



New South Wales

Fertilisers Amendment Bill 1999

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to amend the *Fertilisers Act 1985* so as to implement the findings of a review of the Act carried out to meet the New South Wales Government's commitments in relation to the National Competition Policy. The amendments made by this Bill:

- (a) provide for the Minister for Agriculture to make orders declaring substances to be included in or excluded from the definition of *fertiliser*, and
- (b) discontinue the registration of brand names for soil improving agents, and
- (c) provide for the Minister to make orders declaring the particulars that must be marked on parcels of soil improving agents or trace element products, and
- (d) provide for the Minister to make orders setting composition standards for soil improving agents or trace element products, and

- (e) create offences relating to failure to mark parcels of soil improving agents or trace element products and to the selling of parcels of soil improving agents or trace element products that do not comply with marked particulars or with composition standards, and
- (f) remove obsolete provisions, including provisions relating to the appointment of analysts, and
- (g) make other changes of a minor or consequential nature.

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 is a formal provision giving effect to the amendments to the *Fertilisers Act 1985* set out in Schedule 1.

Clause 4 is a formal provision giving effect to the amendments to the *Fertilizers (Amendment) Act 1992* in Schedule 2.

Schedule 1 Amendment of Fertilisers Act 1985

Definition of “fertiliser”

Schedule 1 [4] and **[5]** restate the definition of *fertiliser* so that the Minister for Agriculture may make an order including specified substances within the definition (and therefore within the scope of the *Fertilisers Act 1985*) or excluding specified substances from the definition. An order of this type will be subject to Parliamentary review in the same way as a statutory rule.

Discontinuation of registration of brand names

Schedule 1 [7] repeals those provisions of the Act that provide for the registration of brand names in relation to substances intended to be sold as soil improving agents.

Schedule 1 [1] makes a consequential amendment to the long title of the Act.

Schedule 1 [8] repeals a provision that creates an offence of sale otherwise than under a registered brand name. (That provision will be redundant when the system of registration is discontinued.)

Schedule 1 [6] sets out the object of the amended Act, which no longer includes the registration of brand names.

Regulation of sale by dealers

Schedule 1 [9] and **[13]** provide for the Minister to make orders regarding the particulars required to be marked on parcels containing soil improving agents and trace element products. (Such particulars are presently set out in the Act and the regulations.) Ministerial orders will be subject to Parliamentary review in the same way as statutory rules.

Schedule 1 [10] restates the offence of selling soil improving agents that do not comply with the particulars marked on the parcel in which they are sold.

Schedule 1 [14] creates a new, analogous, offence in relation to trace element products (see proposed section 22A).

Schedule 1 [11] and **[14]** provide for the Minister to make orders setting composition standards for soil improving agents and trace element products, being the maximum concentration or proportion of anything that a soil improving agent or trace element product may contain. (Such composition standards presently apply only to soil improving agents, and are set out in the regulations.) Ministerial orders will be subject to Parliamentary review in the same way as statutory rules.

Schedule 1 [12] omits a provision dealing with the information required to be provided when soil improving agents are sold on prescription.

Provisions relating to analysts

Schedule 1 [16] omits provisions relating to the appointment of public servants as analysts for the purposes of the Act and to the procedure for analyses conducted by such analysts.

Schedule 1 [15] makes a consequential amendment.

Schedule 1 [17] restates a provision dealing with evidentiary certificates that purport to have been signed by inspectors or analysts. The revised provision applies only to inspectors.

Other amendments

Schedule 1 [2], [18] and [19] omit definitions, regulation-making powers and savings provisions that will be redundant as a consequence of the proposed amendments.

Schedule 1 [3] updates references to offices.

Schedule 2 Amendments to Fertilizers (Amendment) Act 1992

The *Fertilizers (Amendment) Act 1992* contains uncommenced amendments to provisions of the *Fertilisers Act 1985* that are proposed to be amended or repealed by Schedule 1 to the proposed Act.

