

No. , 1917.

A BILL

To prevent the introduction into New South Wales of diseases affecting plants, to provide for the eradication of such diseases and to prevent the spread thereof; and for other purposes.

BE it enacted by the King'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 :—

Preliminary.

1. This Act may be cited as the "Plant Diseases Act, Short title. 1917," and shall come into operation on the day of , one thousand nine hundred and .

2. The Vine and Vegetation Diseases and Fruit Act, Repeal. 1912, No. 34, is hereby repealed.

3. All offices, appointments, regulations, rules, pro- Acts of clamations, certificates, orders, permits, instruments, done under and generally all acts of authority which originated repealed enactments to under any enactment repealed by this Act, and hereby continue in re-enacted with or without modification, and which are force. .
are subsisting or in force on or immediately prior to the commencement of this Act shall, subject to this Act, continue in force and ensure for the purpose of this Act as fully and effectually as if they had originated under the corresponding provisions of this Act, and accordingly shall, when necessary, be deemed to have so originated.

4. In this Act, unless inconsistent with the context Interpretation. or subject, matter—

"Disease" or "pest" means any disease or pest attributable to organisms belonging either to the animal kingdom or to the vegetable kingdom which the Governor may declare by proclamation in the Gazette to be a disease or pest, and includes any such disease or pests in whatever stage of existence it may be.

"Inspector" means an inspector appointed under this Act or an Act hereby repealed.

"Fruit" means the product of any plant, and includes the peel, skin, or shell of any such product, and also the seeds of any plant.

"Minister" means the Minister of Agriculture.

"Occupier" as applied to any orchard or other land or premises includes any person having the charge, management, or control thereof.

"Owner" includes any person holding land under any lease or license from the Crown or deriving title from, under or through him.

"Plant"

- “ Plant ” means any tree, vine, flower, shrub, vegetable, or other vegetation of economic value, or such other plants as the Governor may declare by proclamation to be plants.
- “ Prescribed ” prescribed by this Act or the regulations.
- “ Infected ” means infected with disease or pest.
- “ Covering or package ” includes any case, box, bag, wrapper, packing, or material of whatsoever description designed to contain or be used in the packing of anything.
- “ Nursery ” means any premises whereon or wherein any trees, shrubs, vines, and ornamental or fruit-bearing plants are grown for the purpose of sale or disposal in their living state.
- “ Regulations ” means regulations made under this Act.
- “ Orchard ” means any place where one or more fruit-producing plants are grown.
- “ Under Secretary ” means the Under Secretary of the Department of Agriculture.
- “ Vegetables. ” Potatoes, onions, green peas, green beans, and any other vegetable declared by the Minister by notice in the Gazette.

5. The Governor may by proclamation prohibit either absolutely or except in accordance with the regulations the bringing into the State either generally or from any specified State, country, or place; or the bringing into any specified portion of the State or into the prescribed portion thereof, as the case may be; of all or any of the things following, that is to say :—

Power to prohibit the introduction into the State or specified portions thereof of things likely to introduce disease.

- (a) Any specified kind of plant, fruit, or other thing which would in his opinion be likely to introduce any disease into the State or into any specified portion thereof, as the case may be.
- (b) All or any coverings or goods in or with which any plant, fruit, or thing of the kind specified has been contained or packed or come in contact.
- (c) Anything which is infected, or anything which is infected with any specified disease.

6.

6. The Governor may by proclamation—

- (a) appoint any specified ports or places to be the only ports or places of entry for plants or fruit or for any specified kind of plants or fruit ;
- (b) appoint quarantine grounds where plants, fruit, and covering, and goods which have come in contact with plants or fruit may be detained for the purpose of being inspected, disinfected, destroyed, or otherwise disposed of ;
- (c) prohibit the use, storage, or carriage within the State or within any specified portion of the State of coverings in or with which any specified plant or fruit has been contained or packed or come in contact ;
- (d) prohibit the removal of any or every tree, plant from out of any nursery, orchard, or other place unless only as prescribed ; or
- (e) revoke or vary any proclamation made under this Act or any Act hereby repealed.

Powers to appoint ports or places of entry, quarantine stations, to prohibit export in certain cases, and to revoke or vary proclamation.

