

FIRST PRINT

FERTILIZERS BILL, 1984

EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The objects of this Bill are—

- (a) to provide for the registration of brand names for fertilizers and liming materials;
- (b) to regulate the sale of fertilizers, liming materials and trace element products;
- (c) to repeal the Fertilizers Act, 1934; and
- (d) to make other provisions in connection with the objects referred to in paragraphs (a), (b) and (c).

The Bill contains the following provisions:—

PART I.—PRELIMINARY.

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides for the commencement of the proposed Act.

Clause 3 consists of an interpretation provision for the proposed Act.

Clause 4 provides that the proposed Act binds the Crown.

PART II.—REGISTRATION OF BRAND NAMES.

Clause 5 provides for the keeping of a register of brand names for the purposes of the proposed Act.

Clause 6 provides for the making of applications for registration of brand names in relation to substances intended to be sold as soil improving agents (that is, fertilizers and liming materials).

Clause 7 provides for the registration of brand names in relation to substances intended to be sold as soil improving agents.

Clause 8 specifies the term for which registration of a brand name has effect.

Clause 9 provides for the making of applications for the variation of the registered particulars in respect of brand names.

Clause 10 provides for the variation of the registered particulars in respect of brand names.

Clause 11 provides for the cancellation of the registration of brand names.

Clause 12 provides certain rights of appeal in relation to the registration of brand names.

Clause 13 requires the Director of Chemistry of the Department of Agriculture to publish each year a list of all registered brand names.

Clause 14 provides for the issue of certificates in relation to registered brand names.

PART III.—REGULATION OF SALES BY DEALERS.

DIVISION 1.—*Soil improving agents.*

Clause 15 requires soil improving agents to be sold under registered brand names.

Clause 16 requires soil improving agents to be sold in properly marked parcels.

Clause 17 requires soil improving agents to conform to the registered particulars of the brand names under which they are sold.

Clause 18 requires soil improving agents to comply with the composition standards prescribed by the regulations under the proposed Act.

Clause 19 prohibits substances being falsely represented as soil improving agents.

Clause 20 enables the Director-General of Agriculture to require certain information to be furnished in cases where a soil improving agent is formulated to the prescription of a purchaser.

DIVISION 2.—*Trace element products.*

Clause 21 requires trace element products to be sold in properly marked parcels.

Clause 22 prohibits substances being falsely represented as trace element products.

PART IV.—INSPECTORS AND ANALYSTS.

Clause 23 provides for the appointment of inspectors for the purposes of the proposed Act.

Clause 24 requires inspectors to be provided with identification certificates.

Clause 25 gives inspectors certain powers of entry and search in relation to premises.

Clause 26 enables an inspector to require a person suspected of committing an offence to furnish the inspector with that person's name and place of abode.

Clause 27 prohibits persons from obstructing inspectors who are acting in the exercise of their functions under the proposed Act.

Clause 28 prohibits persons from forging inspectors' identification certificates or impersonating inspectors.

Clause 29 provides for the appointment of analysts for the purposes of the proposed Act.

Clause 30 provides for the analysis of samples of soil improving agents and trace element products.

Clause 31 prohibits persons from wrongfully tampering with samples of substances that have been analysed or are intended for analysis.

Clause 32 enables the Director of Chemistry of the Department of Agriculture to publish certain matters concerning substances that have been analysed pursuant to the proposed Act.

PART V.—SUPPLEMENTARY.

Clause 33 prohibits a person from making false or misleading statements in or in relation to an application under the proposed Act or in purported compliance with a requirement under the proposed Act.

Clause 34 prohibits the unlawful disclosure by a person of information gained by that person in the administration or execution of the proposed Act.

Clause 35 enables proceedings for offences to be taken before a stipendiary magistrate.

Clause 36 provides that, where an offence against the proposed Act is committed by a corporation, the directors of the corporation may also be proceeded against in respect of the offence.

