



New South Wales

Horticultural Legislation Amendment Bill 2000

Explanatory note

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

Overview of Bill

The objects of this Bill are:

- (a) to repeal the *Horticultural Stock and Nurseries Act 1969*, and
- (b) to facilitate the continued regulation of the horticultural stock industry in accordance with the principles of National Competition Policy after that repeal by:
 - (i) amending the *Plant Diseases Act 1924* to facilitate the making of Ministerial orders and proclamations in respect of plant disease and pest control, and
 - (ii) amending the *Agricultural Industry Services Act 1998* to enable the Minister to establish an agricultural industry services committee under that Act in relation to a horticultural stock industry without first conducting a poll of its proposed constituents.

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 to the proposed Act (except for Schedule 1.2 which will commence on a day or days to be appointed by proclamation).

Clause 3 is a formal provision giving effect to the amendments to Acts set out in Schedule 1.

Clause 4 repeals the *Horticultural Stock and Nurseries Act 1969* on 31 December 2000 or on the date of assent to the proposed Act (whichever is the later).

Schedule 1 Amendment of Acts

Agricultural Industry Services Act 1998 (Schedule 1.1)

Schedule 1.1 amends the *Agricultural Industry Services Act 1998* by inserting a Schedule 4 in the Act. Schedule 4 contains savings, transitional and other provisions consequent on the repeal of the *Horticultural Stock and Nurseries Act 1969*.

In particular, Part 2 of proposed Schedule 4 contains provisions to facilitate the establishment of an agricultural industry services committee under the *Agricultural Industry Services Act 1998* in relation to horticultural stock industries that are presently regulated by or under the *Horticultural Stock and Nurseries Act 1969*.

Under the *Agricultural Industry Services Act 1998* as it presently stands, an agricultural industry services committee can only be established following a poll of its proposed constituents, all of whom must be primary producers. The provisions in Part 2 of proposed Schedule 4 will dispense with the requirement to conduct such a poll before establishing a committee in relation to a horticultural industry. This dispensation will apply for a period of 6 months commencing on the day on which the *Horticultural Stock and Nurseries Act 1969* is repealed.

Part 2 of proposed Schedule 4 will also require a poll to be conducted of the proposed constituents of any such committee before a levy can be imposed. At present, section 23 (2) of the Act provides for an alternative mechanism for imposing a levy, namely, by a resolution of a meeting of an agricultural industry service committee's constituents. This alternative mechanism will not be available to a committee until after it has first successfully conducted a poll to levy its constituents.

Plant Diseases Act 1924 (Schedule 1.2)

Schedule 1.2 [1] and [2] amend section 5A of the Act to enable the Minister, by order, to require certain persons to do or permit acts (or take measures) specified in the order or to prohibit specified acts or measures. At present, the power conferred by section 5A does not extend to prohibiting acts and measures.

Schedule 1.2 [3] amends section 28A of the Act to provide that an order made under that section, to the extent that it relates to the branding or labelling of plant coverings, ceases to have effect on the 5th anniversary of its making unless it ceases to be in force on an earlier date. It also provides for the publication of such proposed orders before they are made.

Schedule 1.2 [4] amends section 28B to enable the Governor to declare, by proclamation published in the Gazette, that any specified provision of the Act or the regulations either applies or does not apply to a specified disease or pest.

Schedule 1.2 [5] and [6] make provision for matters of a savings or transitional nature consequent on the amendment of the Act by the proposed Act.

