

FERTILISERS BILL

EXPLANATORY NOTE

THIS Bill consolidates and amends the Fertilisers Act 1960. The Bill differs in 5 main respects from that Act. Registration becomes voluntary; sulphur is declared to be a fertilising element; the proportion of fertilising elements that a fertiliser must contain before it can be registered is increased from 3 percent to 5 percent; the power of the Director-General of Agriculture and Fisheries to refuse to register fertilisers is extended; and generally there is greater provision for controlling and ensuring the quality of registered fertiliser.

Clause 1 relates to the Short Title and commencement. The Bill will come into force on 1 December 1982.

Clause 2 relates to interpretation.

Clause 3 imposes certain restrictions on the sale of fertilisers. To the extent that contraventions of provisions of the Bill are, later in the Bill, declared to be criminal offences, this clause contains not only the most important controlling mechanism of the Bill, but also the most important penal provisions. It forbids the sale of any fertiliser that is not a registered fertiliser, if it is in any way described or labelled with the words "registered fertiliser", the words "registered fertilizer", or any similar expression. It forbids the sale of fertilisers containing excessive quantities of certain components prescribed by regulations made under the Bill. And it requires registered fertilisers to be labelled in a manner prescribed by regulations made under the Bill.

Clause 4 provides for the registration of the specifications, brand, and trade-name of fertilisers. Subject to certain exceptions specified in *clause 5* of the Bill, if the Director-General is satisfied that a fertiliser manufactured in accordance with the specifications concerned would meet the criteria specified in *subclause (4)*, he must register them.

Clause 5 relates to the refusal of registration. *Subclause (1)* specifies certain circumstances in which the Director-General must refuse registration. *Subclause (3)* gives the Director-General a discretion to refuse registration in respect of a fertiliser that has previously been deregistered because of improper manufacture, if he is not convinced that it will be properly manufactured in the future.

Clause 6 specifies the circumstances in which the Director-General may revoke the registration of any fertiliser.

Clause 7 provides that if the Director-General refuses to register a fertiliser, or deregisters one that has been registered, he must give written notice of his reasons for doing so.

Clause 8 provides a right of appeal against a decision to deregister, or refuse to register, any fertiliser.

Clause 9 requires manufacturers, importers, and vendors of registered fertilisers to keep certain records.

Clause 10 specifies that certain particulars must be supplied when registered fertiliser is sold in quantities of 50 kilograms or more.

Clause 11 requires manufacturers and importers of registered fertilisers to establish and maintain quality control programmes, and keep records of the results of those programmes.

Clause 12 creates certain statutory warranties in any sale of a registered fertiliser. There is implied a warranty that the substance is in conformity with its labelling, and a warranty that the ingredients are evenly distributed throughout it.

Clause 13 provides for the appointment of Analysts and Inspectors.

Clause 14 specifies the powers of Inspectors. These are a power of entry and inspection, power to take samples, the power to require the production of certain documents, and such other powers as are necessary to enable them to carry out their duties. There is imposed on Inspectors a duty of confidentiality in relation to information they acquire in the performance of their duties.

Clause 15 provides that every analysis made for the purposes of the Bill must be carried out in a laboratory registered under the Testing Laboratory Registration Act 1972.

Clause 16 relates to methods of analysis and certificates of analysis.

Clause 17 provides for a Court to order an independent analysis of a sample taken under the Bill.

Clause 18 empowers the Director-General to require manufacturers and importers to provide certain returns in relation to the registered fertiliser they manufacture and import.

Clause 19 empowers the Director-General to publish details of analyses of and experiments carried out with fertilisers, and other matters relating to fertilisers; and protects him from any action that might otherwise be brought against him in respect of any such publication.

Clause 20 enables a person convicted of an offence relating to the sale of any fertiliser who proves that he sold it innocently, in the same form as it was, and with the same particulars and description as he was supplied with, when he bought it, to recover the amount of any fine he has been ordered to pay, and his costs, from the person who sold the fertiliser to him.

Clause 21 relates to offences and penalties.

Clause 22 provides for the making of regulations prescribing a large number of matters in relation to fertilisers and their manufacture.

