

FIRST PRINT

PLANT DISEASES (AMENDMENT) BILL 1987

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The object of this Bill is to amend the Plant Diseases Act 1924 so as—

- (a) to provide for the delegation of the Minister's functions under that Act;
- (b) to provide for more flexible methods of payment of fees for the exercise by inspectors of certain powers under that Act;
- (c) to abolish the requirements for registration of orchards and nurseries;
- (d) to increase the maximum penalties for offences against that Act from \$500 and \$1,000 respectively to \$2,000 and for offences against regulations under that Act from \$500 to \$1,000;
- (e) to enable regulations to be made with respect to the identification of varieties of fruit or vegetables that are exposed or displayed for sale;
- (f) to enable certain regulations to apply, adopt or incorporate by reference specified provisions of certain enactments or specified standards, rules, codes or specifications prescribed by organisations such as the Standards Association of Australia;
- (g) to enable regulations to be made providing for the exemption of specified persons, places, matters or things from the operation of regulations made under that Act; and
- (h) to provide for other matters of a consequential, ancillary or minor nature.

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Clause 1 specifies the short title of the proposed Act.

Clause 2 provides that the proposed Act will, with minor exceptions, commence on a day to be appointed by the Governor-in-Council.

Clause 3 provides for the Plant Diseases Act 1924 to be referred to in the proposed Act as the Principal Act.

Clause 4 is a formal provision which gives effect to the Schedule of amendments to the Principal Act.

Clause 5 is a formal provision which gives effect to the Schedule of savings.

Schedule 1 (1) amends the long title to the Principal Act to make it clear that that Act will no longer deal with the registration of orchards and nurseries.

Schedule 1 (2) makes some minor amendments to the definitions of "Disease", "Fruit", "Pest" and "Vegetables" in section 3 of the Principal Act and clarifies the powers of the Governor with respect to the making of proclamations for the purposes of those definitions. Schedule 1 (2) also replaces the definition of "Chief of the Division of Horticulture" and introduces a definition of "functions" for the purposes of the Principal Act.

Schedule 1 (3) inserts a new section into the Principal Act, proposed section 3A, which will empower the Minister concerned to delegate the Minister's functions under the Principal Act.

Schedule 1 (4) makes a minor consequential amendment to section 11A of the Principal Act, which provides for certain authorised persons to have the functions of inspectors.

Schedule 1 (5) replaces section 18 of the Principal Act, which empowers an inspector to question vendors of fruit and plants. Under the substituted section, an offender will be liable to a maximum penalty of \$2,000 instead of \$500 as at present.

Schedule 1 (6) amends section 18A of the Principal Act, which empowers an inspector to issue detention notices in respect of fruit and vegetables and fruit and vegetable coverings that do not comply with certain requirements of the Principal Act or regulations under that Act. As a result of the amendment, a person will not be required to pay the prescribed fee as a condition precedent to the exercise by an inspector of powers conferred on inspectors by that section. Instead, regulations will make it possible to pay the fee at some later date, either in the form of a lump sum or in instalments. Schedule 1 (6) also makes other amendments of a minor or consequential nature.

Schedule 1 (7) and (8) provide for the repeal of sections 19 and 20 of the Principal Act, which deal with the registration of orchards and nurseries and the giving of certain certificates.

Schedule 1 (9) amends section 21 of the Principal Act, which empowers an inspector to destroy plants in a neglected orchard or nursery in certain circumstances. The amendments are in the nature of statute law revision.

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Schedule 1 (10) replaces section 23 of the Principal Act, which confers on the owner of land or premises in the occupation of another person a right of entry in order to perform any duty or obligation imposed on that person under the Principal Act or regulations under that Act. Under the substituted section, the maximum penalty for hindering or obstructing a person in the exercise of such a right will be increased from \$500 to \$2,000.

Schedule 1 (11) makes a minor amendment by way of statute law revision to section 24 (2) of the Principal Act (which requires certain notices to be in writing).

Schedule 1 (12) amends section 25A of the Principal Act, which empowers an inspector to demand a person's name and place of abode. Under the amendment, the maximum penalty for an offence under the section will be increased from \$500 to \$2,000.

Schedule 1 (13) amends section 25B of the Principal Act, which makes it an offence to forge or counterfeit an inspector's written evidence of authority or to personate an inspector. As a result of the amendment, the maximum penalty for the offence will be increased from \$500 to \$2,000.

Schedule 1 (14) replaces sections 25C and 25D of the Principal Act. Section 25C makes it an offence to assault, threaten, resist, obstruct or hinder an inspector who is exercising a function under the Principal Act. As a result of the amendment, the maximum penalty for the offence will be increased from \$1,000 to \$2,000. Section 25D makes it an offence to engage in certain corrupt activities in relation to an inspector. Under the substituted section, the maximum penalty for the offence is to be increased from \$1,000 to \$2,000.