Clause 37 provides that, in any legal proceedings, certain certificates are to be taken as prima facie evidence of the matters stated in those certificates.

Clause 38 enables evidence as to part of a sample of a quantity of a substance to be considered as evidence as to the whole of the quantity of the substance from which the sample was taken.

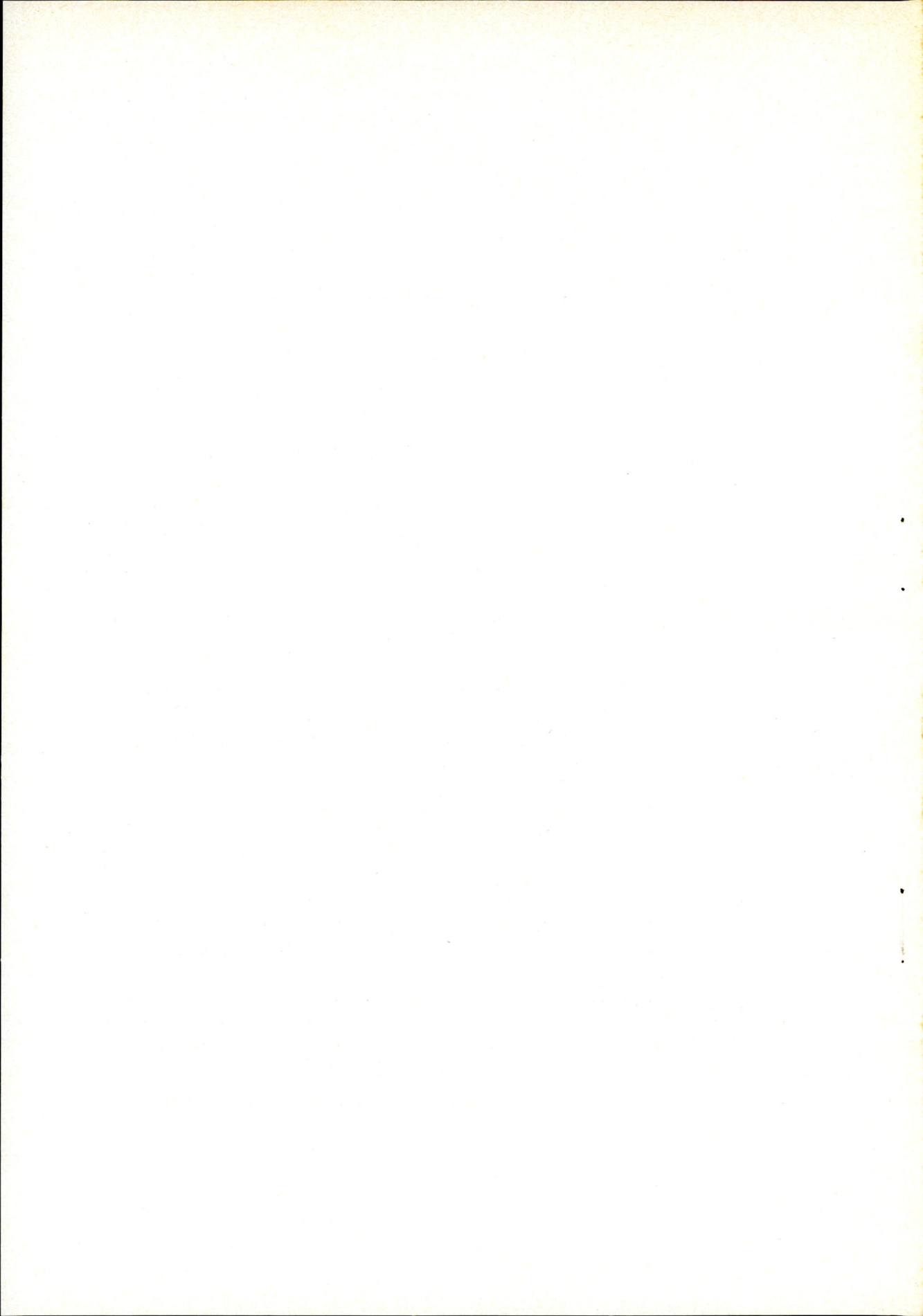
Clause 39 provides certain defences to persons accused of offences arising under the proposed Act.