First print



New South Wales

Horticultural Legislation Amendment Bill 2000

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New South Wales

Horticultural Legislation Amendment Bill 2000

No. , 2000

A Bill for

An Act to repeal the *Horticultural Stock and Nurseries Act 1969*; to amend the *Plant Diseases Act 1924* to facilitate the making of orders and proclamations concerning plant diseases and pests; to amend the *Agricultural Industry Services Act 1998* to facilitate the establishment of agricultural industry services committees in respect of horticultural stock industries; and for other purposes.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Horticultural Legislation Amendment Act 2000</i> .	3
2 Commencement	4
(1) This Act commences on the date of assent to this Act, except as provided by subsection (2).	5 6
(2) Schedule 1.2 commences on a day or days to be appointed by proclamation.	7 8
3 Amendment of Acts	9
Each Act specified in Schedule 1 is amended as set out in that Schedule.	10 11
4 Repeal of Horticultural Stock and Nurseries Act 1969 No 3	12
The <i>Horticultural Stock and Nurseries Act 1969</i> is repealed on 31 December 2000 or on the date of assent to this Act (whichever is the later).	13 14 15

Schedule 1	Amendment of Acts	1
	(Section 3)	2
1.1	Agricultural Industry Services Act 1998 No 45	3
[1]	Section 52A	4
	Insert after section 52:	5
	52A Savings, transitional and other provisions	6
	Schedule 4 has effect.	7
[2]	Schedule 4	8
	Insert after Schedule 3:	9
	Schedule 4 Savings, transitional and other provisions	10
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	(Section 52A)	12
Part 1	General	13
1	Regulations	14
(1)	The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:	15
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	<i>Horticultural Legislation Amendment Act 2000</i> , but only to the extent that it repeals the <i>Horticultural Stock and Nurseries Act 1969</i> .	18
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(2)	Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.	21
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(3)	To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:	1
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(a)	to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or	4
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(b)	to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.	7
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Part 2 Provisions consequent on repeal of Horticultural Stock and Nurseries Act 1969		10
		11
Division 1 Interpretation		12
2 Definitions		13
	In this Part:	14
	<i>amending Act</i> means the <i>Horticultural Legislation Amendment Act 2000</i> .	15
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	<i>cultivate</i> horticultural stock means to grow, raise or produce the stock otherwise than by propagation.	17
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	<i>establishment period</i> means the period of 6 months commencing on the day on which the repealed Act is repealed.	19
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	<i>horticultural stock</i> means any tree, vine, plant, shrub or other vegetation.	21
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	<i>horticultural stock industry</i> means an industry concerned with:	23
(a)	the propagation of horticultural stock for the purpose of sale, or	24
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(b)	the cultivation of such stock for the purpose of sale.	26
	<i>propagate</i> horticultural stock means to generate or multiply by sexual or asexual means.	27
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	<i>repealed Act</i> means the <i>Horticultural Stock and Nurseries Act 1969</i> as in force immediately before its repeal by the amending Act.	29
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	<i>sale</i> , in relation to horticultural stock, includes:	1
	(a) barter or exchange, or	2
	(b) agreeing to sell or offering or exposing for sale, or	3
	(c) having in possession for sale, or	4
	(d) sending, forwarding or delivering for or on sale,	5
	or causing, suffering or attempting any of those acts or things.	6
Division 2	Establishment of horticultural industry service committees	7
		8
3	Establishment of agricultural services industry committee for horticultural stock industry	9
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	(1) Section 4 (2) (b) of this Act does not apply to the establishment of an agricultural industry services committee under this Act in relation to a horticultural stock industry.	11
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	(2) Any information concerning a person who was registered as a nurseryman or reseller under the repealed Act immediately before the commencement of the establishment period may be used by the Minister or any such committee for the purposes of this Act to ascertain the constituent members (or proposed constituent members) of the committee.	14
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	(3) Subclauses (1) and (2) cease to have effect on the expiry of the establishment period. However, nothing in this subclause affects the validity of any agricultural industry services committee established under this Act during that period in relation to a horticultural stock industry.	20
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4	Levying of rates by agricultural industry services committee	25
	(1) Despite section 23 (2) of this Act, an agricultural industry services committee established under this Act during the establishment period in relation to a horticultural stock industry cannot resolve to levy a rate on its constituents (whether during or after that period) unless the resolution is made in accordance with section 23 (2) (b) of this Act.	26
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- (2) Subclause (1) ceases to apply to an agricultural industry services committee immediately after the first time that the committee has successfully made a resolution to levy its constituents in accordance with section 23 (2) (b) of this Act. 1
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Division 3 General provisions 5