Schedule 1 (15) amends section 26 of the Principal Act, which prescribes certain offences against that Act. As a result of the amendment, a person found guilty of any of those offences will be liable to a penalty not exceeding \$2,000. The maximum penalty for such an offence is at present \$1,000. Section 26 (3), which provides for the reversal of the onus of proof in proceedings for certain offences against the Principal Act and the regulations under that Act, is being amended so as to make it clear that it applies only to the offences arising by virtue of section 26 (1) (a) and (f). (Those offences respectively relate to selling, and bringing onto and removing from premises, infected plants, fruit and other things and having possession of plants, fruit and certain other things imported in contravention of the Principal Act or an instrument made under that Act.) The opportunity has also been taken to effect certain other amendments to section 26 of a consequential nature and by way of statute law revision.

Schedule 1 (16) consequentially amends section 27 of the Principal Act, which relates to the recoverable expenses of an authorised inspector. (See Schedule 1 (9)).

Schedule 1 (17) amends section 28 of the Principal Act, which confers power on the Governor-in-Council to make regulations for the purposes of that Act. As a result of the amendments to the section, it will be possible to make regulations requiring the variety as well as the grade of unpacked fruit or vegetables to be identified when the fruit or vegetables are exposed or displayed for sale. It will also be possible, by regulation, to confer appeal rights against the withdrawal of or refusal to grant credit facilities in relation to a payment that a person may become liable to make under section 18A of the Principal Act.

The maximum penalty that may be imposed for an offence against the regulations is to be increased from \$500 to \$1,000.

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Further amendments to section 28 of the Principal Act will enable regulations to make provision for a matter relating to the grading or packing of fruit or vegetables or the branding or labelling of coverings containing fruit, vegetables or other plants by applying, adopting or incorporating by reference certain enactments or other documents, including standards prescribed in documents published by the Standards Association of Australia and other organisations concerned with prescribing standards.

It will also be possible to make regulations limiting the application of the regulations, in particular cases, providing for the exemption of specified persons, places, matters or things from the regulations and authorising matters or things to be determined, applied or regulated by specified persons or bodies.

The section is further amended in consequence of the repeal of sections 19 and 20 of the Principal Act.

Schedule 1 (18) amends section 29 of the Principal Act, which prohibits the sale of fruit and vegetables that are not up to fair average quality or do not comply with certain other requirements. At present, an offence against the section is punishable by a penalty not exceeding \$500. This amount is to be increased to \$2,000.

Schedule 1 (19) removes all short headings from the Principal Act.

PLANT DISEASES (AMENDMENT) BILL 1987

NEW SOUTH WALES



TABLE OF PROVISIONS

1. Short title
2. Commencement
3. Principal Act
4. Amendment of Act No. 38, 1924
5. Savings

SCHEDULE 1—AMENDMENTS TO THE PRINCIPAL ACT

SCHEDULE 2—SAVINGS



PLANT DISEASES (AMENDMENT) BILL 1987

NEW SOUTH WALES



No. , 1987

A BILL FOR

An Act to amend the Plant Diseases Act 1924 for the purposes of making fresh provision with respect to standards for marketing fresh fruit and vegetables in New South Wales and abolishing the requirements for the registration of orchards and nurseries and for other purposes.

Plant Diseases (Amendment) 1987

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:

5 Short title

1. This Act may be cited as the "Plant Diseases (Amendment) Act 1987".

Commencement

2. (1) Sections 1 and 2 shall commence on the date of assent to this
10 Act.

(2) Except as provided by subsection (1), this Act shall commence on such day as may be appointed by the Governor and notified by proclamation published in the Gazette.

Principal Act

15 3. The Plant Diseases Act 1924 is referred to in this Act as the Principal Act.

Amendment of Act No. 38, 1924

4. The Principal Act is amended in the manner set forth in Schedule 1.

Savings

20 5. Schedule 2 has effect.

SCHEDULE 1

(Sec. 4)

AMENDMENTS TO THE PRINCIPAL ACT

(1) Long title—

5 Omit “to provide for the registration of orchards and nurseries;”.

(2) Section 3 (**Interpretation**)—

(a) Section 3 (1), definition of “Chief of the Division of Horticulture”—

Omit the definition, insert instead:

10 “Chief of the Division of Plant Industries” means the person for the time being holding office or acting as the Chief, Division of Plant Industries, Department of Agriculture;

(b) Section 3 (1), definition of “Disease”—

15 Omit “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”, insert instead “declared under subsection (3) to be a disease for the purposes of this definition”.

(c) Section 3 (1), definition of “Fruit”—

20 Omit “which the Governor may by proclamation published in the Gazette declare to be fruit for the purposes of this Act”, insert instead “declared under subsection (3) to be fruit for the purposes of this definition”.

(d) Section 3 (1), definition of “Pest”—

25 Omit “which the Governor, by proclamation published in the Gazette, declares to be a pest”, insert instead “declared under subsection (3) to be a pest for the purposes of this definition”.

(e) Section 3 (1), definition of “Vegetables”—

30 Omit “vegetable which the Governor may by proclamation published in the Gazette declare to be a vegetable”, insert instead “plants of a kind declared under subsection (3) to be vegetables for the purposes of this definition”.