7. The Minister may appoint such persons as he thinks fit to be inspectors under this Act and confer on them such powers and functions as he may deem necessary in order to carry out the provisions of this Act.

Appointment of officers.

8. Every occupier of any orchard in which any disease appears shall, within twenty-four hours after first discovering or becoming aware of its presence, give written notice thereof to an inspector or to the Under-Secretary.

Notice to be given of appearance of disease.

9. (1) Every occupier or owner of any orchard on a date to be fixed by the Minister by notice in the Gazette shall, unless exempted by the Minister, register that orchard with the department in manner prescribed by regulation.

Orchard to be registered.

(2) Every owner or occupier of any nursery on a date to be fixed by the Minister by notice in the Gazette shall, unless exempted by the Minister, register that nursery with the department in manner prescribed by regulation.

Nursery to be registered. Inspection and certification.

(3) The Minister may, whenever he thinks fit, cause an inspector to inspect any such nursery, and if on inspection it is found that the plants in such nursery are free from disease or pest he may give to the owner or occupier a certificate in the form prescribed. Such certificate shall have effect for the time mentioned therein.

(4) The Minister may cancel any such certificate at any time during the period mentioned therein, and the person to whom such certificate is issued shall on demand deliver it up.

(5) Any person who falsely pretends that he is the holder of any such certificate shall be liable to a penalty not exceeding *fifty* pounds.

10. Any inspector may at any time enter any orchard, nursery, land, or premises or any house or structure used for the storage of fruit, or conveyance, or may board any vessel and may thoroughly search and inspect the same and any part thereof, and anything thereon or therein, for the purpose of ascertaining whether the same is infected, and may for the purpose aforesaid examine plants, fruit, coverings, and goods and other things, and dig up plants, open packages, and do all such other things (whether of the same nature as hereinbefore mentioned or not) as he may deem necessary or expedient.

Power of entry and search.

11. (1) An inspector may, with the approval of and subject to an appeal to the Minister, serve on the owner and occupier of any orchard or place where any plant is growing, or on either of them, a notice requiring them or him to take any measures or do any acts which the inspector may deem necessary, and are set forth in such notice, or as are prescribed to prevent the spread of any disease, and in such case even although the orchard or place is not infected, any person on whom such notice is served, shall within the time specified thereon comply with the requisitions thereof.

Power to require owner or occupier of orchard to take steps to prevent spread of disease.

(2) In the event of notice being served on both the owner and occupier, they shall be jointly and severally liable to perform the requisitions thereof.

(3)

(3) In case of any default in compliance with the terms of the notice any inspector may do or cause to be done all such things as may be necessary in order to carry the terms of the notice completely into effect, and the expenses incurred in or about so doing shall be recoverable from the person or persons guilty of the default.

12. (1) Whenever an inspector is satisfied that disease exists on any orchard, land, or premises, he may by requisition to the owner and occupier or either of them require them or him to do whatever is necessary in order to eradicate such disease from such orchard, land, or premises, and to prevent the spread thereof, and the requisition may specify any particular steps which the inspector requires to be taken or are prescribed. Steps to be taken by inspector when orchard infected.

(2) Such requisition may name a time by which the doing of anything thereby required shall be commenced and a time within which it shall be completed.

(3) The owner and occupier, jointly or severally, or the owner or occupier, as the case may be, shall be responsible for the due compliance with the requisition, and shall do everything thereby required to be done.

(4) In case of any default in compliance with the terms of the requisition any inspector may do or cause to be done all such things as may be necessary in order to carry the terms of the requisition completely into effect, and the expenses incurred in and about so doing shall be recoverable from the person or persons guilty of the default.

Penalty *one hundred pounds.*

13. (1) If, as the result of any investigation conducted by him, any inspector shall declare any plant, fruit, covering, goods, conveyance, or vessel or thing to be infected, he shall give notice thereof to the owner or person in charge thereof, and on receipt of such notice such owner or person shall forthwith take such measures and do such acts as are necessary, or as the inspector shall declare to be necessary in order to eradicate or prevent the spread of the disease. Power to order infected things to be dealt with so as to eradicate disease.

(2)

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(2) If such person or owner fails or neglects to take any such measure or do any such acts as aforesaid, any inspector may do the same at the expense in all things of either such owner or such person in charge thereof as the Minister shall direct.

