that brand ; or
- (c) as to potash, to five per centum of the potash certified to be present in a fertilizer of that brand ; or
- (d) as to lime, to seven per centum of the total lime certified to be present in a fertilizer,

shall be guilty of an offence against this Act.

(2) Every dealer who sells any bone manure, phosphate fertilizer, agricultural lime, or gypsum which does not contain the percentage of fine material stated in the certificate furnished under section ten to be contained in bone manure, phosphate fertilizer, agricultural lime or gypsum of the same name or brand, shall, if the deficiency is greater than five per centum of fine material, be guilty of an offence against this Act.

**24.** Every dealer who sells any fertilizer containing any phosphate not directly derived from bone under any brand, designation, or description which suggests the presence in the fertilizer of bone manure, shall be guilty of an offence against this Act.

Sale of fertilizer incorrectly described as "bone manure" an offence.  
S.A. 9 Geo. V, No. 1,335, s. 13.

**25.** Every dealer who sells any fertilizer which does not bear a distinctive name or brand shall be guilty of an offence against this Act.

Prohibition of sale of fertilizer not bearing a distinctive brand.  
*Ibid.* s. 14.

## PART V.

## INSPECTION AND ANALYSIS.

cf. S.A.  
9 Geo. V,  
No. 1,355,  
s. 15.

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

Obstructing  
inspectors.  
*Ibid.* s. 16.

**27.** Any person who in any way obstructs or interferes with any inspector or analyst in the discharge of any of his duties or the exercise of any of his powers under this Act shall be guilty of an offence against this Act.

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

**28.** Any inspector may, at any time during the day-time, enter upon any land or into any warehouse, store, shop, building, or other premises where any fertilizer is or may reasonably be supposed to be kept for sale or sold, and may—

- (a) examine and, on payment of the ordinary market price therefor (if demanded), take a quantity of any fertilizer there found as a sample for analysis; and
- (b) do any act or thing prescribed by regulation to be done in connection with or for the purposes of anything authorised by this section or the analysis of samples taken under this section.

Procedure  
on taking  
sample.  
*Ibid.* s. 18.  
cf. *Ibid.* s. 10  
(2).

**29.** When an inspector takes a sample for analysis under section twenty-eight he shall—

- (a) thoroughly mix such sample and divide it into three approximately equal parts;
- (b) place each such part in a separate package, and seal or fasten each such package;
- (c) place on each such package a label stating the name, so far as 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, and the time and place of taking;
- (d) deliver one of such parts to the person in charge, or apparently in charge, of the premises; and
- (e) retain one of such parts for future comparison.

The other of such parts may be utilised for analysis.

**30.**

**30.** The particulars contained in any statement furnished to the Minister under section ten may be published in the Agricultural Gazette and in any newspaper, and in such other manner as is prescribed.

Publication of certificate. cf. S.A. 9 Geo. V, No. 1,355, s. 19.

**31.** The result of the analysis by an analyst of any sample or part of a sample of any fertilizer, together with the name and address or place of business of the dealer from whom the fertilizer was bought or of the person in the occupation or apparent occupation of the premises where the sample was taken, and the certificate furnished under section ten and also any explanations of and comments upon the result of the analysis, may be published in the Agricultural Gazette and in any newspaper, and in such other manner as is prescribed.

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

**32.** (1) Any person who has bought any fertilizer shall, subject to this section and to section thirty-seven, be entitled to have a sample of the fertilizer so bought analysed by an analyst, and to receive the analyst's certificate of the result of the analysis.

Right of buyer to analysis. *Ibid.* s. 21. cf. Qld. Act, s. 11.

(2) Every buyer intending to submit a sample for analysis under this section shall, within two months after delivery of the fertilizer to him or receipt by him of the invoice therefor, give notice in writing by post to the seller or his agent of his intention, and of the day (not being earlier than fourteen days from the date of the posting of the notice) and time when the sample will be taken.

(3) The buyer shall on the day and at the time mentioned in the notice—

- (a) take a sample of the fertilizer in the manner prescribed, in the presence of a justice of the peace or member of the police force, and of the seller or the agent or other representative of the seller, if the seller or his agent or representative desires to be present; and
- (b) thoroughly mix the sample and divide it into three approximately equal parts, to be then and there separated, and each part to be marked and sealed, or fastened up in such a manner as its nature will permit; and
- (c) if required to do so, deliver one of such parts to the seller or his agent or representative.