*Plant Diseases (Amendment) 1987*SCHEDULE 1—*continued*AMENDMENTS TO THE PRINCIPAL ACT—*continued*

(f) Section 3 (3), (4)—

After section 3 (2), insert:

(3) The Governor may, by proclamation published in the Gazette—

- 5 (a) declare an organism of the vegetable kingdom which causes an abnormal or unhealthy condition in plants to be a disease for the purpose of the definition of that expression in subsection (1);
- 10 (b) declare an edible product of a species of plant to be fruit for the purpose of the definition of that expression in that subsection;
- (c) declare anything to be a pest for the purpose of the definition of that expression in that subsection; or
- 15 (d) declare plants of any kind to be vegetables for the purpose of the definition of that expression in that subsection.
- (4) In this Act—
- (a) a reference to a function includes a reference to a power, authority and duty; and
- 20 (b) a reference to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.

(3) Section 3A—

After section 3, insert:

Power of Minister to delegate functions

- 25 3A. (1) The Minister may delegate to a person the exercise of any of the Minister's functions under this Act, other than this power of delegation.
- (2) A delegation under this section—
- (a) shall be in writing;
- 30 (b) may be general or limited; and

SCHEDULE 1—*continued*AMENDMENTS TO THE PRINCIPAL ACT—*continued*

(c) may be revoked, wholly or partly, by the Minister.

(3) A delegate is, in the exercise of a function delegated under this section, subject to such conditions as are specified in the instrument of delegation.

5 (4) A function delegated under this section, when exercised by the delegate, shall be deemed to have been exercised by the Minister.

10 (5) A delegation under this section does not prevent the exercise of a function by the Minister nor does it prevent an officer of a Government department concerned with the administration of this Act from exercising such a function in accordance with an authority conferred by the Minister.

15 (6) A function purporting to have been exercised by a delegate under this section shall, until the contrary is proved, be deemed to have been duly exercised by a delegate under this section.

(4) Section 11A (**Authorised persons to have certain of the functions of inspectors**)—

(a) Section 11A (1)—

Omit “and perform”.

20 (b) Section 11A (1)—

Omit “powers, authorities, duties and”.

(5) Section 18—

Omit the section, insert instead:

Power to question vendors of fruit and plants

25 18. (1) An inspector may require any person having possession or control of fruit or plants, which the inspector suspects on reasonable grounds are intended for sale, to answer any questions relating to the fruit or plants.

SCHEDULE 1—*continued*AMENDMENTS TO THE PRINCIPAL ACT—*continued*

(2) A person who—

(a) refuses to answer, to the best of the person's knowledge, a question put in accordance with a requirement made under subsection (1); or

5 (b) gives, to such a question, an answer which to the person's knowledge is false or misleading,

is guilty of an offence and liable to a penalty not exceeding \$2,000.

(3) A person is not guilty of an offence under this section unless it is established that the inspector—

10 (a) warned the person that a failure or refusal to comply with the requirement is an offence; and

(b) identified himself or herself as an inspector to the person.

(6) Section 18A (**Detention notices**)—

(a) Section 18A (5)–(5B)—

15 Omit section 18A (5), insert instead:

(5) If a person has been given a notice under subsection (3), an inspector may, at the request of that person, 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.

20

(5A) A person who requests an inspector to exercise the power conferred by subsection (5) is liable, as a condition of that power being exercised, to pay the prescribed fee in the prescribed manner.

25 (5B) If the prescribed fee is not paid within the prescribed period, it is recoverable in a court of competent jurisdiction as a debt due to the Crown.

*Plant Diseases (Amendment) 1987*SCHEDULE 1—*continued*AMENDMENTS TO THE PRINCIPAL ACT—*continued*

(b) Section 18A (9) (b)—

Omit the paragraph, insert instead:

(b) is satisfied that subsection (6) has been complied with in respect of a covering, or of fruit or vegetables, to which the notice relates,

5

(c) Section 18A (12) (b)—

Omit “Farm Produce Agents Act, 1926” wherever occurring, insert instead “Farm Produce Act 1983”.

(7) Section 19 (**Orchards and nurseries to be registered**)—

10

Omit the section.

(8) Section 20 (**Inspection and certification**)—

Omit the section.

(9) Section 21 (**Power to destroy plants in an abandoned orchard or nursery**)—

15

(a) Section 21 (1)—

Omit “Any person aggrieved by a decision of the Minister under this subsection may appeal therefrom to a court of petty sessions presided over by a stipendary magistrate in the manner prescribed.”.

20

(b) Section 21 (2)–(5)—

Omit section 21 (2), insert instead:

(2) Any person aggrieved by a decision of the Minister under subsection (1) may, in the prescribed manner and within the prescribed period, appeal against the decision to a Local Court constituted by a Magistrate sitting alone.

25

(3) On the hearing of an appeal under subsection (2), the Local Court shall confirm the decision appealed against unless satisfied that—

30

(a) the findings contained in the inspector’s report on which the decision was based were not justified; or

SCHEDULE 1—*continued*AMENDMENTS TO THE PRINCIPAL ACT—*continued*

- (b) having regard to all the circumstances of the case, the decision was not reasonable,

in which event that Court shall quash the decision.

