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[CONFIDENTIAL.]

(Rough Draft for Consideration Only.)

No. , 1919.

A BILL

To regulate the sale and prevent the adulteration of fertilizers ; to provide for the inspection and analysis, and for the registration of brands of fertilizers ; for purposes consequent thereon or incidental thereto ; and to repeal the Fertilizers Act, 1904.

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

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PART

PART I.

PRELIMINARY.

1. This Act may be cited as the "Fertilizers Act, 1919." It shall commence and come into force on a date to be proclaimed by the Governor in the Gazette. Short title.

2. The Fertilizers Act, 1904, is hereby repealed. Repeal.

3. In this Act unless the context otherwise indicates— Definitions.

"Analyst" means analyst appointed in pursuance of this Act. No. 2,652
Vic., s. 3.

"Bone dust" or "bone meal" means a fertilizer consisting of disintegrated bones (with or without other portions of animals and containing over fifteen parts of phosphoric acid in each one hundred parts of the fertilizer.

"Fertilizer" means any substance containing nitrogen, phosphoric acid, or potash, used or intended to be used as a fertilizer, not being stable manure, refuse from fellmongeries, or other similar substances in their unmanufactured state, but includes any such substance as the Governor may by proclamation in the Gazette declare to be a fertilizer.

"Inspector" means person appointed as an inspector under the provisions of this Act.

"Parcel" includes sack, barrel, case, or package. Ibid.

"Phosphoric acid" means phosphorus pentoxide. Ibid.

"Potash" means potassium monoxide.

"Prescribed" means prescribed by this Act or by the regulations.

"Regulations" means regulations made under this Act.

"Vendor" includes any person acting as an agent on behalf of a vendor. Ibid.

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

PART I.—PRELIMINARY—*ss.* 1-4.

PART II.—SALE OF FERTILIZERS—*ss.* 5-9.

PART III.—REGISTRATION OF BRANDS—*ss.* 10-19.

PART IV.—INSPECTION AND ANALYSIS—*ss.* 20-39.

PART V.—GENERAL AND SUPPLEMENTAL—*ss.* 40-45.

Division into
Parts.

PART

PART II.

SALE OF FERTILIZERS.

5. Upon the sale of any fertilizer, whether paid for at the time of sale or not, the vendor shall at the time of sale, or before delivery of the same or any part thereof, give to the purchaser an invoice signed by the vendor or his agent, and stating—

Invoice certificate. No. 2,652 Vic., s. 5.

- (a) the full name and place of business of the vendor;
- (b) the brand registered in respect of such fertilizer and intended for identifying it; and
- (c) the quantity of fertilizer comprised in the sale:

Provided that where the weight of the fertilizer sold in less than twenty-eight pounds it shall not be necessary for the vendor to give the invoice as aforesaid unless the purchaser at the time of sale requires such invoice to be given him.

6. Every such invoice shall be deemed a representation or warranty by the vendor to the purchaser of the truth of the matters referred to therein.

Warranty. Ibid. s. 6.

7. (1) Every person who sells or offers or exposes for sale any fertilizer, and every dealer in fertilizers who has in his possession, management, control, or direction, any fertilizer, shall cause each parcel to be legibly branded with the brand registered in respect of such fertilizer.

Parcels to be legibly branded. cf. Ibid. s. 7.

(2) In the case of bone dusts and bone meals, the percentage of fine materials shall be stated. Fine material is the material which passes through a sieve of thirty-two linear meshes to the inch, and coarse material is the portion retained on the mesh of the sieve.

(3) Every such statement shall be deemed a representation or warranty by the vendor of the truth of the matters certified thereby.

8. Every vendor who fails to give to the purchaser an invoice as provided in section five, or fails to comply with the provisions of the last preceding section, shall be guilty of an offence against this Act, and shall be liable on conviction to a penalty not exceeding *ten* pounds for the first offence, and to a penalty not exceeding *fifty* pounds for any subsequent offence.

Penalty. Ibid. s. 8.

9.

9. In any proceedings brought against any person for failing to give to the purchaser of any fertilizer an invoice, the burden of proof that upon such sale an invoice was given by the vendor to the purchaser shall lie on the defendant.

Burden of proof.
No. 2,652
Vic., s. 42.

PART III.

REGISTRATION OF BRANDS.

10. (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.

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

(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.

11. (1) No brand shall be registered save with the approval of the Minister.

Registration of brands.
Ibid. s. 19.

(2) No brand shall be registered if in the opinion of the Minister it is substantially identical with any other brand registered or proposed to be registered, or so nearly resembles it as to be likely to deceive.

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

Amendment of register.
Ibid. s. 20.

