



Fertilizers Act 1993

An Act to regulate the sale of fertilizers

[Royal Assent 27 October 1993]

Be it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

PART 1 - Preliminary

1. Short title

This Act may be cited as the *Fertilizers Act 1993*.

2. Commencement

This Act commences on a day to be proclaimed.

3. Interpretation

In this Act –

advertisement includes any method of conveying information;

analysis means any examination, test or determination of the quality, strength, purity or composition of any fertilizer;

analyst means an analyst approved under section 4;

constituent means any nitrogen, phosphorus, potassium, sulphur, calcium, magnesium, aluminium, boron, chlorine, cobalt, copper, iron, manganese, molybdenum, selenium or zinc present in any form in a fertilizer;

custom fertilizer mixture means a mixture of fertilizer prepared at the request of a customer for sale to that customer;

fertilizer means –

(a) any substance likely to increase plant growth which supplies nutrients to plants or conditions soil for that purpose, other than farmyard or stable manure, humus,

seaweed, crude night-soil, crude offal, crude refuse or crude waste which is untreated or undried; and

(b) any substance prescribed as a fertilizer for the purposes of this Act;

ingredient means a substance used to formulate a fertilizer;

inspector means an inspector appointed under section 5;

label includes any tag, brand, stamp, mark, identifying feature or statement in writing affixed to or inserted in or used or intended to be used in connection with a package;

package includes anything in or by which a fertilizer is cased, covered, enclosed, contained or packed;

Secretary means the Secretary of the Department;

sell includes –

(a) offer or expose for sale; and

(b) keep or have in possession for sale; and

(c) barter or exchange; and

(d) agree to sell; and

(e) send, forward or deliver for sale;

seller means a seller of fertilizers and a person who acts on behalf of a seller;

substance includes –

(a) any solids, liquids and gases; and

(b) any solid, liquid or gaseous compound or mixture.

4. Analysts

(1) The Minister may approve analysts as analysts for the purpose of this Act.

(2) An analyst may be approved –

(a) for a specified period; or

(b) for an indefinite period.

(3) The Minister may revoke the approval of an analyst under this section if satisfied that the analyst is incompetent or incapable of being an analyst for the purposes of this Act.

5. Inspectors

The Minister may appoint persons employed in the Department as inspectors for the purposes of this Act.

6. Powers of inspectors

(1) An inspector has the following powers:

- (a) to enter, search and inspect, at any reasonable time, any premises or conveyance the inspector reasonably believes is kept or used for the sale, preparation for sale, storage, delivery or manufacture of any fertilizer;
- (b) to inspect, examine and take a sample of any article the inspector reasonably believes is intended to be used for sale as a fertilizer;
- (c) to inspect, examine and take a sample of any fertilizer;
- (d) to inspect, take copies of or seize any records, documents or other matter kept at any premises or in any conveyance in relation to the sale of fertilizers;
- (e) to require any person to provide any information in relation to the sale of fertilizers;
- (f) to require any person to give such reasonable assistance as may be required.

(2) A person, without reasonable excuse, must not –

- (a) fail to provide any information required by an inspector; or
- (b) fail to give any assistance required by an inspector.

Penalty:

Fine not exceeding 10 penalty units.

(3) The owner of any record, document or matter seized under subsection (1)(d) is entitled to have reasonable access to the record, document or matter.

PART 2 - Fertilizers

Division 1 - Sale of fertilizers

7. Sale of fertilizers

(1) Subject to subsection (2), a person must not sell any fertilizer if the package containing the fertilizer –

- (a) does not have the prescribed label; or
- (b) has any false or misleading label, brand or mark in respect of the nature, quality, strength, purity or composition of the fertilizer; or
- (c) does not contain the prescribed caution or warning.

Penalty:

Fine not exceeding 50 penalty units.

(2) Subsection (1) does not apply to the sale of –

- (a) any fertilizer in bulk; or
- (b) any custom fertilizer mixture.

8. Invoices for certain sales

(1) Subject to subsection (2), a seller must not sell to any person any fertilizer in bulk or any custom fertilizer mixture unless the seller provides that person with an invoice or delivery docket.

Penalty:

Fine not exceeding 50 penalty units.

(2) Subsection (1) does not apply to the sale of any fertilizer in bulk to a manufacturer of fertilizer.

(3) An invoice or delivery docket relating to a sale referred to in subsection (1) –

- (a) is to contain the prescribed information; and
- (b) is to be given to the buyer as prescribed.

9. Seizure of fertilizers

(1) An inspector may seize any fertilizer which is offered or exposed for sale in contravention of this Act.

