



New South Wales

Plant Diseases Amendment Bill 2000

Explanatory note

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

Overview of Bill

The object of this Bill is to amend the *Plant Diseases Act 1924*:

- (a) to make further provision with respect to the powers of inspectors under the Act, and
- (b) to permit the placement of monitoring devices and the carrying out of works for the prevention or control of pests and diseases affecting plants.

Outline of provisions

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

Clause 2 provides for the commencement of the proposed Act on the date of assent.

Clause 3 is a formal provision giving effect to the amendments to the *Plant Diseases Act 1924* set out in Schedule 1.

Schedule 1 Amendments

Schedule 1 [3] amends section 13 of the Act to enable an inspector to enter land, premises, vehicles and vessels in order to instal or inspect pest or disease monitoring devices or to determine whether persons are discharging their obligations under the Act. **Schedule 1 [1]** and **[2]** make consequential amendments.

Schedule 1 [4] amends section 13 of the Act to prescribe requirements (such as the giving of notice) to be observed by an inspector exercising a power of entry under the section.

Schedule 1 [5] proposes to insert two new sections into the Act. Proposed section 13A provides for the Minister to make an order conferring on inspectors a right to enter land or premises and carry out works for the prevention or control of pests or diseases affecting plants. The making of such an order is restricted by the new section to cases where the Minister believes that a failure to make the order would result in serious consequences to health, the environment or trade. The order is required to be tabled in Parliament in the same manner as a statutory rule, and expires after 6 months (unless it is sooner revoked or disallowed). Proposed section 13B provides for the consideration of objections from occupiers of the affected land or premises to the carrying out of works authorised by the Minister's order. The objections are to be considered by the Director-General or a designated officer or person, who may give directions as to how the works are to be carried out on the land or premises, or authorise alternative works, or dispense with the works altogether so far as they were proposed to be carried out on the land or premises.

Schedule 1 [6] amends section 26 of the Act to prohibit interference with devices installed to monitor pests or diseases.

Schedule 1 [7] inserts a new Schedule 4 into the Act, specifying procedures to be followed in connection with objections under proposed section 13B.

First print



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New South Wales

Plant Diseases Amendment Bill 2000

No. , 2000

A Bill for

An Act to amend the *Plant Diseases Act 1924* to make further provision with respect to the detection, prevention and control of pests and diseases affecting plants.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Plant Diseases Amendment Act 2000</i> .	3
2 Commencement	4
This Act commences on the date of assent.	5
3 Amendment of Plant Diseases Act 1924 No 38	6
The <i>Plant Diseases Act 1924</i> is amended as set out in Schedule 1.	7

Schedule 1	Amendments	1
	(Section 3)	2
[1]	Section 3A Power of Minister to delegate functions	3
	Insert after section 3A (6):	4
	(7) This section does not apply to functions of the Minister under section 13A.	5 6
[2]	Section 13 Powers of inspection	7
	Omit “subsection (1B)” from section 13 (1A) (b).	8
	Insert instead “subsection (1BA)”.	9
[3]	Section 13 (1B) and (1BA)	10
	Omit section 13 (1B). Insert instead:	11
	(1B) An inspector may enter any land, premises, vehicle or vessel for the purpose of:	12 13
	(a) searching for or inspecting any plants, fruit, coverings or other things (whether of the same or a different kind) that the inspector believes on reasonable grounds:	14 15 16
	(i) are infected or are likely to convey infection, or	17
	(ii) have been introduced into the State or any portion of the State, or are being conveyed or dealt with, in contravention of any proclamation, notification, order or undertaking given under this Act or the regulations, or	18 19 20 21 22
	(b) installing a device to monitor any pest or disease, or inspecting such a device already installed, or	23 24
	(c) determining whether any duty or obligation imposed by or under this Act has been discharged.	25 26
	(1BA) An inspector exercising a power conferred by this section may:	27
	(a) for the purpose of searching for or inspecting any plants, fruit, coverings or other things referred to in subsection (1B) (a):	28 29 30

(i)	open any part of a vehicle or vessel (or require the driver or person in charge of the vehicle or vessel to do so), and	1 2 3
(ii)	open any coverings, or	4
(b)	take samples of any such plants, fruit, coverings or other things, or	5 6
(c)	install, or inspect any device installed, for monitoring a pest or disease.	7 8
[4]	Section 13 (3) and (4)	9
	Insert after section 13 (2):	10
(3)	A power conferred by this section to enter any land, premises, vehicle or vessel is not to be exercised unless the inspector:	11 12
(a)	has been issued by the Director-General with a certificate of authority, and	13 14
(b)	in the case of entry of any land or premises—gives reasonable notice to the occupier of the land or premises, unless the giving of notice would defeat the purpose for which it is intended to exercise the power, and	15 16 17 18 19
(c)	exercises the power at a reasonable hour of the day, unless it is being exercised in an emergency, and	20 21
(d)	produces the certificate of authority if required to do so by a person apparently in occupation of the premises or in charge of the vehicle or vessel, and	22 23 24
(e)	uses no more force than is reasonably necessary to effect the entry.	25 26
(4)	A certificate of authority must:	27
(a)	state that it is issued under this Act, and	28
(b)	give the name of the inspector to whom it is issued, and	29
(c)	describe the nature of the powers conferred and the source of the powers, and	30 31
(d)	state the date (if any) on which it expires, and	32