(4)

(4) The buyer shall send or deliver two of such parts to the Minister.

(5) The Minister shall retain one of the said parts for future comparison, and shall send or deliver the other part to an analyst, who shall with all convenient speed analyse the same and give or send, by post or otherwise, a certificate in duplicate to the Minister wherein he shall specify the results of the analysis.

(6) The Minister shall forward the certificate to the buyer and shall file the duplicate in his office.

Analyst's  
certificate.  
S.A. 9 Geo. V,  
No. 1,365, s. 22.

**33.** The certificate of the analyst shall be in the form and contain the particulars mentioned in the Second Schedule to this Act, or as near thereto as circumstances permit.

Unit for  
sampling.  
*Ibid.* s. 16.

**34.** Any sample which may be taken shall be drawn from at least ten per centum of the packages of the total quantity of the fertilizer from which it is drawn, and at once be thoroughly mixed and divided as provided in subsection three (b) of section thirty-two.

## PART VI.

### GENERAL AND SUPPLEMENTAL.

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

**35.** (1) At the hearing of any civil or criminal proceedings with regard to any sample or part thereof which has been analysed by an analyst, or the lot from which the sample was taken, or with regard to the contents of any package of fertilizer which have been so analysed, the production of a certificate in or to the effect of the prescribed form purporting to be signed by an analyst shall, without proof of the signature of the person appearing to have signed the same or that he is an analyst, be prima facie evidence—

- (a) of the identity of the thing analysed ;
- (b) of the result of the analysis ;
- (c) of the matters stated in the certificate ; and
- (d) of the prescribed method of analysis (if any) having been followed by the analyst in making the analysis, unless



unless the defendant, by at least three clear days' (exclusive of Sundays and public holidays) notice in writing delivered to the informant and by a like three clear days' (exclusive as aforesaid) notice delivered, with a witness fee of one guinea, to the analyst, requires that such analyst shall attend as a witness.

(2) In any case where the attendance of an analyst is required as mentioned in this section, the court may, in addition to any other order which may be made as to costs, make such order as it, he, or they deem proper as to the witness fee paid to the analyst, and as to the expenses of and remuneration to be paid for the analysis.

**36.** Where any method of analysis has been prescribed for the analysis of any fertilizer any analyst must in his certificate of analysis declare that he has followed the prescribed method in his analysis. But evidence shall be admissible on the part of the defence of an analysis made by other than the prescribed method or to show that the prescribed method is not correct.

Certificate of analysis. cf. N.S.W. 1908, No. 31, s. 30. cf. No. 2,652 Vict., s. 15.

**37.** The costs of and incidental to the obtaining of any analysis shall be paid in the first instance by the person requesting the analysis, but shall subsequently be dependent upon the results of the analysis, and if the fertilizer does not comply with the warranty shall be recoverable from the seller of such fertilizer as a simple contract debt, or, in the case of a conviction for an offence, shall be added to the penalty, and be recoverable in the same manner: Provided that in cases where the person requesting the analysis is engaged in rural production, and the fertilizer complies with the warranty, such costs shall be paid by the Treasurer out of moneys voted by Parliament for the purpose.

Costs of analysis. S.A. 9 Geo. V, No. 1,355, s. 25. cf. Qld. Act, s. 12 (2).

**38.** When, in any proceedings in respect of an offence against this Act, a contravention of any of the provisions of this Act is proved with regard to any sample of fertilizer, such contravention shall be deemed to have been proved with regard to the whole lot from which the sample was taken, or all the fertilizer bought at the same time as such sample.

Offence as to sample deemed offence as to whole lot. S.A. 9 Geo. V, No. 1,355, s. 27.

**39.**

Tampering  
with samples.  
S. A.  
9 Geo. V,  
No. 1,355,  
s. 28.  
cf. Qld. Act,  
s. 13.

**39.** If any person knowingly and fraudulently—  
(a) tampers with any package of fertilizer so as to procure that any sample of it taken under this Act does not correctly represent the contents of the package ; or

(b) tampers with any sample taken under this Act, he shall be liable to a penalty not exceeding *twenty* pounds, or to imprisonment for a term not exceeding *six* months.

Certain  
allegations no  
defence.  
*Ibid.* s. 29.  
*Ibid.* s. 14 (2).