- (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) 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.

13.

13. Every manufacturer or importer of fertilizers 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
Vic., s. 21.

14. (1) Every such application shall be accompanied by the amount of the prescribed fee for registration not exceeding, in the case of any one manufacturer or importer applying for registration of a number of brands at one time, the sum of five pounds, and by a statement 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;
- (f) a statement of the results of a chemical analysis of the fertilizer, stating the proportion per centum in which the fertilizer contains the three ingredients, nitrogen, phosphoric acid, and potash, and the respective forms in which they respectively occur; and
- (g) 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.

15. A list of all brands registered, together with the information supplied in accordance with section fourteen, under 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.

Publication
of list.
Ibid. s. 23.

16.

16. (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 January, one thousand nine hundred and twenty, whichever may first occur, a fertilizer shall not be sold except in parcels. Every such parcel and every invoice referring thereto shall be marked with the brand registered in respect of such fertilizer in the manner prescribed.

Marking of
parcel sold.
No. 2,652
Vic., s. 24.

(2) Notwithstanding anything contained in this section, where any fertilizer is sold which has been prepared upon an order in writing of the purchaser solely for his own use and according to a bona fide special prescription in writing supplied by the purchaser, it shall not be necessary to mark with a registered brand any parcels thereof or any invoice used in connection therewith, provided the sanction of the Minister has previously been obtained.

17. (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.

Interim
registration.
Ibid. s. 25.

(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.

18. 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.
Ibid. s. 26.

19. Every manufacturer, importer, or vendor or 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 respect of which a brand is registered.

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

PART IV.

INSPECTION AND ANALYSIS.

20. The Governor may appoint inspectors and analysts under this Act. The chemist of the Department of Agriculture, or the person acting in his place during his absence from duty, shall, by virtue of his office, be an analyst under this Act. Inspectors and Government analysts.

21. Any inspector may at any reasonable time enter and inspect any place which he has reasonable grounds to believe is kept or used for the sale, storage, delivery, conveyance, manufacture, or preparation of any fertilizer, and may inspect such fertilizer. Power to enter and inspect.

22. Any analyst or inspector acting in the execution of this Act shall not be deemed to be a trespasser by reason of any entry or removal authorised by this Act, nor be liable for any damage occasioned in carrying out the provisions of this Act, unless the damage was occasioned by such analyst or inspector wilfully and without necessity. Indemnity for carrying out provisions of Act.

Purchase of samples for analysis.

23. (1) Any analyst or inspector may at any time require the purchaser of any fertilizer to state the name and address of the vendor from whom he purchased such fertilizer, and the price charged or paid therefor, and also to produce for inspection any invoice given to him by the vendor pursuant to this Act. Power to demand information. 2,652 Vic., s. 31.

(2) Any person who withholds any such information or fails so to produce such invoice, or obstructs the said analyst or inspector in the execution of any of his duties under this Act, shall be liable to a penalty of not more than *five* pounds for a first offence and of not more than *ten* pounds for each subsequent offence.

24. (1) On payment or tender to any person offering for sale, selling, or manufacturing or preparing for sale, any fertilizer, or who, being a dealer in fertilizers, has in his possession, management, control, or direction any fertilizer, or to his agent or servant, or to any person in charge Power to demand, select, and take samples.

charge of the fertilizer, of the current price thereof or at the rate of payment prescribed, any inspector may demand and select and take or obtain samples of the said fertilizer as required by him for the purposes of this Act.

(2) Such inspector may require the said person or his agent or servant to show and permit the inspection of any package or vessel in which such fertilizer is at the time kept, and may take, or may require the said person to take, therefrom the samples demanded:

Provided that where any fertilizer is kept for retail sale in a closed package, no person shall be required by any inspector to sell less than the whole of such package.

25. All samples taken under this Act shall consist of not less than three pounds in weight, and shall be taken from a parcel or parcels comprising not less than five per centum of each whole lot sampled. Method of taking samples.

Where portions are drawn from more than one parcel they shall be thoroughly mixed together before the final sample is taken.

Procedure on taking sample.

26. (1) An inspector intending to take any fertilizer for the purpose of submitting it to analysis shall thereupon notify such intention to the owner or his agent or servant or other person in charge of such fertilizer. Manner in which sample may be dealt with.

If the vendor or his agent fails to attend the taking of the sample when so notified the said inspector may proceed to take such sample in his absence.

(2) The said inspector shall divide any such sample into three parts, to be then and there separated, and each part to be branded and sealed or fastened up in such manner as its nature will permit, and shall then, if required to do so, deliver one of the said parts to the owner, agent, servant, or person aforesaid, and shall retain one of the said parts for future comparison, and submit the third part to an analyst. Division of sample.

