



New South Wales

Plant Diseases Amendment Act 1995 No 44

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New South Wales

Plant Diseases Amendment Act 1995 No 44

Act No 44, 1995

An Act to amend the *Plant Diseases Act 1924* with respect to penalties and administrative matters, and for other purposes; and to amend the *Justices Act 1902* consequentially. [Assented to 26 October 1995]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Plant Diseases Amendment Act 1995*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

3 Amendment of Plant Diseases Act 1924 No 38

The *Plant Diseases Act 1924* is amended as set out in Schedule 1.

4 Consequential amendment of Justices Act 1902 No 27, section 100I

Insert in paragraph (a) of the definition of *penalty notice*, in alphabetical order, the following matter:

Plant Diseases Act 1924, section 19,

5 Explanatory notes

The matter appearing under the heading “Explanatory note” in Schedule 1 does not form part of this Act.

Schedule 1 Amendments

(Section 3)

[1] Section 2

Omit the section. Insert instead:

2 Savings and transitional provisions

Schedule 3 has effect.

Explanatory note

The amendment gives effect to Schedule 3 (to be inserted in the Act) which contains provisions of a savings and transitional nature.

[2] Section 3 Definitions

Omit the definitions of *Approved*, *Chief of the Division of Plant Industries*, *Disease*, *Fruit* and *Vegetable* from section 3 (1).

Insert instead:

Approved means approved for the time being by the Chief, Division of Plant Industries.

Chief, Division of Plant Industries means the Chief, Division of Plant Industries in the Department of Agriculture.

Disease means any organism of the vegetable kingdom, virus or mycoplasma organism which causes an abnormal or unhealthy condition in plants, and includes anything declared by proclamation under section 28B to be a disease for the purposes of this definition.

Fruit means any of the types of fruit listed in Schedule 1 or any other edible product of a plant declared by proclamation under section 28B to be a fruit for the purposes of this definition, and includes the peel, skin or shell of any such type of fruit or plant.

Vegetable means any of the types of vegetable listed in Schedule 2 or any other edible product of a plant declared by proclamation under section 28B to be a vegetable for the purposes of this definition, and includes the peel, skin or shell of any such type of vegetable or plant.

[3] Section 3 (1), definition of pest

Omit “under subsection (3)”.
Insert instead “by proclamation under section 28B”.

[4] Section 3 (3)

Omit section 3 (3).

Explanatory note

The amendments to section 3:

- replace the definition of *Chief of the Division of Plant Industries* to reflect the correct title of that position, and make a consequential change to the definition of *approved*
- e expand the definition of *disease* to include virus and mycoplasma organisms
- e replace the definitions of *fruit* and *vegetable* with definitions referring to the types of fruit and vegetable set out in Schedules 1 and 2 (to be inserted by Schedule 1 (26)) or declared by proclamation to fall within those definitions
- e make a minor consequential change to the definition of *pest*
repeal section 3 (3) (this does not replace the Governor’s power to declare certain things by proclamation (now contained in section 28B), but is merely consequential on the changes to the above definitions).

[5] Section 4 Power to regulate or prohibit the introduction of things likely to introduce disease

Insert “regulate or” after “in the Gazette” in section 4 (1).

[6] Section 4 (2)

Omit the subsection. Insert instead:

- (2) Unless it sooner ceases to be in force, a proclamation made under subsection (1) is revoked on the tenth anniversary of the date on which it was published in the Gazette.

Explanatory note

The amendments to section 4:

- enable the Governor by proclamation to regulate (as well as prohibit) the introduction of any thing into the State which has the potential to introduce disease
- provide for the revocation of any such proclamation on the tenth anniversary of its publication in the Gazette (unless it is sooner revoked or the Governor extends its operation under section 3 (2) of the Act).

[7] Section 5 Power to appoint places of entry and quarantine

Omit “Governor” from section 5 (1).

Insert instead “Minister”.

[8] Section 5 (1)

Omit “proclamation” wherever occurring. Insert instead “order”.

Explanatory note

The amendments to section 5 enable the Minister to appoint, by order published in the Gazette, places of entry and quarantine in New South Wales. At present, such appointments are made by the Governor by proclamation.

[9] Section 5A Treatment and eradication of diseases

Omit “and” where secondly occurring from section 5A (2) (b).

[10] Section 5A (2) (d)

Insert at the end of section 5A (2) (c):

, and

- (d) unless it sooner ceases to be in force, is revoked on the fifth anniversary of the date on which it was published in the Gazette.

Explanatory note

The amendments to section 5A provide for the revocation of orders made under that section on the fifth anniversary of their publication in the Gazette (unless they are sooner revoked or the Minister extends their operation under section 3 (2) of the Act).

[11] Section 7 Undertaking in prescribed cases

Insert “, in a form approved by the Chief, Division of Plant Industries,” after “undertaking” in section 7 (1).

Explanatory note

The amendment to section 7 provides that the undertaking which the Minister can currently accept from an owner or occupier of land (instead of declaring the land to be a quarantine area) is to be in a form approved by the Chief, Division of Plant Industries.