Clause 40 ensures that no person is personally liable for acts or omissions done or omitted to be done by that person in the bona fide exercise of that person's functions under the proposed Act.

Clause 41 provides for the service of notices under the proposed Act.

Clause 42 enables the Governor to make regulations for the purposes of the proposed Act.

Clause 43 and Schedules 1 and 2 provide for the repeal of the Fertilizers Act, 1934, and certain other enactments and make appropriate savings and transitional provisions consequent thereon.



FERTILIZERS BILL, 1984

NEW SOUTH WALES.

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FERTILIZERS BILL, 1984

No. , 1984.

A BILL FOR

An Act to provide for the registration of brand names for fertilizers and liming materials; to regulate the sale of fertilizers, liming materials and trace element products; to repeal the Fertilizers Act, 1934; and for other purposes.

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

5

PART I.**PRELIMINARY.****Short title.**

1. This Act may be cited as the "Fertilizers Act, 1984".

Commencement.

- 10 2. (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.

Interpretation.

- 15 3. (1) In this Act, except in so far as the context or subject-matter otherwise indicates or requires—

"analyst" means a person for the time being appointed as an analyst under section 29 (1);

"approved" means approved for the time being by the Director-General;

- 20 "brand name" means a brand name under which a soil improving agent is, or is intended to be, sold;

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

- 25 "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;

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- “Department” means the Department of Agriculture;
- “Deputy Director-General” means a person for the time being holding office or acting as a Deputy Director-General of Agriculture;
- 5 “Director of Chemistry” means the person for the time being holding office or acting as the Director of Chemistry of the Department;
- “Director-General” means the person for the time being holding office or acting as the Director-General of Agriculture;
- “dolomite” means an artificially prepared or naturally occurring mixture of carbonates, oxides or hydroxides of calcium and magnesium;
- 10 “fertilizer” means a substance that—
- (a) consists of or contains nitrogen, phosphorus or potassium, or any compound thereof; and
 - (b) 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,
- 15 but does not include farm-yard manure or stable manure, crude night-soil, crude offal, compost, seaweed or unmanufactured refuse;
- “gypsum” means the sulphate salt of calcium in either hydrated or anhydrous form;
- 20 “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);
- 25 “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;
- 30 “magnesite” means an oxide, hydroxide or carbonate compound of magnesium;

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“parcel” includes sack, bag, barrel, case, package and any other container;

“premises” includes land, place, vehicle and vessel;

“register” means the register referred to in section 5 (1);

5 “registered” means registered under this Act;

“registered particulars” means—

(a) in respect of a brand name relating to a fertilizer—the particulars for the time being entered in the register in relation to the brand name under section 7 (3) (c); and

10 (b) in respect of a brand name relating to a liming material—the particulars for the time being entered in the register in relation to the brand name under section 7 (3) (d);

15 “registered proprietor”, in relation to a registered brand name, means the person whose name is for the time being entered in the register as the registered proprietor of the brand name;

“registration” includes renewal of registration;

“regulation” means a regulation made under this Act;

“sell” includes—

- 20 (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
- 25 (f) have in possession for sale;

“soil improving agent” means—

- (a) a fertilizer; or
- (b) a liming material;

30 “trace element” means boron, cobalt, copper, iron, magnesium, manganese, molybdenum, selenium or zinc or any other prescribed element;

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“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.

Act binds Crown.

4. 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.

PART II.

REGISTRATION OF BRAND NAMES.

The register.

5. (1) The Director-General shall cause a register to be kept for the purposes of this Act.