5 (4) After the end of the prescribed period within which an appeal may be made under subsection (2) against a decision in relation to an orchard or nursery, the Minister may cause an inspector to destroy all plants within the orchard or nursery that in the inspector's opinion are likely to harbour or spread diseases or pests but only if—

- 10 (a) such an appeal has not been made within that period; or
 (b) where such an appeal has been made within that period—
 the appeal has been disallowed or withdrawn.

15 (5) Costs incurred in exercising the power conferred by subsection (4) are recoverable in a court of competent jurisdiction as a debt due to the Crown from the owner of the orchard or nursery concerned or, if the orchard or nursery is not occupied by its owner, from the occupier of the orchard or nursery.

(10) Section 23—

Omit the section, insert instead:

20 **Owner to have right of entry**

25 23. (1) The owner of land or premises occupied by another person, whether as lessee or in any other capacity, has the right to enter and remain on the land or premises for the purpose of performing a duty or obligation imposed on owners of land or premises by this Act or the regulations.

(2) A person who obstructs or hinders the performance by another person of a duty or obligation imposed on that other person by this Act or the regulations is guilty of an offence and liable to a penalty not exceeding \$2,000.

SCHEDULE 1—*continued*
 AMENDMENTS TO THE PRINCIPAL ACT—*continued*

(11) Section 24 (**Notices to be given in writing**)—

Section 24 (2)—

Omit “Horticulture”, insert instead “Plant Industries”.

(12) Section 25A (**Demanding name and place of abode**)—

5 (a) Section 25A (2)—

Omit “upon demand made as aforesaid”, insert instead “on demand made in accordance with subsection (1)”.

(b) Section 25A (2)—

10 Omit “shall be guilty of an offence against this Act”, insert instead “is guilty of an offence and liable to a penalty not exceeding \$2,000”.

(13) Section 25B (**Personation of inspector**)—

15 Omit “shall be guilty of an offence against this Act”, insert instead “is guilty of an offence and liable to a penalty not exceeding \$2,000”.

(14) Sections 25C, 25D—

Omit the sections, insert instead:

Assaulting, threatening, obstructing etc. an inspector

20 25C. A person who assaults, threatens, resists, obstructs or hinders an inspector in the exercise of a function conferred or imposed on an inspector by or under this Act is guilty of an offence and liable to a penalty not exceeding \$2,000.

Corruption

25 25D. A person who, without lawful authority, offers, makes or gives to an inspector a payment, gratuity or present in consideration of the inspector’s doing or omitting to do any act or thing relating to the exercise of a function conferred or imposed on an inspector by or under this Act is guilty of an offence and liable to a penalty not exceeding \$2,000.

SCHEDULE 1—*continued*AMENDMENTS TO THE PRINCIPAL ACT—*continued*(15) Section 26 (**Offences**)—

(a) Section 26 (1) (a)—

Omit the paragraph, insert instead:

5 (a) without reasonable excuse, sells, or brings onto or removes from the person's premises, any plant, fruit, covering or thing of any nature whatever with the knowledge that the plant, fruit, covering or thing—

(i) is infected or is likely to convey infection; or

10 (ii) was imported, introduced or brought into New South Wales or any part of New South Wales in contravention of a provision of a proclamation, notification or undertaking made or given under this Act or the regulations; or

(b) Section 26 (1) (b)—

15 Omit the paragraph.

(c) Section 26 (1A), (2), (2A)—

Omit the subsections, insert instead:

(2) A person who is found guilty of an offence against subsection (1) is liable to a penalty not exceeding \$2,000.

20 (2A) Proceedings for an offence against this Act or the regulations shall be dealt with summarily before a Local Court constituted by a Magistrate sitting alone.

(d) Section 26 (3)—

25 Omit "against this Act or the regulations", insert instead "arising under subsection (1) (a) or (f)".

(16) Section 27 (**Recoverable expenses of authorised inspector**)—

Omit "21 (2)", insert instead "21 (4)".

SCHEDULE 1—*continued*AMENDMENTS TO THE PRINCIPAL ACT—*continued*

- (17) Section 28 (**Regulations**)—
- (a) Section 28 (1) (b)—
Omit the paragraph.
- (b) Section 28 (1) (dii)—
5 Omit “grade”, insert instead “variety or grade, or both the variety and grade.”.
- (c) Section 28 (1) (diii)—
Omit the paragraph, insert instead:
10 (diii) the restriction or prohibition of the exposure or display for sale of fruit or vegetables to which regulations made for the purpose of paragraph (dii) relate unless the variety or grade of the fruit or vegetables is, or, if the case requires, both their variety and grade are, identified as prescribed;
- (d) Section 28 (1) (f) (i)—
15 Omit the subparagraph.
- (e) Section 28 (1) (g)—
After section 28 (1) (f), insert:
20 (g) the conferring on a person liable to pay fees under this Act of a right of appeal or review in respect of the withdrawal of credit facilities from, or the refusal to extend such facilities to, that person in relation to the payment of those fees.
- (f) Section 28 (2)–(2B)—
Omit section 28 (2), insert instead:
25 (2) The regulations may create an offence punishable by a penalty not exceeding \$1,000.
(2A) The regulations may make provision for or in respect of any matter relating to—
(a) the grading or packing of fruit or vegetables; or