Clause 23 contains transitional provisions relating to substances that are at present "registered fertilisers". A proprietor of a registered fertiliser must, within 3 months of the commencement of the Bill, apply for registration under the Bill. His product is deemed to be registered for those 3 months, but if he has not applied within that time it ceases so to be deemed at the end of the period. If he does so apply, the deemed registration continues for at least another 3 months. If, from the information supplied in the application, it is clear that the substance concerned does not meet the criteria for registration contained in

clause 4 (4), it will then cease so to be deemed. But if from the application form the substance appears to meet those criteria, the deemed registration continues until either the substance becomes registered under the Bill, or, for one of the reasons set out in the Bill, registration is refused.

Clause 24 makes consequential amendments to the Ministry of Agriculture and Fisheries Act 1953, the Consumer Information Act 1969, and the Pesticides Act 1979.

Clause 25 repeals the Fertilisers Act 1960 and its amendments.

Right Hon. Mr MacIntyre

FERTILISERS

ANALYSIS

Title	13. Appointment of Analysts and Inspectors
1. Short Title and commencement	14. Powers of Inspectors
2. Interpretation	15. Laboratories to be registered
3. Restrictions on sales of fertilisers	16. Analysis
4. Registration of fertiliser formulations	17. Independent analysis
5. Refusal of registration	18. Returns by proprietors
6. Revocation of registration	19. Director-General may publish details
7. Director-General to give reasons	20. Recovery by vendor against prior vendor
8. Appeals	21. Offences and penalties
9. Prescribed particulars to be retained	22. Regulations
10. Proprietors and vendors to supply purchasers with prescribed particulars	23. Transitional
11. Quality control of registered fertilisers	24. Consequential amendments
12. Implied warranties	25. Repeals
	Schedule

A BILL INTITULED

An Act to consolidate and amend the Fertilisers Act 1960

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:

1. Short Title and commencement—(1) This Act may be cited as the Fertilisers Act 1982.

(2) This Act shall come into force on the 1st day of December 1982.

2. Interpretation—(1) In this Act, unless the context otherwise requires,—

- “Additive” means a substance, not being a fertiliser, that is, or is intended to be, added to, mixed with, or, by means of any chemical process, incorporated in, a registered fertiliser; and includes any substance being manufactured with the intention that it be so added, mixed, or incorporated: 5
- “Analyst” means an Analyst appointed under section 13 of this Act: 10
- “Component”, in relation to any fertiliser, includes an additive of that fertiliser and an integral component of that fertiliser:
- “Director-General” means the Director-General of Agriculture and Fisheries: 15
- “Fertiliser” means a substance described as, or held out to be, for, or suitable for, sustaining or increasing the growth, productivity, or quality of plants by its application to those plants or the soil in which they grow or will grow; and includes a substance imported, manufactured, or being manufactured, with the intention that it be so described or held out: 20
- “Fertilising element” means nitrogen, phosphorus, potassium, or sulphur; and includes any other element for the time being declared by the Governor-General by Order in Council to be a fertilising element for the purposes of this Act: 25
- “Importer”, in relation to any substance, means a person who enters that substance through customs; and “to import” has a corresponding meaning: 30
- “Inspector” means an Inspector appointed under this Act:
- “Manufacturer”, in relation to any substance, means a person who manufactures or prepares that substance for the purpose of sale; and includes a person who packs that substance for sale or who mixes other substances to form that substance for the purpose of sale; and “to manufacture” has a corresponding meaning: 35
- “Occupier”, in relation to any premises, means the person occupying those premises, and includes any agent, manager, foreman, or other person, acting or apparently acting in the general management or control of those premises; and where the premises are occupied by a body of persons, whether corporate or unincorporate, also includes the working manager: 40 45

5 “Package”, in relation to any substance, means anything in or by which that substance is cased, covered, enclosed, contained, or packed; but does not include any building, vehicle, wagon, or other thing used for the storage or carriage of that substance in bulk:

“Pesticide” means a pesticide within the meaning of the Pesticides Act 1979:

“Pesticides Board” means the Pesticides Board constituted under section 12 of the Pesticides Act 1979:

10 “Premises” includes any wagon, trailer, ship, truck, aircraft, or vehicle of any description:

“Proprietor” means a manufacturer or importer of registered fertilisers; and—

15 (a) In relation to any fertiliser manufactured in New Zealand, means its manufacturer; and

(b) In relation to any other fertiliser, means its importer:

20 “Registered fertiliser” means a substance sold under a brand and trade-name registered under section 4 of this Act and manufactured or imported by the person who applied for that registration or his lawful successor:

25 “Restricted component” means a substance declared by regulations made under this Act to be a restricted component of fertilisers:

“Sale” includes contracting, offering, or attempting to sell; having in possession for sale; causing or allowing to be sold; and barter; and “to sell” has a corresponding meaning:

30 “Vendor” means a person who sells registered fertilisers in the ordinary course of his business, whether on his own account or on behalf of any other person.