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(2) The Director-General may from time to time cause the particulars for the time being entered in the register to be varied so as to ensure that the register remains a true and accurate record of the matters to which those particulars relate.

5 Applications for registration.

6. (1) A person may apply to the Director-General for registration of a brand name in relation to a substance intended to be sold as a soil improving agent.

(2) An application under subsection (1) shall—

- 10 (a) be in or to the effect of the approved form;
- (b) nominate a person as the proposed registered proprietor of the brand name the subject of the application;
- (c) be accompanied by the prescribed fee; and
- (d) be lodged at a prescribed office of the Department.

15 (3) The Director-General may require an applicant for registration of a brand name to furnish the Director-General with—

- (a) a sample of the substance intended to be sold under the brand name; and
- 20 (b) such information (in addition to the information contained in the application) as the Director-General may reasonably require in order to determine the application.

Registration.

7. (1) Except as provided by subsection (2), the Director-General shall register a brand name the subject of an application under section 6.

25 (2) The Director-General may refuse to register a brand name—

- (a) if, in the opinion of the Director-General—
- (i) the brand name is misleading as to the composition of the substance intended to be sold thereunder;

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- (ii) the brand name is identical, or substantially identical, to some other registered brand name; or
 - (iii) the brand name so nearly resembles some other registered brand name as to be likely to deceive;
- 5 (b) if the substance intended to be sold under the brand name fails to comply with the prescribed composition standards;
- (c) if the person nominated in the relevant application as the proposed registered proprietor of the brand name has been convicted in respect of an offence arising under this Act or the regulations; or
- 10 (d) for such other reason as the Director-General thinks fit.

(3) The Director-General registers a brand name by causing the following particulars to be entered in the register:—

- (a) the brand name;
- 15 (b) the name of the person nominated in the relevant application as the proposed registered proprietor of the brand name;
- (c) in the case of a brand name relating to a fertilizer—
 - (i) the proportion in which any nitrogen, phosphorus or potassium occurs in the fertilizer;
 - 20 (ii) the proportion in which any prescribed form of nitrogen, phosphorus or potassium occurs in the fertilizer; and
 - (iii) such other particulars (if any) as are prescribed in relation to fertilizers; and
- (d) in the case of a brand name relating to a liming material—
 - 25 (i) the proportion in which any calcium, magnesium or sulphur occurs in the liming material;
 - (ii) the proportion in which any prescribed form of calcium, magnesium or sulphur occurs in the liming material; and
 - (iii) such other particulars (if any) as are prescribed in relation to liming materials.

- 30 **(4)** Where the Director-General refuses to register a brand name the subject of an application under section 6, the Director-General shall, as soon as practicable after so refusing, cause notice of the refusal, and of the grounds therefor, to be served on the applicant.

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(5) Where, at the expiration of 60 days after an application has been made under section 6, the Director-General has failed to determine the application under this section, the Director-General shall, for the purposes only of any appeal under section 12, be deemed to have refused to register the brand name the subject of the application.

Term of registration.

8. (1) The registration of a brand name—

(a) takes effect—

10 (i) except as provided by subparagraph (ii)—on the day on which the brand name is registered; or

(ii) in the case of a renewal of registration for which application has been made before the third anniversary of the day on which the registration last took effect—on that anniversary; and

15 (b) ceases to have effect—

(i) on the third anniversary of the day on which the registration took effect or, in the case of a renewal of registration, last took effect; or

(ii) upon cancellation of the registration,

20 whichever first occurs.

(2) Where an application for renewal of registration of a brand name is made before the third anniversary of the day on which the registration last took effect, the registration shall, notwithstanding subsection (1) (b) (i) but subject to any cancellation of the registration, continue in force until the application is finally determined.

Applications for variation of registered particulars.

9. (1) The registered proprietor of a brand name may apply to the Director-General for variation of the registered particulars in respect of the brand name.