5 Funds in Horticultural Stock and Nurseries Account 6

- (1) The Minister may direct that any available funds in the Horticultural Stock and Nurseries Account be applied to pay any persons, associations or institutions determined by the Minister to be used by them in any manner that, in the opinion of the Minister, will assist in any of the following: 7
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- (a) the establishment of an agricultural industry services committee under this Act in relation to a horticultural stock industry, 12
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- (b) the development or protection of a horticultural stock industry. 15
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- (2) For the purposes of this clause: 17
- (a) the Horticultural Stock and Nurseries Account is to continue to be kept after the repeal of the repealed Act until the Account is closed in accordance with subclause (3), and 18
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- (b) any fees recovered after the repeal of the repealed Act that were payable under the repealed Act immediately before that repeal that would have been payable to the credit of the Horticultural Stock and Nurseries Account had the repealed Act not been repealed are to continue to be paid to the credit of that Account, and 22
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- (c) any penalties recovered after the repeal of the repealed Act in respect of offences committed against that Act before its repeal that would have been payable to the credit of the Horticultural Stock and Nurseries Account had the repealed Act not been repealed are to continue to be paid to the credit of that Account. 28
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- (3) The Treasurer may, on the recommendation of the Minister: 34
- (a) close the Horticultural Stock and Nurseries Account, 35
and 36

(b)	transfer any funds standing to the credit of the Account on the date of closure to any persons, associations or institutions recommended by the Minister.	1 2 3
(4)	In this clause: <i>available funds</i> , in relation to the Horticultural Stock and Nurseries Account, means:	4 5 6
(a)	any funds standing to the credit of the Account immediately before the repeal of section 20 of the repealed Act, and	7 8 9
(b)	any funds subsequently paid to the credit of the Account in accordance with subclause (2).	10 11
	<i>Horticultural Stock and Nurseries Account</i> means the Horticultural Stock and Nurseries Account kept under section 20 of the repealed Act immediately before the repeal of that Act.	12 13 14 15
6	Continuing operation of Part 5 (Inspections and records) of repealed Act	16 17
(1)	Sections 16–18 of the repealed Act, as in force immediately before their repeal, continue to apply to any contravention of a provision of the repealed Act (or the regulations made under that Act) that occurred or is alleged to have occurred before the repeal of that provision.	18 19 20 21 22
(2)	If section 19 of the repealed Act, as in force immediately before its repeal, applied to a person in respect of a record kept, or required to be kept, under that section:	23 24 25
(a)	the section continues to apply to that person and record as if section 19 (and any regulation prescribing matters for the purposes of that section) had not been repealed, and	26 27 28 29
(b)	the reference in that section to an inspector has the same meaning as it had immediately before that repeal.	30 31

7	Offences committed before repeal of repealed Act	1
(1)	Proceedings for offences under the repealed Act (or the regulations made under that Act) committed, or alleged to have been committed, before the repeal of that Act are to be prosecuted and determined as if the repealed Act had not been repealed.	2 3 4 5 6
(2)	Accordingly, the law (including any relevant provision of the repealed Act) that would have been applicable to the proceedings had the repealed Act not been repealed continues to apply to the proceedings as if the repealed Act had not been repealed.	7 8 9 10 11
(3)	Section 13 of the repealed Act, as in force immediately before its repeal, continues to apply to horticultural stock propagated or offered for sale in contravention of a notification under section 12 of the repealed Act before that repeal.	12 13 14 15
(4)	This clause does not affect the operation of section 30 of the <i>Interpretation Act 1987</i> .	16 17
8	Fees payable under repealed Act	18
(1)	Any fee payable under the repealed Act that was unpaid immediately before the repeal of that Act is taken to be payable under this Act.	19 20 21
(2)	Any such fee is taken to be a debt due to the Crown and is recoverable by the Director-General in a court of competent jurisdiction.	22 23 24
(3)	The repeal of Part 2 (Registration) of the repealed Act does not:	25
(a)	entitle a person to a refund of the prescribed fee paid before that repeal for an application for the registration, or the renewal of the registration, as a nurseryman or reseller for any part of the year in respect of which the fee was paid that elapses after the repeal of that Part, or	26 27 28 29 30
(b)	affect the liability of any person who was liable to pay (but had not paid) such a fee for the whole of the year to which the liability related even if part of that year elapses after the repeal of that Part.	31 32 33 34