(2) Every reference in this Act to the proportion of a substance contained in any other substance shall be read as a
35 reference to the proportion by weight of that substance contained in that other substance.

Cf. 1960, No. 33, s. 2

3. Restrictions on sales of fertilisers—No person shall sell—

40 (a) Any fertiliser that is not a registered fertiliser but has a title or description, or is in a package, or has with it or near it, any written name, description, or instructions, containing, bearing, or using the words “registered fertiliser” or “registered fertilizer”, or
45 any similar words or expression; or

- (b) Any fertiliser that contains more than the prescribed proportion of a restricted component; or
- (c) Any registered fertiliser that is not labelled in the prescribed manner.

Cf. 1960, No. 33, ss. 3, 5 (1), 12, 13

5

4. Registration of fertiliser formulations—(1) Any manufacturer or importer may apply to the Director-General, on a form provided by him for the purpose, for the registration of—

(a) The specifications for the formulation of any fertiliser; 10
and

(b) The brand and trade-name under which the applicant intends to sell that fertiliser.

(2) Every application shall contain the prescribed particulars and be accompanied by the prescribed fee. 15

(3) Subject to section 5 of this Act, if the Director-General is satisfied that the application complies with subsection (2) of this section, and that the fertiliser concerned will, if it conforms with the specifications concerned, be a fertiliser to which subsection (4) of this section applies, he shall— 20

(a) Register the brand and trade-name concerned as a brand and trade-name under which the applicant may sell fertiliser; and

(b) Register those specifications as a fertiliser that, if manufactured or imported by the applicant, may be 25
sold under that brand and trade-name; and

(c) Issue to the applicant a certificate of registration of that brand and trade-name and those specifications.

(4) This subsection applies to every fertiliser that—

(a) Is in a state suitable for sustaining or increasing the 30
growth, productivity, or quality of plants by its application to those plants or the soil on which they grow or will grow; and

(b) Contains in the aggregate, in forms that are both chemically and physically capable of effective 35
utilisation by plants within a reasonable time of its being applied, at least 5 percent of fertilising elements;—

but does not apply to animal manure, or any other animal or vegetable matter in either a fresh or a partly decomposed 40
condition, unless that manure or matter is in such a state that decomposition has ceased and will not resume until that manure or matter is applied to plants or soil.

(5) In determining, for the purposes of this Act, whether or not any substance contains, in the aggregate, in forms that are both chemically and physically capable of effective utilisation by plants within a reasonable time of its being applied, at least 5 percent of fertilising elements, no account shall be taken of any fertilising element present in such a form in a proportion less than the proportion prescribed in respect of that element.

Cf. 1960, No. 33, ss. 5, 6, 7

10 **5. Refusal of registration**—(1) The Director-General shall refuse registration under section 4 of this Act if—

(a) The brand concerned is the same as a brand already registered under that section by any person other than the applicant, or, in the opinion of the
15 Director-General, is so similar to such a brand that it may mislead intending purchasers; or

(b) The trade-name concerned—
(i) Is the same as any already so registered; or
(ii) In his opinion, is so similar to any already so
20 registered that it may mislead intending purchasers; or

(iii) In his opinion is, or closely resembles, any generic name or description of any kind, class, or family of fertiliser; or

25 (c) The specifications concerned provide that a pesticide is to be an additive, and the Pesticides Board recommends to him that they should not be registered; or

(d) Those specifications provide for the fertiliser to contain
30 more than the prescribed proportion of a restricted component; or

(e) In his opinion, registration would be contrary to the public interest.

(2) Nothing in subsection (1) (b) (iii) of this section shall
35 prevent the registration of any trade-name containing any generic name or description of any kind, class, or family of fertiliser, or any name or description resembling any such generic name or description, if, in the opinion of the Director-General, that trade-name contains some other name, word,
40 description, or expression, sufficient to distinguish it from the generic name or description concerned.

(3) The Director-General may refuse registration under section 4 of this Act if—

- (a) The specifications concerned are the same as or, in his opinion, very similar to, any specifications whose registration has been revoked under paragraph (b) 5 or paragraph (c) of section 6 (2) of this Act; and
- (b) He is not satisfied that the applicant is both—
 - (i) Willing to ensure; and
 - (ii) Capable of ensuring—
 that the fertiliser concerned will conform adequately 10 with those specifications and contain no more than the prescribed proportions of restricted components.