(2) Any fertilizer seized is forfeited and may be disposed of as the Minister directs.

Division 2 - Samples and analysis

10. Taking of samples

A sample of any fertilizer is to be taken only in the prescribed manner.

11. Analysis

- (1) An inspector is to submit any sample taken to an analyst as soon as is practicable.
- (2) An analyst is to analyse a sample in the prescribed manner as soon as is practicable.

12. Result of analysis

- (1) An analyst is to furnish a certificate of analysis to the Secretary in a form approved by the Secretary stating the result of the analysis of a sample of any fertilizer.
- (2) The Secretary is to forward a copy of the certificate to the person from whom the sample was obtained.
- (3) If the result of the analysis shows that the sample of a fertilizer does not conform to the Act, the seller must not sell that fertilizer.

Penalty:

Fine not exceeding 50 penalty units.

13. Publication of analysis

- (1) Subject to subsection (2), the Secretary may publish in a newspaper –
 - (a) the result of the analysis of a sample of any fertilizer; and
 - (b) the name and address of the person from whom the sample was obtained.
- (2) Before any publication is made under subsection (1), the Secretary is to –
 - (a) notify the person from whom the sample was obtained of the intention to make that publication; and
 - (b) give that person an opportunity to explain any discrepancy between the analysis of that sample carried out under this Act and any other analysis of the fertilizer.

Division 3 - Complaints

14. Complaints

- (1) Any person may make a complaint to the Secretary about any fertilizer or seller.
- (2) A complaint –

- (a) is to be in writing; and
- (b) is to contain full details of the ground of the complaint; and
- (c) is to be accompanied by the prescribed fee.

15. Investigation of complaints

On receipt of a complaint, the Secretary is to direct –

- (a) an inspector to investigate the matter; and
- (b) an analyst to analyse any sample taken during the investigation.

16. Result of investigation

(1) After an investigation under section 15, the Secretary may –

- (a) dismiss the complaint; or
- (b) uphold the complaint.

(2) If the Secretary dismisses a complaint, the Secretary is to give a notice in writing to the complainant stating the reasons for the dismissal.

(3) If the Secretary upholds the complaint, the Secretary may direct the seller to take a specified course of action.

(4) A person must comply with a direction of the Secretary.

Penalty:

Fine not exceeding 50 penalty units.

Division 4 - Offences

17. Obstruction

A person must not hinder or obstruct a person in the exercise of a power or the performance of a duty under this Act.

Penalty:

Fine not exceeding 20 penalty units.

18. Impersonation

A person must not impersonate an inspector.

Penalty:

Fine not exceeding 20 penalty units.

19. Tampering with samples

A person must not tamper with, adulterate or destroy any sample taken under this Act.

Penalty:

Fine not exceeding 20 penalty units.

20. False and misleading statements, &c.

A person, in giving any information in connection with any label, constituent, ingredient, invoice, delivery docket, document or advertisement in respect of any fertilizer, must not –

(a) make a statement knowing it to be false or misleading; or

(b) omit any matter from a statement knowing that without that matter the statement is misleading.

Penalty:

Fine not exceeding 20 penalty units.

21. Liability of other persons

(1) If a seller is charged with an offence for which the seller is liable but which was committed by another person, that other person is liable to the same extent as the seller.

(2) By complaint, a seller may have the other person referred to in subsection (1) brought before the court so that the court hears that complaint at the same time as the complaint against the seller.

(3) The court may convict the other person referred to in subsection (1) instead of the seller if satisfied –

(a) that the seller used diligence to comply with this Act; and

(b) that the other person committed the offence without the seller's knowledge or consent.

PART 3 - Miscellaneous

22. Costs of analysis

In any proceedings for an offence against this Act, a court may order a person to pay the costs of an analysis, whether or not the person is convicted of the offence.

23. Evidence

(1) In any proceedings under this Act, a document purporting to be the certificate of analysis relating to a matter to which the proceedings relate is evidence of the facts stated in that document unless the party against whom the certificate is tendered gives notice to the other party in the proceedings at least 3 days before the day appointed for the return of the summons that the party requires the analyst who furnished the certificate to be called as a witness.

(2) In any proceedings under this Act –

(a) oral evidence that any person is an analyst or an inspector is sufficient; and

(b) authority to do any act or take any proceedings is presumed; and

(c) the allegation that any person was a seller, or that any fertilizer was sold, is sufficient evidence of the fact alleged.

(3) If a contravention of this Act is proved with respect to any part of any sample taken, the contravention is proved with respect to the whole lot from which the sample was taken.

