

PLANT DISEASES (AMENDMENT) ACT.

New South Wales



ANNO VICESIMO

ELIZABETHÆ II REGINÆ

Act No. 27, 1971.

An Act to make further provisions with respect to the branding or labelling of coverings containing fruit or plants and the grading and packing of fruit or vegetables; to simplify the procedure for prescribing the treatment of diseases of plants; to enable the Minister to authorise persons to act as inspectors; to avoid certain doubts; for these and other purposes to amend the Plant Diseases Act, 1924, and the Horticultural Stock and Nurseries Act, 1969; and for purposes connected therewith. [Assented to, 27th September, 1971.]

BE

Plant Diseases (Amendment).

No. 27, 1971

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 :—

Short title and commencement.

1. (1) This Act may be cited as the "Plant Diseases (Amendment) Act, 1971".

(2) Sections two and four of this Act shall commence upon such day or days as may be appointed by the Governor in respect thereof and notified by proclamation published in the Gazette.

Amendment of Act No. 38, 1924.
New sec. 18A.

2. The Plant Diseases Act, 1924, is amended—

(a) by inserting next after section eighteen the following new section :—

Detention notices.

18A. (1) In this section, a reference to a covering includes a reference to any fruit or plant contained in the covering.

(2) This section applies to—

- (a) a covering that is required by the regulations to be branded or labelled as prescribed and is not so branded or labelled;
- (b) a fruit that is required by the Act or the regulations to be graded or packed as prescribed and is not so graded or packed; and
- (c) a vegetable that is required by the Act or the regulations to be graded or packed as prescribed and is not so graded or packed.

(3) Where a person is in possession or control of coverings or fruit or vegetables to which this section applies, an inspector may give to that person

Plant Diseases (Amendment).

person a notice that is in the prescribed form and No. 27, 1971 requires that person, except in so far as the notice is cancelled as provided by subsection nine of this section—

- (a) to keep at a specified place;
- (b) to refrain from selling, or otherwise dealing with or disposing of; and
- (c) to refrain from permitting or suffering any other person to sell or otherwise deal with or dispose of,

those coverings, that fruit or those vegetables.

(4) An inspector may identify in the prescribed manner the coverings or fruit or vegetables to which a notice given under subsection three of this section relates.

(5) Where a person has been given a notice under subsection three of this section an inspector may—

- (a) at the request of that person; and
- (b) on payment of the prescribed fee in the prescribed manner,

change the brands or labels on a covering to which the notice relates to the extent necessary to ensure that the covering is branded or labelled as prescribed.

(6) Where a person has been given a notice under subsection three of this section and an inspector has not exercised the powers conferred on him by subsection five of this section, that person shall—

- (a) regrade or repack the fruit or vegetables to which the notice relates to the extent necessary to ensure that that fruit is or those vegetables are, graded or packed as prescribed

Plant Diseases (Amendment).

No. 27, 1971

prescribed and to ensure that the covering containing that fruit or those vegetables is branded or labelled as prescribed; or

- (b) deal with, or dispose of, the fruit or vegetables to which the notice relates in a manner approved or directed in writing by an inspector.

(7) A person shall be deemed to have complied with subsection six of this section if that which he would be required to do in order to comply therewith is done on his behalf or at his direction.

(8) For the purposes of section nine of this Act, a person who is required to comply with subsection six of this section in respect of a covering or fruit or vegetables and fails to do so shall be deemed to have dealt with, or disposed of, that covering or fruit or those vegetables contrary to the direction of an inspector.

(9) Where a notice has been given under subsection three of this section and an inspector—

- (a) has exercised the powers conferred on him by subsection five of this section in respect of a covering to which the notice relates; or

(b) is satisfied—

- (i) that subsection six of this section has been complied with in respect of a covering or fruit or vegetables, to which the notice relates; and

(ii)

Plant Diseases (Amendment).

- (ii) that the prescribed fee has been paid No. 27, 1971 in the prescribed manner,

an inspector shall give to the person to whom the notice was given a cancellation of the notice in the prescribed form in so far as the notice relates to that covering or fruit or those vegetables.

(10) An inspector may identify in the prescribed manner the coverings or fruit or vegetables to which a cancellation given under subsection nine of this section relates.