Cf. 1960, No. 33, s. 8

6. Revocation of registration—(1) The Director-General shall revoke the registration under section 4 of this Act of the 15 specifications for the formulation of a fertiliser, and the brand and trade-name concerned, if—

- (a) He becomes satisfied that a fertiliser formulated in accordance with those specifications is not a fertiliser to which section 4 (4) of this Act applies; or 20
- (b) Those specifications provide that a pesticide is to be an additive, and the Pesticides Board has recommended the revocation; or
- (c) Those specifications provide for the fertiliser to contain more than the prescribed proportion of a restricted 25 component.

(2) The Director-General may revoke the registration under section 4 of this Act of the specifications for the formulation of a fertiliser, and the brand and trade-name concerned, if, in his opinion,— 30

- (a) Any component of the fertiliser sold under that brand and trade-name—
 - (i) From time to time fails to conform with those specifications by a margin greater than that prescribed in that behalf in respect of it, or in 35 respect of a class of component to which it belongs or in respect of a class of fertiliser to which that fertiliser belongs; or
 - (ii) Consistently fails to conform with those specifications (whether within or outside that 40 margin); or
- (b) From time to time the fertiliser sold under that brand and trade-name contains more than the prescribed proportion of a restricted component; or

- (c) Continued registration is contrary to the public interest.
- (3) A revocation under this section shall take effect upon—
 - (a) The receipt by its proprietor of a written notice from the Director-General of the revocation; or
 - 5 (b) Such later date as is specified in that behalf in that notice.

Cf. 1960, No. 33, s. 9

7. Director-General to give reasons—Where the Director-General refuses or revokes registration under section 4 of
10 this Act, he shall give the proprietor concerned written notice of his reasons for doing so.

8. Appeals—(1) There shall be a right of appeal within 28 days after the date of the decision appealed against from the whole or any part of any decision of the Director-General
15 refusing or revoking registration under section 4 of this Act, on the grounds that, having regard to the provisions of this Act, the decision of the Director-General was not reasonably arrived at.

(2) Every appeal under subsection (1) of this section shall
20 be made in the prescribed manner to an Appeal Authority consisting of a District Court Judge and 2 assessors, of whom one shall be appointed by the Director-General and one by the appellant.

(3) On any appeal under subsection (1) of this section, the
25 Appeal Authority shall be deemed to be a Commission of Inquiry under the Commissions of Inquiry Act 1908; and all the provisions of that Act shall apply accordingly.

(4) On the hearing of any appeal under subsection (1) of this section, the Appeal Authority, whose decision shall be
30 final, shall either—

- (a) Confirm the decision appealed against; or
- (b) Reverse that decision, subject to such modifications and conditions as it thinks fit.

(5) The Director-General shall take such action as may be
35 necessary to give effect to any decision of an Appeal Authority under this section.

(6) There shall be paid to each assessor appointed under this section fees and travelling allowances and expenses in accordance with the Fees and Travelling Allowances Act
40 1951; and the provisions of that Act shall apply accordingly as if the assessors were members of a statutory Board within the meaning of that Act.

Cf. 1960, No. 33, s. 10

9. Prescribed particulars to be retained—Every proprietor and vendor shall retain, in the prescribed manner, and for the prescribed period, the prescribed documents, records, and particulars.

Cf. 1969, No. 33. s. 14 (7)

5

10. Proprietors and vendors to supply purchasers with prescribed particulars—Every proprietor and vendor shall supply to every person to whom he sells any registered fertiliser in packages or quantities of 50 kg or more, the particulars prescribed in respect of that fertiliser or the class 10 of fertiliser to which it belongs.

Cf. 1960, No. 33. s. 20

11. Quality control of registered fertilisers—(1) For the purposes of ensuring the quality of registered fertilisers manufactured or imported by him, every proprietor shall 15 establish and maintain a prescribed programme of regular analysis of the chemical and physical characteristics of the additives and registered fertilisers he manufactures, imports, or stores.

(2) Every proprietor shall, within 7 days of any such 20 analysis or inspection, prepare a written record of its results; and shall retain that record for at least 6 months after its preparation.

12. Implied warranties—(1) In every sale in packages or quantities of 50 kg or more of any registered fertiliser there 25 shall be implied a warranty by the seller to the purchaser that—

- (a) The fertiliser concerned conforms with the description and other information with which it is labelled; and
- (b) At the time of sale, the ingredients of which the fertiliser 30 concerned is composed are evenly distributed throughout it.