(4) The repeal of Part 3A (Certification schemes) of the repealed Act does not entitle a person to a refund of the prescribed fee paid before that repeal for an application to participate in an approved certification scheme or for labels for stock grown in accordance with an approved certification scheme.	1 2 3 4 5
9 No compensation payable consequent on repeal of repealed Act	6
No compensation is payable to any person for any damage or other loss suffered by that person by reason of the repeal of the repealed Act by the amending Act.	7 8 9
1.2 Plant Diseases Act 1924 No 38	10
[1] Section 5A Treatment and eradication of diseases and pests	11
Omit section 5A (1). Insert instead:	12
(1) For the purpose of treating a disease or pest or preventing the spread of disease or a pest, 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, require an appropriate person:	13 14 15 16 17
(a) to do or permit such acts, or to take such measures (including the uprooting and destruction of plants or fruit and the destruction of packages), as are specified in the order, or	18 19 20 21
(b) to prohibit such acts or the taking of such measures as are specified in the order.	22 23
[2] Section 5A (4)	24
Insert after section 5A (3):	25
(4) In this section:	26
<i>appropriate person</i> means:	27
(a) an owner or occupier of land or premises, or	28
(b) a person in possession of plants, fruit, coverings or any other things, whether of the same or of a different kind or nature.	29 30 31

[3] Section 28A Orders	1
Insert after section 28A (3):	2
(3A) Before an order relating to a matter referred to in subsection (1) (b) is made, the proposed order must be published in at least one newspaper circulating in the area to which the order will apply or in such other publication as the Minister considers appropriate.	3 4 5 6 7
(3B) To the extent that an order relates to a matter referred to in subsection (1) (b), it is revoked on the fifth anniversary of the date on which it was published in the Gazette unless it sooner ceases to be in force.	8 9 10 11
[4] Section 28B Proclamations	12
Insert after section 28B (d):	13
, and	14
(e) that any specified provision of this Act or the regulations:	15
(i) applies only to a specified disease or pest, or	16 17
(ii) does not apply to a specified disease or pest.	18
[5] Schedule 3 Savings and transitional provisions	19
Insert at the end of clause 1 (1):	20
<i>Horticultural Legislation Amendment Act 2000</i> , but only to the extent that it amends this Act	21 22

[6] Schedule 3	1
Insert after Part 2:	2
Part 3 Provisions consequent on enactment of Horticultural Legislation Amendment Act 2000	3
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4 Definition	6
In this Part, <i>amending Act</i> means the <i>Horticultural Legislation Amendment Act 2000</i> .	7
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5 Continuation of certain orders made under section 5A	9
(1) An order made under section 5A of this Act that is in force immediately before the amendment of that section by the amending Act is taken to be an order in force under section 5A of this Act (as amended by the amending Act).	10
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(2) Any such order is, unless it sooner ceases to be in force, revoked on the date on which it would have been revoked by the operation of section 5A as in force immediately before its amendment by the amending Act.	14
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6 Revocation of existing orders under to section 28A of Act	18
(1) To the extent that an existing order relates to a matter referred to in section 28A (1) (b) of this Act, the order is revoked on the fifth anniversary of the date on which Schedule 1.2 [3] to the amending Act commenced unless the order sooner ceases to be in force.	19
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(2) In this clause, <i>existing order</i> means an order in force under section 28A of this Act immediately before the commencement of Schedule 1.2 [3] to the amending Act.	24
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