**40.** In any proceedings in respect of an offence against this Act it shall be no defence to allege, or to prove, that the buyer, having bought only for analysis, was not prejudiced by the sale, or that the fertilizer in question, though deficient in one or more constituents, was not defective in other, or in all, constituents.

No offence  
where  
fertilizer not  
carefully  
protected.  
*Ibid.* s. 30.

**41.** Where it can be shown in any proceedings in respect of an offence against this Act that any person who has submitted for analysis a sample of the fertilizer with respect to which such offence is alleged to have been committed has not stored such fertilizer in such manner as to ensure the same being kept perfectly dry, the information for such offence shall be dismissed.

Rights of  
seller against  
person who  
sold to him.  
*Ibid.* s. 31.  
*Ibid.* s. 14 (3).

**42.** A person alleged to have committed an offence under this Act in respect of any fertilizer sold by him shall be entitled to the same rights and remedies, civil or criminal, against the person from whom he bought such fertilizer as are available to the person who bought such fertilizer from him, and any damages recovered by him may, if the court considers that the circumstances justify it, include the amount of any penalty and costs paid by him on conviction under this Act, and the costs of and incidental to his defence on such conviction.

Who may  
prosecute.  
*Ibid.* s. 32.  
*Ibid.* s. 14 (1).

**43.** A prosecution for an offence against this Act may be instituted either by the person aggrieved, by an inspector, or by any person authorised in that behalf by the Minister.

What  
deficiencies  
allowed.  
*Ibid.* s. 33.

**44.** (1) If the percentage of nitrogen, nitrogen as nitrates, potash, calcium oxide, total phosphate, water soluble phosphate, or acid soluble phosphate contained in any fertilizer is less by the following amounts, namely, one-half per centum of nitrogen or nitrogen as nitrates,

nitrate, one-half per centum of potash, or five per centum of calcium oxide, or two per centum of phosphate, separately or in the aggregate, whether total phosphate, water soluble phosphate or acid soluble phosphate, than the percentages stated in the invoice given to the purchaser of such fertilizer, such invoice shall be deemed to be false in a material particular.

(2) If the fertilizer is bone manure, phosphate fertilizer, agricultural lime, or gypsum, and the percentage of fine material contained in such fertilizer is less by five per centum by weight than the percentage stated in the invoice given to the purchaser of such fertilizer, such invoice shall be deemed to be false in a material particular.

(3) If the fertilizer is lime, agricultural lime, or gypsum, and such lime, agricultural lime, or gypsum does not conform to the description stated in the invoice given to the purchaser thereof, such invoice shall be deemed to be false in a material particular.

**45.** (1) In any proceedings, civil or criminal, with respect to any fertilizer analysed under this Act—

Evidence.  
S.A.  
9 Geo. V,  
No. 1,355,  
s. 34.  
cf. Qld. Act,  
s. 15.

(a) parol evidence that any person is an analyst or an inspector or other officer under this Act shall be deemed sufficient, unless the defendant proves the contrary ;

(b) authority to do any act or take any proceeding shall be presumed until the contrary is proved ; and

(c) the allegation that any fertilizer was sold shall be sufficient evidence of the fact which constitutes a sale as herein defined, until the contrary is proved, and the onus of proof that any fertilizer was not for sale shall lie upon the defendant.

(2) If in any such proceedings any question arises as to whether any fertilizer which is proved to have been in any place specified in a notice under section five as a place where such fertilizer can be purchased is in such place for the purpose of sale, the fact that such fertilizer was in such place shall be conclusive evidence that such fertilizer was in such place for the purpose of sale.

**46.**

Exemption  
of employer  
from penalty  
on conviction  
of actual  
offender.

S.A.

9 Geo. V,  
No. 1,355,  
s. 35.

Vict. 2,652,  
1915, s. 41.

cf. Qld. Act,  
s. 14 (3).

**46.** (1) Where any 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.

(2) Where it is made to appear to the satisfaction of any analyst, inspector, or officer appointed under this Act, or any member of the police force, at the time of discovering an offence—

- (a) that the dealer has used all due diligence to enforce the execution of this Act; and
- (b) by what person the offence has been committed; and
- (c) that it has been committed without the knowledge, consent, or connivance of the said dealer, and in contravention of his orders,

the said analyst, inspector, officer, or member of the police force shall proceed against the person whom he believes to be the actual offender, without first proceeding against the said dealer.

Regulations.