(2) For the purposes of subsection (1) (a) of this section—

- (a) A fertiliser shall be deemed to conform with the description and other information with which it is 35 labelled if it is labelled in the prescribed manner; and

- (b) To the extent that it is not labelled in the prescribed manner, a fertiliser shall be deemed not to conform with the description and other information with which it is labelled.

5 Cf. 1960, No. 33. s. 21

13. Appointment of Analysts and Inspectors—

(1) Subject to subsection (2) of this section, there shall from time to time be appointed under the State Services Act 1962 such number of Analysts and Inspectors as are necessary for
10 the purposes of this Act and any other enactment that confers or imposes powers or duties on Analysts or Inspectors.

(2) No person shall be appointed to be an Analyst or Inspector unless—

15 (a) He has completed, to the satisfaction of the Director-General, a course of training and instruction approved by the Director-General for Analysts or Inspectors (as the case requires); or

20 (b) He has so completed some other training and instruction that, in the opinion of the Director-General, it is unnecessary for him to complete a course approved under paragraph (a) of this subsection.

Cf. 1960, No. 33, s. 4

14. Powers of Inspectors—(1) Every Inspector, accompanied if he thinks fit by a member of the Police or any other
25 officer of the Public Service qualified to assist him in the execution of his duty, may—

30 (a) Enter at all reasonable hours by day and night any premises when he has reasonable cause to believe that any fertiliser is being manufactured, and enter by day any premises that he has reasonable cause to believe to be premises used for—

(i) The manufacture or storage of fertilisers; or
35 (ii) The storage of additives; or
(iii) The retention of any certificate, book, notice, record, list, or other document required by this Act to be retained:

40 (b) Make such inspections, examinations, tests, and inquiries, and, subject to subsection (2) of this section, take such samples and photographs, as are necessary to ascertain whether the provisions of this Act have been or are being complied with:

- (c) Require the production by any person of any certificate, book, notice, record, list, or other document required by this Act to be retained by that person, and inspect, examine, and copy or take notes from it: 5
- (d) Have and exercise such other powers and authorities as are necessary to carry this Act into effect.
- (2) The following provisions shall apply to the taking of any sample by an Inspector:
- (a) The Director-General may from time to time, by notice 10 in the *Gazette*, issue a directive, approving one or more methods for sampling any specified substance or class of substance, and may at any time amend or revoke any such directive; and where any such directive is for the time being in force, a sample of 15 that substance or, as the case requires, of a substance of that class, shall be taken in accordance with the appropriate approved method or, as the case requires, one of the appropriate approved 20 methods:
- (b) If the occupier of the premises concerned, or his authorised agent, is available, the sample shall be taken in his presence:
- (c) If neither the occupier of the premises concerned nor his authorised agent is available, the sample shall be 25 taken in the presence of some other witness:
- (d) If the occupier of the premises concerned is the proprietor of the substance to be sampled, he shall, if so requested, supply the Inspector with all labour and equipment necessary to enable the sample to be 30 taken:
- (e) Subject to sections 15, 16, and 17 of this Act, after it has been taken, the sample shall be dealt with in the prescribed manner.
- (3) Except for the purposes of this Act and the performance 35 of his functions under this Act, or with the consent of the Minister, no Inspector shall disclose to any person any information he acquires in the course of the performance of those functions.

Cf. 1960, No. 33, ss. 4, 23

40

15. Laboratories to be registered—Every analysis carried out under or for the purposes of this Act shall be carried out in premises that are a testing laboratory registered under the Testing Laboratory Registration Act 1972; and for

the purposes of this Act no account shall be taken of any testing carried out elsewhere, or of any results, report, or certificate arising from any such testing.

16. Analysis—(1) In this section, “analysis” means an
5 analysis made for the purposes of this Act by an Analyst or a person acting under the direction of an Analyst.

(2) The Director-General may from time to time, by notice in the *Gazette*, issue a directive approving one or more methods for—

10 (a) Analysing any specified substance or class of substance;
or

(b) Detecting the presence of, or ascertaining the amount of, any specified ingredient or component, or class of ingredient or component, of any substance or any
15 specified substance or class of substance; or

(c) Analysing any specified ingredient or component, or class of ingredient or component, of any substance or any specified substance or class of substance,—

and may at any time amend or revoke any such directive; and
20 where any such directive is for the time being in force, such part of any analysis as involves doing any of those things shall be done in accordance with the appropriate approved method, or, as the case requires, one of the appropriate approved methods.