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- (2) An application under subsection (1) shall—
- (a) be in or to the effect of the approved form;
 - (b) specify the proposed variation of the registered particulars concerned;
 - 5 (c) be accompanied by the prescribed fee; and
 - (d) be lodged at a prescribed office of the Department.

(3) The Director-General may require an applicant for variation of the registered particulars in respect of a brand name to furnish the Director-General with—

- 10 (a) a sample of the substance intended to be sold under the brand name (as formulated in accordance with those particulars, as varied); and
- (b) such information (in addition to the information contained in the application) as the Director-General may reasonably require in
15 order to determine the application.

Variation of registered particulars.

10. (1) Except as provided by subsection (2), the Director-General shall vary the registered particulars the subject of an application under section 9 in accordance with the proposed variation specified in the application.

- 20 (2) The Director-General may refuse to vary the registered particulars in respect of a brand name—
- (a) if the substance intended to be sold under the brand name (as formulated in accordance with those particulars, as varied) fails to comply with the prescribed composition standards; or
 - 25 (b) for such other reason as the Director-General thinks fit.

(3) Where the Director-General refuses to vary the registered particulars the subject of an application under section 9, the Director-General shall, as soon as practicable after so refusing, cause notice of the refusal, and of the grounds therefor, to be served on the applicant.

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(4) Where, at the expiration of 60 days after an application has been made under section 9, the Director-General has failed to determine the application under this section, the Director-General shall, for the purposes only of any appeal under section 12, be deemed to have refused to vary the 5 registered particulars the subject of the application.

Cancellation of registration.

11. (1) The Director-General may, by order published in the Gazette, cancel the registration of a brand name—

- (a) upon the request of the registered proprietor of the brand name;
- 10 (b) upon the conviction of the registered proprietor of the brand name in respect of an offence arising under this Act or the regulations;
- (c) where any fee payable under this Act or the regulations in relation to the brand name has not been paid; or
- 15 (d) where the brand name has been registered in error or is registered on the basis of information which is false or misleading in a material particular.

(2) An order under subsection (1) takes effect on and from the day of its publication in the Gazette or, where a later day is specified in the order in that regard, on and from the day so specified.

20 Appeals.

12. (1) A person may, in accordance with the regulations, appeal to a court of petty sessions against—

- (a) the refusal by the Director-General—
 - 25 (i) to register a brand name the subject of an application under section 6 by that person; or
 - (ii) to vary the registered particulars the subject of an application under section 9 by that person; or
- (b) the cancellation by the Director-General of the registration of a brand name of which that person was the registered proprietor 30 immediately before that registration was cancelled.

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(2) An appeal under subsection (1) shall be in the nature of a new hearing.

(3) An appeal under subsection (1) shall be heard and determined by a stipendiary magistrate.

5 (4) A determination under subsection (3) is final and binds the appellant and the Director-General.

Annual list of registered brand names.

13. (1) The Director of Chemistry shall, as soon as practicable after 1st January in each year, cause to be published in the Gazette a list of all 10 brand names registered as at that date.

(2) A list referred to in subsection (1) shall contain, in respect of each registered brand name—

- (a) the name of the registered proprietor of the brand name;
- 15 (b) in the case of a brand name relating to a fertilizer—the particulars for the time being entered in the register in relation to the brand name under section 7 (3) (c) (i) and (ii);
- (c) in the case of a brand name relating to a liming material—the particulars for the time being entered in the register in relation to the brand name under section 7 (3) (d) (i) and (ii); and
- 20 (d) such other particulars (if any) as the Director of Chemistry considers appropriate.

Certificates of registered particulars.

14. (1) A person may apply to the Director-General for a copy of the registered particulars in respect of a registered brand name.

25 (2) Where the Director-General receives an application under subsection (1), the Director-General shall, upon payment of the prescribed fee, cause the applicant to be furnished with a certificate, in or to the effect of the prescribed form, containing a copy of the registered particulars in respect of the brand name to which the application relates.