(3) Provided that when any fertilizer is contained in a bottle, tin, or other package in such quantity that its division into three parts, as hereinbefore provided, would Where quantity in package is insufficient for analysis.

would furnish parts insufficient for accurate analysis, additional bottles, tins, or packages which purport to contain a similar fertilizer under the same brand may be taken or obtained, and the contents of two or more bottles, tins, or packages may be mixed together and the mixture divided and submitted for analysis as hereinbefore provided.

27. Where an inspector takes or obtains a sample of any fertilizer in a locality which is situated outside a radius of fifteen miles from the General Post Office, at Sydney, such sample may be forwarded to an analyst through the post office, as a registered article, or may be forwarded under seal in any other convenient way, in which case the certificate of the analyst that, on receipt by him, the seal was unbroken shall be sufficient evidence of identity. Any charge for postage or carriage shall be deemed one of the expenses of the analysis.

Forwarding
of sample by
post.

28. (1) Any purchaser of any fertilizer shall, on payment to any analyst of a fee of one pound one shilling or such fee as may from time to time be prescribed by regulations, be entitled to have a sample of such fertilizer analysed by any such analyst and to receive from him a certificate of the results of such analysis.

Payment for
analysis.
No. 2,652
Vic., s. 10.

(2) If the analyst is an officer of the Public Service the fee for such analysis shall be paid by him into the Consolidated Revenue; if not such an officer the analyst shall be entitled to retain such fee for his own use.

29. A purchaser of any fertilizer intending to submit a sample thereof for analysis shall at the time of ordering such fertilizer give notice in writing to the vendor or agent selling such fertilizer of his intention to take a sample thereof for the purpose of analysis. If within twelve hours of the arrival of such fertilizer at the railway station of destination the vendor or his agent does not attend for the purpose of witnessing the taking of the sample by the purchaser, the latter may at any time within two days take such sample himself:

Procedure
when vendor
does not
accept
purchaser's
offer to divide
fertilizer in
his presence.

Provided that such sample shall be taken from a parcel or parcels comprising not less than five per centum of the whole consignment.

30.

30. (1) When such vendor or agent attends as aforesaid, the purchaser shall forthwith in the presence of such vendor or agent take from the fertilizer a sufficient sample and shall divide the same into three parts and shall—

- (a) place each part in a suitable vessel and properly mark and seal same;
- (b) deliver one of such parts to the vendor or his agent;
- (c) retain one of the parts for future comparison;
- (d) submit the third part if he deems it necessary to an analyst for analysis.

(2) If an analyst does not reside within two miles of the residence of the said purchaser such sample may be forwarded to such analyst through the post as a registered parcel, and the certificate of the analyst that, on receipt by him, the seal was unbroken shall be sufficient evidence of identity.

31. On receiving for analysis any samples of any fertilizer from any purchaser the analyst shall divide the same into two parts, and shall, on receipt of the prescribed fee, analyse one of such parts and forward a certificate of the result of such analysis to the purchaser, and shall place in a glass bottle or jar the other of such parts, and seal and fasten up the same, and shall retain the same for a period of six months for production in case proceedings are afterwards taken in the matter.

32. Any person who improperly breaks any seal of or tampers with any bottle or jar containing any sample, and any person who knowingly and fraudulently tampers with any parcel of any fertilizer so as to procure that any sample of it taken in pursuance of this Act does not correctly represent the contents of the parcel, shall be liable for the first offence to a penalty of not more than *fifty* pounds, and for any subsequent offence to a penalty of not more than *one hundred* pounds.

The analysis.

33. Any analyst analysing any fertilizer submitted to him in pursuance of this Act may give a certificate in the form prescribed of the result of the analysis.

In

Mode of
obtaining
analysis.
No. 2,652
Vic., s. 11.

Samples may
be sent
through post.
Ibid. s. 14.

Analyst to
divide
sample.
Ibid. s. 13.

Penalty for
tampering
with parcel
of fertilizer.
cf. No. 2,652
Vic., s. 12.

Certificate of
analyst to be
evidence.
cf. No. 2,652
Vic., s. 15.

In any legal proceeding under this Act the production of a certificate, purporting to be signed by an analyst, shall be sufficient evidence of the identity of the fertilizer analysed, and of the result of the analysis, without proof of the signature of the person appearing to have signed the same.

34. Where any method of analysis has been prescribed for the analysis of any fertilizer, any analyst, either for the prosecution or defence in any proceedings under this Act, must in his certificate of analysis declare that he has followed the prescribed method in his analysis. Certificate of analysis. cf. No. 2,652 Vic., s. 15.