SCHEDULE 1—*continued*AMENDMENTS TO THE PRINCIPAL ACT—*continued*

- (b) the branding or labelling of coverings containing fruit, vegetables or other plants,

by applying, adopting or incorporating by reference, with or without modification—

- 5 (c) any specified provisions of an Act of New South Wales or the Commonwealth, or of any regulations or other instruments made under such an Act, as in force when the regulations take effect or as in force from time to time; or

- (d) any specified standards, rules, codes or specifications—

- 10 (i) prescribed in a document published by the Standards Association of Australia or the British Standards Institution;

- 15 (ii) prescribed in a document published by any other organisation concerned with prescribing standards, being an organisation approved by the Minister and notified in the Gazette as an organisation so approved for the purposes of this subparagraph; or

- 20 (iii) included in a document issued by the Crown in right of this State or the Commonwealth or by any agency or instrumentality of the Crown in right of this State or the Commonwealth,

and as in force when the regulations take effect.

- 25 (2B) If the regulations apply, adopt or incorporate by reference any specified standards, rules, codes or specifications prescribed or included in a document referred to in subsection (2A) (d), the Minister shall, on being requested to do so by any person, make a copy of that document available for inspection by that person.

(2C) A provision of a regulation may—

- 30 (a) apply generally or be limited in its application by reference to specified exceptions or factors;

- (b) apply differently according to different factors of a specified kind;

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- (c) authorise any matter or thing to be from time to time determined, applied or regulated by any specified person or body; or
- 5 (d) provide for specified persons, places, matters or things, or specified classes of persons, places, matters or things, to be exempted, either absolutely or subject to conditions, from that or any other provision of a regulation,
- or may do any combination of those things.
- (18) Section 29 (**Sale of fruit etc. not up to fair average quality**)—
- 10 (a) Section 29 (1)—
Before “The fact”, insert “(1AA)”.
- (b) Section 29 (3)—
Omit the subsection, insert instead:
- 15 (3) A person who contravenes a provision of this section is guilty of an offence and liable to a penalty not exceeding \$2,000.
- (19) Short headings—
Omit the short headings before sections 1, 4, 11, 19, 20, 21, 23 and 29.

SCHEDULE 2

20

(Sec. 5)

SAVINGS

Certain proclamations to continue

1. Any proclamation—
- 25 (a) declaring an organism of the vegetable kingdom to be a disease for the purpose of the definition of that expression in section 3 (1) of the Principal Act;

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SCHEDULE 2—*continued*SAVINGS—*continued*

(b) declaring an edible product of a plant to be a fruit for the purpose of the definition of that expression in section 3 (1) of the Principal Act;

(c) declaring anything to be a pest for the purpose of the definition of that expression in section 3 (1) of the Principal Act; or

5 (d) declaring any species of plant to be a vegetable for the purpose of the definition of that expression in section 3 (1) of the Principal Act,

and in force immediately before the commencement of this Act shall continue in force as if it had been made under section 3 (3) of the Principal Act (as in force after that commencement).

10 Pending appeals under section 21 of the Principal Act

2. An appeal lodged under section 21 (1) of the Principal Act (as in force immediately before the commencement of this Act) and not disposed of before that commencement may be disposed of under section 21 (3) of the Principal Act (as in force after that commencement) as if it had been lodged under section 21 (2) of that Act (as so in force).

15 Savings for certain offences

3. If, after the commencement of this Act, any person is found guilty of having committed an offence against this Act, being an offence referred to in subsection (2) of section 26 of the Principal Act (as in force immediately before that commencement), that person is nevertheless liable to be dealt with in accordance with that subsection (as
20 so in force).

PLANT DISEASES (AMENDMENT) ACT 1987 No. 17

NEW SOUTH WALES



TABLE OF PROVISIONS

1. Short title
2. Commencement
3. Principal Act
4. Amendment of Act No. 38, 1924
5. Savings

SCHEDULE 1—AMENDMENTS TO THE PRINCIPAL ACT
SCHEDULE 2—SAVINGS

PLANT DISEASES (AMENDMENT) ACT 1987 No. 17

NEW SOUTH WALES



Act No. 17, 1987

An Act to amend the Plant Diseases Act 1924 for the purposes of making fresh provision with respect to standards for marketing fresh fruit and vegetables in New South Wales and abolishing the requirements for the registration of orchards and nurseries and for other purposes. [Assented to 15 April 1987]

Plant Diseases (Amendment) 1987

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

1. This Act may be cited as the "Plant Diseases (Amendment) Act 1987".

Commencement

2. (1) Sections 1 and 2 shall commence on the date of assent to this Act.

(2) Except as provided by subsection (1), this Act shall commence on such day as may be appointed by the Governor and notified by proclamation published in the Gazette.