S.A.

9 Geo. V,  
No. 1,355,  
s. 36.

**47.** (1) The Governor may make regulations not inconsistent with this Act, prescribing all things which by this Act are required, contemplated, or permitted to be prescribed, or which may be necessary or convenient

to

to be prescribed for giving effect to the provisions and objects of this Act, and amongst others the following things:—

- (a) The method to be adopted by the buyer of any fertilizer in taking a sample of the fertilizer in order that he may obtain an analyst's analysis thereof ;
  - (b) the methods of analysis to be adopted by analysts in analysing samples of fertilizer submitted for analysis under this Act ;
  - (c) the fees to be paid for obtaining an analyst's analysis ;
  - (d) fees to be paid for anything done under this Act ;
  - (e) forms to be used in connection with anything done under this Act ;
  - (f) the manner in which the powers and duties of analysts and inspectors are to be exercised and discharged, and generally such things as may be necessary or convenient for enabling analysts and inspectors to exercise and discharge such powers and duties, and to carry out the provisions and objects of this Act ;
  - (g) regulating and fixing standards for fertilizers ;
  - (h) regulating the branding, stamping, and marking of packages ;
  - (i) penalties for offences against regulations, not exceeding in any case the sum of *twenty* pounds, and in the case of continuing offences not exceeding *two* pounds per day.
- (2) The regulations shall—
- (a) be published in the Gazette ;
  - (b) take effect from the date of publication or from some later date to be stated in the regulations ;
  - (c) be laid before both Houses of Parliament within fourteen days after publication if Parliament is in session, and if not, then within fourteen days after the commencement of the next session. If either House of Parliament passes a resolution at any time within

within fifteen sitting days after such regulations have been laid before such House disallowing any regulation, such regulation shall thereupon cease to have effect.

Recovery of penalties.

**48.** Penalties imposed by this Act or by regulations made thereunder may be recovered in a summary manner before a court of petty sessions.

General penalty. cf. 747, 1900, s. 11.

**49.** Any person guilty of an offence against this Act for which no penalty is specified shall, without prejudice to any civil liability, be liable to a penalty for a first offence of not more than *twenty* pounds, and for any subsequent offence of not more than *one hundred* pounds.

Saving. No. 2,652 Vict., s. 35.

**50.** 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.

Remedy by a vendor against a prior vendor. *Ibid.* s. 36.

**51.** 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—

- (a) that the fertilizer the subject of such conviction was consigned, forwarded, or sold to him by the defendant, and that the brand shown on the invoice and package containing such fertilizer when received by him was the same as that shown on the invoice and package given by him upon the sale in respect of which he has been convicted; and
- (b) that he purchased or received such fertilizer not knowing it to be of a different composition to that in respect of which the brand was registered.

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

**52.**

**52.** Every person who forges or utters, knowing it to be forged, any brand or 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.

Forgery.  
No. 2,652  
Vict., s. 37.

**53.** 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 to  
officers acting  
under the Act.  
S.A. 9 Geo. V,  
No. 1,355, s. 37.

SCHEDULES.

FIRST SCHEDULE.

Sec. 1 (2).

No. of Act.	Short Title.	Extent of repeal.
No. 33 of 1904 ...	Fertilizers Act, 1904 ...	The whole.

SECOND SCHEDULE.

Sec. 33.

FERTILIZERS ACT, 1924.

*Form of certificate by analyst.*

I, the undersigned, agricultural analyst, do hereby certify that on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, I received from \_\_\_\_\_ a sealed sample labelled \_\_\_\_\_ which has been analysed by the method of analysis prescribed for each determination, and from the results obtained I am of the opinion that the sample contained the following, viz. :—

Nitrogen	... ..	per cent.
"  as nitrates	... ..	"
Potash in water soluble form calculated at K <sub>2</sub> O	... ..	"
Water soluble phosphate, calculated as tricalcium phosphate...	... ..	"
Acid soluble phosphate	... ..	"
Total phosphate	... ..	"
Calcium oxide (CaO)	... ..	"
Calcium oxide expressed as calcium sulphate (CaSO <sub>4</sub> )	... ..	"
Bone manure—fine material	... ..	"
Phosphate fertilizer—fine material	... ..	"
Agricultural lime—fine material	... ..	"
Gypsum—fine material	... ..	"

OBSERVATIONS.

As witness my hand this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

Analyst.