(11) In any prosecution for an offence against this Act in respect of coverings, fruit or vegetables, proof that a notice was given under subsection three of this section in relation to the coverings, fruit or vegetables shall be prima facie evidence that the notice had not, at the time of the alleged offence, been cancelled in so far as it related to the coverings, fruit or vegetables.

(12) Where a prescribed fee for the purposes of this section is paid by a person who is not the owner of the coverings or fruit or vegetables in respect of which the payment is made, an amount equal to the amount of that fee—

- (a) may be recovered from the owner by that person in any court of competent jurisdiction as a debt due and owing by the owner; and
- (b) shall, if that person is a licensed farm produce agent under the Farm Produce Agents Act, 1926, be deemed to be an out-of-pocket expense properly payable by the principal for the purposes of the Farm Produce Agents Act, 1926,

to the extent to which it has not been waived or remitted in accordance with subsection thirteen of this section.

(13)

Plant Diseases (Amendment).

No. 27, 1971

(13) The Minister may waive or remit the whole or any part of a prescribed fee for the purposes of this section.

Sec. 28.
(Regulations.)

(b) by inserting at the end of paragraph (f) of subsection one of section twenty-eight the following new subparagraph :—

(iv) for the purposes of section 18A of this Act.

Further amendment
of Act
No. 38,
1924.

3. (1) The Plant Diseases Act, 1924, is further amended—

Sec. 3.
(Interpretation.)

(a) (i) by omitting from section three the definition of "Disease" and by inserting in lieu thereof the following definition :—

"Disease" means any organism of the vegetable kingdom which causes an abnormal or unhealthy condition in plants and includes anything which the Governor, by proclamation published in the Gazette, declares to be a disease.

(ii) by omitting from the same section the definition of "Pest" and by inserting in lieu thereof the following definition :—

"Pest" means any organism of the animal kingdom, other than the vertebrata, which feeds upon or is injurious to plants and includes anything which the Governor, by proclamation published in the Gazette, declares to be a pest.

(iii) by omitting from the same section the definition of "Plant" and by inserting in lieu thereof the following definition :—

"Plant" means any member of the vegetable kingdom and includes the seed or any part of a plant whether living or dead and

Plant Diseases (Amendment).

and whether attached to a plant or separate therefrom. No. 27, 1971

- (b) by inserting next after section eleven the following new section :— New sec. 11A.

11A. (1) A person who is authorised by writing under the hand of the Minister to do so may exercise and perform such of the powers, authorities, duties and functions of an inspector as are specified in the authority. Authorised persons to have certain of the powers, etc., of inspectors.

(2) An authority under this section—

- (a) may be varied or revoked by the Minister by writing under his hand; and
 (b) may be limited in its operation to a part of the State specified in the authority.

- (c) by omitting from subsection (1B) of section thirteen the word “appointment” and by inserting in lieu thereof the word “authority”; Sec. 13. (Power to stop, enter and search.)

- (d) by omitting from section 25B the word “appointment” wherever occurring and by inserting in lieu thereof the word “authority”; Sec. 25B. (Personation of inspector.)

- (e) by omitting subsection six of section twenty-six and by inserting in lieu thereof the following subsection :— Sec. 26. (Offences.)

(6) In any proceeding against any person for an offence against this Act or the regulations a certificate purporting to be signed by the Director-General of Agriculture stating that a person has been appointed or authorised to act as an inspector under this Act and during any period specified in the certificate held office or was authorised to act as such an inspector shall be prima facie evidence of the facts stated therein.

(f)

Plant Diseases (Amendment).