25 (3) After the analysis of a sample of any substance, the proprietor of that substance, and the occupier of the premises in which the substance was situated when the sample was taken, shall, on application to the Director-General, be entitled without charge to obtain a copy of the certificate,
30 signed by the Analyst concerned, of the results of the analysis or, if no such certificate has been prepared, a copy of any report on the analysis prepared by the person who made it.

(4) Any other person shall, upon payment of the prescribed fee, be entitled to a copy of the certificate, signed by the
35 Analyst concerned, of the results of any analysis of a sample of any substance or, if no such certificate has been prepared, a copy of any report on that analysis by the person who made it.

(5) The costs of an analysis shall be borne—

40 (a) In the case of an analysis carried out at the request of any member of the public, by him; and the analysis concerned shall not be carried out until those costs have been paid:

- (b) In every other case by the proprietor of the substance analysed; and those costs may be recovered by the Director-General in any Court of competent jurisdiction as a debt due to the Crown.

Cf. 1960, No. 33, ss. 23–27; 1981, No. 118, s. 70 5

17. Independent analysis—In any proceedings for an offence against this Act, the Court may order that any part of a sample retained by an Inspector pursuant to regulations made under this Act be divided into equal parts for the informant and each defendant, in the presence of the 10 defendants or their agents, and that each part be submitted to an independent analyst for analysis and report.

Cf. 1960, No. 33, s. 29

18. Returns by proprietors—(1) Within one month of receiving from the Director-General notice in writing to do so, 15 a manufacturer shall furnish him with a return showing:

- (a) The quantities of each substance he received for the purpose of the manufacture of registered fertilisers during a period specified in that notice; and
- (b) The quantities of each substance he used or otherwise 20 disposed of for that purpose during that period; and
- (c) The quantities of each type of registered fertiliser he manufactured, sold, delivered, or otherwise disposed of during that period; and
- (d) The quantity of each substance he held in stock for the 25 purpose of the manufacture of registered fertilisers at a date specified in that notice; and
- (e) The quantity of each type of registered fertiliser he held in stock at that date.

(2) Within one month of receiving from the Director- 30 General notice in writing to do so, an importer shall furnish him with a return giving—

- (a) The quantities of each type of imported registered fertiliser he received during a period specified in that notice; and 35
- (b) The quantities of each type of imported registered fertiliser he sold or otherwise disposed of during that period; and
- (c) The quantity of each type of registered fertiliser he held in stock on a date specified in that notice. 40

Cf. 1960, No. 33, s. 30

19. Director-General may publish details—(1) The Director-General may, in relation to any substance that is a fertiliser or additive, publish, in any manner he thinks fit, all or any of the following matters:

- 5 (a) The results of any analysis of that substance:
 (b) Where that substance is a registered fertiliser, the registered specifications for its formulation:
 (c) The results of any experiments carried out with that substance:
 10 (d) Any statistical information relating to that substance obtained from returns under section 18 of this Act:
 (e) Any registered brand and trade-name of that substance:
 (f) The name of the proprietor of that substance.
 (2) No action shall lie against the Director-General or any
 15 other person in respect of the publication by him of any matter referred to in subsection (1) of this section, or the publication by any other person of any such matter that has been published by him.

Cf. 1960, No. 33, s. 31

20 **20. Recovery by vendor against prior vendor**—(1) Any person convicted of an offence against this Act for failing to comply with section 3 (1) of this Act may, in any action he brings against any other person for misrepresentation or for breach of warranty in respect of the sale by that other person
 25 to him of the substance concerned, recover, in addition to the other damages (if any) recoverable by him, both the amount of the fine he paid in respect of the conviction and the costs he paid in respect of his defence, if he proves that—

- 30 (a) The particulars in the advice note, label, or package in respect of which the conviction arose were to the same effect as those contained in the advice note, label, or package, with or in which that substance was sold to him; and
 (b) He purchased that substance not knowing it to be
 35 otherwise than as described in the advice note or label or on the package with or in which it was sold to him; and
 (c) He sold that substance in a state the same as that he received it in.

40 (2) In any action referred to in subsection (1) of this section, it shall be open to the defendant to prove that any conviction concerned was wrongful.