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PART III.

REGULATION OF SALES BY DEALERS.

DIVISION 1.—*Soil improving agents.***Soil improving agents to be sold under registered brand names.**

5 **15. (1)** A dealer shall not sell a soil improving agent otherwise than under a registered brand name.

Penalty: \$2,000.

(2) Subsection (1) does not apply to the sale of a soil improving agent—

- 10 (a) to a manufacturer of soil improving agents; or
 (b) to a purchaser to whose prescription the soil improving agent is formulated.

Soil improving agents to be sold in marked parcels.

15 **16. (1)** A dealer shall not sell a soil improving agent under a registered brand name unless the soil improving agent is contained in a parcel which is marked with the following particulars:—

- 20 (a) the brand name under which the soil improving agent is sold;
 (b) the registered particulars in respect of the brand name under which the soil improving agent is sold;
 (c) the quantity of soil improving agent contained in the parcel; and
 (d) such other particulars (if any) as are prescribed.

Penalty: \$1,000.

(2) Subsection (1) does not apply to the sale of a soil improving agent—

- 25 (a) to a manufacturer of soil improving agents;
 (b) where—
 (i) the soil improving agent comprised in the sale consists of a bulk lot of 90 kilograms or more; and

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- 5 (ii) the dealer concerned furnishes the purchaser, at or before the time the soil improving agent is delivered to the purchaser, with an invoice containing the particulars referred to in paragraphs (a), (b), (c) and (d) of that subsection; or
- (c) where the soil improving agent is obtained, in the presence of the purchaser, from a parcel which is marked with the particulars referred to in paragraphs (a) and (b) of that subsection.

Soil improving agents to conform to registered particulars.

- 10 17. A dealer shall not sell a soil improving agent under a registered brand name unless the soil improving agent conforms to the registered particulars in respect of the brand name.

Penalty: \$2,000.

Soil improving agents to comply with composition standards.

- 15 18. (1) A dealer shall not sell a soil improving agent unless the soil improving agent complies with the prescribed composition standards.

Penalty: \$2,000.

(2) Subsection (1) does not apply to the sale of a soil improving agent—

- 20 (a) to a manufacturer of soil improving agents; or
- (b) to a purchaser to whose prescription the soil improving agent is formulated.

Substances not to be falsely represented as soil improving agents.

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

Penalty: \$2,000.

*Fertilizers 1984***Information concerning soil improving agents sold on prescription.**

20. (1) Where a dealer sells a soil improving agent which has been, or purports to have been, formulated to the prescription of the purchaser, the Director-General may cause to be served on the dealer a notice in writing 5 requiring the dealer to furnish the Director-General with a written statement containing the following particulars:—

- (a) the date of the sale;
- (b) the quantity of soil improving agent comprised in the sale;
- 10 (c) the prescription to which the soil improving agent was, or purports to have been, so formulated; and
- (d) such other particulars (if any) as are prescribed.

(2) A dealer shall not fail to comply with the requirements of a notice served under subsection (1).

Penalty (subsection (2)): \$1,000.

15 DIVISION 2.—*Trace element products.*

Trace element products to be sold in marked parcels.

21. (1) A dealer shall not sell a trace element product unless the trace element product is contained in a parcel which is marked with the following particulars:—

- 20 (a) the quantity of trace element product contained in the parcel;
- (b) the respective forms in which each trace element occurs in the trace element product;
- (c) the respective proportions in which each such form of trace element occurs in the trace element product; and
- 25 (d) such other particulars (if any) as are prescribed.

Penalty: \$1,000.

(2) Subsection (1) does not apply to the sale of a trace element product—

- (a) to a dealer; or

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(b) where—

- 5
- (i) the trace element product comprised in the sale consists of a bulk lot of 90 kilograms or more; and
 - (ii) the dealer concerned furnishes the purchaser, at or before the time the trace element product is delivered to the purchaser, with an invoice stating the particulars referred to in paragraphs (a), (b), (c) and (d) of that subsection.