Schedule 2 amends the 1992 Act as a consequence of those proposed changes.

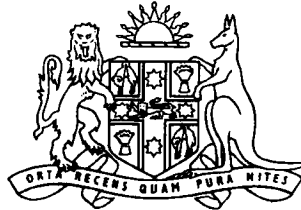


New South Wales

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New South Wales

Fertilisers Amendment Bill 1999

No. , 1999

A Bill for

An Act to amend the *Fertilisers Act 1985* so as to discontinue the registration of brand names for soil improving agents and to provide for the setting of composition standards for, and the marking of parcels of, soil improving agents and trace element products; and for other purposes.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Fertilisers Amendment Act 1999</i> .	3
2 Commencement	4
This Act commences on a day or days to be appointed by proclamation.	5 6
3 Amendment of Fertilisers Act 1985 No 5	7
The <i>Fertilisers Act 1985</i> is amended as set out in Schedule 1.	8
4 Amendment of Fertilizers (Amendment) Act 1992 No 8	9
The <i>Fertilizers (Amendment) Act 1992</i> is amended as set out in Schedule 2.	10 11

Schedule 1	Amendment of Fertilisers Act 1985	1
	(Section 3)	2
[1]	Long title	3
	Omit “to provide for the registration of brand names for fertilisers and liming materials;”.	4 5
[2]	Section 3 Definitions	6
	Omit the definitions of <i>analyst</i> , <i>brand name</i> , <i>Director of Chemistry</i> , <i>register</i> , <i>registered</i> , <i>registered particulars</i> , <i>registered proprietor</i> and <i>registration</i> from section 3 (1).	7 8 9
[3]	Section 3 (1), definitions of “Director-General” and “Deputy Director-General”	10 11
	Omit “Agriculture” wherever occurring.	12
	Insert instead “the Department of Agriculture”.	13
[4]	Section 3 (1), definition of “fertiliser”	14
	Omit the definition. Insert instead:	15
	<i>fertiliser</i> has the meaning given by section 3A.	16
[5]	Section 3A	17
	Insert after section 3:	18
	3A Definition of “fertiliser”	19
	(1) For the purposes of this Act, <i>fertiliser</i> means:	20
	(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	21 22 23 24 25 26 27

(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.	1 2 3
(2)	However, <i>fertiliser</i> 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.	4 5 6
(3)	It is the duty of the Minister, before making an order under this section, to consult:	7 8
(a)	the Minister for the Environment, and	9
(b)	the Minister for Health, and	10
(c)	any other Minister whom the Minister considers would have responsibilities giving rise to an interest in being consulted,	11 12 13
	but failure to consult those Ministers does not invalidate any order made.	14 15
(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.	16 17 18 19
(5)	Section 40 (Notice of statutory rules to be tabled) and section 41 (Disallowance of statutory rules) of the <i>Interpretation Act 1987</i> 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.	20 21 22 23
[6] Section 4A		24
	Insert after section 4:	25
4A Object of this Act		26
	The object of this Act is to regulate the sale of soil improving agents and trace element products so as:	27 28
(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	29 30 31 32

(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	1 2 3 4 5
(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.	6 7 8 9 10
[7]	Part 2 Registration of brand names	11
	Omit the Part.	12
[8]	Section 15 Soil improving agents to be sold under registered brand names	13 14
	Omit the section.	15
[9]	Section 16	16
	Omit the section. Insert instead:	17
	16 Soil improving agents to be sold in marked parcels	18
(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.	19 20 21 22
(2)	Without limiting the generality of subsection (1), those particulars may comprise any or all of the following:	23 24
(a)	details of the quantity of soil improving agent contained in the parcel,	25 26
(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,	27 28 29 30 31