[12] Section 9 Seizure of plants

Omit “Minister” from section 9 (1).

Insert instead “Chief, Division of Plant Industries”.

Explanatory note

The amendment to section 9 transfers from the Minister to the Chief, Division of Plant Industries the power to issue directions in respect of plants seized by an inspector under that section.

[13] Section 14 Power to require owner or occupier of land or premises to prevent spread of disease

Omit “prevent the spread of any disease or pest”.

Insert instead “control or prevent the spread of any disease or pest (including, if reasonably necessary in the circumstances, the destruction of any place or thing on the land or premises that is inhabited by any disease or pest)”.

Explanatory note

The amendment to section 14, which currently enables an inspector to issue a notice requiring an owner or occupier of land to prevent the spread of any disease or pest, extends the powers of an inspector to include the service of a notice requiring the owner or occupier to control or destroy any place or thing inhabited by any disease or pest if such action is necessary and reasonable.

[14] Section 15 Steps to be taken when land or premises are infected

Omit “Whenever disease or pest exists on any land or premises an inspector” from section 15 (1).

Insert instead “If an inspector has reasonable grounds to suspect the presence of a disease or pest on any land or premises, the inspector”.

Explanatory note

The amendment to section 15 provides that an inspector may issue a notice to an owner or occupier of land or premises to take certain steps if the inspector has reasonable grounds to suspect the presence of a disease or pest on the land or premises. At present, such a notice can only be issued if a pest or disease exists on the land or premises.

[15] Sections 18, 23, 25A, 25B, 25C, 25D, 26, 29

Omit “20 penalty units” wherever occurring.
Insert instead “100 penalty units”.

Explanatory note

The amendments increase the maximum amount of penalties for certain offences from 20 penalty units to 100 penalty units (currently \$10,000) to bring penalties under the Act into line with penalties under comparable legislation, such as the *Stock Diseases Act 1923*.

[16] Section 19

Insert after section 18A:

19 Penalty notices

- (1) In this section, *prescribed offence* means an offence against this Act or the regulations that is prescribed by the regulations for the purposes of this section.
- (2) An inspector authorised under subsection (3) may serve a penalty notice on a person if it appears to the inspector that the person has committed a prescribed offence.
- (3) The Chief, Division of Plant Industries may authorise in writing an inspector to exercise the power conferred by subsection (2) and may, at any time, revoke such an authorisation by notice in writing given to the inspector.
- (4) A penalty notice is a notice to the effect that, if the person served does not want the matter to be determined by a court, the person may pay, within the period and to the person specified in the notice, the amount of penalty prescribed by the regulations for the offence if dealt with under this section.
- (5) A penalty notice may be served personally or by post.
- (6) If the amount of penalty prescribed for an alleged offence is paid in accordance with a penalty notice, no person is liable to further proceedings for the alleged offence.

- (7) Payment under this section is not to be regarded as an admission of liability for the purpose of, and is not in any way to affect or prejudice, any civil proceeding arising out of the same occurrence.
- (8) The regulations may do all or any of the following:
 - (a) prescribe an offence for the purposes of this section by specifying the offence or referring to the provision creating the offence,
 - (b) prescribe the amount of penalty payable for the offence if dealt with under this section,
 - (c) prescribe different amounts of penalties for different offences or classes of offences.
- (9) The amount of a penalty prescribed under this section must not exceed the maximum amount of penalty which could be imposed for the offence by a court.
- (10) This section does not limit the operation of any other provision of, or any other provision made under, this or any other Act relating to proceedings that may be taken in respect of offences.

Explanatory note

Section 19 enables offences under the Act and regulations to be dealt with by way of penalty notices served on persons suspected of having committed such offences. A penalty notice is a notice to the effect that, if a person does not want the matter to be determined by a court, the person may, in the time allowed, pay the amount of penalty prescribed for the offence and avoid further proceedings for the offence.

Section 100I of the *Justices Act 1902* is amended consequentially to bring penalty notices issued under section 19 within the self-enforcing infringement notice scheme.

[17] Section 21 Power to destroy plants in an abandoned orchard or nursery

Omit section 21 (1). Insert instead:

- (1) An inspector who has reasonable cause to believe that any disease or pest is likely to be present in, or spread from, an orchard or nursery because it is neglected or

abandoned may report the matter to the Minister. The Minister is required to give notice to the owner or occupier of the orchard or nursery if the Minister decides to exercise the powers conferred on the Minister by this section.

Explanatory note

Section 21 (1) currently provides that an inspector can only report to the Minister that an orchard or nursery is likely to spread disease or pest if the orchard or nursery is habitually, or has been for 2 years, uncultivated or neglected. The amendment enables an inspector to report to the Minister whenever the inspector has reason to believe that any disease or pest is likely to be present in (or spread from) an orchard or nursery because it is neglected or abandoned.

[18] Section 24 Notices to be given in writing

Omit “Chief of the Division of Plant Industries” from section 24 (2).
Insert instead “Chief, Division of Plant Industries”.