Principal Act

3. The Plant Diseases Act 1924 is referred to in this Act as the Principal Act.

Amendment of Act No. 38, 1924

4. The Principal Act is amended in the manner set forth in Schedule 1.

Savings

5. Schedule 2 has effect.

SCHEDULE 1

(Sec. 4)

AMENDMENTS TO THE PRINCIPAL ACT

(1) Long title—

Omit “to provide for the registration of orchards and nurseries;”.

(2) Section 3 (**Interpretation**)—

(a) Section 3 (1), definition of “Chief of the Division of Horticulture”—

Omit the definition, insert instead:

“Chief of the Division of Plant Industries” means the person for the time being holding office or acting as the Chief, Division of Plant Industries, Department of Agriculture;

(b) Section 3 (1), definition of “Disease”—

Omit “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”, insert instead “declared under subsection (3) to be a disease for the purposes of this definition”.

(c) Section 3 (1), definition of “Fruit”—

Omit “which the Governor may by proclamation published in the Gazette declare to be fruit for the purposes of this Act”, insert instead “declared under subsection (3) to be fruit for the purposes of this definition”.

(d) Section 3 (1), definition of “Pest”—

Omit “which the Governor, by proclamation published in the Gazette, declares to be a pest”, insert instead “declared under subsection (3) to be a pest for the purposes of this definition”.

(e) Section 3 (1), definition of “Vegetables”—

Omit “vegetable which the Governor may by proclamation published in the Gazette declare to be a vegetable”, insert instead “plants of a kind declared under subsection (3) to be vegetables for the purposes of this definition”.

Plant Diseases (Amendment) 1987

SCHEDULE 1—*continued*

AMENDMENTS TO THE PRINCIPAL ACT—*continued*

(f) Section 3 (3), (4)—

After section 3 (2), insert:

(3) The Governor may, by proclamation published in the Gazette—

- (a) declare an organism of the vegetable kingdom which causes an abnormal or unhealthy condition in plants to be a disease for the purpose of the definition of that expression in subsection (1);
- (b) declare an edible product of a species of plant to be fruit for the purpose of the definition of that expression in that subsection;
- (c) declare anything to be a pest for the purpose of the definition of that expression in that subsection; or
- (d) declare plants of any kind to be vegetables for the purpose of the definition of that expression in that subsection.

(4) In this Act—

- (a) a reference to a function includes a reference to a power, authority and duty; and
- (b) a reference to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.

(3) Section 3A—

After section 3, insert:

Power of Minister to delegate functions

3A. (1) The Minister may delegate to a person the exercise of any of the Minister's functions under this Act, other than this power of delegation.

(2) A delegation under this section—

- (a) shall be in writing;
- (b) may be general or limited; and

SCHEDULE 1—*continued*AMENDMENTS TO THE PRINCIPAL ACT—*continued*

- (c) may be revoked, wholly or partly, by the Minister.
- (3) A delegate is, in the exercise of a function delegated under this section, subject to such conditions as are specified in the instrument of delegation.
- (4) A function delegated under this section, when exercised by the delegate, shall be deemed to have been exercised by the Minister.
- (5) A delegation under this section does not prevent the exercise of a function by the Minister nor does it prevent an officer of a Government department concerned with the administration of this Act from exercising such a function in accordance with an authority conferred by the Minister.
- (6) A function purporting to have been exercised by a delegate under this section shall, until the contrary is proved, be deemed to have been duly exercised by a delegate under this section.
- (4) Section 11A (**Authorised persons to have certain of the functions of inspectors**)—
- (a) Section 11A (1)—
Omit “and perform”.
- (b) Section 11A (1)—
Omit “powers, authorities, duties and”.
- (5) Section 18—
Omit the section, insert instead:
- Power to question vendors of fruit and plants**
18. (1) An inspector may require any person having possession or control of fruit or plants, which the inspector suspects on reasonable grounds are intended for sale, to answer any questions relating to the fruit or plants.

SCHEDULE 1—*continued*AMENDMENTS TO THE PRINCIPAL ACT—*continued*

(2) A person who—

- (a) refuses to answer, to the best of the person's knowledge, a question put in accordance with a requirement made under subsection (1); or
- (b) gives, to such a question, an answer which to the person's knowledge is false or misleading,

is guilty of an offence and liable to a penalty not exceeding \$2,000.

(3) A person is not guilty of an offence under this section unless it is established that the inspector—

- (a) warned the person that a failure or refusal to comply with the requirement is an offence; and
- (b) identified himself or herself as an inspector to the person.

(6) Section 18A (**Detention notices**)—

(a) Section 18A (5)–(5B)—

Omit section 18A (5), insert instead:

(5) If a person has been given a notice under subsection (3), an inspector may, at the request of that person, 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.

(5A) A person who requests an inspector to exercise the power conferred by subsection (5) is liable, as a condition of that power being exercised, to pay the prescribed fee in the prescribed manner.

(5B) If the prescribed fee is not paid within the prescribed period, it is recoverable in a court of competent jurisdiction as a debt due to the Crown.