- (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, 1
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 - (d) warning labels. 6
- (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. 7
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Maximum penalty: 20 penalty units. 11
- (4) However, it is not an offence to sell a soil improving agent that has not been marked with those particulars: 12
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 - (a) if the soil improving agent is sold to a dealer, or 14
 - (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 15
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 - (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. 22
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- (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. 29
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- (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. 33
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[10] Section 17	1
Omit the section. Insert instead:	2
17 Soil improving agents to conform to marked particulars	3
(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).	4 5 6 7 8
(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.	9 10 11 12 13
Maximum penalty: 50 penalty units.	14
(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.	15 16 17
[11] Section 18	18
Omit the section. Insert instead:	19
18 Soil improving agents to comply with composition standards	20
(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 <i>composition standard</i>).	21 22 23 24 25
(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.	26 27 28 29
Maximum penalty: 50 penalty units.	30

(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.	1 2 3
(4)	It is the duty of the Minister, before making an order under this section, to consult:	4 5
(a)	the Minister for the Environment, and	6
(b)	the Minister for Health, and	7
(c)	any other Minister whom the Minister considers would have responsibilities giving rise to an interest in being consulted,	8 9 10
	but failure to consult those Ministers does not invalidate any order made.	11 12
(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.	13 14 15 16
(6)	Section 40 (Notice of statutory rules to be tabled) and section 41 (Disallowance of statutory rules) of the <i>Interpretation Act 1987</i> 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 18 19 20 21
[12]	Section 20 Information concerning soil improving agents sold on prescription	22 23
	Omit the section.	24
[13]	Section 21	25
	Omit the section. Insert instead:	26
21	Trace element products to be sold in marked parcels	27
(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.	28 29 30 31

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- (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 <i>Interpretation Act 1987</i> 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.	1 2 3 4
[14] Sections 22A and 22B	5
Insert after section 22:	6
22A Trace element products to conform to marked particulars	7
(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).	8 9 10 11 12
(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.	13 14 15 16 17
Maximum penalty: 50 penalty units.	18
(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.	19 20 21
22B Trace element products to comply with composition standards	22
(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 <i>composition standard</i>).	23 24 25 26 27
(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.	28 29 30 31
Maximum penalty: 50 penalty units.	32
(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.	33 34 35

(4) It is the duty of the Minister, before making an order under this section, to consult:	1 2
(a) the Minister for the Environment, and	3
(b) the Minister for Health, and	4
(c) any other Minister whom the Minister considers would have responsibilities giving rise to an interest in being consulted,	5 6 7
but failure to consult those Ministers does not invalidate any order made.	8 9
(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.	10 11 12 13
(6) Section 40 (Notice of statutory rules to be tabled) and section 41 (Disallowance of statutory rules) of the <i>Interpretation Act 1987</i> 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.	14 15 16 17 18
[15] Part 4	19
Omit “and analysts” from the heading to the Part.	20
[16] Sections 29–32	21
Omit the sections.	22
[17] Section 37	23
Omit the section. Insert instead:	24
37 Evidentiary certificates	25
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.	26 27 28 29 30 31 32 33

Fertilisers Amendment Bill 1999

Schedule 1 Amendment of Fertilisers Act 1985

[18] Section 42 Regulations	1
Omit section 42 (1) (a)–(i). Insert instead:	2
(a) the functions of inspectors,	3
[19] Schedule 2 Savings and transitional provisions	4
Omit clauses 3–6 and Part 2.	5

Schedule 2	Amendment of Fertilizers (Amendment) Act 1992	1
		2
	(Section 4)	3
[1]	Schedule 1 Amendments relating to sewage sludge	4
	Omit Schedule 1 (1). Insert instead:	5
	(1) Long title:	6
	From the long title, omit “to regulate the sale of fertilisers, liming materials”, insert instead “to regulate the sale or supply of soil improving agents”.	7 8 9
[2]	Schedule 1	10
	Omit Schedule 1 (2) (a), (b) and (d), (3), (4), (5), (6), (8)–(11) and (13).	11