Explanatory note

The amendment to section 24 updates a reference to the position of Chief, Division of Plant Industries.

[19] Section 26 Offences

Insert after section 26 (1) (a):

- (b) alters, falsifies or misuses any notice or document issued by an inspector, or makes a false statement to an inspector, or

[20] Section 26 (1) (g)

Insert at the end of section 26 (1) (f):

, or

- (g) without reasonable excuse, introduces into New South Wales any plant, fruit, vegetable, package or covering with the knowledge that it is infected with a pest or disease.

[21] Section 26 (1A)

Insert after section 26 (1):

- (1A) A person who, but for this subsection, would be liable to be convicted for an offence under both section 25A (2) (b) and subsection (1) (b) of this section in respect of the same matter is liable to be convicted in respect of only one of those offences.

[22] Section 26 (3)

Omit “or (f)”. Insert instead “, (f) or (g)”.

[23] Section 26 (8)

Insert after section 26 (7):

- (8) In this section, *notification* includes a notice.

Explanatory note

The amendments to section 26:

- create a new offence of altering, falsifying or misusing any notice or document issued by an inspector, and a new offence of making a false statement to an inspector
- create a new offence of introducing into New South Wales, without reasonable excuse, any plant, fruit, vegetable, package or covering with the knowledge that it is infected with a pest or disease
- provide that a person may not be convicted of more than one offence relating to the same matter
- make it clear that references to notifications in the section include references to notices.

[24] Section 28 Regulations

Omit “10 penalty units” from section 28 (2).

Insert instead “50 penalty units”.

Explanatory note

The amendment to section 28 increases, from 10 to 50 penalty units (currently \$5,000), the maximum penalty that may be imposed by an offence created by the regulations.

[25] Section 28B

Insert after section 28A:

28B Proclamations

The Governor may, by proclamation, declare:

- (a) any organism of the vegetable kingdom, virus or mycoplasma organism which causes an abnormal or unhealthy condition in plants to be a disease for the purposes of this Act, and
- (b) an edible product of a species of plant to be fruit for the purposes of this Act, and
- (c) any thing to be a pest for the purposes of this Act, and
- (d) plants of any kind to be vegetables for the purposes of this Act.

Explanatory note

Section 28B restates the Governor's power to make proclamations and is consequential on the repeal of section 3 (3) which currently permits certain definitions in subsection (1) to be amended by proclamation.

[26] Schedules 1–3

Insert at the end of the Act:

Schedule 1 Types of fruit

(Section 3 (1))

- berry fruit
- cacti
- citrus fruit
- melons
- plantation hits
- pome fruit
- stone fruit

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- tropical fruits
- the following fruit—carambola, feijoa, fig, guava, jackfruit, jujube, longan, loquat, mammey sapote, medlar, olive, pepino, persimmon, pomegranate, sapodilla, tomato, cherry tomato, tamarillo, quandong, date and abiu.

Schedule 2 Types of vegetable

(Section 3 (1))

- chinese vegetables
- crucerirae
- curcubit group
- herbs
- leaf vegetables
- legumes
- onion group
- root vegetables
- vine vegetables
- the following vegetables—rhubarb, alfalfa, aniseed, choko, artichoke, asparagus, capsicum, celeriac, celery, chilli, corella, corn, courgette, eggplant, horseradish, mushroom, okra, paprika, pepper and rosella.

Schedule 3 Savings and transitional provisions

(Section 2)

Part 1 General

1 Savings and transitional regulations

- (1) The regulations may contain provisions of a savings and transitional nature consequent on the enactment of the following Acts:

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- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to that Act or a later date.
- (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:
 - (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
 - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done before the date of its publication.

Part 2 Provisions consequent on enactment of Plant Diseases Amendment Act 1995

2 Definition

In this Part, *amending Act* means the *Plant Diseases Amendment Act 1995*.

3 Continuation of certain instruments

- (1) Any proclamation made under section 3 (3), and in force immediately before the commencement of Schedule 1 (4) to the amending Act, is taken to be a proclamation in force under section 28B as inserted by Schedule 1 (25) to the amending Act.
- (2) Any proclamation made under section 5, and in force immediately before the commencement of Schedule 1 (7) to the amending Act, is taken to be an order made under that section as amended by that item and may be amended or repealed accordingly.
- (3) Any proclamation or order so taken to be made under this Act is, unless it sooner ceases to be in force, revoked on the tenth anniversary of the commencement of Schedule 1 (4) and (7), respectively, to the amending Act.

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Schedule 1 Amendments

Explanatory note

The amendment inserts Schedules 1–3 containing the following provisions:

- Schedules 1 and 2 list types of fruit and vegetable for the purposes of the new definitions of fruit and vegetable inserted by Schedule 1 (2)
- Schedule 3 provides for the making of savings and transitional regulations consequent on the proposed Act and for the continuation of certain instruments.

[Minister's second reading speech made in—
Legislative Assembly on 31 May 1995
Legislative Council on 11 October 1995]