Cf. 1960, No. 33, s. 32

21. Offences and penalties—(1) Every person commits an offence against this Act, and shall be liable on summary conviction to a fine not exceeding \$5,000 and, where the offence is a continuing one, to a further fine not exceeding \$200 for every day or part of a day on which the offence has continued, who—

- (a) Acts in contravention of, or fails or neglects to comply with, any provision of this Act:
- (b) Wilfully obstructs an Inspector in the exercise of his powers or performance of his functions under this Act:
- (c) With the intention that a sample of any substance taken, or to be taken, in pursuance of this Act should not be a fair sample of that substance, tampers with or manipulates that substance or any part of it:
- (d) With the intention that the results of an analysis of any sample taken in pursuance of this Act, or of any part of any such sample, should differ from those that would otherwise be obtained, tampers with or manipulates that sample or part:
- (e) Wilfully makes a false or misleading statement in, or a material omission from, any return made under this Act:
- (f) Publishes or causes to be published any advertisement relating to any registered fertiliser that states that that fertiliser has been analysed under this Act by an Analyst, or quotes or purports to quote the findings of any Analyst in relation to that fertiliser, whether or not those findings are given in any certificate or report prepared for the purposes of this Act.

(2) Every person commits an offence against this Act, and shall be liable on summary conviction to a fine not exceeding \$500 and, where the offence is a continuing one, to a further fine not exceeding \$50 for every day or part of a day on which the offence has continued, who acts in contravention of, or fails or neglects to comply with, any provision of any regulations made under this Act.

22. Regulations—The Governor-General may from time to time, by Order in Council, make regulations for all or any of the following purposes:

- (a) Declaring to be restricted components of fertilisers substances whose presence as a component of a fertiliser causes, or may cause, that fertiliser to be harmful:
- 5 (b) Prescribing the maximum proportion of any substance so declared that may be contained in fertilisers; and different proportions may be prescribed in respect of different fertilisers, fertilisers of different classes, different substances, substances of different classes, 10 and substances present together with other substances, or any of them:
- (c) Prescribing the manner and circumstances in which registered fertilisers must be labelled:
- (d) Prescribing the particulars to be contained in 15 applications for registration under section 4 of this Act:
- (e) Prescribing, in respect of any fertilising element, a minimum proportion that must be contained in any 20 substance, in forms that are both chemically and physically capable of effective utilisation by plants within a reasonable time of its being applied, before that element can be taken account of in determining, for the purposes of section 4 (4) of this Act, the aggregate proportion of fertilising elements 25 contained in that substance:
- (f) Prescribing margins by which components of registered fertilisers may vary from the registered specifications for their formulation:
- (g) Prescribing the manner in which appeals under section 8 (1) of this section are to be made and disposed of: 30
- (h) Prescribing the documents, records, and particulars to be retained by proprietors and vendors, the manner in which they are to be retained, and the periods for which they are to be retained:
- 35 (i) Prescribing the particulars to be supplied to purchasers of registered fertilisers in packages or quantities of 50 kg or more by proprietors and vendors; and different particulars may be prescribed in respect of different fertilisers, or fertilisers or different classes, 40 or both:
- (j) Prescribing, in respect of proprietors, quality control programmes in respect of registered fertilisers; and different programmes may be prescribed in respect of different classes of proprietor, different fertilisers, 45 and fertilisers of different classes, or any of them:

- (k) Prescribing standards of fineness of grinding for registered fertilisers, and the components of registered fertilisers; and different standards may be prescribed for different fertilisers or components, or fertilisers or components of different classes: 5
- (l) Prescribing the manner in which samples taken for the purposes of this Act are to be dealt with; and different manners may be prescribed for different substances, or substances of different classes, or both: 10
- (m) Requiring Inspectors to retain a specified proportion or amount of any sample:
- (n) Prescribing fees for the purposes of this Act:
- (o) Regulating or prohibiting the use of the expressions "superphosphate", "rock phosphate", "single superphosphate", "double superphosphate", "triple superphosphate", "super", and other similar expressions:
- (p) Providing for such other matters as are contemplated by or necessary for giving full effect to this Act and its due administration. 20

23. Transitional—(1) In this section,—

"Details", in relation to any existing fertiliser, means the matters specified in paragraphs (b) and (c) of section 5 (2) of the Fertilisers Act 1960: 25

"Existing fertiliser" means a substance that was, immediately before the commencement of this Act, registered under that section:

"Specifications", in relation to any existing fertiliser, means the matters specified in paragraphs (d) and (e) of that section. 30

(2) Where an existing fertiliser to which this subsection applies is formulated in accordance with its specifications and labelled in accordance with its details, the following provisions shall apply: 35

- (a) Its details shall be deemed to be registered under section 4 (3) (a) of this Act:
- (b) Its specifications shall be deemed to be registered under section 4 (3) (b) of this Act:
- (c) The certificate of registration issued to its proprietor in respect of it under section 5 (4) of the Fertilisers Act 1960 shall be deemed to be a certificate of registration of its details and specifications issued under section 5 (3) (c) of this Act.