But evidence shall be admissible on the part of the defence of analysis made by other than the prescribed method, and to show that the prescribed method is not correct.

35. Any analyst who offends against any of the provisions of this Act, or of the regulations respecting any method of analysis prescribed, may, if the Governor is satisfied that the offence has been wilfully committed, be disqualified by the Governor for appointment as an analyst for such period as the Governor thinks fit. Disqualification of analyst for non-compliance.

36. (1) Where an inspector in any case under this Act has caused the fertilizer forming the subject of prosecution to be analysed by an analyst, the court may, in case of a conviction for an offence against this Act, assess the reasonable expense of and attending such analysis, and award the same against the defendant as part of the costs of the prosecution. Costs of analysis.

(2) The court may also, in case of any conviction under this Act, assess and award against the defendant as part of the costs of the prosecution the expenses incurred by any inspector in travelling to and attending the trial.

(3) Where any prosecution has been initiated by a purchaser other than an inspector, and the vendor proves that the fertilizer supplied by him is in conformity with the analysis registered in respect of the brand of such fertilizer within the limits set forth in section thirty-nine, the cost of such prosecution may be awarded against the prosecutor.

37.

37. A copy of the result of any analysis of any fertilizer taken or obtained by an inspector shall, on demand, be supplied by the Minister to the person from whom the fertilizer was taken or obtained, and to the manufacturer or his agent in New South Wales on payment of a fee, to be fixed by the Minister, not exceeding *ten* shillings and *sixpence*.

Copy of result
of analysis.

38. No person shall, in any writing for trade purposes or any advertisement, refer to any analysis made for the purposes of this Act.

Analysis not
to be referred
to for trade
purposes.

Any person who contravenes this section shall be liable to a penalty not exceeding *ten* pounds.

Penalty where analysis shows deficiency in fertilizing matter.

39. Where any fertilizer submitted for analysis by any purchaser or inspector is found to contain less nitrogen, phosphoric acid, or potash than the proportions respectively stated in the application for the registration of the brand shown in the invoice or on the parcel containing such fertilizer, if such deficiency in regard to the ingredients of fertilizing value exceeds the percentage of deficiency as set forth in the Schedule to this Act with respect to fertilizers of the like description, the vendor, in every case as aforesaid, shall be liable, on conviction, to a penalty not exceeding *ten* pounds for the first offence, and not exceeding *fifty* pounds for any subsequent offence.

Penalty
where
fertilizer is
deficient in
fertilizing
matter.

PART V.

GENERAL AND SUPPLEMENTAL.

40. (1) The Governor may make regulations for carrying out the provisions of this Act, and may in such regulations impose any penalty not exceeding *twenty* pounds for any breach of the same.

Regulations.

(2) Such regulations shall—

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

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

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

42. Every person who commits any breach of this Act shall, where no penalty is specifically provided, be liable to a penalty not exceeding *twenty* pounds. Penalty where not specially provided.

43. Nothing in this Act contained and no proceedings taken under this Act against any offender shall in any way interfere with or lessen any right or remedy by civil process which any party aggrieved by any offence against this Act might have had if this Act had not been passed. Saving. No. 2,652 Vic., s. 35.

44. In any action brought by any person for misrepresentation or for a breach of warranty on the sale of any fertilizer, such person may recover alone or in addition to any other damages recoverable by him the amount of any penalty in which he has been convicted under this Act, together with the costs paid by him upon such conviction and those incurred by him in and about his defence thereto if he proves— Remedy by a vendor against a prior vendor. Ibid. s. 36.

(a) that the fertilizer the subject of such conviction was consigned, forwarded, or sold to him by the defendant, and that the brand shown on the invoice and parcel containing such fertilizer when received by him were the same as that shown on the invoice and parcel given by him upon the sale in respect of which he has been convicted; and

(b)

(b) that he purchased or received such fertilizer not knowing it to be of a different composition to that in respect of which such brand was registered.

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

45. 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
Vic., s. 37.

SCHEDULE.

Description of fertilizer.	Percentages of deficiency allowed on quantities of ingredients of fertilizing value, as set forth in the invoice.			
	Nitrogen.	Potash readily soluble.	Phosphoric acid.	
			Water soluble.	Water insoluble.
Fertilizers containing nitrogen..	0.50			
Fertilizers containing potash...	1.00		
Fertilizers containing water soluble phosphoric acid	*1.00	
Fertilizers containing water insoluble phosphoric acid..	*1.00

* NOTE.—Provided that the total phosphoric acid deficiency shall not exceed 1.50 per cent.