(4) section 177A of the Evidence Act 2001 does not apply in relation to any proceedings under this Act.

24. Immunity

Any action or proceeding does not lie against a person –

(a) who is acting in good faith in the exercise or purported exercise of a power or in the performance or purported performance of a function under this Act; or

(b) who is acting in accordance with any instructions, or under the direction, of an analyst or inspector.

25. Exemptions

(1) The Secretary may exempt any fertilizer from the operation of this Act.

(2) A person who wishes a fertilizer to be exempted may apply in a form approved by the Secretary.

(3) An application to exempt a fertilizer from the operation of this Act –

- (a) is to be lodged with the Secretary; and
- (b) is to be accompanied by the prescribed fee; and
- (c) is to contain the following:
 - (i) the name of the fertilizer;
 - (ii) the reasons for seeking the exemption;
 - (iii) any other prescribed details.

26. Certificate of exemption

- (1) On receipt of an application, the Secretary may –
 - (a) grant the application; or
 - (b) refuse to grant the application.
- (2) If the Secretary refuses to grant the application, the Secretary is to advise the applicant by notice in writing of the reasons for that refusal.
- (3) If the Secretary grants the application, the Secretary is to issue a certificate of exemption.

27. Appeals

- (1) Any person may appeal to a magistrate against –
 - (a) the forfeiture or disposal of any fertilizer under section 9; and
 - (b) the taking of any sample under section 10; and
 - (c) the statement of the result of the analysis of any sample under section 12; and
 - (d) the publication under section 13 of the result of the analysis of a sample.
 - (e)
 - (f)
 - (g)
 - (h)
- (2) An appeal is to be made within 14 days after the date of the event which is the subject of the appeal.

28. Orders on appeals

On the hearing of an appeal by a person, a magistrate may make any one or more of the following orders:

- (a) that any forfeited fertilizer be returned to the person;
- (b) that the person be compensated for the disposal of any fertilizer;
- (c) that the statement of the result of the analysis of any sample be retracted or amended;
- (d) that a publication made under section 13 be retracted or amended.
- (e)
- (f)
- (g)
- (h)

28A. Reviews

Any person may apply to the Magistrates Court (Administrative Appeals Division) for a review of –

- (a) the dismissal of a complaint under section 16(1); and
- (b) the upholding of a complaint under section 16(1); and
- (c) the refusal of the Secretary to issue a certificate of exemption under section 26; and
- (d) the issue of a certificate of exemption under section 26.

29. Regulations

(1) The Governor may make regulations for the purposes of this Act and in relation to the following matters:

- (a) the fertilizers which may be exempted from this Act;
- (b) the circumstances in which a fertilizer may be exempted from this Act;
- (c) the standards of strength, quality or quantity with which a fertilizer must comply;

- (d) the prohibition of the use of a fertilizer in prescribed circumstances;
 - (e) the labelling of packages of fertilizers;
 - (f) the warnings to be contained on labels, invoices and delivery dockets;
 - (g) the sale of fertilizers;
 - (h) the methods of analysis and sampling of any fertilizer;
 - (i) the fees payable under this Act;
 - (j) the procedures relating to appeals.
- (2) Regulations may be made so as to apply differently according to matters, limitations or restrictions, whether as to time, circumstance or otherwise, specified in the regulations.
- (3) The regulations may –
- (a) provide that a contravention of, or a failure to comply with, any of the regulations is an offence; and
 - (b) in respect of such an offence, provide for the imposition of a fine not exceeding 10 penalty units and, in the case of a continuing offence, a further fine not exceeding 2 penalty units for each day during which the offence continues.
- (4) The regulations may adopt, either wholly or in part and with or without modification, and, either specifically or by reference, any of the standards, procedures, rules, codes or specifications of any authority, whether the standards, procedures, rules, codes or specifications are published or issued before or after the commencement of this Act.

30. Repeal

The *Fertilizers Act 1950* is repealed.

31. Administration of Act

Until provision is made in relation to this Act by order under section 4 of the *Administrative Arrangements Act 1990* –

- (a) the administration of this Act is assigned to the Minister for Primary Industry and Fisheries; and

(b) the Department responsible to the Minister for Primary Industry and Fisheries in relation to the administration of this Act is the Department of Primary Industry and Fisheries.

Table Of Amendments

Act	Number and year	Date of commencement
Fertilizers Act 1993	No. 61 of 1993	1.12.1993
Evidence (Consequential Amendments) Act 2001	No. 80 of 2001	1.7.2002
Magistrates Court (Administrative Appeals Division) (Consequential Amendments) Act 2001	No. 73 of 2001	1.7.2002