14. For the purpose of carrying out the object of this Act any inspector may destroy or otherwise dispose of any plants or fruit which are infected or which he shall on reasonable grounds believe to be infected, or any coverings in or with which any such plants or fruit have been contained or packed or come in contact.

Power to destroy infected plants, coverings, &c.

15. It shall be lawful for an inspector to require any person having in his possession or under his control any fruit or plants for sale, to answer any questions relating to such fruit or plants, and such person shall forthwith answer any such questions truthfully to the best of his knowledge, information, and belief.

Power to question vendors of fruit, &c.

Penalty, *ten* pounds.

16. (1) If any inspector shall report to the Minister that any orchard has been abandoned the Minister may cause a notice to be served on the owner or occupier and may therein state that unless, within the period specified therein, good cause is not shown to him why he should not exercise the powers conferred by this section, he will order all plants in such orchard which are deemed by an inspector to be likely to harbor or spread or capable of aiding in the harboring or spreading of disease to be destroyed.

Power to destroy plants in an abandoned orchard.

(2) Unless within the period specified in such notice good cause as aforesaid is shown to the satisfaction of the Minister then the orchard shall be conclusively deemed to be abandoned, and the Minister may cause such plants as aforesaid to be destroyed as stated in the notice, and this Act shall be sufficient warrant for any act done or step taken for that purpose.

(3) For the purposes of this section an orchard shall be deemed to be abandoned which is habitually or has been for a long period left uncultivated or neglected.

17. Any plant, fruit, covering, goods or other thing which, contrary to this Act, is or are in any way introduced or attempted to be introduced into the State or imported

Seizure of prohibited plants.

imported or introduced or brought into any portion of this State from any other portion thereof contrary to this Act or any proclamation or regulation made thereunder may forthwith be seized by any person authorised in writing by the Minister either generally or specifically and shall be destroyed or otherwise dealt with as such inspector thinks fit at the expense in all things of either the owner or person in charge thereof as the Minister shall direct.

18. Any owner of any orchard, land, or premises which is in the occupation of another person shall have full right of entry on and into the same, and of remaining thereon and therein for the purpose of doing anything he is required to do under or pursuant to this Act, and if in the performance of any duty or obligation imposed on him by or under this Act the owner of any orchard, land, or premises is in any way obstructed or hindered by the occupier or the occupier by the owner, the one who obstructs or hinders the other shall be liable to a daily penalty not exceeding *five* pounds.

Penalty if owner or occupier hinders the other.

19. An inspector may employ such assistants as he deems necessary in carrying out the provisions of this Act.

Employment of assistants.

20. For the purpose of making an entry or removal or otherwise performing his duties under this Act, any inspector or assistant may, in case of resistance use all necessary force.

Use of force in case of resistance.

21. Every person commits an offence against this Act who directly obstructs, hinders, or interrupts, or threatens, or assaults, or uses improper or abusive language to any inspector or assistant whilst in the performance of his duty under this Act :

Persons obstructing officers.

Provided that no proceedings for the recovery of any penalty for such offence, nor the payment thereof, shall be a bar to any action at law by any such inspector or assistant.

22. No inspector or assistant shall be deemed to be a trespasser by reason of any entry or removal under this Act, or be liable for any damage occasioned in carrying out the provisions of this Act.

Officers not to be trespassers.

23.

23. Any notice to be given to any person under or pursuant to this Act or any regulation must be given in writing either by delivering the same to such person, or by leaving the same at or posting the same by registered post addressed to him at his usual or last known place of abode in New South Wales, or if he is unknown or has no place of abode and no place of business in the State, and cannot be found in New South Wales, then by affixing such notice in a conspicuous place on the land to which such notice relates.

Notices to be given in writing.

24. No person shall be entitled to any compensation whatsoever in respect to anything done by any inspector or other officer or assistant or any other person in the discharge of any duty or obligation under this Act or any regulation, or in respect of any measure taken in order to eradicate or prevent the spread of disease or carry out the provisions of this Act or any regulation or in respect of any loss or injury that may directly or indirectly result therefrom.

Persons not entitled to compensation.

25. Every person commits an offence against this Act who, directly or indirectly by himself, his servant or agent—

Offences.