Substances not to be falsely represented as trace element products.

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

Penalty: \$2,000.

PART IV.

INSPECTORS AND ANALYSTS.

Appointment of inspectors.

15 23. (1) Agricultural inspectors may be appointed for the purposes of this Act under and in accordance with the Public Service Act, 1979.

(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.

20 (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.

Identification certificates.

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

(2) A certificate of identification shall be in or to the effect of the 5 prescribed form.

Powers of inspectors in relation to premises.

25. (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:—

- 10 (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—
- 15 (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;
- 20 (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 1 kilogram of any soil improving agent or trace element product found in or on any such premises;
- 25 (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
- 30 reasonable grounds, to relate to the sale of a soil improving agent or trace element product.

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(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.

5 (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 a.m. and 7.00 p.m. only.

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

Penalty (subsection (5)): \$2,000.

Inspectors may demand name and address.

26. (1) An inspector who finds a person—

- 15 (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.

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

Penalty (subsection (2)): \$1,000.

Obstruction of inspectors, etc.

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

Penalty: \$2,000.

Impersonation of inspectors, etc.

28. A person shall not—

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

Penalty: \$2,000.

Appointment of analysts.

29. (1) The Minister may, by instrument in writing, appoint such
10 persons as the Minister considers necessary as analysts for the purposes of
this Act.

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

Analysis of soil improving agents, etc.

15 30. (1) A person may apply to an analyst for analysis of a sample of—

- (a) any substance which is, or purports to be, a soil improving agent or
trace element product; or
- (b) any other substance which is manufactured, represented, sold or
used as a means for directly or indirectly—
 - 20 (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.

25 (2) An application under subsection (1) shall be accompanied by—

- (a) the sample to which the application relates; and
- (b) the prescribed fee.

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(3) Subsection (2) (b) does not require an application under subsection (1) to be accompanied by a fee where both the applicant and the analyst are members of the Public Service of New South Wales.

(4) Upon receipt of an application under subsection (1), an analyst shall—

- (a) examine the sample to which the application relates; and
- (b) furnish the applicant with a certificate, in or to the effect of the prescribed form, of the results of the examination.

(5) An analyst who is not a member of the Public Service of New South Wales is entitled to retain any fee paid to the analyst under subsection (2).

Tampering with samples, etc.

31. A person shall not tamper with any sample to which an application under section 30 relates for the purpose of—

- (a) preventing, obstructing, hindering or impeding the examination of the sample by an analyst; or
- (b) improperly influencing the results of any examination of the sample carried out, or proposed to be carried out, by an analyst.

Penalty: \$2,000.

20 Publication of analyses, etc.

32. The Director of Chemistry may cause to be published in the Gazette, or in any newspaper, journal or other publication, the results of any examination carried out by an analyst in relation to—

- (a) any substance which is, or purports to be, a soil improving agent or trace element product; or

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(b) any other substance which is manufactured, represented, sold or used as a means for directly or indirectly—

- 5
- (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,

and may cause to be so published any opinion formed by the Director of Chemistry in relation to the substance to which those results relate.

10

PART V.

SUPPLEMENTARY.

False or misleading information.

33. 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 15 any statement or furnish any information which is false or misleading in a material particular.

Penalty: \$2,000.

Disclosure of information.

34. A person shall not disclose any information obtained in connection 20 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;

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- (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
- 5 (e) with other lawful excuse.

Penalty: \$2,000.

Proceedings for offences.

35. Proceedings for an offence against this Act or the regulations may be taken before a court of petty sessions constituted by a stipendiary
10 magistrate.

Offences by corporations.

36. (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
15 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;
- 20 (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
25 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.

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(4) In this section, a reference to a director of a corporation includes a reference—

- 5 (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.

Evidentiary certificates.