- No. 27, 1971
Sec. 28.
(Regulations.)
- (f) (i) by omitting from paragraph (aii) of subsection one of section twenty-eight the word "appointment" and by inserting in lieu thereof the word "authority";
- (ii) by inserting next after paragraph (d) of the same subsection the following new paragraph :—
- (di) the restriction or prohibition of the packing for sale or sale of coverings that are not branded or labelled as prescribed or fruit or vegetables that are not graded or packed as prescribed.
- Savings.
- (2) Any written evidence of appointment of an inspector in force immediately before the commencement of this Act shall be deemed on and after that commencement to be written evidence of authority of that inspector under the Plant Diseases Act, 1924, as amended by this Act.
- Avoidance of certain doubts.
- (3) A regulation made before the commencement of this Act purporting to have been made under the Plant Diseases Act, 1924, as in force at the time of the making of the regulation shall be deemed to have been validly made under that Act as so in force if it could have been made under the Plant Diseases Act, 1924, as amended by this Act, had that Act, as so amended, been in force at that time.
- Further amendment of Act No. 38, 1924.
4. The Plant Diseases Act, 1924, is further amended—
- Sec. 5.
(Power to appoint places of entry and quarantine.)
- (a) by omitting paragraph (e) of subsection one of section five;
- New sec. 5A.
- (b) by inserting next after the same section the following new section :—

5A.

Plant Diseases (Amendment).

5A. (1) For the purpose of treating a disease or pest or preventing the spread thereof, or for the purpose of eradicating or lessening the risk of disease or pest or to prevent any disease or pest attacking or being harboured, the Minister may, by order published in the Gazette, require—

(a) an owner or occupier of land or premises;
or

(b) a person in possession of fruit or plants,
to do or permit such acts, and to take such measures, including the uprooting and destruction of plants or fruit and the destruction of packages, as are specified in the order.

(2) An order published under subsection one of this section—

(a) may be limited in its application to a specified part of the State;

(b) may require the measures referred to in subsection one of this section to be taken and the acts so referred to to be done or permitted at a time or times specified in the order;

(c) may require the measures referred to in subsection one of this section to be taken and the acts so referred to to be done or permitted in relation to any thing including plants, fruit and coverings; and

(d) shall be deemed to be a regulation for the purposes of section forty-one of the Interpretation Act, 1897.

(c) by inserting in subsection one of section nine after the words "contrary to" where secondly occurring the words "an order or";

(d)

Sec. 9.
(Seizure of plants.)

Plant Diseases (Amendment).

No. 27, 1971

Sec. 13.
(Power to
stop, enter
and
search.)

- (d) (i) by inserting in subsection one of section thirteen after the word "notification" the word ", order";
- (ii) by inserting in subsection (1A) of the same section after the word "notification," the word "order,";
- (iii) by inserting in subsection (1B) of the same section after the word "notification" the word ", order";

Sec. 16.
(Recovery of
expenses.)

- (e) (i) by inserting in paragraph (b) of section sixteen after the word "given" the words "or order published";
- (ii) by inserting in the same section after the word "direction," where secondly occurring the word "order";

Sec. 26.
(Offences.)

- (f) (i) by inserting in paragraph (c) of subsection one of section twenty-six after the word "notification" the word ", order";
- (ii) by inserting in paragraph (d) of the same subsection after the word "notification" the word ", order";
- (iii) by inserting in subsection five of the same section after the word "proclamation" the word ", order";
- (iv) by inserting next after subsection six of the same section the following new subsection :—

(7) In any proceeding against any person for an offence against this Act any printed paper purporting to be an order by the Minister published under this Act and to be printed by the Government Printer shall be evidence that

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Plant Diseases (Amendment).

an order by the Minister, in the words printed in that paper, was duly published under this Act. No. 27, 1971
Sec. 28.
(Regulations.)

- (g) by omitting paragraph (a) of subsection one of section twenty-eight.

5. (1) The Horticultural Stock and Nurseries Act, 1969, is amended— Amendment
of Act No.
3, 1969.

- (a) (i) by omitting from section three the definition of “disease” and by inserting in lieu thereof the following definition :— Sec. 3.
(Interpre-
tation.)

“disease” has the meaning ascribed thereto in the Plant Diseases Act, 1924;

- (ii) by omitting from the same section the definition of “pest” and by inserting in lieu thereof the following definition :—

“pest” has the meaning ascribed thereto in the Plant Diseases Act, 1924;

- (b) (i) by inserting in paragraph (a) of section twenty-two after the word “appointed” the words “or authorised to act as”; Sec. 22.
(Evidence.)

- (ii) by inserting in the same paragraph after the word “office” the words “or was authorised to act”.

(2) The amendments made by subsection one of this section shall commence on the day on which the Horticultural Stock and Nurseries Act, 1969, commences.