(3) Subject to subsections (4) to (6) of this section, subsection (2) of this section shall apply to all existing fertilisers.

(4) Where, before the 1st day of March 1983, the proprietor of an existing fertiliser has not applied for registration of its specifications, brand, and trade-name under section 4 of this Act, subsection (2) of this section shall cease to apply to it on 5 that day.

(5) Where—

- (a) Before the 1st day of March 1983 the proprietor of an existing fertiliser applies as aforesaid; and
 10 (b) It appears from his application that the fertiliser concerned, if it conforms with the specifications concerned, will contain in the aggregate, in forms that are both chemically and physically capable of efficient utilisation by plants, less than 5 percent of fertilising elements,—

15 subsection (2) of this section shall cease to apply to that existing fertiliser on the 1st day of June 1983.

(6) Subject to subsections (4) and (5) of this section, subsection (2) of this section shall cease to apply to an existing fertiliser—

- 20 (a) On the happening of the earlier of the following events:
 (i) The registration of its specifications, brand, and trade-name under section 4 of this Act;
 (ii) The notification to its proprietor of the refusal of that registration; or
 25 (b) Where the event concerned happens before the 1st day of June 1983, on that day.

24. Consequential amendments—(1) The Schedule to the Ministry of Agriculture and Fisheries Act 1953 (as substituted by section 4 (1) of the Ministry of Agriculture and 30 Fisheries Amendment Act 1972 and from time to time thereafter amended) is hereby consequentially amended by omitting from the expression “The Fertilisers Act 1960” the expression “1960”, and substituting the expression “1982”.

(2) Section 25 (2) of the Consumer Information Act 1969 is 35 hereby consequentially amended by repealing paragraph (c), and substituting the following paragraph:

“(c) Any registered fertiliser within the meaning of the Fertilisers Act 1982; or”.

(3) Section 2 of the Pesticides Act 1979 is hereby amended 40 by revoking the definition of the term “fertiliser”, and substituting the following definition:

“‘Fertiliser’ means a fertiliser within the meaning of the Fertilisers Act 1982.”.

(4) The said section 2 is hereby further amended by inserting in the definition of the term “pesticide”, before the word “includes”, where it first appears, the words “, subject to subsection (2) of this section,”.

(5) The said section 2 is hereby further amended by 5 adding, as subsections (2) to (5), the following subsections:

“(2) For the purposes of this Act, a substance or mixture of substances shall not be deemed to be a plant growth regulator by virtue only of the fact that it is a fertiliser.

“(3) This subsection applies to a fertiliser if— 10

“(a) It is sold in a quantity of 50 kg or more; and

“(b) It is a pesticide by virtue of the action or supposed action of one or more of its components, whether additives or integral components; and

“(c) That component or, as the case requires, each of those 15 components, is a registered pesticide.

“(4) A fertiliser to which subsection (3) of this section applies shall not be required to be registered under this Act.

“(5) For so long as a fertiliser to which subsection (3) of this section applies is not registered under this Act, every— 20

“(a) Regulation or prohibition of, or restriction on, the application, preparation, or concentration in any area or on any particular crop; and

“(b) Provision relating to the labelling,—
of a registered pesticide that is a component of that fertiliser, 25 contained in this Act or any regulations made under this Act, shall continue to apply to that pesticide notwithstanding that it is a component of that fertiliser.”

(6) Every reference in any enactment to a fertiliser within the meaning of the Fertilisers Act 1960 shall be read as a 30 reference to a fertiliser to which section 4 (4) of this Act applies.

25. Repeals—The enactments specified in the Schedule to this Act are hereby consequentially repealed. 35

Section 25

SCHEDULE

ENACTMENTS REPEALED

1960, No. 33—The Fertilisers Act 1960.

1962, No. 66—The Fertilisers Amendment Act 1962.

1972, No. 58—The Fertilisers Amendment Act 1972.