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SCHEDULE 1—*continued*

AMENDMENTS TO THE PRINCIPAL ACT—*continued*

- (b) Section 18A (9) (b)—
Omit the paragraph, insert instead:
- (b) is satisfied that subsection (6) has been complied with in respect of a covering, or of fruit or vegetables, to which the notice relates,
- (c) Section 18A (12) (b)—
Omit “Farm Produce Agents Act, 1926” wherever occurring, insert instead “Farm Produce Act 1983”.
- (7) Section 19 (**Orchards and nurseries to be registered**)—
Omit the section.
- (8) Section 20 (**Inspection and certification**)—
Omit the section.
- (9) Section 21 (**Power to destroy plants in an abandoned orchard or nursery**)—
- (a) Section 21 (1)—
Omit “Any person aggrieved by a decision of the Minister under this subsection may appeal therefrom to a court of petty sessions presided over by a stipendary magistrate in the manner prescribed.”.
- (b) Section 21 (2)–(5)—
Omit section 21 (2), insert instead:
- (2) Any person aggrieved by a decision of the Minister under subsection (1) may, in the prescribed manner and within the prescribed period, appeal against the decision to a Local Court constituted by a Magistrate sitting alone.
- (3) On the hearing of an appeal under subsection (2), the Local Court shall confirm the decision appealed against unless satisfied that—
- (a) the findings contained in the inspector’s report on which the decision was based were not justified; or

SCHEDULE 1—*continued*AMENDMENTS TO THE PRINCIPAL ACT—*continued*

- (b) having regard to all the circumstances of the case, the decision was not reasonable,

in which event that Court shall quash the decision.

(4) After the end of the prescribed period within which an appeal may be made under subsection (2) against a decision in relation to an orchard or nursery, the Minister may cause an inspector to destroy all plants within the orchard or nursery that in the inspector's opinion are likely to harbour or spread diseases or pests but only if—

(a) such an appeal has not been made within that period; or

(b) where such an appeal has been made within that period—
the appeal has been disallowed or withdrawn.

(5) Costs incurred in exercising the power conferred by subsection (4) are recoverable in a court of competent jurisdiction as a debt due to the Crown from the owner of the orchard or nursery concerned or, if the orchard or nursery is not occupied by its owner, from the occupier of the orchard or nursery.

(10) Section 23—

Omit the section, insert instead:

Owner to have right of entry

23. (1) The owner of land or premises occupied by another person, whether as lessee or in any other capacity, has the right to enter and remain on the land or premises for the purpose of performing a duty or obligation imposed on owners of land or premises by this Act or the regulations.

(2) A person who obstructs or hinders the performance by another person of a duty or obligation imposed on that other person by this Act or the regulations is guilty of an offence and liable to a penalty not exceeding \$2,000.

SCHEDULE 1—*continued*AMENDMENTS TO THE PRINCIPAL ACT—*continued*(11) Section 24 (**Notices to be given in writing**)—

Section 24 (2)—

Omit “Horticulture”, insert instead “Plant Industries”.

(12) Section 25A (**Demanding name and place of abode**)—

(a) Section 25A (2)—

Omit “upon demand made as aforesaid”, insert instead “on demand made in accordance with subsection (1)”.

(b) Section 25A (2)—

Omit “shall be guilty of an offence against this Act”, insert instead “is guilty of an offence and liable to a penalty not exceeding \$2,000”.

(13) Section 25B (**Personation of inspector**)—

Omit “shall be guilty of an offence against this Act”, insert instead “is guilty of an offence and liable to a penalty not exceeding \$2,000”.

(14) Sections 25C, 25D—

Omit the sections, insert instead:

Assaulting, threatening, obstructing etc. an inspector

25C. A person who assaults, threatens, resists, obstructs or hinders an inspector in the exercise of a function conferred or imposed on an inspector by or under this Act is guilty of an offence and liable to a penalty not exceeding \$2,000.

Corruption

25D. A person who, without lawful authority, offers, makes or gives to an inspector a payment, gratuity or present in consideration of the inspector’s doing or omitting to do any act or thing relating to the exercise of a function conferred or imposed on an inspector by or under this Act is guilty of an offence and liable to a penalty not exceeding \$2,000.

SCHEDULE 1—*continued*AMENDMENTS TO THE PRINCIPAL ACT—*continued*(15) Section 26 (**Offences**)—

(a) Section 26 (1) (a)—

Omit the paragraph, insert instead:

(a) without reasonable excuse, sells, or brings onto or removes from the person's premises, any plant, fruit, covering or thing of any nature whatever with the knowledge that the plant, fruit, covering or thing—

(i) is infected or is likely to convey infection; or

(ii) was imported, introduced or brought into New South Wales or any part of New South Wales in contravention of a provision of a proclamation, notification or undertaking made or given under this Act or the regulations; or

(b) Section 26 (1) (b)—

Omit the paragraph.

(c) Section 26 (1A), (2), (2A)—

Omit the subsections, insert instead:

(2) A person who is found guilty of an offence against subsection (1) is liable to a penalty not exceeding \$2,000.

(2A) Proceedings for an offence against this Act or the regulations shall be dealt with summarily before a Local Court constituted by a Magistrate sitting alone.