37. In any legal proceedings—

- 10 (a) a certificate which purports to have been signed by the Director-General or a Deputy Director-General and which states that, on a date specified in the certificate—
- (i) a person so specified was or was not an inspector;
- (ii) a person so specified was or was not an analyst;
- 15 (iii) a brand name so specified was or was not registered; or
- (iv) particulars so specified were or were not the registered particulars in respect of a brand name so specified; or
- (b) a certificate which purports to have been signed by an analyst and which states that—
- 20 (i) on a date specified in the certificate the analyst examined a substance so specified; and
- (ii) the results of the examination are as so specified,

is, without proof of the signature of the person by whom the certificate purports to have been signed, prima facie evidence of the fact or facts so stated.

25

Evidence of part to be evidence of whole.

38. 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
5 bulk lot, as the case may be.

Defences.

39. 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
10 nature or composition of the substance was such that its sale would constitute such an offence.

Liability.

40. 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
15 conferred or imposed on the person by or under this Act.

Service of notices.

41. 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
20 last known to the Director-General.

Regulations.

42. (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
25 carrying out or giving effect to this Act and, in particular, for or with respect to—

(a) the keeping of the register;

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- (b) the transfer of registration;
 - (c) composition standards for soil improving agents;
 - (d) the manner of determining the composition of soil improving agents;
 - 5 (e) the functions of inspectors and analysts;
 - (f) the procedures to be followed in connection with the taking of samples of substances for examination under this Act;
 - (g) the methods to be employed in connection with the analysis of samples of substances taken for examination under this Act;
 - 10 (h) the design, construction and marking of parcels to be used for containing soil improving agents or trace element products;
 - (i) the design, construction and marking of labels to be attached to parcels used for containing soil improving agents or trace element products;
 - 15 (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—
 - 20 (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
 - 25 (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;
 - 30 (c) authorise any matter or thing to be from time to time determined, applied or regulated by any specified person; or

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(d) adopt wholly or partially, either specifically or by reference, any standard code, rule or specification contained in a publication approved by the Minister for the purposes of this paragraph, or may do any combination of those things.

5 (3) A provision of a regulation may impose a penalty not exceeding \$500 for any contravention of the provision.

Repeals, etc.

43. (1) Each Act specified in Schedule 1 is, to the extent indicated therein, repealed.

10 (2) Schedule 2 has effect.

SCHEDULE 1.

(Sec. 43 (1).)

REPEALS.

Fertilizers Act, 1934, No. 51—the whole Act.

15 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.

(Sec. 43 (2).)

SAVINGS AND TRANSITIONAL PROVISIONS.

20

Interpretation.

1. In this Schedule—

“appointed day” means the day appointed and notified under section 2 (2);

“the repealed Act” means the Fertilizers Act, 1934.

*Fertilizers 1984*SCHEDULE 2—*continued.*SAVINGS AND TRANSITIONAL PROVISIONS—*continued.***Inspectors.**

2. A person who, immediately before the appointed day, was an inspector under 5 the repealed Act shall be deemed to be an inspector appointed under section 23 (1).

Analysts.

3. A person who, immediately before the appointed day, was an analyst under the repealed Act shall be deemed to be an analyst appointed under section 29 (1).

Register.

10 4. The register which, immediately before the appointed day, was kept under the repealed Act shall be deemed to be the register kept under section 5 (1).

Applications for registration.

15 5. An application for registration of a brand which was made before the appointed day under the repealed Act, being an application which was neither withdrawn nor determined before that day, shall be deemed to be an application for registration of a brand name made on that day under section 6.

Registration.

20 6. A brand which, immediately before the appointed day, was registered under the repealed Act—
(a) shall, on that day, be deemed to be a brand name registered under section 7; and
(b) shall, subject to any cancellation of the deemed registration, continue to be deemed to be so registered until 31st December next following that day.

Seized substances, articles and documents.

25 7. 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.