- (e) state that the powers do not authorise entry, without the consent of the occupier, into any part of premises used for residential purposes, except as authorised under subsection (1C), and 1
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- (f) bear the signature of the person by whom it is issued and state the capacity in which the person is acting in issuing the certificate. 5
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[5] Sections 13A and 13B 8

Insert after section 13: 9

13A Control orders 10

- (1) The Minister may, by order in writing, authorise an inspector to enter any land or premises specified or described in the order and there to carry out such work, for the prevention or control of any pest or disease, as the order may authorise. 11
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- (2) An order under this section may be made only if the Minister believes on reasonable grounds that the work authorised by the order is necessary in order to avoid: 15
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 - (a) a danger to the health of the public or to consumers of food or produce derived from plants or to persons working with plants, or 18
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 - (b) an undue hazard to the environment, or 21
 - (c) an adverse effect on trade in any plant or a product derived from the plant. 22
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- (3) A right of entry conferred by an order under this section includes, in so far as the work authorised by the order reasonably requires it, a right to enter any place forming the curtilage of, or used in connection with, any premises used for residential purposes, but not a right to enter a portion of any premises actually used as a dwelling. 24
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- (4) Before an inspector, in pursuance of an order under this section, enters any land or premises for the first time: 30
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 - (a) a copy of the order is to be served on the occupier of the land or premises, if the land or premises are particularly identified in the order as land or premises to which the order applies, or 32
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- (b) if the order applies to the land or premises because it is expressed to apply within a specified area that includes the land or premises, the terms of the order are to be published in at least one newspaper circulating in the area or notified in such other manner as the Minister may specify in the order. 1
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- (5) An order under this section, unless it sooner ceases to be in force, ceases to be in force 6 months after the date on which it was made and, while in force, is subject to any conditions specified in it. 7
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- (6) An order under this section must inform occupiers of any land or premises of their rights under section 13B. 11
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- (7) The provisions of section 40 (notice of statutory rules to be tabled) and section 41 (disallowance of statutory rules) of the *Interpretation Act 1987* apply to an order under this section in the same way as they apply to a statutory rule. 13
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- 13B Objection to works authorised by control order** 17
- (1) An occupier of land or premises on which works are authorised, by an order under section 13A, to be carried out may object to the carrying out of those works on the land or premises, and Schedule 4 applies in respect of any such objection. 18
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- (2) Each objection duly made and lodged is to be considered by the Director-General of the Department of Agriculture, who, taking into account both the merits of the objection and the significance of the works authorised by the order to be carried out on the land or premises: 23
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- (a) may confirm that the works authorised by the order are to be carried out on the land or premises (and, in so doing, may or may not specify conditions or restrictions to be observed by the inspector when carrying out the works), or 28
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- (b) may direct that the works authorised by the order are not to be carried out on the land or premises (and, in so doing, may or may not direct the carrying out of alternative works). 33
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(3) Any confirmation or direction under subsection (2) is to be reduced to writing and, on being notified to the objector in accordance with Schedule 4, has effect as if it were an order of the Minister under section 13A (except that no objection may be made to it under this section).	1 2 3 4 5
(4) The powers conferred by this section on the Director-General of the Department of Agriculture may be delegated to a person nominated by the Director-General.	6 7 8
[6] Section 26 Offences	9
Insert at the end of section 26 (1) (g):	10
, or	11
(h) destroys, damages or interferes with a device installed under section 13.	12 13
[7] Schedule 4	14
Insert after Schedule 3:	15
Schedule 4 Objections to works authorised by control order	16 17
(Section 13B)	18
1 Manner of making objection	19
An objection must:	20
(a) be made in writing addressed to the Director-General of the Department of Agriculture, and	21 22
(b) identify the property concerned, the objector and the objector's contact details.	23 24
2 Lodgment of objection	25
An objection is duly lodged only if it is:	26
(a) received at the place specified, and within the time specified, by the relevant order, or	27 28

(b) delivered to an inspector who has entered the land or premises of the objector to carry out works authorised by the order. 1
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3 Outcome of objection to be notified 4

Notice of any confirmation or direction under section 13B (2) in relation to the objection is to be promptly given to the objector. 5
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