(d) Section 26 (3)—

Omit "against this Act or the regulations", insert instead "arising under subsection (1) (a) or (f)".

(16) Section 27 (**Recoverable expenses of authorised inspector**)—

Omit "21 (2)", insert instead "21 (4)".

SCHEDULE 1—*continued*AMENDMENTS TO THE PRINCIPAL ACT—*continued*(17) Section 28 (**Regulations**)—

(a) Section 28 (1) (b)—

Omit the paragraph.

(b) Section 28 (1) (dii)—

Omit “grade”, insert instead “variety or grade, or both the variety and grade.”.

(c) Section 28 (1) (diii)—

Omit the paragraph, insert instead:

(diii) the restriction or prohibition of the exposure or display for sale of fruit or vegetables to which regulations made for the purpose of paragraph (dii) relate unless the variety or grade of the fruit or vegetables is, or, if the case requires, both their variety and grade are, identified as prescribed;

(d) Section 28 (1) (f) (i)—

Omit the subparagraph.

(e) Section 28 (1) (g)—

After section 28 (1) (f), insert:

(g) the conferring on a person liable to pay fees under this Act of a right of appeal or review in respect of the withdrawal of credit facilities from, or the refusal to extend such facilities to, that person in relation to the payment of those fees.

(f) Section 28 (2)–(2B)—

Omit section 28 (2), insert instead:

(2) The regulations may create an offence punishable by a penalty not exceeding \$1,000.

(2A) The regulations may make provision for or in respect of any matter relating to—

(a) the grading or packing of fruit or vegetables; or

SCHEDULE 1—*continued*AMENDMENTS TO THE PRINCIPAL ACT—*continued*

- (b) the branding or labelling of coverings containing fruit, vegetables or other plants,
- by applying, adopting or incorporating by reference, with or without modification—
- (c) any specified provisions of an Act of New South Wales or the Commonwealth, or of any regulations or other instruments made under such an Act, as in force when the regulations take effect or as in force from time to time; or
- (d) any specified standards, rules, codes or specifications—
- (i) prescribed in a document published by the Standards Association of Australia or the British Standards Institution;
 - (ii) prescribed in a document published by any other organisation concerned with prescribing standards, being an organisation approved by the Minister and notified in the Gazette as an organisation so approved for the purposes of this subparagraph; or
 - (iii) included in a document issued by the Crown in right of this State or the Commonwealth or by any agency or instrumentality of the Crown in right of this State or the Commonwealth,

and as in force when the regulations take effect.

(2B) If the regulations apply, adopt or incorporate by reference any specified standards, rules, codes or specifications prescribed or included in a document referred to in subsection (2A) (d), the Minister shall, on being requested to do so by any person, make a copy of that document available for inspection by that person.

(2C) A provision of a regulation may—

- (a) apply generally or be limited in its application by reference to specified exceptions or factors;
- (b) apply differently according to different factors of a specified kind;

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- (c) authorise any matter or thing to be from time to time determined, applied or regulated by any specified person or body; or
- (d) provide for specified persons, places, matters or things, or specified classes of persons, places, matters or things, to be exempted, either absolutely or subject to conditions, from that or any other provision of a regulation,

or may do any combination of those things.

(18) Section 29 (**Sale of fruit etc. not up to fair average quality**)—

(a) Section 29 (1)—

Before “The fact”, insert “(1AA)”.

(b) Section 29 (3)—

Omit the subsection, insert instead:

(3) A person who contravenes a provision of this section is guilty of an offence and liable to a penalty not exceeding \$2,000.

(19) Short headings—

Omit the short headings before sections 1, 4, 11, 19, 20, 21, 23 and 29.

SCHEDULE 2

(Sec. 5)

SAVINGS

Certain proclamations to continue

1. Any proclamation—

- (a) declaring an organism of the vegetable kingdom to be a disease for the purpose of the definition of that expression in section 3 (1) of the Principal Act;

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SCHEDULE 2—*continued*SAVINGS—*continued*

- (b) declaring an edible product of a plant to be a fruit for the purpose of the definition of that expression in section 3 (1) of the Principal Act;
 - (c) declaring anything to be a pest for the purpose of the definition of that expression in section 3 (1) of the Principal Act; or
 - (d) declaring any species of plant to be a vegetable for the purpose of the definition of that expression in section 3 (1) of the Principal Act,
- and in force immediately before the commencement of this Act shall continue in force as if it had been made under section 3 (3) of the Principal Act (as in force after that commencement).

Pending appeals under section 21 of the Principal Act

2. An appeal lodged under section 21 (1) of the Principal Act (as in force immediately before the commencement of this Act) and not disposed of before that commencement may be disposed of under section 21 (3) of the Principal Act (as in force after that commencement) as if it had been lodged under section 21 (2) of that Act (as so in force).

Savings for certain offences

3. If, after the commencement of this Act, any person is found guilty of having committed an offence against this Act, being an offence referred to in subsection (2) of section 26 of the Principal Act (as in force immediately before that commencement), that person is nevertheless liable to be dealt with in accordance with that subsection (as so in force).