- (a) sells or offers or exposes for sale any plant, fruit, goods, covering, or thing which is or are diseased or infected (except under the direction or order of an inspector) brings or suffers to be brought upon or removed or suffers to be removed from his premises any such plant, fruit, goods, covering, or thing; or
- (b) sells or offers or exposes for sale any plant, fruit, goods, covering, or thing which has or have been introduced into New South Wales in breach of any proclamation or regulations under this Act, or (except under the direction of any inspector) bring or suffers to be brought upon, or removes or suffers to be removed from his premises any such plant, fruit, goods, covering, or thing; or
- (c) does not attempt to do any other act in breach of this Act, or any proclamation or regulation under this Act; or

(d)

- (d) fails or neglects to faithfully observe and perform any duty or obligation imposed on him by this Act, or by any proclamation or regulation under this Act.

26. Every person who commits any offence against this Act shall (if no penalty is hereinbefore specified for the offence) be liable on summary conviction to a penalty not exceeding *fifty* pounds. Penalties.

27. In all proceedings taken against any person for any offence against this Act the averments of the prosecutor contained in a sworn complaint shall be deemed to be proved in the absence of proof to the contrary. Onus of proof.

28. Whenever in any such prosecution knowledge must be shown, such knowledge shall be presumed, unless and until the contrary is proved and the defendant satisfies the court that the want of knowledge was reasonable and was in no way imputable to negligence on the part of himself, his servant, or agent. Proof of knowledge.

29. (1) The Governor may make regulations prescribing all matters which by this Act are required or permitted to be prescribed, or which it may be necessary or convenient to prescribe for giving effect to this Act. Regulations.

(2) Without limiting the generality of any of the above provisions, it is hereby declared that the Governor may by regulations—

- (a) prescribe the manner in which plants, fruit, and coverings in which plants or fruit have been contained or packed shall (whether infected or not) be treated in order to eradicate disease or lessen the risk of the spread of disease, or for preventing any fruit pest attacking or being harboured on or in any plant or covering;
- (b) provide for the registration of all or any orchards containing one or more fruit trees or grape vines, vineyards, nurseries, auction rooms, shops, markets, or other premises used in connection with the sale or storage of plants or fruit;
- (c) prescribe the matters in respect of which fees shall be payable under this Act, and fix the amount of such fees, and the mode of payment and recovery thereof;
- (d)

- (d) require the occupiers of plant nurseries to fumigate or otherwise treat all or any plants before the same are sent out from the nurseries, and prescribe the manner of such fumigation or treatment;
- (e) require coverings containing fruit or plants to be branded or labelled, and prescribe the manner of such branding or labelling;
- (f) securing the detention and examination of trees, plants, and vegetables which are suspected to be diseased, and of boxes, baskets, packages, and cases which are suspected to contain diseased trees, plants, or vegetables, or to harbour or to be infected with disease;
- (g) impose a penalty not exceeding *twenty-five* pounds for the breach of any regulation.

30. (1) Any regulation or by-law made or purporting to be made under or by virtue of this Act shall—

- (a) be published in the Gazette;
- (b) take effect from the date of publication or from a later date to be specified therein; and
- (c) be judicially noticed, and unless and until disallowed as hereinafter provided, or except in so far as in conflict with any expressed provision of this or any other act be conclusively deemed to be valid.

(2) Such regulations and by-laws shall be laid before both Houses of Parliament within fourteen days after publication if Parliament is in session, and if not, then within fourteen days after the commencement of the next session.

31. (1) No person shall sell the whole or any part of any lot of fruit or vegetables or any fruit or vegetables contained in a package unless the outer layer or shown surface of the fruit or vegetables contained in such lot or package is so arranged or packed that it is a true indication of the fair average quality of the whole of the fruit or vegetables.

It shall be considered a false representation when more than ten per centum of such fruit or vegetables is substantially

substantially smaller or defective as to cause material waste or is inferior in grade to the faced or shown surface of such lot or package.

(2) No person shall sell any fruit or vegetables contained in any package which also contains any foreign substance in a greater proportion than is indicated by the outer layer or shown surface of such fruit or vegetables.

(3) Any person who is guilty of a contravention of this section shall be liable to a penalty not exceeding *twenty* pounds.
